

South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

MARITIME SERVICES (ACCESS) ACT 2000

No. 82 of 2000

[Assented to 14 December 2000]

An Act to provide for access to South Australian ports and maritime services on fair commercial terms; to provide for price regulation of essential maritime services; to amend the South Australian Ports (Bulk Handling Facilities) Act 1996; and for other purposes.

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Amendment of South Australian Ports (Bulk Handling Facilities) Act 1996

The Parliament of South Australia enacts as follows:

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the *Maritime Services (Access) Act 2000*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Objects

3. The objects of this Act are—

- (a) to provide access to maritime services on fair commercial terms; and
- (b) to facilitate competitive markets in the provision of maritime services; and
- (c) to protect the interests of users of essential maritime services by ensuring that regulated prices are fair and reasonable having regard to the level of competition in, and efficiency of, the regulated industry; and
- (d) to ensure that disputes about access are subject to an appropriate dispute resolution process.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"associate"—see subsection (2);

"customer" means a person who seeks the provision of a maritime service;

"essential maritime industry" means an industry of providing an essential maritime service or essential maritime services;

"essential maritime service" means a maritime service consisting of—

- (a) providing or allowing for access of vessels to a proclaimed port; or
- (b) providing port facilities for loading or unloading vessels at a proclaimed port; or
- (c) providing berths for vessels at a proclaimed port;

"Industry Regulator" means the South Australian Independent Industry Regulator established under Part 2 of the *Independent Industry Regulator Act 1999*;

"initial period of price regulation" means the first 3 years after the commencement of section 6;

"interested third party"—see section 14;

"maritime industry" means an industry of providing a maritime service or maritime services;

"maritime service" means a service provided on a commercial basis of any of the following kinds:

- (a) providing or allowing for access of vessels to a proclaimed port;
- (b) a pilotage service facilitating access to a proclaimed port;
- (c) providing berths for vessels at a proclaimed port;
- (d) providing port facilities for loading or unloading vessels at a proclaimed port;
- (e) providing for the storage of goods at a proclaimed port;
- (f) providing access to land in connection with the provision of services of any of the kinds mentioned above,

but does not include any of the following:

- (g) a towage service for facilitating access to a proclaimed port;
- (h) a bunkering service provided at a proclaimed port;
- (i) a service for the provisioning of vessels (including the supply of electricity and water) within a proclaimed port;
- (j) a service for the removal of waste from vessels at a proclaimed port;

"port facility" means buildings, wharves and jetties, plant and equipment (but not stevedoring plant and equipment) at a proclaimed port for carrying on a business of providing a maritime service and includes natural and artificial elements or aspects of a harbour on which a proclaimed port is established that are relevant to such a business;

"pricing determination" means a determination under the *Independent Industry Regulator Act 1999* regulating prices, conditions relating to prices and price-fixing factors for goods and services;

"proclaimed port" means a port declared by proclamation to be subject to this Act;

"regulated operator" or **"operator"** means a person who is subject to the access regime prescribed by this Act;

"regulated services" means services declared by proclamation to be regulated services under section 10.

(2) Two persons are **associates** of each other if—

- (a) they are related bodies corporate within the meaning of the *Corporations Law*; or
- (b) one is a body corporate and the other is a director or secretary of the body corporate; or
- (c) they are members of the same partnership or joint venture; or
- (d) one is a trustee and the other is a beneficiary of the same trust; or

- (e) there is an agreement, arrangement or understanding (whether enforceable or not) under which—
 - (i) one acts in accordance with the directions, instructions or wishes of the other; or
 - (ii) if one or both are bodies corporate—a majority of the directors of one act in accordance with the directions, instructions or wishes of the other,(other than an agreement, arrangement or understanding entered into in the ordinary course of business for the supply of goods or services); or
- (f) the regulations declare them to be associates for the purposes of this Act; or
- (g) a chain of associations can (by applying any one or more of the above provisions) be traced between them through another person or other persons.

Proclaimed ports

5. (1) The Governor may, by proclamation, declare any one or more of the following ports to be subject to this Act:

- (a) Port Adelaide;
- (b) Port Giles;
- (c) Wallaroo;
- (d) Port Pirie;
- (e) Port Lincoln;
- (f) Thevenard;
- (g) any other port declared by regulation to be capable of being brought within the application of this Act.

