

Authorised Version No. 082
Port Management Act 1995

No. 82 of 1995

Authorised Version incorporating amendments as at
1 July 2022

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The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The main purpose of this Act is—

- | | | | | | |
|------|--|---|---|---|--|
| * | * | * | * | * | S. 1(a)
substituted by
No. 85/2003
s. 3,
repealed by
No. 45/2010
s. 25. |
|
 | | | | | |
| (ab) | to provide for the establishment,
management and operation of commercial
trading ports and local ports in Victoria; and | | | | S. 1(ab)
inserted by
No. 85/2003
s. 3. |
| (b) | to provide for the economic regulation of
certain port services; and | | | | |
| (c) | to provide for the imposition of certain port
charges or fees; and | | | | S. 1(c)
amended by
No. 63/2007
s. 3. |
| (d) | to require the engagement of licensed
harbour masters in certain circumstances and
set out their functions; and | | | | |
| (e) | to provide for the transfer of property, rights
and liabilities and the management of Crown
land and to make provision with respect to
the rights of staff; and | | | | |

- (f) to amend the **Port of Melbourne Authority Act 1958**, the **Port of Geelong Authority Act 1958**, the **Port of Portland Authority Act 1958**, the **Marine Act 1988**, the **Pollution of Waters by Oil and Noxious Substances Act 1986** and the **Dangerous Goods Act 1985**.

2 Commencement

- (1) This Part and section 189(7) and (8) come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 28 November 1998, it comes into operation on that day.

S. 2(3)
substituted by
No. 51/1996
s. 3.

S. 3
amended by
No. 63/2007
s. 4(2) (ILA
s. 39B(1)).

3 Definitions

- (1) In this Act—

abandoned thing means a thing to which
Division 4 of Part 5B applies;

S. 3(1) def. of
*abandoned
thing*
inserted by
No. 93/2009
s. 10.

anchorage means a place in port waters where
vessels may anchor;

S. 3(1) def. of
anchorage
inserted by
No. 10/2016
s. 94(2).

S. 3(1) def. of
board
repealed by
No. 45/2010
s. 26(a).

* * * * *

cargo includes any substance or article and any container or other item used to contain any substance or article;

* * * * *

S. 3(1) def. of *Central Plan Office* inserted by No. 110/2004 s. 58(a), amended by No. 70/2013 s. 4(Sch. 2 item 38.1), repealed by No. 53/2017 s. 89.

channel has the same meaning as it has in section 3(1) of the **Marine Safety Act 2010**;

S. 3(1) def. of *channel* substituted by No. 65/2010 s. 418(a).

channel-dredging activities means any of the following activities to enable use of a channel by vessels—

S. 3(1) def. of *channel-dredging activities* inserted by No. 10/2016 s. 94(2).

- (a) altering, dredging, cleansing, scouring, straightening and improving a channel;
- (b) reducing or removing any banks or shoals within a channel;
- (c) abating and removing any impediments, obstructions and nuisances in a channel that are injurious to the seabed or that obstruct or tend to obstruct navigation;
- (d) placing or disposing of excavated or dredged material resulting from the carrying out of an activity referred to in paragraph (a), (b) or (c);
- (e) undertaking any works necessary to place or dispose of excavated or dredged material resulting from the

carrying out of an activity referred to in paragraph (a), (b) or (c);

S. 3(1) def. of *channel fee* inserted by No. 63/2007 s. 4(1).

channel fee means a fee under section 75;

S. 3(1) def. of *channel operator* substituted by No. 23/2003 s. 18(b), amended by Nos 85/2003 s. 30(1)(a), 45/2010 s. 26(b), 38/2011 s. 22(1), 10/2016 s. 179(Sch. 1 item 7.1(b)), 19/2022 s. 34(1)(a).

channel operator means—

- (a) in the case of port of Melbourne waters, Ports Victoria;
- (b) in the case of any other port waters, a person who manages channels in those waters under an agreement with Ports Victoria;

S. 3(1) def. of *coastal vested land* amended by No. 26/2018 s. 97(1).

coastal vested land means—

- (a) in relation to PGA, Crown land—
 - (i) that is vested in PGA and that was so vested by or under the **Port of Geelong Authority Act 1958**;
and
 - (ii) that is marine and coastal Crown land within the meaning of the **Marine and Coastal Act 2018**;
- (b) in relation to PPA, Crown land—
 - (i) that is vested in PPA and that was so vested by or under the **Port of Portland Authority Act 1958**;
and

(ii) that is marine and coastal Crown land within the meaning of the **Marine and Coastal Act 2018**—

but does not include any land vested in PGA or PPA that is declared by Order in Council under section 5(4) not to be coastal vested land for the purposes of this Act;

commercial trading port means the port of Melbourne, the port of Geelong, the port of Portland, the port of Hastings and any other port declared to be a commercial trading port by Order in Council under section 6;

S. 3(1) def. of *commercial trading port* inserted by No. 85/2003 s. 28(a).

development includes—

- (a) the construction, extension, demolition or removal of a building or works;
- (b) the decoration or alteration of the inside or outside of a building or the alteration of works;
- (c) the subdivision or consolidation of land, airspace or buildings;
- (d) the installation, provision or operation of facilities or services;

Director, Transport Safety has the same meaning as it has in section 3 of the **Transport Integration Act 2010**;

S. 3(1) def. of *Director of Marine Safety* inserted by No. 23/2003 s. 18(a), substituted as *Director, Transport Safety* by No. 6/2010 s. 203(1)(Sch. 6 item 36.1(a)) (as amended by No. 45/2010 s. 22).

S. 3(1) def. of
*domestic
partner*
inserted by
No. 63/2007
s. 4(1),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 48.1).

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of
*film friendly
principles*
inserted by
No. 51/2014
s. 9(Sch. 2
item 14.1).

film friendly principles has the same meaning as in the **Filming Approval Act 2014**;

S. 3(1) def. of
film permit
inserted by
No. 51/2014
s. 9(Sch. 2
item 14.1).

film permit has the same meaning as in the **Filming Approval Act 2014**;

S. 3(1) def. of
*harbour
master*
substituted by
No. 9/2004
s. 26,
amended by
No. 65/2010
s. 418(b).

harbour master has the same meaning as in the **Marine Safety Act 2010**;

S. 3(1) def. of
*harbour
master
licence*
inserted by
No. 19/2022
s. 34(2).

harbour master licence has the same meaning as in the **Marine Safety Act 2010**;

S. 3(1) def. of
*hazardous
port activity*
inserted by
No. 93/2009
s. 10,
amended by
No. 54/2012
s. 12.

hazardous port activity means any activity involving the following—

- (a) the transfer of dry or liquid cargoes to and from vessels or wharves;
- (ab) the transfer of liquid fuel or other non-cargo liquids by flexible hose to and from vessels or wharves;

(b) hot works, being welding, thermal or oxygen cutting or heating or any other heat producing or spark producing activity;

* * * * *

S. 3(1) def. of *HPHC* inserted by No. 63/1997 s. 3, repealed by No. 85/2003 s. 29(a).

instrument includes a document and an oral agreement;

leased port of Melbourne land means port of Melbourne land in respect of which the port of Melbourne operator holds a leasehold interest;

S. 3(1) def. of *leased port of Melbourne land* inserted by No. 10/2016 s. 94(2).

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

licensed harbour master means a harbour master licensed by the Director, Transport Safety under the **Marine Safety Act 2010**;

S. 3(1) def. of *licensed harbour master* amended by Nos 77/2001 s. 32(4)(a)(i), 6/2010 s. 203(1)(Sch. 6 item 36.1(b)) (as amended by No. 45/2010 s. 22), 65/2010 s. 418(b).

local port means a port declared to be a local port by Order in Council under section 6;

S. 3(1) def. of *local port* inserted by No. 85/2003 s. 28(a).

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S. 3(1) def. of *managed land* repealed by No. 23/2003 s. 3(b).

* * * * *

S. 3(1) def. of *management plan* inserted by No. 85/2003 s. 27.

management plan means a safety management plan or an environment management plan required by section 91C;

S. 3(1) def. of *Marine Board* repealed by No. 77/2001 s. 32(4)(a)(ii).

* * * * *

S. 3(1) def. of *Melbourne port area* repealed by No. 23/2003 s. 3(b).

* * * * *

S. 3(1) def. of *member of the police force* inserted by No. 63/2007 s. 4(1), repealed by No. 37/2014 s. 10(Sch. item 128.1(b)).

* * * * *

S. 3(1) def. of *MPC* repealed by No. 23/2003 s. 3(b).

* * * * *

S. 3(1) def. of *navigation aid* substituted by No. 65/2010 s. 418(c).

navigation aid has the same meaning as it has in section 3(1) of the **Marine Safety Act 2010**;

owner, in relation to a vessel or cargo, means owner within the meaning of section 4;

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<p><i>partner</i> of a person means the person's spouse or domestic partner;</p>	<p>S. 3(1) def. of <i>partner</i> inserted by No. 63/2007 s. 4(1).</p>
<p><i>PGA</i> means Port of Geelong Authority;</p>	
<p>* * * * *</p>	<p>S. 3(1) def. of <i>PMA</i> repealed by No. 23/2003 s. 3(b).</p>
<p>* * * * *</p>	<p>S. 3(1) def. of <i>POHC</i> inserted by No. 85/2003 s. 29(b), repealed by No. 45/2010 s. 26(a).</p>
<p><i>police officer</i> has the same meaning as in the Victoria Police Act 2013;</p>	<p>S. 3(1) def. of <i>police officer</i> inserted by No. 37/2014 s. 10(Sch. item 128.1(a)).</p>
<p><i>port</i> means the port of Melbourne, the port of Geelong, the port of Portland, the port of Hastings and any other port declared under section 6 in relation to which port lands or port waters or both port lands and port waters have been declared under section 5;</p>	<p>S. 3(1) def. of <i>port</i> inserted by No. 85/2003 s. 28(a).</p>
<p><i>Port Act</i> means the Port of Geelong Authority Act 1958, the Port of Melbourne Authority Act 1958 or the Port of Portland Authority Act 1958;</p>	<p>S. 3(1) def. of <i>Port Act</i> inserted by No. 63/1997 s. 3.</p>
<p><i>port authority</i> means Port of Melbourne Authority, Port of Geelong Authority or Port of Portland Authority;</p>	
<p><i>port authority abolition date</i>, in relation to a port authority, means the date fixed by the Governor in Council by Order under</p>	<p>S. 3(1) def. of <i>port authority abolition date</i> inserted by No. 63/1997 s. 3.</p>

section 153(2) for the purposes of that port authority;

S. 3(1) def. of *port corporation* amended by Nos 51/1996 s. 4, 63/1997 ss 5(1), 6(1), 23/2003 s. 3(c), 85/2003 ss 29(c), 30(1)(b), 45/2010 s. 26(c), 38/2011 s. 22(2), 10/2016 s. 179(Sch. 1 item 7.1(c)), 19/2022 s. 34(1)(b).

port corporation means Port of Hastings Development Authority or Ports Victoria;

S. 3(1) def. of *port land* amended by No. 23/2003 s. 3(d).

port land means—

- (a) in the case of the port of Melbourne, the port of Melbourne land;
- (b) in the cases of the port of Geelong, Portland or Hastings, the land declared by Order in Council made under section 5(1) to be the port land of that port;

S. 3(1) def. of *port licence* inserted by No. 10/2016 s. 94(2).

port licence means a licence granted under Division 5 of Part 3;

S. 3(1) def. of *port licence fee* inserted by No. 8/2012 s. 4, substituted by No. 10/2016 s. 94(1)(a).

port licence fee means the fee payable by the port licence holder under Part 2B;

port licence holder means the holder of a port licence;

S. 3(1) def. of *port licence holder* inserted by No. 10/2016 s. 94(2).

port manager means—

S. 3(1) def. of *port manager* inserted by No. 85/2003 s. 28(a).

- (a) in the case of a commercial trading port, the person or body who effectively manages, superintends or controls the operation of the port or part of the port, but does not include a tenant or occupier of part of the port unless the tenant or occupier has entered into a port management agreement to manage the operations of that part of the port; or
- (b) in the case of a local port, the person or body appointed under section 44A to be the port manager of the port;

port of Hastings means port of Hastings land and port of Hastings waters;

S. 3(1) def. of *port of Hastings* inserted by No. 45/2010 s. 26(f).

Port of Hastings Development Authority has the same meaning as in the **Transport Integration Act 2010**;

S. 3(1) def. of *Port of Hastings Development Authority* inserted by No. 38/2011 s. 22(3).

port of Hastings land means land declared by Order in Council under section 5(1) of the **Port Management Act 1995** to be the port land of the port of Hastings;

S. 3(1) def. of *port of Hastings land* inserted by No. 45/2010 s. 26(f).

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S. 3(1) def. of
*port of
Hastings
waters*
inserted by
No. 45/2010
s. 26(f).

port of Hastings waters means waters declared by
Order in Council under section 5(2) of the
Port Management Act 1995 to be the port
waters of the port of Hastings;

S. 3(1) def. of
*port of
Melbourne*
inserted by
No. 23/2003
s. 3(a),
amended by
No. 23/2003
s. 18(c).

port of Melbourne means port of Melbourne land
and port of Melbourne waters;

S. 3(1) def. of
*Port of
Melbourne
Corporation*
inserted by
No. 23/2003
s. 3(a),
substituted by
No. 45/2010
s. 26(d),
repealed by
No. 10/2016
s. 179(Sch. 1
item 7.1(d)).

* * * * *

S. 3(1) def. of
*port of
Melbourne
land*
inserted by
No. 23/2003
s. 3(a),
amended by
Nos 110/2004
s. 58(b),
10/2016
s. 94(1)(b).

port of Melbourne land means land that is in the
municipal district of the Melbourne City
Council, Maribyrnong City Council,
Hobsons Bay City Council or Port Phillip
City Council or any land in Port Phillip Bay
adjoining one or more of those municipal
districts, being—

- (a) land—
 - (i) an interest in which (being an
interest that is in the nature of a
freehold or leasehold interest or a
licence) is held by a public sector
entity or the port of Melbourne
operator; and

(ii) that is declared by the Order in Council under section 5(1A) to be port of Melbourne land; and

(b) any land that is deemed to be temporarily reserved under the **Crown Land (Reserves) Act 1978** for the purposes of the port of Melbourne by the operation of Part 4;

port of Melbourne operator means a person declared under section 4A to be the port of Melbourne operator;

S. 3(1) def. of *port of Melbourne operator* inserted by No. 10/2016 s. 94(2).

port of Melbourne waters means any waters which by Order in Council made under section 5(2) are declared to be port waters of the port of Melbourne;

S. 3(1) def. of *port of Melbourne waters* inserted by No. 23/2003 s. 18(a), substituted by No. 85/2003 s. 4.

port operator means a person who owns the business of, or is responsible for the management and operations of, the port of Geelong, Portland or Hastings or a berth located in one of those ports but does not include a port authority;

port property, in relation to SEC, has the same meaning as in section 85(3) of the **State Electricity Commission Act 1958**;

S. 3(1) def. of *port property* inserted by No. 63/1997 s. 3.

port safety officer, in relation to the port of Melbourne, means a person appointed under section 230L of the **Transport Act 1983**;

S. 3(1) def. of *port safety officer* inserted by No. 93/2009 s. 10.

S. 3(1) def. of
port waters
amended by
No. 23/2003
s. 18(d),
substituted by
No. 85/2003
s. 28(b).

port waters, in relation to a port, means the waters declared by Order in Council under section 5(2) to be port waters of the port;

S. 3(1) def. of
Ports Victoria
inserted by
No. 19/2022
s. 34(1)(d).

Ports Victoria has the same meaning as in section 3 of the **Transport Integration Act 2010**;

PPA means Port of Portland Authority;

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

S. 3(1) def. of
provision of channels
inserted by
No. 10/2016
s. 94(2).

provision of channels includes carrying out channel-dredging activities;

S. 3(1) def. of
public entity
inserted by
No. 10/2016
s. 94(2).

public entity has the same meaning as in the **Public Administration Act 2004**;

S. 3(1) def. of
public sector entity
inserted by
No. 10/2016
s. 94(2).

public sector entity has the same meaning as in the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**;

S. 3(1) def. of
quarter
inserted by
No. 8/2012
s. 4.

quarter means a period of 3 months ending on 30 September, 31 December, 31 March or 30 June in any year;

<p><i>restricted access area</i> means an area that is the subject of a declaration under Division 2 of Part 5A;</p>	<p>S. 3(1) def. of <i>restricted access area</i> inserted by No. 63/2007 s. 4(1).</p>
<p><i>rights</i> means all rights, powers, privileges and immunities, whether actual, contingent or prospective;</p>	
<p><i>SEC</i> means the State Electricity Commission of Victoria;</p>	<p>S. 3(1) def. of <i>SEC</i> inserted by No. 63/1997 s. 3.</p>
<p><i>Secretary</i> means the Department Head, within the meaning of the Public Administration Act 2004, of the Department of Transport;</p>	<p>S. 3(1) def. of <i>Secretary</i> inserted by No. 93/2009 s. 10, amended by Nos 70/2013 s. 4(Sch. 2 item 38.2), 49/2019 s. 186(Sch. 4 item 34.1).</p>
<p><i>spouse</i> of a person means a person to whom the person is married;</p>	<p>S. 3(1) def. of <i>spouse</i> inserted by No. 63/2007 s. 4(1).</p>
<p><i>Station Pier land</i> means the land shown outlined in black on the plan lodged in the Central Plan Office and numbered OP 119746—A;</p>	<p>S. 3(1) def. of <i>Station Pier land</i> inserted by No. 110/2004 s. 58(a).</p>
<p><i>stevedoring</i> means the loading or unloading of the cargo of a vessel and incidental activities such as the handling or storage of cargo or stevedoring equipment at the place at which the cargo is loaded or unloaded;</p>	

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S. 3(1) def. of
VCA
substituted by
No. 85/2003
s. 30(1)(c).

VCA means the Victorian Channels Authority as
in force immediately before the
commencement of section 10 of the **Port
Services (Port Management Reform)
Act 2003**;

S. 3(1) def. of
*Victorian
Ports
Corporation
(Melbourne)*
inserted by
No. 10/2016
s. 179(Sch. 1
item 7.1(a)),
repealed by
No. 19/2022
s. 34(1)(c).

* * * * *

S. 3(1) def. of
VRCA
inserted by
No. 85/2003
s. 30(1)(c),
substituted by
No. 45/2010
s. 26(e),
repealed by
No. 19/2022
s. 34(1)(c).

* * * * *

S. 3(1) def. of
vessel
substituted by
No. 65/2010
s. 418(d).

vessel has the same meaning as it has in
section 3(1) of the **Marine Safety Act 2010**;

S. 3(1) def. of
wharfage fee
inserted by
No. 63/2007
s. 4(1).

wharfage fee means a fee under section 74;

works includes—

- (a) any change to the natural or existing
condition or topography of land;
- (b) the removal of vegetation or topsoil;
- (c) land reclamation and land
decontamination;

- (d) the construction, demolition or substantial alteration of any structure in or on land;
 - (e) dredging.
- (2) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

S. 3(2)
inserted by
No. 63/2007
s. 4(2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 48.2).

3A Transport Integration Act 2010

This Act is transport legislation within the meaning of the **Transport Integration Act 2010**.

S. 3A
inserted by
No. 6/2010
s. 24(5)(Sch. 1
item 10) (as
amended by
No. 45/2010
s. 5).

3B Filming Approval Act 2014

This Act is filming approval legislation within the meaning of the **Filming Approval Act 2014**.

S. 3B
inserted by
No. 51/2014
s. 9(Sch. 2
item 14.2).

4 Owner of vessel or cargo

- (1) A reference in this Act to the owner of a vessel includes a reference to—
- (a) a person to whom the vessel belongs; or
 - (b) a person who has chartered the vessel.

(2) A reference in this Act to the owner of a vessel or cargo includes a reference to any person who, whether on the person's own behalf or on behalf of another—

(a) exercises any of the functions of the owner of the vessel or cargo; or

(b) represents to the port of Melbourne operator, Ports Victoria or a port operator that the person has those functions or accepts the obligation to exercise those functions.

S. 4(2)(b)
amended by
Nos 23/2003
s. 17(Sch.
item 1),
85/2003
s. 30(2),
10/2016 ss 95,
179(Sch. 1
item 7.2),
19/2022 s. 35.

(3) For the purposes of this Act, a person does not cease to be an owner of a vessel because the vessel is mortgaged, chartered, leased or hired to another person.

S. 4A
inserted by
No. 10/2016
s. 96.

4A Declaration of port of Melbourne operator

The Minister, by Order published in the Government Gazette, may declare that a person specified in the Order is on and after a date specified in the Order the port of Melbourne operator.

5 Orders in Council

(1) The Governor in Council may, by Order published in the Government Gazette, declare any lands, or 2 or more areas of lands, to be the port land of the port of Geelong, the port of Portland, the port of Hastings or any other commercial trading port or a local port.

S. 5(1)
amended by
No. 85/2003
s. 5(1).

(1A) The Governor in Council may, from time to time, by Order published in the Government Gazette, declare any land, an interest in which (being an interest in the nature of a freehold or leasehold

S. 5(1A)
inserted by
No. 23/2003
s. 4.

interest or a licence) is held by the Port of Melbourne Corporation, to be port of Melbourne land.

- (2) The Governor in Council may, by Order published in the Government Gazette, declare any waters, or 2 or more areas of waters, to be the port waters of the port of Melbourne, the port of Geelong, the port of Portland, the port of Hastings or any other commercial trading port or a local port. **S. 5(2) amended by No. 85/2003 s. 5(1).**
- (3) An Order under subsection (1), (1A) or (2) must contain a description of the port land or port waters that is sufficient to identify it and to define its boundaries. **S. 5(3) amended by No. 85/2003 s. 5(2).**
- (4) The Governor in Council may on the recommendation of the Minister administering the **Crown Land (Reserves) Act 1978**, by Order published in the Government Gazette, declare any land vested in PGA or PPA not to be coastal vested land for the purposes of this Act.
- (5) The Governor in Council may, by Order published in the Government Gazette, amend a declaration of port lands or a declaration of port waters or a declaration of both port lands and port waters so as to— **S. 5(5) inserted by No. 85/2003 s. 5(3).**
- (a) include an area of lands and waters or lands or waters in, or exclude an area of lands and waters or lands or waters from, that declaration; or
 - (b) correct any error in that description of the lands or waters.
- (6) A port consists of the area or areas of lands and waters or lands or waters that are from time to time declared in relation to that port by Order of the Governor in Council under this section. **S. 5(6) inserted by No. 85/2003 s. 5(3).**

S. 5(7)
inserted by
No. 85/2003
s. 5(3),
amended by
Nos 70/2013
s. 4(Sch. 2
item 38.3),
21/2015
s. 3(Sch. 1
item 39).

- (7) An Order of the Governor in Council may describe an area of lands or waters by reference to any map or plan lodged in the Central Plan Office.

S. 6
repealed by
No. 63/1997
s. 6(2), new
s. 6
inserted by
No. 85/2003
s. 6.

6 Ports

The Governor in Council may by Order published in the Government Gazette—

- (a) name the port established by the area of lands and waters or lands or waters declared by an Order under section 5;
- (b) declare the port to be a commercial trading port or a local port for the purposes of this Act;
- (c) revoke the declaration of a port as a commercial trading port or a local port;
- (d) declare a port that has been declared by Order in Council to be a local port to be a commercial trading port;
- (e) declare part of a port that has been declared by Order in Council to be a local port to be a commercial trading port;
- (f) declare a port that has been declared by Order in Council to be a commercial trading port to be a local port;
- (g) declare part of a port that has been declared by Order in Council to be a commercial trading port to be a local port;
- (h) amend the name of a port that has been established by Order in Council.

7 Subsidiary

For the purposes of this Act, the question whether a body corporate is a subsidiary of Ports Victoria shall be determined in the same manner as the question would be determined under the Corporations Act of Victoria if Ports Victoria and the body corporate were corporations within the meaning of that Act.

S. 7
amended by
Nos 44/2001
s. 3(Sch.
item 92.1),
23/2003
s. 17(Sch.
item 2),
85/2003
s. 30(2),
10/2016
s. 179(Sch. 1
item 7.3),
19/2022 s. 36.

8 Crown to be bound

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

9 Extra-territorial operation

It is the intention of the Parliament that the operation of this Act should, so far as possible, include operation in relation to the following—

- (a) land situated outside Victoria, whether in or outside Australia;
- (b) things situated outside Victoria, whether in or outside Australia;
- (c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;
- (d) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country.

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Pt 2 (Heading)
substituted by
No. 45/2010
s. 27.

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Pt 2 Div. 1
(Heading)
repealed by
No. 45/2010
s. 28(1).

* * * * *

Pt 2 Div. 1
(Heading and
ss 10–16)
substituted as
Pt 2 Div. 1
(Heading and
ss 10–15) by
No. 23/2003
s. 5.

Ss 10, 11
substituted by
No. 23/2003
s. 5,
repealed by
No. 45/2010
s. 28(2).

* * * * *

S. 12
substituted by
No. 23/2003
s. 5,
amended by
No. 23/2003
s. 19,
repealed by
No. 45/2010
s. 28(2).

* * * * *

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*	*	*	*	*	<p>S. 13 amended by No. 51/1996 ss 5(1), 10(2), substituted by No. 23/2003 s. 5, amended by Nos 23/2003 s. 20, 17/2009 s. 6, 6/2010 s. 203(1)(Sch. 6 item 36.2) (as amended by No. 45/2010 s. 22), repealed by No. 45/2010 s. 28(2).</p>
*	*	*	*	*	<p>S. 14 substituted by No. 23/2003 s. 5, repealed by No. 45/2010 s. 28(2).</p>
*	*	*	*	*	<p>S. 14A inserted by No. 23/2003 s. 21, amended by No. 63/2007 s. 5, repealed by No. 45/2010 s. 28(2).</p>
*	*	*	*	*	<p>S. 15 substituted by No. 23/2003 s. 5, amended by No. 85/2003 s. 7, repealed by No. 45/2010 s. 28(2).</p>

16 Port of Melbourne Corporation—transitional powers under leases

Despite the repeal of the **Port of Melbourne Authority Act 1958**, the Port of Melbourne Corporation may decline an option on a lease that was in force immediately before the relevant date under Part 8 having regard to the requirements for port purposes pursuant to the **Port of Melbourne Authority Act 1958** as if that Act were still in operation.

S. 16
(Heading)
substituted by
No. 45/2010
s. 29.
S. 16
repealed by
No. 23/2003
s. 5, new s. 16
inserted by
No. 85/2003
s. 8.

S. 17
repealed by
No. 63/1997
s. 6(2).

Pt 2 Div. 1A
(Heading)
repealed by
No. 45/2010
s. 30(1).
Pt 2 Div. 1A
(Heading and
ss 17A–17D)
inserted by
No. 63/1997
s. 4,
substituted as
Pt 2 Div. 1A
(Heading and
ss 17A–17G)
by No.
85/2003 s. 9.

Ss 17A–17C
substituted by
No. 85/2003
s. 9,
repealed by
No. 45/2010
s. 30(2).

	*	*	*	*	*
	*	*	*	*	*
	*	*	*	*	*

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* * * * *

S. 17D
substituted by
No. 85/2003
s. 9,
amended by
No. 17/2009
s. 7,
repealed by
No. 45/2010
s. 30(2).

17E Port operations

S. 17E
inserted by
No. 85/2003
s. 9.

(1) The Port of Hastings Development Authority must administer any port management agreement in force in relation to the port of Hastings.

S. 17E(1)
amended by
Nos 45/2010
s. 31(1),
38/2011
s. 23(1).

(2) The Port of Hastings Development Authority must notify the Minister and the Treasurer immediately if—

S. 17E(2)
amended by
Nos 45/2010
s. 31(2),
38/2011
s. 23(2)(a).

(a) a port management agreement is terminated;
or

(b) a default occurs under the agreement; or

(c) the Port of Hastings Development Authority has reason to believe it is likely that—

S. 17E(2)(c)
amended by
No. 38/2011
s. 23(2)(b).

(i) the port management agreement may be terminated; or

(ii) a default may occur under the agreement.

(3) The Port of Hastings Development Authority must notify the Minister and the Treasurer of its recommended course of action consequent on a termination or default or likely termination or default notified under subsection (2).

S. 17E(3)
amended by
Nos 45/2010
s. 31(3),
38/2011
s. 23(3).

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Ss 17F, 17G inserted by No. 85/2003 s. 9, repealed by No. 45/2010 s. 30(2).	*	*	*	*	*
Pt 2 Div. 2 (Heading and ss 18–22) amended by Nos 51/1996 s. 5(2), 77/2001 s. 32(4)(b), 23/2003 s. 22, substituted as Pt 2 Div. 2 (Heading and ss 18AA–22) by No. 85/2003 s. 10, amended by Nos 63/2007 s. 6, 17/2009 s. 8, 6/2010 s. 203(1)(Sch. 6 item 36.2) (as amended by No. 45/2010 s. 22), repealed by No. 45/2010 s. 32.	*	*	*	*	*
Pt 2 Div. 3 (Heading) repealed by No. 45/2010 s. 33(1).	*	*	*	*	*

23 Accountability for damage

S. 23(1) substituted by No. 51/1996 s. 6(1), amended by Nos 85/2003 s. 30(2), 10/2016 s. 97(1)(c), 19/2022 s. 37.

- (1) A person who by any act done or omitted to be done on port land or port waters (including an act that causes an obstruction to navigation in port waters)—

(a) causes damage to—

(i) any property (whether real or personal) of Ports Victoria or of a channel operator (being property used by the channel operator in connection with the exercise of its function as channel operator); or

S. 23(1)(a)(i)
amended by
Nos 85/2003
s. 30(2),
19/2022 s. 37.

(ia) any property (whether real or personal) of the port of Melbourne operator (being property used by the port of Melbourne operator in connection with the provision of channels by it); or

S. 23(1)(a)(ia)
inserted by
No. 10/2016
s. 97(1)(a).

(ii) any building, works, infrastructure or facilities erected, established, installed, provided, managed or maintained by Ports Victoria or a channel operator under or for the purposes of this Act; or

S. 23(1)(a)(ii)
amended by
Nos 85/2003
s. 30(2),
19/2022 s. 37.

(b) causes Ports Victoria, a channel operator as channel operator or the port of Melbourne operator to suffer economic loss—

S. 23(1)(b)
amended by
Nos 85/2003
s. 30(2),
10/2016
s. 97(1)(b),
19/2022 s. 37.

is liable to pay damages to Ports Victoria, the channel operator or the port of Melbourne operator (as the case requires) in respect of that damage or loss.

(2) If damage or loss of a kind referred to in subsection (1) is caused by a vessel or by any person employed in or about the vessel, the owner, master and agent of the vessel, or any of them, is liable to pay damages to Ports Victoria, the channel operator or the port of Melbourne operator in respect of that damage or loss and that liability exists despite the fact—

S. 23(2)
substituted by
No. 51/1996
s. 6(1),
amended by
Nos 85/2003
s. 30(2),
10/2016
s. 97(2),
19/2022 s. 37.

- (a) that the damage or loss was caused by act of God or inevitable accident or otherwise without negligence or wrongful act or omission on the part of any person; or
- (b) that the vessel was under compulsory pilotage.

S. 23(2A)
inserted by
No. 51/1996
s. 6(1),
amended by
Nos 85/2003
s. 30(2),
10/2016
s. 97(3),
19/2022 s. 37.

- (2A) Ports Victoria, a channel operator or the port of Melbourne operator may recover any damages to which it is entitled under subsection (1) or (2) in any court of competent jurisdiction.

S. 23(3)
amended by
Nos 51/1996
s. 6(2)(a)(b),
85/2003
s. 30(2),
10/2016
s. 97(3),
19/2022 s. 37.

- (3) Nothing in this section prejudices any other rights which Ports Victoria, a channel operator or the port of Melbourne operator may have, or limits any liabilities to which a vessel or its master, owner or agent may be subject, in respect of any damage or loss caused by the vessel.

24 Liability of certain persons

S. 24(1)
amended by
Nos 51/1996
s. 6(3)(a)–(c),
85/2003
s. 30(2),
10/2016 s. 98,
19/2022 s. 38.

- (1) If any sum has been paid to Ports Victoria, a channel operator or the port of Melbourne operator by, or recovered from, the owner, master or agent of a vessel as damages for any damage or loss under section 23, the owner, master or agent may, if the damage or loss was due to the negligence of a person other than the owner, master or agent, recover from that person the sum so paid or recovered (together with the costs of levying and recovering it) in any court of competent jurisdiction.
- (2) Nothing in this section deprives any licensed pilot of the benefit of any statutory limitation of liability.

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*	*	*	*	*	<p>S. 25 repealed by No. 45/2010 s. 33(2).</p>
*	*	*	*	*	<p>S. 26 amended by Nos 51/1996 s. 7, 85/2003 s. 28(c), repealed by No. 45/2010 s. 33(2).</p>
*	*	*	*	*	<p>Ss 27–29 repealed by No. 45/2010 s. 33(2).</p>
*	*	*	*	*	<p>S. 30 amended by No. 23/2003 s. 6, repealed by No. 45/2010 s. 33(2).</p>
*	*	*	*	*	<p>S. 31 amended by Nos 44/2001 s. 3(Sch. item 92.2), 63/2007 s. 7, repealed by No. 45/2010 s. 33(2).</p>
*	*	*	*	*	<p>Ss 32–37 repealed by No. 45/2010 s. 33(2).</p>
*	*	*	*	*	<p>S. 38 amended by No. 23/2003 s. 7, repealed by No. 45/2010 s. 33(2).</p>

Port Management Act 1995
No. 82 of 1995
Part 2—Provisions relating to port corporations

Ss 39–44
repealed by
No. 45/2010
s. 33(2).

* * * * *

Part 2A—Local ports

Pt 2A
(Heading and
ss 44A–44G)
inserted by
No. 85/2003
s. 11.

44A Appointment of port managers of local ports

S. 44A
inserted by
No. 85/2003
s. 11.

- (1) The Governor in Council may by instrument appoint as the port manager of a local port a committee of management of Crown land that is within the port.
- (2) The Governor in Council may—
 - (a) revoke the appointment of a port manager of a local port;
 - (b) if the name of a port manager changes, make corresponding amendments to the instrument of appointment of the port manager.
- (3) A port manager for a local port has the following functions—
 - (a) to manage the operations of the port, particularly with respect to shipping and boating activities in the port, with a view to ensuring that those operations are carried out safely, efficiently and effectively;
 - (b) to provide, develop and maintain port facilities, including wharves, jetties, slipways, breakwaters, moorings, buildings and vehicle parks;
 - (c) to provide, develop and maintain, in accordance with any relevant standards developed by the Director, Transport Safety, navigational aids in the port;

S. 44A(3)(c)
amended by
No. 6/2010
s. 203(1)(Sch. 6
item 36.2) (as
amended by
No. 45/2010
s. 22).

Port Management Act 1995
No. 82 of 1995
Part 2A—Local ports

S. 44A(3)(d)
amended by
No. 65/2010
s. 419(1).

(d) to carry out the functions and powers of a local authority under the **Marine Safety Act 2010** in respect of any State waters within the port;

S. 44A(3)(e)
amended by
No. 6/2010
s. 203(1)(Sch. 6
item 36.2) (as
amended by
No. 45/2010
s. 22).

(e) to provide, develop and maintain, in accordance with any relevant standards developed by the Director, Transport Safety, navigation channels in the port;

(f) to manage the operations of the port, and the construction and operation of port facilities and navigation channels in a manner that minimises the risk of environmental damage;

(g) to participate in the control of marine and land pollution in the port as a relevant statutory authority under the Victorian component of the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances;

(h) to allocate and manage moorings and berths in the port;

(i) to exercise any other functions of the port manager of a local port under this or any other Act;

(j) to do anything else in relation to the port that is specified by Order of the Governor in Council under subsection (4).

