

South Australia

Maritime Services (Access) Act 2000

An Act to provide for access to South Australian ports and maritime services on fair commercial terms; to provide for price regulation of essential maritime services; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 3 Objects
- 4 Interpretation
- 5 Proclaimed ports

Part 2—Regulation of maritime industries

Division 1—Essential maritime industries

- 6 Certain maritime industries to be regulated industries

Division 2—Pilotage

- 8 Obligation to maintain a current schedule of pilotage charges

Division 3—General functions of Commission in relation to maritime industries

- 8A Enforcement of Act
- 9 General functions of Commission

Part 3—Access to maritime services at proclaimed ports

Division 1—Regulated port operators

- 10 Regulated port operators

Division 2—Basis of access

- 11 Access on fair commercial terms

Division 3—Negotiation of access

- 12 Preliminary information to assist proponent to formulate proposal
- 13 Proposal for access
- 14 Duty to negotiate in good faith
- 15 Existence of dispute

Division 4—Conciliation

- 16 Settlement of dispute by conciliation

17 Voluntary and compulsory conferences

Division 5—Reference of dispute to arbitration

18 Power to refer dispute to arbitration

19 Application of *Commercial Arbitration Act 1986*

Division 6—Parties and representation

20 Parties to the arbitration

21 Representation

22 Commission's right to participate

Division 7—Conduct of arbitration

23 Arbitrator's duty to act expeditiously

24 Hearings to be in private

25 Procedure on arbitration

26 Procedural powers of arbitrator

27 Power to obtain information and documents

28 Confidentiality of information

29 Proponent's right to terminate arbitration before an award is made

30 Arbitrator's power to terminate arbitration

Division 8—Awards

30A Time limit for arbitration

31 Formal requirements related to awards

32 Principles to be taken into account by arbitrator

33 Incidental legal effect of awards

34 Consent awards

35 Proponent's option to withdraw from award

36 Termination or variation of award

Division 9—Enforcement of award

37 Contractual remedies

38 Injunctive remedies

39 Compensation

Division 10—Appeals and costs

40 Appeal from award on question of law

41 Costs

Division 11—Segregation of accounts

42 Accounts and records relating to the provision of regulated services

Division 12—Expiry of this Part

43 Review and expiry of Part

Part 4—Miscellaneous

44 Hindering access

45 Variation or revocation of proclamations

46 Transitional provision

47 Regulations

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Maritime Services (Access) Act 2000*.

3—Objects

The objects of this Act are—

- (a) to provide access to maritime services on fair commercial terms; and
- (b) to facilitate competitive markets in the provision of maritime services through the promotion of the economically efficient use and operation of, and investment in, those services; and
- (c) to protect the interests of users of essential maritime services by ensuring that regulated prices are fair and reasonable having regard to the level of competition in, and efficiency of, the regulated industry; and
- (d) to ensure that disputes about access are subject to an appropriate dispute resolution process.

4—Interpretation

- (1) In this Act, unless the contrary intention appears—

associate—see subsection (2);

Commission means the Essential Services Commission established under the *Essential Services Commission Act 2002*;

customer means a person who seeks the provision of a maritime service;

essential maritime industry means an industry of providing an essential maritime service or essential maritime services;

essential maritime service means a maritime service consisting of—

- (a) providing or allowing for access of vessels to a proclaimed port; or
- (b) providing port facilities for loading or unloading vessels at a proclaimed port;
or
- (c) providing berths for vessels at a proclaimed port;

interested third party—see section 14;

maritime industry means an industry of providing a maritime service or maritime services;

maritime service means a service provided on a commercial basis of any of the following kinds:

- (a) providing or allowing for access of vessels to a proclaimed port;
- (b) a pilotage service facilitating access to a proclaimed port;
- (c) providing berths for vessels at a proclaimed port;

- (d) providing port facilities for loading or unloading vessels at a proclaimed port;
- (e) providing for the storage of goods at a proclaimed port;
- (f) providing access to land in connection with the provision of services of any of the kinds mentioned above,

but does not include any of the following:

- (g) a towage service for facilitating access to a proclaimed port;
- (h) a bunkering service provided at a proclaimed port;
- (i) a service for the provisioning of vessels (including the supply of electricity and water) within a proclaimed port;
- (j) a service for the removal of waste from vessels at a proclaimed port;

port facility means buildings, wharves and jetties, plant and equipment (but not stevedoring plant and equipment) at a proclaimed port for carrying on a business of providing a maritime service and includes natural and artificial elements or aspects of a harbour on which a proclaimed port is established that are relevant to such a business;

pricing determination means a determination under the *Essential Services Commission Act 2002* regulating prices, conditions relating to prices and price-fixing factors for goods and services;

proclaimed port means a port declared by proclamation to be subject to this Act;

regulated operator or **operator** means a person who is subject to the access regime prescribed by this Act;

regulated services means services declared by proclamation to be regulated services under section 10.

(2) Two persons are **associates** of each other if—

- (a) they are related bodies corporate within the meaning of the *Corporations Law*; or
- (b) one is a body corporate and the other is a director or secretary of the body corporate; or
- (c) they are members of the same partnership or joint venture; or
- (d) one is a trustee and the other is a beneficiary of the same trust; or
- (e) there is an agreement, arrangement or understanding (whether enforceable or not) under which—
 - (i) one acts in accordance with the directions, instructions or wishes of the other; or
 - (ii) if one or both are bodies corporate—a majority of the directors of one act in accordance with the directions, instructions or wishes of the other,

(other than an agreement, arrangement or understanding entered into in the ordinary course of business for the supply of goods or services); or

- (f) the regulations declare them to be associates for the purposes of this Act; or

- (g) a chain of associations can (by applying any one or more of the above provisions) be traced between them through another person or other persons.

5—Proclaimed ports

- (1) The Governor may, by proclamation, declare any one or more of the following ports to be subject to this Act:
 - (a) Port Adelaide;
 - (b) Port Giles;
 - (c) Wallaroo;
 - (d) Port Pirie;
 - (e) Port Lincoln;
 - (f) Thevenard;
 - (g) any other port declared by regulation to be capable of being brought within the application of this Act.
- (2) A proclamation under this section may define the boundaries of the proclaimed port.

Part 2—Regulation of maritime industries

Division 1—Essential maritime industries

6—Certain maritime industries to be regulated industries

- (1) Essential maritime industries are regulated industries for the purposes of the *Essential Services Commission Act 2002*.
- (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.
- (5) For the purposes of the *Essential Services Commission Act 2002* a person to whom the control and management of a port is assigned by a port operating agreement under the *Harbors and Navigation Act 1993* will be regarded as a licensed entity.
- (6) The Commission's powers and responsibilities are not affected by this section except to the extent expressly provided.
- (7) In this section—
prescribed period means—
 - (a) the period ending 30 October 2012; and
 - (b) each successive period of 5 years thereafter.

Division 2—Pilotage

8—Obligation to maintain a current schedule of pilotage charges

- (1) A person who carries on a business involving the provision of pilotage services in relation to a proclaimed port must—
 - (a) maintain a schedule of current pilotage charges; and
 - (b) provide, at the request of a member of the public, a copy of the current schedule.

Maximum penalty: \$2 500.

- (2) Before a person who carries on business involving the provision of pilotage services changes pilotage charges, the person must give the Commission—
 - (a) a copy of the proposed new schedule of pilotage charges; and
 - (b) a description of the changes and the reasons for them.

Maximum penalty: \$2 500.

Division 3—General functions of Commission in relation to maritime industries

8A—Enforcement of Act

The Commission has the function of monitoring and enforcing compliance with this Act.

9—General functions of Commission

- (1) The Commission must keep maritime industries under review with a view to determining whether regulation (or further regulation) is required under the *Essential Services Commission Act 2002*.
- (2) The Commission may—
 - (a) develop and issue standards to be complied with in the provision of a maritime service; and
 - (b) revise standards issued under this section from time to time.
- (3) A standard issued by the Commission under this section is for the guidance of those engaged in maritime industries and does not have the force of law.
- (4) However, if such a standard is promulgated as a regulation it has the force of law and contravention of the standard attracts a penalty fixed in the regulations.

Part 3—Access to maritime services at proclaimed ports

Division 1—Regulated port operators

10—Regulated port operators

A person (a **regulated operator**) is subject to the access regime prescribed by this Act if the person carries on a business of providing maritime services at a proclaimed port that are declared by proclamation to be regulated services.