(2) A proclamation under this section may define the boundaries of the proclaimed port.

PART 2
REGULATION OF MARITIME INDUSTRIES

DIVISION 1—ESSENTIAL MARITIME INDUSTRIES

Certain maritime industries to be regulated industries

6. (1) Essential maritime industries are regulated industries for the purposes of the *Independent Industry Regulator Act 1999*.

(2) The first pricing determination to be made during the initial period of price regulation relating to essential maritime industries is to be made by the Minister.

(3) For the purpose of making the pricing determination referred to in subsection (2), the *Independent Industry Regulator Act 1999* applies as if the Minister were the Industry Regulator.

(4) The Minister's pricing determination operates as a determination under Part 3 of the *Independent Industry Regulator Act 1999* and, during the initial period of price regulation, cannot be varied or revoked except as contemplated in that determination.

(5) For the purposes of the *Independent Industry Regulator Act 1999* a person to whom the control and management of a port is assigned by a port operating agreement under the *Harbors and Navigation Act 1993* will be regarded as a licensed entity.

(6) The Industry Regulator's powers and responsibilities are not affected by this section except to the extent expressly provided and, in particular, the Industry Regulator is responsible for the enforcement of the pricing determination made under subsection (2).

Review to be conducted by Industry Regulator

7. (1) The Industry Regulator must, before the end of the initial period of price regulation, conduct a review of the industries subject to the pricing determination to determine whether essential maritime services should continue to be subject to price regulation and, if so, the appropriate form of the regulation.

(2) In conducting the review, the Industry Regulator must comply with any provisions of the pricing determination that are relevant to the carrying out of the review.

(3) The Industry Regulator must give reasonable notice of the review in a newspaper circulating generally throughout the State inviting written submissions on the matters under review within a reasonable time specified in the notice.

(4) The Industry Regulator must consider submissions made in response to the notice and other submissions made in the course of other forms of public consultation undertaken by the Industry Regulator in connection with the review.

(5) On completing the review, the Industry Regulator must forward to the Minister a report on the review and the conclusions reached by the Industry Regulator as a result of the review.

DIVISION 2—PILOTAGE**Obligation to maintain a current schedule of pilotage charges**

8. (1) A person who carries on a business involving the provision of pilotage services in relation to a proclaimed port must—

- (a) maintain a schedule of current pilotage charges; and
- (b) provide, at the request of a member of the public, a copy of the current schedule.

Maximum penalty: \$2 500.

(2) Before a person who carries on business involving the provision of pilotage services changes pilotage charges, the person must give the Industry Regulator—

- (a) a copy of the proposed new schedule of pilotage charges; and
- (b) a description of the changes and the reasons for them.

Maximum penalty: \$2 500.

**DIVISION 3—GENERAL FUNCTIONS OF INDUSTRY REGULATOR
IN RELATION TO MARITIME INDUSTRIES****General functions of Industry Regulator**

9. (1) The Industry Regulator must keep maritime industries under review with a view to determining whether regulation (or further regulation) is required under the *Independent Industry Regulator Act 1999*.

(2) The Industry Regulator may—

- (a) develop and issue standards to be complied with in the provision of a maritime service;
and
- (b) revise standards issued under this section from time to time.

(3) A standard issued by the Industry Regulator under this section is for the guidance of those engaged in maritime industries and does not have the force of law.

(4) However, if such a standard is promulgated as a regulation it has the force of law and contravention of the standard attracts a penalty fixed in the regulations.

PART 3
ACCESS TO MARITIME SERVICES AT PROCLAIMED PORTS

DIVISION 1—REGULATED PORT OPERATORS

Regulated port operators

10. A person (a **regulated operator**) is subject to the access regime prescribed by this Act if the person carries on a business of providing maritime services at a proclaimed port that are declared by proclamation to be regulated services.

DIVISION 2—BASIS OF ACCESS

Access on fair commercial terms

11. (1) A regulated operator must provide regulated services on terms—

- (a) agreed between the operator and the customer; or
- (b) if they do not agree, on fair commercial terms determined by arbitration under this Act.