(4) The Governor in Council on the recommendation of the Minister may declare, by Order published in the Government Gazette—

(a) that port managers are to have additional functions in relation to local ports;

(b) that a particular port manager is to have an additional function in relation to its local port or to a specified part of its local port;

- (c) that a particular port manager is not to have a particular function (including a function referred to in subsection (3)) in relation to its local port or to a specified part of its local port.
- (5) The Minister must not make a recommendation under subsection (4) unless the Minister—
 - (a) has consulted with—
 - (i) the Minister administering the **Crown Land (Reserves) Act 1978**; and
 - (ii) the Minister administering the **Marine and Coastal Act 2018**;
 - (b) is satisfied that the additional functions are necessary or desirable because of the particular operations or location of the port.
- (6) The Order in Council must specify the function that is being added or removed.
- (7) An Order in Council takes effect on the day after the day the Order is published in the Government Gazette, or on any later date specified in the Order.

S. 44A(5)(a)(ii)
amended by
No. 26/2018
s. 97(2).

44B General powers of port managers

- (1) A port manager of a local port may do all things that are necessary or convenient to enable it to carry out its functions under section 44A.
- (2) Without limiting subsection (1), a port manager may—
 - (a) enter into other contracts and agreements (including contracts of indemnity and contracts for the provision of services or facilities);
 - (b) employ staff, or engage consultants, contractors or agents;

S. 44B
inserted by
No. 85/2003
s. 11.

- (c) exercise its powers outside the port lands or waters of the port to the extent necessary or convenient to carry out the functions of port manager of that port or to ensure the safe operation of the port.

S. 44C
inserted by
No. 85/2003
s. 11.

44C Delegation

The port manager of a local port may delegate, in writing, any power conferred on it by or under this Act (other than this power of delegation) to any of its employees.

S. 44D
inserted by
No. 85/2003
s. 11.

44D Charges

- (1) The port manager of a local port may impose a charge for the use of any facility in the port.
- (2) A reference to the use of a facility includes a reference—
 - (a) to the use of a channel in the port; and
 - (b) to the use of any service provided by the port manager.
- (3) The amount of a charge imposed under this section in respect of a facility must not exceed the maximum charge (if any) that the regulations state is to be the maximum amount that may be charged by a port manager for the use of such a facility.
- (4) In imposing a charge under this section, the port manager may—
 - (a) make allowances for differences in time, place or circumstance relating to the use of the facility for which the charge is being imposed; and
 - (b) may provide for exemptions from the charge in specified circumstances.
- (5) In imposing a charge, the port manager must specify who is to be liable for paying the charge.

- (6) The port manager must ensure that it does not impose a charge on a person for using a facility unless it gave the person adequate notice of the charge before the person became liable to pay the charge.
- (7) A charge imposed under this section is a debt due to the port manager by the person who is liable to pay it.
- (8) A port manager may charge interest at the rate not exceeding the rate fixed under section 2 of the **Penalty Interest Rates Act 1983** on any unpaid charge that is due to the local authority.

44E Dredging

Subject to obtaining any permit, consent or other authority required by or under any other Act, the port manager of a local port may, in carrying out its functions—

- (a) alter, dredge, cleanse, scour, straighten and improve the bed and channel of any river or sea-bed in port waters;
- (b) reduce or remove any banks or shoals within any such river or sea-bed;
- (c) abate and remove impediments, obstructions and nuisances in, or on the banks and shores of, any such river or sea-bed that are injurious to the river or sea-bed or that obstruct, or that may tend to obstruct, navigation.

S. 44E
inserted by
No. 85/2003
s. 11.

44F Other works

Subject to obtaining any permit, consent or other authority required by or under any other Act, in carrying out its functions in relation to the provision, development and maintenance of port facilities, a port manager of a local port may—

S. 44F
inserted by
No. 85/2003
s. 11.

- (a) change the natural or existing condition or topography of land;
- (b) remove vegetation or topsoil;
- (c) reclaim or decontaminate land;
- (d) construct, demolish or substantially alter any structure in or on land;
- (e) remove, decommission or make safe any existing facility.

S. 44G
inserted by
No. 85/2003
s. 11.

44G Port manager may act as harbour master if there is no harbour master

- (1) This section applies if there is no harbour master for a local port.
- (2) Sections 221, 232, 233, 234, 235, 236, 237 and 238 of the **Marine Safety Act 2010** apply as if a reference in those provisions to a harbour master were a reference to the local authority for the port.

S. 44G(2)
amended by
Nos 9/2004
s. 27, 65/2010
s. 419(2).

Part 2B—Port licence fee

Pt 2B
(Heading and
ss 44H–44L)
inserted by
No. 8/2012
s. 5.

44HAA Definitions

S. 44HAA
inserted by
No. 10/2016
s. 99.

In this Part—

annual licence fee means the port licence fee payable under section 44H;

upfront licence fee means the port licence fee payable under section 44HA;

Victorian Transport Fund means the Fund established under section 13 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**.

44H Liability to pay port licence fee

S. 44H
inserted by
No. 8/2012
s. 5,
substituted by
No. 10/2016
s. 99.

- (1) The port licence holder is liable to pay a port licence fee in respect of the port licence the port licence holder holds.
- (2) The port licence fee is payable for each financial year the port licence is in force on and after 1 July 2015 (an *annual licence fee*).
- (3) The amount of the annual licence fee is the amount calculated in accordance with this Part.
- (4) The amount of the annual licence fee that is payable is not to be adjusted even if the obligation to pay the fee arises after the beginning of the financial year in respect of which the fee is payable.
- (5) No amount of an annual licence fee that has been paid is to be refunded if the port licence ceases to be in force before the end of the financial year in respect of which that fee has been paid.

S. 44HA
inserted by
No. 10/2016
s. 99.

44HA Treasurer may require a one-off upfront licence fee for a period of up to 15 years instead of annual fees for that period

- (1) Despite section 44H, the Treasurer, in respect of a period of up to 15 years ending on or before 1 July 2032, may require the port licence holder to pay to the Treasurer, before that period commences, a fee determined by the Treasurer in relation to all of the financial years encompassed by that period in which the port licence will be in force (an *upfront licence fee*) instead of the annual licence fees that would otherwise be payable under section 44H for those financial years.
- (2) In determining an upfront licence fee, the Treasurer may have regard to the way section 44J would otherwise apply to determine the annual licence fee for each financial year encompassed by the period to which the upfront licence fee relates.
- (3) Subsection (2) does not limit how the Treasurer may determine an upfront licence fee.
- (4) The payment of an upfront licence fee satisfies any obligation a port licence holder has to pay an annual licence fee for a financial year that would otherwise arise under section 44H if that upfront licence fee relates to a period that encompasses that financial year.
- (5) No upfront licence fee, and no part of an upfront licence fee, that is paid in accordance with this section is to be refunded to the port licence holder except as provided under section 44N.

S. 44I
inserted by
No. 8/2012
s. 5.

44I Amount of port licence fee

- (1) The amount of the port licence fee payable in respect of the financial year commencing on 1 July 2012 is \$75 million.

- (2) The amount of the port licence fee payable in respect of each subsequent financial year is the amount calculated under section 44J.

44J Calculation of port licence fee

S. 44J
inserted by
No. 8/2012
s. 5.

- (1) For the purposes of section 44I(2), the amount is calculated in accordance with the formula—

S. 44J(1)
amended by
No. 44/2014
s. 33(Sch.
item 21(1)).

$$\frac{A \times B}{C}$$

where—

- A** is the amount of the fee for the financial year immediately preceding the financial year in respect of which the fee is payable;
- B** is the sum of the consumer price index numbers for the consecutive reference periods in respect of the period commencing on 1 January and ending on the next following 31 December in the financial year 2 years earlier than the financial year in respect of which the fee is payable last published by the Australian Bureau of Statistics as at 15 April immediately preceding the financial year in respect of which the fee is payable;
- C** is the sum of the consumer price index numbers for the consecutive reference periods in respect of the period commencing on 1 January in the financial year 3 years earlier than the financial year in respect of which the fee is payable and ending on the next following 31 December immediately preceding the financial year for which the fee is payable.

- (2) If it is necessary for the purposes of this section to calculate an amount that consists of or includes a fraction of a whole dollar, the amount is taken to be calculated in accordance with this section if the calculation is made to the nearest whole dollar.
- (3) In this section—

S. 44J(3)
def. of
consumer price index
substituted by
No. 44/2014
s. 33(Sch.
item 21(2)).

consumer price index means the all groups consumer price index for Melbourne in original terms published by the Australian Bureau of Statistics.

S. 44K
(Heading)
amended by
No. 10/2016
s. 100(1).

44K Notice of annual licence fee

S. 44K
inserted by
No. 8/2012
s. 5.

S. 44K(1)
amended by
No. 10/2016
s. 100(2).

- (1) The Minister must cause a notice to be published in the Government Gazette specifying the amount of an annual licence fee calculated in accordance with section 44J before the 1 June that immediately precedes the financial year to which the annual licence fee relates.

S. 44K(2)
amended by
No. 10/2016
s. 100(3).

- (2) A failure to comply with subsection (1) in respect of a financial year does not affect the obligation of the port licence holder under section 44H to pay the annual licence fee for that year.

44L Method of payment of annual licence fee

S. 44L
(Heading)
amended by
No. 10/2016
s. 101(1).

S. 44L
inserted by
No. 8/2012
s. 5.

- (1) The annual licence fee for a financial year is payable by the port licence holder in quarterly instalments.
- (2) The Minister must issue a fee notice to the port licence holder on or before the first day of a financial year specifying—
 - (a) the amount of the annual licence fee payable in respect of that financial year; and
 - (b) the amount payable for each quarterly instalment and the dates on which payment is due.
- (3) The port licence holder must pay each instalment amount specified in the fee notice to the Minister within 30 days after the last day of the quarter to which the instalment relates.

S. 44L(1)
amended by
No. 10/2016
s. 101(2).

S. 44L(2)
amended by
No. 10/2016
s. 101(3)(a).

S. 44L(2)(a)
amended by
No. 10/2016
s. 101(3)(b).

S. 44L(3)
amended by
No. 10/2016
s. 101(4).

44M Where are port licence fees to be paid?

S. 44M
inserted by
No. 10/2016
s. 102.

- (1) An annual licence fee (including an instalment amount of an annual licence fee) is to be paid into the Consolidated Fund.
- (2) An upfront licence fee is to be paid into the Victorian Transport Fund unless the Treasurer directs that the fee is to be paid into the Consolidated Fund.

S. 44N
inserted by
No. 10/2016
s. 102.

44N Refund of upfront licence fee

- (1) This section applies if—
 - (a) the port licence holder has paid an upfront licence fee; and
 - (b) before the period for which the port licence holder has paid that fee ends, the Minister revokes the holder's port licence under section 63J on a ground specified in the licence as a ground on which a refund of an upfront licence or part of an upfront licence fee is payable.
- (2) There must be paid to the previous port licence holder an amount (the *refund amount*) that is attributable to the financial years that have not passed and are encompassed by the period to which the upfront licence relates.
- (3) The refund amount must be paid as follows—
 - (a) if the upfront licence fee was paid into the Victorian Transport Fund and there are sufficient funds in that Fund for that payment, from that Fund;
 - (b) if the upfront licence fee was paid into the Victorian Transport Fund but there are insufficient funds in that Fund for that payment, from—
 - (i) that Fund; and
 - (ii) the Consolidated Fund in respect of any part of the amount that cannot be met by funds in the Victorian Transport Fund;
 - (c) if the upfront licence fee was paid into the Consolidated Fund, from the Consolidated Fund.

(4) The Consolidated Fund is appropriated to the extent necessary for the purposes of a payment of a refund amount under subsection (3)(b)(ii) or (c).

(5) In this section—

previous port licence holder means the person who held the port licence that has been revoked under section 63J and to which this section applies.

Part 3—Regulation of port services

Division 1—Preliminary

45 Definitions

In this Part—

S. 45 def. of
*adverse
compliance
report*
inserted by
No. 10/2016
s. 103(a).

adverse compliance report, in relation to a provider of prescribed services, means a final published report in which the Commission has found that the provider has not complied with a Pricing Order in a significant and sustained manner;

S. 45 def. of
*associated
entity*
inserted by
No. 10/2016
s. 103(a).

associated entity has the same meaning as in the Corporations Act;

S. 45 def. of
*authorised
transaction*
inserted by
No. 10/2016
s. 103(a).

authorised transaction has the same meaning as in the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**;

S. 45 def. of
*channel
operator*
amended by
Nos 23/2003
s. 23, 85/2003
s. 30(2),
45/2010 s. 34,
38/2011 s. 24,
repealed by
No. 10/2016
s. 103(e).

* * * * *

S. 45 def. of
Commission
inserted by
No. 62/2001
s. 86(1)(a).

Commission means the Essential Services Commission established under the **Essential Services Commission Act 2001**;

S. 45 def. of
*final
published
report*
inserted by
No. 10/2016
s. 103(a).

final published report means a report on an inquiry under section 49I laid before each House of the Parliament or made available for public inspection in accordance with section 45 of the **Essential Services Commission Act 2001**;

S. 45 def. of
Office
repealed by
No. 62/2001
s. 86(1)(b).

* * * * *

S. 45 def. of
port assets
inserted by
No. 10/2016
s. 103(a).

port assets has the same meaning as in the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**;

S. 45 def. of
*prescribed
channel*
repealed by
No. 10/2016
s. 103(e).

* * * * *

S. 45 def. of
*prescribed
prices*
amended by
No. 10/2016
s. 103(b).

prescribed prices means the prices specified in section 49(1)(b);

S. 45 def. of
*prescribed
services*
amended by
No. 10/2016
s. 103(c).

prescribed services means the services specified in section 49(1)(c);

S. 45 def. of
Pricing Order
repealed by
No. 62/2001
s. 86(2)(a),
new def. of
Pricing Order
inserted by
No. 10/2016
s. 103(a).

Pricing Order means an Order in Council made under section 49A;

Pricing Order transition period means the period specified under a Pricing Order;

S. 45 def. of *Pricing Order transition period* inserted by No. 10/2016 s. 103(a).

protected provision means—

S. 45 def. of *protected provision* inserted by No. 10/2016 s. 103(a).

- (a) a provision of a Pricing Order that specifies the initial values of assets used by a provider of prescribed services to provide those services, including the Shared Channels used by vessels bound either for the port of Melbourne or for the port of Geelong; or
- (b) a provision of a Pricing Order that specifies the economic life of an asset used by a provider of prescribed services to provide those services for amortisation and depreciation purposes; or
- (c) a provision of a Pricing Order specified under a Pricing Order as a protected provision;

regulated industry means the industry specified in section 49(1)(a);

S. 45 def. of *regulated industry* amended by No. 10/2016 s. 103(d).

re-regulation recommendation means a recommendation of the ESC Minister to the Governor in Council to make an Order under section 49A that amends or revokes provisions of a Pricing Order to make Division 3 apply in relation to the provision of prescribed services;

S. 45 def. of *re-regulation recommendation* inserted by No. 10/2016 s. 103(a).

S. 45 def. of
seaward limit
inserted by
No. 10/2016
s. 103(a).

seaward limit means the line constituting the arc of a circle with a radius of 3 nautical miles centred on position 38°17'.52' S144°36'.84"E (Point Lonsdale Signal Station);

S. 45 def. of
Shared Channels
inserted by
No. 10/2016
s. 103(a).

Shared Channels means that part of port of Melbourne waters extending from the seaward limit to Point Richards in the direction of Geelong and Fawkner Beacon in the direction of Melbourne, including the channels known as the Great Ship Channel and adjacent channels and the South Channel;

S. 45 def. of
show cause notice
inserted by
No. 10/2016
s. 103(a).

show cause notice means a notice under section 49K(1).

S. 46
amended by
No. 62/2001
s. 86(1)(c).

46 Construction of Part

This Part is relevant legislation for the purposes of the **Essential Services Commission Act 2001**.

S. 47
amended by
No. 10/2016
s. 104(1)(2)
(ILA s. 39B(1)).

47 Application of Part

- (1) Subject to this section, this Part applies to any person, including a person who is a provider of prescribed services.
- (2) Division 3 applies (and Divisions 2A and 2B do not apply) in relation to the provision of prescribed services if a Pricing Order declares that—
 - (a) Division 3 applies in relation to the provision of prescribed services; and
 - (b) the Pricing Order (other than the protected provisions) does not apply in relation to the provision of prescribed services.

- (3) To avoid doubt, Divisions 2A and 2B do not apply, and Division 3 applies, to the provision of prescribed services if there is no Pricing Order in effect.

S. 47(3)
inserted by
No. 10/2016
s. 104(2).

48 Objectives of this Part

- (1) The objectives of this Part are—
- (a) to promote efficient use of, and investment in, the provision of prescribed services for the long-term interests of users and Victorian consumers; and
 - (b) to protect the interests of users of prescribed services by ensuring that prescribed prices are fair and reasonable whilst having regard to the level of competition in, and efficiency of, the regulated industry; and
 - (c) to allow a provider of prescribed services a reasonable opportunity to recover the efficient costs of providing prescribed services, including a return commensurate with the risks involved; and
 - (d) to facilitate and promote competition—
 - (i) between ports; and
 - (ii) between shippers; and
 - (iii) between other persons conducting other commercial activities in ports; and
 - (e) to eliminate resource allocation distortions by prohibiting a State sponsored port operator from providing a relevant service at a price lower than the competitively neutral price for that service.
- (2) In this section, *competitively neutral price*, *State sponsored port operator* and *relevant services* each have the meaning given to them by section 49R.

S. 48
amended by
No. 62/2001
s. 86(1)(d)(e),
substituted by
No. 10/2016
s. 105.

S. 48A
inserted by
No. 10/2016
s. 105.

48A Commission must have regard to objectives of this Part

In addition to the objectives under section 8 of the **Essential Services Commission Act 2001** (but subject to section 5(2) of that Act), the Commission must have regard to the objectives set out in section 48 when performing its functions or exercising its powers in relation to the regulated industry.

S. 49
amended by
Nos 62/2001
s. 86(1)(f),
77/2001
s. 32(4)(c),
substituted by
No. 85/2003
s. 12,
amended by
No. 10/2016
s. 106(2) (ILA
s. 39B(1)).

49 Price regulation

- (1) For the purposes of Part 3 of the **Essential Services Commission Act 2001**—
- (a) the port industry in a commercial trading port is a regulated industry;
 - (b) the prices charged for the provision of, or in connection with, prescribed services in respect of the regulated industry, other than prescribed prices for prescribed services within the meaning of the **Grain Handling and Storage Act 1995**, are prescribed prices;
 - (c) the following are prescribed services—

S. 49(c)
amended by
No. 63/2007
s. 8,
substituted by
No. 78/2011
s. 50.

S. 49(c)(i)
substituted by
No. 10/2016
s. 106(1).

- (i) the provision of channels (except anchorages) for use by shipping in port of Melbourne waters, including the Shared Channels used by vessels bound either for the port of Melbourne or for the port of Geelong and the Dedicated Channels used by vessels bound for the port of Melbourne;

- (ii) the provision of berths, buoys or dolphins in connection with the berthing of vessels in the port of Melbourne; S. 49(c)(ii)
substituted by
No. 10/2016
s. 106(1).
 - (iii) the provision of short-term storage or cargo marshalling facilities in connection with the loading or unloading of vessels at berths, buoys or dolphins in the port of Melbourne; S. 49(c)(iii)
substituted by
No. 10/2016
s. 106(1).
 - (iv) the provision of access to, or allowing the use of, places or infrastructure (including wharves, slipways, gangways, roads and rail infrastructure) on port of Melbourne land for the provision of services to port users; S. 49(c)(iv)
inserted by
No. 10/2016
s. 106(1).
- Examples**
- Tanker, wharf and water inspection services, and security services, are kinds of services that are provided to port users on port of Melbourne land.
- (v) any other service that is prescribed by the regulations. S. 49(c)(v)
substituted by
No. 10/2016
s. 106(1).

(2) For the purposes of Part 3 of the **Essential Services Commission Act 2001**— S. 49(2)
inserted by
No. 10/2016
s. 106(2).

- (a) a granting of a lease or sublease by the port of Melbourne operator pursuant to which a person is permitted to provide any of the following in the port of Melbourne to other persons is not a prescribed service—
 - (i) container terminal or stevedoring operations;
 - (ii) automotive terminal or stevedoring operations;

- (iii) dry-bulk terminal or stevedoring operations;
- (iv) liquid-bulk terminal or stevedoring operations;
- (v) break-bulk terminal or stevedoring operations;
- (vi) an activity or operations specified in the regulations; and

- (b) the services described in subparagraphs (i) to (v) of subsection (1)(c) are not prescribed services if Ports Victoria provides those services.

S. 49(2)(b)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.4),
19/2022 s. 39.

Pt 3 Div. 2
(Heading and
ss 50–52)
amended by
No. 51/1996
s. 8,
repealed by
No. 62/2001
s. 86(2)(b),
new Pt 3
Div. 2
(Heading and
ss 49A–49H)
inserted by
No. 10/2016
s. 107.

Division 2—Port of Melbourne Pricing Order

S. 49A
inserted by
No. 10/2016
s. 107.

49A Pricing Order

- (1) The Governor in Council, on the recommendation of the ESC Minister, may make an Order—
 - (a) for or with respect to the provision of prescribed services; and
 - (b) for the regulation, in such manner as the Governor in Council thinks fit, of the prices for the provision of prescribed services.
- (2) Without limiting the generality of subsection (1)(a), an Order under subsection (1) may—

- (a) declare whether Division 2A, 2B or 3, or the Order, applies in relation to the provision of prescribed services; and

Note

See also section 47(2).

- (b) specify a provision of the Order as a protected provision; and
 - (c) specify a period commencing on the day the Pricing Order takes effect as the Pricing Order transition period; and
 - (d) specify procedures to enable monitoring of compliance with the Order; and
 - (e) specify how specified information is to be recorded and kept; and
 - (f) require persons to prepare and give reports to the Commission about specified information or specified matters.
- (3) Without limiting the generality of subsection (1)(b), the manner may include any one or more of the following—
- (a) monitoring the level of prices for prescribed services or any component of prescribed services;
 - (b) specifying pricing policies or principles;
 - (c) specifying cost measurement and allocation principles;
 - (d) specifying initial values of assets used by the port of Melbourne operator to provide prescribed services, including the initial values of the Shared Channels used by vessels bound either for the port of Melbourne or for the port of Geelong;
 - (e) specifying the treatment of capital expenditure;

- (f) fixing the price or the rate of increase or decrease in a price;
- (g) fixing a maximum price or maximum rate of increase or minimum rate of decrease in the maximum price;
- (h) fixing an average price for prescribed services or any component of prescribed services, or an average rate of increase or decrease in the average price;
- (i) specifying an amount determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;
- (j) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the rate or supply of prescribed services or any component of prescribed services;
- (k) fixing a maximum revenue or maximum rate of increase or minimum rate of decrease in the maximum revenue in relation to prescribed services or any component of prescribed services;
- (l) providing for a return on, or return of, capital—
 - (i) before any relevant capital expenditure is incurred; or
 - (ii) over a period that is shorter than the projected economic life of the relevant asset; or
 - (iii) if the provider of prescribed services to whom the Order applies or any associated entity of the provider is a private sector entity who has been granted a lease of port assets for the

purposes of an authorised transaction,
on an uneven basis during the period
that equates to the term of that lease.

49B General powers in relation to a Pricing Order

S. 49B
inserted by
No. 10/2016
s. 107.

A Pricing Order may—

- (a) confer functions and powers on, or leave any matter to be decided by, the Commission; and
- (b) be of general or limited application; and
- (c) differ according to differences in time, place or circumstances.

49C Pricing Order must be published in the Government Gazette

S. 49C
inserted by
No. 10/2016
s. 107.

A Pricing Order must be published in the Government Gazette.

49D When Pricing Order takes effect

S. 49D
inserted by
No. 10/2016
s. 107.

A Pricing Order takes effect—

- (a) on the day the Order is published in the Government Gazette; or
- (b) if a later day is specified in the Order, on that day.

49E Limitation on amending or revoking a Pricing Order

S. 49E
inserted by
No. 10/2016
s. 107.

A Pricing Order cannot be amended or revoked except in accordance with this Division.

49F Circumstances in which a Pricing Order may be amended

S. 49F
inserted by
No. 10/2016
s. 107.

- (1) Subject to sections 49G and 49H, a Pricing Order may only be amended by an Order made under section 49A as follows—

- (a) to revoke a provision that declares that Division 3 does not apply in relation to the provision of prescribed services;

Note

See also section 47(2).

- (b) to revoke a provision because of the commencement of port operations at a new container port in Victoria;
- (c) to make consequential amendments to the Order as a result of a revocation of the kind provided under paragraph (a) or (b);
- (d) with the agreement of the provider of prescribed services to whom the Order applies.

- (2) A Pricing Order may only be amended as provided under subsection (1)(a) if the ESC Minister decides to make a re-regulation recommendation.

Note

See also section 49L.

S. 49G
inserted by
No. 10/2016
s. 107.

49G Circumstances in which a Pricing Order may be wholly revoked

A Pricing Order may be wholly revoked by an Order made under section 49A if—

- (a) the provider of prescribed services to whom the Order applies is a public entity; or
- (b) the provider of prescribed services to whom the Order applies agrees to the revocation.

S. 49H
inserted by
No. 10/2016
s. 107.

49H Protected provisions cannot be revoked or amended etc.

- (1) A protected provision that is in effect cannot be amended by another Order made under section 49A except with the agreement of the

provider of prescribed services to whom the Order applies.

- (2) In addition, the effect of a protected provision that is in effect cannot be altered or varied by another Order made under section 49A except with the agreement of the provider of prescribed services to whom the Order applies.
- (3) A protected provision cannot be revoked except—
 - (a) when the Pricing Order is wholly revoked because of the circumstances set out in section 49G; or
 - (b) with the agreement of the provider of prescribed services to whom the Order applies.

Division 2A—Monitoring compliance with Pricing Order

Pt 3 Div. 2A
(Heading and
ss 49I–49N)
inserted by
No. 10/2016
s. 108.

49I Conduct of reviews into compliance with Pricing Order

S. 49I
inserted by
No. 10/2016
s. 108.

- (1) The Commission must, not later than 6 months after a review period, conduct and complete an inquiry under the **Essential Services Commission Act 2001** and report to the ESC Minister—
 - (a) as to whether a provider of prescribed services to whom a Pricing Order applies has complied with the Order during the review period; and
 - (b) if there was non-compliance with the Pricing Order, whether that non-compliance was, in the Commission's view, non-compliance in a significant and sustained manner.

- (2) Subject to this Division, an inquiry under this section must be conducted in accordance with Part 5 of the **Essential Services Commission Act 2001** but sections 40 and 46 of that Act do not apply in respect of that inquiry.
- (3) As part of an inquiry under this section the Commission may take into account—
- (a) any findings it has made in reports on previous inquiries under this section; and
 - (b) the nature and details of any instance of non-compliance with a Pricing Order by a provider of prescribed services that is the subject of a report on a previous inquiry under this section.
- (4) Without limiting Part 5 of the **Essential Services Commission Act 2001**, a final report on an inquiry under this section must include—
- (a) the Commission's findings as to whether there has been non-compliance with a Pricing Order by a provider of prescribed services that is non-compliance in a significant and sustained manner; and
 - (b) the Commission's reasons for those findings.
- (5) In this section—
- review period* means—
- (a) the period commencing on the day on which the first Pricing Order made under section 49A takes effect and ending 5 years after that day; and
 - (b) every subsequent period of 5 years commencing on the day after the day on which the previous period ends.

49J Draft report to be provided to provider of prescribed services

S. 49J
inserted by
No. 10/2016
s. 108.

The Commission must—

- (a) provide a draft of a report on an inquiry under section 49I to the provider of prescribed services who is the subject of the inquiry; and
- (b) give the provider an opportunity to make a written submission to the Commission on that draft report before the Commission prepares its final report on the inquiry.

49K Giving of show cause notice to non-compliant provider of prescribed services

S. 49K
inserted by
No. 10/2016
s. 108.

- (1) If the ESC Minister, having regard to an adverse compliance report and after consultation with the Minister, considers that the provider of prescribed services who is the subject of the report has not complied with a Pricing Order in a significant and sustained manner, the ESC Minister may give the provider a written notice (a *show cause notice*).
- (2) A show cause notice must—
 - (a) state that the ESC Minister considers that the provider of prescribed services has not complied with the Pricing Order in a significant and sustained manner and that the ESC Minister is considering making a re-regulation recommendation; and
 - (b) set out the nature and details of non-compliance with the Pricing Order that the ESC Minister considers constitute non-compliance in a significant and sustained manner; and
 - (c) specify any actions that the ESC Minister considers the provider may take to remedy that non-compliance or to prevent

non-compliance, including the giving of an undertaking under section 49M; and

- (d) state that the provider may make written submissions to the ESC Minister, in the time specified in the show cause notice, as to why, in the provider's view, the ESC Minister should not make a re-regulation recommendation.
- (3) The time specified in a show cause notice for the purposes of subsection (2)(d) must not be less than 60 days after the notice is given to the provider.
- (4) After receiving a written submission in response to a show cause notice, the ESC Minister, by written notice, may request further information from the provider of prescribed services within the period specified in that notice.
- (5) The ESC Minister must not give a show cause notice until any proceeding on an application to VCAT under section 55 of the **Essential Services Commission Act 2001** relating to the adverse compliance report is finally heard and determined by VCAT.
- (6) The ESC Minister must cause to be published a show cause notice and a notice under subsection (4) on the Department's Internet site.

S. 49K(5)
amended by
No. 21/2019
s. 28.

S. 49L
inserted by
No. 10/2016
s. 108.

49L Re-regulation recommendation

- (1) Subject to this section, after the giving of a show cause notice to a provider of prescribed services, the ESC Minister must decide whether to make a re-regulation recommendation.
- (2) Before making a decision under subsection (1), the ESC Minister must consult with the Minister.

- (3) In deciding whether to make a re-regulation recommendation, the ESC Minister must have regard to—
- (a) any written submission of the provider of prescribed services in response to the show cause notice that the Minister receives within the time specified in the notice, including any undertakings the provider proposes to give under section 49M; and
 - (b) any further information the provider gives to the Minister on a request under section 49K(4); and
 - (c) whether the provider has breached any undertaking given under section 49N; and
 - (d) whether it is in the public interest that Division 3 apply in relation to the provision of prescribed services.
- (4) In having regard to the matter in subsection (3)(d), the ESC Minister must have regard to the objectives of this Part.
- (5) The ESC Minister must decide whether to make a re-regulation recommendation within 90 days after the later of—
- (a) the date specified in the show cause notice as the date by which the provider of prescribed services must make a submission; or
 - (b) the date on which the provider must provide the information requested under section 49K(4) to the ESC Minister.

49M Undertakings

- (1) The ESC Minister may accept a written undertaking given by a provider of prescribed services who is the subject of an adverse compliance report in relation to the provider's

**S. 49M
inserted by
No. 10/2016
s. 108.**

non-compliance with a Pricing Order if the ESC Minister is satisfied that—

- (a) the terms of the undertaking offered by the provider are appropriate to adequately address the provider's non-compliance with a Pricing Order; and
 - (b) the provider is reasonably likely to comply with the terms of the undertaking.
- (2) Before accepting an undertaking under subsection (1), the ESC Minister must consult with the Minister.
 - (3) The provider of prescribed services may withdraw or vary the undertaking at any time, but only with the consent of the ESC Minister.
 - (4) The ESC Minister must cause to be published a copy of an undertaking accepted under subsection (1) on an internet site maintained by the Department of Transport.

S. 49M(4)
amended by
Nos 3/2017
s. 50(Sch. 1
item 5),
49/2019
s. 186(Sch. 4
item 34.2).

S. 49N
inserted by
No. 10/2016
s. 108.

49N Enforcement of undertakings

- (1) This section applies if the ESC Minister considers that a provider of prescribed services whose undertaking has been accepted under section 49M has breached any of its terms.
- (2) The ESC Minister may apply to the Supreme Court for an order under subsection (4).
- (3) Before making an application under subsection (2), the ESC Minister must consult with the Minister.
- (4) If, on an application under subsection (2), the Supreme Court is satisfied that the provider of prescribed services has breached a term of the undertaking, the Court may make all or any of the following orders—

- (a) an order directing the provider to comply with that term of the undertaking;
- (b) an order directing the provider to pay to the State an amount up to the amount of any financial benefit that the provider has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the Court considers appropriate directing the provider to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the Court considers appropriate.

Division 2B—Transitional enforcement regime for port of Melbourne operator

Pt 3 Div. 2B
(Heading and
ss 49O, 49P)
inserted by
No. 10/2016
s. 108.

49O Application of Division

S. 49O
inserted by
No. 10/2016
s. 108.

- (1) This Division applies during the Pricing Order transition period.
- (2) This Division does not limit Division 2A.

49P Enforcement of Pricing Order during Pricing Order transition period

S. 49P
inserted by
No. 10/2016
s. 108.

If the Supreme Court is satisfied, on the application of the ESC Minister, that a provider of prescribed services has engaged, is engaging, or is proposing to engage in conduct that constitutes a contravention of an enforceable provision, the Court may make all or any of the following orders—

- (a) an order granting an injunction on such terms as the Court thinks appropriate—
 - (i) restraining the provider from engaging in the conduct; or
 - (ii) if the conduct involves refusing or failing to do something, requiring the provider to do that thing;
- (b) an order directing the provider to pay to the State an amount up to the amount of any financial benefit that the provider has obtained directly or indirectly and that is reasonably attributable to the contravention;
- (c) an order directing the provider to compensate any other person who has suffered loss or damage as a result of the contravention;
- (d) any other order that the Court thinks appropriate.

Pt 3 Div. 2C
(Heading and
s. 49Q)
inserted by
No. 10/2016
s. 108.

Division 2C—Complaints in relation to provision of prescribed services

49Q Person provided prescribed services may complain to ESC in relation to the provision of such services

- (1) This section applies if a person who is provided prescribed services considers that the provider of those services has not, in providing the services, complied with the Pricing Order which applies to those services.
- (2) The person may complain to the Commission about the non-compliance with the Pricing Order.
- (3) On receiving a complaint under subsection (2), the Commission may investigate the complaint.

- (4) In investigating the complaint, the Commission may have regard to any matter raised or considered in—
- (a) the Commission's most recent final published report; and
 - (b) any application to the Supreme Court under section 49P.

Note

The Commission must also have regard to the objectives of this Part and the objectives under section 8 of the **Essential Services Commission Act 2001** when investigating a complaint—see section 48A.

- (5) The Commission must inform the person of the outcome of its investigation of the person's complaint.
- (6) If the Commission considers that the issues raised in the complaint have not been considered or dealt with under a Pricing Order or Division 2A or 2B, the Commission may refer the complaint to the ESC Minister.

Division 2D—Competitive neutrality pricing

Subdivision 1—Preliminary

49R Definitions

In this Division—

accrual building block methodology—
see section 49S;

competitively neutral price, for a relevant service,
means the price, determined through the
application of the competitively neutral
pricing principles, that is the lower of—

Pt 3 Div. 2D
(Heading and
ss 49R–49ZH)
inserted by
No. 10/2016
s. 108.

S. 49R
inserted by
No. 10/2016
s. 108.

- (a) the price which is likely to enable the recovery of the efficient costs attributable to any State cost contribution and any private cost contribution in providing the relevant service; and
- (b) the price at which the port of Melbourne operator provides a service that is economically substitutable for the relevant service, having regard to any material differences between the quality or scope of the relevant service and the quality or scope of the economically substitutable service;

competitively neutral pricing principles means the principles specified in an Order under section 49ZC;

handling, in relation to a container, includes loading, unloading, transporting or storing;

private cost contribution means the amount of any capital invested by a private sector entity in, or expenses incurred by a private sector entity in operating, a State sponsored port;

private sector entity has the same meaning as in the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**;

relevant service means any of the following services provided at a State sponsored port for the purpose of enabling the handling, at that port, of containers that are being transported from, or are to be transported to, a destination outside of Australia—

- (a) the provision of channels used by vessels to access the State sponsored port;

- (b) the provision of berths, buoys or dolphins in connection with the berthing of vessels carrying container cargoes in the State sponsored port;
- (c) the provision of short term storage or cargo marshalling facilities in connection with the loading or unloading of vessels carrying container cargoes at berths, buoys or dolphins in the State sponsored port;
- (d) a service that is prescribed;

State cost contribution means an amount reflecting the net competitive advantage conferred on or given to a State sponsored port operator and includes—

- (a) an exemption from a requirement to pay a State tax or charge; and
- (b) an exemption under a law of the State; and
- (c) an explicit or implicit guarantee of debt executed or otherwise given by the State or by a Minister on behalf of the State; and
- (d) a concessional interest rate on a loan given by a public sector entity; and
- (e) an exemption from a requirement to account for depreciation expenses; and
- (f) an exemption from a requirement to earn a commercial rate of return on assets; and
- (g) a matter or thing referred to in section 49T(2);

State sponsored port—see section 49T;

State sponsored port operator means an operator of a State sponsored port.