Division 2—Basis of access

11—Access on fair commercial terms

- (1) A regulated operator must provide regulated services on terms—
 - (a) agreed between the operator and the customer; or
 - (b) if they do not agree, on fair commercial terms determined by arbitration under this Act.
- (2) A term as to the price at which regulated services are to be provided will be regarded as a fair commercial term if the price is regulated by a pricing determination under the *Essential Services Commission Act 2002* and the term is consistent with that determination.

Division 3—Negotiation of access

12—Preliminary information to assist proponent to formulate proposal

- (1) A regulated operator must, at the request of a person who intends to ask the operator to provide a regulated service (the **intending proponent**), provide the intending proponent with—
 - (a) information reasonably requested about—
 - (i) the extent to which the regulated operator's port facilities subject to the access regime are currently being utilised; and
 - (ii) technical requirements that have to be complied with by persons for whom the operator provides regulated services; and
 - (iii) the rules with which the intending proponent would be required to comply; and
 - (b) the information about the price of regulated services provided by the operator that is required to be provided under guidelines issued by the Commission.
- (2) If the operator requires, an intending proponent must pay a reasonable charge fixed by the operator for the supply of information requested under this section.

13—Proposal for access

- (1) A person who wants a regulated service (the **proponent**) may make a written proposal to a regulated operator setting out proposed terms and conditions for the provision of the maritime service.

- (2) A proposal may provide for—
 - (a) the modification of port facilities on land occupied by the operator for the purpose of providing the relevant service; or
 - (b) the establishment of additional port facilities on land occupied by the operator for the purpose of providing the relevant service.
- (3) If the operator requires, a proponent must provide further information about the proponent's proposal that the operator reasonably requires in order to give the information for which the proponent has asked.
- (4) The operator must, within one month after the relevant day—
 - (a) give written notice of the proposal to—
 - (i) the Commission; and
 - (ii) any person (an ***affected third party***) whose rights would be affected by implementation of the proposal; and
 - (b) notify the proponent of the name and address of any affected third party and give the proponent a preliminary indication about—
 - (i) whether the operator is prepared to provide the regulated service sought in the proposal and, if so, on what terms and conditions; and
 - (ii) if some alteration of, or addition to, existing facilities would be necessary to provide the services, whether the operator would agree to the alteration or addition and, if so, on what terms.
- (5) The ***relevant day*** is the day on which the written proposal is made to the operator, or if the operator requires further information under subsection (3), the day on which that information is provided.
- (6) Notice of an access proposal may be given to affected third parties by publishing a notice in a newspaper circulating generally in the State stating—
 - (a) the name of the proponent and an address at which the proponent may be contacted; and
 - (b) the name of the operator and an address at which the operator may be contacted; and
 - (c) the general nature of the access proposal.
- (7) A regulated operator may recover the reasonable costs of giving notice under this section, as a debt, from the proponent.

14—Duty to negotiate in good faith

- (1) The operator and any interested third parties must negotiate with the proponent in good faith and on the basis that the proponent's reasonable requirements are to be accommodated as far as practicable.
- (2) An ***interested third party*** is an affected third party who, by notice given to the proponent or the operator, indicates its interest in the negotiations.

15—Existence of dispute

- (1) If, within 30 days after the proposal is made, the operator, the proponent and any interested third parties have not agreed on terms for the provision of the proposed service, a dispute exists.
- (2) A party to the dispute may refer the dispute to the Commission.

Division 4—Conciliation

16—Settlement of dispute by conciliation

- (1) If a dispute is referred to the Commission, the Commission must, in the first instance, attempt to resolve the dispute by conciliation.
- (2) The Commission need not attempt to resolve a dispute by conciliation if, in the Commission's opinion—
 - (a) the subject-matter of the dispute is trivial, misconceived or lacking in substance; or
 - (b) the parties have not negotiated in good faith.
- (3) In attempting to resolve a dispute by conciliation, the Commission must have regard to the same factors as would be relevant in an arbitration of the dispute.