(2) A term as to the price at which regulated services are to be provided will be regarded as a fair commercial term if the price is regulated by a pricing determination under the *Independent Industry Regulator Act 1999* and the term is consistent with that determination.

DIVISION 3—NEGOTIATION OF ACCESS

Preliminary information to assist proponent to formulate proposal

12. (1) A regulated operator must, at the request of a person who intends to ask the operator to provide a regulated service (the **intending proponent**), provide the intending proponent with—

- (a) information reasonably requested about—
 - (i) the extent to which the regulated operator's port facilities subject to the access regime are currently being utilised; and
 - (ii) technical requirements that have to be complied with by persons for whom the operator provides regulated services; and
 - (iii) the rules with which the intending proponent would be required to comply; and
- (b) the information about the price of regulated services provided by the operator that is required to be provided under guidelines issued by the Industry Regulator.

(2) If the operator requires, an intending proponent must pay a reasonable charge fixed by the operator for the supply of information requested under this section.

Proposal for access

13. (1) A person who wants a regulated service (the **proponent**) may make a written proposal to a regulated operator setting out proposed terms and conditions for the provision of the maritime service.

(2) A proposal may provide for—

- (a) the modification of port facilities on land occupied by the operator for the purpose of providing the relevant service; or
- (b) the establishment of additional port facilities on land occupied by the operator for the purpose of providing the relevant service.

(3) If the operator requires, a proponent must provide further information about the proponent's proposal that the operator reasonably requires in order to give the information for which the proponent has asked.

(4) The operator must, within one month after the relevant day—

- (a) give written notice of the proposal to—
 - (i) the Industry Regulator; and
 - (ii) any person (an **affected third party**) whose rights would be affected by implementation of the proposal; and
- (b) notify the proponent of the name and address of any affected third party and give the proponent a preliminary indication about—
 - (i) whether the operator is prepared to provide the regulated service sought in the proposal and, if so, on what terms and conditions; and
 - (ii) if some alteration of, or addition to, existing facilities would be necessary to provide the services, whether the operator would agree to the alteration or addition and, if so, on what terms.

(5) The **relevant day** is the day on which the written proposal is made to the operator, or if the operator requires further information under subsection (3), the day on which that information is provided.

(6) Notice of an access proposal may be given to affected third parties by publishing a notice in a newspaper circulating generally in the State stating—

- (a) the name of the proponent and an address at which the proponent may be contacted; and
- (b) the name of the operator and an address at which the operator may be contacted; and
- (c) the general nature of the access proposal.

(7) A regulated operator may recover the reasonable costs of giving notice under this section, as a debt, from the proponent.

Duty to negotiate in good faith

14. (1) The operator and any interested third parties must negotiate with the proponent in good faith and on the basis that the proponent's reasonable requirements are to be accommodated as far as practicable.

(2) An **interested third party** is an affected third party who, by notice given to the proponent or the operator, indicates its interest in the negotiations.

Existence of dispute

15. (1) If, within 30 days after the proposal is made, the operator, the proponent and any interested third parties have not agreed on terms for the provision of the proposed service, a dispute exists.

(2) A party to the dispute may refer the dispute to the Industry Regulator.

DIVISION 4—CONCILIATION**Settlement of dispute by conciliation**

16. (1) If a dispute is referred to the Industry Regulator, the Industry Regulator must, in the first instance, attempt to resolve the dispute by conciliation.

(2) The Industry Regulator need not attempt to resolve a dispute by conciliation if, in the Industry Regulator's opinion—

- (a) the subject-matter of the dispute is trivial, misconceived or lacking in substance; or
- (b) the parties have not negotiated in good faith.

(3) In attempting to resolve a dispute by conciliation, the Industry Regulator must have regard to the same factors as would be relevant in an arbitration of the dispute.

Voluntary and compulsory conferences

17. (1) The Industry Regulator may call voluntary or compulsory conferences of the parties to the dispute to explore the possibility of resolving the dispute by agreement.

(2) The Industry Regulator, or a nominee of the Industry Regulator, will preside at any such conference.

(3) A party to a dispute who is asked by the Industry Regulator to attend a conference under this section must attend the conference if the Industry Regulator indicates in the request that attendance is compulsory.