S. 49S
inserted by
No. 10/2016
s. 108.

49S Meaning of *accrual building block methodology*

- (1) An *accrual building block methodology* is a methodology that—
 - (a) provides for an allowance to recover—
 - (i) a return on assets used by a State sponsored port operator to provide relevant services (the *capital base of a State sponsored port operator*); and
 - (ii) a return of the capital base of a State sponsored port operator through depreciation; and
 - (iii) the forecast efficient operating expenditure that would be incurred by a State sponsored port operator acting prudently in the provision of relevant services; and
 - (b) requires that—
 - (i) an initial capital base of a State sponsored port operator be established utilising the depreciated optimised replacement cost approach; and
 - (ii) the value of that capital base be updated on an annual basis by applying a roll forward principle that takes the opening value at the start of a financial year, adds in capital expenditure when incurred or to be incurred and deducts an amount for the return of capital; and
 - (iii) the value of any assets transferred from a public sector entity to a private sector entity that form part of a private cost

- contribution for a State sponsored port be included in the capital base of a State sponsored port operator of that port at a value calculated using the depreciated optimised replacement cost approach; and
- (c) requires costs incurred by a State sponsored port operator be allocated between different types of relevant services, and other services (if any), on the basis that—
- (i) costs that are directly attributable to a service are to be allocated to that service; and
 - (ii) costs that are not directly attributable to a service are to be allocated on the basis of the expected revenue share of that service to expected total services revenue; and
- (d) provides for the establishment of an aggregate revenue requirement that provides a State sponsored port operator with a reasonable opportunity to recover the allowances referred to in subsection (1)(a); and
- (e) requires the aggregate revenue requirement to be used to establish the prices for relevant services that, if paid, would provide a State sponsored port operator a reasonable opportunity to recover its aggregate revenue requirement.
- (2) For the purposes of subsection (1)(a)(i), an ***accrual building block methodology*** must provide for the recovery of a return on assets to be determined—

S. 49S(2)(a)
amended by
No. 68/2017
s. 124(1).

- (a) by reference to that which would be required by a benchmark efficient entity providing services with a similar degree of risk; and
 - (b) using an appropriate method that distinguishes between the cost of equity and debt so that a weighted average cost of capital can be derived.
- (3) An **accrual building block methodology** must not, for the purposes of subsection (1)(c), allow for the inclusion, in the capital base of a State sponsored port operator, of any value attributable to rail, road or other landside infrastructure at a place that is outside a State sponsored port operated by that operator.

S. 49T
inserted by
No. 10/2016
s. 108.

49T Meaning of *State sponsored port*

- (1) A ***State sponsored port*** is a port located in Port Phillip Bay (other than the port of Melbourne) or in Western Port Bay—
- (a) the main purpose of which is to handle international containers and at which containers may be handled; and
 - (b) to which a matter or thing set out in subsection (2) applies.
- (2) The following are matters or things which apply for the purposes of subsection (1)—
- (a) the port has been partially or fully constructed or is being operated by—
 - (i) a public sector entity; or
 - (ii) a private sector entity using financial support in the form of a grant from a public sector entity;
 - (b) any equity funding for construction of the port has been or is provided by or on behalf of a public sector entity on materially better

- terms than would be available to the operator of that port from a private sector entity;
- (c) any debt funding for the construction of the port has been or is provided by or on behalf of a public sector entity on materially better terms than would be available to the operator of that port from a private sector entity;
 - (d) a public sector entity provides financial support or a financial concession in respect of the port that has the effect of materially reducing the cost of capital for or operating costs of the port (including the operating costs of users of the port) and that support or concession or a similar support or concession is not available to the port of Melbourne operator;
 - (e) a public sector entity provides financial support or a financial concession in respect of the costs of the transport of containers to or from the port that has the effect of materially reducing the operating costs of the transport of containers to or from the port and that support or concession, or a similar support or concession, is not available in respect of the transport of containers to or from the port of Melbourne;
 - (f) a public sector entity provides financial support or a financial concession to users of or tenants at or prospective users of or tenants at the port such that their cost of being or becoming a user or tenant of the port is materially reduced and that support or concession, or a similar support or concession, is not available to users of or tenants at or prospective users of or tenants at the port of Melbourne.

S. 49U
inserted by
No. 10/2016
s. 108.

49U Application

- (1) This Division applies on and after the day on which the first lease of land comprising port assets is granted to a private sector entity under section 11 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**.
- (2) This Division ceases to apply on the day on which the lease referred to in subsection (1) ends.

Note

The Pricing Order made under Division 2, the ongoing monitoring regime under Division 2A and the transitional enforcement regime under Division 2B apply to the port of Melbourne operator.

Subdivision 2—Competitive neutrality pricing obligations

S. 49V
inserted by
No. 10/2016
s. 108.

49V State sponsored port operator must provide services at not less than competitively neutral prices

- (1) A State sponsored port operator must not provide a relevant service at a price that is lower than the competitively neutral price for the relevant service.
- (2) For the purposes of complying with subsection (1), a State sponsored port operator must apply the competitively neutral pricing principles.

S. 49W
inserted by
No. 10/2016
s. 108.

49W State sponsored port operator must publish relevant service prices

A State sponsored port operator must on or before 31 May every year (the *publication date*)—

- (a) publish all prices for every relevant service it will provide in the financial year after the publication date; and

- (b) give a copy of those prices to the Commission.

49X State sponsored port operator must keep records of relevant service prices

S. 49X
inserted by
No. 10/2016
s. 108.

- (1) A State sponsored port operator must keep records (including financial and business records) relating to the prices for relevant services the operator provides in accordance with guidelines prepared under subsection (3).
- (2) A State sponsored port operator must keep records (including financial and business records) relating to the prices for relevant services the operator provides in a manner that is consistent with guidelines prepared under subsection (3).
- (3) The Commission must prepare guidelines for the purposes of subsection (1) and (2).

Subdivision 3—Investigation and enforcement of competitive neutrality pricing obligations

49Y Commission may be requested to inquire into relevant service prices

S. 49Y
inserted by
No. 10/2016
s. 108.

- (1) This section applies if the ESC Minister or the port of Melbourne operator is of the view that a State sponsored port operator is providing, or is likely to provide, a relevant service at a price lower than the competitively neutral price for that service.
- (2) The ESC Minister or the port of Melbourne operator may request the Commission to conduct an inquiry into the price for the relevant service.
- (3) Before making a request, the ESC Minister must consult with the Minister.
- (4) A request must—
 - (a) be in writing; and

- (b) set out the grounds on which the ESC Minister or port of Melbourne operator requests the Commission to investigate the price for the relevant service; and
- (c) include any relevant information or evidence in support of the grounds.

S. 49Z
inserted by
No. 10/2016
s. 108.

49Z Commission may conduct inquiry into relevant service prices

- (1) The Commission must, no later than 3 months after receiving a request under section 49Y—
 - (a) conduct and complete an inquiry into the subject matter of the request; and
 - (b) prepare a final report on the inquiry.
- (2) In the case of a request under section 49Y from the port of Melbourne operator, the Commission may refuse to act under subsection (1) if the Commission is of the view that the request—
 - (a) is frivolous; or
 - (b) is vexatious; or
 - (c) is without substance; or
 - (d) has been made in bad faith.

S. 49Z(3)
amended by
No. 41/2021
s. 135(1).

- (3) Sections 42 to 46 of the **Essential Services Commission Act 2001** apply in respect of an inquiry under this section.

S. 49Z(3A)
inserted by
No. 41/2021
s. 135(2).

- (3A) For the purposes of an inquiry under this section, the Commission may—
 - (a) serve an information gathering notice under section 36(1) of the **Essential Services Commission Act 2001** in accordance with Part 4 of that Act; or
 - (b) exercise a power under section 39K of the **Essential Services Commission Act 2001** in accordance with Part 4A of that Act.

- (4) A final report on an inquiry under this section must include—
- (a) the Commission's findings as to whether the State sponsored port operator has been providing, or is likely to provide, a relevant service at a price lower than the competitively neutral price for that service; and
 - (b) the Commission's reasons for those findings.

49ZA Commission may determine minimum competitively neutral price for relevant service

S. 49ZA
inserted by
No. 10/2016
s. 108.

- (1) This section applies if the Commission in a final report on an inquiry under section 49Z finds that the State sponsored port operator has been providing, or is likely to provide, a relevant service at a price lower than the competitively neutral price for that service.
- (2) The Commission may make a determination that specifies the minimum competitively neutral price for the provision of the relevant service.
- (3) In addition, a determination must specify a period (not exceeding 5 years from the date the determination takes effect) during which the minimum competitively neutral price will apply to the provision of the relevant service.
- (4) Section 35(1) to (3) and (5) of the **Essential Services Commission Act 2001** applies to a determination of the Commission under this section as if the determination under this section were a determination under section 35 of that Act.

49ZB Enforcement of Commission determinations

S. 49ZB
inserted by
No. 10/2016
s. 108.

If the Supreme Court is satisfied, on the application of the ESC Minister or the port of Melbourne operator, that a State sponsored port operator has engaged, is engaging, or is proposing

to engage in conduct that constitutes a contravention of a determination under section 49ZA, the Court may make all or any of the following orders—

- (a) if the applicant is the ESC Minister—
 - (i) an order granting an injunction on such terms as the Court thinks appropriate—
 - (A) restraining the State sponsored port operator from engaging in the conduct; or
 - (B) if the conduct involves refusing or failing to do something, requiring the operator to do that thing;
 - (ii) an order directing the State sponsored port operator to pay to the State an amount up to the amount of any financial benefit that the operator has obtained directly or indirectly and that is reasonably attributable to the contravention;
 - (iii) an order directing the operator to compensate any other person who has suffered loss or damage as a result of the contravention;
- (b) if the applicant is the port of Melbourne operator, an order granting an injunction on such terms as the Court thinks appropriate—
 - (i) restraining the State sponsored port operator from engaging in the conduct; or

S.
49ZB(a)(i)(B)
amended by
No. 68/2017
s. 124(2).

S. 49ZB(a)(iii)
amended by
No. 68/2017
s. 124(2).

- (ii) if the conduct involves refusing or failing to do something, requiring the operator to do that thing;
- (c) in all cases, any other order that the Court thinks appropriate.

S. 49ZB(b)(ii)
amended by
No. 68/2017
s. 124(2).

Subdivision 4—Competitively neutral pricing principles Order

49ZC Competitively neutral pricing principles Order

- (1) The Governor in Council, by Order published in the Government Gazette, may specify principles for the purposes of this Division.
- (2) An Order under this section—
 - (a) must set out principles that provide for the determination of a competitively neutral price for the provision of a relevant service through the application of an accrual building block methodology; and
 - (b) may specify other principles (which may include methodologies or procedures), that are not inconsistent with paragraph (a), for the determination of a competitively neutral price for the provision of a relevant service; and
 - (c) may include any other matter or thing ancillary to, or not inconsistent with, a matter or thing referred to in paragraph (a) or (b).

S. 49ZC
inserted by
No. 10/2016
s. 108.

49ZD General powers in relation to competitively neutral pricing principles Order

An Order under section 49ZC may—

- (a) confer functions and powers on, or leave any matter to be decided by, the Commission; and

S. 49ZD
(Heading)
amended by
No. 68/2017
s. 124(3).

S. 49ZD
inserted by
No. 10/2016
s. 108.

- (b) be of general or limited application; and
- (c) differ according to differences in time, place or circumstances.

S. 49ZE
inserted by
No. 10/2016
s. 108.

49ZE When a competitively neutral pricing principles Order takes effect

An Order under section 49ZC takes effect—

- (a) on the day the Order is published in the Government Gazette; or
- (b) if a later day is specified in the Order, on that day.

S. 49ZF
inserted by
No. 10/2016
s. 108.

49ZF Limitation on amending or revoking a competitively neutral pricing principles Order

An Order under section 49ZC cannot be amended or revoked except in accordance with this Subdivision.

S. 49ZG
inserted by
No. 10/2016
s. 108.

49ZG Circumstances in which a competitively neutral pricing principles Order may be amended

Subject to section 49ZH, an Order under section 49ZC may only be amended with the agreement of the port of Melbourne operator.

S. 49ZH
inserted by
No. 10/2016
s. 108.

49ZH Circumstances in which a competitively neutral pricing principles Order may be wholly revoked

A Order under section 49ZC may be wholly revoked by an Order made under that section—

- (a) if the port of Melbourne operator agrees to the revocation; or
- (b) after the first lease of land comprising port assets granted to a private sector entity under section 11 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016** ends.

Division 3—General economic regulation powers

Pt 3 Div. 3
(Heading)
substituted by
No. 10/2016
s. 109.

53 Conduct of inquiries

S. 53
substituted by
Nos 62/2001
s. 87(1),
10/2016 s. 110.

- (1) The Commission must, not later than 6 months after the end of an inquiry period—
 - (a) conduct and complete an inquiry into the following matters—
 - (i) whether a port lessee or the port of Melbourne operator has power in the relevant market that it may exercise in relation to the process for the setting or reviewing of rents or associated payments (however described) payable by a tenant under an applicable lease;
 - (ii) whether a port lessee or the port of Melbourne operator has exercised that power in a way that has the effect of causing material detriment to the long term interests of Victorian consumers (a *misuse of market power*); and
 - (b) if and only if the Commission finds that there has been a misuse of market power, make recommendations to the ESC Minister about whether the provision of access to port of Melbourne land by means of an applicable lease should be subject to economic regulation, and, if so, the form of the economic regulation.

- (2) For the purposes of subsection (1)(b), the form of economic regulation may include a form of price regulation.
- (3) Without limiting subsection (1), in conducting an inquiry under this section the Commission must have regard to—
 - (a) the processes used to establish or review rents or associated payments (however described) payable by a tenant under an applicable lease; and
 - (b) a port lessee's or the port of Melbourne operator's compliance with any processes for setting and reviewing rents or associated payments (however described) payable by a tenant under an applicable lease required under—
 - (i) a port of Melbourne lease; or
 - (ii) any agreement or arrangement entered into by the port lessee or the port of Melbourne operator in connection with a port of Melbourne lease; and
 - (c) the extent to which any rents or associated payments (however described) paid by a tenant under an applicable lease may be passed through by the tenant to users of services provided by the tenant, to those users' customers, and ultimately to Victorian consumers.
- (4) An inquiry under this section must be conducted in accordance with Part 5 of the **Essential Services Commission Act 2001** but section 40 of that Act does not apply in respect of that inquiry.

(5) In this section—

applicable lease means a sublease, or a sublease of a sublease, of leased port of Melbourne land granted by a port lessee (other than to the port of Melbourne operator) or by the port of Melbourne operator;

inquiry period means any of the following—

- (a) the period of 3 years commencing on the day on which the first lease of land comprising port assets is granted to a private sector entity under section 11 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**;
- (b) the period of 5 years commencing on the day after the day on which the period referred to in paragraph (a) ends;
- (c) a period of 5 years commencing on the day after the day on which a previous 5 year period ends;

port lessee means a lessee under a port of Melbourne lease;

port of Melbourne lease has the same meaning as in section 59 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**;

relevant market means the market for access to leased port of Melbourne land by means of an applicable lease.

54 General power to make determinations

S. 54
substituted by
No. 62/2001
s. 87(1).

S. 54(1)
substituted by
No. 10/2016
s. 111(1).

- (1) This section applies if—
- (a) there is no Pricing Order in effect and the ESC Minister determines that prescribed services are to be subject to price regulation; or
 - (b) there is a Pricing Order in effect and that Order declares that this Division applies to the provision of prescribed services.

S. 54(2)
substituted by
No. 10/2016
s. 111(1).

- (2) The Commission must make a determination in accordance with Part 3 of the **Essential Services Commission Act 2001**.

S. 54(3)
repealed by
No. 63/2007
s. 9, new
s. 54(3)
inserted by
No. 78/2011
s. 51.

- (3) The Commission must not make a determination under this section in relation to prescribed services unless it has the approval of the Minister administering this Act to do so.

S. 54(3A)
inserted by
No. 10/2016
s. 111(2).

- (3A) In addition, while a Pricing Order is in effect, the Commission must not make a determination under this section in relation to prescribed services provided in the port of Melbourne that does not give effect to, or has the effect of altering or varying, a protected provision.

S. 54(4)
inserted by
No. 85/2003
s. 13.

- (4) The Commission may, when making a determination in relation to prescribed services in a commercial trading port, have regard to the costs associated with any service related to the prescribed services if—
- (a) the related service is necessary or essential to the provision of prescribed services; and
 - (b) the related service cannot readily be provided by another provider; and

(c) it is not feasible to charge a separate price for the related service.

* * * * *

S. 54(5)
inserted by
No. 85/2003
s. 13,
amended by
Nos 45/2010
s. 35, 38/2011
s. 25(1),
repealed by
No. 10/2016
s. 111(3).

(6) Without limiting subsection (4), the Commission may, when making a determination in relation to prescribed services in the port of Hastings, have regard to a related service required to meet the Port of Hastings Development Authority's object under section 141S of the **Transport Integration Act 2010** including the following services—

S. 54(6)
inserted by
No. 38/2011
s. 25(2).

- (a) the provision of rail and road infrastructure within the port that is necessary for moving cargo to or from berthing facilities or short term storage facilities or cargo marshalling facilities;
- (b) the provision of land to satisfy safety, security, planning or environmental requirements;
- (c) the provision of safety, security, emergency or environmental management services that are required by law or to meet the reasonable expectations that the community has of the Authority;
- (d) the provision of strategic planning for the port;
- (e) the facilitation of trade through the port.

S. 54(7)
inserted by
No. 10/2016
s. 111(4).

- (7) To avoid doubt, a determination made by the Commission under this section in relation to prescribed services provided in the port of Melbourne does not cease to have effect only because a Pricing Order ceases to have effect.

Pt 3 Div. 3A
(Heading)
inserted by
No. 10/2016
s. 112.

Division 3A—Service quality monitoring

S. 54A
inserted by
No. 10/2016
s. 113.

54A ESC Minister may direct Commission in relation to exercise of powers relating to standards and conditions of service and supply

- (1) The ESC Minister may request, in writing, the Commission to exercise its powers under section 55(1).
- (2) A request under subsection (1) may specify the time within which the Commission is to exercise its powers under section 55(1).
- (3) The Commission must comply with a request it receives under subsection (1).

55 Standards and conditions of service and supply

S. 55(1)
amended by
No. 62/2001
s. 86(1)(d)(f).

- (1) For the purposes of Part 3 of the **Essential Services Commission Act 2001**, the Commission has power to—
- (a) develop, issue and review standards and conditions of service and supply in respect of prescribed services; and
- (b) monitor and report on compliance with those standards and conditions; and
- (c) make determinations in relation to any matter specified in paragraph (a) or (b).

(2) The Commission must consult with the Director, Transport Safety before exercising a power under subsection (1)(a).

S. 55(2)
 amended by
 Nos 62/2001
 s. 86(1)(d),
 77/2001
 s. 32(4)(d),
 6/2010
 s. 203(1)(Sch. 6
 item 36.2) (as
 amended by
 No. 45/2010
 s. 22), 54/2012
 s. 13, 10/2016
 s. 114(1).

* * * * *

S. 55(3)(4)
 amended by
 No. 62/2001
 s. 86(1)(d),
 repealed by
 No. 10/2016
 s. 114(2).

* * * * *

S. 55(5)
 repealed by
 No. 10/2016
 s. 114(2).

Division 3B—Information requirements and information disclosure restrictions

Pt 3 Div. 3B
 (Heading)
 inserted by
 No. 10/2016
 s. 115.

56 Financial and business records

- (1) A provider of prescribed services must keep financial and business records—
- (a) in respect of the provision of channels for use by shipping that are separate from financial and business records for other prescribed services; and
 - (b) in respect of prescribed services that are separate from any financial and business records for other aspects of any business conducted by the provider of prescribed services.

S. 56(1)
 substituted by
 No. 85/2003
 s. 14.

Port Management Act 1995
No. 82 of 1995
Part 3—Regulation of port services

S. 56(2)
amended by
No. 62/2001
s. 86(1)(d).

- (2) The financial and business records must be prepared and maintained in accordance with guidelines made by the Commission.

S. 56(3)
amended by
No. 62/2001
s. 86(1)(d).

- (3) The provider of prescribed services must make the financial and business records available to the Commission when required to do so by notice in writing given by the Commission.

- (4) A requirement under subsection (3) must identify the information or document required and must specify—

S. 56(4)(b)
amended by
No. 62/2001
s. 86(1)(d).

- (a) by when the requirement must be complied with; and
- (b) in what form the information or copy of the document is to be given to the Commission; and
- (c) that the requirement is made under this section and must include a copy of this section and section 57.

S. 56(5)
amended by
No. 62/2001
s. 86(3)(a).

- (5) A person who without lawful excuse fails to comply with any requirement made under this section is guilty of an offence.

Penalty: 120 penalty units.

- (6) It is a lawful excuse for the purposes of subsection (5) that compliance may tend to incriminate the person or make the person liable to a penalty for any other offence.

S. 56(7)
amended by
No. 62/2001
s. 86(1)(d)
(3)(b).

- (7) A person must not, in purported compliance with a requirement, knowingly give the Commission information that is false or misleading.

Penalty: 120 penalty units or imprisonment for 6 months.

- (8) A person must not—
- (a) threaten, intimidate or coerce another person;
or
 - (b) take, threaten to take, incite or be involved in
any action that causes another person to
suffer any loss, injury or disadvantage—
because that other person complied, or intends to
comply, with a requirement made under this
section.
- Penalty: 120 penalty units.
- (9) A person is not liable in any way for any loss,
damage or injury suffered by another person
because of the giving in good faith of a document
or information to the Commission under this
section.
- * * * * *
- S. 56(8)
amended by
No. 62/2001
s. 86(3)(c).
- S. 56(9)
amended by
No. 62/2001
s. 86(1)(d).
- S. 56(10)
amended by
No. 62/2001
s. 86(1)(h),
repealed by
No. 41/2021
s. 136.

57 Restriction on disclosure of confidential information

- (1) This section applies if information or a document
is given to the Commission under section 56 and,
at the time it is given, the person giving it states
that it is of a confidential or commercially
sensitive nature.
- (2) The Commission must not disclose the
information or the contents of the document to
any person unless—
- (a) it is of the opinion—
 - (i) that the disclosure of the information or
document would not cause detriment to
the person supplying it; or
- S. 57(1)
amended by
No. 62/2001
s. 86(1)(d).
- S. 57(2)
amended by
No. 62/2001
s. 86(1)(d)
(3)(d).

- (ii) that although the disclosure of the information or document would cause detriment to the person supplying it, the disclosure would assist in achieving the objectives of this Part and the benefit of achieving those objectives would outweigh any detriment caused by the disclosure; and
- (b) it is of the opinion, in relation to any other person who is aware of the information or the contents of the document and who might be detrimentally affected by the disclosure—
 - (i) that the disclosure of the information or document would not cause detriment to that person; or
 - (ii) that although the disclosure of the information or document would cause detriment to that person, the disclosure would assist in achieving the objectives of this Part and the benefit of achieving those objectives would outweigh any detriment caused by the disclosure; and
- (c) it gives the person who supplied the information or document a written notice—
 - (i) stating that the Commission wishes to disclose the information or contents of the document, specifying the nature of the intended disclosure and setting out detailed reasons why the Commission wishes to make the disclosure; and
 - (ii) stating that the Commission is of the opinion required by paragraph (a) and setting out detailed reasons why it is of that opinion; and

S. 57(2)(c)(i)
amended by
No. 62/2001
s. 86(1)(d).

S. 57(2)(c)(ii)
amended by
No. 62/2001
s. 86(1)(d).

(d) if it is aware that the person who supplied the information or document in turn received the information or document from another person and is aware of that other person's identity and address, it gives that other person a written notice—

(i) containing the details required by paragraph (c); and

(ii) stating that the Commission is of the opinion required by paragraph (b) in relation to him, her or it and setting out detailed reasons why it is of that opinion.

S. 57(2)(d)(ii)
amended by
No. 62/2001
s. 86(1)(d).

Penalty: 120 penalty units.

(3) Subsection (2) does not prevent the Commission—

S. 57(3)
amended by
No. 62/2001
s. 86(1)(d).

(a) from disclosing information or the contents of a document to—

S. 57(3)(a)
substituted by
No. 62/2001
s. 86(1)(i).

(iaa) the chief executive officer of the Commission employed under section 23A(1) of the **Essential Services Commission Act 2001**; or

S. 57(3)(a)(iaa)
inserted by
No. 41/2021
s. 137.

(i) an employee employed under section 24(1) of the **Essential Services Commission Act 2001**; or

(ii) a member of staff referred to in section 24(2) of that Act; or

(iii) a consultant engaged under section 25 of that Act; or

(iv) a member of a Division, committee or panel acting under a delegation under section 26 of that Act; or

Port Management Act 1995
No. 82 of 1995
Part 3—Regulation of port services

S. 57(3)(c)
amended by
No. 62/2001
s. 86(1)(i).

(b) from using information or a document for the purposes of an inquiry; or

(c) from disclosing information or the contents of a document to the Minister in a report prepared in the form required by section 45(2) of the **Essential Services Commission Act 2001**.

S. 57(4)
amended by
No. 62/2001
s. 86(1)(d).

(4) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the Commission wishes to disclose it cannot cause detriment to any person referred to in subsection (2)(a) or (b).

Pt 3 Div. 4
(Heading and
ss 58–63)
amended by
Nos 62/2001
ss 86(1)
(c)(d)(f)(g),
87(2), 85/2003
ss 15–17,
75/2004 s. 68,
63/2007 s. 10,
repealed by
No. 78/2011
s. 52.¹

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Division 5—Port licences

Pt 3 Div. 5
(Heading and
ss 63A–63K)
inserted by
No. 62/2001
s. 88,
substituted as
Pt 3 Div. 5
(Heading and
ss 63A–63L)
by
No. 10/2016
s. 116.

63A Provision of prescribed services without licence prohibited

S. 63A
inserted by
No. 62/2001
s. 88,
substituted by
No. 10/2016
s. 116.

A person must not provide prescribed services unless the person—

- (a) is the holder of a licence authorising the provision of the relevant prescribed services; or
- (b) is exempted from the requirement to obtain a licence in respect of the provision of the relevant prescribed services.

Penalty: 100 penalty units and 10 penalty units for each day after the day on which a notice of contravention of this section is served on the person by the Minister.

63B Exemptions for public sector entities that are not the port of Melbourne operator

S. 63B
inserted by
No. 62/2001
s. 88,
amended by
No. 75/2004
s. 69,
substituted by
No. 10/2016
s. 116.

The following entities are exempted from the requirement to obtain a licence in respect of the provision of prescribed services—

- (a) Ports Victoria;

S. 63B(a)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.5),
19/2022 s. 40.

(b) any other public sector entity if it is not the port of Melbourne operator.

S. 63C
inserted by
No. 62/2001
s. 88,
amended by
No. 75/2004
s. 70,
substituted by
No. 10/2016
s. 116.

63C Exemptions by Governor in Council

- (1) The Governor in Council, by Order in Council published in the Government Gazette, may exempt a person from the requirement to obtain a licence in respect of the provision of the prescribed services specified in the Order in Council.
- (2) An exemption may be of general or specific application.
- (3) An exemption is subject to such terms, conditions and limitations as are specified in the Order in Council.
- (4) An Order under subsection (1) may confer powers and functions on, and leave any matter to be decided by, the Minister.

S. 63D
inserted by
No. 62/2001
s. 88,
amended by
No. 75/2004
s. 71,
substituted by
No. 10/2016
s. 116.

63D Application for port licence

- (1) A person may apply to the Minister for the issue of a licence authorising the provision of the prescribed services specified in the application.
- (2) An application must be in a form approved by the Minister and be accompanied by such documents as may be required by the Minister.
- (3) An application must be accompanied by the application fee (if any) fixed by the Minister.

63E Grant or refusal of application

- (1) Subject to subsection (2), the Minister may grant or refuse an application for the issue of a licence for any reason the Minister considers appropriate.
- (2) Subject to this section, the Minister may decide the procedures that are to apply in respect of the issue of a licence.
- (3) The Minister must notify an applicant in writing of the Minister's decision to grant or refuse to grant the application and, in the case of a decision to refuse to grant the application, of the reasons for the Minister's decision.

S. 63E
inserted by
No. 62/2001
s. 88,
amended by
No. 75/2004
s. 72,
substituted by
No. 10/2016
s. 116.

63F Provisions relating to port licences

- (1) A licence is to be issued for such term (if any) as is decided by the Minister and is specified in the licence.
- (2) Subject to this section, a licence is subject to such conditions as are decided by the Minister.
- (3) Without limiting the generality of subsection (2), the conditions on a licence may include provisions—
 - (a) requiring the port licence holder to be the port of Melbourne operator; or
 - (b) requiring the port licence holder to comply with a requirement under Part 2B; or
 - (c) specifying procedures for the variation of the licence; or
 - (d) specifying grounds and procedures for the revocation of the licence.
- (4) The Minister must consult with the Treasurer before deciding conditions specifying—
 - (a) procedures for the variation or revocation of the licence; or

S. 63F
inserted by
No. 62/2001
s. 88,
amended by
No. 75/2004
s. 73,
substituted by
No. 10/2016
s. 116.

(b) any grounds for the revocation of the licence.

(5) In addition, the Minister, in any conditions that the Minister decides that specify a procedure for the variation or revocation of the licence, must include a requirement that the Minister consult with the Treasurer before making any decision under that procedure.

S. 63G
inserted by
No. 62/2001
s. 88,
substituted by
No. 10/2016
s. 116.

63G Gazettal requirement in relation to grant of port licence

- (1) The Minister must ensure that notice of the grant of a port licence is published in the Government Gazette as soon as possible after the grant of a licence.
- (2) A notice under subsection (1) must include—
 - (a) the name of the port licence holder; and
 - (b) the term of the port licence; and
 - (c) the place where a copy of the port licence may be inspected.

S. 63H
inserted by
No. 62/2001
s. 88,
substituted by
No. 10/2016
s. 116.

63H Compliance with conditions of port licence

A port licence holder must comply with the conditions of the port licence the port licence holder holds.

Penalty: 100 penalty units and 10 penalty units for each day after the day on which a notice of contravention of this section is served on the person by the Minister.

S. 63I
inserted by
No. 62/2001
s. 88,
substituted by
No. 10/2016
s. 116.

63I Variation of port licence

A port licence or the licence conditions may be varied—

- (a) in accordance with the procedures specified in the licence conditions; or

(b) by agreement between the Minister (after consultation with the Treasurer) and the port licence holder.

63J Revocation of port licence

- (1) The Minister may revoke a port licence on any ground specified in the licence conditions.
- (2) The procedure that applies to a revocation of a port licence under subsection (1) is the procedure specified in the licence conditions (if any).

S. 63J
inserted by
No. 62/2001
s. 88,
amended by
No. 75/2004
s. 74,
substituted by
No. 10/2016
s. 116.

63K Transfer of port licence—on application by port licence holder

- (1) A port licence holder may apply to the Minister for approval to transfer the port licence they hold.
- (2) An application must be in a form approved by the Minister and be accompanied by such documents as may be required by the Minister.
- (3) An application must be accompanied by the application fee (if any) fixed by the Minister.
- (4) Subject to this section, the Minister may approve, or refuse to approve, the application for any reason the Minister considers appropriate.
- (5) The Minister may, after consultation with the Treasurer, decide that, upon the transfer of the port licence under this section, the conditions to which the licence is subject are varied as decided by the Minister.
- (6) Subject to this section, the Minister may decide the procedures that are to apply in respect of the transfer of a port licence.
- (7) The Minister must notify an applicant in writing of the Minister's decision to approve or refuse to approve the application and, in the case of a decision to refuse to approve the application, of the reasons for the Minister's decision.

S. 63K
inserted by
No. 62/2001
s. 88,
repealed by
No. 75/2004
s. 75, new
s. 63K
inserted by
No. 10/2016
s. 116.

S. 63L
inserted by
No. 10/2016
s. 116.

63L Transfer of port licence—on Minister's initiative

- (1) The Minister, with the consent of the port licence holder, may transfer the port licence the port licence holder holds to another person.
- (2) The Minister may, after consultation with the Treasurer, decide that, upon the transfer of the port licence under this section, the conditions to which the licence is subject are varied as decided by the Minister.

Pt 3 Div. 6
(Heading and
s. 63M)
inserted by
No. 10/2016
s. 117.

Division 6—Other matters

S. 63M
inserted by
No. 10/2016
s. 117.

63M Revocation of ESC Price Monitoring Determination when Pricing Order takes effect

Despite anything to the contrary in the **Essential Services Commission Act 2001** or this Act, unless sooner revoked, the ESC Price Monitoring Determination is revoked on the day the first Pricing Order takes effect.

Part 4—Reservation of land

Pt 4 (Heading)
amended by
No. 23/2003
s. 8.

Division 1—Reservation of land for the purposes of the port of Melbourne

Pt 4 Div. 1
(Heading and
ss 64–67)
amended by
Nos 107/1995
s. 127, 51/1996
s. 9,
repealed by
No. 63/1997
s. 6(3)
new Pt 4
Div. 1
(Heading
and s. 64)
inserted by
No. 23/2003
s. 9.

64 Power to reserve unalienated Crown land for the purposes of the port of Melbourne

New s. 64
inserted by
No. 23/2003
s. 9.

(1) The Minister, in consultation with the Minister administering section 4 of the **Crown Land (Reserves) Act 1978**, may recommend to the Governor in Council that any Crown land that is—

- (a) in the municipal district of the Melbourne City Council, Maribyrnong City Council, Hobsons Bay City Council or Port Phillip City Council or in Port Phillip Bay adjoining one or more of those municipal districts; and
- (b) not reserved under the **Crown Land (Reserves) Act 1978**—

be reserved for the purposes of the port of Melbourne.

- (2) The Minister must not make a recommendation under subsection (1) unless the Minister—
 - (a) has received a plan of the land signed by the Surveyor-General; and
 - (b) is satisfied that the land, shown on the plan signed by the Surveyor-General, represents the land that is to be reserved for the purposes of the port of Melbourne.
- (3) On receiving a recommendation of the Minister under subsection (1), the Governor in Council may, by Order published in the Government Gazette, declare that any interests over the land shown in the plan, other than those specified in the Order, are surrendered to the Crown.
- (4) On the publication of an Order under subsection (3) in the Government Gazette—
 - (a) the land is deemed to be unalienated land of the Crown, freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests other than those specified in the Order; and
 - (b) the land is deemed to be temporarily reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for the purposes of the port of Melbourne, and the reservation may be amended, revoked and otherwise dealt with in accordance with that Act; and
 - (c) Ports Victoria is deemed to be the committee of management of the land and for those purposes is deemed to be an incorporated committee under that Act.

S. 64(4)(c)
amended by
Nos 110/2004
s. 59, 10/2016
s. 179(Sch. 1
item 7.6),
19/2022 s. 41.

65 Station Pier land deemed to be reserved land

On and from the commencement of this section,
Station Pier land—

- (a) is deemed to be temporarily reserved under section 4(1) of the **Crown Land (Reserves) Act 1978** for the purposes of the port of Melbourne, and the reservation may be amended, revoked and otherwise dealt with in accordance with that Act; and
- (b) Ports Victoria is deemed to be the committee of management of the land, and, for those purposes, is deemed to be an incorporated committee under that Act.

New s. 65
inserted by
No. 110/2004
s. 60.

