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Transport Integration Act 2010 TRANSPORT RESTRUCTURING ORDER (ESTABLISHMENT OF PORTS VICTORIA) NO. 1/2021

Order in Council

This Order may be cited as the Transport Restructuring Order (Establishment of Ports Victoria) No. 1/2021.

The Governor in Council under Division 1 of Part 4B of the **Transport Integration Act 2010**, Orders –

1. Commencement

This Order comes into operation on 1 July 2021 (the **Commencement Day**).

2. Definitions

(1) A term used in this Order has the same meaning as that term has in the **Transport Integration Act 2010**, unless the context otherwise requires.

Note:

- (1) Section 3 of the **Transport Integration Act 2010** contains the following definitions:
- commercial trading port* has the same meaning as in the **Port Management Act 1995**;
 - decision making principles* means the principles specified in Division 3 of Part 2 of the **Transport Integration Act 2010**;
 - Department* means the Department of Transport;
 - port* has the same meaning as in the **Port Management Act 1995**;
 - Port Capacity Project part of the port of Melbourne* means that part of the port of Melbourne at which the development declared in the nomination order under the **Project Development and Construction Management Act 1994**, dated 4 September 2012 and published in the Government Gazette on 7 September 2012, is being carried out;
 - port manager* has the same meaning as in the **Port Management Act 1995**;
 - port of Melbourne* has the same meaning as in the **Port Management Act 1995**;
 - port of Melbourne waters* has the same meaning as in the **Port Management Act 1995**;
 - port waters* has the same meaning as in the **Port Management Act 1995**;
 - Secretary* means Secretary to the Department;
 - Transfer Order* means an Order in Council made under Division 2 of Part 4B of the **Transport Integration Act 2010**;
 - transport system objectives* means the objectives specified in Division 2 of Part 2 of the **Transport Integration Act 2010**;
 - Victorian Ports Corporation (Melbourne)* means the body corporate continued under section 141B of the **Transport Integration Act 2010**;
 - Victorian Regional Channels Authority* means the body corporate continued under section 141J of the **Transport Integration Act 2010**;
 - vision statement* means the statement set out in section 6 of the **Transport Integration Act 2010**.
- (2) Section 3 of the **Transport Integration Act 2010** also defines, among other things, *Director*, *Transport Safety*, *public entity* (which has the same meaning as in the **Public Administration Act 2004**), *transport body*, *transport legislation* and *transport system*.
- (3) The **Transport Integration Act 2010** is included in the definition of *transport legislation*; see paragraph (t) of that definition.
- (2) In this Order –
- regional port waters* means port waters other than –
 - (a) port of Melbourne waters; or

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- (b) waters declared by Order in Council under section 5(2) of the **Port Management Act 1995** to be the port waters of a local port (within the meaning of that Act); or
- (c) waters deemed under section 183(1) of the **Port Management Act 1995** to be the waters of a local port (within the meaning of that Act) for the purposes of that Act.

Note:

Section 141I of the **Transport Integration Act 2010** contains a definition of *regional port waters*; it is specific to Division 3B of Part 6 of that Act which relates to the Victorian Regional Channels Authority and so is also specifically defined in this subclause for the purposes of this Order.

3. Objective

The objective of this Transport Restructuring Order is to –

- (a) constitute a new sector transport agency, Ports Victoria; and
- (b) provide for Ports Victoria's constitution and membership; and
- (c) provide that Ports Victoria is a Transport Corporation within the meaning of the **Transport Integration Act 2010** and to apply provisions relating to Transport Corporations to Ports Victoria for purposes including (but not limited to) conferring on Ports Victoria the constitutional and membership provisions that apply to Transport Corporations; and
- (d) set out the main objects of Ports Victoria; and
- (e) confer all of the duties, functions and powers of the Victorian Ports Corporation (Melbourne) on Ports Victoria, only to be performed or exercised by Ports Victoria, and to be performed or exercised by Ports Victoria on an ongoing basis; and
- (f) confer all of the duties, functions and powers of the Victorian Regional Channels Authority on Ports Victoria, only to be performed or exercised by Ports Victoria, and to be performed or exercised by Ports Victoria on an ongoing basis; and
- (g) alter the constitution and membership of the Victorian Ports Corporation (Melbourne) to provide that it is a single member body corporate, and is not a Transport Corporation (but remains a sector transport agency); and
- (h) provide that the board of the Victorian Ports Corporation (Melbourne) goes out of office when this Order comes into effect; and
- (i) alter the constitution and membership of the Victorian Regional Channels Authority to provide that it is a single member body corporate, and is not a Transport Corporation (but remains a sector transport agency); and
- (j) provide that the board of the Victorian Regional Channels Authority goes out of office when this Order comes into effect; and
- (k) alter the object of the Victorian Ports Corporation (Melbourne) and confer on it the function of the Roads Corporation in section 87(b) of the **Transport Integration Act 2010** (to be performed concurrently with the Roads Corporation and the Victorian Regional Channels Authority) so that the Victorian Ports Corporation (Melbourne)'s object and sole function is to make available staff and provide resources and other support as necessary to assist the Secretary to perform the functions and exercise the powers conferred on the Secretary by or under the **Transport Integration Act 2010** or any other Act; and
- (l) alter the object of the Victorian Regional Channels Authority and confer on it the function of the Roads Corporation in section 87(b) of the **Transport Integration Act 2010** (to be performed concurrently with the Roads Corporation and the Victorian Ports Corporation (Melbourne)) so that the Victorian Regional Channels Authority's object and sole function is to make available staff and provide resources and other support as necessary to assist the Secretary to perform the functions and exercise the

powers conferred on the Secretary by or under the **Transport Integration Act 2010** or any other Act; and

- (m) provide that, while the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority remain sector transport agencies and transport bodies, corporate plan provisions in the **Transport Integration Act 2010** are disappplied in respect of those bodies as from the Commencement Day (the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority respectively having only the objects and support functions described in paragraphs (k) and (l)); and
- (n) provide for matters of a transitional or savings nature in relation to any act, matter or thing done or required to be done by or in relation to the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority, being sector transport agencies affected by this Order, or to enable the effective implementation of the restructuring effected by this Order; and
- (o) provide for other matters of a savings, transitional or consequential nature on the making of this Order, including providing for the construction of references in any Act, subordinate legislation or in any other document of any kind; and
- (p) provide that while this Order is in force, the provisions of any transport legislation specified in this Order (including the **Transport Integration Act 2010**) are to be taken to apply as varied or modified by this Order and that references in any transport legislation or any regulation or instrument or in any other document of any kind are to be construed as provided in this Order; and
- (q) to apply, adopt or incorporate, with or without modification, the provisions of certain Acts (including the **Transport Integration Act 2010**) or regulations made under certain Acts as provided in this Order; and
- (r) to provide for any other matter necessary or convenient to give effect to Division 1 of Part 4B of the **Transport Integration Act 2010** and to enable the effective implementation of the restructuring that is the subject of this Order.

4. **Transfer of property, rights and liabilities**

- (1) Transfer Orders are required in relation to the restructuring that is the subject of this Order.
- (2) The property, rights and liabilities to be transferred from the Victorian Ports Corporation (Melbourne) to Ports Victoria by Transfer Order (Victorian Ports Corporation (Melbourne)) (Establishment of Ports Victoria) No. 1/2021 are described in Schedule 2 to this Order.
- (3) The property, rights and liabilities to be transferred from the Victorian Regional Channels Authority to Ports Victoria by Transfer Order (Victorian Regional Channels Authority) (Establishment of Ports Victoria) No. 2/2021 are described in Schedule 3 to this Order.

Note:

Sections 66C to 66L and 66O of the **Transport Integration Act 2010** contain provisions relating to transferred property, rights and liabilities including making provision in respect of the substitution of parties to agreements, the transfer of transferee instruments relating to the transferred property, rights and liabilities, proceedings, interests in land, easements, action to be taken by the Registrar of Titles, taxes, evidence and related matters.

5. **Transfer of employees necessary to give effect to the restructuring**

The transfer of employees from the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority to Ports Victoria will be necessary to give effect to the restructuring that is the subject of this Order.

Note:

- (1) Under section 313 of the Fair Work Act 2009 (Cth), where an enterprise agreement covers transferring employees immediately before the termination of their employment with the old employer (such as the Victorian Ports Corporation (Melbourne)), that same enterprise agreement will then transfer to the new

employer (such as Ports Victoria) and will cover the new employer and the transferring employees in relation to the transferring work once the transferring employees are employed by the new employer (such as Ports Victoria).

- (2) The transfer of an enterprise agreement as a result of the operation of section 313 of the Fair Work Act 2009 (Cth) is consistent with the transfer of employees under section 66N of the **Transport Integration Act 2010** (i.e. on terms and conditions of employment no less favourable overall).

6. Ports Victoria established

Ports Victoria is established and is constituted as a new sector transport agency under section 65E(1) of the **Transport Integration Act 2010**.

Note:

- (1) Ports Victoria is a sector transport agency, being established by Transport Restructuring Order under Division 1 of Part 4B of the **Transport Integration Act 2010** (see section 65A(2)(d), 65E(1) and paragraph (i) of the definition of *sector transport agency* in section 3 of that Act).
- (2) Section 65E(3) of the **Transport Integration Act 2010** provides that a new sector transport agency constituted under section 65E(1) –
 - (a) is a body corporate with perpetual succession;
 - (b) has an official seal;
 - (c) may sue and be sued;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) Ports Victoria is a transport body by operation of paragraph (eb) of the definition of *transport body* in section 3 of the **Transport Integration Act 2010**. This means that Ports Victoria must have regard to the transport system objectives set out in Division 2 of Part 2 of that Act in exercising its powers and performing its functions under any transport legislation, and to the decision making principles set out in Division 3 of Part 2 of that Act in making decisions under any transport legislation (see sections 24(1) and (2) of the **Transport Integration Act 2010**).
- (4) By reason of the modifications to Division 4 of Part 6 of the **Transport Integration Act 2010** made by clauses 7 and 13 of this Order, Ports Victoria is a Transport Corporation within the meaning of that Act and provisions applicable to Transport Corporations in Division 4 of Part 6 of that Act apply as modified by this Order. The purpose of applying the provisions to Ports Victoria, as specified in this Order, includes (but is not limited to) the purpose of conferring on Ports Victoria the constitutional and membership provisions that apply to Transport Corporations.
- (5) Note further that the provisions in section 65E(3), set out in paragraph (2), appear in like form in section 142(1) of the **Transport Integration Act 2010** in relation to Transport Corporations.

7. Modification of definition of Transport Corporation

- (1) The definition of Transport Corporation in section 3 of the **Transport Integration Act 2010** is varied for purposes of this Order so that, while this Order is in force, it applies as if –
 - (a) paragraphs (d) and (e) were omitted; and
 - (b) there were inserted “(g) Ports Victoria;”.
- (2) Without limiting the operation of subclause (1), the provisions relating to Transport Corporations in Division 4 of Part 6 of the **Transport Integration Act 2010** apply to Ports Victoria as modified by this Order.

