

Pilbara Port Assets (Disposal) Bill 2015

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**Schedule 1 — Utah Point Bulk
Handling Facility**

Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Pilbara Port Assets (Disposal) Bill 2015

A Bill for

An Act to provide for the disposal of the whole or part of certain businesses carried on by, or all or any of certain assets or liabilities owned or managed by, the Pilbara Ports Authority, and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary matters

1. Short title

This is the *Pilbara Port Assets (Disposal) Act 2015*.

2. Commencement

This Act comes into operation on the day after the day on which it receives the Royal Assent.

3. Terms used

In this Act, unless the contrary intention appears —

acquirer means the entity to which a port asset or associated asset is disposed of for the purposes of a section 10 disposal;

asset means property of any kind whether tangible, intangible, real or personal and includes (without limitation) —

(a) any chose in action, goodwill, right, interest or claim of any kind, whether arising from, accruing under, created or evidenced by or the subject of an instrument or otherwise and whether liquidated or unliquidated or actual, contingent or prospective; and

(b) a contractual right that is to be regarded as arising because of section 23(2);

Authority means the Pilbara Ports Authority under the *Port Authorities Act 1999*;

associated agency has the meaning given in section 4(3);

associated asset means an associated State asset or an associated SC asset;

associated SC asset has the meaning given in section 4(2);

associated State asset has the meaning given in section 4(1);

company means a company registered under the *Corporations Act 2001* (Commonwealth);

- 1 **corporate vehicle** means —
- 2 (a) a company created for the purposes of this Act each
- 3 security in which is held by the Minister or the Treasurer
- 4 on behalf of the State; or
- 5 (b) a subsidiary under the *Corporations Act 2001*
- 6 (Commonwealth) of a company referred to in
- 7 paragraph (a); or
- 8 (c) a subsidiary under the *Port Authorities Act 1999* of the
- 9 Authority; or
- 10 (d) a subsidiary of a subsidiary mentioned in paragraph (b)
- 11 or (c);
- 12 **dispose of**, in relation to a port asset or associated asset,
- 13 includes —
- 14 (a) to sell the port asset or associated asset; and
- 15 (b) to grant a lease or licence in respect of the port asset or
- 16 associated asset; and
- 17 (c) to create and assign an interest in the port asset or
- 18 associated asset;
- 19 **disposer** means the entity from which a port asset or associated
- 20 asset is disposed of for the purposes of a section 10 disposal;
- 21 **lease** includes a concurrent lease, a sublease or a concurrent
- 22 sublease;
- 23 **liability** —
- 24 (a) means any liability, duty or obligation —
- 25 (i) whether liquidated or unliquidated or actual,
- 26 contingent or prospective; or
- 27 (ii) whether owed alone or jointly or jointly and
- 28 severally with any other person;
- 29 and
- 30 (b) includes a contractual liability that is to be regarded as
- 31 arising because of section 23(2);

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- 1 **port asset** means —
- 2 (a) the whole or any part of a business carried on by, or any
- 3 asset or liability owned or managed by, the Authority; or
- 4 (b) the whole or any part of a business carried on by, or any
- 5 asset or liability owned by or managed on behalf of the
- 6 Authority, an associated agency, a corporate vehicle or
- 7 the State by, a corporate vehicle,
- 8 to the extent to which the business, asset or liability relates to or
- 9 comprises the Utah Point Bulk Handling Facility or is owned or
- 10 managed by the Authority and is, in the Minister’s opinion,
- 11 associated with the Utah Point Bulk Handling Facility;
- 12 **port authority** means a port authority under the *Port Authorities*
- 13 *Act 1999* section 3(1);
- 14 **private entity** means a person other than any of the following —
- 15 (a) a port authority;
- 16 (b) a statutory corporation;
- 17 (c) a corporate vehicle;
- 18 (d) the State;
- 19 **port facility** means —
- 20 (a) a port asset or associated asset disposed of under this
- 21 Act; or
- 22 (b) an asset that was a port asset or associated asset before it
- 23 was disposed of under this Act; or
- 24 (c) anything prescribed by the regulations to be a port
- 25 facility for the purposes of the provision in which the
- 26 term is used;
- 27 **purposes**, of a section 10 disposal, has the meaning given in
- 28 section 5;
- 29 **regulations** means regulations made under section 47;
- 30 **right** means any right, power, privilege or immunity whether
- 31 actual, contingent or prospective but, in relation to a transfer
- 32 order, does not include any privilege or immunity enjoyed as an

1 agent of the Crown except insofar as it relates to anything done
2 or omitted to be done before the transfer time;

3 **section 10 disposal** means a disposal for which an order is in
4 force under section 10;

5 **statutory corporation** means —

6 (a) a Minister or chief executive officer who is constituted,
7 or continued in existence, as a body corporate under an
8 Act; or

9 (b) any other body corporate, other than a port authority,
10 that is constituted, or continued in existence, under an
11 Act;

12 **transferee**, in relation to a transfer order, has the meaning given
13 in section 20(1)(b);

14 **transferor**, in relation to a transfer order, has the meaning given
15 in section 20(1)(b);

16 **transfer order** means a transfer order made under section 20 as
17 amended under that section or corrected under section 26;

18 **transfer time**, in relation to a transfer order, means the time
19 specified under section 20(1)(a) in the transfer order;

20 **Utah Point Bulk Handling Facility** means —

21 (a) the Authority berth known as berth 4 (shown for
22 information coloured red and marked as “PH 4” on the
23 map in Schedule 1); and

24 (b) the Authority stockyards known as stockyard 1 (shown
25 for information coloured red and marked as
26 “Stockyards” on the map in Schedule 1); and

27 (c) the Authority stockyards known as stockyard 2 (shown
28 for information coloured red and marked as “Atlas
29 Stockyard 2” on the map in Schedule 1).