S. 65(b)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.6),
19/2022 s. 42.

**66 Powers of Ports Victoria in relation to reserved
Crown land**

- (1) Despite anything to the contrary in the **Crown Land (Reserves) Act 1978**, Ports Victoria may grant a lease or licence over any land reserved under this Part for which it is the committee of management for any period (of not greater than 25 years) for which Ports Victoria thinks fit, if that lease or licence is in accordance with the purposes for which the land is reserved.
- (2) The power to grant a lease or licence under subsection (1) is in addition to any power Ports Victoria has as a committee of management under the **Crown Land (Reserves) Act 1978** to grant a lease or licence under that Act.

S. 66
(Heading)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.7),
19/2022
s. 43(1).

New s. 66
inserted by
No. 110/2004
s. 60.

S. 66(1)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.8),
19/2022
s. 43(2)(a).

S. 66(2)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.8),
19/2022
s. 43(2)(b).

S. 66(3)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.8),
19/2022
s. 43(2)(c).

(3) Ports Victoria has the same powers to manage land reserved under this Part as it has in relation to land in which it has a proprietary interest, including, but not limited to, the power to impose wharfage and channel fees.

S. 66(4)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.8),
19/2022
s. 43(2)(b).

(4) In exercising a power under subsection (3) Ports Victoria must not do so inconsistently with—
(a) subsection (1) or (2); or
(b) the purposes for which the land is reserved.

Pt 4 Divs 2, 3
(Headings
and ss 68–71)
repealed by
No. 63/1997
s. 6(3).

* * * * *

Division 4—General

72 Registrar of Titles to amend records

S. 72(1)
repealed by
No. 85/1998
s. 24(Sch.
item 46.1).

* * * * *

(2) The Registrar of Titles, on being requested to do so, must make any amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of any provision of this Part.

73 Exemption from stamp duty and other taxes

No stamp duty or other tax is chargeable under any Act in respect of anything done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part.

Part 4A—Regulation of towage services

Division 1—Preliminary

Pt 4A
(Heading and
ss 73A–73R)
inserted by
No. 93/2009
s. 11.

73A Definitions

In this Part—

S. 73A
inserted by
No. 93/2009
s. 11.

notified towage services provider means a person who has given a notification under section 73F that is in force under section 73H;

towage conditions determination means a determination made in accordance with Division 4;

towage requirements determination means a determination made in accordance with Division 2;

towage service means the service of supplying one or more towage vessels to assist in the navigation of other vessels by towing or pushing those vessels into, within or out of port waters;

towage vessel means a vessel designed or intended to be used to assist another vessel's navigation by towing or pushing that vessel.

Division 2—Towage requirements

73B Towage requirements determination

S. 73B
inserted by
No. 93/2009
s. 11.

- (1) The Victorian Ports Corporation (Melbourne) may make a determination as to—
- (a) the period of time for which its provisions operate (the *determination period*); and

S. 73B(1)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.9).

- S. 73B(1)(c)**
amended by
No. 10/2016
s. 118(1)(a).
- S. 73B(1)(ca)**
inserted by
No. 10/2016
s. 118(1)(b).
- S. 73B(1)(e)**
amended by
No. 10/2016
s. 118(1)(c).
- S. 73B(1)(f)**
inserted by
No. 10/2016
s. 118(1)(d).
- (b) the minimum number of towage vessels required to be provided by notified towage services providers during the determination period; and
 - (c) the minimum towing and pushing capacity of any such vessels; and
 - (ca) the minimum emergency response capability (including minimum fire-fighting capabilities) of any such vessels or class of such vessels and any specified standards applicable to such capabilities; and
 - (d) the minimum requirements necessary for such vessels to be fit to provide the service that the vessels are to be used to provide; and
 - (e) the availability required for such vessels to provide the services; and
 - (f) the availability required for such vessels that have emergency response capabilities (including fire-fighting capabilities).
- (2) The determination period determined under subsection (1)(a)—
- (a) must not commence until two months after the day on which the determination is published in the Government Gazette; and
 - (b) must commence immediately on the termination of a previous determination period (other than in the case of the first determination made under this provision); and
 - (c) must terminate at a time that ensures paragraphs (a) and (b) may be complied with.

- (3) In making a determination under subsection (1), the Victorian Ports Corporation (Melbourne)—
- (a) must have regard to—
 - (i) the requirements that are necessary for the safe and efficient operation of the port of Melbourne for the determination period; and
 - (ii) any submissions made under section 73D as to the proposed determination notified under section 73C; and
 - (b) must not make a determination that has greater requirements as to the number, capacity and availability of vessels than those requirements set out in the proposed determination notified under section 73C.

S. 73B(3)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.9).

- (3A) A standard specified for the emergency response capabilities (including the fire-fighting capabilities) for a towage vessel, or a class of towage vessel, in a determination under subsection (1) must meet or exceed the relevant standard specified by the Director, Transport Safety under section 202B of the **Marine Safety Act 2010**.

S. 73B(3A)
inserted by
No. 10/2016
s. 118(2).

- (4) A determination under this section—
- (a) must be published in the Government Gazette; and
 - (b) has effect from the date of publication; and
 - (c) operates for the determination period.

S. 73C
inserted by
No. 93/2009
s. 11.

73C Process for making a towage requirements determination

S. 73C(1)
substituted by
No. 10/2016
s. 119,
amended by
No. 10/2016
s. 179(Sch. 1
item 7.10).

(1) Subject to subsection (1A), the Victorian Ports Corporation (Melbourne) must publish notice of a proposal to make a towage requirements determination in the Government Gazette before making the determination.

S. 73C(1A)
inserted by
No. 10/2016
s. 119,
amended by
No. 10/2016
s. 179(Sch. 1
item 7.10).

(1A) The Victorian Ports Corporation (Melbourne) must consult with the port of Melbourne operator on the proposal at least 30 days before publishing a notice under subsection (1).

(2) A notice under subsection (1) must be published at least one month before the making of the determination.

(3) A notice under subsection (1) must—

- (a) set out the proposed form and content of the determination; and
- (b) the fact that written submissions may be made on the proposed determination to the Corporation; and
- (c) the time within which the written submissions must be made under section 73E.

S. 73D
inserted by
No. 93/2009
s. 11.

73D Entitlement to make submissions

S. 73D(1)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.10).

(1) Any person who is likely to be affected by a proposed determination notified under section 73C may make a written submission to the Victorian Ports Corporation (Melbourne) about the determination.

- (2) A submission under subsection (1) must be made within the time specified in the notice published under section 73C.

Division 3—Notification of towage service providers

73E Offence to provide towage services without notification

S. 73E
inserted by
No. 93/2009
s. 11.

- (1) A person must not provide a towage service in the port of Melbourne unless the person is a notified towage services provider.

Penalty: 60 penalty units.

- (2) For the purposes of subsection (1), the owner of a vessel that is being used to provide a towage service is taken to be the person providing the service, unless the owner has notified the Victorian Ports Corporation (Melbourne) that another person is providing the service.

S. 73E(2)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.10).

73F Making notification

S. 73F
inserted by
No. 93/2009
s. 11.

- (1) A person may notify the Victorian Ports Corporation (Melbourne) that that person is providing or intends to provide a towage service in the port of Melbourne.

S. 73F(1)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.11).

- (2) A notification under subsection (1)—

(a) must be in writing; and

(b) must be in a form approved by the Victorian Ports Corporation (Melbourne); and

S. 73F(2)(b)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.11).

(c) must contain the information required by the Victorian Ports Corporation (Melbourne).

S. 73F(2)(c)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.11).

S. 73G
inserted by
No. 93/2009
s. 11,
amended by
No. 10/2016
s. 179(Sch. 1
item 7.12).

73G Procedure for acknowledgment of notification

Within 2 weeks of receiving a notification under section 73F the Victorian Ports Corporation (Melbourne) must acknowledge receipt of that notification by notice in writing.

S. 73H
inserted by
No. 93/2009
s. 11.

73H Period for which notification remains in force

A notification under section 73F remains in force from the time from which acknowledgement of the notification is given to the person who has given the notification until—

S. 73H(a)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.13).

(a) the Victorian Ports Corporation (Melbourne) believes, on reasonable grounds, that the person no longer provides a towage service in the port of Melbourne and so notifies the person in writing; or

S. 73H(b)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.13).

(b) the person who has given the notification notifies the Victorian Ports Corporation (Melbourne) in writing that the person no longer provides a towage service in the Port of Melbourne.

S. 73I
inserted by
No. 93/2009
s. 11.

73I Record of towage service providers

S. 73I(1)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.13).

- (1) The Victorian Ports Corporation (Melbourne) must keep and maintain a record of each notified towage services provider.
- (2) The record kept under subsection (1) must set out—
 - (a) the name and address of each notified towage services provider; and
 - (b) the date on which each notified towage service provider became such a notified towage service provider; and

- (c) any other information that the Victorian Ports Corporation (Melbourne) determines should be included in the record.
- S. 73I(2)(c)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.13).

Division 4—Towage conditions

73J Determination of towage conditions

- S. 73J
inserted by
No. 93/2009
s. 11.
- (1) The Victorian Ports Corporation (Melbourne) may determine conditions that a notified towage services provider must comply with in the course of providing towage services in the port of Melbourne.
- S. 73J(1)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.13).
- (2) The conditions that the Victorian Ports Corporation (Melbourne) may determine under subsection (1) are conditions as to the following—
- S. 73J(2)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.13).
- (a) the minimum number of towage vessels the notified towage services provider is to supply over the period of time specified in the determination (the *specified period*); and
- (b) the minimum towing and pushing capacity of any such vessels; and
- S. 73J(2)(b)
amended by
No. 10/2016
s. 120(a).
- (ba) the minimum emergency response capability (including minimum fire-fighting capabilities) of any such vessels or class of such vessels and any specified standards applicable to such capabilities; and
- S. 73J(2)(ba)
inserted by
No. 10/2016
s. 120(b).
- (c) the minimum requirements necessary for such vessels to be fit to provide the services that the vessels are to be used to provide; and

S. 73J(2)(d)
amended by
No. 10/2016
s. 120(c).

(d) the availability required for such vessels to provide the services; and

S. 73J(2)(e)
inserted by
No. 10/2016
s. 120(d).

(e) the availability required for such vessels that have emergency response capabilities (including fire-fighting capabilities).

S. 73K
inserted by
No. 93/2009
s. 11.

73K Limitations on making towage conditions determinations

S. 73K(1)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.13).

- (1) In making a towage conditions determination, the Victorian Ports Corporation (Melbourne)—
- (a) must have regard to the towage requirements determination for the period in respect of which the towage conditions determination is to apply (*relevant towage requirements determination*); and
 - (b) must not make a determination that has the effect of—
 - (i) requiring the supply of a total minimum number of towage vessels for the port of Melbourne for the specified period that exceeds the total minimum number of towage vessels required by the relevant towage requirements determination for the port for that period; or
 - (ii) requiring the supply of a total minimum number of towage vessels of a particular capacity for the port of Melbourne for the specified period that exceeds the total minimum number of towage vessels of that capacity required by the relevant towage requirements determination for the port for that period; and

- (ba) must not make a determination that specifies a standard that is to apply to the emergency response capabilities (including the fire-fighting capabilities) of a towage vessel, or class of towage vessel, to be supplied by the notified towage services provider that does not meet or exceed the relevant standard specified by the Director, Transport Safety under section 202B of the **Marine Safety Act 2010**; and **S. 73K(1)(ba) inserted by No. 10/2016 s. 121.**
- (c) must ensure that the specified period of the towage conditions determination is the same as or less than the determination period of the relevant towage requirements determination; and
- (d) must not make the determination until two months after the Victorian Ports Corporation (Melbourne) has made the relevant towage requirements determination. **S. 73K(1)(d) amended by No. 10/2016 s. 179(Sch. 1 item 7.13).**
- (2) Any part of a towage conditions determination that has not been made in accordance with subsection (1) is of no effect.

73L Service and publication of determination

S. 73L inserted by No. 93/2009 s. 11.

- (1) On making a towage conditions determination, the Victorian Ports Corporation (Melbourne) must serve a copy of the determination on the notified towage services provider to which the determination applies. **S. 73L(1) amended by No. 10/2016 s. 179(Sch. 1 item 7.14).**
- (2) A towage conditions determination must be published in the Government Gazette within 5 days after the determination is served under subsection (1).

S. 73M
inserted by
No. 93/2009
s. 11.

73M Coming into effect of towage conditions

The conditions set out in a towage conditions determination—

- (a) come into effect on the later of—
 - (i) the day on which the determination is served under section 73L(1); or
 - (ii) the commencement of the determination period for the relevant towage requirements determination; and
- (b) cease to have effect if the determination is not published in accordance with section 73L(2).

S. 73N
inserted by
No. 93/2009
s. 11.

73N Process for making towage conditions determination

S. 73N(1)
amended by
No. 65/2010
s. 419(3),
substituted by
No. 10/2016
s. 122,
amended by
No. 10/2016
s. 179(Sch. 1
item 7.15).

- (1) The Victorian Ports Corporation (Melbourne) must not make a towage conditions determination unless the Corporation has first consulted with—
 - (a) the Director, Transport Safety; and
 - (b) the port of Melbourne operator.

S. 73N(2)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.15).

- (2) Before making a towage conditions determination, the Victorian Ports Corporation (Melbourne) must first obtain the approval of the Minister.
- (3) Before approving the making of a towage conditions determination, the Minister must obtain the approval of the Treasurer.

73O Compliance with determined towage condition

S. 73O
inserted by
No. 93/2009
s. 11).

- (1) If a notified towage services provider has not complied with any condition in a towage conditions determination applying to the provision of towage services in the port of Melbourne by that services provider, within 2 months of the condition having been in effect, the Victorian Ports Corporation (Melbourne) may serve notice to that effect to the provider.
- (2) A notice under subsection (1)—
- (a) must set out the matters comprising the failure to comply; and
 - (b) may specify that within two months of the date on which the notice is served on the provider, the provider must comply with the condition; and
 - (c) if a specification is made under paragraph (b), must set out that it is an offence not to comply with the specification.
- (3) A notified towage services provider must comply with any condition in a towage conditions determination, in respect of which a specification under section (2)(b) has been given to the provider, within two months of the date on which the notice under subsection (1) has been served on the provider.

S. 73O(1)
amended by
No. 10/2016
s. 179(Sch. 1
item 7.16).

Penalty: 240 penalty units.

Division 5—General matters

S. 73P
inserted by
No. 93/2009
s. 11,
amended by
No. 10/2016
s. 179(Sch. 1
item 7.16).

73P Review by VCAT

A person to whom a towage conditions determination applies may apply to VCAT for a review of a decision by the Victorian Ports Corporation (Melbourne) to make the determination.

S. 73Q
inserted by
No. 93/2009
s. 11.

73Q Period for making application to VCAT

An application for review under section 73P must be made within 28 days of the later of—

- (a) the day on which the decision is made; or
- (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 73R
inserted by
No. 93/2009
s. 11,
repealed by
No. 78/2011
s. 53.

* * * * *

Part 5—Port fees

Pt 5 (Heading)
amended by
No. 63/2007
s. 11.

74AA Definitions

S. 74AA
inserted by
No. 10/2016
s. 123.

In this Part—

anchorage fee means a channel fee for the provision of an anchorage;

Note

A channel includes anchorages—see the definition of *channel* in section 3(1).

approved channel fee means a channel fee approved by Order in Council under section 74AB;

approved wharfage fee means a wharfage fee approved by Order in Council under section 74AB;

designated State port entity means any of the following entities designated by Order in Council under section 74AB—

S. 74AA def.
of *designated State port entity*
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.17),
19/2022 s. 44.

(a) Ports Victoria;

(b) a public entity other than Ports Victoria.

74AB Designated State port entities and approved wharfage fees and channel fees

S. 74AB
inserted by
No. 10/2016
s. 123.

The Governor in Council, by Order published in the Government Gazette, may do any one or more of the following—

(a) designate Ports Victoria or another public entity as a designated State port entity;

S. 74AB(a)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.18),
19/2022
s. 45(a).

S. 74AB(c)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.18),
19/2022
s. 45(a).

- (b) approve a wharfage fee determined by a designated State port entity under section 74 as an approved wharfage fee;
- (c) approve a channel fee (other than an anchorage fee) determined by Ports Victoria under section 75 as an approved channel fee.

Note to
s. 74AB(c)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.19),
19/2022
s. 45(b).

Note

Ports Victoria is the channel operator for port of Melbourne waters—see the definition of *channel operator* in section 3(1).

S. 74
(Heading)
substituted by
No. 38/2011
s. 26(1).

74 Wharfage fees—Port of Melbourne

S. 74
amended by
No. 23/2003
s. 10,
substituted by
No. 63/2007
s. 12.

S. 74(1)
amended by
Nos 45/2010
s. 36, 38/2011
s. 26(2),
substituted by
No. 10/2016
s. 124(1).

- (1) Subject to this Part—
 - (a) the port of Melbourne operator may determine a wharfage fee in respect of the provision of a site in the port of Melbourne at which stevedoring operations may be carried out; and
 - (b) a designated State port entity may determine a wharfage fee in respect of the provision of a site in the port of Melbourne at which stevedoring operations may be carried out.

- (2) A fee determined under subsection (1) may be calculated by reference to the quantity, volume, weight or value of cargo loaded or unloaded at the site. **S. 74(2) amended by No. 10/2016 s. 124(2).**
- (2A) The calculation of a fee by the port of Melbourne operator as provided under subsection (2) is subject to Part 3. **S. 74(2A) inserted by No. 10/2016 s. 124(3).**
- (3) Subject to this Act, different fees may be determined under subsection (1) in respect of a site or a class of site, or cargo or a class of cargo, or a vessel or a class of vessel or according to any other factors that the port of Melbourne operator or designated State port entity determines. **S. 74(3) amended by No. 10/2016 s. 124(4).**
- (4) A fee determined under subsection (1)(a) is payable to the port of Melbourne operator and a fee determined under subsection (1)(b) that is an approved wharfage fee is payable to the designated State port entity that determined it—
- (a) in the case of cargo unloaded from a vessel at the site, by the person who, immediately after it is unloaded, is the owner of the cargo; and
 - (b) in the case of cargo loaded onto a vessel at the site, by the person who, immediately before it is loaded, is the owner of the cargo; and
 - (c) in the case of the loading of an empty container onto a vessel or the unloading of an empty container from a vessel at the site, by the person who is the owner of the vessel.
- (5) If a fee determined under subsection (1)(a) or an approved wharfage fee, or any part of such a fee, is not paid by the person liable under subsection (4)(a) or (b) to pay it, that person and the person who, at the time payment is demanded by the port of Melbourne operator or designated State port **S. 74(5) amended by No. 10/2016 s. 124(6).**

entity (as the case requires), is the owner of the cargo are jointly and severally liable for the payment of the fee.

- (6) Nothing in this section affects a fee payable for services specified in subsection (1) in accordance with the terms of a contract.

S. 74A
inserted by
No. 38/2011
s. 27.

74A Wharfage fees—Port of Hastings

- (1) Subject to this Part, the Port of Hastings Development Authority may determine a wharfage fee in respect of the provision of a site in the port of Hastings at which stevedoring operations may be carried out.
- (2) Subject to Part 3, a fee determined under subsection (1) may be calculated by reference to the quantity, volume, weight or value of cargo loaded or unloaded at the site.
- (3) Subject to this Act, different fees may be determined under subsection (1) in respect of a site or a class of site, or cargo or a class of cargo, or a vessel or a class of vessel or according to any other factors that the Port of Hastings Development Authority determines.
- (4) A fee determined under subsection (1) is payable to the Port of Hastings Development Authority—
- (a) in the case of cargo unloaded from a vessel at the site, by the person who, immediately after it is unloaded, is the owner of the cargo; and
- (b) in the case of cargo loaded onto a vessel at the site, by the person who, immediately before it is loaded, is the owner of the cargo; and

- (c) in the case of the loading of an empty container onto a vessel or the unloading of an empty container from a vessel at the site, by the person who is the owner of the vessel.
- (5) If a fee determined under subsection (1), or any part of such a fee, is not paid by the person liable under subsection (4)(a) or (b) to pay it, that person and the person who, at the time payment is demanded by the Port of Hastings Development Authority, is the owner of the cargo are jointly and severally liable for the payment of the fee.
- (6) Nothing in this section affects a fee payable for services specified in subsection (1) in accordance with the terms of a contract.

75 Channel fees

(1) Subject to this Part—

S. 75
amended by
No. 85/2003
s. 30(2),
substituted by
No. 63/2007
s. 13.

(a) Ports Victoria may determine fees for—

S. 75(1)(a)
amended by
No. 19/2022
s. 46(a).

- (i) the provision of channels by Ports Victoria in the port waters of Ports Victoria for use by vessels, not being channels in the port waters of a channel operator; and

S. 75(1)(a)(i)
amended by
Nos 10/2016
s. 125(1)(a),
19/2022
s. 46(a).

- (ii) any service related to the provision of the service described in subparagraph (i); and

(b) a channel operator may determine fees for—

S. 75(1)(b)
substituted by
No. 10/2016
s. 125(1)(b).

- (i) the provision of channels by the channel operator in the port waters of the channel operator for use by vessels; and

- (ii) any service related to the provision of the service described in subparagraph (i); and

Note to s. 75(1)(b) amended by Nos 10/2016 s. 179(Sch. 1 item 7.20), 19/2022 s. 46(b).

S. 75(1)(c) inserted by No. 10/2016 s. 125(1)(b).

Note

Ports Victoria is the channel operator for port of Melbourne waters—see the definition of *channel operator* in section 3(1).

- (c) the port of Melbourne operator may determine fees for—
 - (i) the provision of channels (other than anchorages) by the port of Melbourne operator in port of Melbourne waters for use by vessels; and
 - (ii) any service related to the provision of the service described in subparagraph (i).

(2) A fee determined under subsection (1)—

- (a) may be calculated by reference to the tonnage of a vessel or in any other manner; and
- (b) may differ according the nature of any vessel or any cargo on any vessel; and
- (c) may differ according to the length of time vessels are in—

S. 75(2)(c) substituted by No. 10/2016 s. 125(2).

S. 75(2)(c)(i) amended by No. 19/2022 s. 46(c).

- (i) if the fee is determined by Ports Victoria or the channel operator, the port waters of a port serviced by Ports Victoria or the channel operator (as the case requires); and
- (ii) if the fee is determined by the port of Melbourne operator, port of Melbourne waters.

- (2A) A fee determined by the port of Melbourne operator as provided under subsection (2) is subject to Part 3. **S. 75(2A) inserted by No. 10/2016 s. 125(3).**
- (3) Subject to subsection (3A), a fee determined under subsection (1) is payable by the person or persons specified in the determination, who must be one or more of the following—
- (a) the owner of any vessel that has used, is using or proposes to use the channel;
 - (b) the person who, immediately after any cargo is unloaded from a vessel that has used the channel, is the owner of the cargo;
 - (c) the person who, immediately before cargo is loaded onto a vessel that proposes to use the channel, is the owner of the cargo.
- (3A) A fee determined under subsection (1) by Ports Victoria (other than an anchorage fee) is not payable under subsection (3) unless the fee is an approved channel fee. **S. 75(3A) inserted by No. 10/2016 s. 125(5), amended by Nos 10/2016 s. 179(Sch. 1 item 7.21), 19/2022 s. 46(d).**
- Note**
Ports Victoria is the channel operator for port of Melbourne waters—see the definition of *channel operator* in section 3(1). **Note to s. 75(3A) amended by Nos 10/2016 s. 179(Sch. 1 item 7.22), 19/2022 s. 46(e).**
- (4) If a fee determined under subsection (1) is not paid by the person liable under the determination to pay it, that person and the person who is the owner of the cargo, at the time payment is demanded by Ports Victoria, the channel operator or the port of Melbourne operator (as the case requires), are jointly and severally liable for the payment of the fee. **S. 75(4) amended by Nos 10/2016 s. 125(6), 19/2022 s. 46(f).**

- (5) Nothing in this section affects a fee payable for the services specified in subsection (1) in accordance with the terms of a contract.

Ss 76, 77
repealed by
No. 51/1996
s. 10(1).

* * * * *

S. 78
(Heading)
inserted by
No. 63/2007
s. 18(Sch.
item 1(1)).

78 Payment of wharfage and channel fees

S. 78(1)
amended by
Nos 23/2003
s. 17(Sch.
item 3(1)),
85/2003
s. 30(2),
63/2007
s. 18(Sch.
item 1(2)),
38/2011
s. 28(1),
10/2016
s. 126(1),
19/2022
s. 47(a).

- (1) A wharfage fee or channel fee under this Part is payable on demand by the port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or the channel operator (as the case requires), or at such time, or on such terms, as the port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or the channel operator may determine in respect of the person liable to pay it.

S. 78(2)
amended by
Nos 23/2003
s. 17(Sch.
item 3(2)),
85/2003
s. 30(2),
63/2007
s. 18(Sch.
item 1(3)),
38/2011
s. 28(2),
10/2016
s. 126(2),
19/2022
s. 47(b).

- (2) Agents may be appointed by the port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or the channel operator for collection of wharfage fees or channel fees.

- (3) A wharfage fee or channel fee under this Part is a debt due to the port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or the channel operator (as the case requires) from the person liable to pay it and is recoverable in a court of competent jurisdiction.
- S. 78(3)
amended by
Nos 23/2003
s. 17(Sch.
item 3(3)),
85/2003
s. 30(2),
63/2007
s. 18(Sch.
item 1(4)),
38/2011
s. 28(3),
10/2016
s. 126(2),
19/2022
s. 47(b).
- * * * * *
- S. 78(4)
repealed by
No. 63/2007
s. 18(Sch.
item 1(5)).

79 Interest on overdue payments

- (1) Wharfage fees and channel fees under this Part that are unpaid by the due date may, if the port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or the channel operator so requires, attract interest at a rate determined by it.
- S. 79(1)
amended by
Nos 23/2003
s. 17(Sch.
item 4),
85/2003
s. 30(2),
63/2007
s. 18(Sch.
item 2(1)),
38/2011 s. 29,
10/2016 s. 127,
19/2022 s. 48.
- (2) Different rates may be determined for fees that remain unpaid for different periods of time.
- S. 79(2)
amended by
No. 63/2007
s. 18(Sch.
item 2(2)).
- (3) The rate determined in respect of any period is not to exceed the prescribed rate.

80 Security for payment of wharfage and channel fees

S. 80
(Heading)
inserted by
No. 63/2007
s. 18(Sch.
item 3(1)).

S. 80(1)
amended by
Nos 23/2003
s. 17(Sch.
item 5(1)),
85/2003
s. 30(2),
63/2007
s. 18(Sch.
item 3(2)),
38/2011
s. 30(1),
10/2016
s. 128(1),
19/2022
s. 49(a).

S. 80(2)
amended by
Nos 11/2001
s. 3(Sch.
item 57),
23/2003
s. 17(Sch.
item 5(2)),
85/2003
s. 30(2),
38/2011
s. 30(2),
10/2016
s. 128(2),
19/2022
s. 49(b).

S. 80(3)
amended by
Nos 23/2003
s. 17(Sch.
item 5(3)),
85/2003
s. 30(2),
38/2011
s. 30(3),
10/2016
s. 128(1),
19/2022
s. 49(a).

- (1) As security for the payment of wharfage fees or channel fees that have been or may be incurred under this Part by a person, the port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or the channel operator may require the person to lodge with it a security deposit.
- (2) The security deposit may take the form of cash or a guarantee provided by a body permitted to use the expression *bank* under section 66 of the Banking Act 1959 of the Commonwealth or such other form as the port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or the channel operator may approve, and is to be in or for an amount determined by the port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or the channel operator.
- (3) The port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or a channel operator may appropriate a security deposit or the proceeds of a security deposit to meet liabilities of the depositor (including any interest payable) under this Part that are unpaid after becoming due.

(4) If a security deposit or the proceeds of a security deposit have been appropriated or partly appropriated, the port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or the channel operator may require lodgement of further security.

S. 80(4)
amended by
Nos 23/2003
s. 17(Sch.
item 5(4)),
85/2003
s. 30(2),
38/2011
s. 30(4),
10/2016
s. 128(1),
19/2022
s. 49(a).

(5) If at any time the port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or a channel operator considers that a depositor's potential liabilities under this Part should be more adequately guaranteed, it may require the lodgement of security in a greater amount, or in a different form or both.

S. 80(5)
amended by
Nos 23/2003
s. 17(Sch.
item 5(5)),
85/2003
s. 30(2),
38/2011
s. 30(5),
10/2016
s. 128(1),
19/2022
s. 49(a).

81 Liability of current owners and agents

(1) To the extent to which a channel fee under this Part is not paid by the person who was the owner of the vessel at the time the fee was incurred, the fee is payable by the person who is the owner at the time payment is demanded by Ports Victoria, the channel operator or the port of Melbourne operator.

S. 81(1)
amended by
Nos 85/2003
s. 30(2),
63/2007
s. 18(Sch.
item 4(1)),
10/2016 s. 129,
19/2022 s. 50.

(2) If, when a vessel left port waters—

(a) there was an agent for the berthing or working of the vessel; and

(b) there was no other agent for the vessel—

that agent is liable, to the same extent as the owner of the vessel, for unpaid channel fees under this Part incurred by the vessel while in port waters.

S. 81(2)
amended by
No. 63/2007
s. 18(Sch.
item 4(2)).

S. 81(3)
amended by
No. 63/2007
s. 18(Sch.
item 4(3)).

- (3) If, when a vessel left port waters, there was an agent for the vessel other than an agent for the berthing or working of the vessel, that agent is liable, to the same extent as the owner of the vessel, for any such unpaid fees.

S. 82
(Heading)
inserted by
No. 63/2007
s. 18(Sch.
item 5(1)).

82 Waiver or refund of wharfage or channel fees

S. 82
amended by
Nos 23/2003
s. 17(Sch.
item 6),
85/2003
s. 30(2),
63/2007
s. 18(Sch.
item 5(2)),
38/2011 s. 31,
10/2016 s. 130,
19/2022 s. 51.

The port of Melbourne operator, the designated State port entity, the Port of Hastings Development Authority, Ports Victoria or a channel operator may waive or refund the whole or any part of a wharfage fee or channel fee under this Part that is due to it in any particular case or class of cases.

Part 5A—Powers to restrict access to areas

Division 1—Preliminary

83 Definitions

In this Part—

authorised person means a person—

- (a) acting under a certificate of authorisation under section 88G; or
- (b) who is a police officer, acting in the course of his or her duties as such a police officer; or
- (c) who is—
 - (i) an employee in the public service within the meaning of the **Public Administration Act 2004**; or
 - (ii) an officer or employee of a public body—

who is performing duties or functions under this Act, the **Marine and Coastal Act 2018**, the **Conservation, Forests and Lands Act 1987**, the **Crown Land (Reserves) Act 1978**, the **Dangerous Goods Act 1985**, the **Emergency Management Act 1986** or the **Emergency Management Act 2013**, the **Environment Protection Act 2017**, the **Fisheries Act 1995**, the **Flora and Fauna Guarantee Act 1988**, the **Land Act 1958**, the **Marine Safety Act 2010**, the **National Parks Act 1975**, the **Occupational Health and Safety Act 2004**, the

Pt 5A
(Heading and
ss 83-88H)
inserted by
No. 63/2007
s. 14.

New s. 83
inserted by
No. 63/2007
s. 14.

S. 83 def. of
*authorised
person*
amended by
Nos 65/2010
s. 419(4) (as
amended by
No. 78/2011
s. 43), 73/2013
s. 99(a),
37/2014
s. 10(Sch.
item 128.2),
26/2018
s. 97(3),
19/2018 s. 248,
39/2018
s. 51(1).

Parks Victoria Act 2018, the Planning and Environment Act 1987, the Pollution of Waters by Oil and Noxious Substances Act 1986 or the Water Act 1989 or any regulations made under any one of those Acts;

S. 83 def. of *port waters* amended by Nos 45/2010 s. 37, 19/2022 s. 52(a).

port waters, in relation to Ports Victoria, means any waters in respect of which Ports Victoria has functions under Division 3 of Part 6 of the **Transport Integration Act 2010**;

S. 83 def. of *recommending authority* amended by Nos 38/2011 s. 32, 10/2016 ss 131, 179(Sch. 1 item 7.23), 19/2022 s. 52(b).

recommending authority—

- (a) in relation to an area, the declaration of which as a restricted access area is or may be recommended by Ports Victoria, means Ports Victoria; or
- (ab) in relation to an area, the declaration of which as a restricted access area is or may be recommended by the port of Melbourne operator, means the port of Melbourne operator; or

* * * * *

- (c) in relation to an area, the declaration of which as a restricted access area is or may be recommended by the Port of Hastings Development Authority, means the Port of Hastings Development Authority;

restricted access area declaration means a declaration made under section 84 (whether or not amended under Division 2).

Division 2—Declaration of areas

84 Making a declaration of restricted access area

New s. 84
inserted by
No. 63/2007
s. 14.

(1) The Minister, on the recommendation of Ports Victoria may declare—

S. 84(1)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.24),
19/2022
s. 53(a).

(a) that any part of port of Melbourne waters or port of Melbourne land, that is not leased port of Melbourne land, that is specified in the declaration (not being more than 12 square kilometres, in area) is an area to which access is restricted; or

S. 84(1)(a)
amended by
No. 45/2010
s. 38(1)(2),
substituted by
No. 38/2011
s. 33(1),
amended by
No. 10/2016
s. 132(1).

(b) that, in relation to a vessel, while the vessel is in port of Melbourne waters, the area that is—

S. 84(1)(b)
amended by
Nos 45/2010
s. 38(3),
38/2011
s. 33(2)(a).

(i) within a specified distance of the vessel (not being a distance of more than 1.4 kilometres); and

(ii) within port of Melbourne waters or port of Melbourne land—

S. 84(1)(b)(ii)
substituted by
Nos 45/2010
s. 38(4),
38/2011
s. 33(2)(b).

is an area to which access is restricted.

(1AA) The Minister, on the recommendation of the port of Melbourne operator, may declare that any part of leased port of Melbourne land that is specified in the declaration (not being more than 12 square kilometres, in area) is an area to which access is restricted.

S. 84(1AA)
inserted by
No. 10/2016
s. 132(2).

Port Management Act 1995
No. 82 of 1995
Part 5A—Powers to restrict access to areas

S. 84(1A)
inserted by
No. 38/2011
s. 33(3).

(1A) The Minister, on the recommendation of the Port of Hastings Development Authority may declare that any part of port of Hastings land that is specified in the declaration (not being more than 12 square kilometres, in area) is an area to which access is restricted.

S. 84(2)
amended by
No. 19/2022
s. 53(b).

(2) The Minister, on the recommendation of Ports Victoria may declare—

S. 84(2)(a)
amended by
No. 19/2022
s. 53(b).

(a) that a part of any port waters of Ports Victoria, that is specified in the declaration (not being more than 12 square kilometres, in area) is an area to which access is restricted; or

S. 84(2)(b)
amended by
No. 19/2022
s. 53(b).

(b) that, in relation to a vessel, while the vessel is in port waters of Ports Victoria, the area that is—

(i) within a specified distance of the vessel (not being a distance of more than 1.4 kilometres); and

(ii) within port waters of Ports Victoria—

is an area to which access is restricted.

(3) The Minister must not make a declaration under this section unless—

(a) the Minister is satisfied that the declaration is necessary to enable the recommending authority to carry out its powers or functions and give effect to its objectives under this Act; and

- (b) if any area or part of an area that is to be declared under subsection (1) or (2)—
- (i) is reserved or deemed to be reserved under the **Crown Land (Reserves) Act 1978**; or
 - (ii) is within 100 metres of land that is reserved or deemed to be reserved under the **Crown Land (Reserves) Act 1978**—

the Minister has first consulted the Minister administering that Act.