17—Voluntary and compulsory conferences

- (1) The Commission may call voluntary or compulsory conferences of the parties to the dispute to explore the possibility of resolving the dispute by agreement.
- (2) The Commission, or a nominee of the Commission, will preside at any such conference.
- (3) A party to a dispute who is asked by the Commission to attend a conference under this section must attend the conference if the Commission indicates in the request that attendance is compulsory.
Maximum penalty: \$20 000.

Division 5—Reference of dispute to arbitration

18—Power to refer dispute to arbitration

- (1) If a dispute is not resolved by conciliation after the Commission has made reasonable attempts to do so, or if it appears unlikely that a dispute can be resolved by conciliation, 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, the Commission may refer the dispute to arbitration.
- (2) The Commission need not refer a dispute to arbitration if, in the Commission's opinion—
 - (a) the subject-matter of the dispute is trivial, misconceived or lacking in substance; or
 - (b) the parties have not negotiated in good faith; or

- (c) there are other good reasons why the dispute should not be referred to arbitration.
- (3) The arbitrator is to be a person selected by the Commission after consultation with the parties to the dispute 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.
- (5) If for some reason an arbitrator does not complete an arbitration, the Commission may, after consultation with the parties, make a fresh appointment.

19—Application of *Commercial Arbitration Act 1986*

The *Commercial Arbitration Act 1986* applies to an arbitration under this Act to the extent that it may operate consistently with the provisions of this Act.

Division 6—Parties and representation

20—Parties to the arbitration

The parties to the arbitration are—

- (a) the proponent, the operator and any interested third parties; and
- (b) any other person whose interests may be materially affected by the outcome of the arbitration and who is joined as a party to the arbitration by the arbitrator.

21—Representation

A party to an arbitration may be represented by a lawyer or, by leave of the arbitrator, another representative.

22—Commission's right to participate

- (1) The Commission may participate in arbitration proceedings under this Act.
- (2) If the Commission participates, the Commission may call evidence and make representations on the questions subject to the arbitration.

Division 7—Conduct of arbitration

23—Arbitrator's duty to act expeditiously

An arbitrator must proceed with the arbitration as quickly as the proper investigation of the dispute, and the proper consideration of all matters relevant to the fair determination of the dispute, allow.

24—Hearings to be in private

- (1) Arbitration proceedings must be conducted in private unless all parties agree to have the proceedings conducted in public.

- (2) An arbitrator may give directions about who may be present at arbitration proceedings conducted in private.
- (3) In giving directions under subsection (2), the arbitrator must have regard to the wishes of the parties and the need for commercial confidentiality.
- (4) A person must comply with a direction under subsection (2).
Maximum penalty: \$20 000.
- (5) If the arbitrator considers it in the public interest to do so, the arbitrator may give public notice of the outcome of an arbitration.

25—Procedure on arbitration

- (1) An arbitrator—
 - (a) is not bound by technicalities, legal forms or rules of evidence; and
 - (b) may obtain information on matters relevant to the dispute in any way the arbitrator thinks appropriate.

Example—

The arbitrator may, for example, conduct proceedings by—

- telephone; or
- closed circuit television; or
- other means of communicating at a distance.

- (2) An arbitrator may require the presentation of evidence or argument in writing and may decide matters on which the arbitrator will hear oral evidence or argument.

26—Procedural powers of arbitrator

- (1) An arbitrator may—
 - (a) give procedural directions;
 - (b) make orders requiring—
 - (i) the delivery of documents clarifying the issues between the parties;
 - (ii) the discovery and inspection of documents;
 - (c) sit at any time or place;
 - (d) adjourn the arbitration proceedings from time to time and from place to place;
 - (e) refer a matter to an expert for report, and accept the expert's report in evidence;
 - (f) do anything else necessary for the expeditious hearing and determination of the dispute.
- (2) An arbitrator may hear two or more proceedings relating to the same general subject matter together.
- (3) An arbitrator may proceed with arbitration proceedings in the absence of a party if the party has been given at least 14 days notice of the proceedings.
- (4) An arbitrator may engage a lawyer to provide advice on the conduct of the arbitration and to assist the arbitrator in drafting the award.