Note:

- (1) Section 65A(4)(g) of the **Transport Integration Act 2010** provides that a Transport Restructuring Order may provide, among other things, that while the Order is in force, the provisions of any transport legislation specified in the Order applies as varied or modified by the Order.
- (2) The effect of this provision is that Ports Victoria is a Transport Corporation as defined in section 3 of the **Transport Integration Act 2010** but, from the Commencement Day, the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority are not.
- (3) See also clause 13 of this Order, which modifies Division 4 of Part 6 of the **Transport Integration Act 2010** for the purposes of this Order, and clauses 17 to 20, which further modify the **Transport Integration Act 2010** to alter the constitution and membership of each of the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority and confer on each of those bodies various powers, duties and functions.

8. Ports Victoria is a public entity but does not represent the Crown

- (1) Section 141C of the **Transport Integration Act 2010** is applied to Ports Victoria by this Order as if modified so that, for the purposes of this Order, it applies as if the reference to the Victorian Ports Corporation (Melbourne) were a reference to Ports Victoria.
- (2) To avoid doubt, nothing in this clause modifies the application of section 141C of the **Transport Integration Act 2010** to the Victorian Ports Corporation (Melbourne), which remains a public entity but does not represent the Crown.

Note:

- (1) Section 65A(4)(e) of the **Transport Integration Act 2010** provides that a Transport Restructuring Order may apply, adopt or incorporate, with or without modification, the provision of any Act or of any regulations made under any Act.
- (2) Section 141C of the **Transport Integration Act 2010** provides that the Victorian Ports Corporation (Melbourne) is a public entity but does not represent the Crown.
- (3) The effect of the modification made by subclause (1) for the purposes of this Order is that Ports Victoria is a public entity, but does not represent the Crown.
- (4) Because Ports Victoria is a public entity within the meaning of the **Public Administration Act 2004**, Divisions 2 and 3 of Part 5 of that Act apply to Ports Victoria.
- (5) Because the provision is applied to Ports Victoria by this Order for the purposes of this Order, the provision remains applicable to the Victorian Ports Corporation (Melbourne), which remains a public entity but does not represent the Crown. The Victorian Regional Channels Authority is similarly a public entity but does not represent the Crown (see section 141K of the **Transport Integration Act 2010**).
- (6) Because the provision is applied to Ports Victoria by this Order, Ports Victoria assumes various capacities in place of the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority. For example, Ports Victoria is, amongst other things –
 - a. a public sector body under the **Public Administration Act 2004** (in addition to being a public entity within the meaning of that Act);
 - b. an agency and a prescribed authority under the **Freedom of Information Act 1982**;
 - c. a public sector agency under the **Privacy and Data Protection Act 2014**;
 - d. a public sector agency under the **Health Records Act 2001**;
 - e. a public body under the **Financial Management Act 1994**;
 - f. a public body under the **Project Development and Construction Management Act 1994**;
 - g. a defined entity under the **Gender Equality Act 2020**;
 - h. a public body under the **Public Interest Disclosures Act 2012**;
 - i. a public office under the **Public Records Act 1973**;
 - j. a port management body under the **Marine Safety Act 2010**;
 - k. a port manager under the **Port Management Act 1995**;
 - l. a channel operator under the **Port Management Act 1995**;
 - m. a designated State port entity under the **Port Management Act 1995**;
 - n. a port management body under the **Marine (Drug, Alcohol and Pollution Control) Act 1988**; and
 - o. a control agency and a support agency under the **Emergency Management Act 2013**.
- (7) Functions of the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority under Commonwealth legislation included, for example, vessel traffic service (VTS) functions, including functions as a VTS Authority under Marine Order 64 (Vessel Traffic Services) 2013 (Cth) and a Vessel Traffic Service Authority under the **Navigation Act 2012** (Cth) and, in the case of the Victorian Ports Corporation (Melbourne), functions as –
 - a. a port facility operator with respect to Station Pier and must have a Maritime Security Plan pursuant to the **Maritime Transport and Offshore Facilities Security Act 2003** (Cth) for the security regulated port facility (Station Pier);
 - b. a cargo terminal operator under the **Customs Act 1901** (Cth); and
 - c. the manager of a First Point of Entry under section 229(1) of the **Biosecurity Act 2015** (Cth) (Station Pier).

9. Object of Ports Victoria

The object of the Victorian Ports Corporation (Melbourne) set out in section 141D of the **Transport Integration Act 2010** and the object of the Victorian Regional Channels Authority set out in section 141L of that Act are adopted in this Order as if modified so that, for the purposes of this Order, they apply to Ports Victoria as if –

- (1) the main objects of Ports Victoria are –
 - (a) to ensure that port of Melbourne waters and channels in port of Melbourne waters are managed for use on a fair and reasonable basis consistent with the **Transport Integration Act 2010** vision statement and the transport system objectives; and
 - (b) to ensure that regional port waters and channels in regional port waters and channels in regional port waters are managed for use on a fair and reasonable basis consistent with the vision statement and the transport system objectives; and
 - (c) to manage and develop Station Pier and West Finger Pier consistent with the vision statement and the transport system objectives; and
 - (d) if authorised under section 141EA of the **Transport Integration Act 2010** (as applied and modified by clause 11 of this Order), to manage and develop the Port Capacity Project part of the port of Melbourne consistent with the vision statement and the transport system objectives; and
 - (e) as a designated State port entity, to manage a site in the port of Melbourne at which stevedoring operations are carried out consistent with the vision statement and the transport system objectives; and

Note:

- (1) The Victorian Ports Corporation (Melbourne) was declared to be a designated State port entity (as defined in section 74AA of the **Port Management Act 1995**) by Order published in Government Gazette S 184 on 6 June 2017. This designation allows wharfage fees to be approved as “approved wharfage fees” under section 74AB(b) of that Act. It also enlivens the object in paragraph (e) of this subclause and related conferred function (see section 141D(1)(d) of the **Transport Integration Act 2010**).
 - (2) As a result of transitional provisions contained in Schedule 1 to this Order, Ports Victoria is taken to be a designated State port entity as defined in section 74AA of the **Port Management Act 1995**.
- (2) without limiting the generality of subclause (1), the main objects of Ports Victoria include the following –
 - (a) to ensure, in collaboration with relevant responsible bodies, that the port of Melbourne waters, Station Pier and West Finger Pier are effectively integrated with the transport system and other systems of infrastructure in the State; and
 - (b) ensuring, in collaboration with transport bodies and public entities, that regional port waters and channels in regional port waters are effectively integrated with the transport system and other systems of infrastructure in the State; and
 - (c) to establish and manage channels in port of Melbourne waters for use on a fair and reasonable basis.

Note:

transport system is defined in section 3 of the **Transport Integration Act 2010**.

10. Conferral of all of the duties, functions and powers of the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority on Ports Victoria and related matters

- (1) All of –
- (a) the functions of the Victorian Ports Corporation (Melbourne) set out in Division 3A of Part 6 of the **Transport Integration Act 2010**; and
 - (b) the functions of the Victorian Regional Channels Authority set out in Division 3B of Part 6 of the **Transport Integration Act 2010**; and
 - (c) the duties and powers of the Victorian Ports Corporation (Melbourne) under any transport legislation; and
 - (d) the duties and powers of the Victorian Regional Channels Authority under any transport legislation
- are conferred on Ports Victoria.

- (2) The functions, duties and powers are only to be performed or exercised by Ports Victoria, and are to be performed or exercised by Ports Victoria on an ongoing basis.

Note:

Section 65F(1) of the **Transport Integration Act 2010** provides that if a Transport Restructuring Order confers a duty, function or power on a new sector transport agency and provides that the duty, function or power is only to be performed by the new sector transport agency on an ongoing basis, the sector transport agency on which that duty, function or power was previously conferred does not have that duty, function or power and any power or duty that the sector transport agency has in connection with, or as incidental to, the performance of that duty, function or power is withdrawn accordingly. See clauses 17 to 20, which modify the **Transport Integration Act 2010** to provide the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority with new constitutions and membership, and provide those bodies with various powers, duties and functions.

- (3) Sections 141E(2) and 141M(2) of the **Transport Integration Act 2010** are adopted in this Order as if modified so that, for the purposes of this Order, they apply to Ports Victoria as if –
- (a) in performing the functions conferred on Ports Victoria by subclause (1), Ports Victoria must –
 - (i) carry out its functions consistently with State policies and strategies for the development of the Victorian port and freight networks; and
 - (ii) operate in a commercially sound manner having regard to –
 - (a) the benefits of increased competition between persons and bodies that provide services related to the operation of the area (other than the port of Melbourne) where it is carrying out its functions; and
 - (b) to the extent that it is possible to do so consistently with paragraph 3(a)(i), the benefits of increased competition between persons and bodies that provide services related to the operation of the port of Melbourne; and
 - (c) to the extent that it is possible to do so consistently with paragraph 3(a)(i), the persons living or working in the immediate neighbourhood of the port of Melbourne; and
 - (d) the need to conduct research and collect information relating to the performance of the functions in subclause (1) and the operation of regional port waters and channels in regional port waters and, to the extent that it is possible to do so consistently with paragraph 3(a)(i), the operation of the port of Melbourne, so as to enable Ports Victoria to meet the primary object of Ports Victoria; and

- (e) the need to deal efficiently with any complaints relating to the performance of its functions.

Note:

Certain land in the port of Melbourne is leased to a private sector entity.

- (4) Section 141E(2) of the **Transport Integration Act 2010** is varied by this Order as if modified so that it does not apply to the Victorian Ports Corporation (Melbourne).
- (5) Section 141M(2) of the **Transport Integration Act 2010** is varied by this Order as if modified so that it does not apply to the Victorian Regional Channels Authority.

Note:

The effect of subclause (1) is that the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority do not have the functions set out in Division 3A and Division 3B of Part 6 of the **Transport Integration Act 2010**. This Order therefore disapplies sections 141E(2) and 141M(2) of that Act in respect of the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority and applies them, as modified by this Order, to Ports Victoria.

- (6) Section 141M(3) of the **Transport Integration Act 2010** is applied by this Order as if modified so that Ports Victoria may carry out the function in section 141M(1)(a) of the **Transport Integration Act 2010**, conferred on Ports Victoria by subclause (1)(b) of this clause, to ensure, in relation to regional port waters and channels in those waters –
- (i) the establishment, management and, in accordance with the standards developed by the Director, Transport Safety, the dredging and maintenance of the channels in those waters;
- (ii) the provision and maintenance, in accordance with the standards developed by the Director, Transport Safety, of navigation aids in connection with navigation in those waters and channels;
- (iii) the general direction and control of the movement of vessels within those waters and channels in accordance with the **Marine Safety Act 2010**, in relation to a commercial trading port by arranging for the port manager or another person to carry out those functions for the port waters and channels in the port.
- (7) The functions conferred on Ports Victoria by subclauses (1)(a) and (1)(b) of this clause, and the provisions relating to the performance of those functions, as applied or adopted as varied or modified by this Order, apply as set out in Schedule 1 to this Order.
- (8) In the event of any conflict between subclause (7) of this clause and Schedule 1 on the one hand, and subclauses 1(a) and 1(b) on the other, subclauses 1(a) and 1(b) prevail.

