

Port Authorities (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 9 September 1987

(Brought in by Mr Roper and Mr Walsh)

A BILL

to amend the *Port of Melbourne Authority Act 1958*, the *Port of Geelong Authority Act 1958* and the *Port of Portland Authority Act 1958*.

Port Authorities (Amendment) Act 1987

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purposes.

1. The purposes of this Act are—

- 5 (a) to alter the composition of the Port of Geelong Authority and the Port of Portland Authority; and
- (b) to alter the way in which the regulation-making powers of those Authorities and the Port of Melbourne Authority are exercised.

10 _ Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

**PART 2—AMENDMENT OF THE PORT OF GEELONG AUTHORITY
ACT 1958**

Principal Act.

3. In this Part, the *Port of Geelong Authority Act 1958* is called the Principal Act.

5

New sections 4, 4A, 4B, 4C, 4D, 4E, 4F and 5 substituted.

4. For sections 4 and 5 of the Principal Act substitute—

Establishment of the Authority.

“4. (1) There is established an Authority called the Port of Geelong Authority.

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(2) The Authority—

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its corporate name; and

(d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of carrying this Act into execution; and

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(e) is capable of doing and suffering anything that a body corporate may by law do and suffer and that is necessary or expedient for carrying this Act into execution.

20

(3) The common seal must be kept as directed by the Authority and must only be used as authorised by the Authority.

(4) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.”

25

Accountability of the Authority.

“4A. (1) The Authority is subject to—

(a) the general direction and control of the Minister; and

(b) any specific written direction given by the Minister in relation to a matter or class of matter specified in the direction.

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(2) The Authority may cause a written direction to be published in the *Government Gazette*.”

Members of the Authority.

“4B. The Authority consists of 8 members appointed by the Governor in Council, of whom—

- 5 (a) one is the General Manager appointed under section 12 (1);
 and
- (b) one is an officer of the Ministry of Transport nominated by
 the Minister; and
- (c) one is engaged in the business of importing or exporting
10 goods by sea into or from the State; and
- (d) one is the owner, or the agent of the owner, of ships trading
 at ports within the State; and
- (e) two are nominated by the Geelong Trades and Labour
 Council; and
- 15 (f) one is nominated by the Minister as representing primary
 production in the State; and
- (g) one is nominated by the Minister as representing local
 government in the State.”

Chairperson and deputy chairperson.

20 “4C. (1) The Governor in Council must appoint a member to be
chairperson and another member to be deputy chairperson.

 (2) The chairperson must preside at any meeting of the Authority
at which he or she is present.

25 (3) If the chairperson is absent the deputy chairperson (or, if the
deputy chairperson is also absent, a member elected by the members
present) must preside.”

Terms and conditions of office.

“4D. (1) A member holds office for the term, not exceeding 3 years,
that is specified in the instrument of appointment, and is eligible for
re-appointment.

30 (2) A member is appointed subject to any terms and conditions
that are specified in the instrument of appointment and that are not
inconsistent with this Act.

 (3) A member may resign his or her office in writing delivered to
the Governor in Council.

35 (4) The office of a member becomes vacant if—

- (a) the member becomes bankrupt; or
- (b) the member is convicted of an offence which is, or which
 would if committed in Victoria be, an indictable offence; or
- 40 (c) the member is absent from 3 consecutive meetings of the
 Authority without the Minister’s leave.

(5) A member, other than a person who holds a full-time government office (within the meaning of the *Public Service Act 1974*) or a full-time office in the public service or with a statutory authority, is entitled to be paid—

- (a) any remuneration that is specified in the instrument of appointment or that is fixed from time to time by the Governor in Council; and 5
- (b) allowances for travelling and personal expenses at the rates and on the conditions applicable to officers of the public service.” 10

Acting members.

“4E. (1) If a member is absent from duty the Minister may appoint a person whom the Minister considers suitable to act in the place of that member during that absence.

- (2) A person so appointed, while acting in the place of the member— 15
 - (a) has all the powers and may perform all the functions of the member; and
 - (b) if the person does not hold a full-time government office (within the meaning of the *Public Service Act 1974*) or a full-time office in the public service or with a statutory authority, is entitled to be paid any remuneration and travelling or other allowances fixed by the Minister from time to time, having regard to the rates of remuneration and other allowances for the time being payable to members of statutory corporations.” 20 25

Meetings of the Authority.

“4F. (1) A majority of members in office at the time constitutes a quorum.