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1 **4. Associated assets and associated agencies**

- 2 (1) An associated State asset is any asset or liability that —
- 3 (a) is owned by the State but is not owned or managed by a
- 4 statutory corporation; and
- 5 (b) is, in the Minister's opinion, associated with a port asset.
- 6 (2) An associated SC asset is any asset or liability that —
- 7 (a) is owned by, or managed on behalf of the State by, a
- 8 statutory corporation; and
- 9 (b) is, in the Minister's opinion, associated with a port asset.
- 10 (3) An associated agency is a statutory corporation that owns or
- 11 manages an associated SC asset.

12 **5. Purposes of section 10 disposal**

13 The purposes of a section 10 disposal include the following —

- 14 (a) the purpose of effecting or facilitating the section 10
- 15 disposal;
- 16 (b) any purpose ancillary or incidental to, or consequential
- 17 on, the section 10 disposal.

18 **6. Things on land**

19 A reference in this Act to a thing that is on land is to be taken to

20 be a reference to a thing that is on, in, over or under the land.

21 **7. Severance of things on land**

- 22 (1) The Minister may, by order in writing for the purposes of a
- 23 section 10 disposal, direct that a specified thing that is on land
- 24 and is capable of being disposed of is not part of the land,
- 25 regardless of whether it is in the nature of a fixture.
- 26 (2) The effect of the order is that, for the purposes of a section 10
- 27 disposal, the thing —
- 28 (a) is taken to be severed from the land; and

- 1 (b) is capable of being assigned as personal property
2 separately from the land; and
3 (c) is capable of being removed from the land by, or with
4 the authority of, the owner of the land.
- 5 (3) The severance of a thing from land under this section does not
6 affect the right of the thing to be situated on that land.
- 7 (4) The Minister may vary or revoke an order made under
8 subsection (1).

9 **8. Act binds Crown**

10 This Act binds the State and, so far as the legislative power of
11 the State permits, the Crown in all its other capacities.

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Part 2 — Enabling disposal

9. Disposal of port assets and associated assets authorised

- (1) A port asset owned or managed by the Authority may be disposed of, whether by the Authority or the State, if the disposal is authorised by an order made under section 10.
- (2) A port asset owned or managed by a corporate vehicle may be disposed of, whether by the corporate vehicle or the State, if the disposal is authorised by an order made under section 10.
- (3) An associated State asset may be disposed of by the State if the disposal is authorised by an order made under section 10.
- (4) An associated SC asset may be disposed of, whether by the associated agency or the State, if the disposal is authorised by an order made under section 10.

10. Minister may order disposal of port assets or associated assets

- (1) The Minister may, by order published in the *Gazette* —
 - (a) direct the disposal of all or specified port assets or all or specified associated assets; or
 - (b) vary or revoke an order made under paragraph (a), or under this paragraph, at any time before effect is given to the order.
- (2) An order made under subsection (1) may be in general terms and need not include any details about how the disposal is to be effected or specific details about the assets the subject of the disposal.
- (3) If the Minister is not the Treasurer, the Minister cannot make an order under subsection (1) without the Treasurer's approval.
- (4) If the Minister is not the Minister administering the *Port Authorities Act 1999*, the Minister cannot make an order under subsection (1) without the Minister's approval.

- 1 (5) An order made under subsection (1) takes effect —
2 (a) on the day after the day on which the order is published
3 in the *Gazette*; or
4 (b) if a later day is specified in the order — on that day.

5 **11. Effecting disposal**

- 6 (1) Subject to section 12, there are no limitations on the nature of
7 any transaction or arrangement that can be entered into for the
8 purposes of a section 10 disposal.
- 9 (2) An express provision of this Act authorising the establishment
10 of a particular kind of legal entity for the purposes of a
11 section 10 disposal does not limit the kinds of legal entity that
12 can be used for those purposes.
- 13 (3) One or more corporate vehicles or one or more trusts can be
14 used for the purposes of a section 10 disposal.
- 15 (4) If a company mentioned in paragraph (a) of the definition of
16 *corporate vehicle* in section 3 is to be used for the purposes of a
17 section 10 disposal by the State, the Under Treasurer must
18 ensure that the necessary steps are taken on behalf of the State
19 to create the company.
- 20 (5) The Minister or the Treasurer can —
21 (a) receive on behalf of the State an allotment and issue of,
22 or otherwise acquire on behalf of the State, securities in
23 the company; and
24 (b) hold, and dispose of, on behalf of the State any
25 securities in the company so acquired by the person.
- 26 (6) The Minister may enter into on behalf of the State any
27 agreement for the purposes of a section 10 disposal.

28 **12. Disposal of land**

- 29 (1) The following land can be disposed of under this Act —
30 (a) Crown land;

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- 1 (b) freehold land owned by the Authority, an associated
2 agency, a corporate vehicle or the State.
- 3 (2) Land referred to in subsection (1) can only be disposed of under
4 this Act to a private entity by granting to the private entity —
- 5 (a) an interest in the land that is no greater than a leasehold
6 interest for a period not exceeding 99 years; or
- 7 (b) a licence in respect of the land for a period not
8 exceeding 99 years.
- 9 (3) The securities in a corporate vehicle can only be disposed of
10 under this Act to a private entity if the corporate vehicle
11 holds —
- 12 (a) an interest in the land referred to in subsection (1) that is
13 no greater than a leasehold interest for a period not
14 exceeding 99 years; or
- 15 (b) a licence in respect of the land referred to in
16 subsection (1) for a period not exceeding 99 years.
- 17 (4) In calculating, for subsection (2) or (3), the period for which an
18 interest in land or licence in respect of land (the *interest or*
19 *licence*) is granted or is held, any further period is to be
20 included.
- 21 (5) In subsection (4) —
- 22 *further period* means the period of any further interest in the
23 land, or further licence in respect of the land, that may be
24 granted whether under —
- 25 (a) an option to renew the interest or licence; or
26 (b) an option to renew any further interest or licence,
27 or otherwise.
- 28 (6) This section applies despite the *Port Authorities Act 1999*
29 section 28(3) and (4).