11. Section 141EA of the Transport Integration Act 2010 modified: Minister may authorise Ports Victoria to perform certain functions

Section 141EA of the **Transport Integration Act 2010** is modified as if, for the purpose of this Order, for –

“141EA Minister may authorise Victorian Ports Corporation (Melbourne) to perform certain functions

The Minister may, in writing, authorise the Victorian Ports Corporation to perform a function specified in section 141E(1)(a).”

there were substituted –

“141EA Minister may authorise Ports Victoria to perform certain functions

The Minister may, in writing, authorise Ports Victoria to perform a function specified in section 141E(1)(a) of the **Transport Integration Act 2010**, conferred on Ports Victoria by subclause (1)(a) of the Transport Restructuring Order (Establishment of Ports Victoria) No.1/2021, as section 141E(1)(a) is applied and modified by that Order.”

Note:

The function in section 141E(1)(a) is given to Ports Victoria by this Order, as set out in clause (1)(a) of Schedule 1 to this Order. The effect of this clause is that Ports Victoria may be authorised to perform its function in relation to the

plan for the development of the Port Capacity Project part of the port of Melbourne, and that the provision is taken not to apply to the Victorian Ports Corporation (Melbourne) as and from the Commencement Day.

12. Sections 141H and 141P of the Transport Integration Act 2010 applied as if modified: Public interest functions

- (1) Section 141H of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, section 141H applies as if a reference to the Victorian Ports Corporation (Melbourne) (wherever occurring) were a reference to Ports Victoria.
- (2) Section 141P of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, it does not apply to the Victorian Regional Channels Authority.

Note:

The effect of this clause is that –

- (a) the Minister may, with the approval of the Treasurer, direct the board of Ports Victoria –
 - (i) to perform certain functions that the Minister considers to be in the public interest but which may cause Ports Victoria to suffer financial detriment;
 - (ii) to cease to perform functions of a kind referred to in sub-paragraph (i); or
 - (iii) to cease to perform certain functions that the minister considers not to be in the public interest; and
- (b) the board of Ports Victoria must comply with a direction given by the Minister; and
- (c) if Ports Victoria satisfies the Treasurer that it has suffered financial detriment as a result of complying with such a direction, Ports Victoria may be reimbursed by the State an amount determined by the Treasurer, and the Consolidated Fund is appropriated to the necessary extent; and
- (d) section 141H of the **Transport Integration Act 2010** does not apply to the Victorian Ports Corporation (Melbourne); and
- (e) section 141P of the **Transport Integration Act 2010** does not apply to the Victorian Regional Channels Authority.

13. Division 4 of Part 6 of the Transport Integration Act 2010 to apply to Ports Victoria as if modified: Provisions applying to Transport Corporations

- (1) The heading to Part 6 of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, it applies as if for –

“**Part 6 – Transport Corporations**”

there were substituted –

“**Part 6 – Transport Corporations and the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority**”.
- (2) Section 158 of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, it applies as if –
 - (a) in subsection (1), for “The Minister”, there were substituted “Subject to subsection (8), the Minister”; and
 - (b) in subsection (6) for “the Victorian Ports Corporation (Melbourne), the Port of Hastings Development Authority and the Victorian Regional Channels Authority,” there were substituted “Ports Victoria and the Port of Hastings Development Authority”; and
 - (c) after subsection (7), there were inserted –

“(8) For the purposes of this Part, the initial capital of Ports Victoria is taken to be the sum of the initial capital of the Victorian Ports Corporation (Melbourne) and the initial capital of the Victorian Regional Channels Authority, as deemed to have been determined under subsection (7)”.
- (3) Section 159(2) of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, it applies as if, for “the Victorian Ports Corporation (Melbourne), the Port of Hastings Development Authority and the Victorian Regional Channels Authority” there were substituted “Ports Victoria and the Port of Hastings Development Authority”.

- (4) Section 160(3) of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, it applies as if, for “the Victorian Ports Corporation (Melbourne), the Port of Hastings Development Authority and the Victorian Regional Channels Authority” there were substituted “Ports Victoria and the Port of Hastings Development Authority”.
- (5) Section 164 of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, it applies as if –
- (a) in subsection (2) –
 - (i) for “the Victorian Ports Corporation (Melbourne)” there were substituted “Ports Victoria”; and
 - (ii) for “section 141H” there were substituted “section 141H as it is applied and modified by the Transport Restructuring Order (Establishment of Ports Victoria) No.1/2021”; and
 - (b) subsection (3) were omitted.
- (6) Section 165 of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, it applies as if –
- (a) in subsection (13), for “the Victorian Ports Corporation (Melbourne), the Port of Hastings Development Authority and the Victorian Regional Channels Authority” there were substituted “Ports Victoria and the Port of Hastings Development Authority”; and
 - (b) subsection (14) does not apply; and
 - (c) after subsection (14), there were inserted –
 - “(15) Section 165(2) is modified so that it applies to Ports Victoria as if, in the 2021 – 2022 financial year, the board of directors of Ports Victoria must give a copy of its proposed corporate plan to the Secretary and the Treasurer by 17 September 2021.
 - (16) Section 165(5)(c) is modified so that it applies to Ports Victoria as if, in the 2021 – 2022 financial year, for “2 months” there were substituted “6 months”.
- (7) Section 167(3) of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, it applies as if, for “the Victorian Ports Corporation (Melbourne), the Port of Hastings Development Authority and the Victorian Regional Channels Authority” there were substituted “Ports Victoria and the Port of Hastings Development Authority”;
- (8) Section 169(3) of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, it applies as if, for “the Victorian Ports Corporation (Melbourne), the Port of Hastings Development Authority and the Victorian Regional Channels Authority” there were substituted “Ports Victoria and the Port of Hastings Development Authority”.

Note:

- (1) Division 4 of Part 6 of the **Transport Integration Act 2010** contains provisions applying generally to Transport Corporations which apply to Ports Victoria as a result of the application of that Division to Ports Victoria by this Order, including in relation to powers of Transport Corporations, proceedings of the Board, capital, dividends, reporting, corporate plans, delegations and other matters.
- (2) Section 163 of the **Transport Integration Act 2010** provides that a Transport Corporation is subject to the general direction and control of the Minister.
- (3) Section 38A of the **Transport Integration Act 2010** also provides that the Secretary to the Department of Transport may give a written direction to a sector transport agency in respect of the performance by that agency of any of its functions.

14. Section 141F and 141O of the Transport Integration Act 2010 to apply to Ports Victoria as if modified: Dredging by Ports Victoria

- (1) Section 141F of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, including clause 10 of this Order, it applies as if –
 - (a) a reference to the Victorian Ports Corporation (Melbourne) were a reference to Ports Victoria; and
 - (b) the reference to section 141E(1)(h) were a reference to that function as conferred on Ports Victoria and modified by this Order, as set out in clause (1) (d) of Schedule 1 to this Order.
- (2) Section 141O of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, it applies as if a reference to the Victorian Regional Channels Authority were a reference to Ports Victoria.

15. 141G of the Transport Integration Act 2010 modified to apply to Ports Victoria: Acquisition or disposal of land by Ports Victoria to be subject to consultation with the Secretary and approval by Minister

Section 141G of the **Transport Integration Act 2010** is modified so that, for the purposes of this Order, including clause 10 of this Order –

- (1) it applies as if a reference to the Victorian Ports Corporation (Melbourne) (wherever occurring) were a reference to Ports Victoria; and
- (2) it does not apply to the Victorian Ports Corporation (Melbourne).

Note:

The effect of this clause is that Ports Victoria must consult with the Secretary and obtain the approval of the Minister before acquiring or disposing of land. However, this does not apply to any interest in land or class of interest in land acquired or disposed of by Ports Victoria which has been exempted by the Minister by notice in writing given to Ports Victoria.

16. Section 141N of the Transport Integration Act 2010 modified to apply to Ports Victoria: Power to contract for the provision of services and facilities

Without limiting the generality of section 152(2)(a) of the **Transport Integration Act 2010**, as applied to Ports Victoria by clause 7 of this Order, section 141N of that Act is modified so that, for the purposes of this Order, for “section 152(2)(a), the Victorian Regional Channels Authority” there were substituted “section 152(2)(a), Ports Victoria”.

Note:

- (1) Section 152 of the **Transport Integration Act 2010** is applied to Ports Victoria by clause 7 of this Order.
- (2) The effect of this clause is that Ports Victoria may enter into contracts (including contracts of indemnity) for the provision of services or facilities.

17. New constitution and membership of the Victorian Ports Corporation (Melbourne) and related matters

17.1 Victorian Ports Corporation (Melbourne) remains the same body

To avoid doubt, nothing in this Order affects the existence and continuation of the Victorian Ports Corporation (Melbourne) as the body corporate established under section 10 of the Port Services Act 1995 and continued under section 141B of the **Transport Integration Act 2010**.

17.2 Modification of constitution and membership of the Victorian Ports Corporation (Melbourne)

17.2.1 On and from the Commencement Day, the board of the Victorian Ports Corporation (Melbourne) goes out of office.

17.2.2 To avoid doubt, Division 4 of Part 6 does not apply to the Victorian Ports Corporation (Melbourne).

17.2.3 Despite section 65F(1) of the **Transport Integration Act 2010**, sections 24 and 38A of that Act continue to apply to the Victorian Ports Corporation (Melbourne).

17.2.4 Division 3A of Part 6 of the **Transport Integration Act 2010** applies to the Victorian Ports Corporation (Melbourne), for the purposes of this Order, with the following modifications –

(1) as if, after section 141B, there were inserted –

“141BA Membership of Victorian Ports Corporation (Melbourne)

- (1) While this Order remains in force, the Victorian Ports Corporation (Melbourne) consists of one member appointed in accordance with section 141CA as Chief Executive of the Victorian Ports Corporation (Melbourne).
- (2) The Chief Executive of the Victorian Ports Corporation (Melbourne) is responsible for the management of the functions of the Victorian Ports Corporation (Melbourne).