- (4) A park or a part of a park, within the meaning of the **National Parks Act 1975**, is not to be taken to be the subject of a declaration under this section, unless the Minister administering that Act consents to the application of the declaration to the park or the part of the park.
- (5) If any area or part of an area that is to be declared under subsection (1) or (2) is in port waters of a recommending authority, the recommending authority must not recommend the declaration of the area unless the authority has first consulted the Director, Transport Safety.
- (6) If any area or part of an area that is to be declared under subsection (1) or (2) is within 100 metres of a park or a part of a park, within the meaning of the **National Parks Act 1975**, the recommending authority must not recommend the declaration of the area unless the authority has first consulted the Secretary, within the meaning of that Act.
- (7) Ports Victoria must not recommend the declaration of a restricted access area under subsection (2) in relation to port waters of Ports Victoria in respect of which Ports Victoria has delegated any of its functions under Division 3 of Part 6 of the **Transport Integration Act 2010**,

S. 84(5)
amended by
No. 6/2010
s. 203(1)(Sch. 6
item 36.2) (as
amended by
No. 45/2010
s. 22).

S. 84(7)
amended by
Nos 45/2010
s. 38(5),
19/2022
s. 53(c).

unless Ports Victoria has first consulted with the person or body to whom Ports Victoria has delegated the functions.

New s. 85
inserted by
No. 63/2007
s. 14,
amended by
No. 10/2016
s. 133.

85 Effect of declaration

The Minister may specify in a declaration under section 84(1), (1AA), (1A) or (2) any of the following—

- (a) vessels or classes of vessels that may or may not have access to the area, and, in relation to vessels, any of the following—
 - (i) purposes for which vessels may or may not have access to the area;
 - (ii) times during which vessels may or may not have access to the area;
 - (iii) activities that may or may not be carried out by vessels having access to the area;
- (b) persons or classes of persons that may or may not have access to the area, and, in relation to persons, any of the following—
 - (i) purposes for which persons may or may not have access to the area;
 - (ii) times during which persons may or may not have access to the area;
 - (iii) activities that may or may not be carried out by persons having access to the area;
- (c) any conditions relating to access to the area.

New s. 86
inserted by
No. 63/2007
s. 14.

86 Provisions as to restricted access area declarations

- (1) A restricted access area declaration—
 - (a) must be made by instrument published in the Government Gazette; and

- (b) may describe an area by reference to a map, plan or otherwise.
- (2) A restricted access area declaration takes effect—
 - (a) on the day that it is published in the Government Gazette; or
 - (b) if a later day is specified in the declaration, on that day.
- (3) A restricted access area declaration remains in force, for the period specified in the declaration, unless the declaration is sooner revoked, but, in any case, for no more than 12 months.

87 Amendment or revocation of declaration

The Minister may amend or revoke a restricted access area declaration in the same manner as that in which it is made.

New s. 87
inserted by
No. 63/2007
s. 14.

88 Publication of declaration

The recommending authority for a restricted access area declaration must—

- (a) publish the declaration in a newspaper circulating generally throughout Victoria; and
- (b) publish the declaration in a manner that makes it readily accessible to a person likely to enter the area; and
- (c) publish the declaration on the Internet.

New s. 88
inserted by
No. 63/2007
s. 14.

88A Operation of declaration where inconsistent with other powers

- (1) In the case of any inconsistency between a power that may be exercised by the Director, Transport Safety or another person under a relevant law and a power that may be exercised in respect of a

S. 88A
inserted by
No. 63/2007
s. 14.

S. 88A(1)
amended by
No. 6/2010
s. 203(1)(Sch. 6
item 36.2) (as
amended by
No. 45/2010
s. 22).

restricted access area, the power that may be exercised under the relevant law prevails.

S. 88A(2)
amended by
No. 65/2010
s. 419(4A) (as
amended by
No. 78/2011
s. 43).

- (2) In this section, *relevant law* means any provision of this Act (other than this Part), the **Marine Safety Act 2010**, regulations made under this Act (other than in respect of this Part) or regulations made under the **Marine Safety Act 2010**.

Division 3—Offences and other enforcement powers in relation to areas

S. 88B
inserted by
No. 63/2007
s. 14.

88B Offence to enter restricted access area

- (1) A person, who is not an authorised person, must not enter into or remain in a restricted access area, or cause a vessel to enter into or remain in a restricted access area, in contravention of the declaration of the area.

Penalty: 10 penalty units.

- (2) In any proceedings for an offence against subsection (1), it is a defence if the person charged with the offence has a reasonable excuse for entering into or remaining in the area in respect of which the proceedings have been brought.

S. 88C
inserted by
No. 63/2007
s. 14.

88C Interference with activities

- (1) A person, who is not an authorised person, must not, in contravention of a declaration of a restricted access area—
- (a) interfere with or hinder; or
 - (b) cause any other person to interfere with or hinder—

the carrying out of any activity in the area that is being carried out for the purpose of enabling the recommending authority for the area to carry out

its powers or functions or give effect to its objectives under this Act.

Penalty: 10 penalty units.

- (2) In any proceedings for an offence against subsection (1), it is a defence if the person charged with the offence has a reasonable excuse for—

- (a) interfering with or hindering; or
- (b) causing any other person to interfere with or hinder—

the carrying out of the activity.

- (3) A person, who is not an authorised person, must not, in contravention of a declaration of a restricted access area—

- (a) interfere with or hinder; or
- (b) cause any other person to interfere with or hinder—

the entry into a restricted access area by a person authorised by a certificate under section 88G to do so.

Penalty: 10 penalty units.

- (4) In any proceedings for an offence against subsection (3), it is a defence if the person charged with the offence has a reasonable excuse for—

- (a) interfering with or hindering; or
- (b) causing any other person to interfere with or hinder—

the entry.

S. 88D
inserted by
No. 63/2007
s. 14.

88D Offence not to give certain information to police when asked to do so

S. 88D(1)
amended by
No. 37/2014
s. 10(Sch.
item 128.3).

- (1) A person who is in a restricted access area must, if asked to do so by a police officer—
 - (a) give his or her name and address; and
 - (b) state the authority under which he or she is entitled to be in the area and provide evidence that the person has that relates to that authority.

Penalty: 5 penalty units.

S. 88D(2)
amended by
No. 37/2014
s. 10(Sch.
item 128.3).

- (2) A person who is not entitled to enter or remain in a restricted access area without a certificate of authorisation under section 88G must, when asked to do so by a police officer, produce the certificate.

Penalty: 5 penalty units.

S. 88E
inserted by
No. 63/2007
s. 14.

88E Warning to leave area

- (1) The recommending authority for a restricted access area may warn any person to leave any part of the area.
- (2) For the purposes of section 9(1) of the **Summary Offences Act 1966**, in exercising a power under subsection (1), the recommending authority is deemed to be the occupier of the land concerned.
- (3) A person exercising a power under this section must produce evidence of his or her authority to do so before exercising the power.

S. 88F
inserted by
No. 63/2007
s. 14,
amended by
No. 37/2014
s. 10(Sch.
item 128.3).

88F Powers to move vessels from areas

If a person has, within sight of a police officer, committed an offence under this Part and that person is in charge of a vessel, the police officer may—

- (a) take charge of the vessel; and
- (b) move it to an appropriate place or direct another person to move it to an appropriate place.

88G Certificates of authorisation

- (1) The recommending authority for a restricted access area may issue a certificate in writing to any person authorising the person to enter and remain in any part of the restricted access area.
- (2) A certificate under subsection (1)—
 - (a) subject to any amendment or revocation, remains in force for the period specified in the certificate; and
 - (b) is subject to the conditions specified in the certificate; and
 - (c) may be amended or revoked at any time by the recommending authority.

S. 88G
inserted by
No. 63/2007
s. 14.

88H Certificate as evidence of area

In any proceedings for an offence under this Part, a certificate, signed by the recommending authority for a restricted access area, certifying that, at the time of the alleged conduct that is the subject of the proceedings, an area was the restricted access area, is admissible evidence of the facts stated in it.

S. 88H
inserted by
No. 63/2007
s. 14.

Pt 5B
(Headings
and ss 88I–
88W)
inserted by
No. 93/2009
s. 12.

Part 5B—Powers as to certain hazardous or polluting activities or things

Division 1—Preliminary

S. 88I
inserted by
No. 93/2009
s. 12.

88I Definitions

In this Part—

S. 88I def. of
clean up
amended by
No. 39/2018
s. 51(2)(a).

clean up has the same meaning as in the
Environment Protection Act 2017;

S. 88I defs. of
pollute and
polluted
repealed by
No. 39/2018
s. 51(2)(b).

* * * * *

Division 2—Pollution abatement

S. 88J
(Heading)
amended by
Nos 10/2016
ss 134(1),
179(Sch. 1
item 7.25),
19/2022
s. 54(1).

88J Pollution abatement by Ports Victoria

S. 88J
inserted by
No. 93/2009
s. 12,
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.26),
19/2022
s. 54(2).

Where—

S. 88J(a)
amended by
No. 10/2016
s. 134(2).

- (a) pollutants have been or are being discharged
on port of Melbourne land, that is not leased
port of Melbourne land, or into port of
Melbourne waters; or

- | | |
|---|--|
| (b) a pollution incident within the meaning of the Environment Protection Act 2017 has occurred on port of Melbourne land, that is not leased port of Melbourne land, or in port of Melbourne waters; or | S. 88J(b)
amended by
Nos 10/2016
s. 134(2),
39/2018
s. 51(3). |
| (c) any potentially hazardous substance appears to have been abandoned or dumped on port of Melbourne land, that is not leased port of Melbourne land, or in port of Melbourne waters; or | S. 88J(c)
amended by
No. 10/2016
s. 134(2). |
| (d) any potentially hazardous substance is being handled in a manner which is likely to cause an environmental hazard on port of Melbourne land, that is not leased port of Melbourne land, or in port of Melbourne waters— | S. 88J(d)
amended by
No. 10/2016
s. 134(2). |

Ports Victoria may conduct a clean up or cause a clean up to be conducted as Ports Victoria considers necessary.

88JA Pollution abatement by port of Melbourne operator

S. 88JA
inserted by
No. 10/2016
s. 135.

- (1) This section applies if—
- (a) pollutants have been or are being discharged on leased port of Melbourne land; or
 - (b) a pollution incident within the meaning of the **Environment Protection Act 2017** has occurred on leased port of Melbourne land; or
 - (c) any potentially hazardous substance appears to have been abandoned or dumped on leased port of Melbourne land; or
 - (d) any potentially hazardous substance is being handled in a manner which is likely to cause an environmental hazard on leased port of Melbourne land.

S. 88JA(1)(b)
amended by
No. 39/2018
s. 51(3).

- (2) The port of Melbourne operator may conduct a clean up or cause a clean up to be conducted as the port of Melbourne operator considers necessary.

S. 88K
(Heading)
amended by
Nos 10/2016
ss 136,
179(Sch. 1
item 7.27),
19/2022
s. 55(1).

88K Recovery of costs of clean up by Ports Victoria

S. 88K
inserted by
No. 93/2009
s. 12.

S. 88K(1)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.28),
19/2022
s. 55(2)(a).

- (1) If Ports Victoria conducts a clean up under section 88J, Ports Victoria may recover any reasonable costs incurred by Ports Victoria in conducting the clean up from the person who caused the circumstances that gave rise to the need for the clean up to be conducted.

S. 88K(2)
amended by
No. 19/2022
s. 55(2)(b).

- (2) The costs that may be recovered under subsection (1) include labour, administrative and overhead costs, determined on such basis as Ports Victoria reasonably considers appropriate, incurred as a result of any action taken by Ports Victoria under subsection (1).

S. 88K(3)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.28),
19/2022
s. 55(2)(c).

- (3) An amount payable under subsection (1) may be recovered in any court of competent jurisdiction as a debt due to Ports Victoria.

S. 88KA
inserted by
No. 10/2016
s. 137.

88KA Recovery of costs of clean up by port of Melbourne operator

- (1) If the port of Melbourne operator conducts a clean up under section 88JA, the port of Melbourne operator may recover any reasonable costs incurred by it in conducting the clean up from the

person who caused the circumstances that gave rise to the need for the clean up to be conducted.

- (2) The costs that may be recovered under subsection (1) include labour, administrative and overhead costs, determined on such basis as the port of Melbourne operator reasonably considers appropriate, incurred as a result of any action taken by it under subsection (1).
- (3) An amount payable under subsection (1) may be recovered in any court of competent jurisdiction as a debt due to the port of Melbourne operator.

88L Relationship with the Environment Protection Act 2017

These provisions do not apply in any situation in which the Authority (within the meaning of the **Environment Protection Act 2017**) is conducting a clean up under that Act.

S. 88L
(Heading)
amended by
No. 39/2018
s. 51(4).

S. 88L
inserted by
No. 93/2009
s. 12,
amended by
No. 39/2018
s. 51(5).

Division 3—Hazardous port activities

88M Hazardous port activity notice

- (1) A person who proposes to carry out a hazardous port activity in port of Melbourne waters or on port of Melbourne land that is not leased port of Melbourne land, must give notice to Ports Victoria before doing so.

Penalty: 20 penalty units.

S. 88M
inserted by
No. 93/2009
s. 12.

S. 88M(1)
amended by
Nos 10/2016
ss 138(1),
179(Sch. 1
item 7.29),
19/2022 s. 56.

S. 88M(1A)
inserted by
No. 10/2016
ss 138(2),
179(Sch. 1
item 7.29),
amended by
No. 19/2022
s. 56.

- (1A) A person who proposes to carry out a hazardous activity on leased port of Melbourne land must give notice to Ports Victoria and the port of Melbourne operator before doing so.

Penalty: 20 penalty units.

S. 88M(2)
amended by
No. 10/2016
s. 138(3).

- (2) A notice under subsection (1) or (1A) must be given in accordance with the regulations.

S. 88N
inserted by
No. 93/2009
s. 12.

88N Hazardous port activity direction

- (1) If a port safety officer for the port of Melbourne is satisfied that a hazardous port activity is being carried out or is proposed to be carried out in port of Melbourne waters or on port of Melbourne land, the officer may give a direction in writing to the person who is carrying out or who proposes to carry out the activity.
- (2) A direction under subsection (1) may—
- (a) direct a person who is carrying out an activity to cease carrying out the activity; or
 - (b) direct a person within a specified area of the port to leave the area; or
 - (c) direct a person in the port to leave the port.
- (3) A port safety officer for the port of Melbourne may, if it is reasonable to do so, give an oral direction about any matter on which a direction may be given under subsection (1) to any person who is carrying out or who proposes to carry out a hazardous port activity.

88O Offence not to comply with hazardous port activity direction

S. 88O
inserted by
No. 93/2009
s. 12.

A person who has been given a hazardous port activity direction under section 88N must comply with that direction, unless that person has a reasonable excuse for not doing so.

Penalty: 60 penalty units.

Division 4—Abandoned or unclaimed goods or things

88AP Definitions

S. 88AP
inserted by
No. 55/2017
s. 43.

In this Division—

relevant port means—

S. 88AP def.
of *relevant port*
amended by
No. 19/2022
s. 57.

- (a) if the port manager is Ports Victoria—
 - (i) those parts of the port comprising port of Melbourne waters and port of Melbourne land that is not leased port of Melbourne land; and
 - (ii) other commercial trading ports;
- (b) if the port manager is the port of Melbourne operator—those parts of the port comprising leased port of Melbourne land;

* * * * *

- (d) if the port manager is a person or body appointed under section 44A—the local port in respect of which that person or body was appointed under that section.

S. 88P
inserted by
No. 93/2009
s. 12,
substituted by
No. 10/2016
s. 139.
S. 88P(1)
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.30),
19/2022 s. 58.

88P Offence to leave things in port waters or on port land

- (1) A person must not leave any thing unattended in port of Melbourne waters or on port of Melbourne land that is not leased port of Melbourne land for more than one month without the permission of Ports Victoria.

Penalty: 60 penalty units.

- (2) A person must not leave any thing unattended on leased port of Melbourne land for more than one month without the permission of the port of Melbourne operator.

Penalty: 60 penalty units.

S. 88Q
inserted by
No. 93/2009
s. 12,
amended by
No. 10/2016
ss 140,
179(Sch. 1
item 7.31),
substituted by
No. 55/2017
s. 44.

88Q Removal of things

- (1) Subject to subsection (2), a port manager may move any thing or cause any thing to be moved from a relevant port if—
- (a) the thing has been left unattended at the relevant port for more than one month; and
 - (b) the identity or location of the owner of the thing cannot be established or the port manager reasonably believes that the owner of the property will not move the property.
- (2) A port manager may immediately remove a thing from a port if—
- (a) the port manager is of the opinion that the thing has been left unattended at the relevant port and—
 - (i) is causing an impediment to the operations of the port; or

- (ii) is causing an environmental hazard to the port; or
 - (iii) is a risk to the safety or security of the port or port operations; or
 - (iv) is a danger to public health; and
- (b) the identity or location of the owner of the thing cannot be established or the port manager reasonably believes that the owner of the property will not move the property.

88R Powers when moving things

- (1) In the case of a vehicle or vessel, a person acting in accordance with section 88Q(1) or (2) may enter the vehicle or vessel using, if necessary, reasonable force, for the purpose of conveniently or expeditiously moving the vehicle or vessel.
- (2) A port manager when moving a thing under section 88Q(1) or (2) must move it to a place that the port manager reasonably believes is the nearest safe and convenient place.

S. 88R
inserted by
No. 93/2009
s. 12.

S. 88R(2)
amended by
Nos 10/2016
ss 141,
179(Sch. 1
item 7.32),
55/2017 s. 45.

88S Requirement to make enquiries as to owner of thing

If a port manager has moved a thing under section 88Q(1) or (2), the port manager must make all reasonable enquiries to establish the identity or location of the owner of the property.

S. 88S
inserted by
No. 93/2009
s. 12,
amended by
Nos 10/2016
ss 142,
179(Sch. 1
item 7.32),
55/2017 s. 46.

88T Disposal of thing

S. 88T
inserted by
No. 93/2009
s. 12.

S. 88T(1)
amended by
Nos 10/2016
ss 143(1),
179(Sch. 1
item 7.33),
55/2017
s. 47(1).

(1) If, after reasonable enquiries, a port manager is unable to establish the identity or location of the owner of a thing that has been moved under section 88Q(1) or (2), the port manager may dispose of the thing either by gift, sale or destruction of the thing or by otherwise dealing with the thing.

S. 88T(2)
amended by
Nos 10/2016
ss 143(1),
179(Sch. 1
item 7.33),
55/2017
s. 47(2)(a).

(2) A port manager must not dispose of a thing under subsection (1) unless—

S. 88T(2)(a)
amended by
Nos 10/2016
s. 143(1),
55/2017
s. 47(2)(b).

(a) the port manager has given notice about the disposal of the thing in a newspaper circulating generally in Victoria and on its website; and

(b) 28 days have expired since the giving of the notice.

(3) The requirements of subsection (2) do not apply to the disposal of a thing that is perishable.

S. 88T(4)
amended by
Nos 10/2016
ss 143(2),
179(Sch. 1
item 7.33),
55/2017
s. 47(3).

(4) If a port manager establishes the identity or location of the owner of a thing that has been moved under section 88Q(1) or (2), the port manager must give the owner notice in writing that the port manager intends to dispose of the thing.

(5) If a port manager gives notice in writing under subsection (4) to the owner and the owner of the thing does not recover the thing from the port manager within 28 days the port manager may dispose of the thing after the 28 days have expired, either by gift, sale or destruction of the thing or by otherwise dealing with the thing.

S. 88T(5)
amended by
Nos 10/2016
ss 143(3),
179(Sch. 1
item 7.33),
55/2017
s. 47(4).

(6) The requirements of subsection (5) do not apply to the disposal of a thing that is perishable.

88U Recovery of costs

S. 88U
inserted by
No. 93/2009
s. 12.

(1) If a port manager has moved a thing under section 88Q(1) or (2), the port manager may recover from the owner—

S. 88U(1)
amended by
Nos 10/2016
ss 144(1),
179(Sch. 1
item 7.34),
55/2017
s. 48(1).

(a) the costs of the moving of the thing; and

(b) the costs of storing the thing; and

(c) if the thing has been disposed of, the costs of the disposal of the thing.

(2) An amount payable under subsection (1) may be recovered in any court of competent jurisdiction as a debt due to the port manager.

S. 88U(2)
amended by
Nos 10/2016
s. 144(2),
55/2017
s. 48(2).

(3) If the thing is disposed of, an amount that may be recovered under subsection (1) is to be paid out of the proceeds (if any) of the disposal.

88V Payment of compensation

S. 88V
inserted by
No. 93/2009
s. 12.

S. 88V(1)
amended by
Nos 10/2016
ss 145(1),
179(Sch. 1
item 7.34),
55/2017
s. 49(1).

- (1) If the owner of a thing is unable to recover possession of the thing because the thing has been disposed of under this Division, a port manager must pay to the owner and any other person with an interest in the thing an amount commensurate with the value of the person's interest in the thing less any amount payable under section 88U.
- (2) An amount payable under subsection (1) is to be paid out of the proceeds (if any) of the disposal of the thing.
- (3) A person with an interest in a thing that has been disposed of under this Division may make an application to the Magistrates' Court for an order that compensation be paid in accordance with subsection (2) and the Court may make either or both of the following orders, where appropriate—
 - (a) an order that compensation be paid to that person commensurate with the value of the person's interest in the thing;
 - (b) an order that the costs incurred by a port manager in moving or disposing of the thing under this Division may be retained by the port manager out of the proceeds of the sale of the thing.
- (4) An application under subsection (3) must be made within 12 months of the date of the disposal of the thing.
- (5) Section 73(2) of the Personal Property Securities Act 2009 of the Commonwealth applies to an interest arising out of the operation of this Division.

S. 88V(3)(b)
amended by
Nos 10/2016
s. 145(2),
55/2017
s. 49(2).

S. 88V(5)
inserted by
No. 74/2010
s. 35.

88W Proceeds of disposal where owner not located

If a thing has been disposed of under section 88T(1) where neither the identity nor the location of the owner has been established—

S. 88W
inserted by
No. 93/2009
s. 12.

(a) a port manager may recover the costs of moving and disposal of the thing from the proceeds of that disposal; and

S. 88W(a)
amended by
Nos 10/2016
ss 146(a),
179(Sch. 1
item 7.34),
55/2017
s. 50(a).

(b) if no claim has been made under section 88V within 12 months of the disposal of the thing, any proceeds from the disposal of the thing, after the recovery of any costs under paragraph (a), must be paid—

S. 88W(b)
amended by
No. 10/2016
s. 146(b).

(i) if the thing was disposed of by a port manager (other than the port of Melbourne operator), into the Consolidated Fund; and

S. 88W(b)(i)
inserted by
No. 10/2016
s. 146(b),
amended by
Nos 10/2016
s. 179(Sch. 1
item 7.34),
55/2017
s. 50(b).

(ii) if the thing was disposed of by the port of Melbourne operator, to the State.

S. 88W(b)(ii)
inserted by
No. 10/2016
s. 146(b).

Pt 5C
(Headings
and ss 88X–
88ZO)
inserted by
No. 10/2016
s. 147.

Part 5C—Regulation of activities in the port of Melbourne

Division 1—Preliminary

S. 88X
inserted by
No. 10/2016
s. 147.

88X Definitions

In this Part—

allowable purposes means the purposes set out in
section 88ZI(2);

authorised officer means a person appointed
under section 88ZL;

information direction means a direction given
under 88ZI(1);

port operator direction means a direction given
under 88Y(1);

reportable matter—see section 88ZG.

Division 2—Port operator directions

S. 88Y
inserted by
No. 10/2016
s. 147.

88Y Directions to maintain or improve safety and security

- (1) The port of Melbourne operator, for the purpose of maintaining or improving safety and security on leased port of Melbourne land, may give directions that regulate or prohibit any of the following activities on that land—
 - (a) the driving, stopping and parking of vehicles;
 - (b) the movement, handling or storage of goods;
 - (c) any activity that may pose a risk to safety or security on that land.
- (2) A port operator direction may be of general application or may be limited in its application to specified persons or a specified class of persons.

88Z How port operator directions are given

S. 88Z
inserted by
No. 10/2016
s. 147.

- (1) A port operator direction may be given in any of the following ways—
 - (a) by notice displayed in the area of the leased port of Melbourne land where the direction applies;
 - (b) by notice published on the port of Melbourne operator's Internet site;
 - (c) by notice served on the person or persons to whom the direction applies.
- (2) A port operator direction given by notice published on the port of Melbourne operator's Internet site is of no effect until a copy of the notice has been published in the Government Gazette.
- (3) Before a port operator direction is given, not less than 2 weeks advance notice of the proposed direction must be given—
 - (a) to the harbour master engaged for the port of Melbourne waters; and
 - (b) to the Minister administering the **Dangerous Goods Act 1985** if the direction relates to dangerous goods to which that Act applies.
- (4) Advance notice of a proposed port operator direction is sufficiently given to the harbour master engaged for the port of Melbourne waters or the Minister administering the **Dangerous Goods Act 1985** by being delivered or sent by post to the office of the harbour master or that Minister, as appropriate.
- (5) Advance notice of a proposed port operator direction is not required if the direction is given in an emergency or is necessary to avert an imminent threat of death or serious injury to persons or serious damage to property.

S. 88ZA
inserted by
No. 10/2016
s. 147.

88ZA Enforcement of port operator directions

- (1) A person to whom a port operator direction applies must comply with the direction unless compliance would result in the person contravening a requirement imposed by or under an Act.
- (2) The port of Melbourne operator may enforce compliance with a port operator direction in any of the following ways—
 - (a) by removing from the leased port of Melbourne land any person who is contravening the direction;
 - (b) by removing from the leased port of Melbourne land or moving within that land any vehicle that is stopped or parked in contravention of the direction;
 - (c) by removing from the leased port of Melbourne land or moving within that land any goods stored in contravention of the direction;
 - (d) by carrying out any work in the leased port of Melbourne land that a person has failed to carry out in contravention of the direction or that is reasonably required to be carried out to remedy a contravention of the direction.
- (3) The power to remove or move a vehicle or goods from or within leased port of Melbourne land includes the power to place the vehicle or goods in secure storage pending return of the vehicle or goods to their owner.
- (4) Anything done by or on behalf of the port of Melbourne operator reasonably and in good faith to enforce compliance with a port operator direction as permitted by this Division does not subject the port of Melbourne operator or any

other person to any action, liability, claim or demand.

88ZB Recovery of costs

**S. 88ZB
inserted by
No. 10/2016
s. 147.**

- (1) This section applies if—
 - (a) a person fails to comply with a port operator direction; and
 - (b) as a result, the port of Melbourne operator incurs costs in enforcing compliance with the port operator direction.
- (2) The port of Melbourne operator is entitled to recover from the person the reasonable costs incurred by it as a debt in a court of competent jurisdiction.
- (3) A certificate issued by the port of Melbourne operator certifying as to the reasonable costs incurred by it in enforcing compliance with a port operator direction is evidence of the matters certified.

88ZC Advance notice of proposed work

**S. 88ZC
inserted by
No. 10/2016
s. 147.**

- (1) The port of Melbourne operator is not authorised to enforce compliance with a port operator direction by carrying out work that a person has failed to carry out in contravention of the direction, or that is reasonably required to be carried out to remedy a contravention by a person of the direction, unless the port of Melbourne operator has given the person advance notice of the proposed work.
- (2) Advance notice of proposed work must—
 - (a) be given no less than 7 days before the work commences; and
 - (b) be given in writing; and
 - (c) give details of the alleged contravention concerned.

- (3) Advance notice of proposed work is not required in an emergency or if the proposed work is necessary to avert an imminent threat of death or serious injury to persons or serious damage to property.
- (4) In such a case, notice of the work being undertaken must be given as soon as reasonably practicable in the circumstances.

S. 88ZD
inserted by
No. 10/2016
s. 147.

88ZD Power of entry

The port of Melbourne operator may enter any premises on leased port of Melbourne land at any time for the purpose of—

- (a) ascertaining whether a port operator direction is being complied with or has been contravened; or
- (b) doing anything that the port of Melbourne operator is authorised to do to enforce compliance with a port operator direction.

S. 88ZE
inserted by
No. 10/2016
s. 147.

88ZE Functions and powers may be performed or exercised by authorised officers

- (1) The functions and powers of the port of Melbourne operator under this Division may be performed or exercised on behalf of the port of Melbourne operator by an authorised officer.
- (2) Accordingly, a reference in this Division to a port operator direction includes such a direction given by an authorised officer on behalf of the port of Melbourne operator.
- (3) An authorised officer who enters land or premises under the authority of this Division may be accompanied by any person believed by the authorised officer to be capable of providing assistance in the performance or exercise of the authorised officer's functions or powers under this Division.

- (4) An authorised officer may request the assistance of any police officer if the authorised officer reasonably believes that the performance or exercise of the authorised officer's functions or powers under this Division will be obstructed or otherwise interfered with.

88ZF Obstruction of authorised officer

A person must not obstruct or otherwise interfere with an authorised officer in the performance of any function, or exercise of any power, of the authorised officer under this Division.

Penalty: 60 penalty units.

S. 88ZF
inserted by
No. 10/2016
s. 147.

88ZG Monitoring of port operator directions

- (1) The port of Melbourne operator must within 3 months after the end of each 6 month period ending on 30 June or 31 December in a year (beginning with the year 2015) provide details to the Minister of such of the following matters (*reportable matters*) as occurred in the period concerned—
- (a) the giving of a port operator direction by the port of Melbourne operator;
 - (b) any port operator direction given by the port of Melbourne operator ceasing to have effect;
 - (c) any contravention of which the port of Melbourne operator is aware of a port operator direction given by the port of Melbourne operator;
 - (d) any exercise by the port of Melbourne operator of the power under section 88ZD to enter premises;

S. 88ZG
inserted by
No. 10/2016
s. 147.

- (e) any action taken by the port of Melbourne operator to enforce compliance with a port operator direction (being action authorised to be taken under this Part).
- (2) The port of Melbourne operator must also provide details of reportable matters to the Minister as and when directed to do so by the Minister by written notice given to the port of Melbourne operator.
- (3) A notice under subsection (2) must allow not less than 21 days for compliance with the direction.
- (4) Information required to be provided by or under this section must be provided in such manner and form as the Minister may direct by written notice given to the port of Melbourne operator.

S. 88ZH
inserted by
No. 10/2016
s. 147.

88ZH Publication of reports about port operator directions

- (1) The Minister may publish reports and statements, based on information provided to the Minister under section 88ZG about reportable matters, subject to the following requirements—
 - (a) any such report or statement must not include information that identifies a person (or is likely to lead to the identification of a person) as a person who has contravened a port operator direction;
 - (b) the Minister must provide the port of Melbourne operator with a copy of the proposed report or statement at least 14 days before it is published.
- (2) No liability (including liability in defamation) is incurred for publishing in good faith a report or statement under this section or a fair report or summary of such a report or statement.

Division 3—Information gathering by port of Melbourne operator

88ZI Power to require information to be provided

S. 88ZI
inserted by
No. 10/2016
s. 147.

- (1) The port of Melbourne operator, by written direction (an *information direction*), may require any of the following persons to provide relevant information to the port of Melbourne operator—
 - (a) the master of any vessel that berths in the port of Melbourne;
 - (b) a shipping agent for goods shipped to, from or within the port of Melbourne;
 - (c) a consignor or consignee of goods shipped to, from or within the port of Melbourne;
 - (d) an operator of stevedoring or other facilities on leased port of Melbourne land.
- (2) Information is *relevant information* if it is information that the port of Melbourne operator reasonably requires for any of the following purposes—
 - (a) monitoring compliance with port operator directions;
 - (b) determining liability for and the amount of, and facilitating the collection of, wharfage fees and channel fees;
 - (c) compiling statistics that the port of Melbourne operator is—
 - (i) directed, in writing, by the Minister to compile; or
 - (ii) required to compile by or under an Act or an agreement with the State or a public entity;

- (d) co-ordinating communication at the port;
 - (e) any purpose prescribed by the regulations in connection with the operation and management of the port of Melbourne.
- (3) An information direction must allow a reasonable period of not less than 14 days for compliance with the direction unless the direction is given in response to an emergency or to avert an imminent threat of death or serious injury to persons or serious damage to property (in which case compliance is required as soon as reasonably practicable).

S. 88ZJ
inserted by
No. 10/2016
s. 147.

88ZJ Use and disclosure of information collected

The port of Melbourne operator is authorised to use and disclose information provided to it in compliance with an information direction for any allowable purpose for which it is authorised to require the information.

S. 88ZK
inserted by
No. 10/2016
s. 147.

88ZK Compliance with information direction

- (1) A person must not without reasonable excuse fail to comply with an information direction given to the person.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

- (2) A duty of confidentiality is not a reasonable excuse for failure to comply with an information direction.

- (3) A person must not in purported compliance with an information direction given to the person provide information that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

- (4) The provision of information that would otherwise constitute a breach of a duty of confidentiality does not constitute such a breach if the information is provided in compliance with an information direction.

Division 4—Authorised officers

88ZL Appointment

- (1) The chief executive officer of the port of Melbourne operator, by instrument, may appoint as an authorised officer any officer, employee or agent of the port of Melbourne operator who the chief executive officer considers is suitably qualified or trained to exercise the powers of an authorised officer under this Part.
- (2) An appointment under subsection (1) is for a term, and subject to the conditions, specified in the instrument of appointment.
- (3) The chief executive officer of the port of Melbourne operator, by instrument, may delegate the chief executive's power under subsection (1) to an officer or employee of the port of Melbourne operator.

**S. 88ZL
inserted by
No. 10/2016
s. 147.**

S. 88ZM
inserted by
No. 10/2016
s. 147.

88ZM Identity cards

- (1) The port of Melbourne operator must cause to be issued an identity card to an authorised officer appointed under section 88ZL.
- (2) An identity card must—
 - (a) state the authorised officer's name and their appointment as an authorised officer; and
 - (b) include any other matter that is prescribed.

S. 88ZN
inserted by
No. 10/2016
s. 147.

88ZN Return of identity cards

If a person to whom an identity card has been issued ceases to be an authorised officer, the person must return the identity card to the port of Melbourne operator as soon as practicable.

Penalty: 60 penalty units.

S. 88ZO
inserted by
No. 10/2016
s. 147.

88ZO Production of identity card

- (1) An authorised officer must produce the officer's identity card for inspection—
 - (a) before exercising a power under this Part; or
 - (b) if asked to do so by any person at any time during the exercise of a power under this Part.

Penalty: 5 penalty units.

- (2) Subsection (1) does not apply if—
 - (a) the authorised officer reasonably believes that the production of the officer's identity card would affect the safety or welfare of any person; or
 - (b) the request to produce the identity card is made by a person to whom the authorised officer has already produced that identity card on the same day before exercising a power under this Part.

Port Management Act 1995
No. 82 of 1995
Part 5C—Regulation of activities in the port of Melbourne

- (3) Any action taken or thing done by an authorised officer under this Part is not invalidated by the officer's failure to produce the officer's identity card.

Port Management Act 1995
No. 82 of 1995
Part 6—Harbour masters

Part 6—Harbour masters

S. 83 amended by No. 85/2003 s. 30(2), repealed by No. 9/2004 s. 28.	*	*	*	*	*
S. 84 amended by No. 77/2001 s. 32(4)(b), repealed by No. 9/2004 s. 28.	*	*	*	*	*
S. 85 amended by No. 85/2003 s. 30(2), repealed by No. 9/2004 s. 28.	*	*	*	*	*
S. 86 amended by No. 77/2001 s. 32(4)(b), repealed by No. 9/2004 s. 28.	*	*	*	*	*
S. 87 amended by No. 77/2001 s. 32(4)(b), repealed by No. 9/2004 s. 28.	*	*	*	*	*
S. 88 amended by No. 85/2003 s. 30(2), repealed by No. 9/2004 s. 28.	*	*	*	*	*

89 Offence to fail to comply with direction, or obstruct, harbour master

- (1) The master of a vessel must not, without reasonable excuse, refuse or fail to comply with any direction given under this Part to the master by a harbour master.

Penalty: 120 penalty units.

- (2) A person must not, without reasonable excuse, obstruct a harbour master (or a person acting under the direction of a harbour master) exercising any function under this Part.

Penalty: 60 penalty units.

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S. 90
amended by
Nos 77/2001
s. 32(4)(b),
85/2003
s. 30(2),
repealed by
No. 9/2004
s. 28.