1 **13. Land subject to unregistered leases with terms exceeding**
2 **5 years**

3 Despite the *Transfer of Land Act 1893* section 68, land disposed
4 of under this Act is subject to any prior unregistered lease or
5 agreement for lease or for letting for a term exceeding 5 years to
6 a tenant in actual possession even though the lease or agreement
7 may not be specially notified as an encumbrance on the
8 certificate of title or registered instrument for the land.

9 **14. Functions and powers of Minister**

10 The Minister has all of the functions and powers that are
11 necessary or convenient for the purposes of this Act, including
12 the power to acquire land.

13 **15. Functions and powers of Authority**

14 The Authority has all of the functions and powers that are
15 necessary or convenient for the purposes of the disposal of a
16 port asset under this Act, including the power to acquire land.

17 **16. Functions and powers of associated agencies**

18 An associated agency has all of the functions and powers that
19 are necessary or convenient for the purposes of the disposal of
20 an associated SC asset under this Act, including the power to
21 acquire land.

22 **17. Functions and powers of corporate vehicles**

23 A corporate vehicle has all of the functions and powers that are
24 necessary or convenient for the purposes of the disposal of a
25 port asset under this Act, including —

- 26 (a) the power to acquire land; and
27 (b) the power to create subsidiaries.

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1 **18. Directions by Minister**

- 2 (1) The Minister may, for the purposes of a section 10 disposal,
3 give a written direction to the Authority, an associated agency
4 or a corporate vehicle.
- 5 (2) The Authority, an associated agency or a corporate vehicle must
6 comply with a direction given to it under subsection (1).
- 7 (3) The Authority, an associated agency or a corporate vehicle, or a
8 director or officer of the Authority, an associated agency or a
9 corporate vehicle, is not liable for, and does not contravene the
10 *Port Authorities Act 1999* or the *Western Australian Land*
11 *Authority Act 1992* by reason of, anything done or omitted to be
12 done in good faith in compliance with, or purported compliance
13 with, a direction given under subsection (1).
- 14 (4) Unless a direction given under subsection (1) specifies
15 otherwise, nothing in the direction or this section affects any
16 requirement under the *Port Authorities Act 1999* or the *Western*
17 *Australian Land Authority Act 1992* for the approval of a
18 Minister to be obtained in relation to any matter.
- 19 (5) This section is declared to be a Corporations legislation
20 displacement provision for the purposes of the *Corporations*
21 *Act 2001* (Commonwealth) section 5G in relation to the
22 Corporations legislation generally.

23 **19. Regulations about corporate vehicles and trusts**

- 24 (1) Regulations may make provision about the constitution, trust
25 deed or another constituent document of a corporate vehicle or
26 trust that is to be used for the purposes of a section 10 disposal.
- 27 (2) Regulations may declare a matter dealt with, provided for, done
28 or occurring under regulations referred to in subsection (1) to be
29 an excluded matter for the purposes of the *Corporations*
30 *Act 2001* (Commonwealth) section 5F in relation to —
- 31 (a) the whole of the Corporations legislation; or
32 (b) a specified provision of that legislation; or

- 1 (c) that legislation other than a specified provision; or
2 (d) that legislation other than to a specified extent.

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Part 3 — Implementing disposal

Division 1 — Transfer orders

20. Minister may make transfer orders

- (1) For the purposes of a section 10 disposal, the Minister may, by order published in the *Gazette* (a **transfer order**), specify all or any of the following —
- (a) a time (which must be after the day on which the order is published in the *Gazette*) that is the transfer time under the transfer order;
 - (b) any asset or liability that, by operation of section 21, is to be transferred from the Authority, an associated agency, a corporate vehicle or the State as specified in the order (the **transferor**) to the Authority, a corporate vehicle or a private entity as specified in the order (the **transferee**);
 - (c) proceedings in which, by operation of section 21, the transferee is to be substituted for the transferor as a party;
 - (d) any agreement or instrument relating to anything transferred that, by operation of section 21, is to have effect as if, unless otherwise expressly specified in the order, references to the transferee were substituted for references to the transferor in the agreement or instrument.
- (2) If the transfer time is specified by reference to when a thing is done, the Minister must ensure that notice of the time when the thing is done is published in the *Gazette*.
- (3) A transfer order may specify persons or things by reference to schedules that —
- (a) need not be published in the *Gazette*; but
 - (b) must be available for public inspection on business days at the place and between the times specified in the

1 transfer order for 6 months after the day on which the
2 transfer order is published in the *Gazette*.

3 (4) For subsection (3)(b), a business day is a day other than a
4 Saturday, Sunday or public holiday.

5 (5) A person or thing specified in a schedule for a transfer order is
6 to be taken to be specified in the transfer order.

7 (6) A person or thing may be specified in a transfer order by
8 describing the person or thing as a member of a class.

9 (7) Before a transfer order is made specifying anything by reference
10 to a schedule, the Minister must consult each relevant official to
11 whom a copy of the schedule must be given under section 25(2)
12 about the form and content of the schedule for the purpose of
13 facilitating the recording and registration of instruments or
14 documents as required by section 25(3)(b).

15 (8) The Minister may, by order published in the *Gazette*, amend a
16 transfer order or a schedule for a transfer order, but only —

17 (a) before the transfer time; and

18 (b) with the consent of the transferee.

19 **21. Consequences of transfer orders**

20 (1) In this section —

21 *specified* means specified in the transfer order.