141BB Official seal

- (1) The official seal of the Victorian Ports Corporation (Melbourne) must –
 - (a) be kept in such custody as the Victorian Ports Corporation (Melbourne) directs;
 - (b) not be used except as authorised by the Victorian Ports Corporation (Melbourne).
- (2) All courts must take judicial notice of the official seal of the Victorian Ports Corporation (Melbourne) affixed to any document.”; and

(2) as if, after section 141C, there were inserted –

“141CA Chief Executive of the Victorian Ports Corporation (Melbourne)

- (1) The Minister may appoint a person to the office of Chief Executive of the Victorian Ports Corporation (Melbourne) and may at any time remove or suspend a person from that office.
- (2) The Chief Executive of the Victorian Ports Corporation (Melbourne) may resign from the office in writing signed by the Chief Executive and delivered to the Minister.
- (3) If the Chief Executive of the Victorian Ports Corporation (Melbourne) is unable, whether because of illness, suspension, absence or otherwise, to perform the duties of the office of Chief Executive, the Minister may appoint another person to act in the place, or to perform the functions, of the Chief Executive during the period of the inability.
- (4) A person appointed under this clause to act in the place, or to perform the functions, of the Chief Executive of the Victorian Ports Corporation (Melbourne) while so acting –
 - (a) has all the rights and powers, and must perform all the duties, of the Chief Executive of the Victorian Ports Corporation (Melbourne); and
 - (b) is to be paid any remuneration and travelling or other allowances fixed by the Minister from time to time, having regard to the rate of remuneration and allowances for the time being payable to the Chief Executive of the Victorian Ports Corporation (Melbourne).
- (5) The Chief Executive the Victorian Ports Corporation (Melbourne) –
 - (a) holds office –
 - (i) for the period (not more than 5 years) that is specified in their instrument of appointment and is eligible to be reappointed;

- (ii) on the terms and conditions specified in their instrument of appointment;
 - (b) is entitled to be paid any remuneration and travelling and other allowances fixed from time to time by the Minister; and
 - (c) may be appointed on a full-time or part-time basis.
- (6) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to the Chief Executive of the Victorian Ports Corporation (Melbourne) in respect of the office of the Chief Executive of the Victorian Ports Corporation (Melbourne).”; and

Note:

See clause 24, which applies the **Public Administration Act 2004** for this purpose.

- (3) as if, for section 141D, there were substituted –

“141D Object of the Victorian Ports Corporation (Melbourne)

The object of the Victorian Ports Corporation (Melbourne) is to make available staff and provide resources and other support as necessary to assist the Secretary to perform the functions and exercise the powers conferred on the Secretary by or under any Act including the **Transport Integration Act 2010**.”; and

- (4) as if, for section 141E, there were substituted –

“141DA Victorian Ports Corporation (Melbourne) – directions and requirements to provide information

- (1) The Minister or the Treasurer may, in writing, require the Victorian Ports Corporation (Melbourne) to give the Minister or the Treasurer any information that the Minister or the Treasurer requires.
- (2) The Victorian Ports Corporation (Melbourne) must exercise its powers and discharge its duties subject to –
 - (a) the general direction and control of the Minister; and
 - (b) any specific directions given by the Minister with the approval of the Treasurer.
- (3) Any specific directions given under subclause 2(b) may be published in the Government Gazette.”; and

Note:

- (1) The Victorian Ports Corporation (Melbourne) remains a body corporate with the powers of a body corporate. See section 141B of the **Transport Integration Act 2010**. It remains a transport body and a sector transport agency.
- (2) Section 24 of the **Transport Integration Act 2010** provides that a transport body must have regard to the transport system objectives in exercising its powers and performing its functions, and to the decision making principles in making decisions, under any transport legislation.
- (3) Section 38A of the **Transport Integration Act 2010** enables the Secretary to give a written direction to a sector transport agency in respect of the performance of any of its functions.
- (4) Section 162 of the **Transport Integration Act 2010** enables the Minister or the Treasurer to require reports from Transport Corporations.
- (5) Section 163 provides that a Transport Corporation is subject to the general direction and control of the Minister, and that the Minister may also give specific directions with the approval of the Treasurer.
- (6) This clause applies provisions with the same effect as the provisions applicable to Transport Corporations set out above to the Victorian Ports Corporation (Melbourne).
- (7) The **Financial Management Act 1994**, including the annual reporting requirements under Part 7 of that Act, applies to the Victorian Ports Corporation (Melbourne). See also clause 23 of this Order.

17.2.5 Section 85 of the **Transport Integration Act 2010** applies to the Victorian Ports Corporation (Melbourne) as if, for “Roads Corporation”, there were substituted “Victorian Ports Corporation (Melbourne)”.

Note:

This effect of this provision is that an act or decision of the Victorian Ports Corporation (Melbourne) is not invalid only –

- (a) because of a vacancy in the office of Chief Executive; or
- (b) because of a defect or irregularity in, or in connection with, the appointment of the Chief Executive; or
- (c) in the case of a person appointed or directed to act as the Chief Executive, on the grounds that the occasion for the person so acting had not arisen or had ceased.

18. Function of the Victorian Ports Corporation (Melbourne)

The function of the Roads Corporation in section 87(b) of the **Transport Integration Act 2010** is conferred on the Victorian Ports Corporation (Melbourne), to be performed concurrently with the Roads Corporation and the Victorian Regional Channels Authority.

Note:

- (1) It is a function of the Secretary under s.33A(1)(b) of the **Transport Integration Act 2010** to provide resources and support as necessary to enable other transport bodies to perform their functions and exercise the powers conferred on them under the **Transport Integration Act 2010** or any other Act.
- (2) The Victorian Ports Corporation (Melbourne)’s function, as provided for by this Order, is to make available staff and provide resources and support as necessary to assist the Secretary to perform the functions and exercise the powers conferred on the Secretary by or under the **Transport Integration Act 2010** or any other Act. This means that the Victorian Ports Corporation (Melbourne) may, for example, if required by the Secretary, support the Secretary in providing resources and support to Ports Victoria.

19. New constitution and membership of the Victorian Regional Channels Authority and related matters

19.1 Victorian Regional Channels Authority remains the same body

To avoid doubt, nothing in this Order effects the existence and continuation of Victorian Regional Channels Authority as the same body corporate established under section 18 of the **Port Services Act 1995** and continued under s 141J of the **Transport Integration Act 2010**.

19.2 Modification of constitution and membership of the Victorian Regional Channels Authority

19.2.1 On and from the Commencement Day, the board of the Victorian Regional Channels Authority goes out of office.

19.2.2 To avoid doubt, Division 4 of Part 6 does not apply to the Victorian Regional Channels Authority.

19.2.3 Despite section 65F(1) of the **Transport Integration Act 2010**, sections 24 and 38A of that Act continue to apply to the Victorian Regional Channels Authority.

19.2.4 Division 3B of Part 6 of the **Transport Integration Act 2010** applies to the Victorian Regional Channels Authority, for the purposes of this Order, with the following modifications –

- (1) as if, after section 141J, there were inserted –
 - “**141JA Membership of Victorian Regional Channels Authority**
 - “(1) The Victorian Regional Channels Authority consists of one member appointed in accordance with section 141KA as Chief Executive of the Victorian Regional Channels Authority.
 - (2) The Chief Executive of the Victorian Regional Channels Authority is responsible for the management of the functions of the Victorian Regional Channels Authority.

141JB Official seal

- (1) The official seal of the Victorian Regional Channels Authority must –
 - (1) be kept in such custody as the Victorian Regional Channels Authority directs;
 - (2) not be used except as authorised by the Victorian Regional Channels Authority.
- (2) All courts must take judicial notice of the official seal of the Victorian Regional Channels Authority affixed to any document.”; and
- (2) as if, after section 141K, there were inserted –

“141KA Chief Executive of the Victorian Regional Channels Authority

- (1) The Minister may appoint a person to the office of Chief Executive of the Victorian Regional Channels Authority and may at any time remove or suspend a person from that office.
- (2) The Chief Executive of the Victorian Regional Channels Authority may resign from the office in writing signed by the Chief Executive and delivered to the Minister.
- (3) If the Chief Executive of the Victorian Regional Channels Authority is unable, whether because of illness, suspension, absence or otherwise, to perform the duties of the office of Chief Executive, the Minister may appoint another person to act in the place, or to perform the functions, of the Chief Executive during the period of the inability.
- (4) A person appointed under this clause to act in the place, or to perform the functions, of the Chief Executive of the Victorian Regional Channels Authority while so acting –
 - (a) has all the rights and powers, and must perform all the duties, of the Chief Executive of the Victorian Regional Channels Authority; and
 - (b) is to be paid any remuneration and travelling or other allowances fixed by the Minister from time to time, having regard to the rate of remuneration and allowances for the time being payable to the Chief Executive of the Victorian Regional Channels Authority.
- (5) The Chief Executive the Victorian Regional Channels Authority –
 - (a) holds office –
 - (i) for the period (not more than 5 years) that is specified in their instrument of appointment and is eligible to be reappointed;
 - (ii) on the terms and conditions specified in their instrument of appointment;
 - (b) is entitled to be paid any remuneration and travelling and other allowances fixed from time to time by the Minister; and
 - (c) may be appointed on a full-time or part-time basis.
- (6) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to the Chief Executive of the Victorian Regional

Channels Authority in respect of the office of the Chief Executive of the Victorian Regional Channels Authority.”; and

Note:

See clause 24, which applies the **Public Administration Act 2004** for this purpose.

- (3) as if, for section 141L, there were substituted –

“141L Object of the Victorian Regional Channels Authority

The object of the Victorian Regional Channels Authority is to make available staff and provide resources and other support as necessary to assist the Secretary to perform the functions and exercise the powers conferred on the Secretary by or under any Act including the **Transport Integration Act 2010**.”; and

as if, for section 141M, there were substituted –

“141MA Victorian Regional Channels Authority – directions and requirements to provide information

- (1) The Minister or the Treasurer may, in writing, require the Victorian Regional Channels Authority to give the Minister or the Treasurer any information that the Minister or the Treasurer requires.
- (2) The Victorian Regional Channels Authority must exercise its powers and discharge its duties subject to –
 - (a) the general direction and control of the Minister; and
 - (b) any specific directions given by the Minister with the approval of the Treasurer.
- (3) Any specific directions given under subclause 2(b) may be published in the Government Gazette.”; and

Note:

- (1) The Victorian Regional Channels Authority remains a body corporate with the powers of a body corporate. See section 141J of the **Transport Integration Act 2010**. It remains a transport body and a sector transport agency.
- (2) Section 24 of the **Transport Integration Act 2010** provides that a transport body must have regard to the transport system objectives in exercising its powers and performing its functions, and to the decision making principles in making decisions, under any transport legislation.
- (3) Section 38A of the **Transport Integration Act 2010** enables the Secretary to give a written direction to a sector transport agency in respect of the performance of any of its functions.
- (4) Section 162 of the **Transport Integration Act 2010** enables the Minister or the Treasurer to require reports from Transport Corporations.
- (5) Section 163 provides that a Transport Corporation is subject to the general direction and control of the Minister, and that the Minister may also give specific directions with the approval of the Treasurer.
- (6) This clause applies provisions with the same effect as the provisions applicable to Transport Corporations set out above to the Victorian Regional Channels Authority.
- (7) The **Financial Management Act 1994**, including the annual reporting requirements under Part 7 of that Act, applies to the Victorian Regional Channels Authority. See also clause 23 of this Order.