(2) A question arising at a meeting of the Authority is determined by a majority of votes and, if the votes are equal, the person presiding has a casting vote. 30

(3) The Authority must meet at the times and places that are determined by the chairperson or the Authority.

(4) Subject to this section, the Authority may regulate its own procedure.” 35

Validity of acts and decisions of the Authority.

“5. (1) An act or decision of the Authority is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in or in connection with the appointment of a member; or 40

- (c) in the case of an acting member, the occasion for that person so acting had not arisen or had ceased.”.

Bankrupts.

5. Section 8 of the Principal Act is repealed.

5 New section 9 substituted.

6. For section 9 of the Principal Act substitute—

Member must declare pecuniary interest.

- 10 “9. A member who has a pecuniary interest (whether direct or indirect) in a matter being considered or about to be considered by the Authority at a meeting at which he or she is present must declare the nature of the interest at the meeting.”.

Procedure.

7. Section 10 of the Principal Act is repealed.

Officers.

- 15 8. In section 12 (1) of the Principal Act for “any” substitute “a General Manager and any other”.

Regulations.

9. (1) In section 79A of the Principal Act—

- 20 (a) before “The” insert “(1)”; and
(b) omit “with the approval of the Governor in Council”; and
(c) after paragraph (c) insert—
“ (2) Regulations made by the Authority under this section—
25 (a) do not take effect until approved by the Governor in Council; and
(b) must, for the purposes of section 3 (1) of the *Subordinate Legislation Act 1962*, be taken to be made on the day on which they are so approved.”.

- (2) In section 99 of the Principal Act—

- 30 (a) in sub-section (2) omit “with the approval of the Governor in Council”; and
(b) sub-section (2) (a) is repealed; and
(c) after sub-section (3) insert—
35 “(4) Regulations made by the Authority under this section—

- (a) do not take effect until approved by the Governor in Council; and
- (b) must, for the purposes of section 3 (1) of the *Subordinate Legislation Act* 1962, be taken to be made on the day on which they are so approved.” 5

Alteration of title from “Commissioner” to “member”.

10. (1) In section 3 of the Principal Act—

- (i) omit the definition of “Commissioner”; and
- (ii) after the definition of “Master” insert—
“Member” means a member of the Authority.’. 10

(2) In section 112 of the Principal Act for “Commissioner” (wherever occurring) substitute “member”.

Miscellaneous amendments to Principal Act.

11. (1) In the Principal Act—

(a) in section 14— 15

- (i) for “employés” (wherever occurring) substitute “employees”; and
- (ii) for “employé” (wherever occurring) substitute “employee”; and

(b) in section 27, for “25” substitute “24”; and 20

(c) in section 27C, omit the expression beginning “and to be land” and ending at the end of the section; and

(d) in section 46 (1), omit “or section 27B”; and

(e) in section 64 (1) (a) (iii), for “harbor-master” substitute “Authority”; and 25

(f) in section 64 (1A) (a), for “harbor-master” substitute “Authority”; and

(g) section 99 (2) (j) is repealed; and

(h) section 101 is repealed; and

- (i) in section 107 (2), for “Justices Act 1958” substitute “Magistrates (Summary Proceedings) Act 1975”; and 30

(j) in section 117, for “Justices Act 1958” substitute “Magistrates (Summary Proceedings) Act 1975”; and

(k) in section 119, for “the secretary or a Commissioner” substitute “a member, or an officer who is authorised in that behalf by the Authority,”. 35

(2) In the Seventh Schedule to the Principal Act—

(a) in clause 8 (1)—

- (i) omit “a judge of” (wherever occurring); and
- (ii) for “such judge” substitute “the Supreme Court”; and 40
- (iii) for “I do order” substitute “the Court orders”; and

(b) in clause 8 (3)—

(i) for “judge’s” substitute “court”; and

(ii) omit “a judge of”; and

(iii) omit “C.D.,
Secretary.”; and

(c) in clause 8 (4) (a), omit “any judge of”; and

(d) in clause 8 (4) (b), for “Such judge” substitute “The Supreme Court”.

Savings and transitional provisions.

12. (1) In this section—

“Former Authority” means the Port of Geelong Authority as constituted under the Principal Act as in force immediately before the commencement of this section;

“New Authority” means the Port of Geelong Authority as constituted under the Principal Act as amended by this Act.

(2) On the commencement of this section the former Authority is abolished and the Commissioners of the former Authority go out of office.