22 (2) A transfer order has effect at the transfer time as follows —

23 (a) a specified asset is, by operation of this section and
24 without the need for any conveyance, transfer,
25 assignment or assurance or any prior notice or further
26 act, transferred to the transferee and becomes an asset of
27 the transferee;

28 (b) a specified liability is, by operation of this section and
29 without the need for any prior notice or further act,
30 transferred to and becomes a liability of the transferee;

- 1 (c) the transferee is, by operation of this section, substituted
2 for the transferor as a party to any specified
3 proceedings;
- 4 (d) a specified agreement or instrument has effect, by
5 operation of this section, as if (unless otherwise
6 specified) a reference to the transferee were substituted
7 for a reference to the transferor in the agreement or
8 instrument;
- 9 (e) any proceedings or remedy that might have been
10 commenced by, or available against or to, the transferor
11 in relation to an asset or liability transferred by
12 paragraph (a) or (b) may be commenced by, or are
13 available against or to, the transferee;
- 14 (f) anything relating to an asset or liability transferred by
15 paragraph (a) or (b) that was done or omitted to be done
16 by, to or in respect of the transferor before the transfer
17 and is of any effect is to be taken to have been done or
18 omitted by, to or in respect of the transferee.

19 **22. Completion of transactions for this Division**

20 If a transfer order cannot to any extent have the effect sought to
21 be achieved by this Division (whether because a matter is
22 governed otherwise than by a law of this State or for any other
23 reason), the Minister and the transferor must each take all
24 practicable steps to achieve that effect as soon as possible after
25 the transfer time.

26 **23. Effect of arrangements internal to transferors**

- 27 (1) An instrument that provides for arrangements between different
28 parts of the transferor's business or undertaking may be
29 specified in a transfer order as if it created contractual rights and
30 liabilities.
- 31 (2) An instrument specified as described in subsection (1) is to be
32 regarded as if its provisions were contractual provisions
33 between different legal entities.

1 (3) A contractual right or liability that is to be regarded as arising
2 because of subsection (2) is transferable under this Division.

3 **24. Delivery and access to records**

4 (1) In this section —

5 *record* includes a register, minute, receipt, book of account or
6 other document (however compiled, recorded or stored);

7 *relevant record*, in relation to a transfer order, means a record
8 relating to any asset, liability, agreement, instrument or
9 proceedings specified under section 20(1) in the transfer order.

10 (2) The Minister may give the transferor under a transfer order a
11 direction (whether in the transfer order or otherwise in writing)
12 as to which relevant records, or classes of relevant records, in
13 the possession or control of the transferor must be delivered to
14 or shared with, or be able to be accessed by, the transferee under
15 the transfer order.

16 (3) The transferor must deliver to or share with the transferee, or
17 enable the transferee to have access to, relevant records in
18 accordance with the direction.

19 (4) The transferor and transferee must make arrangements for the
20 delivery or sharing of, or access to, relevant records in
21 accordance with the direction.

22 (5) This section is declared to be a Corporations legislation
23 displacement provision for the purposes of the *Corporations*
24 *Act 2001* (Commonwealth) section 5G in relation to the
25 Corporations legislation generally.

26 **25. Registration of documents**

27 (1) In this section —

28 *relevant official* means any of the following —

29 (a) the Registrar of Titles under the *Transfer of Land*
30 *Act 1893*;

- 1 (b) the Registrar of Deeds and Transfers under the
2 *Registration of Deeds Act 1856*;
- 3 (c) the Minister administering the *Land Administration*
4 *Act 1997*;
- 5 (d) any other person authorised by a written law to record
6 and give effect to the registration of instruments or
7 documents relating to transactions affecting any estate
8 or interest in land or any other property.
- 9 (2) The Minister must ensure that a copy of each of the following
10 instruments is given to each relevant official —
- 11 (a) a transfer order and any schedule for it;
- 12 (b) any order made under section 20(8) amending a transfer
13 order or any schedule for it;
- 14 (c) any order made under section 26(1) correcting a transfer
15 order or any schedule for it;
- 16 (d) any notice published under section 20(2) in respect of
17 the transfer time in relation to a transfer order.
- 18 (3) A relevant official must —
- 19 (a) take notice of this Division, a transfer order and any
20 other instrument relating to a transfer order that is
21 referred to in subsection (2); and
- 22 (b) record and register in the appropriate manner the
23 instruments or documents necessary to show the effect
24 of this Division and a transfer order.
- 25 **26. Correction of errors in transfer orders**
- 26 (1) The Minister may, by order published in the *Gazette*, make any
27 provision that is necessary to correct any error in a transfer
28 order or a schedule for a transfer order.
- 29 (2) An order made under subsection (1) may be expressed to take
30 effect on and after the transfer time.

- 1 (3) To the extent that a provision of an order made under
2 subsection (1) takes effect before the order is published in the
3 *Gazette*, section 21 does not, as a result of that provision,
4 operate so as —
- 5 (a) to affect in a manner prejudicial to any person (other
6 than the State, the transferor or transferee, or a Minister,
7 officer or agency of the State) the rights of that person
8 existing before publication; or
- 9 (b) to impose liabilities on any person (other than the State,
10 the transferor or transferee, or a Minister, officer or
11 agency of the State) in respect of anything done or
12 omitted to be done before publication.

13 **Division 2 — Disclosure of information**

14 **27. Authorised disclosure of information**

- 15 (1) A disclosure of information that is authorised under this section
16 is not to be regarded as —
- 17 (a) a breach of contract or confidence or any other civil
18 wrong; or
- 19 (b) a breach of duty under any of the following —
- 20 (i) the *Port Authorities Act 1999* Schedule 3;
- 21 (ii) the *Western Australian Land Authority Act 1992*
22 Schedule 1A;
- 23 (iii) the *Statutory Corporations (Liability of*
24 *Directors) Act 1996* section 5;
- 25 or
- 26 (c) a breach of, or an offence under, a provision of a written
27 law that prohibits or restricts the disclosure of
28 information.
- 29 (2) For subsection (1), a disclosure of information is authorised if it
30 is made for the purposes of a section 10 disposal by —
- 31 (a) the Government or the Authority, an associated agency
32 or a corporate vehicle; or

1 (b) a person acting with the authority of a body referred to
2 in paragraph (a).

3 (3) For subsection (2), a disclosure of information made for the
4 purposes of a section 10 disposal includes a disclosure of
5 information whenever made if the disclosure is or was made for
6 the purposes of a potential section 10 disposal.