Maximum penalty: \$20 000.

DIVISION 5—REFERENCE OF DISPUTE TO ARBITRATION**Power to refer dispute to arbitration**

18. (1) If a dispute is not resolved by conciliation after the Industry Regulator has made reasonable attempts to do so, or if it appears unlikely that a dispute can be resolved by conciliation, the Industry Regulator may refer the dispute to arbitration.

(2) The Industry Regulator need not refer a dispute to arbitration if, in the Industry Regulator's opinion—

- (a) the subject-matter of the dispute is trivial, misconceived or lacking in substance; or
- (b) the parties have not negotiated in good faith; or

(c) there are other good reasons why the dispute should not be referred to arbitration.

(3) The arbitrator is to be a person selected by the Industry Regulator after consultation with the parties to the dispute.

(4) Following consultation, the Industry Regulator may decide to act as arbitrator.

(5) If for some reason an arbitrator does not complete an arbitration, the Industry Regulator may, after consultation with the parties, make a fresh appointment or decide to act as arbitrator himself or herself.

Application of Commercial Arbitration Act 1986

19. The *Commercial Arbitration Act 1986* applies to an arbitration under this Act to the extent that it may operate consistently with the provisions of this Act.

DIVISION 6—PARTIES AND REPRESENTATION

Parties to the arbitration

20. The parties to the arbitration are—

- (a) the proponent, the operator and any interested third parties; and
- (b) any other person whose interests may be materially affected by the outcome of the arbitration and who is joined as a party to the arbitration by the arbitrator.

Representation

21. A party to an arbitration may be represented by a lawyer or, by leave of the arbitrator, another representative.

Industry Regulator's right to participate

22. (1) The Industry Regulator may participate in arbitration proceedings under this Act.

(2) If the Industry Regulator participates, the Industry Regulator may call evidence and make representations on the questions subject to the arbitration.

DIVISION 7—CONDUCT OF ARBITRATION

Arbitrator's duty to act expeditiously

23. An arbitrator must proceed with the arbitration as quickly as the proper investigation of the dispute, and the proper consideration of all matters relevant to the fair determination of the dispute, allow.

Hearings to be in private

24. (1) Arbitration proceedings must be conducted in private unless all parties agree to have the proceedings conducted in public.

(2) An arbitrator may give directions about who may be present at arbitration proceedings conducted in private.

(3) In giving directions under subsection (2), the arbitrator must have regard to the wishes of the parties and the need for commercial confidentiality.

(4) A person must comply with a direction under subsection (2).

Maximum penalty: \$20 000.

(5) If the arbitrator considers it in the public interest to do so, the arbitrator may give public notice of the outcome of an arbitration.

Procedure on arbitration

25. (1) An arbitrator—

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) may obtain information on matters relevant to the dispute in any way the arbitrator thinks appropriate.

Example—

The arbitrator may, for example, conduct proceedings by—

- telephone; or
- closed circuit television; or
- other means of communicating at a distance.

(2) An arbitrator may require the presentation of evidence or argument in writing and may decide matters on which the arbitrator will hear oral evidence or argument.

Procedural powers of arbitrator

26. (1) An arbitrator may—

- (a) give procedural directions;
- (b) make orders requiring—
 - (i) the delivery of documents clarifying the issues between the parties;
 - (ii) the discovery and inspection of documents;
- (c) sit at any time or place;
- (d) adjourn the arbitration proceedings from time to time and from place to place;
- (e) refer a matter to an expert for report, and accept the expert's report in evidence;
- (f) do anything else necessary for the expeditious hearing and determination of the dispute.

(2) An arbitrator may hear two or more proceedings relating to the same general subject matter together.

(3) An arbitrator may proceed with arbitration proceedings in the absence of a party if the party has been given at least 14 days notice of the proceedings.

(4) An arbitrator may engage a lawyer to provide advice on the conduct of the arbitration and to assist the arbitrator in drafting the award.