27—Power to obtain information and documents

- (1) If an arbitrator has reason to believe that a person is in a position to give information or to produce documents, that may be relevant to the dispute, the arbitrator may, by written notice—
 - (a) require the person within a period stated in the notice—
 - (i) to give the arbitrator a written statement of specified information; or
 - (ii) to produce to the arbitrator specified documents or copies of specified documents; or
 - (b) require the person to appear before the arbitrator at a specified time and place to give evidence.
- (2) A written statement must, if the arbitrator so requires, be verified by statutory declaration of the person providing the information or, if the person is a body corporate, an appropriate officer of the body corporate.
- (3) If documents are produced to an arbitrator, the arbitrator may—
 - (a) take possession of, make copies of, and take extracts from, the documents; and
 - (b) keep the documents for as long as is necessary for the purposes of the arbitration.
- (4) A person must—
 - (a) comply with a requirement of the arbitrator under subsection (1) or (2); and
 - (b) if the person is required to appear as a witness before the arbitrator—comply with further requirements to make an oath or affirmation, or to answer questions.

Maximum penalty: \$20 000.

- (5) However, a person need not give information or produce a document if—
 - (a) the information or the contents of the document are the subject of legal professional privilege, or would tend to incriminate the person of an offence; and
 - (b) the person objects to giving the information or producing the document by giving written notice of the ground of the objection to the arbitrator or, if the person is appearing as a witness before the arbitrator, by an oral statement of the ground of objection.

28—Confidentiality of information

- (1) A person who gives the arbitrator information, or produces documents, may ask the arbitrator to keep the information or the contents of the documents confidential.
- (2) The arbitrator may, after considering representations from the parties, impose conditions limiting access to, or disclosure of, the information or documentary material.
- (3) A person must not contravene a condition imposed under subsection (2).

Maximum penalty: \$75 000.

29—Proponent's right to terminate arbitration before an award is made

- (1) The proponent may terminate the arbitration before an award is made.
- (2) The arbitration is terminated under this section by giving notice of termination to—
 - (a) the Commission; and
 - (b) the arbitrator; and
 - (c) the other parties to the arbitration.

30—Arbitrator's power to terminate arbitration

- (1) An arbitrator may at any time terminate an arbitration without making an award if the arbitrator is satisfied—
 - (a) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
 - (b) the proponent has not engaged in negotiations in good faith; or
 - (c) the terms and conditions on which the maritime service is to be provided should continue to be governed by an existing contract or award.
- (2) Before terminating an arbitration under this section, the arbitrator must give the Commission an opportunity to make representations on the matter.

Division 8—Awards

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.

31—Formal requirements related to awards

- (1) An award must—
 - (a) be in writing; and
 - (b) set out the reasons on which it is based; and
 - (c) specify the period for which it remains in force.
- (2) The arbitrator must, within 7 days after an award is made, give a copy of the award to—
 - (a) the Commission; and
 - (b) the parties to the award.

32—Principles to be taken into account by arbitrator

- (1) In deciding on the terms of an award, the arbitrator should take into account—
 - (a) the operator's legitimate business interest and investment in the port or port facilities; and
 - (b) the costs to the operator of providing the service (including the costs of any necessary modification to, or extension of, a port facility) but not costs associated with losses arising from increased competition in upstream or downstream markets; and
 - (c) the economic value to the operator of any additional investment that the proponent or the operator has agreed to undertake; and
 - (d) the interests of all persons holding contracts for use of any relevant port facility; and
 - (e) firm and binding contractual obligations of the operator or other persons (or both) already using any relevant port facility; and
 - (f) the operational and technical requirements necessary for the safe and reliable provision of the service; and
 - (g) the economically efficient operation of any relevant port facility; and
 - (h) the benefit to the public from having competitive markets; and
 - (i) the pricing principles specified in subsection (2).
- (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.

33—Incidental legal effect of awards

- (1) An award may vary the rights of other customers of the operator under existing contracts or awards if—
 - (a) those customers will continue to be able to meet their reasonably anticipated requirements measured at the time when the dispute was notified to the Commission; and
 - (b) the terms of the award provide appropriate compensation for loss or damage (if any) suffered by those customers as a result of the variation of their rights.
- (2) An award may require the operator to extend, or permit the extension of, the port facilities under the operator's control if—
 - (a) the extension is technically and economically feasible and consistent with the safe and reliable operation of the facilities; and

- (b) the operator's legitimate business interests in the port facilities are protected; and
- (c) the terms on which the service is to be provided to the proponent take into account the costs and the economic benefits to the parties of the extension.