7 **28. Auditor General may disclose information**

8 Despite the *Auditor General Act 2006* section 46(2), the Auditor
9 General may, for the purposes of a section 10 disposal, disclose
10 to any person, or provide any person with access to, information
11 in the possession or under the control of the Auditor General.

12 **29. Offence of disclosing information**

13 (1) Subsection (2) applies to a person (a *bound recipient*) who —

14 (a) obtains information connected with a section 10
15 disposal, whether through a disclosure authorised by
16 section 27 or otherwise; and

17 (b) has agreed or is otherwise under a duty not to disclose
18 the information to others.

19 (2) A bound recipient commits an offence if the bound recipient
20 breaches the agreement or duty referred to in subsection (1)(b).

21 Penalty for this subsection: a fine of \$200 000.

22 (3) A person who obtains information connected with a section 10
23 disposal from or through a bound recipient commits an offence
24 if, without lawful excuse, the person discloses the information
25 in a way that would have resulted in a breach of the agreement
26 or duty referred to in subsection (1)(b) if the disclosure had been
27 made by the bound recipient.

28 Penalty for this subsection: a fine of \$200 000.

29 (4) For subsections (1)(a) and (3), information connected with a
30 section 10 disposal includes information whenever obtained if

1 the information is or was connected with a potential section 10
2 disposal.

3 **Division 3 — Other matters**

4 **30. Application of proceeds of disposal**

5 The proceeds of a section 10 disposal must be applied by paying
6 them to the Treasurer or as the Treasurer directs otherwise.

7 **31. Provision by State of indemnities and guarantees**

8 (1) The Treasurer may, in the name and on behalf of the State, give
9 an indemnity or guarantee in respect of a matter related to —

10 (a) a section 10 disposal; or

11 (b) the action (whether under a transfer order or otherwise)
12 by which anything is disposed of in connection with a
13 section 10 disposal.

14 (2) The Treasurer may, in the name and on behalf of the State, give
15 to any person who is or has been a director or officer of the
16 Authority, associated agency or corporate vehicle an indemnity
17 against any liability determined by the Treasurer (including
18 any civil liability under the *Corporations Act 2001*
19 (Commonwealth)), whether or not the liability relates to a
20 matter referred to in subsection (1).

21 (3) Any money payable under an indemnity or guarantee given
22 under this section must be paid by the Treasurer.

23 (4) Payments made under subsection (3) are charged to the
24 Consolidated Account, which this subsection appropriates
25 accordingly.

26 **32. Takeover by State of certain obligations**

27 (1) This section applies in relation to an obligation (whether
28 contingent or otherwise) of the Authority, an associated agency
29 or a corporate vehicle.

1 **Part 4 — Provisions relating to corporate vehicles**

2 **33. Application of this Part**

3 This Part applies if, for the purposes of a section 10 disposal, a
4 port asset or associated SC asset is disposed of (whether under a
5 transfer order or otherwise) from the Authority, an associated
6 agency or a corporate vehicle (the *disposer*) to a corporate
7 vehicle (the *acquirer*).

8 **34. Acquirer's powers and duties**

9 To the extent prescribed by the regulations, the acquirer has the
10 powers, duties, rights and obligations in respect of the port asset
11 or associated SC asset that the disposer would have had if the
12 disposal had not occurred.

13 **35. Application of written laws to acquirer**

14 (1) In this section —

15 *applicable written law* —

- 16 (a) means a written law (other than this Act) that applies to
17 or in relation to, or refers to, the disposer; and
18 (b) includes a written law that, by operation of this section,
19 applies to or in relation to, or refers to, the disposer.

20 (2) An applicable written law is to be taken to apply to or in relation
21 to, or to refer to, the acquirer —

- 22 (a) to the extent prescribed by the regulations; and
23 (b) with the changes that are prescribed by the regulations
24 or are otherwise necessary or convenient for the
25 purposes of this Part.

26 (3) Without limiting subsection (2), the regulations may provide
27 that a reference in an applicable written law to the disposer that
28 relates to the port asset or associated SC asset before the
29 disposal occurred is to be taken to include a reference to the
30 acquirer.

1 **Part 5 — Provisions relating to leases and licences**

2 **36. Term used: port facilities instrument**

3 In this Part —

4 ***port facilities instrument*** means —

- 5 (a) a lease or licence in respect of port facilities entered into
6 for the purposes of a section 10 disposal; or
7 (b) a lease or licence designated under section 37(2)(a) as a
8 port facilities instrument for the purposes of the section
9 in which the term is used,

10 and includes that lease or licence as varied from time to time.

11 **37. Minister may designate certain matters**

12 (1) In this section —

13 ***associate***, in relation to a lessee or licensee under a port
14 facilities instrument, means —

- 15 (a) a related body corporate; and
16 (b) a trust, joint venture or partnership where the interest of
17 the lessee or licensee or of a related body corporate in
18 the trust, joint venture or partnership entitles the lessee
19 or licensee or the related body corporate to —
20 (i) control the composition of the governing body of
21 the trust, joint venture or partnership; or
22 (ii) cast, or control the casting of, more than one half
23 of the maximum number of votes that might be
24 cast at a general meeting of the trust, joint
25 venture or partnership; or
26 (iii) control the business affairs of the trust, joint
27 venture or partnership;

28 ***related body corporate*** means a body corporate that is related to
29 the lessee or licensee by virtue of the *Corporations Act 2001*
30 (Commonwealth) section 50.

- 1 (2) The Minister may by order —
- 2 (a) designate a lease or licence as a port facilities instrument
- 3 for the purposes of section 38 or 39, as the case requires;
- 4 (b) designate the lessee or licensee under a port facilities
- 5 instrument, or an associate of the lessee or licensee
- 6 under a port facilities instrument, as a port facilities
- 7 instrument holder for the purposes of section 39;
- 8 (c) designate an agreement or arrangement as an agreement
- 9 or arrangement entered into in connection with a port
- 10 facilities instrument for the purposes of section 38.
- 11 (3) The Minister may by order vary or revoke an order made under
- 12 subsection (2).
- 13 (4) An order under this section must be published in the *Gazette*.