91 Protection from liability

- (1) A harbour master engaged for the waters of a relevant port, or any other person exercising the functions of a harbour master in relation to the waters of a relevant port, is not personally liable for anything done or omitted to be done in good faith—

- (a) in the exercise of a power or the performance of a function under or in connection with Chapter 6 of the **Marine Safety Act 2010** or a direction in regulations made under that Act; or

S. 91
amended by
No. 85/2003
s. 30(2),
substituted by
No. 9/2004
s. 29.

S. 91(1)(a)
amended by
No. 65/2010
s. 419(5).

S. 91(1)(b)
amended by
No. 65/2010
s. 419(5).

- (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under or in connection with Chapter 6 of the **Marine Safety Act 2010** or a direction in regulations made under that Act.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a harbour master or person exercising the functions of harbour master, attaches instead to the person or body by which the harbour master or person exercising the functions of a harbour master is engaged.
- (3) In this section *waters of a relevant port* means—
- (a) the port of Melbourne waters; or
 - (b) the waters declared under section 5 to be the waters of the port of Geelong; or
 - (c) the waters declared under section 5 to be the waters of the port of Portland; or
 - (d) the port of Hastings waters.

S. 91(3)(d)
substituted by
No. 45/2010
s. 39.

Part 6A—Port management plans

Pt 6A
(Heading and
ss 91A–91I)
inserted by
No. 85/2003
s. 18.

91A Definition

In this Part—

S. 91A
inserted by
No. 85/2003
s. 18.

relevant Ministers means the Ministers administering the **Marine and Coastal Act 2018**, **Dangerous Goods Act 1985**, the **Environment Protection Act 2017**, the **Marine (Drug, Alcohol and Pollution Control) Act 1988**, the **Marine Safety Act 2010**, the **Occupational Health and Safety Act 2004** and the **Emergency Management Act 2013**.

S. 91A def. of
*relevant
Ministers*
amended by
Nos 107/2004
s. 184, 65/2010
s. 419(6),
54/2012 s. 14,
73/2013
s. 99(b),
26/2018
s. 97(4),
39/2018
s. 51(6).

91B Application of other Acts

- (1) This Part has effect in addition to, and not in derogation of, any Act referred to in the definition of *relevant Ministers*.
- (2) If a provision of this Part is inconsistent with a provision of an Act referred to in the definition of *relevant Ministers*, the provision of the Act referred to in the definition prevails to the extent of any inconsistency.

S. 91B
inserted by
No. 85/2003
s. 18.

91BA Extended meaning of *port manager*

- (1) Without limiting the meaning of *port manager* in section 3(1), for the purposes of this Part, the port of Melbourne operator is also a port manager who manages, superintends or controls the operation of a part of the port of Melbourne when the operator is—

S. 91BA
inserted by
No. 10/2016
s. 148.

- (a) carrying out channel-dredging activities in port of Melbourne waters; or
- (b) establishing or maintaining navigational aids in connection with navigation in port of Melbourne waters.

(2) To avoid doubt, the activities referred to in subsection (1)(a) and (b) are part of the operations of the port of Melbourne.

S. 91C
inserted by
No. 85/2003
s. 18.

91C Port manager's responsibilities for management plans

S. 91C(1)
amended by
No. 54/2012
s. 4(1).

(1) A port manager must ensure that—

- (a) a safety management plan; and
- (b) an environment management plan—

are prepared in accordance with this Part for the port or part of the port that the port manager manages, superintends or controls.

Penalty: 240 penalty units, in the case of a commercial trading port and 60 penalty units in the case of a local port.

S. 91C(1AA)
inserted by
No. 54/2012
s. 4(2).

(1AA) A port manager may prepare a safety management plan and an environment management plan under subsection (1) as a single plan.

S. 91C(1A)
inserted by
No. 63/2007
s. 15.

(1A) A port manager must ensure that—

- (a) the safety management plan; and
- (b) the environment management plan—

for the port or the part of the port that the port manager manages, superintends or controls are audited in accordance with this Part.

Penalty: 240 penalty units, in the case of a commercial or trading port and 60 penalty units in the case of a local port.

(2) A port manager must ensure that reasonable steps are taken to—

(a) implement the measures or strategies that are specified in the management plan to prevent or reduce the hazards and risks associated with the operation of the port or part of the port; and

S. 91C(2)(a)
amended by
No. 10/2016
s. 149(1).

(b) follow the processes that are set out in the management plan to involve tenants, licensees and service providers in the port or part of the port with the implementation of the management plan; and

S. 91C(2)(b)
amended by
No. 10/2016
s. 149(1).

(c) follow the procedures that are set out in the management plan for implementing, reviewing and revising the management plan.

Penalty: 240 penalty units, in the case of a commercial trading port and 60 penalty units in the case of a local port.

(3) The port manager must comply with any written direction of the Minister under section 91H.

Penalty: 240 penalty units, in the case of a commercial trading port and 60 penalty units in the case of a local port.

(4) The port manager must ensure that copies of the following documents are kept at the office of the port manager at the port—

(a) the port safety management plan and the environment management plan for the port or part of the port; and

S. 91C(4)(a)
amended by
No. 10/2016
s. 149(2).

(b) the certificates required to be attached to those plans; and

- (c) audit reports on the management plans prepared under section 91F.

Penalty: 20 penalty units.

- (5) The port manager must ensure that copies of the documents referred to in subsection (4) are made available for inspection by a person authorised in writing by the Minister to have access to those documents.

Penalty: 20 penalty units.

S. 91CA
inserted by
No. 54/2012
s. 5.

91CA Safety and environment management planning objectives

The safety management and environment management planning objectives are—

- (a) promoting improvements in safety and environmental outcomes at Victoria's ports; and
- (b) promoting and facilitating the development, maintenance and implementation of systems that enable compliance with the various safety and environmental duties that apply to the operation of the port; and
- (c) promoting an integrated and systematic approach to risk management in relation to the operation of the port.

S. 91D
inserted by
No. 85/2003
s. 18.

91D Safety and environment management plans

S. 91D(1)
amended by
No. 54/2012
s. 6(1).

- (1) A safety management plan and an environment management plan must—
- (a) identify by a description, map or plan the area or areas of the port lands and waters to which it applies;

Port Management Act 1995
No. 82 of 1995
Part 6A—Port management plans

- (b) identify the nature and extent of the safety or environmental hazards and risks (as the case requires) associated with the operation of the port; **S. 91D(1)(b) amended by No. 54/2012 s. 6(2).**
- (c) assess the likely impact of those hazards and risks on the port and the surrounding area;
- (d) specify the measures and strategies to be implemented to prevent or reduce those hazards or risks;
- (e) nominate the person who is to be responsible for implementing those measures and strategies;
- (f) set out the processes to be followed to involve tenants, licensees and service providers in the port or part of the port with the implementation of the management plan; **S. 91D(1)(f) amended by No. 10/2016 s. 150(1).**
- (g) set out the procedures to be followed for implementing, reviewing and revising the management plan; **S. 91D(1)(g) amended by No. 54/2012 s. 6(3).**
- (h) set out those measures (if any) that the port manager intends to implement to eliminate or reduce the safety and environmental risks and hazards (as the case requires) of the port or part of the port; **S. 91D(1)(h) inserted by No. 54/2012 s. 6(4), amended by No. 10/2016 s. 150(2).**
- (i) set out the key performance indicators through which the port manager can assess the extent to which the implementation of the management plan achieves the safety and environment management planning objectives set out in section 91CA. **S. 91D(1)(i) inserted by No. 54/2012 s. 6(4).**
- (2) The safety management plan and the environment management plan for a port or part of a port must be prepared in accordance with this Part within 12 months after the declaration of the port or part of the port under section 6 or any later date that is **S. 91D(2) amended by Nos 54/2012 s. 6(5), 10/2016 s. 150(3).**

fixed by the Minister with respect to the port or part of the port.

S. 91D(3)
substituted by
No. 54/2012
s. 6(6),
amended by
No. 10/2016
s. 150(4).

- (3) The safety management plan and the environment management plan for a port or part of a port must be prepared in accordance with any Ministerial guidelines under section 91G.

S. 91D(4)
repealed by
No. 54/2012
s. 6(7).

* * * * *

S. 91E
inserted by
No. 85/2003
s. 18,
substituted by
No. 54/2012
s. 7.

91E Audits of compliance

S. 91E(1)
amended by
No. 10/2016
s. 151(a).

- (1) A safety management plan for a commercial trading port or a part of a commercial trading port must be audited by a person who is approved by the Minister in accordance with subsection (5) to determine whether—

(a) the plan adequately provides for the matters required by section 91D(1); and

(b) the plan has been prepared in accordance with any Ministerial guidelines under section 91G; and

(c) the port manager is complying with the safety management plan for the port or the part of the port.

S. 91E(1)(c)
amended by
No. 10/2016
s. 151(b).

S. 91E(2)
amended by
Nos 10/2016
s. 151(a),
39/2018
s. 51(7).

- (2) An environment management plan for a commercial trading port or a part of a commercial trading port must be audited by an environmental auditor appointed under Division 1 of Part 8.3 of the **Environment Protection Act 2017** to determine whether—

- (a) the plan adequately provides for the matters required by section 91D(1); and
 - (b) the plan has been prepared in accordance with any Ministerial guidelines under section 91G; and
 - (c) the port manager is complying with the environment management plan for the port or the part of the port.
- (3) A safety management plan for a local port must be audited by a person who is approved by the Minister in accordance with subsection (5) to determine whether—
- (a) the plan adequately provides for the matters required by section 91D(1); and
 - (b) the plan has been prepared in accordance with any Ministerial guidelines under section 91G; and
 - (c) the port manager is complying with the safety management plan for the port.
- (4) An environment management plan for a local port must be audited by a person who is approved by the Minister in accordance with subsection (5) or an environmental auditor appointed under Division 1 of Part 8.3 of the **Environment Protection Act 2017** to determine whether—
- (a) the plan adequately provides for the matters required by section 91D(1); and
 - (b) the plan has been prepared in accordance with any Ministerial guidelines under section 91G; and
 - (c) the port manager is complying with the environment management plan for the port.

S. 91E(2)(c)
amended by
No. 10/2016
s. 151(b).

S. 91E(4)
amended by
No. 39/2018
s. 51(7).

- (5) After consulting the relevant Ministers, the Minister may approve a person to audit safety management plans for a commercial trading port or a local port, or an environment management plan for a local port, if the Minister is satisfied the person has the appropriate qualifications or experience in—
- (a) for safety management plans, safety assessment or safety management to conduct the audits; or
 - (b) for environment management plans, environmental assessment or environmental management to conduct the audits.

S. 91F
inserted by
No. 85/2003
s. 18,
amended by
No. 63/2007
s. 16,
substituted by
No. 54/2012
s. 7.

91F When must an audit be conducted?

The port manager of a port must ensure that an audit under section 91E is conducted—

- (a) within 6 months of the time fixed in a direction given to the port manager by the Minister under section 91H(1); or
- (b) within 3 years after the previous audit was conducted.

S. 91FA
inserted by
No. 54/2012
s. 7.

91FA Reports on audits

A person who has audited a management plan under section 91E must—

- (a) prepare a report to the port manager about the outcomes of the audit and the person's recommendations (if any) about any changes required to the plan or to the operations of the port to comply with the plan; and
- (b) forward a copy of the report to the Minister within 21 days after the person has completed the report; and

- (c) forward a copy of the report to any body that is prescribed in accordance with the regulations.

91G Ministerial guidelines

- (1) The Minister may issue guidelines about the following matters in relation to management plans—
- (a) the form of the plans;
 - (b) the content of the plans;
 - (c) the method and process for preparing the plans;
 - (d) the processes to enable tenants, licensees and service providers in the port to be involved in the preparation and implementation of the plans;
 - (e) the processes for consultation with people affected by the plans;
 - (f) the publication and availability of management plans;
 - (g) the form and content of reports under section 91HB;
 - (h) the date by which a report under section 91HB must be prepared.
- (2) The guidelines must be published in the Government Gazette and made available for inspection free of charge at the office of the Minister.

S. 91G
inserted by
No. 85/2003
s. 18.

S. 91G(1)(f)
amended by
No. 54/2012
s. 8(a).

S. 91G(1)(g)
inserted by
No. 54/2012
s. 8(b).

S. 91G(1)(h)
inserted by
No. 54/2012
s. 8(b).

- (3) The Minister must consult with the relevant Ministers before issuing guidelines under this section.

S. 91H
inserted by
No. 85/2003
s. 18.

91H Ministerial directions

S. 91H(1)
amended by
No. 10/2016
s. 152(1).

- (1) The Minister may, by notice in writing to a port manager, direct that a management plan for the port or the part of the port must be prepared within any time fixed by the Minister other than that required by this Part.

S. 91H(2)
repealed by
No. 54/2012
s. 9(1).

* * * * *

- (3) The Minister may, by notice in writing to a port manager, direct the port manager to—

S. 91H(3)(a)
amended by
No. 10/2016
s. 152(2).

- (a) implement any of the measures or strategies that are specified in the management plan to prevent or reduce the hazards and risks associated with the operation of the port or the part of the port; or

S. 91H(3)(b)
amended by
No. 10/2016
s. 152(2).

- (b) follow the processes that are set out in the management plan to involve tenants, licensees and service providers in the port or the part of the port with the implementation of the management plan; or

- (c) follow any procedures that are set out in the management plan for implementing, reviewing and revising the plan.

S. 91H(4)
amended by
Nos 63/2007
s. 17, 54/2012
s. 9(2),
10/2016
s. 152(3).

- (4) Subject to subsection (4A), the Minister may, by notice in writing to a port manager, direct the port manager to have a safety management plan or an environment management plan for the port or the part of the port audited in accordance with section 91E at other times to those required by

section 91F if the Minister is of the opinion that the audit is necessary or appropriate.

- (4A) The Minister must consult with the relevant Ministers before giving a direction to a port Manager under subsection (4) that a safety management plan or an environment management plan must be audited at a time that is earlier than otherwise required by section 91F.

S. 91H(4A)
inserted by
No. 54/2012
s. 9(3).

- (5) The Minister may, by notice in writing to a port manager, direct the port manager to amend a management plan for the port or the part of the port to implement any recommendation of the person who has conducted an audit of the management plan under section 91E to make changes to the plan so that it continues to adequately provide for the matters required by section 91D(1).

S. 91H(5)
amended by
Nos 54/2012
s. 9(4),
10/2016
s. 152(3).

91HA Publication of audit

S. 91HA
inserted by
No. 54/2012
s. 10.

- (1) The Minister may, by notice in writing to a port manager, direct that the report of a person who has conducted an audit of a management plan must be published in accordance with the direction or any guidelines issued under section 91G.
- (2) In requiring a port manager to publish a report under subsection (1), the Minister cannot require the port manager to publish any information that—
- (a) is of a confidential or commercially sensitive nature; or
 - (b) relates to the personal affairs of any person (including a deceased person).

S. 91HB
inserted by
No. 54/2012
s. 10.

91HB Reporting

S. 91HB(1)
amended by
No. 10/2016
s. 153.

- (1) The port manager must make an annual report to the Minister and any bodies that are prescribed by the regulations on the safety and environmental performance outcomes for the port or the part of the port.
- (2) A report under this section must comply with any guidelines issued under section 91G.

S. 91I
inserted by
No. 85/2003
s. 18.

91I Transitional provisions—management plans

Despite section 91C, the port manager of a port that was operating immediately before the date of commencement of section 18 of the **Port Services (Port Management Reform) Act 2003** must comply with section 91C within 12 months after that date or any later date that is fixed by the Minister with respect to the port.

Part 6B—Port Development Strategy

Pt 6B
(Heading and
ss 91J–91N)
inserted by
No. 17/2009
s. 9.

91J Definitions

S. 91J
inserted by
No. 17/2009
s. 9.

In this Part—

direction means a direction issued by the Minister under section 91N;

guidelines means guidelines made under section 91M;

Port Development Strategy means a Port Development Strategy for each commercial trading port prepared under this Part;

port land owner means—

- (a) the owner of the land where the relevant commercial trading port is located; or
- (b) if there is more than one owner of the land where the relevant commercial trading port is located, the owner of the land that comprises the largest single area of land on which the relevant commercial trading port is located;

relevant port authority means—

- (a) in the case of the port of Melbourne, the port of Melbourne operator;
- (b) in the case of the port of Hastings, the Port of Hastings Development Authority;

S. 91J def. of
*relevant port
authority*
amended by
Nos 45/2010
s. 40, 38/2011
s. 34, 54/2012
s. 15, 10/2016
s. 154.

- (ba) in the case of the port of Geelong, the VRCA;
- (c) in the case of any other commercial trading port, the port land owner.

S. 91K
inserted by
No. 17/2009
s. 9.

91K Port Development Strategy

S. 91K(1)
amended by
No. 10/2016
s. 155.

- (1) The relevant port authority must at intervals of 5 years prepare a Port Development Strategy in accordance with this Part.
- (2) A Port Development Strategy must include—
 - (a) projections of trade through the commercial trading port;
 - (b) current and projected land use requirements, including transitional land uses designed to protect the port from constraints on efficient operations and mitigate adverse impacts of port operations on adjacent uses;
 - (c) current and projected infrastructure requirements for land and water in the commercial trading port;
 - (d) current and projected transport infrastructure requirements for land and water in the commercial trading port;
 - (e) any other matters specified in any guidelines.
- (3) The first Port Development Strategy must be prepared by the date specified in the guidelines.
- (4) A Port Development Strategy must be prepared and submitted to the Minister in accordance with the guidelines.

91L Consultation requirements

- (1) If a commercial trading port is located on land owned by different owners, the relevant port authority must consult with all the other land owners in preparing the Port Development Strategy.
- (2) If the port waters of a commercial trading port are managed by a channel operator who is not the relevant port authority, the relevant port authority must consult with the channel operator in preparing the Port Development Strategy.

S. 91L
inserted by
No. 17/2009
s. 9.

91M Guidelines

- (1) The Minister may issue guidelines about the following matters in relation to a Port Development Strategy—
 - (a) the form;
 - (b) the content;
 - (c) the method and process for preparation;
 - (d) processes to enable tenants, licensees and service providers in the port to be involved in the preparation;
 - (e) processes for consultation with people affected;
 - (f) publication and availability.
- (2) The guidelines must be published in the Government Gazette and made available for inspection free of charge at the office of the Minister.

S. 91M
inserted by
No. 17/2009
s. 9.

S. 91N
inserted by
No. 17/2009
s. 9.

91N Ministerial directions

- (1) If a relevant port authority fails to prepare and submit a Port Development Strategy in accordance with section 91K, the Minister may, by notice in writing to the relevant port authority, direct that a Port Development Strategy for the relevant commercial trading port must be prepared and submitted within the time fixed by the Minister in the direction being at least 3 months after the date of the direction.
- (2) A relevant port authority must comply with a direction given to the relevant port authority under subsection (1).

Penalty: 240 penalty units.

- (3) If the Minister is of the opinion that the Port Development Strategy submitted by a relevant port authority—
 - (a) has not been prepared in accordance with the guidelines; or
 - (b) does not include the matters referred to in section 91K—

the Minister may, by notice in writing to the relevant port authority, direct the relevant port authority to amend and resubmit a Port Development Strategy within the time fixed by the Minister in the direction being at least 3 months after the date of the direction.

- (4) A relevant port authority must comply with a direction given to the relevant port authority under subsection (3).

Penalty: 240 penalty units.

Part 6C—Port of Melbourne Rail Access Strategy

Pt 6C
(Heading and
ss 91O–91V)
inserted by
No. 10/2016
s. 156.

91O Definitions

In this Part—

direction means a direction given under
section 91U or 91V;

guidelines means guidelines made under
section 91T;

Port Development Strategy has the same meaning
as in Part 6B;

port rail shuttle—see section 91P;

private sector entity has the same meaning as in
the **Delivering Victorian Infrastructure
(Port of Melbourne Lease Transaction)
Act 2016**;

Rail Access Strategy—see section 91Q.

S. 91O
inserted by
No. 10/2016
s. 156.

91P Meaning of *port rail shuttle*

A *port rail shuttle* is a rail intermodal facility in,
or in the vicinity of, the port of Melbourne that is
connected to rail terminals outside the port, the
purpose of which is to increase rail freight
movements into and out of the port in order—

- (a) to provide an alternative to the movement of
freight into and out of the port by means of
road transport; and
- (b) to reduce traffic congestion on roads in and
around the port caused by the movement of
freight into and out of the port by means of
road transport.

S. 91P
inserted by
No. 10/2016
s. 156.

S. 91Q
inserted by
No. 10/2016
s. 156.

91Q Rail Access Strategy

- (1) The port of Melbourne operator must prepare a strategy (a *Rail Access Strategy*) in accordance with this Part.
- (2) The port of Melbourne operator must prepare—
 - (a) the first Rail Access Strategy within 3 years after the first lease of land comprising port assets is granted to a private sector entity under section 11 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**; and
 - (b) every other Rail Access Strategy at the same time as it prepares a Port Development Strategy under Part 6B.
- (3) The port of Melbourne operator must prepare and submit a Rail Access Strategy to the Minister.
- (4) A Rail Access Strategy must set out—
 - (a) options for rail infrastructure projects for improving rail access for the movement of freight into and out of the port of Melbourne; and
 - (b) a commercial assessment of each identified option that—
 - (i) in the case of the first Rail Access Strategy prepared under this Part, includes—
 - (A) projections of trade through the port of Melbourne; and
 - (B) current and projected transport infrastructure requirements for land and water in the port of Melbourne; and

- (ii) in the case of every other Rail Access Strategy prepared under this Part, is consistent with the applicable Port Development Strategy for the port of Melbourne; and
 - (iii) in all cases, includes any other matter specified in the guidelines; and
- (c) the implementation timing for each identified option.
- (5) One of the options set out in the first Rail Access Strategy must be the development of a port rail shuttle.
- (6) Every rail infrastructure project identified as an option set out in a Rail Access Strategy must be capable of being implemented within 5 years after it has been submitted to the Minister in accordance with this section.
- (7) If there are guidelines in effect in respect of the form and content of a Rail Access Strategy, and the method and process for preparation of a Rail Access Strategy, the port of Melbourne operator must prepare and submit a Rail Access Strategy to the Minister in accordance with the guidelines.

91R Rail infrastructure project options in Rail Access Strategy are major infrastructure projects for the purposes of the Infrastructure Victoria Act 2015

S. 91R
inserted by
No. 10/2016
s. 156.

A rail infrastructure project identified as an option in a Rail Access Strategy is a major infrastructure project for the purposes of section 44 of the **Infrastructure Victoria Act 2015**.

S. 91S
inserted by
No. 10/2016
s. 156.

91S Consultation

- (1) In preparing a Rail Access Strategy, the port of Melbourne operator must consult with—
 - (a) port of Melbourne users; and
 - (b) owners and tenants of port of Melbourne land; and
 - (c) licensees at the port of Melbourne; and
 - (d) persons who wish to design, construct or operate rail infrastructure at the port of Melbourne; and
 - (e) persons who wish to provide rail freight services at the port of Melbourne; and
 - (f) relevant government agencies; and
 - (g) any stakeholders specified in guidelines.
- (2) If there are guidelines in effect that set out a process for consultation with the persons and entities listed in subsection (1), the port of Melbourne operator must, in preparing a Rail Access Strategy, consult with those persons and entities in accordance with the guidelines.

S. 91T
inserted by
No. 10/2016
s. 156.

91T Guidelines

- (1) The Minister may issue guidelines about any one or more of the following matters in relation to a Rail Access Strategy—
 - (a) the form;
 - (b) the content;
 - (c) the method and process for preparation;
 - (d) processes for consultation;
 - (e) stakeholders for the purposes of section 91S(1)(g);
 - (f) publication and availability.

- (2) The guidelines must be published in the Government Gazette and made available for inspection free of charge at the office of the Minister.

91U Ministerial directions if port of Melbourne operator fails to prepare and submit a Rail Access Strategy

S. 91U
inserted by
No. 10/2016
s. 156.

- (1) This section applies if the port of Melbourne operator fails to prepare and submit a Rail Access Strategy in accordance with section 91Q.
- (2) The Minister, by written notice given to the port of Melbourne operator, may direct the operator to prepare and submit a Rail Access Strategy to the Minister by the date specified in the direction.
- (3) The date specified in a direction under subsection (2) must be at least 3 months after the date of the direction.
- (4) The port of Melbourne operator must comply with a direction given to it under subsection (2).

Penalty: 240 penalty units.

91V Ministerial directions if Rail Access Strategy is non-compliant

S. 91V
inserted by
No. 10/2016
s. 156.

- (1) This section applies if the Minister is of the opinion that a Rail Access Strategy submitted by the port of Melbourne operator—
- (a) has not been prepared in accordance with the guidelines, if any; or
- (b) does not set out the matters required to be set out under section 91Q.
- (2) The Minister, by written notice given to the port of Melbourne operator, may direct the operator to amend and resubmit the Rail Access Strategy to the Minister by the date specified in the direction.

- (3) The date specified in a direction under subsection (2) must be at least 3 months after the date of the direction.
- (4) The port of Melbourne operator must comply with a direction given to it under subsection (2).

Penalty: 240 penalty units.

Part 7—General

92 Port corporation may act under certain agreements and instruments

- (1) If, under section 100 or an allocation statement under section 101, the rights and liabilities of a port authority under an agreement or instrument, vest in or become liabilities of a port corporation (*the first corporation*)—
- (a) another port corporation may, with the agreement of the first corporation and instead of the first corporation, perform personally or by an agent any obligation, act or conduct allowed to be performed by the first corporation under, or indemnify the first corporation in respect of any liability of the first corporation under, that agreement or instrument; and
 - (b) the performance by the other port corporation of any obligation, act or conduct allowed to be performed by the first corporation under or in relation to that agreement or instrument is for all purposes deemed to be performance by the first corporation.

* * * * *

**S. 92(2)
repealed by
No. 63/1997
s. 6(4).**

- (3) Nothing in this section shall be construed as imposing any liability on a port corporation in favour of any party to the relevant agreement or instrument.

93 Amendment of planning schemes

(1) In addition to any other powers to prepare or approve amendments to any planning scheme, the Minister administering the **Planning and Environment Act 1987** may prepare and approve an amendment to any planning scheme to do any one or more of the following—

S. 93(1)(a)
amended by
Nos 46/1998
s. 7(Sch. 1),
77/2001
s. 32(4)(b),
6/2010
s. 203(1)(Sch. 6
item 36.2) (as
amended by
No. 45/2010
s. 22),
70/2013
s. 4(Sch. 2
item 38.4).

(a) substitute a reference to a Minister, the Secretary to the Department of Environment and Primary Industries, a port corporation, a channel operator, the Director, Transport Safety or a port operator for a reference to a port authority;

(b) change the designation of land from being reserved or zoned for the purposes of a specified port authority to being reserved or zoned for general port purposes;

S. 93(1)(c)
amended by
Nos 46/1998
s. 7(Sch. 1),
77/2001
s. 32(4)(b),
6/2010
s. 203(1)(Sch. 6
item 36.2) (as
amended by
No. 45/2010
s. 22),
70/2013
s. 4(Sch. 2
item 38.4).

(c) specify the Minister administering the **Planning and Environment Act 1987**, the Secretary to the Department of Environment and Primary Industries, a port authority, a port corporation, a channel operator, the Director, Transport Safety, a municipal council or a port operator as a responsible authority for the administration or enforcement of the planning scheme or of a specified provision of the planning scheme;

(d) specify a Minister, the Secretary to the Department of Environment and Primary Industries, a port authority, a port corporation, a channel operator, the Director, Transport Safety or a port operator as a referral authority for applications of a specified kind;

S. 93(1)(d)
amended by
Nos 46/1998
s. 7(Sch. 1),
77/2001
s. 32(4)(b),
6/2010
s. 203(1)(Sch. 6
item 36.2) (as
amended by
No. 45/2010
s. 22),
70/2013
s. 4(Sch. 2
item 38.4).

(e) provide that no permit is required to be obtained by a port authority, port corporation, channel operator or port operator for a use or development of land of a specified class;

(f) zone or re-zone land forming part of port land or port waters and describe the objects and purposes of those zones and of particular use and development controls within those zones.

(2) Subsection (1) authorises the preparation of only one amendment to each existing planning scheme.

(3) The **Planning and Environment Act 1987**, except for section 12 and Divisions 1 and 2 of Part 3, applies to the preparation and approval of an amendment under subsection (1).

94 Liability of officers of bodies corporate

S. 94
substituted by
No. 66/2012
s. 28.

(1) If a body corporate commits an offence against any of the following provisions, an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate—

(a) section 63A;

- (b) section 73E(1);
 - (c) section 73O(3);
 - (d) section 88M(1);
 - (e) section 88O;
 - (f) section 91C(2);
 - (g) section 91C(3).
- (2) An officer of a body corporate who is found guilty of an offence by force of subsection (1) is liable to a penalty not exceeding the maximum penalty for a natural person for the offence.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, regard must be had to—
- (a) the officer's knowledge about the matter concerned; and
 - (b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and
 - (c) the actions taken (if any) by the officer to prevent the contravention by the body corporate; and
 - (d) any other relevant matter.
- (4) An officer of a body corporate may commit an offence against a provision referred to in subsection (1) whether or not the body corporate is proceeded against or found guilty of an offence against that provision.

- (5) In this section, *officer*—
- (a) in relation to a body corporate that is a corporation as defined by section 9 of the Corporations Act, has the same meaning as officer of a corporation has in section 9 of that Act; or
 - (b) in relation to a body corporate which is not a corporation as defined by section 9 of the Corporations Act, means any person (by whatever name called) who is concerned in, or takes part in, the management of the body corporate.

95 Service of documents on port corporation

- (1) A document required or authorised to be served on a port corporation may be served—
- (a) personally on a person—
 - (i) apparently concerned in the management of the port corporation; or
 - (ii) apparently authorised to accept service of documents on behalf of the port corporation; or
 - (b) by post to the port corporation at its principal office.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a port corporation in any other manner.

96 Treasurer may give guarantee

- (1) The Treasurer may, on behalf of the Government of Victoria, execute a guarantee on such terms and conditions as the Treasurer determines in favour of any person guaranteeing the due satisfaction of amounts that become payable by a port corporation under section 104(1) or because of

Part 8 or of amounts that become payable, and of other actions required to be performed, as a result of or in connection with the provision to a port corporation of financial accommodation including, but not limited to, the payment of expenses of enforcing or obtaining or endeavouring to obtain such satisfaction.

- (2) Any sums required by the Treasurer in fulfilling any liability arising under a guarantee given under this section shall be paid out of the Consolidated Fund, which is to the necessary extent appropriated accordingly.
- (3) Any sums received or recovered by the Treasurer from a port corporation or otherwise in respect of any sum paid by the Treasurer under a guarantee shall be paid into the Consolidated Fund.

97 Power to prosecute

S. 97
repealed by
No. 51/1996
s. 11,
new s. 97
inserted by
No. 93/2009
s. 13,
amended by
Nos 54/2012
s. 16, 10/2016
s. 179(Sch. 1
item 7.35),
55/2017
s. 51(1)(2) (ILA
s. 39B(1)).

S. 97(1)
amended by
No. 19/2022
s. 61.

S. 97(2)
inserted by
No. 55/2017
s. 51(2).

- (1) Proceedings for an offence against Part 4A or Part 5B or regulations made under section 98(1)(cb), (cc) or (cd) may be commenced by any person authorised in writing either generally or in a particular case by Ports Victoria.
- (2) Proceedings for an offence against this Act or regulations made under this Act may be commenced by the Secretary.

98 Regulations

(1) The Governor in Council may, with respect to commercial trading ports managed by a port corporation or local ports generally or with respect to a specified commercial trading port managed by a port corporation or local port, make regulations for or with respect to—

S. 98(1)
substituted by
No. 85/2003
s. 19(1).

- (a) the management of the ports or port;
- (b) the conduct and behaviour of people within the ports or port, and the conditions on which people may be admitted to, or excluded from, any part of the ports or port;
- (c) traffic co-ordination and the movement and the parking of vehicles within the ports or port;

* * * * *

S. 98(1)(ca)
inserted by
No. 93/2009
s. 14(a),
repealed by
No. 54/2012
s. 17(1).

(cb) prohibition or regulation of the carrying out on port land or on vessels in port waters or elsewhere in port waters of hazardous port activities, including but not limited to—

S. 98(1)(cb)
inserted by
No. 93/2009
s. 14(a),
amended by
No. 54/2012
s. 17(2).

- (i) notification of any such hazardous port activities;
- (ii) authorisation of the carrying out of any such hazardous port activities;
- (iii) conditions to which such authorisations are subject and any other matters for or with respect to such authorisations;
- (iv) recovery of costs associated with the regulation of the carrying out of such hazardous port activities and of any

action required to be taken in relation to the carrying out of such hazardous port activities;

(v) forms and notices relating to the carrying out of such activities;

(cc) the moving of abandoned things;

S. 98(1)(cc)
inserted by
No. 93/2009
s. 14(a).

(cd) procedures for dealing with abandoned things, including but not limited to—

S. 98(1)(cd)
inserted by
No. 93/2009
s. 14(a).

(i) storage of abandoned things;

(ii) the nature of enquiries to be made as to the ownership of the things;

(iii) methods of collection of things by owners and notification of that method to owners;

(iv) methods of disposal for particular things;

(v) methods for recovery of costs of storage and disposal of things;

(vi) the keeping of registers of abandoned things;

(ce) prescribing bodies for the purposes of sections 91FA and 91HB;

S. 98(1)(ce)
inserted by
No. 54/2012
s. 17(3).

(d) prescribing penalties not exceeding 20 penalty units for breaches of the regulations;

S. 98(1)(d)
amended by
No. 93/2009
s. 14(b).

(e) prescribing any other matter or thing authorised or required to be prescribed or necessary or convenient to be prescribed for carrying this Act into effect with respect to the ports or port.

- (1A) In addition, the Governor in Council may make regulations or with respect to—
- (a) prescribing provisions of this Act as civil penalty requirements for the purposes of the **Essential Services Commission Act 2001**;
 - (b) prescribing amounts for the purposes of section 54E(b), (c), (d) or (g) of the **Essential Services Commission Act 2001**;
 - (c) prescribing amounts of notice penalties for the purposes of section 54U(b), (c), (d) or (g) of the **Essential Services Commission Act 2001**;
 - (d) prescribing any other matter that is required for the operation of civil penalty orders in Division 1 of Part 7 of the **Essential Services Commission Act 2001**;
 - (e) prescribing any other matter that is required to be prescribed for the operation of the penalty notice regime in Division 2 of Part 7 of the **Essential Services Commission Act 2001**;
 - (f) any other matter required or permitted by this Act to be prescribed or necessary or convenient to be prescribed to give effect to this Act.

S. 98(1A)
inserted by
No. 10/2016
s. 157(1),
substituted by
No. 41/2021
s. 138.

- (2) Regulations made under this Act may be made—

- (aa) so as to be of general or limited application;
- (aab) so as to differ according to differences in time, place or circumstances;

S. 98(2)(aa)
inserted by
No. 10/2016
s. 157(2).

S. 98(2)(aab)
inserted by
No. 10/2016
s. 157(2).

Port Management Act 1995
No. 82 of 1995
Part 7—General

S. 98(2)(a)(i)
repealed by
No. 10/2016
s. 157(3).

(a) so as to apply—

* * * * *

S. 98(2)(a)(ii)
amended by
No. 85/2003
s. 19(2).

(ii) throughout the whole of the port area or
in a specified part of that area;

(b) so as to require a matter affected by the
regulations to be—

(i) in accordance with a specified standard
or specified requirement; or

(ii) approved by or to the satisfaction of a
prescribed person;

(c) so as to incorporate, adopt or apply, wholly
or partially or as amended by the regulations,
the provisions of any document, standard,
rule, specification or method formulated,
issued, prescribed or published by any
authority or body whether—

(i) as formulated, issued, prescribed or
published at the time the regulation is
made or at any time before the
regulation is made; or

(ii) as amended from time to time;

(d) so as to confer a discretionary authority on a
prescribed person;

(e) so as to provide, in a specified case or class
of cases for the exemption of persons or
things or a class of persons or things from
any of the provisions of the regulations,
whether unconditionally or on specified
conditions and either wholly or to the extent
specified.

