

South Australia

# South Australian Ports (Bulk Handling Facilities) Act 1996

An Act to authorise the sale of bulk handling facilities at South Australian ports; and for other purposes.

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Interpretation

### Part 2—Sale of bulk handling facilities

- 4 Sale of bulk handling facilities
- 5 Statutory easement
- 6 Registrar-General to note statutory easement
- 7 Leases and other rights in relation to land

### Part 4—Miscellaneous

- 39 Bulk handling facilities to be regarded as chattels
- 40 Interaction between this Act and other Acts
- 43 Regulations and proclamations

Legislative history

---

**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *South Australian Ports (Bulk Handling Facilities) Act 1996*.

### 3—Interpretation

In this Act, unless the contrary intention appears—

***bulk handling facilities*** means—

- (a) the equipment designed principally for handling grain installed at the following government ports:

- (i) Port Adelaide;
- (ii) Port Giles;
- (iii) Wallaroo;
- (iv) Port Pirie;
- (v) Port Lincoln;
- (vi) Thevenard,

including that equipment as modified from time to time and equipment installed in substitution for that equipment; or

- (b) other equipment for loading or unloading commodities at a government port classified by proclamation as bulk handling facilities to which this Act applies;

**commodity** means—

- (a) primary produce; or
- (b) minerals, petroleum, natural gas, or other products of the mining industry; or
- (c) manufactured goods;

**Corporation** means the South Australian Ports Corporation;

**government port** means a port vested in the Corporation under the *South Australian Ports Corporation Act 1994*;

**land** includes—

- (a) a subsurface stratum (which may terminate at a particular subsurface level or extend downwards without defined limit);
- (b) a stratum of airspace (which may terminate at a specified level or extend upwards without defined limit).

## Part 2—Sale of bulk handling facilities

### 4—Sale of bulk handling facilities

- (1) The Treasurer may by agreement (a **sale agreement**) with another (the **purchaser**) transfer title to the Corporations's bulk handling facilities to the purchaser.

There may be two or more agreements relating to different bulk handling facilities with the same purchaser or with different purchasers.

- (2) A sale agreement—
  - (a) vests title to bulk handling facilities to which the agreement relates in the purchaser in accordance with its terms; and
  - (b) discharges those bulk handling facilities from any trust or other interest in favour of the Crown (except to the extent that any such interest may be expressly preserved under the terms of the agreement).
- (3) A transfer of title under this section operates by force of this Act and despite the provisions of any other law or instrument.

- (4) A sale agreement may require the purchaser to indemnify the Corporation against specified liabilities or liabilities of a specified class.
- (5) The Treasurer—
  - (a) may apply the net proceeds of a sale under this section in discharging or recouping outstanding liabilities of the Corporation; and
  - (b) must pay the balance to the *Asset Management Task Force Operating Account* at the Treasury to be used for the purpose of retiring State debt.

## 5—Statutory easement

- (1) On the sale of bulk handling facilities, an easement (a *statutory easement*) arises over subjacent and adjacent land entitling the owner of the bulk handling facilities—
  - (a) to support for the bulk handling facilities; and
  - (b) to have access to the relevant land (through agents and employees) reasonably required for operating, maintaining, repairing, modifying, removing or replacing the bulk handling facilities.
- (2) A person exercising rights under the statutory easement must take reasonable steps—
  - (a) to minimise damage to land or other property from work or activities carried out in the exercise of rights conferred by the statutory easement; and
  - (b) to avoid unnecessary interference with land or other property, or the use or enjoyment of land or other property, from the exercise of rights under the statutory easement.
- (3) The owner of land affected by the statutory easement may, by agreement with the owner of the bulk handling facilities, execute an instrument—
  - (a) conferring an easement that operates to the exclusion of the statutory easement so far as it affects that land; or
  - (b) discharging the land from the statutory easement,and on registration of the instrument under the *Real Property Act 1886* or the *Registration of Deeds Act 1935* the land is discharged from the statutory easement.
- (4) In this section—

*adjacent land* in relation to bulk handling facilities includes land declared by proclamation to be adjacent to the relevant facilities.