(3) On that commencement—

(a) all rights, property and assets that immediately before that commencement were vested in the former Authority are, by force of this sub-section, vested in the new Authority; and

(b) all debts, liabilities and obligations of the former Authority existing immediately before that commencement become, by force of this sub-section, debts, liabilities and obligations of the new Authority; and

(c) the new Authority is, by force of this sub-section, substituted as a party to any arrangement or contract entered into by or on behalf of the former Authority as a party and in force immediately before that commencement; and

(d) the new Authority is, by force of this sub-section, substituted as a party to any proceedings pending in any court to which the former Authority was a party immediately before that commencement; and

(e) any reference to the former Authority in any Act or in any subordinate instrument within the meaning of the *Interpretation of Legislation Act* 1984, or in any other document, must, so far as it relates to any period after that commencement and if not inconsistent with the context or subject matter, be construed as a reference to the new Authority; and

- (f) any reference to the chairman or a Commissioner of the former Authority in any Act or in any subordinate instrument within the meaning of the *Interpretation of Legislation Act* 1984, or in any other document, must, so far as it relates to any period after that commencement and if not inconsistent with the context or subject matter, be construed as a reference to the chairperson or a member (as the case may be) of the new Authority. 5

- (4) A person who was, immediately before the commencement of this section, employed by the former Authority continues, on and from that commencement, to be employed by the new Authority on terms and conditions no less favourable than those on which the person was employed immediately before that commencement and with the benefit of all rights accrued immediately before that commencement. 10

PART 3—AMENDMENT OF THE *PORT OF PORTLAND AUTHORITY ACT* 1958 15

Principal Act.

13. In this Part, the *Port of Portland Authority Act* 1958 is called the Principal Act.

No. 6340.
Reprinted to
No. 9204.
Subsequently
amended by
Nos. 9578,
9635, 9902,
9921, 9945,
110/1986,
121/1986 and
123/1986.

Interpretation. 20

14. In section 3 (1) of the Principal Act—

- (a) for the definition of “Chairman” substitute—
“Chairperson” means the chairperson of the Authority.; and
(b) omit the definition of “Deputy-chairman”.

New sections 4, 5, 6, 7, 8, 9, 10, 10A and 10B substituted. 25

15. For sections 4, 5, 6, 6A, 7, 8, 9 and 10 of the Principal Act substitute—

Establishment of the Authority.

- “4. (1) There is established an Authority called the Port of Portland Authority. 30

- (2) The Authority—

- (a) is a body corporate with perpetual succession; and
(b) has a common seal; and
(c) may sue and be sued in its corporate name; and

(d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of carrying this Act into execution; and

5 (e) is capable of doing and suffering anything that a body corporate may by law do and suffer and that is necessary or expedient for carrying this Act into execution.

(3) The common seal must be kept as directed by the Authority and must only be used as authorised by the Authority.

10 (4) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed."

Accountability of the Authority.

"5. (1) The Authority is subject to—

15 (a) the general direction and control of the Minister; and
(b) any specific written direction given by the Minister in relation to a matter or class of matter specified in the direction.

(2) The Authority may cause a written direction to be published in the *Government Gazette*."

20 Members of the Authority.

"6. (1) The Authority consists of 8 members appointed by the Governor in Council, of whom—

25 (a) one is the General Manager appointed under section 11 (1); and
(b) one is an officer of the Ministry of Transport nominated by the Minister; and
(c) two are nominated by the Minister as being identified with business or use of the port; and
30 (d) two are jointly nominated by the Victorian Trades Hall Council and the South Western District Trades and Labour Council; and
(e) one is nominated by the Minister as representing primary production in the State; and
35 (f) one is nominated by the Minister as representing local government in the State."

Chairperson and deputy chairperson.

"7. (1) The Governor in Council must appoint a member to be chairperson and another member to be deputy chairperson.

40 (2) The chairperson must preside at any meeting of the Authority at which he or she is present.

(3) If the chairperson is absent the deputy chairperson (or, if the deputy chairperson is also absent, a member elected by the members present) must preside.”

Terms and conditions of office.

“8. (1) A member holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment, and is eligible for re-appointment. 5

(2) A member is appointed subject to any terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act. 10

(3) A member may resign his or her office in writing delivered to the Governor in Council.

(4) The office of a member becomes vacant if—

- (a) the member becomes bankrupt; or
- (b) the member is convicted of an offence which is, or which would if committed in Victoria be, an indictable offence; or 15
- (c) the member is absent from 3 consecutive meetings of the Authority without the Minister’s leave.

