

South Australia

# **Maritime Services (Access) (Miscellaneous) Amendment Act 2009**

An Act to amend the *Maritime Services (Access) Act 2000*.

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

### **Part 1—Preliminary**

#### **1—Short title**

This Act may be cited as the *Maritime Services (Access) (Miscellaneous) Amendment Act 2009*.

#### **2—Commencement**

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

#### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## **Part 2—Amendment of *Maritime Services (Access) Act 2000***

### **4—Amendment of section 3—Objects**

Section 3(b)—after "maritime services" insert:

through the promotion of the economically efficient use and operation of, and investment in, those services

### **5—Amendment of section 4—Interpretation**

Section 4(1), definition of *initial period of price regulation*—delete the definition

### **6—Amendment of section 6—Certain maritime industries to be regulated industries**

(1) Section 6(2) and (4)—delete subsections (2) and (4) and substitute:

(2) The Commission is authorised to make a price determination under Part 3 of the *Essential Services Commission Act 2002* relating to essential maritime industries.

(3) A price determination authorised by subsection (2) must specify an expiry date that is not later than the date on which the prescribed period in which the determination takes effect ends.

(2) Section 6(6)—delete "and, in particular, the Commission is responsible for the enforcement of the pricing determination made under subsection (2)"

(3) Section 6—after subsection (6) insert:

(7) In this section—

*prescribed period* means—

(a) the period ending 30 October 2012; and

(b) each successive period of 5 years thereafter.

### **7—Repeal of section 7**

Section 7—delete the section

### **8—Amendment of section 18—Power to refer dispute to arbitration**

(1) Section 18(1)—after "conciliation," insert:

or, in any event, if the dispute is not resolved within 6 months after the referral of the dispute to the Commission under section 16,

(2) Section 18(3)—after "dispute" insert:

and must be a person who—

(a) is independent of the parties to the dispute; and

(b) is not subject to the control or direction of the South Australian Government in any capacity; and

(c) is properly qualified to act in the resolution of the dispute; and

(d) has no direct or indirect interest in the outcome of the dispute.

- (3) Section 18(4)—delete subsection (4)
- (4) Section 18(5)—delete "or decide to act as arbitrator himself or herself"

## **9—Insertion of section 30A**

Before section 31 insert:

### **30A—Time limit for arbitration**

- (1) An award must be made within the period of 6 months from the date on which the dispute is referred to arbitration (the *standard period*).
- (2) However, if after the commencement of the standard period the arbitrator exercises a power under this Part in relation to the provision of information or documents, any period between the date of the exercise of the power and the date of compliance is not to be taken into account when determining the end date of the standard period.

## **10—Amendment of section 32—Principles to be taken into account by arbitrator**

- (1) Section 32—after paragraph (h) insert:
  - and
  - (i) the pricing principles specified in subsection (2).
- (2) Section 32—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
  - (2) The pricing principles relating to the price of access to a service are as follows:
    - (a) that access prices should allow multi-part pricing and price discrimination when it aids efficiency;
    - (b) that access prices should not allow a vertically integrated operator to set terms and conditions that would discriminate in favour of its downstream operations, except to the extent that the cost of providing access to others would be higher;
    - (c) that access prices should provide incentives to reduce costs or otherwise improve productivity.

## **11—Amendment of section 40—Appeal from award on question of law**

Section 40—after subsection (3) insert:

- (4) Unless the Court specifically decides to suspend the operation of an award until the determination of an appeal, an appeal does not suspend the operation of an award.

## **12—Amendment of section 43—Review and expiry of Part**

- (1) Section 43(1)—delete subsection (1)
- (2) Section 43(2)—delete "triennial cycle" and substitute:
  - prescribed period

- (3) Section 43(5)(a)—delete "triennial cycle" and substitute:  
prescribed period
- (4) Section 43(5)(b)—delete "cycle" and substitute:  
prescribed period
- (5) Section 43(7)—delete "triennial cycle" first occurring and substitute:  
prescribed period
- (6) Section 43(7)(a)—delete "cycle" and substitute:  
prescribed period
- (7) Section 43(7)(a)—delete "triennial cycle" and substitute:  
prescribed period
- (8) Section 43—after subsection (7) insert:
  - (8) In this section—  
***prescribed period*** means—
    - (a) the period ending 30 October 2012; and
    - (b) each successive period of 5 years thereafter.

### **13—Amendment of section 46—Transitional provision**

- (1) Section 46(3), note—delete the note
- (2) Section 46—after subsection (3) insert:
  - (4) The pricing determination in relation to essential maritime services made by the Commission under the *Essential Services Commission Act 2002* in operation immediately before the commencement of this subsection will expire on 30 October 2012.