## 6—Registrar-General to note statutory easement

- (1) The Registrar-General must, on application by the Treasurer, note the statutory easement on each certificate of title, or Crown lease, affected by the easement.
- (2) An application under this section—
  - (a) need not include a plan of the statutory easement; but
  - (b) must include a schedule of all certificates of title and Crown leases affected by the statutory easement.
- (3) The Registrar-General is entitled to act on the basis of information included in the application and is not obliged to do anything to verify the accuracy of that information.

## 7—Leases and other rights in relation to land

- (1) The Treasurer may, in connection with the sale of bulk handling facilities—
  - (a) sell land of the Corporation to the purchaser; or
  - (b) lease land of the Corporation to the purchaser; or
  - (c) grant other rights over or in respect of land of the Corporation,  
on terms the Treasurer thinks fit.
- (2) In exercising powers under subsection (1) the Treasurer is taken to be acting as agent of the Corporation.
- (3) An apparently genuine document purporting to be an instrument executed by the Treasurer as agent of the Corporation must, in the absence of proof to the contrary, be accepted by any court or administrative official as an instrument duly executed under this section.
- (4) The powers of the Treasurer under this section are not limited by section 10(3) of the *South Australian Ports Corporation Act 1994*.<sup>1</sup>

**Note—**

- 1 This provides that the "Corporation cannot sell, lease or otherwise dispose of any land, or any interest in land, except with the approval of the Minister".

## Part 4—Miscellaneous

### 39—Bulk handling facilities to be regarded as chattels

Bulk handling facilities are chattels and capable of being acquired, owned, dealt with and disposed of as such (despite the extent of their affixation to land).

### 40—Interaction between this Act and other Acts

- (1) A transaction under this Act is not subject to the *Land and Business (Sale and Conveyancing) Act 1994*.
- (2) A transaction under this Act is not subject to the *Retail Shop Leases Act 1995*.
- (3) No consent, approval or authorisation is required under Part 4 of the *Development Act 1993* for a transaction under Part 2 of this Act.
- (4) An application under section 223LD of the *Real Property Act 1886* for the division of land in consequence of a transfer or lease under this Act need not be accompanied by a certificate from the Development Assessment Commission.<sup>1</sup>

**Note—**

- 1 See section 223LD(3)(c) of the *Real Property Act 1886*.

### 43—Regulations and proclamations

- (1) The Governor may make regulations and proclamations for the purposes of this Act.
- (2) The Governor may, by subsequent proclamation, vary or revoke a proclamation made under this Act.

**Exception—**

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

- (3) A regulation may prescribe a fine (not exceeding \$2 000) for contravention of the regulation.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *South Australian Ports (Bulk Handling Facilities) Act 1996* amended the following:

*South Australian Ports Corporation Act 1994*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1996	94	<i>South Australian Ports (Bulk Handling Facilities) Act 1996</i>	12.12.1996	31.7.1997 ( <i>Gazette 31.7.1997 p236</i> ) except Pt 3 and ss 41 & 42—11.9.1997 ( <i>Gazette 11.9.1997 p704</i> )
2000	82	<i>Maritime Services (Access) Act 2000</i>	14.12.2000	Sch—31.10.2001 ( <i>Gazette 25.10.2001 p4686</i> )

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 82/2000 Sch para (a) amended under <i>Legislation Revision and Publication Act 2002</i>	31.10.2001
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
<i>bulk handling service</i>	<i>deleted by 82/2000 Sch para (b)</i>	31.10.2001
<i>operator</i>	<i>deleted by 82/2000 Sch para (b)</i>	31.10.2001
Pt 3	<i>deleted by 82/2000 Sch para (c)</i>	31.10.2001
Pt 4		
ss 41 and 42	<i>deleted by 82/2000 Sch para (d)</i>	31.10.2001
Sch	<i>omitted under Legislation Revision and Publication Act 2002</i>	