(5) A member, other than a person who holds a full-time government office (within the meaning of the *Public Service Act 1974*) or a full-time office in the public service or with a statutory authority, is entitled to be paid— 20

- (a) any remuneration that is specified in the instrument of appointment or that is fixed from time to time by the Governor in Council; and 25
- (b) allowances for travelling and personal expenses at the rates and on the conditions applicable to officers of the public service.”

Acting members.

“9. (1) If a member is absent from duty the Minister may appoint a person whom the Minister considers suitable to act in the place of that member during that absence. 30

(2) A person so appointed, while acting in the place of the member—

- (a) has all the powers and may perform all the functions of the member; and 35
- (b) if the person does not hold a full-time government office (within the meaning of the *Public Service Act 1974*) or a full-time office in the public service or with a statutory authority, is entitled to be paid any remuneration and travelling or other allowances fixed by the Minister from time to time, having regard to the rates of remuneration and other 40

allowances for the time being payable to members of statutory corporations.”

Meetings of the Authority.

5 “10. (1) A majority of members in office at the time constitutes a quorum.

(2) A question arising at a meeting of the Authority is determined by a majority of votes and, if the votes are equal, the person presiding has a casting vote.

10 (3) The Authority must meet at the times and places that are determined by the chairperson or the Authority.

(4) Subject to this section, the Authority may regulate its own procedure.”

Validity of acts and decisions of the Authority.

15 “10A. An act or decision of the Authority is not invalid only because—

(a) of a vacancy in the office of a member; or

(b) of a defect or irregularity in or in connection with the appointment of a member; or

20 (c) in the case of an acting member, the occasion for that person so acting had not arisen or had ceased.”

Member must declare pecuniary interest.

25 “10B. A member who has a pecuniary interest (whether direct or indirect) in a matter being considered or about to be considered by the Authority at a meeting at which he or she is present must declare the nature of the interest at the meeting.”

Officers.

16. In section 11 (1) (a) of the Principal Act for “such” substitute “a General Manager and such other”.

Regulations.

30 17. (1) In section 27A of the Principal Act—

(a) before “The” insert “(1)”; and

(b) omit “with the approval of the Governor in Council”; and

(c) after paragraph (c) insert—

35 “(2) Regulations made by the Authority under this section —

(a) do not take effect until approved by the Governor in Council; and

- (b) must, for the purposes of section 3 (1) of the *Subordinate Legislation Act 1962*, be taken to be made on the day on which they are so approved.”.
- (2) In section 37 of the Principal Act—
 - (a) For “Subject to the approval of the Governor in Council the” substitute “(1) The”; and 5
 - (b) after paragraph (b) insert—
 - “(2) Regulations made by the Authority under this section —
 - (a) do not take effect until approved by the Governor in Council; and 10
 - (b) must, for the purposes of section 3 (1) of the *Subordinate Legislation Act 1962*, be taken to be made on the day on which they are so approved.”. 15
- (3) In section 45 of the Principal Act—
 - (a) in sub-section (1) omit “with the approval of the Governor in Council”; and
 - (b) sub-section (1) (a) is repealed; and
 - (c) after sub-section (2) insert— 20
 - “(3) Regulations made by the Authority under this section —
 - (a) do not take effect until approved by the Governor in Council; and
 - (b) must, for the purposes of section 3 (1) of the *Subordinate Legislation Act 1962*, be taken to be made on the day on which they are so approved.”. 25

Alteration of title from “Commissioner” to “member”.

- 18. (1) In section 3 (1) of the Principal Act—
 - (a) omit the definition of “Commissioner”; and 30
 - (b) after the definition of “Goods” insert—
 - ““Member” means a member of the Authority.”.

(2) In section 20 (2) of the Principal Act, for “Commissioners” substitute “Authority”.

Miscellaneous amendments to Third Schedule. 35

- 19. In the Third Schedule to the Principal Act—
 - (a) in clause 1 of Part I., for “Chairman or Commissioner. Secretary” substitute “Authorised officers of the Authority”; and
 - (b) in clause 2 of Part I., for “a Commissioner and the secretary or acting secretary” substitute “two officers authorised in that behalf by the Authority”; and 40

- (c) in clause 9 of Part I., for “the secretary” (wherever occurring) substitute “an officer authorised in that behalf by the Authority”; and
- 5 (d) in clause 8 (3) of Part II., for “Secretary” substitute “Authorised officer of the Authority”; and
- (e) in clause 10 (2) of Part II., for “Chairman” substitute “chairperson”.

Savings and transitional provisions.

20. (1) In this section—

10 “Former Authority” means the Port of Portland Authority as constituted under the Principal Act as in force immediately before the commencement of this section;

“New Authority” means the Port of Portland Authority as constituted under the Principal Act as amended by this Act.