14 **38. Effect of provisions of port facilities instrument**

- 15 (1) In this section —
- 16 *lessee or licensee* mean the lessee or licensee under the relevant
- 17 port facilities instrument;
- 18 *lessor or licensor* mean the lessor or licensor under the relevant
- 19 port facilities instrument;
- 20 *related arrangement*, in relation to a port facilities instrument,
- 21 means an agreement or arrangement designated under
- 22 section 37(2)(c) as an agreement or arrangement entered into in
- 23 connection with the instrument and includes that agreement or
- 24 arrangement as varied from time to time.
- 25 (2) The provisions of a port facilities instrument, or of any related
- 26 arrangement, dealing with the following matters have effect
- 27 according to their terms despite any law or rule to the
- 28 contrary —
- 29 (a) the payment of any amount by way of premium, rent or
- 30 other moneys under the port facilities instrument or
- 31 related arrangement and the retention of any such
- 32 amount by the lessor or licensor or the State;

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- 1 (b) the non-refundability of any payment made on account
2 of rent, premium, option fee, outgoings, security deposit
3 or otherwise;
- 4 (c) the amount payable by the lessee or licensee in
5 consequence of a breach or early termination of the port
6 facilities instrument;
- 7 (d) the continuance of the port facilities instrument or
8 related arrangement and the obligations that the lessee or
9 licensee has under the port facilities instrument or
10 related arrangement, including payment of rent and
11 other moneys, despite the occurrence of unintended or
12 unforeseen circumstances;
- 13 (e) the circumstances or conditions under which the port
14 facilities instrument may be terminated by a party to the
15 instrument;
- 16 (f) the right of re-entry or forfeiture that the lessor or
17 licensor or the State has in respect of the port facilities
18 instrument.

19 **39. References to port authority may include other entities**

20 (1) In this section —

21 *affected written law* means —

- 22 (a) regulations under the *Dangerous Goods Safety*
23 *Act 2004*;
- 24 (b) the *Emergency Management Act 2005*;
- 25 (c) the *Jetties Act 1926*;
- 26 (d) the *Lights (Navigation Protection) Act 1938*;
- 27 (e) the *Marine and Harbours Act 1981*;
- 28 (f) the *Marine Navigational Aids Act 1973*;
- 29 (g) the *Pollution of Waters by Oil and Noxious Substances*
30 *Act 1987*;
- 31 (h) the *Port Authorities Act 1999*;
- 32 (i) the *Shipping and Pilotage Act 1967*;

1 **port facilities instrument holder** means a person designated by
2 order under section 37(2)(b);

3 **specified** means specified in the regulations.

4 (2) The regulations may provide that a reference to a port authority
5 in a provision of an affected written law that is prescribed in the
6 regulations —

7 (a) is to be taken to be a reference to a specified port
8 facilities instrument holder in lieu of a specified port
9 authority; or

10 (b) is to be taken to include a reference to a specified port
11 facilities instrument holder.

12 **40. Making and registration of certain lease variations**

13 (1) In this section —

14 **relevant official** has the meaning given in section 25(1).

15 (2) If —

16 (a) before a section 10 disposal took place an agreement to
17 lease existed between the Authority, the State or an
18 associated agency and another entity (the **third party**) in
19 relation to land; and

20 (b) for the purposes of the section 10 disposal the land was
21 disposed of by way of a lease (the **acquirer's lease**)
22 recorded and registered by a relevant official under a
23 written law; and

24 (c) the acquirer subsequently surrendered the land in order
25 that a lease of the land could be granted to the third
26 party in accordance with the agreement to lease,

27 the acquirer's lease may be varied to reinclude the land, creating
28 a concurrent lease over the land.

29 (3) If the Minister certifies in writing —

30 (a) that the matters set out in subsection (2)(a), (b) and (c)
31 occurred; and

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- 1 (b) that the acquirer's lease has been varied under
2 subsection (2),
3 a relevant official may record and register the variation of the
4 acquirer's lease.

Part 6 — Miscellaneous matters

41. Exemption from State tax

(1) In this section —

State tax includes —

- (a) duty chargeable under the *Duties Act 2008*; and
- (b) any other tax, duty, fee, levy or charge under a law of the State.

(2) State tax is not payable in relation to —

- (a) anything that occurs by operation of either or both of Parts 2 and 3; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under, to give effect to, or for a purpose connected with or arising out of giving effect to, either or both of Parts 2 and 3.

(3) The Minister may, at the request of the transferor or transferee under a transfer order, certify in writing that —

- (a) a specified thing occurred by operation of either or both of Parts 2 and 3; or
- (b) a specified thing was done under, to give effect to, or for a purpose connected with or arising out of giving effect to, either or both of Parts 2 and 3.

(4) For all purposes and in all proceedings, a certificate under subsection (3) is sufficient evidence of the matters it certifies unless the contrary is shown.

(5) The exemption under subsection (2) does not apply in relation to a thing that occurs or is done if the Minister directs (whether in a transfer order or otherwise in writing) that it does not apply in relation to the thing.