19.2.5 Section 85 of the **Transport Integration Act 2010** applies to the Victorian Regional Channels Authority as if, for “Roads Corporation”, there were substituted “Victorian Regional Channels Authority”.

Note:

This effect of this provision is that an act or decision of the Victorian Regional Channels Authority is not invalid only –

- (a) because of a vacancy in the office of Chief Executive; or
- (b) because of a defect or irregularity in, or in connection with, the appointment of the Chief Executive; or
- (c) in the case of a person appointed or directed to act as the Chief Executive, on the grounds that the occasion for the person so acting had not arisen or had ceased.

20. Function of the Victorian Regional Channels Authority

The function of the Roads Corporation in section 87(b) of the Transport Integration Act 2010 is conferred on the Victorian Regional Channels Authority, to be performed concurrently with the Roads Corporation and the Victorian Ports Corporation (Melbourne).

Note:

- (1) It is a function of the Secretary under s.33A(1)(b) of the **Transport Integration Act 2010** to provide resources and support as necessary to enable other transport bodies to perform their functions and exercise the powers conferred on them under the **Transport Integration Act 2010** or any other Act.
- (2) The Victorian Regional Channels Authority's function, as provided for by this Order, is to make available staff and provide resources and support as necessary to assist the Secretary to perform the functions and exercise the powers conferred on the Secretary by or under the **Transport Integration Act 2010** or any other Act. This means that the Victorian Regional Channels Authority may, for example, if required by the Secretary, support the Secretary in providing resources and support to Ports Victoria.

21. Section 64 modified: Corporate plans and related matters

Sections 64(3), (4), and (5) of the **Transport Integration Act 2010** are modified, for the purposes of this Order, as if, for "sector transport agency" (where in each case occurring) there were substituted "sector transport agency (other than the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority)".

Note:

The effect of this clause is that neither the Victorian Ports Corporation (Melbourne) nor the Victorian Regional Channels Authority will be required to prepare corporate plans under section 64 of the **Transport Integration Act 2010**. The **Financial Management Act 1994**, including the annual reporting requirements under Part 7 of that Act, continues to apply.

22. Provisions of transport legislation (including the Transport Integration Act 2010) specified in this Order taken to apply as varied or modified

While this Order is in force, the provisions of any transport legislation (including the **Transport Integration Act 2010**) specified in this Order are to be taken to apply as varied or modified by this Order and references in any transport legislation, regulation or instrument or in any other document of any kind are to be construed as provided in this Order.

23. Modified application of the Financial Management Act 1994

- (1) For the purposes of this Order, Part 7 of the **Financial Management Act 1994** applies to Ports Victoria, the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority as if modified so that Ports Victoria –
 - (a) must cause to be prepared –
 - (i) in accordance with Part 7 (as modified by this clause), a report of each of the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority's operations during the financial year 2020 – 2021 for that financial year; and
 - (ii) financial statements of each of the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority for that financial year; and
 - (b) must provide the reports and statements to the Chief Executive of the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority, as the case requires, within 8 weeks of the end of the financial year.
- (2) Ports Victoria must provide a copy of each direction (if any) given to the Victorian Ports Corporation (Melbourne) under section 141H of the **Transport Integration Act 2010** in the 2020 – 2021 financial year, and a statement of the Victorian Ports

Corporation (Melbourne)'s response, to the Chief Executive of the Victorian Ports Corporation (Melbourne).

- (3) Ports Victoria must provide a copy of each direction (if any) given to the Victorian Regional Channels Authority under section 141P of the **Transport Integration Act 2010** in the 2020 – 2021 financial year, and a statement of the Victorian Regional Channels Authority's response, to the Chief Executive of the Victorian Regional Channels Authority.
- (4) For the purposes of certifying the financial statements of the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority, the Chief Executive of each body may rely on the reports, statements and information provided by Ports Victoria in so attesting and the attestation may be varied to reflect this clause.

24. Application of the Public Administration Act 2004

The **Public Administration Act 2004** (other than Part 3 of that Act) is applied for the purposes of clauses 17.2 and 19.2 of this Order.

Note:

Clauses 17.2 and 19.2 provide that the **Public Administration Act 2004** applies to the Chief Executive of the Victorian Ports Corporation (Melbourne) and to the Chief Executive of the Victorian Regional Channels Authority in respect of those offices. This clause supports those provisions.

25. Saving of Victorian Ports Corporation (Melbourne) functions and acts

Nothing in this Order limits the capacity of the Victorian Ports Corporation (Melbourne) to perform or exercise functions, powers or duties conferred on it by or under any Act (save as modified by this Order), or affects any thing or act lawfully done by the Victorian Ports Corporation (Melbourne).

26. Saving of Victorian Regional Channels Authority functions and acts

Nothing in this Order limits the capacity of the Victorian Regional Channels Authority to perform or exercise functions, powers or duties conferred on it by or under any Act (save as modified by this Order), or affects any thing or act lawfully done by the Victorian Regional Channels Authority.

27. Things done by the Victorian Ports Corporation (Melbourne)

Anything done by the Victorian Ports Corporation (Melbourne) in the performance of a function or duty, or exercise of a power, under the **Transport Integration Act 2010** or any other Act before the Commencement Day, which function, duty or power has been conferred on Ports Victoria by, or as a consequence of the making of, this Order is taken, on that day, to have been done by Ports Victoria in the performance of a function or duty, or exercise of a power, under the relevant Act.

28. Things done by the Victorian Regional Channels Authority

Anything done by the Victorian Regional Channels Authority in the performance of a function or duty, or exercise of a power, under the **Transport Integration Act 2010** or any other Act before the Commencement Day, which function, duty or power has been conferred on Ports Victoria by, or as a consequence of the making of, this Order is taken, on that day, to have been done by Ports Victoria in the performance of a function or duty, or exercise of a power, under the relevant Act.

29. Things commenced but not completed by the Victorian Ports Corporation (Melbourne)

- (1) This clause applies if, before the Commencement Day, the Victorian Ports Corporation (Melbourne), in the performance of a function or duty, or exercise of a power, under the **Transport Integration Act 2010** or any other Act, which function, duty or power has been conferred on Ports Victoria by, or as a consequence of the making of, this Order has commenced a matter or thing and has not completed that matter or thing before that day.

- (2) On and after the Commencement Day, Ports Victoria must continue and complete that matter or thing and, for the purposes of this clause, anything done by the Victorian Ports Corporation (Melbourne) before that day is taken to have been done by Ports Victoria.

30. Things commenced but not completed by the Victorian Regional Channels Authority

- (1) This clause applies if, before the Commencement Day, the Victorian Regional Channels Authority, in the performance of a function or duty, or exercise of a power, under the **Transport Integration Act 2010** or any other Act, which function, duty or power has been conferred on Ports Victoria by, or as a consequence of the making of, this Order has commenced a matter or thing and has not completed that matter or thing before that day.
- (2) On and after the Commencement Day, Ports Victoria must continue and complete that matter or thing and, for the purposes of this clause, anything done by the Victorian Regional Channels Authority before that day is taken to have been done by Ports Victoria.

31. Superseded references

For the purpose of giving effect to this Order, on and from the Commencement Day –

- (1) a reference to the Victorian Ports Corporation (Melbourne) in any Act (other than the **Transport Integration Act 2010**, save as modified by this Order) or in any instrument (including a subordinate instrument) made under or for the purposes of any Act, or in any other document of any kind, must be construed as a reference to Ports Victoria –
 - (a) so far as the reference relates to any period on or after the Commencement Day; and
 - (a) if not inconsistent with the subject matter; and
- (2) a reference to the Victorian Regional Channels Authority in any Act (other than the **Transport Integration Act 2010**, save as modified by this Order) or in any instrument (including a subordinate instrument) made under or for the purposes of any Act, or in any other document of any kind, must be construed as a reference to Ports Victoria –
 - (a) so far as the reference relates to any period on or after the Commencement Day; and
 - (a) if not inconsistent with the subject matter.

Note:

Section 65A(4)(f) of the **Transport Integration Act 2010** provides that a Transport Restructuring Order may contain provisions (among other things) providing for the construction of references in any Act or subordinate legislation or in any other document of any kind.

- (3) a reference to both the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority in the same section of any Act (other than the **Transport Integration Act 2010**, save as modified by this Order) or in the same section or clause of any instrument (including a subordinate instrument) made under or for the purposes of any Act, or in any other document of any kind, must be construed as a reference to Ports Victoria –
 - (a) so far as the reference relates to any period on or after the Commencement Day; and
 - (b) if not inconsistent with the subject matter.

Note:

See section 38 of the **Interpretation of Legislation act 1984**, which contains a definition of *document*.

document includes, in addition to a document in writing –

- (a) any book, map, plan, graph or drawing;
- (b) any photograph;
- (c) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatsoever;

- (d) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (f) anything whatsoever on which is marked any words, figures, letters or symbols which are capable of carrying a definite meaning to persons conversant with them.

32. Provision for matters of a transitional, savings and consequential nature

For the purpose of giving effect to this Order, on and from the Commencement Day, Schedule 4 to this Order has effect.

31. Severability of any provision or part of this Order

If any provision or part of this Order is invalid, the invalid provision or part is severed, and the Order otherwise continues to apply.