Power to obtain information and documents

27. (1) If an arbitrator has reason to believe that a person is in a position to give information or to produce documents, that may be relevant to the dispute, the arbitrator may, by written notice—

- (a) require the person within a period stated in the notice—
 - (i) to give the arbitrator a written statement of specified information; or
 - (ii) to produce to the arbitrator specified documents or copies of specified documents; or
- (b) require the person to appear before the arbitrator at a specified time and place to give evidence.

(2) A written statement must, if the arbitrator so requires, be verified by statutory declaration of the person providing the information or, if the person is a body corporate, an appropriate officer of the body corporate.

(3) If documents are produced to an arbitrator, the arbitrator may—

- (a) take possession of, make copies of, and take extracts from, the documents; and
- (b) keep the documents for as long as is necessary for the purposes of the arbitration.

(4) A person must—

- (a) comply with a requirement of the arbitrator under subsection (1) or (2); and
- (b) if the person is required to appear as a witness before the arbitrator—comply with further requirements to make an oath or affirmation, or to answer questions.

Maximum penalty: \$20 000.

(5) However, a person need not give information or produce a document if—

- (a) the information or the contents of the document are the subject of legal professional privilege, or would tend to incriminate the person of an offence; and
- (b) the person objects to giving the information or producing the document by giving written notice of the ground of the objection to the arbitrator or, if the person is appearing as a witness before the arbitrator, by an oral statement of the ground of objection.

Confidentiality of information

28. (1) A person who gives the arbitrator information, or produces documents, may ask the arbitrator to keep the information or the contents of the documents confidential.

(2) The arbitrator may, after considering representations from the parties, impose conditions limiting access to, or disclosure of, the information or documentary material.

(3) A person must not contravene a condition imposed under subsection (2).

Maximum penalty: \$75 000.

Proponent's right to terminate arbitration before an award is made

29. (1) The proponent may terminate the arbitration before an award is made.

(2) The arbitration is terminated under this section by giving notice of termination to—

- (a) the Industry Regulator; and
- (b) the arbitrator; and
- (c) the other parties to the arbitration.

Arbitrator's power to terminate arbitration

30. (1) An arbitrator may at any time terminate an arbitration without making an award if the arbitrator is satisfied—

- (a) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
- (b) the proponent has not engaged in negotiations in good faith; or
- (c) the terms and conditions on which the maritime service is to be provided should continue to be governed by an existing contract or award.

(2) Before terminating an arbitration under this section, the arbitrator must give the Industry Regulator an opportunity to make representations on the matter.

DIVISION 8—AWARDS

Formal requirements related to awards

31. (1) An award must—

- (a) be in writing; and
- (b) set out the reasons on which it is based; and
- (c) specify the period for which it remains in force.

(2) The arbitrator must, within 7 days after an award is made, give a copy of the award to—

- (a) the Industry Regulator; and
- (b) the parties to the award.

Principles to be taken into account by the arbitrator

32. In deciding on the terms of an award, the arbitrator should take into account—

- (a) the operator's legitimate business interest and investment in the port or port facilities; and

- (b) the costs to the operator of providing the service (including the costs of any necessary modification to, or extension of, a port facility) but not costs associated with losses arising from increased competition in upstream or downstream markets; and
- (c) the economic value to the operator of any additional investment that the proponent or the operator has agreed to undertake; and
- (d) the interests of all persons holding contracts for use of any relevant port facility; and
- (e) firm and binding contractual obligations of the operator or other persons (or both) already using any relevant port facility; and
- (f) the operational and technical requirements necessary for the safe and reliable provision of the service; and
- (g) the economically efficient operation of any relevant port facility; and
- (h) the benefit to the public from having competitive markets.

Incidental legal effect of awards

33. (1) An award may vary the rights of other customers of the operator under existing contracts or awards if—

- (a) those customers will continue to be able to meet their reasonably anticipated requirements measured at the time when the dispute was notified to the Industry Regulator; and
- (b) the terms of the award provide appropriate compensation for loss or damage (if any) suffered by those customers as a result of the variation of their rights.

(2) An award may require the operator to extend, or permit the extension of, the port facilities under the operator's control if—

- (a) the extension is technically and economically feasible and consistent with the safe and reliable operation of the facilities; and
- (b) the operator's legitimate business interests in the port facilities are protected; and
- (c) the terms on which the service is to be provided to the proponent take into account the costs and the economic benefits to the parties of the extension.