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- 1 **42. Effect of this Act on existing rights and obligations**
- 2 (1) The operation of this Act, including anything done or omitted to
3 be done under or for the purposes of this Act, is not to be
4 regarded as —
- 5 (a) being a breach of confidence or any other civil wrong;
6 or
- 7 (b) being a breach of a contract or instrument, including
8 (without limitation) a provision prohibiting, restricting
9 or regulating the assignment or transfer of assets, rights
10 or liabilities; or
- 11 (c) requiring any act to be done under a contract or
12 instrument; or
- 13 (d) giving rise to a right or remedy of a party to a contract
14 or instrument, or causing or permitting the termination
15 of, or exercise of rights under, a contract or instrument;
16 or
- 17 (e) being an event of default under a contract or instrument;
18 or
- 19 (f) causing a contract or instrument to be void or otherwise
20 unenforceable; or
- 21 (g) subject to section 32(3) and (4), releasing, or allowing
22 the release of, any surety or other obligee from the
23 whole or part of an obligation.
- 24 (2) This section does not limit section 44.
- 25 **43. No compensation payable**
- 26 (1) No compensation is payable by or on behalf of the State —
- 27 (a) because of the enactment or operation of this Act or for
28 the consequences of its enactment or operation; or
- 29 (b) because of any statement or conduct relating to the
30 enactment of this Act; or
- 31 (c) in connection with the disposal under this Act of a port
32 asset or associated asset.

- 1 (2) Subsection (1) does not apply in relation to —
2 (a) any consideration payable under an agreement entered
3 into for the purposes of a section 10 disposal; or
4 (b) any compensation payable in connection with the
5 performance of an obligation arising under an agreement
6 entered into for the purposes of a section 10 disposal.
- 7 (3) This section does not limit section 44.

8 **44. Government agreements not affected**

- 9 (1) In this section —
10 **Government agreement** means an agreement referred to in
11 paragraph (a) of the definition of **Government agreement** in the
12 *Government Agreements Act 1979* section 2 and, if the
13 agreement has been varied, means the agreement as varied.
- 14 (2) This Act does not prejudice or in any way affect any right or
15 obligation of a party to a Government agreement.
- 16 (3) The operation of the *Government Agreements Act 1979* in
17 relation to this Act is not limited or otherwise affected by this
18 Act.
- 19 (4) This section does not limit section 27.

20 **45. Regulations for purposes of, or consequential on, section 10**
21 **disposals**

- 22 (1) In this section —
23 **publication day**, for regulations referred to in subsection (2),
24 means the day on which those regulations are published in the
25 *Gazette*;
26 **the State** includes a Minister, officer or agency of the State.
- 27 (2) Regulations may provide for —
28 (a) matters for which it is necessary or convenient to make
29 provision for the purposes of a section 10 disposal; or

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- 1 (b) matters that it is necessary or convenient to deal with as
2 a consequence of anything contained in, or anything
3 done under, Part 2, 3, 4 or 5.
- 4 (3) Regulations referred to in subsection (2) may be expressed to
5 take effect before publication day for those regulations but after
6 the day on which the order made under section 10(1)(a) for the
7 section 10 disposal is published in the *Gazette*.
- 8 (4) To the extent that regulations referred to in subsection (2) take
9 effect before publication day for those regulations, the
10 regulations do not operate —
- 11 (a) to affect in a manner prejudicial to any person (other
12 than the State or the disposer or acquirer under the
13 section 10 disposal) the rights of that person existing
14 before publication day for those regulations; or
- 15 (b) to impose liabilities on any person (other than the State
16 or the disposer or acquirer under the section 10 disposal)
17 in respect of anything done or omitted to be done before
18 publication day for those regulations.

19 **46. Regulations for purposes of providing access to services**

- 20 (1) In this section —
- 21 **access arrangement**, for a service, means an instrument
22 approved under subsection (3)(b) in respect of the service and
23 includes the instrument as amended or replaced under
24 subsection (3)(c);
- 25 **price regulation** of a service includes the setting of pricing
26 principles, or prices, for access to the service and the monitoring
27 of prices for access to the service;
- 28 **regulator** means the person prescribed by the regulations to be
29 the regulator in respect of access to services;
- 30 **service** means —
- 31 (a) a port or other service provided by means of a port
32 facility; or

- 1 (b) a service ancillary or incidental to a port or other service
2 referred to in paragraph (a);
- 3 *service provider* of a service means the person who owns,
4 controls or operates the port facility —
- 5 (a) by means of which the service is provided; or
6 (b) by means of which a service to which the service is
7 ancillary or supplemental is provided.
- 8 (2) Regulations may provide for access to a service, or price
9 regulation of a service, or both.
- 10 (3) Without limiting subsection (2), the regulations may do any or
11 all of the following —
- 12 (a) require the service provider of a service to lodge with
13 the regulator an instrument setting out —
- 14 (i) the terms and conditions on which access to the
15 service is to be provided; or
- 16 (ii) arrangements for price regulation of the service;
17 or
- 18 (iii) the terms and conditions on which access to the
19 service is to be provided and arrangements for
20 price regulation of the service;
- 21 (b) provide for a process for the approval by the regulator of
22 an instrument referred to in paragraph (a), including the
23 matters to be taken into account by the regulator when
24 deciding whether or not to approve the instrument;
- 25 (c) provide for a process for the approval by the regulator of
26 any amendment or replacement of an instrument referred
27 to in paragraph (a), including the matters to be taken
28 into account by the regulator when deciding whether or
29 not to approve the amendment or replacement;
- 30 (d) provide for the production of information by the service
31 provider of a service to enable persons to understand the
32 elements of an access arrangement for the service;

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- 1 (e) set out, or provide for an instrument referred to in
2 paragraph (a) to set out, duties and requirements in
3 relation to the provision of a service that are to be
4 complied with by the service provider of the service;
- 5 (f) set out the obligations of the service provider of a
6 service in respect of the segregation of the functions and
7 business of providing the service from the service
8 provider's other functions and businesses and enable the
9 regulator to add to, or waive any of, those obligations;
- 10 (g) make provision in relation to services between bodies
11 corporate that are related to each other by virtue of the
12 *Corporations Act 2001* (Commonwealth) section 50;
- 13 (h) provide for the arbitration of disputes between a service
14 provider of a service and a person who is proposing to
15 access, or is accessing, the service under an access
16 arrangement, including the establishment of a panel of
17 arbitrators and appointment of arbitrators by the
18 regulator;
- 19 (i) provide that a provision of the regulations that imposes
20 an obligation on a person is a civil penalty provision;
- 21 (j) prescribe, for a contravention of a civil penalty
22 provision, the amounts that may, in accordance with the
23 regulations, be demanded from or imposed on a person
24 who contravenes a civil penalty provision, being —
- 25 (i) an amount not exceeding \$500 000; and
26 (ii) an additional amount not exceeding \$20 000 for
27 each day or part of a day that the contravention
28 continues;
- 29 (k) provide for the demand for payment of an amount
30 prescribed under paragraph (j) and the enforcement of
31 that demand;
- 32 (l) provide for and regulate the taking of proceedings in
33 respect of alleged contraventions of provisions of the
34 regulations, provide for the orders that can be made and