Dated: 16 June 2021

Responsible Minister:
THE HON MELISSA HORNE MP
Minister for Ports and Freight

SAMUAL WALLACE
Acting Clerk of the Executive Council

Transport Integration Act 2010
TRANSPORT RESTRUCTURING ORDER
(ESTABLISHMENT OF PORTS VICTORIA) NO. 1/2021
SCHEDULE 1

Clause 10

FUNCTIONS OF PORTS VICTORIA

- (1) The Functions of Ports Victoria are –
- (a) if authorised under section 141EA of the **Transport Integration Act 2010** as applied and modified by clause 11 of this Order –
 - (i) to support the Secretary to plan for the development of the Port Capacity Project part of the port of Melbourne;
 - (ii) to provide infrastructure necessary for the development and operation of the Port Capacity Project part of the port of Melbourne;
 - (iii) to develop, or enable and control the development by others of, the Port Capacity Project part of the port of Melbourne;
 - (b) as a designated State port entity (as defined in section 74AA of the **Port Management Act 1995**) –
 - (i) to manage, or enable and control the management by others of, a site in the port of Melbourne for the carrying out of stevedoring operations;
 - (ii) to provide, or enable and control the provision by others of, services at a site in the port of Melbourne it manages and at which stevedoring operations are carried out;

Note:
See the note under clause 9(1)(e). As a result of transitional provisions contained in Schedule 1 to this Order, Ports Victoria is taken to be a designated State port entity as defined in section 74AA of the **Port Management Act 1995**.
 - (c) to promote and market the port of Melbourne;
 - Note:**
Station Pier and West Finger Pier are part of the port of Melbourne – see the definitions of *port of Melbourne* and *Station Pier land* in section 3(1) of the **Port Management Act 1995** and section 65 of that Act.
 - (d) to establish and manage and, in accordance with standards developed by the Director, Transport Safety, to dredge and maintain channels in port of Melbourne waters;
 - (e) to provide and maintain, in accordance with the standards developed by the Director, Transport Safety, navigation aids in connection with navigation in port of Melbourne waters; and
 - (f) to publish information about the depths and configurations of channels and berths in port of Melbourne waters;
 - (g) to provide or maintain systems related to navigation in port of Melbourne waters, including systems for –
 - (i) managing vessel traffic and vessel communications in those waters;
 - (ii) the scheduling and allocation of vessels to berths in those waters and in the port of Melbourne;
 - (h) to generally direct and control, in accordance with the **Marine Safety Act 2010**, the movement of vessels in port of Melbourne waters;
 - (i) to perform functions under Part 4A of the **Port Management Act 1995** (Regulation of towage services);
 - (j) in relation to Station Pier and West Finger Pier –

- (i) to plan for the development and operation of the piers;
 - (ii) to provide land, waters and infrastructure necessary for the development and operation of the piers;
 - (iii) to develop, or enable and control the development by others of, the whole or any part of the piers;
 - (iv) to manage, or enable and control the management by others of, the whole or any part of the piers;
 - (v) to provide, or enable and control the provision by others of, services for the operation of the piers;
 - (vi) to facilitate the integration of infrastructure and logistics systems in the piers with the transport system and other relevant systems outside the piers;
 - (k) to ensure, in relation to regional port waters and channels in those waters –
 - (i) the establishment, management and, in accordance with the standards developed by the Director, Transport Safety, the dredging and maintenance of the channels in those waters;
 - (ii) the provision and maintenance, in accordance with the standards developed by the Director, Transport Safety, of navigation aids in connection with navigation in those waters and channels;
 - (iii) the general direction and control of the movement of vessels within those waters and channels in accordance with the **Marine Safety Act 2010**;
 - (l) to provide technical advice and support to port managers about the management and operation of regional port waters and channels in regional port waters;
 - (m) after consultation with the Secretary and with the approval of the Minister, to assist a port manager with the integrated planning, development, management and promotion activities for the port for which that person is port manager;
 - (n) to perform functions in accordance with a direction given by the Minister under section 141H of the **Transport Integration Act 2010** as modified by clause 12 of this Order;
 - (o) to perform any other functions or duties conferred on Ports Victoria by or under the **Transport Integration Act 2010** or any other Act.
- (2) Ports Victoria may carry out the function in clause(1)(k) to ensure, in relation to regional port waters and channels in those waters –
- (a) the establishment, management and, in accordance with the standards developed by the Director, Transport Safety, the dredging and maintenance of the channels in those waters;
 - (b) the provision and maintenance, in accordance with the standards developed by the Director, Transport Safety, of navigation aids in connection with navigation in those waters and channels;
 - (c) the general direction and control of the movement of vessels within those waters and channels in accordance with the **Marine Safety Act 2010**,
- in relation to a commercial trading port by arranging for the port manager or another person to carry out those functions for the port waters and channels in the port.
- (3) Ports Victoria must –
- (a) carry out its functions consistently with State policies and strategies for the development of the Victorian port and freight networks; and
 - (b) operate in a commercially sound manner having regard to –
 - (i) the benefits of increased competition between persons and bodies that provide services related to the operation of the area where it is carrying out its functions and, to the extent that it is possible to do so consistently with paragraph (a), the port of Melbourne;

- (ii) to the extent that it is possible to do so consistently with paragraph (a), the persons living or working in the immediate neighbourhood of the port of Melbourne; and
 - (iii) the need to conduct research and collect information relating to the performance of the functions in clause (1) and of regional port waters and channels in regional port waters and, to the extent that it is possible to do so consistently with paragraph (a), the operation of the port of Melbourne, so as to enable Ports Victoria to meet the primary object of Ports Victoria; and
 - (iv) the need to deal efficiently with any complaints relating to the performance of its functions.
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Transport Integration Act 2010
TRANSPORT RESTRUCTURING ORDER
(ESTABLISHMENT OF PORTS VICTORIA) NO. 1/2021

Clause 4

SCHEDULE 2

PROPERTY, RIGHTS AND LIABILITIES TO BE TRANSFERRED FROM THE
 VICTORIAN PORTS CORPORATION (MELBOURNE) TO PORTS VICTORIA
 BY TRANSFER ORDER (VICTORIAN PORTS CORPORATION (MELBOURNE))
 (ESTABLISHMENT OF PORTS VICTORIA) NO. 1/2021

All of the property, rights and liabilities of the Victorian Ports Corporation (Melbourne) are, by Transfer Order (Victorian Ports Corporation (Melbourne)) (Establishment of Ports Victoria) No. 1/2021, to be transferred to Ports Victoria, except for –

- (a) the Victorian Ports Corporation (Melbourne)'s official seal; and
- (b) contracts of employment and any enterprise bargaining agreement to which the Victorian Ports Corporation (Melbourne) is a party.

Without limiting the generality of the preceding paragraph, the property, rights and liabilities of the Victorian Ports Corporation (Melbourne) transferred to Ports Victoria include the following:

(a) Contracts

All agreements, deeds, arrangements and understandings (not including contracts of employment or enterprise agreements) which were entered into by or on behalf of the Victorian Ports Corporation (Melbourne) or to which the Victorian Ports Corporation (Melbourne) is a party or under which the Victorian Ports Corporation (Melbourne) has any rights or liabilities, together with:

- (i) all bank guarantees and security deposits held by the Victorian Ports Corporation (Melbourne) or to which the Victorian Ports Corporation (Melbourne) is entitled in respect of those agreements; and
- (ii) all rights or interests under any insurance policy relating to those agreements, each as amended, supplemented or novated from time to time.

(b) Book Debts and Prepayments

All amounts owing or due to the Victorian Ports Corporation (Melbourne) by trade and other debtors and prepayments by the Victorian Ports Corporation (Melbourne) to suppliers of goods and services to the Victorian Ports Corporation (Melbourne) as at the relevant date.

(c) Assets and Infrastructure

All tangible assets and infrastructure and rights in relation to assets and infrastructure including, without limitation:

- (i) plant and equipment;
- (ii) furniture and fittings;
- (iii) motor vehicles;
- (iv) vessels;
- (v) information technology systems and equipment; and
- (vi) other chattels

not including the Victorian Ports Corporation (Melbourne)'s official seal.

(d) Real Property

All rights and interests of any kind in or in relation to real property including without limitation:

- (i) freehold title;

- (ii) rights in respect of Crown Land;
- (iii) leasehold interests;
- (iv) easements; and
- (v) profits a prendre.

(e) Securities and accounts

All:

- (i) shares, debentures, stocks, bonds and other securities of any kind and all legal or equitable interests in relation to them; and
- (ii) all banks accounts and other entitlements of any kind in relation to moneys held by or deposited with any person and all legal or equitable rights in relation to them.

(f) Intellectual Property

All forms of intellectual or industrial property, whether protected by statute, at common law or equity, including without limitation any patent, invention, copyright, design (whether or not registrable), registered and unregistered trade mark, trade secret, domain name, moral right, circuit layout design or right in relation to circuit layouts, right to confidential information, technical information, processes, techniques and know-how.

(g) Books and Records

All notices, correspondence, books of account, plans, drawings, orders, enquiries and other documents, whether written, on computer disks or tapes or other machine readable form.

(h) Authorisations

All licences, accreditations, permits, registrations, consents, concessions, approvals and authorisations issued, granted, approved or otherwise given to the Victorian Ports Corporation (Melbourne).

(i) Claims and Proceedings

All demands, claims, actions or proceedings made or brought by or against the Victorian Ports Corporation (Melbourne), however arising and whether present, unascertained, immediate, future or contingent.

Transport Integration Act 2010
TRANSPORT RESTRUCTURING ORDER
(ESTABLISHMENT OF PORTS VICTORIA) NO. 1/2021

Clause 4

SCHEDULE 3

PROPERTY, RIGHTS AND LIABILITIES TO BE TRANSFERRED FROM THE
 VICTORIAN REGIONAL CHANNELS AUTHORITY TO PORTS VICTORIA BY
 TRANSFER ORDER (VICTORIAN REGIONAL CHANNELS AUTHORITY)
 (ESTABLISHMENT OF PORTS VICTORIA) NO. 2/2021

All of the property, rights and liabilities of the Victorian Regional Channels Authority are, by Transfer Order (Victorian Regional Channels Authority) (Establishment of Ports Victoria) No. 2/2021, to be transferred to Ports Victoria, except for –

- (a) the Victorian Regional Channels Authority's official seal; and
- (b) contracts of employment and any enterprise bargaining agreement to which the Victorian Regional Channels Authority is a party –

Without limiting the generality of the preceding paragraph, the property, rights and liabilities of the Victorian Regional Channels Authority transferred to Ports Victoria include the following:

(a) Contracts

All agreements deeds, arrangements and understandings (not including contracts of employment or enterprise agreements) which were entered into by or on behalf of the Victorian Regional Channels Authority or to which the Victorian Regional Channels Authority is a party or under which the Victorian Regional Channels Authority has any rights or liabilities, together with:

- (i) all bank guarantees and security deposits held by the Victorian Regional Channels Authority or to which the Victorian Regional Channels Authority is entitled in respect of those agreements; and
- (ii) all rights or interests under any insurance policy relating to those agreements, each as amended, supplemented or novated from time to time.

(b) Book Debts and Prepayments

All amounts owing or due to the Victorian Regional Channels Authority by trade and other debtors and prepayments by the Victorian Regional Channels Authority to suppliers of goods and services to the Victorian Regional Channels Authority as at the relevant date.

(c) Assets and Infrastructure

All tangible assets and infrastructure and rights in relation to assets and infrastructure including, without limitation:

- (i) plant and equipment;
- (ii) furniture and fittings;
- (iii) motor vehicles;
- (iv) vessels;
- (v) information technology systems and equipment; and
- (vi) other chattels

not including the Victorian Regional Channels Authority's official seal.

(d) Real Property

All rights and interests of any kind in or in relation to real property including without limitation:

- (i) freehold title;

- (ii) rights in respect of Crown Land;
- (iii) leasehold interests;
- (iv) easements; and
- (v) profits a prendre.