Port Management Act 1995
No. 82 of 1995
Part 7—General

(3) Any regulations made under this Act for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles.

S. 98(3)
inserted by
No. 51/2014
s. 9(Sch. 2
item 14.3).

Pt 8 (Heading)
substituted by
No. 23/2003
s. 11.

Part 8—Transfer of property by port authorities to certain port corporations

Division 1—Preliminary

99 Definitions

(1) In this Part—

former port authority instrument means—

- (a) in relation to former port authority property of which PMA is the transferor, PMA instrument;
- (b) in relation to former port authority property of which PGA is the transferor, PGA instrument;
- (c) in relation to former port authority property of which PPA is the transferor, PPA instrument;

former port authority property means property, rights or liabilities of a port authority that, under this Part, have vested in, or become liabilities of, a port corporation, of a subsidiary that is wholly owned by the port authority or of the State;

PGA instrument means an instrument (including a legislative instrument other than this Act and regulations under this Act and the **Port of Geelong Authority Act 1958** and regulations under that Act) subsisting immediately before the appropriate relevant date—

- (a) to which PGA was a party; or
- (b) that was given to or in favour of PGA;
or
- (c) that refers to PGA; or

(d) under which—

- (i) money is, or may become, payable to or by PGA; or
- (ii) other property is to be, or may become liable to be, transferred to or by PGA;

PMA instrument means an instrument (including a legislative instrument other than this Act and regulations under this Act and the **Port of Melbourne Authority Act 1958** and regulations under that Act) subsisting immediately before the appropriate relevant date—

- (a) to which PMA was a party; or
- (b) that was given to or in favour of PMA; or
- (c) that refers to PMA; or
- (d) under which—
 - (i) money is, or may become, payable to or by PMA; or
 - (ii) other property is to be, or may become liable to be, transferred to or by PMA;

port authority includes, in relation to port property, SEC;

S. 99(1) def. of *port authority* inserted by No. 63/1997 s. 7(1)(a).

port authority instrument has the same meaning as in Part 11;

S. 99(1) def. of *port authority instrument* inserted by No. 63/1997 s. 7(1)(a).

S. 99(1) def. of
*port
corporation*
inserted by
No. 23/2003
s. 12.

port corporation means—

- (a) Melbourne Port Corporation, within the meaning of this Act, as in force immediately before the commencement of section 5 of the **Port Services (Port of Melbourne Reform) Act 2003**; or
- (b) Hastings Port (Holding) Corporation; or
- (c) Victorian Channels Authority;

PPA instrument means an instrument (including a legislative instrument other than this Act and regulations under this Act and the **Port of Portland Authority Act 1958** and regulations under that Act) subsisting immediately before the appropriate relevant date—

- (a) to which PPA was a party; or
- (b) that was given to or in favour of PPA; or
- (c) that refers to PPA; or
- (d) under which—
 - (i) money is, or may become, payable to or by PPA; or
 - (ii) other property is to be, or may become liable to be, transferred to or by PPA;

relevant date—

- (a) in relation to property or rights of PMA that are transferred to MPC under section 100, means the commencement of that section;

- (b) in relation to an allocation statement under section 101 or property, rights or liabilities allocated under such an allocation statement, means the date fixed by the Treasurer under subsection (2) for the purposes of that statement;

transferee, in relation to former port authority property or port property, means the port corporation, the subsidiary that is wholly owned by a port authority or the State to which the property has been transferred under this Part;

S. 99(1) def. of *transferee* amended by No. 63/1997 s. 7(1)(b).

transferor, in relation to former port authority property, means the port authority from which the former port authority property was transferred under this Part and, in relation to port property, means SEC.

S. 99(1) def. of *transferor* amended by No. 63/1997 s. 7(1)(c).

- (2) The Treasurer may, by notice published in the Government Gazette, fix the relevant date for the purposes of an allocation statement under section 101.
- (3) Nothing in this Part enables the transfer of any Crown land.

Division 2—Transfer by operation of Act

100 Transfer of certain port authority property to MPC

On the commencement of this section, the property and rights of PMA in the land described in the folios of the Register set out below vest in MPC subject to the encumbrances (if any) to which they were subject immediately before so vesting.

Volume	Folio
3523	704573
9352	954
2369	473640
3000	599980
3118	623563
3473	694519
3798	759565
3523	704574
9352	955

Division 3—Transfer by allocation

101 Treasurer may direct transfer of property

- (1) The Treasurer, after consultation with the Minister, may give a direction in writing to a port authority directing it to transfer, in accordance with the direction, property, rights and liabilities of a specified kind to—
 - (a) a port corporation; or
 - (b) a subsidiary that is wholly owned by the port authority; or
 - (c) the State.
- (2) Within 21 days after receiving a direction under subsection (1), the port authority must give to the Treasurer a statement approved by the Treasurer relating to the property, rights and liabilities of the port authority to which the direction relates, as at a date specified by the Treasurer for the purposes of this section.

- (3) A statement under this section—
- (a) must allocate the property, rights and liabilities of the port authority shown in the statement in accordance with the directions of the Treasurer; and
 - (b) must be signed by the chief executive officer of the port authority.
- (4) If a statement under this section is approved by the Treasurer and the Minister—
- (a) the Treasurer and the Minister must sign the statement; and
 - (b) the statement is an allocation statement for the purposes of this Part.
- (5) The Treasurer and the Minister may at any time direct a port authority to amend a statement given to them under this section as specified in the direction.
- (6) An allocation statement under this section may be amended by writing signed by the Treasurer and the Minister.
- (7) In this section, *statement* and *allocation statement* include a statement or allocation statement amended in accordance with this section.

102 Property transferred in accordance with direction

On the relevant date—

- (a) all property and rights of a port authority, wherever located, that are allocated under an allocation statement in accordance with a direction of the Treasurer under section 101, vest in a port corporation, a subsidiary that is wholly owned by the port authority or the State in accordance with the statement; and

- (b) all liabilities of a port authority, wherever located, that are allocated under an allocation statement become liabilities of a port corporation, a subsidiary that is wholly owned by the port authority or the State in accordance with the statement.

103 Allocation of property etc. subject to encumbrances

Unless an allocation statement under this Part otherwise provides, where, under this Part—

- (a) property and rights vest in; or
- (b) liabilities become liabilities of—

a transferee in accordance with a direction under section 101—

- (c) the property and rights so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting; and
- (d) the rights to which the transferor was entitled in respect of those liabilities immediately before they ceased to be liabilities of the transferor vest in the transferee.

104 Payments in respect of financial obligations

(1) If—

- (a) an Order has been made under section 36D(1) or 36E(1) of the **Treasury Corporation of Victoria Act 1992** relating to financial obligations of PMA; and

(b) responsibility for those financial obligations has become the responsibility of a port corporation under an allocation statement under this Part—

then—

(c) the port corporation must pay to the Treasury Corporation of Victoria such amounts, and at such times, as PMA would have been liable to pay in respect of those financial obligations if the Order had not been made, except in so far as the Corporation and the port corporation otherwise agree; and

(d) the Corporation must pay to the port corporation such amounts, and at such times, as PMA would have been entitled to receive in respect of those financial obligations if the Order had not been made, except in so far as the Corporation and the port corporation otherwise agree.

(2) An amount payable under subsection (1) may be recovered in a court of competent jurisdiction as a debt due to the Treasury Corporation of Victoria or the port corporation, as the case requires.

Division 4—General

105 Certificate of chief executive officer

(1) A certificate signed by the chief executive officer of a port authority that is a transferor certifying that property, rights or liabilities of the port authority specified in the certificate have been vested in or become liabilities of the transferee in accordance with section 100 or have been allocated under an allocation statement in accordance with section 101 is, unless revoked under subsection (2), conclusive evidence—

- (a) that the property, rights or liabilities have been so vested or allocated or become liabilities of the transferee; and
 - (b) that the property, rights or liabilities vested in or became the property, rights or liabilities of the transferee on the relevant date.
- (2) If the Treasurer and the Minister so direct the chief executive officer of a transferor in writing, the chief executive officer must revoke a certificate given under subsection (1) by issuing another certificate or certificates in place of the first certificate.
- (3) The chief executive officer of a transferor—
- (a) must keep a register of certificates issued under this section; and
 - (b) must make the register reasonably available for inspection by a transferee or other interested person.

106 Value of former port authority property

- (1) The value to MPC as at the commencement of section 100 of the property and rights of PMA transferred under that section is the value determined by the Treasurer.
- (2) The value to a transferee as at the relevant date of property, rights and liabilities of the transferor that are allocated to it under an allocation statement is the value shown in, or calculated in accordance with, the relevant allocation statement.

107 Substitution of party to agreement

Where, under section 100 or an allocation statement, the rights and liabilities of a port authority under an agreement vest in or are allocated to a transferee in accordance with that section or a direction under section 101—

- (a) the transferee becomes, on the relevant date, a party to the agreement in place of the transferor; and
- (b) on and after the relevant date, the agreement has effect as if the transferee had always been a party to the agreement.

108 Former port authority instruments

Each former port authority instrument relating to former port authority property, and each port authority instrument relating to port property, continues to have effect according to its tenor on and after the relevant date in relation to the transfer of that property as if a reference in the instrument to the transferor were a reference to the transferee.

S. 108
amended by
No. 63/1997
s. 7(2).

109 Proceedings

If, immediately before the relevant date, proceedings relating to former port authority property or port property (including arbitration proceedings) of a transferor to which the transferor was a party were pending or existing in any court or tribunal, then, on and after that date, the transferee is substituted for the transferor as a party to the proceedings and has the same rights in the proceedings as the transferor had.

S. 109
amended by
No. 63/1997
s. 7(3).

110 Interests in land

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law if, immediately before the relevant date, a transferor is, in relation to former port authority property or port property of the transferor, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that date—

S. 110
amended by
No. 63/1997
s. 7(3).

- (a) the transferee is to be taken to be the registered proprietor of that interest in land; and
- (b) the transferee has the same rights and remedies in respect of that interest as the transferor had.

111 Amendment of Register

S. 111(1)
amended by
No. 63/1997
s. 7(3).

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument and certificate of the chief executive officer of the transferor of former port authority property or port property, must make any amendments in the Register that are necessary because of the operation of this Part.

S. 111(2)
repealed by
No. 85/1998
s. 24(Sch.
item 46.2).

* * * * *

S. 111(3)
amended by
No. 63/1997
s. 7(3),
repealed by
No. 85/1998
s. 24(Sch.
item 46.2).

* * * * *

112 Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of a port authority.

113 Evidence

- (1) Documentary or other evidence that would have been admissible for or against the interests of a transferor in relation to former port authority property or port property if this Part had not been enacted is admissible for or against the interests of the transferee.
- (2) The **Evidence Act 2008** applies with respect to the books of account of a port authority and to entries made in those books of account before the relevant date, whether or not they relate to former port authority property or port property, as if those books of account and entries were business records.

S. 113(1)
amended by
No. 63/1997
s. 7(3).

S. 113(2)
amended by
Nos 63/1997
s. 7(3),
69/2009
s. 54(Sch. Pt 1
item 43.1).

* * * * *

S. 113(3)
repealed by
No. 69/2009
s. 54(Sch. Pt 1
item 43.3).

114 Validity of things done under this Part

Nothing effected or to be effected by this Part or done or suffered under this Part—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- (b) is to be regarded as placing any person in breach of or as constituting a default under any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or

- (c) is to be regarded as fulfilling any condition which allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any asset, right or liability; or
- (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
- (f) is to be regarded as frustrating any contract; or
- (g) releases any surety or other obligee wholly or in part from any obligation.

Division 5—Rights as between transferees

115 Interim arrangements

S. 115(1)
amended by
No. 63/1997
s. 7(4).

- (1) Each transferee of former port authority property or port property (*the new body*)—

S. 115(1)(a)
amended by
No. 63/1997
s. 7(4).

- (a) may, subject to any agreement to the contrary, exercise such rights and privileges (including access to goods and services) in relation to former port authority property or port property that has become property of another transferee as are reasonably necessary to enable the new body to carry out its functions in a manner similar to the manner in which the relevant port authority carried out corresponding functions before the relevant date; and

(b) must, subject to any agreement to the contrary—

(i) permit any other transferee to exercise such rights and privileges in relation to former port authority property or port property that has become property of the new body; and

S. 115(1)(b)(i)
amended by
No. 63/1997
s. 7(4).

(ii) make available to each other transferee such goods and services as are available from that former port authority property or port property—

S. 115(1)(b)(ii)
amended by
No. 63/1997
s. 7(4).

as are reasonably necessary to enable the other transferee to carry out its functions in a manner similar to the manner in which the relevant port authority carried out corresponding functions before the relevant date.

(2) A transferee must pay such reasonable charges for the exercise of rights and privileges under subsection (1)(a) in respect of former port authority property or port property of another transferee as are determined by the other transferee and agreed between the parties or, if the other transferee determines charges and there is no agreement, as are determined by the Treasurer.

S. 115(2)
amended by
No. 63/1997
s. 7(4).

116 Easements

(1) A transferee may, subject to and in accordance with any agreement entered into with another transferee, exercise such rights and privileges in respect of easements to which the other transferee is entitled as are reasonably necessary to enable the first-mentioned transferee to carry out its functions in a manner similar to the manner in which the transferor carried out corresponding functions before the relevant date.

Port Management Act 1995

No. 82 of 1995

Part 8—Transfer of property by port authorities to certain port corporations

- (2) A transferee must pay such reasonable charges for the exercise of rights and privileges under subsection (1) in respect of easements to which another transferee is entitled as are determined by the other transferee and agreed by the first-mentioned transferee or, if there is no agreement, as are determined by the Treasurer.

Part 9—Staff of port authorities

Pt 9 (Heading)
substituted by
No. 23/2003
s. 13.

117 Definitions

In this Part—

complying superannuation fund means a superannuation entity or a superannuation fund within the meaning of section 10 of the Commonwealth Superannuation Industry (Supervision) Act 1993 which is a complying superannuation fund or a complying approved deposit fund within the meaning of Part IX of the Commonwealth Income Tax Assessment Act 1936;

S. 117 def. of *complying super-annuation scheme* substituted as *complying super-annuation fund* by No. 4/1996 s. 134(10)(a).

current defined benefit scheme means—

- (a) the Port of Melbourne Authority Superannuation Scheme;
- (b) the State Employees Retirement Benefits Fund;
- (c) the State Superannuation Fund;
- (d) the Transport Superannuation Fund;
- (e) the Local Authorities Superannuation Fund;

designated agency means—

- (a) the Environment Protection Authority of Victoria;
- (b) the Director, Transport Safety;
- (c) the Health and Safety Organisation;

S. 117 def. of *designated agency* amended by Nos 77/2001 s. 32(4)(e), 6/2010 s. 203(1)(Sch. 6 item 36.3) (as amended by No. 45/2010 s. 22).

designated agency employee means a port authority employee who accepts an offer of employment made by a designated agency under section 118(1);

designated port employee means a port authority employee who accepts an offer of employment made by a local authority under section 118(2);

port authority employee means a person who immediately before the commencement of this Part is an employee of—

- (a) PMA; or
- (b) PGA; or
- (c) PPA;

port corporation means—

- (a) Melbourne Port Corporation, within the meaning of this Act, as in force immediately before the commencement of section 5 of the **Port Services (Port of Melbourne Reform) Act 2003**; or
- (b) Hastings Port (Holding) Corporation; or
- (c) Victorian Channels Authority;

port corporation employee means a port authority employee who accepts an offer of employment made by a port corporation under section 118(1);

purchaser means—

- (a) a port operator; or
- (b) a channel operator; or
- (c) a person declared by the Minister by instrument in writing to be a purchaser;

S. 117 def. of
*port
corporation*
inserted by
No. 23/2003
s. 14.

regional port employee means a port authority employee who accepts an offer of employment made by a purchaser before the expiry of the transfer period;

transfer period means in respect of each purchaser the period of 2 months commencing on the date on which the purchase is completed.

118 Rights of port authority staff

- (1) If, before 30 June 1996 or such later date as is specified by the Minister for the purposes of this subsection by notice published in the Government Gazette before 30 June 1996, an employee of a port authority accepts an offer of employment made by a port corporation or a designated agency—
 - (a) the employee is to be regarded as having accrued an entitlement to benefits, in connection with his or her employment by the port corporation or the designated agency, that is equivalent to the entitlement that he or she had accrued, as an employee of the port authority, immediately before the commencement of his or her employment by the port corporation or the designated agency;
 - (b) the service of the employee as an employee of the port corporation or the designated agency is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the commencement of his or her employment by the port corporation or the designated agency, as an employee of the port authority;

- (c) the employee is not entitled to receive any payment or other benefit by reason only by having ceased to be an employee of the port authority.
- (2) If, before 30 June 1996 or such later date as is specified by the Minister for the purposes of this subsection by notice published in the Government Gazette before 30 June 1996, an employee of a port authority accepts an offer of employment made by a local authority within the meaning of section 112 of the **Marine Act 1988**—
- (a) the employee is to be regarded as having accrued an entitlement to benefits, in connection with his or her employment by the local authority, that is equivalent to the entitlement that he or she had accrued, as an employee of the port authority, immediately before the commencement of his or her employment by the local authority;
 - (b) the service of the employee as an employee of the local authority is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the commencement of his or her employment by the local authority, as an employee of the port authority;
 - (c) the employee is not entitled to receive any payment or other benefit by reason only by having ceased to be an employee of the port authority.
- (3) The Minister may from time to time, for the purposes of subsection (1) or (2), by notice published in the Government Gazette before the then current specified date (that is, the date specified for the purposes of that subsection by the last notice published in the Government Gazette, whether under that subsection or this

S. 118(3)
inserted by
No. 51/1996
s. 12.

subsection) specify a date later than the then current specified date.

119 Superannuation—continuing membership

- (1) A port corporation employee or a designated agency employee who, immediately before becoming a port corporation employee or designated agency employee, was a member of the Port of Melbourne Authority Superannuation Scheme or the Port of Geelong Authority Superannuation Fund—
- (a) continues, on and after becoming a port corporation employee or designated agency employee, to be a member of the Port of Melbourne Authority Superannuation Scheme or the Port of Geelong Authority Superannuation Fund for so long as he or she continues to be employed by a port authority, a port corporation or a designated agency or until ceasing to be a member as provided in the relevant governing instrument;
 - (b) is not entitled to receive any payment or other benefit by reason only of having ceased to be a port authority employee because of this Act, despite any provision of the relevant governing instrument;
 - (c) is entitled to payments and other benefits as if the relevant port authority, port corporation or designated agency had been the employer at all times since the port authority employee last became a member of the Port of Melbourne Authority Superannuation Scheme or the Port of Geelong Authority Superannuation Fund.

- (2) A designated port employee who, immediately before becoming a designated port employee was a member of the Port of Geelong Authority Superannuation Fund—
- (a) continues, on and after becoming a designated port employee, to be a member of the Port of Geelong Authority Superannuation Fund for so long as he or she continues to be employed by a port authority or a local authority or until ceasing to be a member as provided in the relevant governing instrument;
 - (b) is not entitled to receive any payment or other benefit by reason only of having ceased to be a port authority employee because of this Act, despite any provision of the relevant governing instrument;
 - (c) is entitled to payments and other benefits as if the relevant port authority or local authority had been the employer at all times since the port authority employee last became a member of the Port of Geelong Authority Superannuation Fund.
- (3) On and after the commencement of this Part, the governing instrument of the Port of Melbourne Authority Superannuation Scheme or the Port of Geelong Authority Superannuation Fund has effect as if—
- (a) the reference to PMA or PGA in the definition of **Authority** for the purposes of the governing instrument were a reference to the relevant port authority, port corporation, designated agency or local authority;
 - (b) the relevant governing instrument were amended to the extent necessary to give effect to subsections (1) and (2).

**120 Superannuation—transfer to Local Authorities
Superannuation Fund—designated port employees**

- (1) A port authority employee who becomes a designated port employee and who, immediately before becoming a designated port employee, was a member of a current defined benefit scheme is upon becoming a designated port employee transferred to the Local Authorities Superannuation Fund.
- (2) Despite the transfer of a member under this section to the Local Authorities Superannuation Fund—
 - (a) the member is entitled to receive the same benefits that he or she would have been entitled to receive had he or she not so transferred; and
 - (b) the member is entitled to have his or her rights and obligations determined in accordance with the provisions of the governing instrument of the current defined benefit scheme.
- (3) For the purpose of subsection (2) the Local Authorities Superannuation Board has in respect of a member the duties and powers conferred on the trustees of the current defined benefit scheme by or under the provisions of the governing instrument of that scheme.
- (4) With the approval of the Minister, the trustees of each current defined benefit scheme must enter into an agreement with the Local Authorities Superannuation Board which specifies—
 - (a) the liability of the current defined benefit scheme up to the date of transfer in respect of transferred members under this section; and

- (b) the value of assets of the current defined benefit scheme equal to the liability of the current defined benefit scheme under paragraph (a) that are to be transferred to the Local Authorities Superannuation Fund; and
 - (c) the terms and conditions which apply to the transfer of those assets to the Local Authorities Superannuation Fund.
- (5) For the purposes of subsection (4), the liability in respect of each transferred member is to be treated as being in the same proportion as the total net assets of the current defined benefit scheme are to the total liabilities of the current defined benefit scheme.
- (6) If agreement cannot be reached within 3 months after the member becoming a designated port employee, the Minister may determine the matters specified in subsection (4) or which are in dispute and the trustees of the current defined benefit scheme and the Local Authorities Superannuation Board are deemed by virtue of this subsection to have entered into an agreement containing the matters determined by the Minister.
- (7) The trustees of the current defined benefit scheme must transfer the assets specified in the agreement to the Local Authorities Superannuation Fund.
- (8) As soon as the assets have been transferred, the assets form part of the Local Authorities Superannuation Fund.
- (9) In this section, *current defined benefit scheme* does not include the Local Authorities Superannuation Fund.

**121 Superannuation—change of employment—
designated port employees**

- (1) If a person to whom section 120 applies ceases to be an employee of a local authority so as to become an employee of an Authority (within the meaning of the **Local Authorities Superannuation Act 1988**) subject to section 42 of that Act the person becomes, from the date of commencement of employment with the Authority, a contributor with a resignation benefit and an accrued retirement benefit entitlement calculated in accordance with subsection (2).
- (2) The resignation benefit and accrued retirement benefit entitlement to the date of becoming a contributor to the Local Authorities Superannuation Fund under this section are to be calculated in accordance with the provisions of the governing instrument of the current defined benefit scheme and certified by an actuary appointed by the Local Authorities Superannuation Board after having been translated into the corresponding benefit entitlements under Part 7 of the **Local Authorities Superannuation Act 1988**.
- (3) From the date of becoming a contributor under this section a person is entitled to receive benefits as a contributor to the Local Authorities Superannuation Fund.
- (4) The Local Authorities Superannuation Board must from the separate accounting records kept in respect of persons transferred to the Local Authorities Superannuation Fund under section 120 determine—
 - (a) the liability up to the date of becoming a contributor in respect of a person to whom this section applies; and

- (b) the adjustment to be made to the value of assets shown in the accounting records equal to that liability.
- (5) For the purposes of subsection (4), the liability in respect of a person to whom this section applies is to be treated as being in the same proportion as the total net assets are to the total liabilities as shown in the accounting records at the date of becoming a contributor.

122 Superannuation—contributions—designated port employees

- (1) The Local Authorities Superannuation Board must on the advice of an actuary appointed by the Local Authorities Superannuation Board determine—
 - (a) the extent to which the liability specified under section 120(4)(a) is unfunded; and
 - (b) the contribution to be paid to the Local Authorities Superannuation Fund in respect of that unfunded liability—
 - (i) by PMA, PGA or PPA in respect of persons who transferred from the Transport Superannuation Fund;
 - (ii) by PMA in respect of persons who transferred from the Port of Melbourne Authority Superannuation Fund;
 - (iii) by the Treasurer from the Consolidated Fund in respect of persons who transferred from the State Superannuation Fund;
 - (iv) by PMA, PGA or PPA in respect of persons who transferred from the State Employees Retirement Benefits Fund.

- (2) For the purpose of subsection (1), the liability in respect of each person who transferred is to be treated as being in the same proportion as the total net assets of the Local Authorities Superannuation Fund are to the total liabilities of the Local Authorities Superannuation Fund.
- (3) The contributions determined under subsection (1) must be paid to the Local Authorities Superannuation Board in such instalments and at such intervals as is agreed between the Local Authorities Superannuation Board and the relevant person, or in the absence of agreement, as is determined by the Minister.

**123 Superannuation—private sector employment—
regional port employees**

- (1) A regional port employee may elect during the transfer period to transfer the transfer amount to a complying superannuation fund.
- (2) The transfer amount and the terms and conditions that apply in respect of the transfer are to be determined by the Minister administering the **State Superannuation Act 1988**.
- (3) The trustees must pay out of the relevant current defined benefit scheme or the Port of Geelong Authority Superannuation Scheme the transfer amount, after deducting any tax required to be paid under the Commonwealth Income Tax Assessment Act 1936, to the relevant complying superannuation fund.
- (4) Subject to subsection (5), the trustees must pay into the relevant current defined benefit scheme or the Port of Geelong Authority Superannuation Scheme payments received from the purchaser for superannuation provision in respect of each relevant scheme.

S. 123(1)
amended by
No. 4/1996
s. 134(10)(b).

S. 123(3)
amended by
No. 4/1996
s. 134(10)(b).

- (5) The Treasurer may, in addition to any amount received under subsection (4), pay an amount to be determined by the Treasurer into the relevant scheme referred to in subsection (4) to meet any unfunded superannuation liability relating to regional port employees.
- (6) For the purposes of subsection (4), the Purchaser is deemed to be—
- (a) an authority under the **Local Authorities Superannuation Act 1988**;
 - (b) an employing authority under the **State Superannuation Act 1988**;
 - (c) a transport authority under the **Transport Superannuation Act 1988**;
 - (d) an employer under the **State Employees Retirement Benefits Act 1979**;
 - (e) the Authority under the Port of Melbourne Authority Superannuation Scheme.
- (7) If a person—
- (a) elects not to transfer a transfer amount to a complying superannuation fund under subsection (1); or
 - (b) fails to make an election in accordance with subsection (1)—

S. 123(7)(a)
amended by
No. 4/1996
s. 134(10)(b).

the person is deemed to have resigned as a regional port employee as from the date of the relevant sale for the purposes of the **Local Authorities Superannuation Act 1988**, the **State Superannuation Act 1988**, the **Transport Superannuation Act 1988**, the **State Employees Retirement Benefits Act 1979** or the governing instrument of the Port of Melbourne Authority Superannuation Scheme (as the case may be).

(8) For the purposes of the **Superannuation (Portability) Act 1989**, an officer to whom subsection (7) applies is entitled by virtue of this section to elect to make an application in accordance with section 5 of that Act.

124 Taxes

No stamp duty or other tax is payable under any Act in respect of anything done under this Part.

125 Appropriation

The Consolidated Fund is for the purposes of any payment required to be made under section 122(1)(b)(iii) or 123(5) to the necessary extent appropriated accordingly.

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**Pt 10
(Heading and
ss 126–152)
amended by
No. 51/1996
s. 13,
repealed by
No. 63/1997
s. 9(3).**

Part 11—Abolition of port authorities

Pt 11
(Heading and
ss 153–180)
amended by
No. 27/1996
s. 4(1),
substituted
as Pt 11
(Heading and
ss 153–161)
by No.
63/1997 s. 8.

S. 153
substituted by
No. 63/1997
s. 8.

153 Definitions

(1) In this Part—

port authority instrument, in relation to a port authority, means an instrument (including a legislative instrument other than this Act and regulations under this Act and a Port Act and regulations under a Port Act) subsisting immediately before the port authority abolition date—

- (a) to which the port authority was a party;
or
- (b) that was given to or in favour of the port authority; or
- (c) that refers to the port authority; or
- (d) under which—
 - (i) money is, or may become, payable to or by the port authority; or
 - (ii) other property is to be, or may become liable to be, transferred to or by the port authority—

but does not include a former port authority instrument within the meaning of Part 8.

- (2) The Governor in Council may, by Order published in the Government Gazette, fix the port authority abolition date for the purposes of a port authority.

154 Transfer of property to SEC and abolition of port authorities

S. 154
substituted by
No. 63/1997
s. 8.

On the port authority abolition date—

- (a) all property and rights of the port authority, wherever located, vest in SEC subject to the encumbrances (if any) to which they were subject immediately before so vesting; and
- (b) all liabilities of the port authority, wherever located become liabilities of SEC; and
- (c) SEC becomes the successor in law of the port authority; and
- (d) the port authority is abolished.

155 Substitution of party to agreement

S. 155
substituted by
No. 63/1997
s. 8.

Where, under section 154, the rights and liabilities of a port authority under an agreement vest in, or become liabilities of, SEC—

- (a) SEC becomes, on the port authority abolition date, a party to the agreement in place of the port authority; and
- (b) on and after the port authority abolition date, the agreement has effect as if SEC had always been a party to the agreement.

156 Port authority instruments

S. 156
substituted by
No. 63/1997
s. 8.

A port authority instrument continues to have effect according to its tenor on and after the port authority abolition date as if a reference in the instrument to the port authority were a reference to SEC.

S. 157
substituted by
No. 63/1997
s. 8.

157 Proceedings

Where, immediately before the port authority abolition date, proceedings (including arbitration proceedings) to which the port authority was a party were pending or existing in any court or tribunal, then, on and after the port authority abolition date, SEC is substituted for the port authority as a party to the proceedings and has the same rights in the proceedings as the port authority had.

S. 158
substituted by
No. 63/1997
s. 8.

158 Interests in land

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law, if, immediately before the port authority abolition date, the port authority was the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after the port authority abolition date—

- (a) SEC is to be taken to be the registered proprietor of that interest in land; and
- (b) SEC has the same rights and remedies in respect of that interest as the port authority had.

S. 159
substituted by
No. 63/1997
s. 8.

159 Amendment of Register

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Part.

S. 159(2)(3)
repealed by
No. 85/1998
s. 24(Sch.
item 46.3).

* * * * *

160 Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given.

S. 160
substituted by
No. 63/1997
s. 8.

161 Evidence

- (1) Documentary or other evidence that would have been admissible for or against the interests of a port authority if this Part had not been enacted, is admissible for or against the interests of SEC.
- (2) The **Evidence Act 2008** applies with respect to the books of account of a port authority and to entries made in those books of account before the port authority abolition date as if those books of account and entries were business records.

S. 161
substituted by
No. 63/1997
s. 8.

S. 161(2)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 43.2).

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S. 161(3)
repealed by
No. 69/2009
s. 54(Sch. Pt 1
item 43.3).

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Ss 162–180
repealed by
No. 63/1997
s. 8.

Pt 12
(Heading and
ss 181–189)
amended by
No. 63/1997
s. 9(2),
repealed by
No. 63/1997
s. 8,
new Pt 12
(Heading and
ss 162–164)
inserted by
No. 23/2003
s. 15.

Part 12—Transitional provisions— establishment of Port of Melbourne Corporation

New s. 162
inserted by
No. 23/2003
s. 15.

162 Definitions

In this Part—

commencement day means the day on which section 5 of the **Port Services (Port of Melbourne Reform) Act 2003** comes into operation;

old corporation means MPC, within the meaning of this Act, as in force immediately before the commencement day;

new corporation means the Port of Melbourne Corporation, within the meaning of this Act, as in force on and from the commencement day.

New s. 163
inserted by
No. 23/2003
s. 15.

163 Transfer of property etc. from MPC to the new corporation

Except as otherwise provided in this Act, on and from the commencement day—

- (a) the old corporation is abolished and the directors go out of office; and
- (b) all rights, property and assets that, immediately before the commencement day were vested in the old corporation, vest in the new corporation; and

- (c) all debts, liabilities and obligations of the old corporation existing immediately before the commencement day, become debts, liabilities and obligations of the new corporation; and
- (d) the new corporation is substituted as a party to any proceedings pending in any court or tribunal to which the old corporation was a party, immediately before the commencement day; and
- (e) the new corporation is substituted as a party to any contract or arrangement entered into by or on behalf of the old corporation and in force immediately before the commencement day; and
- (f) any reference to the old corporation in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document, so far as it relates to any period after the commencement day, and if not inconsistent with the context or subject matter, must be construed as a reference to the new corporation.

164 Staff to be transferred from the old corporation to the new corporation

New s. 164
inserted by
No. 23/2003
s. 15.

- (1) A person who was an employee of the old corporation immediately before the commencement day is deemed to be an employee of the new corporation.
- (2) A transferred employee is to be regarded as—
 - (a) being employed in his or her new position with effect on and from the commencement day; and

- (b) having the same terms and conditions as those that applied to the person in relation to his or her employment with the old corporation immediately before the commencement day; and
 - (c) having accrued an entitlement to benefits in connection with the employment with the new corporation that is equivalent to the entitlement that the person had accrued, as an employee of the old corporation, immediately before the commencement day.
- (3) The service of a transferred employee with the new corporation is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the commencement day, as an employee of the old corporation.
- (4) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the old corporation because of the operation of this Division.
- (5) A certificate purporting to be signed by the chief executive officer of the new corporation certifying that the person named in the certificate was, with effect from the commencement day, employed, by virtue of this section, with the new corporation, is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.
- (6) The superannuation entitlements of any person who is a transferred employee are deemed not to be affected by that person becoming a transferred employee.

- (7) If a transferred employee was, immediately before the appointed day an officer within the meaning of the **State Superannuation Act 1988**, he or she continues to be such an officer.
- (8) Nothing in this section prevents—
- (a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the commencement day; or
 - (b) a transferred employee from resigning or being dismissed at any time after the commencement day in accordance with the existing terms and conditions of his or her employment with the new corporation.
- (9) This section applies to the person occupying the position of chief executive officer of the Melbourne Port Corporation immediately before the commencement day, and the amendment to this Act by section 16(3) of the **Port Services (Port of Melbourne Reform) Act 2003** does not apply to that person.
- (10) In this section, *transferred employee* means an employee of the old corporation who is deemed to be an employee of the new corporation by subsection (1).

Part 13—Transitional provisions— transfer of certain VCA functions etc.

Pt 13
(Heading and
ss 190–193)
repealed by
No. 63/1997
s. 8
new Pt 13
(Heading and
ss 165–176)
inserted by
No. 23/2003
s. 24.

Division 1—Definitions

165 Definitions

New s. 165
inserted by
No. 23/2003
s. 24,
amended by
No. 85/2003
s. 20(a).

In this Part—

appointed day means the day on which section 20 of the **Port Services (Port of Melbourne Reform) Act 2003** comes into operation;

former VCA property means property, rights or liabilities of VCA that, under this Part, have vested in or become property rights or liabilities of the new corporation;

instrument includes a document and an oral agreement;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

new corporation means the Port of Melbourne Corporation established under Part 10;

S. 165 def. of
*new
corporation*
inserted by
No. 85/2003
s. 20(b).

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

VCA instrument means an instrument subsisting immediately before the relevant date—

- (a) to which VCA was a party; or
- (b) that was given in favour of VCA; or
- (c) that refers to VCA; or
- (d) under which—
 - (i) money is or may become payable to or by VCA; or
 - (ii) other property is to be or may become liable to be transferred to or by VCA.

Division 2—Allocation of property etc.

166 Treasurer may direct transfer of property etc.

- (1) The Treasurer, after consultation with the Minister, may give a direction in writing to VCA directing it to transfer, in accordance with the direction, property, rights and liabilities of a specified kind to the new corporation.
- (2) Within 21 days after receiving a direction under subsection (1), VCA must give to the Treasurer a statement approved by the Treasurer relating to the property, rights and liabilities of VCA to which the direction relates, as at a date specified by the Treasurer, for the purposes of this section.
- (3) A statement under this section—
 - (a) must allocate the property, rights and liabilities of VCA shown in the statement in accordance with the directions of the Treasurer; and

New s. 166
inserted by
No. 23/2003
s. 24.

(b) must be signed by the chief executive officer of VCA.

S. 166(3A)
inserted by
No. 85/2003
s. 21.

(3A) The Treasurer, after consultation with the Minister, may at any time direct the VCA to amend a statement given to him or her under this section as specified in the direction.