Consent awards

34. If—

- (a) the parties to an arbitration consent to a proposed award; and
- (b) the arbitrator is satisfied that the award is appropriate in the circumstances,

the arbitrator may make an award in the terms proposed.

Proponent's option to withdraw from award

35. (1) A proponent may, within 7 days after the making of an award or such further time as the Industry Regulator may allow, elect not to be bound by the award by giving written notice of the election to the Industry Regulator.

(2) The Industry Regulator must, within 7 days after receiving a notice of election under subsection (1), notify the operator and the other parties to the arbitration.

(3) If the proponent elects not to be bound by an award—

(a) the award is rescinded; and

(b) the proponent is precluded from making another proposal related to the same matter for 2 years from the date the notice of election was given unless the operator agrees or the Industry Regulator authorises a further proposal within that period.

(4) An authorisation under subsection (3)(b) may be given on conditions the Industry Regulator considers appropriate.

Termination or variation of award

36. (1) An award may be terminated or varied by agreement between all parties to the award.

(2) A variation may include an extension of the period for which the award remains in force.

(3) If a material change in circumstances occurs, a party to an award may propose termination or variation of the award.

(4) The provisions of this Part about an access proposal and the arbitration of a dispute arising from an access proposal apply with necessary modifications to a proposal made under this section or a dispute arising out of such a proposal.

DIVISION 9—ENFORCEMENT OF AWARD**Contractual remedies**

37. An award is enforceable as if it were a contract between the parties to the award.

Injunctive remedies

38. (1) The Supreme Court may grant an injunction—

(a) restraining a person from contravening an award; or

(b) requiring a person to comply with an award.

(2) The power of the Court to grant an injunction restraining a contravention of an award may be exercised—

(a) whether or not the defendant has previously contravened the relevant provision of the award; and

(b) whether or not there is imminent danger of substantial damage to any person.

(3) The power of the Court to grant an injunction requiring compliance with an award may be exercised—

- (a) whether or not the defendant has previously failed to comply with the relevant provision of the award; and
- (b) whether or not there is imminent danger of substantial damage to any person.

(4) The Court may grant an interim injunction under this section.

(5) An application for an injunction under this section may be made by—

- (a) the Industry Regulator; or
- (b) a person with a proper interest in whether the relevant provision is complied with.

(6) The Court may grant an injunction by consent without inquiring into the merits of the application.

(7) If the Industry Regulator makes an application for an injunction, the Court cannot require the Industry Regulator or any other person to give an undertaking about damages as a condition of granting the injunction.

(8) The Court may, on application by the Industry Regulator or an interested party, discharge or vary an injunction.

Compensation

39. (1) If a person contravenes an award, the Supreme Court may, on application by the Industry Regulator or an interested person, order compensation of persons who have suffered loss or damage as a result of the contravention.

(2) An order may be made under this section against the person who contravened the provision and others involved in the contravention.

(3) A person is **involved in the contravention** of an award if the person—

- (a) aided, abetted, counselled or procured the contravention; or
- (b) induced the contravention through threats or promises or in some other way; or
- (c) was knowingly concerned in, or a party to, the contravention; or
- (d) conspired with others to contravene the award.

DIVISION 10—APPEALS AND COSTS

Appeal from award on question of law

40. (1) An appeal lies to the Supreme Court from an award, or a decision not to make an award, on a question of law.

(2) On an appeal, the Court may exercise one or more of the following powers:

- (a) vary the award or decision;

- (b) revoke the award or decision;
- (c) make an award or decision that should have been made in the first instance;
- (d) remit the matter to the arbitrator for further consideration or re-consideration;
- (e) make incidental or ancillary orders (including orders for costs).

(3) An award or decision of an arbitrator cannot be challenged or called in question except by appeal under this section.

Costs

41. (1) The costs of an arbitration are to be borne by the parties in proportions decided by the arbitrator, and in the absence of a decision by the arbitrator, in equal proportions.

Example—

If the arbitrator were of the opinion that a party had failed to comply with the duty to negotiate in good faith, the arbitrator could order that party to bear the costs of the arbitration in their entirety.