(e) Securities and accounts

All:

- (i) shares, debentures, stocks, bonds and other securities of any kind and all legal or equitable interests in relation to them; and
- (ii) all bank accounts and other entitlements of any kind in relation to moneys held by or deposited with any person and all legal or equitable rights in relation to them.

(f) Intellectual Property

All forms of intellectual or industrial property, whether protected by statute, at common law or equity, including without limitation any patent, invention, copyright, design (whether or not registrable), registered and unregistered trade mark, trade secret, domain name, moral right, circuit layout design or right in relation to circuit layouts, right to confidential information, technical information, processes, techniques and know-how.

(g) Books and Records

All notices, correspondence, books of account, plans, drawings, orders, enquiries and other documents, whether written, on computer disks or tapes or other machine readable form.

(h) Authorisations

All licences, accreditations, permits, registrations, consents, concessions, approvals and authorisations issued, granted, approved or otherwise given to the Victorian Regional Channels Authority.

(i) Claims and Proceedings

All demands, claims, actions or proceedings made or brought by or against the Victorian Regional Channels Authority, however arising and whether present, unascertained, immediate, future or contingent.

Transport Integration Act 2010
TRANSPORT RESTRUCTURING ORDER
(ESTABLISHMENT OF PORTS VICTORIA) NO. 1/2021
SCHEDULE 4

Clause 32

PROVISIONS OF A TRANSITIONAL, SAVINGS OR CONSEQUENTIAL NATURE
AND OTHER MINOR APPLICATION PROVISIONS,
INCLUDING CONSTRUCTION OF REFERENCES

(1) Borrowing and Investment Powers Act 1987

- (1) Schedule 1 to the **Borrowing and Investment Powers Act 1987** must be read as if after item 7B there were inserted –

“7C. Ports Victoria	5, 8, 10, 11, 11AA, 11AB, 13, 14, 14A, 15, 20, 20A and 21”.
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Note:

See also section 154 of the **Transport Integration Act 2010** which provides that a Transport Corporation has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

- (2) Any approval of the Governor in Council given to the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 4, 11, 19 or 21 of the **Borrowing and Investment Powers Act 1987** before the Commencement Day must be taken, on and from that day, to be an approval given to Ports Victoria.
- (3) Any approval of the Treasurer given to the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 5, 8, 10, 11, 11AB or 20 of the **Borrowing and Investment Powers Act 1987** before the Commencement Day must be taken, on and from that day, to be an approval given to Ports Victoria.

(2) Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016

- (1) In section 3 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**, the definition of *Port Corporation* must be read as if for “the Victorian Ports Corporation (Melbourne) within the meaning of the **Transport Integration Act 2010**” there were substituted “Ports Victoria”, and each reference in that Act to the Port Corporation must be read accordingly unless inconsistent with the subject matter.
- (2) In section 3 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016** the definition of *public sector entity* must be read as if paragraph (e) were omitted.
- (3) A direction given by the Premier to the Victorian Ports Corporation (Melbourne) under section 20 of the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016** before the Commencement Day is to be taken, on and from that day, to be a direction given to Ports Victoria.

(3) Docklands Act 1991

- (1) Section 28(2) of the **Docklands Act 1991** must be read as if –
- (a) “Victorian Ports Corporation (Melbourne),” were omitted; and
 - (b) for “the Victorian Regional Channels Authority” there were substituted “Ports Victoria”.
- (2) Section 32(1) of the **Docklands Act 1991** must be read as if –
- (a) for “the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority” there were substituted “Ports Victoria”; and
 - (b) for “that Authority or Corporation” there were substituted “Ports Victoria”.

(4) **Emergency Management Act 2013**

- (1) Any reference to, or relating to, the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority in the **Emergency Management Act 2013** or in a subordinate instrument or document prepared under or for the purposes of that Act must be read as a reference to, or relating to, Ports Victoria unless that reading is inconsistent with the subject matter.

Examples:

For the purpose of the Victorian State Emergency Response Plan (SEMP), references to Victorian Ports Corporation (Melbourne) (or VMC(M)) and Victorian Regional Channels Authority (or VRCA) must be read as references to Ports Victoria. This includes, for example, those bodies when described in the SEM as commercial port managers.

As a consequence of this Order, Ports Victoria assumes the roles and responsibilities of the Victorian Ports Corporation (Melbourne) and the Victorian Regional Channels Authority, including as a control agency, a support agency, as a provider of expertise, as Chair of the Melbourne Port Emergency Management Committee and in all other capacities.

References to Victorian Ports Corporation (Melbourne) or Victorian Regional Channels Authority (however described) in any other subordinate or other instrument or document made for the purposes of the **Emergency Management Act 2013** must be similarly construed.

- (2) Without limiting the generality of paragraph (1), this paragraph applies if there is in effect, immediately before the Commencement Day, an Order in Council under section 74H of the **Emergency Management Act 2013** designating the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority, or both, as a responsible entity in respect of vital critical infrastructure specified in the Order.
- (3) On the Commencement Day, any Order in Council referred to in paragraph (2) must be read as designating Ports Victoria as the responsible entity within the meaning of Part 7A of that Act in respect of the vital critical infrastructure specified in that Order.
- (4) In this clause, *responsible entity* and *vital critical infrastructure* have the same meaning as in section 74B of the **Emergency Management Act 2013**.

(5) **Essential Services Commission Act 2001**

Any Memorandum of Understanding entered into between the Essential Services Commission and the Victorian Regional Channels Authority for the purpose of section 16 of the **Essential Services Commission Act 2001** before the Commencement Day is to be taken, on and from that day, to be a Memorandum of Understanding entered into between the Essential Services Commission and Ports Victoria.

(6) **Essential Services Commission Regulations 2011**

Regulations 7 and 8 of the **Essential Services Commission Regulations 2011** must be read as if for “Victorian Regional Channels Authority” (wherever occurring) there were substituted “Ports Victoria”.

(7) **Fire Rescue Victoria Act 1958**

Section 32B(5) of the **Fire Rescue Victoria Act 1958** must be read as if for “the Victorian Ports Corporation (Melbourne) (within the meaning of the **Transport Integration Act 2010**)” there were substituted “Ports Victoria”.

(8) **Fisheries Regulations 2019**

Regulation 479 of the **Fisheries Regulations 2019** must be read as if for “the Victorian Regional Channels Authority within the meaning of the **Transport Integration Act 2010**” there were substituted “Ports Victoria”.

(9) **Land Act 1958**

Section 385(2) of the **Land Act 1958** must be read as if –

- (a) in paragraph (e), for “the Victorian Ports Corporation (Melbourne)” there were substituted “Ports Victoria”; and
- (b) paragraph (f) were omitted.

(10) Marine (Drug, Alcohol and Pollution Control) Act 1988

- (1) In section 3 of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**, the definition of *port management body* must be read as if –
 - (a) in paragraph (a), for “the Victorian Ports Corporation (Melbourne)” there were substituted “Ports Victoria”; and
 - (b) in paragraph (b), for “the Victorian Regional Channels Authority” (wherever occurring) there were substituted “Ports Victoria”.
- (2) Any direction given to the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 71B(1) or 71B(2) of the **Marine (Drug, Alcohol and Pollution Control) Act 1988** before the Commencement Day must be taken, on and from that day, to be a direction given to Ports Victoria.

(11) Marine Safety Act 2010

- (1) Any reference to, or relating to, the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority in the **Marine Safety Act 2010** or in a subordinate instrument or document prepared under or for the purposes of that Act must be read as a reference to, or relating to, Ports Victoria unless otherwise specified in this clause or that reading is inconsistent with the subject matter.
- (2) Without limiting paragraph (1), in section 3(1) of the **Marine Safety Act 2010**, the definition of *port management body* must be read as if –
 - (a) in paragraph (a), for “the Victorian Ports Corporation (Melbourne)” there were substituted “Ports Victoria”; and
 - (b) in paragraph (b), for “the Victorian Regional Channels Authority” (wherever occurring) there were substituted “Ports Victoria”.
- (3) Paragraph (1) of this clause does not apply to the definitions of *Victorian Ports Corporation (Melbourne)* and *Victorian Regional Channels Authority* in section 3(1) of the **Marine Safety Act 2010**.

Note:

The Victorian Ports Corporation (Melbourne) and Victorian Regional Channels Authority will continue to exist as corporate entities after the making of this Order. The effect of this Order is to transfer all of the functions and the property, rights and liabilities of those entities to Ports Victoria.

- (4) Without limiting the generality of paragraph (1) –
 - (a) any declaration made by the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 203(1) of the **Marine Safety Act 2010** before the Commencement Day is to be taken, on and from that day, to be a declaration made by Ports Victoria;
 - (b) any notice published in the Government Gazette by the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 208(2) of the **Marine Safety Act 2010** before the Commencement Day is to be taken, on and from that day, to be a notice published by Ports Victoria;
 - (c) any direction given or notice published in the Government Gazette by the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 211(1) of the **Marine Safety Act 2010** before the Commencement Day is to be taken, on and from that day, to be a direction given or notice published by Ports Victoria;
 - (d) any direction given by the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 215(2) of the **Marine Safety Act 2010** before the Commencement Day is to be taken, on and from that day, to be a direction given by Ports Victoria;
 - (e) any engagement of a licensed harbour master by the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority for the purposes of

section 220 of the **Marine Safety Act 2010** before the Commencement Day is to be taken, on and from that day, to be an engagement by Ports Victoria; and

- (f) any authorisation of a person to act as an assistant harbour master by the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority for the purposes of section 229 of the **Marine Safety Act 2010** before the Commencement Day is to be taken, on and from that day, to be an authorisation by Ports Victoria.

(12) Port Management Act 1995

- (1) Any reference to, or relating to, the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority in the **Port Management Act 1995** or in a subordinate instrument or document prepared under or for the purposes of that Act must be read as a reference to, or relating to, Ports Victoria unless otherwise specified in this clause or that reading is inconsistent with the subject matter.
- (2) Without limiting paragraph (1), in section 3 of the **Port Management Act 1995**, the definition of *channel operator* must be read as if –
- (a) in paragraph (a), for “the Victorian Ports Corporation (Melbourne)” there were substituted “Ports Victoria”; and
- (b) in paragraph (b), for “VRCA” there were substituted “Ports Victoria”.
- (3) In section 3 of the **Port Management Act 1995**, the definition of *port corporation* must be read as if –
- (a) “the Victorian Ports Corporation (Melbourne),” were omitted; and
- (b) for “Victorian Regional Channels Authority” there were substituted “Ports Victoria”.
- (4) Paragraph (1) of this clause does not apply to the definitions of *Victorian Ports Corporation* and *VRCA* in section 3 of the **Port Management Act 1995**.

Note:

The Victorian Ports Corporation (Melbourne) and Victorian Regional Channels Authority will continue to exist as corporate entities after the making of this Order. The effect of this Order and associated Transfer Orders (see clause 4 of this Order) is to transfer all of the functions, powers and duties under Transport Legislation and the property, rights and liabilities of those entities to Ports Victoria.