S. 166(3B)
inserted by
No. 85/2003
s. 21.

(3B) An allocation statement under this section may be amended by writing signed by the Treasurer and the Minister.

S. 166(3C)
inserted by
No. 85/2003
s. 21.

(3C) An amendment under subsection (3B) to an allocation statement made after the appointed day in relation to that statement may be made with effect from the appointed day if the Treasurer and the Minister are satisfied that the amendment does not adversely affect any property, rights or liabilities of a person other than the VCA or the new corporation in relation to that statement.

(4) If a statement under this section is approved by the Treasurer and the Minister—

(a) the Treasurer and the Minister must sign the statement; and

(b) the statement is an allocation statement for the purposes of this Part.

New s. 167
inserted by
No. 23/2003
s. 24.

167 Property transferred to the new corporation

On the appointed day—

(a) all property and rights of VCA that are allocated to the new corporation under the allocation statement, vest in the new corporation; and

(b) all liabilities of VCA that are allocated to the new corporation under the allocation statement, become liabilities of the new corporation.

168 Allocation of property etc. subject to encumbrances

New s. 168
inserted by
No. 23/2003
s. 24.

Unless an allocation statement under this Part otherwise provides, where, under this Part property and rights vest in the new corporation or liabilities become liabilities of the new corporation—

- (a) the property and rights so vested are subject to the encumbrances (if any) to which they were subject immediately before so vesting; and
- (b) the rights to which VCA was entitled in respect of those liabilities immediately before they ceased to be liabilities of VCA, vest in the new corporation.

169 Substitution of party to agreement

New s. 169
inserted by
No. 23/2003
s. 24.

If, under an allocation statement, the rights and liabilities of VCA under an agreement are allocated to the new corporation—

- (a) the new corporation becomes, on the appointed day, a party to the agreement in place of VCA; and
- (b) on and after the appointed day, the agreement has effect as if the new corporation had always been a party to the agreement.

S. 169(b)
amended by
No. 85/2003
s. 20(c).

170 VCA instruments

New s. 170
inserted by
No. 23/2003
s. 24,
amended by
No. 85/2003
s. 20(c).

Each VCA instrument relating to former VCA property continues to have effect according to its tenor on and after the appointed day as if a reference in the instrument to VCA were a reference to the new corporation.

New s. 171
inserted by
No. 23/2003
s. 24.

171 Taxes

No duty or other tax is chargeable under any Act in respect of anything done under this Division or in respect of any act or transaction connected with or necessary to be done by reason of this Division, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of VCA.

New s. 172
inserted by
No. 23/2003
s. 24.

172 Validity of things done under this Part

- (1) Nothing effected by this Division or done or suffered by VCA, a Minister or the new corporation under this Division—
 - (a) is to be regarded as placing VCA, a Minister or the new corporation in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
 - (b) is to be regarded as placing any of them in breach of or as constituting a default under any Act or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; or
 - (c) is to be regarded as fulfilling any condition which allows a person to exercise a right or remedy in respect of or to terminate any agreement or obligation; or
 - (d) releases any surety or other obligor wholly or in part from any obligation.
- (2) The validity of any act or transaction of VCA or the new corporation must not be called in question in any proceedings on the ground that any

provision of this Division had not been complied with.

173 Payments in respect of financial obligations of VCA

New s. 173
inserted by
No. 23/2003
s. 24.

In the case of any obligations or rights of VCA under section 36D or 36E of the **Treasury Corporation of Victoria Act 1992**, that have been allocated under an allocation statement under this Division—

- (a) the new corporation must pay to the Treasury Corporation of Victoria such amounts, and at such times, as VCA would have been liable to pay in respect of those financial obligations, if the Order under section 36D or 36E (as the case requires) had not been made, except so far as the Treasury Corporation of Victoria and the new corporation otherwise agree; and
- (b) the Treasury Corporation of Victoria must pay to the new corporation those amounts, and at those times, as VCA would have been entitled to receive in respect of those financial obligations if the Order under section 36D or 36E (as the case requires) had not been made, except in so far as the Treasury Corporation of Victoria and the new corporation otherwise agree.

Division 3—Staff and other matters

174 List of staff to be transferred from VCA to the new corporation

New s. 174
inserted by
No. 23/2003
s. 24.

The chief executive officer of VCA must list, in writing, the employees of VCA, employed by VCA immediately before the appointed day, who are to be employed by the new corporation.

New s. 175
inserted by
No. 23/2003
s. 24.

175 Terms of employment of staff transferred from VCA to the new corporation

- (1) A transferred employee is to be regarded as—
 - (a) being employed in his or her new position with effect on and from the appointed day; and
 - (b) having the same terms and conditions as those that applied to the person in relation to his or her employment with the VCA immediately before the appointed day; and
 - (c) having accrued an entitlement to benefits in connection with the employment with the new corporation that is equivalent to the entitlement that the person had accrued, as an employee of VCA, immediately before the appointed day.
- (2) The service of a transferred employee with the new corporation is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the appointed day, as an employee of VCA.
- (3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of VCA because of the operation of this Division.
- (4) A certificate purporting to be signed by the Chief Executive Officer of the new corporation certifying that the person named in the certificate was, with effect from the appointed day, employed, by virtue of this section, with the new corporation, is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

- (5) The superannuation entitlements of any person who is a transferred employee are deemed not to be affected by that person becoming a transferred employee.
- (6) If a transferred employee was, immediately before the appointed day an officer within the meaning of the **State Superannuation Act 1988**, he or she continues to be such an officer.
- (7) Nothing in this section prevents—
 - (a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the appointed day; or
 - (b) a transferred employee from resigning or being dismissed at any time after the appointed day in accordance with the existing terms and conditions of his or her employment with the new corporation.
- (8) In this section, *transferred employee* means a person listed under section 174.

176 Price determination

- (1) On and from the appointed day—
 - (a) a reference in the price determination to VCA, to the extent that that reference applies to the exercise by that body of functions or powers within the port of Melbourne, is deemed to be a reference to the Port of Melbourne Corporation; and
 - (b) any powers, functions, rights and liabilities of VCA under the price determination, to the extent that they relate to the port of Melbourne, become powers, functions, rights and liabilities of the Port of Melbourne Corporation.

New s. 176
inserted by
No. 23/2003
s. 24.

- (2) In this section *price determination* means the Price Determination for the Channels of the Ports of Melbourne and Geelong, as in force immediately before the appointed day, being the price determination—
- (a) that was made by the Regulator-General under section 54 (as in force before the commencement of the **Essential Services Commission Act 2001**); and
 - (b) notice of the making of which was given in Special Government Gazette Number S99; and
 - (c) that came into operation on 3 July 2000; and
 - (d) that was continued in force under Part 8 of the **Essential Services Commission Act 2001**.

S. 176A
inserted by
No. 85/2003
s. 22.

176A Saving of port of Melbourne waters

Any waters that were declared to be port of Melbourne waters or any waters declared to be port waters of the port of Melbourne immediately before the commencement of section 4 of the **Port Services (Port Management Reform) Act 2003** are deemed to be port of Melbourne waters.

Part 14—Transitional provisions— establishment of Port of Hastings Corporation

Pt 14
(Heading and
ss 194–207)
amended by
No. 27/1996
s. 4(2),
repealed by
No. 63/1997
s. 8, new Pt 14
(Heading and
ss 177–179)
inserted by
No. 85/2003
s. 23.

177 Definitions

In this Part—

commencement day means the day on which section 23 of the Port Services (Port Management Reform) Act 2003 comes into operation;

old corporation means HPHC, within the meaning of this Act, as in force immediately before the commencement day;

new corporation means the Port of Hastings Corporation, within the meaning of this Act, as in force on and from the commencement day;

transferred employee means an employee of the old corporation who is deemed to be an employee of the new corporation by section 179(1).

New s. 177
inserted by
No. 85/2003
s. 23.

178 Transfer of property etc. from HPHC to the new corporation

Except as otherwise provided in this Act, on and from the commencement day—

- (a) the old corporation is abolished and the directors go out of office; and

New s. 178
inserted by
No. 85/2003
s. 23.

- (b) all rights, property and assets that, immediately before the commencement day were vested in the old corporation, vest in the new corporation; and
- (c) all debts, liabilities and obligations of the old corporation existing immediately before the commencement day, become debts, liabilities and obligations of the new corporation; and
- (d) the new corporation is substituted as a party to any proceedings pending in any court or tribunal to which the old corporation was a party, immediately before the commencement day; and
- (e) the new corporation is substituted as a party to any contract or arrangement entered into by or on behalf of the old corporation and in force immediately before the commencement day; and
- (f) any reference to the old corporation in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document, so far as it relates to any period after the commencement day, and if not inconsistent with the context or subject matter, must be construed as a reference to the new corporation.

New s. 179
inserted by
No. 85/2003
s. 23.

179 Staff to be transferred from the old corporation to the new corporation

- (1) A person who was an employee of the old corporation immediately before the commencement day is deemed to be an employee of the new corporation.

- (2) A transferred employee is to be regarded as—
- (a) being employed in his or her new position with effect on and from the commencement day; and
 - (b) having the same terms and conditions as those that applied to the person in relation to his or her employment with the old corporation immediately before the commencement day; and
 - (c) having accrued an entitlement to benefits in connection with the employment with the new corporation that is equivalent to the entitlement that the person had accrued, as an employee of the old corporation, immediately before the commencement day.
- (3) The service of a transferred employee with the new corporation is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the commencement day, as an employee of the old corporation.
- (4) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the old corporation because of the operation of this Part.
- (5) A certificate purporting to be signed by the chief executive officer of the new corporation certifying that the person named in the certificate was, with effect from the commencement day, employed, by virtue of this section, with the new corporation, is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.
- (6) The superannuation entitlements of any person who is a transferred employee are deemed not to be affected by that person becoming a transferred employee.

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No. 82 of 1995
Part 14—Transitional provisions—establishment of Port of Hastings
Corporation

- (7) If a transferred employee was, immediately before the appointed day an officer within the meaning of the **State Superannuation Act 1988**, he or she continues to be such an officer.
- (8) Nothing in this section prevents—
- (a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the commencement day; or
 - (b) a transferred employee from resigning or being dismissed at any time after the commencement day in accordance with the existing terms and conditions of his or her employment with the new corporation.

Part 15—Transitional provisions— establishment of Victorian Regional Channels Authority

Pt 15
(Heading and
ss 180–182)
inserted by
No. 85/2003
s. 24.

180 Definitions

In this Part—

commencement day means the day on which section 24 of the **Port Services (Port Management Reform) Act 2003** comes into operation;

old corporation means VCA, within the meaning of this Act, as in force immediately before the commencement day;

new corporation means the VRCA, within the meaning of this Act, as in force on and from the commencement day;

transferred employee means an employee of the old corporation who is deemed to be an employee of the new corporation by section 182(1).

New s. 180
inserted by
No. 85/2003
s. 24.

181 Transfer of property etc. from VCA to the new corporation

Except as otherwise provided in this Act, on and from the commencement day—

- (a) the old corporation is abolished and the directors go out of office; and
- (b) all rights, property and assets that, immediately before the commencement day were vested in the old corporation, vest in the new corporation; and

New s. 181
inserted by
No. 85/2003
s. 24.

- (c) all debts, liabilities and obligations of the old corporation existing immediately before the commencement day, become debts, liabilities and obligations of the new corporation; and
- (d) the new corporation is substituted as a party to any proceedings pending in any court or tribunal to which the old corporation was a party, immediately before the commencement day; and
- (e) the new corporation is substituted as a party to any contract or arrangement entered into by or on behalf of the old corporation and in force immediately before the commencement day; and
- (f) any reference to the old corporation in any Act or in any proclamation, Order in Council, rule, regulation, order, agreement, instrument, deed or other document, so far as it relates to any period after the commencement day, and if not inconsistent with the context or subject matter, must be construed as a reference to the new corporation.

New s. 182
inserted by
No. 85/2003
s. 24.

182 Staff to be transferred from the old corporation to the new corporation

- (1) A person who was an employee of the old corporation immediately before the commencement day is deemed to be an employee of the new corporation.
- (2) A transferred employee is to be regarded as—
 - (a) being employed in his or her new position with effect on and from the commencement day; and

- (b) having the same terms and conditions as those that applied to the person in relation to his or her employment with the old corporation immediately before the commencement day; and
 - (c) having accrued an entitlement to benefits in connection with the employment with the new corporation that is equivalent to the entitlement that the person had accrued, as an employee of the old corporation, immediately before the commencement day.
- (3) The service of a transferred employee with the new corporation is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the commencement day, as an employee of the old corporation.
- (4) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the old corporation because of the operation of this Part.
- (5) A certificate purporting to be signed by the chief executive officer of the new corporation certifying that the person named in the certificate was, with effect from the commencement day, employed, by virtue of this section, with the new corporation, is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.
- (6) The superannuation entitlements of any person who is a transferred employee are deemed not to be affected by that person becoming a transferred employee.
- (7) If a transferred employee was, immediately before the appointed day an officer within the meaning of the **State Superannuation Act 1988**, he or she continues to be such an officer.

- (8) Nothing in this section prevents—
- (a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the commencement day; or
 - (b) a transferred employee from resigning or being dismissed at any time after the commencement day in accordance with the existing terms and conditions of his or her employment with the new corporation.

Part 16—Other savings and transitionals

Pt 16
(Heading and
s. 183)
inserted by
No. 85/2003
s. 25.

183 Savings for existing local authorities

New s. 183
inserted by
No. 85/2003
s. 25.

- (1) Any lands or waters that were immediately before the date of commencement of section 11 of the **Port Services (Port Management Reform) Act 2003** declared to be a designated port under section 111 of the **Marine Act 1988** are to be deemed to be the lands and waters of a local port for the purposes of this Act.
- (2) Nothing in the **Port Services (Port Management Reform) Act 2003** affects the appointment or constitution of a person or body that was a local authority for lands and waters that were declared to be a designated port under section 111 of the **Marine Act 1988** immediately before the date of commencement of section 11 of the **Port Services (Port Management Reform) Act 2003** and that person or body is deemed to be the port manager of those lands and waters as a local port under this Act.
- (3) Any delegation made or charge fixed under Part 10 of the **Marine Act 1988** by a person or body referred to in subsection (2), immediately before the date of commencement of section 11 of the **Port Services (Port Management Reform) Act 2003**, is deemed to be a delegation made or a charge fixed (as the case requires) under the corresponding provisions of Part 2A of this Act.

New s. 184
inserted by
No. 9/2004
s. 30.

184 Provisions of Subordinate Legislation Act 1994 not to apply to certain ports regulations

- (1) Part 2 of the **Subordinate Legislation Act 1994** does not apply to a statutory rule made under this Act—
 - (a) if the statutory rule is made on or before 1 December 2004; and
 - (b) if the Minister has, before the making of the statutory rule, certified in writing that the statutory rule is the same in substance as the Marine (Designated Ports) Regulations 2004.
- (2) The Minister must ensure that a copy of the certificate under subsection (1) is given to the Scrutiny of Acts and Regulations Committee as soon as practicable after the statutory rule is made.
- (3) A copy of the certificate under subsection (1) must be laid before each House of Parliament at the same time as the statutory rule is so laid under section 15 of the **Subordinate Legislation Act 1994**.
- (4) In this section—

Scrutiny of Acts and Regulations Committee
means the Scrutiny of Acts and Regulations Committee established by the **Parliamentary Committees Act 2003**;

statutory rule has the same meaning as in the **Subordinate Legislation Act 1994**.

S. 184A
inserted by
No. 54/2012
s. 11.

184A Transitional provisions—2012 amendments

Despite the commencement of Part 2 of the **Port Management Further Amendment Act 2012**, the law as in force before that commencement continues to apply to any management plan in force immediately before that commencement.

Part 17—Station Pier— savings and transitional

Pt 17
(Heading and
ss 185–187)
inserted by
No. 110/2004
s. 61.

185 Definitions

In this Part—

commencement day means the day on which Part 12 of the **Transport Legislation (Amendment) Act 2004** comes into operation;

old body means the Station Pier Committee of Management Incorporated appointed by Order in Council dated 15 May 2001 and published in the Government Gazette on 17 May 2001 at page 959.

New s. 185
inserted by
No. 110/2004
s. 61.

186 Savings and transitional provisions for Station Pier

- (1) On the commencement day—
 - (a) the reservation of the land described in Schedule 2 is revoked; and
 - (b) any regulations made under section 13 of the **Crown Land (Reserves) Act 1978** that applied to the land described in Schedule 2 immediately before the commencement day are revoked, in so far as they apply to that land.
- (2) This section does not affect the status or continuity of any lease or licence issued and any agreement or arrangement entered into under the **Crown Land (Reserves) Act 1978** that applied to that land immediately before the commencement day.

New s. 186
inserted by
No. 110/2004
s. 61.

- (3) Each of the deeds or agreements or purported deeds or agreements described in Schedule 3, purportedly entered into by the old body—
- (a) is deemed to be and to always have been validly entered into by the old body; and
 - (b) is deemed to continue in force on and from the commencement day, subject to its terms and conditions; and
 - (c) is deemed to have effect on and from the commencement day as if the Port of Melbourne Corporation were substituted for the old body as a party to the deed or agreement (as the case requires); and
 - (d) anything done or purported to have been done under each purported deed or agreement before the commencement day, that would have been validly done if the old body had had the powers conferred on the Port of Melbourne Corporation in relation to Station Pier land by Part 12 of the **Transport Legislation (Amendment) Act 2004** at the time at which the thing was done, has and is deemed always to have had, the same force and effect as it would have had if the old body had had those powers at the time at which the thing was done or purported to have been done.

New s. 187
inserted by
No. 110/2004
s. 61.

187 Transfer of property etc. from old body to Port of Melbourne Corporation

Except as otherwise provided in this Act, on and from the commencement day—

- (a) the old body is abolished; and
- (b) all rights, property and assets that, immediately before the commencement day were vested in the old body, vest in the Port of Melbourne Corporation; and

- (c) all debts, liabilities and obligations of the old body existing immediately before the commencement day become debts, liabilities and obligations of the Port of Melbourne Corporation; and
- (d) the Port of Melbourne Corporation is substituted as a party in any proceedings pending in any court or tribunal to which the old body was a party, immediately before the commencement day; and
- (e) the Port of Melbourne Corporation is substituted as a party to any contract or arrangement entered into by or on behalf of the old body and in force immediately before the commencement day; and
- (f) any reference to the old body in any Act or in any proclamation, Order in Council, rule, regulations, order, agreement, instrument, deed or other document, so far as it relates to any period after the commencement day, and if not inconsistent with the context or subject matter, must be construed as a reference to the Port of Melbourne Corporation.

Pt 18
(Heading and
ss 188, 189)
inserted by
No. 19/2022
s. 67.

S. 188
inserted by
No. 19/2022
s. 67.

Part 18—Transitional provisions—Transport Legislation Amendment (Port Reforms and Other Matters) Act 2022

188 Registered pilotage services providers taken to be issued pilotage services licence

- (1) On the commencement of section 33 of the **Transport Legislation Amendment (Port Reforms and Other Matters) Act 2022**, a pilotage services provider is taken to have been issued a pilotage services licence under Part 4B.
- (2) In this section—
pilotage services provider has the same meaning as in section 3(1) of the **Marine Safety Act 2010**.

S. 189
inserted by
No. 19/2022
s. 67.

189 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the **Transport Legislation Amendment (Port Reforms and Other Matters) Act 2022**, including any repeals and amendments made by or as a result of the enactment of that Act.
- (2) Regulations made under this section may—
 - (a) have a retrospective effect to a day on or after a date not earlier than the day on which the **Transport Legislation Amendment (Port Reforms and Other Matters) Act 2022** receives the Royal Assent;
 - (b) be of limited or general application;
 - (c) differ according to differences in time, place or circumstances;

- (d) leave any matter or thing to be decided by a specified person or class of person.
- (3) To the extent to which any provision of the regulations under this section takes effect from a date that is earlier than the date of its making, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its making; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its making.
- (4) Regulations under this section have effect despite anything to the contrary in—
- (a) this Act or any other Act (other than the **Transport Legislation Amendment (Port Reforms and Other Matters) Act 2022** or the **Charter of Human Rights and Responsibilities Act 2006**); or
- (b) any subordinate instrument.
- (5) The following are not required for any proposed statutory rule that is to be made under this section—
- (a) consultation under section 6 of the **Subordinate Legislation Act 1994**;
- (b) the preparation of a regulatory impact statement under section 7 of the **Subordinate Legislation Act 1994**.
- (6) This section is **repealed** on the second anniversary of the day on which it comes into operation.

Port Management Act 1995
No. 82 of 1995
Schedule 2

Sch. 1
amended by
Nos 63/1997
s. 5(2),
43/1998 s. 47,
46/1998
s. 7(Sch. 1),
23/2003 s. 16,
85/2003 s. 26,
108/2004
s. 117(1)
(Sch. 3
item 159),
80/2006
s. 26(Sch.
item 85),
repealed by
No. 45/2010
s. 41.

* * * * *

Sch. 2
inserted by
No. 110/2004
s. 62(Sch).

Schedule 2

Situation and area of land	Crown Allotment 18, Section 12, City of Port Melbourne, Parish of Melbourne South, 6.867 hectares
Instrument and date of reservation	Order in Council dated 8 May 2001
Description of land by reference to Government Gazette	Government Gazette dated 10 May 2001, page 892
Purpose of reservation	Public purposes
Extent of reservation	All of the land

Port Management Act 1995
No. 82 of 1995
Schedule 3—Table

Schedule 3—Table

Sch. 3
inserted by
No. 110/2004
s. 62(Sch).

<i>Parties</i>	<i>Location</i>	<i>Description of purported deed or agreement</i>
Station Pier Committee of Management Incorporated TT-Line Company Pty Ltd (ACN 061 996 174)	Part of the land described in the plan numbered OP 119746—A and lodged in the Central Plan Office	Lease of land dated 20 May 2003
Station Pier Committee of Management Incorporated TT-Line Company Pty Ltd (ACN 061 996 174)	Part of the land described in the plan numbered OP 119746—A and lodged in the Central Plan Office	Variation of berthing licence dated 20 May 2003
Station Pier Committee of Management Incorporated TT-Line Company Pty Ltd (ACN 061 996 174)	Part of the land described in the plan numbered OP 119746—A and lodged in the Central Plan Office	Variation of car parking licence dated 20 May 2003
Station Pier Committee of Management Incorporated Heavenly Pier Pty Ltd (ACN 095 763 330)	Part of the land described in the plan numbered OP 119746—A and lodged in the Central Plan Office	Lease dated 24 December 2004
Station Pier Committee of Management Incorporated Delicarts Australia	Part of the land described in the plan numbered OP 119746—A and lodged in the Central Plan Office	Renewal of licence to occupy land dated 14 February 2002

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 5 October 1995

Legislative Council: 31 October 1995

The long title for the Bill for this Act was "A Bill to make further provision relating to ports, to amend the **Port of Melbourne Authority Act 1958**, the **Port of Geelong Authority Act 1958**, the **Port of Portland Authority Act 1958**, the **Marine Act 1988** and certain other Acts and for other purposes."

The **Port Services Act 1995** was assented to on 28 November 1995 and came into operation as follows:

Part 1 (sections 1–9), section 189(7)(8) on 28 November 1995: section 2(1); sections 93, 96, 97, 99, 101–103, 105–125, 126(1)(3), 127–134, 135(2)(3)(16)(18)–(20), 136(2), 137–143, 144(7)(12)(14)(15), 145(2), 146–151, 152(14)(16)(17), 153(1), 169, 194–207, Schedule 1 on 14 December 1995: Government Gazette 14 December 1995 page 3488—see **Interpretation of Legislation Act 1984**; sections 18–63, 68–73, 75, 78–82, 94, 95, 104, 152(9), 155–165, 170–180 on 1 January 1996: Government Gazette 14 December 1995 page 3488; sections 10–13, 17 on 1 February 1996: Government Gazette 18 January 1996 page 93; sections 166–168 on 6 February 1996: Special Gazette (No. 6) 6 February 1996 page 1; sections 14–16, 64–67, 74, 76, 77, 83–92, 98, 100, 126(2), 135(1)(4)(6)(8)(10)(11)(14)(15), 144(2)(9)(11), 153(2), 154, 181–188, 189(1)–(6), 190–193 on 1 March 1996: Special Gazette (No. 14) 27 February 1996 page 1; sections 136(1), 144(1)(4)(6)(10) on 1 July 1996: Special Gazette (No. 58) 28 May 1996 page 1; sections 145(1), 152(1)(4)–(7) (10)–(13) on 26 June 1996: Special Gazette (No. 71) 25 June 1996 page 1; sections 135(9)(12)(13), 144(8), 152(8) on 19 June 1997: Government Gazette 19 June 1997 page 1385;

Sections 126(4), 135(5)(7)(17), 136(3), 144(3)(5)(13), 145(3), 152(2)(3)(15) never proclaimed, repealed by section 9(3) of No. 63/1997.

The title of this Act was changed from the **Port Services Act 1995** to the **Port Management Act 1995** by section 24 of the **Transport Legislation Amendment (Ports Integration) Act 2010**, No. 45/2010.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

Port Management Act 1995
No. 82 of 1995
Endnotes

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Port Management Act 1995** by Acts and subordinate instruments.

Melbourne City Link Act 1995, No. 107/1995

Assent Date: 12.12.95
Commencement Date: S. 127 on 14.12.95: Special Gazette (No. 120)
14.12.95 p. 3
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Superannuation Acts (Amendment) Act 1996, No. 4/1996

Assent Date: 18.6.96
Commencement Date: S. 134(10) on 18.6.96: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Statute Law Revision (Marine) Act 1996, No. 27/1996

Assent Date: 24.9.96
Commencement Date: S. 3 on 16.11.95: s. 2(2); ss 4(2), 5 on 14.12.95:
s. 2(3); s. 4(1) on 1.3.96: s. 2(4); rest of Act on
24.9.96: s. 2(1)
Current State: All of Act in operation

Port Services and Marine (Amendment) Act 1996, No. 51/1996

Assent Date: 26.11.96
Commencement Date: S. 13 on 14.12.95: s. 2(2); rest of Act on 26.11.96:
s. 2(1)
Current State: All of Act in operation

Port Services (Amendment) Act 1997, No. 63/1997

Assent Date: 5.11.97
Commencement Date: S. 9(2) on 28.11.95: s. 2(2); ss 6(1)(2), 7, 8 on 9.12.97;
ss 3–5, 9(3) on 10.12.97: Government Gazette 4.12.97
p. 3290; s. 6(3)(4) on 1.7.99: s. 2(4)
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Miscellaneous Acts (Omnibus No. 1) Act 1998, No. 43/1998

Assent Date: 26.5.98
Commencement Date: S. 47 on 26.5.98: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

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Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 46) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 57) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 92) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Essential Services Commission Act 2001, No. 62/2001

Assent Date: 23.10.01
Commencement Date: Ss 86–88 on 1.1.02: s. 2
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Marine (Further Amendment) Act 2001, No. 77/2001

Assent Date: 27.11.01
Commencement Date: S. 32(4) on 7.2.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Port Services (Port of Melbourne Reform) Act 2003, No. 23/2003

Assent Date: 13.5.03
Commencement Date: Ss 3–17, 24, Sch. on 1.7.03: s. 2(1); ss 18–23 on 3.11.03: Government Gazette 30.10.03 p. 2744
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Port Services (Port Management Reform) Act 2003, No. 85/2003

Assent Date: 11.11.03
Commencement Date: Ss 3, 4, 7, 8, 12–17, 20–22 on 12.11.03: s. 2(1); ss 5(2)(3), 9, 23, 26(1), 29 on 1.1.04: Government Gazette 18.12.03 p. 3208; ss 10, 24, 26(2), 30 on 1.4.04: Government Gazette 1.4.04 p. 714; ss 5(1), 6, 11, 18, 19, 25, 27, 28 on 1.7.04: s. 2(3)
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Marine (Amendment) Act 2004, No. 9/2004

Assent Date: 11.5.04
Commencement Date: S. 30 on 12.5.04: s. 2(1); ss 26–29 on 1.7.04: Government Gazette 1.7.04 p. 1843
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

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Essential Services Commission (Amendment) Act 2004, No. 75/2004

Assent Date: 9.11.04
Commencement Date: Ss 68–75 on 10.11.04: s. 2
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Occupational Health and Safety Act 2004, No. 107/2004

Assent Date: 21.12.04
Commencement Date: S. 184 on 1.7.05: s. 3(1)
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 159) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Transport Legislation (Amendment) Act 2004, No. 110/2004

Assent Date: 21.12.04
Commencement Date: Ss 58–62(Sch.) on 1.2.05: Government Gazette 20.1.05 p. 94
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 85) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Port Services Amendment Act 2007, No. 63/2007

Assent Date: 4.12.07
Commencement Date: Ss 3–18(Sch.) on 1.1.08: Government Gazette 20.12.07 p. 3118
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 48) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Transport Legislation Miscellaneous Amendments Act 2009, No. 17/2009

Assent Date: 12.5.09
Commencement Date: Ss 6–9 on 13.5.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

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**Statute Law Amendment (Evidence Consequential Provisions) Act 2009,
No. 69/2009**

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 43) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

**Transport Legislation Amendment (Hoon Boating and Other Amendments)
Act 2009, No. 93/2009**

Assent Date: 15.12.09
Commencement Date: S. 11 on 31.3.10: Special Gazette (No. 110) 30.3.10
p. 1; ss 10, 12–14 on 1.11.10: Government Gazette
21.10.10 p. 2531
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)

Assent Date: 2.3.10
Commencement Date: Ss 24(5)(Sch. 1 item 10), 203(1)(Sch. 6 item 36) on
1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Transport Legislation Amendment (Ports Integration) Act 2010, No. 45/2010

Assent Date: 17.8.10
Commencement Date: Ss 24–41 on 1.9.10: Special Gazette (No. 337) 24.8.10
p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Marine Safety Act 2010, No. 65/2010 (as amended by No. 78/2011)

Assent Date: 28.9.10
Commencement Date: Ss 418, 419 on 1.7.12: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

**Personal Property Securities (Statute Law Revision and Implementation)
Act 2010, No. 74/2010**

Assent Date: 19.10.10
Commencement Date: S. 35 on 30.1.12: Special Gazette (No. 423) 21.12.11
p. 3
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

**Transport Legislation Amendment (Port of Hastings Development Authority)
Act 2011, No. 38/2011**

Assent Date: 23.8.11
Commencement Date: Ss 22–34 on 1.1.12: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

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Transport Legislation Amendment (Marine Safety and Other Amendments) Act 2011, No. 78/2011

Assent Date: 13.12.11
Commencement Date: Ss 50–53 on 1.1.12: Special Gazette (No. 423)
21.12.11 p. 4
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Port Management Amendment (Port of Melbourne Corporation Licence Fee) Act 2012, No. 8/2012

Assent Date: 6.3.12
Commencement Date: Ss 4, 5 on 1.7.12: s. 2(2)
Current State: All of Act in operation

Australian Consumer Law and Fair Trading Act 2012, No. 21/2012

Assent Date: 8.5.12
Commencement Date: S. 239(Sch. 6 item 35) on 1.7.12: Special Gazette
(No. 214) 28.6.12 p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Port Management Further Amendment Act 2012, No. 54/2012

Assent Date: 18.9.12
Commencement Date: Ss 4–17 on 14.11.12: Special Gazette (No. 373)
7.11.12 p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Transport Legislation Amendment (Marine Drug and Alcohol Standards Modernisation and Other Matters) Act 2012, No. 66/2012

Assent Date: 7.11.12
Commencement Date: S. 28 on 1.12.12: Special Gazette (No. 373) 7.11.12
p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 4(Sch. 2 item 38) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Emergency Management Act 2013, No. 73/2013

Assent Date: 3.12.13
Commencement Date: S. 99 on 1.7.14: Special Gazette (No. 148) 13.5.14 p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

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Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 128) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Treasury Legislation and Other Acts Amendment Act 2014, No. 44/2014

Assent Date: 27.6.14
Commencement Date: S. 33(Sch. item 21) on 30.6.14: s. 2(5)
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Filming Approval Act 2014, No. 51/2014

Assent Date: 12.8.14
Commencement Date: S. 9(Sch. 2 item 14) on 1.3.15: s. 2(2)
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Statute Law Revision Act 2015, No. 21/2015

Assent Date: 16.6.15
Commencement Date: S. 3(Sch. 1 item 39) on 1.8.15: s. 2(1)
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016, No. 10/2016

Assent Date: 22.3.16
Commencement Date: Ss 94(1)(b)(2), 95–98, 103–122, 131–153, 155–157 on 7.6.16: Special Gazette (No. 177) 7.6.16 p. 1; ss 94(1)(a), 99–102, 123–130, 154 on 1.7.16: Special Gazette (No. 177) 7.6.16 p. 1; s. 179(Sch. 1 item 7) on 1.11.16: Special Gazette (No. 325) 25.10.16 p. 1
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Transport Integration Amendment (Head, Transport for Victoria and Other Governance Reforms) Act 2017, No. 3/2017

Assent Date: 14.2.17
Commencement Date: S. 50(Sch. 1 item 5) on 12.4.17: Special Gazette (No. 117) 12.4.17 p. 1
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

Parks and Crown Land Legislation Amendment Act 2017, No. 53/2017

Assent Date: 24.10.17
Commencement Date: S. 89 on 15.12.17: Special Gazette (No. 433) 12.12.17 p. 1
Current State: This information relates only to the provision/s amending the **Port Management Act 1995**

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Ports and Marine Legislation Amendment Act 2017, No. 55/2017

Assent Date: 8.11.17
Commencement Date: Ss 43–51 on 31.12.17: Special Gazette (No. 433)
12.12.17 p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

**Transport Legislation Amendment (Road Safety, Rail and Other Matters)
Act 2017, No. 68/2017**

Assent Date: 19.12.17
Commencement Date: S. 124 on 20.12.17: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Parks Victoria Act 2018, No. 19/2018

Assent Date: 5.6.18
Commencement Date: S. 248 on 12.9.18: Special Gazette (No. 386) 21.8.18
p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Marine and Coastal Act 2018, No. 26/2018

Assent Date: 26.6.18
Commencement Date: S. 97 on 1.8.18: Special Gazette (No. 337) 17.7.18 p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Environment Protection Amendment Act 2018, No. 39/2018 (as amended by
No. 11/2020)

Assent Date: 28.8.18
Commencement Date: S. 51 on 1.7.21: Special Gazette (No. 124) 16.3.21 p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

**Essential Services Commission Amendment (Governance, Procedural and
Administrative Improvements) Act 2019, No. 21/2019**

Assent Date: 20.8.19
Commencement Date: S. 28 on 6.12.19: Special Gazette (No. 496) 3.12.19
p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

Transport Legislation Amendment Act 2019, No. 49/2019

Assent Date: 3.12.19
Commencement Date: S. 186(Sch. 4 item 34) on 1.1.20: Special Gazette
(No. 514) 10.12.19 p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

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**Essential Services Commission (Compliance and Enforcement Powers)
Amendment Act 2021, No. 41/2021**

Assent Date: 19.10.21
Commencement Date: Ss 135–138 on 1.12.21: Special Gazette (No. 673)
30.11.21 p. 1
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

**Transport Legislation Amendment (Port Reforms and Other Matters) Act 2022,
No. 19/2022**

Assent Date: 24.5.22
Commencement Date: Ss 34–58, 61, 67 on 1.7.22: Government Gazette
23.6.22 p. 2737
Current State: This information relates only to the provision/s
amending the **Port Management Act 1995**

3 Explanatory details

¹ S. 62(5) (*repealed*): The amendment proposed by section 239(Schedule 6 item 35) of the **Australian Consumer Law and Fair Trading Act 2012**, No. 21/2012 is not included in this publication due to the earlier repeal of section 62 by section 52 of the **Transport Legislation Amendment (Marine Safety and Other Amendments) Act 2011**, No. 78/2011.

Schedule 6 item 35 reads as follows:

35 Port Management Act 1995

35.1 In section 62(5), for "Trade Practices Act 1974"
substitute "Competition and Consumer
Act 2010".