(2) However, if a proponent terminates an arbitration or elects not to be bound by an award, the proponent must bear the costs in their entirety.

(3) The costs of an arbitration are recoverable as a debt.

DIVISION 11—SEGREGATION OF ACCOUNTS

Accounts and records relating to the provision of regulated services

42. (1) A regulated operator must keep accounts and records relating to the provision of regulated services separately from accounts and records related to other aspects of the business or businesses carried on by the operator.

(2) If regulated services are provided at different ports, separate accounts must be kept for each port.

(3) The accounts and records must be prepared and maintained in accordance with guidelines issued by the Industry Regulator.

(4) A regulated operator must, at the request of the Industry Regulator, make the accounts and records available for inspection by the Industry Regulator.

DIVISION 12—EXPIRY OF THIS PART

Review and expiry of this Part

43. (1) For the purposes of this Division each successive period of 3 years after the commencement of this Part is a triennial cycle.

(2) The Industry Regulator must, within the last year of each triennial cycle, conduct a review of the industries subject to this Part to determine whether this Part should continue to apply to those industries.

(3) The Industry Regulator must give reasonable notice of the review in a newspaper circulating generally throughout the State inviting written submissions on the matters under review within a reasonable time specified in the notice.

(4) The Industry Regulator must consider submissions made in response to the notice and other submissions made in the course of other forms of public consultation undertaken by the Industry Regulator in connection with the review.

(5) On completing the review, the Industry Regulator must forward to the Minister a report on the review and the conclusions reached by the Industry Regulator as a result of the review and, in particular, must recommend either—

(a) that this Part should continue in operation for a further triennial cycle; or

(b) that this Part should expire at the end of the existing cycle.

(6) The Minister must have copies of the report laid before both Houses of Parliament and must have the Industry Regulator's recommendation published in the *Gazette*.

(7) This Part expires at the end of a triennial cycle unless—

(a) the Industry Regulator has, in the report of a review conducted during the cycle, recommended that it should continue in operation for a further triennial cycle; and

(b) a regulation has been made extending the period of its operation accordingly.

PART 4
MISCELLANEOUS

Hindering access

44. A person must not prevent or hinder a person who is entitled to a maritime service from access to that service.

Maximum penalty: \$20 000.

Variation or revocation of proclamations

45. (1) A proclamation under this Act may, on the recommendation of the Industry Regulator, be varied or revoked by a subsequent proclamation.

Exception—

The proclamation fixing the commencement date of this Act cannot be varied or revoked after that date.

(2) A proclamation under this Act may confer discretionary powers on the Industry Regulator or any other person.

Transitional provision

46. (1) An agreement or award in force under the *South Australian Ports (Bulk Handling Facilities) Act 1996* immediately before the commencement of this Act is, as from the commencement of this Act, taken to be an agreement or award under this Act.

(2) Despite any other law, an agreement entered into before the commencement of this Act between a Minister or instrumentality of the Crown and a user of maritime services under which the user is entitled to maritime services at a concessional rate continues in force (with necessary adaptations and modifications) until the date of its intended expiry as an agreement between the user and the current provider of the relevant maritime services.

(3) A reference in any such agreement to charges fixed under an Act, or by the Minister or an instrumentality of the Crown, for specified services is to be read as a reference to the corresponding prices for the relevant services fixed under a pricing determination.

¹. A pricing determination is made under the *Independent Industry Regulator Act 1999*. That Act is, in its application to maritime services, modified by sections 6 and 7 of this Act.

Regulations

47. (1) The Governor may make regulations and proclamations for the purposes of this Act.

(2) The regulations may—

- (a) confer discretionary powers on the Industry Regulator or any other person;
- (b) impose fines, not exceeding \$2 500, for offences against the regulations.

SCHEDULE***Amendment of South Australian Ports (Bulk Handling Facilities) Act 1996***

The *South Australian Ports (Bulk Handling Facilities) Act 1996* is amended—

- (a) by striking out from the long title "to provide for access to bulk handling facilities on fair commercial terms;"
- (b) by striking out from section 3 the definitions of "bulk handling service" and "operator";
- (c) by striking out Part 3; and
- (d) by striking out sections 41 and 42.