



New South Wales

Ports and Maritime Administration Amendment (Port Competition and Co-ordination) Act 2008 No 89

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Ports and Maritime Administration Amendment (Port Competition and Co-ordination) Act 2008 No 89

Act No 89, 2008

An Act to amend the *Ports and Maritime Administration Act 1995* to make further provision for the objects and functions of Port Corporations, the powers of the Minister and the making of regulations with respect to port facilities and services and the port-related supply chain. [Assented to 19 November 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Ports and Maritime Administration Amendment (Port Competition and Co-ordination) Act 2008*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Ports and Maritime Administration Act 1995 No 13

The *Ports and Maritime Administration Act 1995* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

port-related supply chain means land-based services and facilities provided or operated in connection with cargo transport, handling and storage operations (and the co-ordination of those operations) at a port or supply chain facility, or between a port and a supply chain facility.

supply chain facility means a public-access facility provided for the storage, handling and distribution of cargo in connection with its transport to or from a port, including facilities for the storage and handling of empty cargo containers and facilities for the staging and exchange of cargo between different modes of transport (such as an intermodal terminal).

[2] Section 9 Objectives of Port Corporations

Insert at the end of section 9 (c):

, and

- (d) to promote and facilitate a competitive commercial environment in port operations, and
- (e) to improve productivity and efficiency in its ports and the port-related supply chain.

[3] Section 10 Functions of Port Corporations

Insert at the end of section 10 (2) (b):

, and

- (c) to facilitate and co-ordinate improvements in the efficiency of the port-related supply chain.

[4] Sections 10A and 10B

Insert after section 10:

10A Ministerial directions to Port Corporation—competition and productivity

- (1) The Minister may give a Port Corporation directions in writing in relation to the exercise of any of the Corporation's functions in connection with its principal objectives under section 9 (d) and (e).

- (2) The Minister is to advise the voting shareholders of a Port Corporation of the giving and the terms of any such direction.
- (3) A Port Corporation is required to comply with a direction under this section.
- (4) If a Port Corporation considers that complying with any such direction may cause a significant variation in its approved financial outcomes, the Corporation must request the Minister to review the direction.
- (5) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines.
- (6) If a Port Corporation requests such a review:
 - (a) the Corporation may request the Minister to provide it with a written record of the direction if it was not given in writing, and
 - (b) the Corporation is not to comply with the direction until notified of the Minister's decision following the review.
- (7) Following the review, the Minister may confirm or revoke the direction but the Minister is not to confirm the direction unless:
 - (a) the Minister has estimated the variation in the approved financial outcomes from the information supplied by the Port Corporation, and
 - (b) the Minister has referred the matter to the Treasurer, and
 - (c) the Treasurer has approved the direction.
- (8) The Minister's power to give directions to a Port Corporation under this section is in addition to the power of the Minister to give directions under section 20N, 20O or 20P of the *State Owned Corporations Act 1989*. Those sections of that Act do not apply to a direction of the Minister if the direction states that it is being given under this section.

10B Regulations to promote competition and productivity at ports

- (1) The regulations may make provision for or with respect to any of the matters set out in Schedule 4 in connection with the operation or provision of land-based port facilities and services and the facilities and services of the port-related supply chain, in relation to the operation of the following ports:
 - (a) Sydney Harbour,
 - (b) Botany Bay,

- (c) Newcastle,
- (d) Port Kembla.
- (2) This section does not authorise the making of regulations with respect to the operation of any railway outside a port or supply chain facility.
- (3) A regulation under this section may create an offence punishable by a penalty not exceeding 500 penalty units.

[5] Section 101

Omit the section. Insert instead:

101 Offences

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before:
 - (a) a Local Court, or
 - (b) the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought before a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

[6] Schedule 4

Insert after Schedule 3:

Schedule 4 Regulations to promote competition and productivity at ports

(Section 10B)

1 Information for monitoring performance and investment

Requiring (or authorising the Minister to require) a person who operates or provides land-based port facilities or services or facilities and services of the port-related supply chain to provide a Port Corporation or other specified person with information relating to the operation or provision of those facilities or services, for the purpose of facilitating the monitoring of any of the following:

- (a) performance and efficiency in the operation or provision of those facilities or services,
- (b) capital investment in connection with the operation or provision of those facilities or services.

2 Mandatory standards

Setting (including authorising the Minister to set) standards (referred to in this Schedule as *mandatory standards*) in connection with the operation or provision of land-based port facilities and services or facilities and services of the port-related supply chain, including (without limitation) mandatory standards relating to any of the following:

- (a) performance in the delivery and use of services,
- (b) access to facilities and services,
- (c) handling capacity of facilities and services,
- (d) co-ordination of the delivery of services in the port-related supply chain.

3 Reporting on compliance with mandatory standards

Requiring (including authorising the Minister to require) the operator or provider of land-based port facilities or services or facilities and services of the port-related supply chain to keep records and provide information (including reports) to the Minister or a Port Corporation, to facilitate the monitoring of compliance with mandatory standards.

4 Verifying compliance with mandatory standards

Verifying compliance with mandatory standards, including (without limitation):

- (a) requiring the auditing of compliance, and
- (b) authorising entry onto and inspection of any premises or facilities at a port or supply chain facility to facilitate verification of compliance.

5 Compliance incentives and penalties

- (1) Providing incentives to encourage compliance with mandatory standards and imposing sanctions and penalties for any failure to comply with mandatory standards, including (without limitation):
 - (a) creating offences for any failure to comply with mandatory standards, and
 - (b) requiring the payment of and providing for the recovery of financial penalties in connection with a failure by any participant in the port-related supply chain to comply with the mandatory standards, and

(c) providing for any financial penalty payable in connection with a failure to comply with a mandatory standard to be collected by a Port Corporation on behalf of the person to whom the penalty is payable for payment to that person, to facilitate the due payment and recovery of penalties and the reconciliation of penalty liabilities.

(2) In this clause:

financial penalty means a monetary penalty payable by a participant in the port-related supply chain to another participant in the port-related supply chain in connection with a failure to comply with a mandatory standard.

participant in the port-related supply chain means a person who operates or makes use of any facility, or who provides or makes use of any service, in the port-related supply chain.

6 Supply chain charges

Regulating (or authorising the Minister to regulate) the charges (***supply chain charges***) that may be imposed for or in connection with the operation or provision of facilities or services of the port-related supply chain at a port or supply chain facility, including (without limitation):

- (a) setting maximum supply chain charges, and
- (b) regulating the manner in which supply chain charges are to be set or determined (for example, by providing for charges to be set by means of an auction or other market-based pricing mechanism), and
- (c) specifying or otherwise determining the persons by whom supply chain charges are payable, and
- (d) regulating the collection and recovery of supply chain charges, and
- (e) prohibiting the imposition, collection or recovery of supply chain charges contrary to the regulations.

7 Disclosure of information

Authorising, prohibiting and otherwise regulating the publication or disclosure of information provided in response to a requirement imposed by or under a regulation under this Schedule.

[Agreement in principle speech made in Legislative Assembly on 24 September 2008
Second reading speech made in Legislative Council on 11 November 2008]

BY AUTHORITY