- 1 other sanctions that can be imposed in those proceedings
2 and provide for the enforcement of those orders and
3 sanctions;
- 4 (m) provide for the manner in which an amount received by
5 way of civil penalty is to be dealt with and applied;
- 6 (n) prescribe, for an offence under the regulations, a fine not
7 exceeding \$100 000, with or without an additional fine
8 not exceeding \$20 000 for each day or part of a day that
9 the offence continues;
- 10 (o) provide for the review by a person specified in the
11 regulations of a decision made under the regulations;
- 12 (p) confer functions on the Minister, the Economic
13 Regulation Authority under the *Economic Regulation*
14 *Authority Act 2003* or any other person.
- 15 (4) An access arrangement is not subsidiary legislation for the
16 purposes of the *Interpretation Act 1984*.

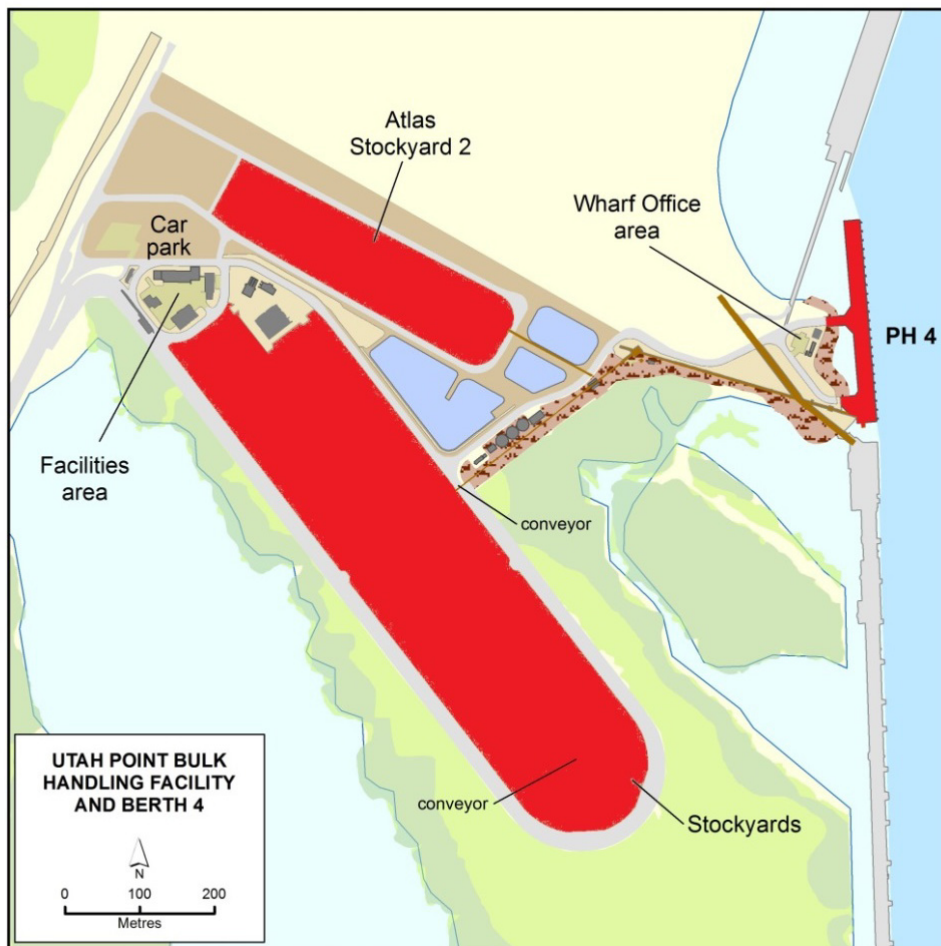
17 **47. Regulations**

- 18 The Governor may make regulations prescribing matters —
- 19 (a) required or permitted to be prescribed by this Act; or
20 (b) necessary or convenient to be prescribed for giving
21 effect to this Act.

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Schedule 1 — Utah Point Bulk Handling Facility

[s. 3]



Ref: PH 041_001_03_01_PH_Port_handbook_Utah_Point

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
acquirer	3, 33
access arrangement	46(1)
acquirer's lease	40(2)
affected written law	39(1)
applicable written law	35(1)
asset	3
associate	37
associated agency	3
associated asset	3
associated SC asset	3
associated State asset	3
Authority	3
bound recipient	29(1)
company	3
corporate vehicle	3
dispose of	3
disposer	3, 33
further period	12(5)
Government agreement	44(1)
interest or licence	12(4)
lease	3
lessee or licensee	38(1)
lessor or licensor	38(1)
liability	3
port asset	3
port authority	3
port facilities instrument	36
port facilities instrument holder	39(1)
port facility	3
price regulation	46(1)
private entity	3
publication day	45(1)
purposes	3
record	24(1)
regulations	3
regulator	46(1)
related arrangement	38(1)
related body corporate	37
relevant official	25(1), 40(1)

Defined terms

relevant record	24(1)
right.....	3
section 10 disposal	3
service	46(1)
service provider.....	46(1)
specified.....	21(1), 39(1)
State tax	41(1)
statutory corporation	3
the State	45(1)
third party.....	40(2)
transfer order.....	3, 20(1)
transfer time	3
transferee.....	3, 20(1)
transferor.....	3, 20(1)