- (5) Section 4(2)(b) of the **Port Management Act 1995** must be read as if –
- (a) “the Victorian Ports Corporation (Melbourne),” were omitted; and
- (b) for “VRCA” there were substituted “Ports Victoria”.
- (6) Section 7 of the **Port Management Act 1995** must be read as if for “the Victorian Ports Corporation (Melbourne) or VRCA” there were substituted “Ports Victoria”.
- (7) Without limiting paragraph (1), sections 64(4)(c) and 65(b) of the **Port Management Act 1995** must be read as if for “the Victorian Ports Corporation (Melbourne)” there were substituted “Ports Victoria”.

Note:

The effect of this clause is that Ports Victoria is deemed to be the committee of management of certain land.

- (8) In section 83 of the **Port Management Act 1995**, the definition of *recommending authority* must be read as if –
- (a) in paragraph (a), for “the Victorian Ports Corporation (Melbourne)” there were substituted “Ports Victoria”; and
- (b) paragraph (b) were omitted.

Note:

Section 83 defines *port waters*, in relation to VRCA, as meaning any waters in respect of which VRCA has functions under Division 3B of Part 6 of the **Transport Integration Act 2010**. The effect of paragraph (1) of this clause is that the reference to VRCA is to be read as a reference to Ports Victoria and the reference to the functions of VRCA under Division 3B of Part 6 of the **Transport Integration Act 2010** is to be read as a reference to the functions of VRCA under Division 3B of Part 6 of the **Transport Integration Act 2010** which are conferred on Ports Victoria by clause 10 of this Order.

- (9) In section 84 of the **Port Management Act 1995** –
- (a) subsection (1) must be read as if for “the Victorian Ports Corporation (Melbourne)” there were substituted “Ports Victoria”;
 - (b) subsection (2) must be read as if for “VRCA” (wherever appearing) there were substituted “Ports Victoria” and as if for “port waters of VRCA” there were substituted “port waters of Ports Victoria other than port of Melbourne waters and port of Melbourne land”; and
 - (c) subsection (7) must be read as if for “VRCA” (wherever appearing) there were substituted “Ports Victoria” and as if for “port waters of VRCA” there were substituted “port waters of Ports Victoria other than port of Melbourne waters and port of Melbourne land”.

Notes:

The effect of paragraph (1) of this clause is that the reference in section 84(7) to VRCA having delegated any of its functions under Division 3B of Part 6 of the **Transport Integration Act 2010** is to be read as a reference to Ports Victoria having delegated any of the functions under Division 3B of Part 6 of the **Transport Integration Act 2010** which are conferred on Ports Victoria by clause 10 of this Order.

Section 84(1) of the **Port Management Act 1995** authorises the Minister to declare restricted access areas in relation to certain parts of port of Melbourne waters and port of Melbourne land on the recommendation of the Victorian Ports Corporation (Melbourne) and section 84(2) authorises the Minister to declare restricted access areas in relation to any port waters of VRCA on the recommendation of VRCA. The effect of paragraph (9) of this clause is that the reference to the Victorian Ports Corporation (Melbourne) in section 84(1) and the reference to VRCA in section 84(2) will both be read as references to Ports Victoria. In order to preserve the current scope of sections 84(1) and 84(2), paragraph (9) also provides that the reference to “port waters of VRCA” in section 84(2) is to be read as a reference to “port waters of Ports Victoria other than port of Melbourne waters and port of Melbourne land”, as these are dealt with separately in section 84(1). There is a corresponding change in section 84(7).

- (10) In section 88AP of the **Port Management Act 1995**, the definition of *relevant port* must be read as if –
- (a) for paragraph (a) there were substituted –
 - “(a) if the port manager is Ports Victoria –
 - (i) those parts of the port comprising port of Melbourne waters and port of Melbourne land that is not leased port of Melbourne land; and
 - (ii) a commercial trading port (other than the port of Melbourne);”;
 - (b) paragraph (c) were omitted.

Note:

The effect of this clause is to combine paragraphs (a) and (c) of the definition of *relevant port*, which deal separately with the Victorian Ports Corporation (Melbourne) and VRCA, into a single paragraph that applies to Ports Victoria.

- (11) Paragraph (1) of this clause does not apply to the definition of *new corporation* in section 180 of the **Port Management Act 1995**.
- (12) Without limiting the generality of paragraph (1) –
- (a) any lease or license granted by the Victorian Ports Corporation (Melbourne) under section 66 of the **Port Management Act 1995** before the Commencement Day is to be taken, on and from that day, to be a lease or licence granted by Ports Victoria;
 - (b) any notice given to the Victorian Ports Corporation (Melbourne) under section 73F of the **Port Management Act 1995** before the Commencement Day is to be taken, on and from that day, to be a notice given to Ports Victoria;
 - (c) any acknowledgement given by the Victorian Ports Corporation (Melbourne) under section 73G of the **Port Management Act 1995** before

the Commencement Day is to be taken, on and from that day, to be an acknowledgement given by Ports Victoria;

- (d) any determination made by the Victorian Ports Corporation (Melbourne) under section 73B(1) or 73J(1) of the **Port Management Act 1995** before the Commencement Day is to be taken, on and from that day, to be a determination made by Ports Victoria;
- (e) any Order in Council made under section 74AB of the **Port Management Act 1995** designating the Victorian Ports Corporation (Melbourne) as a designated state port entity before the Commencement Day is to be read, on and from that day, as designating Ports Victoria as a designated state port entity;
- (f) any Order in Council approving a wharfage fee or channel fee determined by the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority made under section 74AB of the **Port Management Act 1995** before the Commencement Day is to be read, on and from that day, as approving the wharfage fee or channel fee determined by Ports Victoria;
- (g) any determination of a wharfage fee made by the Victorian Ports Corporation (Melbourne) under section 74(1) of the **Port Management Act 1995** before the Commencement Day is to be taken, on and from that day, to be a determination of a wharfage fee by Ports Victoria;
- (h) any determination of a channel fee made by the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 75(1) of the **Port Management Act 1995** before the Commencement Day is to be taken, on and from that day, to be a determination of a channel fee by Ports Victoria;
- (i) any certificate issued by the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 88G(1) of the **Port Management Act 1995** before the Commencement Day is to be taken, on and from that day, to be a certificate issued by Ports Victoria;
- (j) any Port Development Strategy prepared by the Victorian Regional Channels Authority under section 91K of the **Port Management Act 1995** before the Commencement Day is to be taken, on and from that day, to be a Port Development Strategy prepared by Ports Victoria; and
- (k) any person authorised by the Victorian Ports Corporation (Melbourne) under section 97 of the **Port Management Act 1995** before the Commencement Day is to be taken, on and from that day, to be authorised by Ports Victoria.

(13) Port Management (Port of Melbourne Safety and Property) Regulations 2020

- (1) Any reference to, or relating to, the Victorian Ports Corporation (Melbourne) or VPCM in the **Port Management (Port of Melbourne Safety and Property) Regulations 2020** or in a document prepared under or for the purposes of those Regulations must be read as a reference to, or relating to, Ports Victoria unless that reading is inconsistent with the subject matter.
- (2) Without limiting the generality of paragraph (1) –
 - (a) any authority issued by the Victorian Ports Corporation (Melbourne) under regulation 11(1) of the **Port Management (Port of Melbourne Safety and Property) Regulations 2020** before the Commencement Day is to be taken, on and from that day, to be an authority issued by Ports Victoria; and
 - (b) any direction given by the Victorian Ports Corporation (Melbourne) under regulation 24(1) of the **Port Management (Port of Melbourne Safety and Property) Regulations 2020** before the Commencement Day is to be taken, on and from that day, to be a direction given by Ports Victoria.

(14) Transport (Compliance and Miscellaneous) Act 1983

- (1) Section 230L(1)(b) of the **Transport (Compliance and Miscellaneous) Act 1983** must be read as if for “the Victorian Ports Corporation (Melbourne)” there were substituted “Ports Victoria”.
- (2) Any instrument of appointment made by the Victorian Ports Corporation (Melbourne) under section 230 of the **Transport (Compliance and Miscellaneous) Act 1983** before the Commencement Day must be read, on and from that day, as an instrument of appointment made by Ports Victoria.

(15) Transport (Safety Schemes Compliance and Enforcement) Act 2014

- (1) Any instrument of appointment made by the Safety Director under section 116 of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014** or any other document made or issued under that Act before the Commencement Day which contains a reference to the Victorian Ports Corporation (Melbourne) must be read, on and from that day, as containing a reference to Ports Victoria, unless that reading is inconsistent with the subject matter.
- (2) Any instrument of appointment made by the Safety Director under section 116 of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014** or any other document made or issued under that Act before the Commencement Day which contains a reference to the Victorian Regional Channels Authority must be read, on and from that day, as containing a reference to Ports Victoria, unless that reading is inconsistent with the subject matter.

(16) Transport Integration Act 2010

- (1) Any reference to the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority in any instrument of delegation made under section 31, 39 or 64R of the **Transport Integration Act 2010** before the Commencement Day must, on and from that day, be read as a reference to Ports Victoria.
- (2) Any direction given to the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 38A of the **Transport Integration Act 2010** before the Commencement Day must be taken, on and from that day, to be a direction given to Ports Victoria.
- (3) Any requirement to give information given to the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 162 of the **Transport Integration Act 2010** before the Commencement Day must be taken, on and from that day, to be a requirement given to Ports Victoria.
- (4) Any direction given to the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 163 of the **Transport Integration Act 2010** before the Commencement Day must be taken, on and from that day, to be a direction given to Ports Victoria.
- (5) Any instrument made by the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority or a sub-delegate of the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority under section 178 of the **Transport Integration Act 2010** before the Commencement Day must be taken, on and from that day, to be made by Ports Victoria.

(17) Treasury Corporation of Victoria Act 1992

- (1) In section 36A of the **Treasury Corporation of Victoria Act 1992**, the definition of *public authority* must be read as if after “the Victorian Regional Channels Authority” there were inserted “Ports Victoria”.
- (2) Schedule 1 to the **Treasury Corporation of Victoria Act 1992** must be read as if, after the last row in Schedule 1, there were inserted “Ports Victoria” in Column 1 and there were inserted “**Transport Integration Act 2010**” in Column 2.

- (3) Any reference to the Victorian Ports Corporation (Melbourne) or the Victorian Regional Channels Authority in an Order made under section 36D or 36E of the **Treasury Corporation of Victoria Act 1992** before the Commencement Day must be read, on and from that day, as a reference to Ports Victoria.

(18) Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards (Prescribed Public Entities) Regulations 2019

Schedule 1 to the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards (Prescribed Public Entities) Regulations 2019** must be read as if “Ports Victoria” were inserted in a new row below “Port Phillip and Westernport Catchment Management Authority”.

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