15 (2) On the commencement of this section the former Authority is abolished and the Commissioners of the former Authority go out of office.

(3) On that commencement—

20 (a) all rights, property and assets that immediately before that commencement were vested in the former Authority are, by force of this sub-section, vested in the new Authority; and

25 (b) all debts, liabilities and obligations of the former Authority existing immediately before that commencement become, by force of this sub-section, debts, liabilities and obligations of the new Authority; and

30 (c) the new Authority is, by force of this sub-section, substituted as a party to any arrangement or contract entered into by or on behalf of the former Authority as a party and in force immediately before that commencement; and

(d) the new Authority is, by force of this sub-section, substituted as a party to any proceedings pending in any court to which the former Authority was a party immediately before that commencement; and

35 (e) any reference to the former Authority in any Act or in any subordinate instrument within the meaning of the *Interpretation of Legislation Act* 1984, or in any other document, must, so far as it relates to any period after that commencement and if not inconsistent with the context or subject matter, be construed as a reference to the new Authority; and

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(f) any reference to the chairman or a Commissioner of the former Authority in any Act or in any subordinate instrument within the meaning of the *Interpretation of*

Legislation Act 1984, or in any other document, must, so far as it relates to any period after that commencement and if not inconsistent with the context or subject-matter, be construed as a reference to the chairperson or a member (as the case may be) of the new Authority. 5

(4) A person who was, immediately before the commencement of this section, employed by the former Authority continues, on and from that commencement, to be employed by the new Authority on terms and conditions no less favourable than those on which the person was employed immediately before that commencement and with the benefit of all rights accrued immediately before that commencement. 10

PART 4—AMENDMENT OF THE *PORT OF MELBOURNE* *AUTHORITY ACT 1958*

Principal Act.

21. In this Part, the *Port of Melbourne Authority Act 1958* is called the Principal Act. 15

No. 6312.
Reprinted to
No. 9427.
Subsequently
amended by
Nos. 9444, 9533,
9549, 9576,
9592, 9617,
9746, 9887,
9902, 9921,
9945, 10003,
110/1986,
121/1986 and
123/1986.

Effect of sale of land.

22. After section 50 (4) of the Principal Act, insert—

“(5) On the sale of any land under this section—

(a) that land is no longer subject to any trust referred to in section 45; and 20

(b) despite section 55 (1), that land again forms part—

(i) if it is situated within the corporation of the city of Melbourne, of that corporation; and

(ii) in any other case, of the municipal district in which it is situated.”. 25

Regulations.

23. (1) In section 110A of the Principal Act—

(a) before “The” insert “(1)”; and

(b) omit “with the approval of the Governor in Council”; and 30

(c) after paragraph

(c) insert—

“(2) Regulations made by the Authority under this section —

(a) do not take effect until approved by the Governor in Council; and

(b) must, for the purposes of section 3 (1) of the *Subordinate Legislation Act* 1962, be taken to be made on the day on which they are so approved.”.

(2) In section 136 of the Principal Act—

(a) before “Subject” insert “(1)”; and

(b) omit “with the approval of the Governor in Council”; and

(c) at the end of the section insert—

“(2) Regulations made by the Authority under this section—

(a) do not take effect until approved by the Governor in Council; and

(b) must, for the purposes of section 3 (1) of the *Subordinate Legislation Act* 1962, be taken to be made on the day on which they are so approved.”.

Miscellaneous amendments to Principal Act.

24. (1) In the Principal Act—

(a) in section 37—

(i) for “employés” (wherever occurring) substitute “employees”; and

(ii) for “employé” (wherever occurring) substitute “employee”; and

(b) in section 70, for “licence” substitute “license”; and

(c) in section 97, for “the Authority may from time to time by regulations determine” substitute “are fixed by the Authority with the approval of the Minister after consultation with the Treasurer”; and

(d) section 136 (j) is repealed; and

(e) section 141 is repealed.

(2) In the Sixth Schedule to the Principal Act—

(a) in clause 8 (1)—

(i) omit “a judge of” (wherever occurring); and

(ii) for “such judge” substitute “the Supreme Court”; and

(iii) for “I do order” substitute “the Court orders”; and

(b) in clause 8 (3)—

(i) for “judge’s” substitute “court”; and

(ii) omit “a judge of”; and

(c) in clause 8 (4) (a), omit “any judge of”; and

(d) in clause 8 (4) (b), for “Such judge” substitute “The Supreme Court”.