34—Consent awards

If—

- (a) the parties to an arbitration consent to a proposed award; and
 - (b) the arbitrator is satisfied that the award is appropriate in the circumstances,
- the arbitrator may make an award in the terms proposed.

35—Proponent's option to withdraw from award

- (1) A proponent may, within 7 days after the making of an award or such further time as the Commission may allow, elect not to be bound by the award by giving written notice of the election to the Commission.
- (2) The Commission must, within 7 days after receiving a notice of election under subsection (1), notify the operator and the other parties to the arbitration.
- (3) If the proponent elects not to be bound by an award—
 - (a) the award is rescinded; and
 - (b) the proponent is precluded from making another proposal related to the same matter for 2 years from the date the notice of election was given unless the operator agrees or the Commission authorises a further proposal within that period.
- (4) An authorisation under subsection (3)(b) may be given on conditions the Commission considers appropriate.

36—Termination or variation of award

- (1) An award may be terminated or varied by agreement between all parties to the award.
- (2) A variation may include an extension of the period for which the award remains in force.
- (3) If a material change in circumstances occurs, a party to an award may propose termination or variation of the award.
- (4) The provisions of this Part about an access proposal and the arbitration of a dispute arising from an access proposal apply with necessary modifications to a proposal made under this section or a dispute arising out of such a proposal.

Division 9—Enforcement of award

37—Contractual remedies

An award is enforceable as if it were a contract between the parties to the award.

38—Injunctive remedies

- (1) The Supreme Court may grant an injunction—
 - (a) restraining a person from contravening an award; or
 - (b) requiring a person to comply with an award.
- (2) The power of the Court to grant an injunction restraining a contravention of an award may be exercised—
 - (a) whether or not the defendant has previously contravened the relevant provision of the award; and
 - (b) whether or not there is imminent danger of substantial damage to any person.
- (3) The power of the Court to grant an injunction requiring compliance with an award may be exercised—
 - (a) whether or not the defendant has previously failed to comply with the relevant provision of the award; and
 - (b) whether or not there is imminent danger of substantial damage to any person.
- (4) The Court may grant an interim injunction under this section.
- (5) An application for an injunction under this section may be made by—
 - (a) the Commission; or
 - (b) a person with a proper interest in whether the relevant provision is complied with.
- (6) The Court may grant an injunction by consent without inquiring into the merits of the application.
- (7) If the Commission makes an application for an injunction, the Court cannot require the Commission or any other person to give an undertaking about damages as a condition of granting the injunction.
- (8) The Court may, on application by the Commission or an interested party, discharge or vary an injunction.

39—Compensation

- (1) If a person contravenes an award, the Supreme Court may, on application by the Commission or an interested person, order compensation of persons who have suffered loss or damage as a result of the contravention.
- (2) An order may be made under this section against the person who contravened the provision and others involved in the contravention.
- (3) A person is ***involved in the contravention*** of an award if the person—
 - (a) aided, abetted, counselled or procured the contravention; or
 - (b) induced the contravention through threats or promises or in some other way; or
 - (c) was knowingly concerned in, or a party to, the contravention; or
 - (d) conspired with others to contravene the award.

Division 10—Appeals and costs

40—Appeal from award on question of law

- (1) An appeal lies to the Supreme Court from an award, or a decision not to make an award, on a question of law.
- (2) On an appeal, the Court may exercise one or more of the following powers:
 - (a) vary the award or decision;
 - (b) revoke the award or decision;
 - (c) make an award or decision that should have been made in the first instance;
 - (d) remit the matter to the arbitrator for further consideration or re-consideration;
 - (e) make incidental or ancillary orders (including orders for costs).
- (3) An award or decision of an arbitrator cannot be challenged or called in question except by appeal under this section.
- (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.

41—Costs

- (1) The costs of an arbitration are to be borne by the parties in proportions decided by the arbitrator, and in the absence of a decision by the arbitrator, in equal proportions.

Example—

If the arbitrator were of the opinion that a party had failed to comply with the duty to negotiate in good faith, the arbitrator could order that party to bear the costs of the arbitration in their entirety.

- (2) However, if a proponent terminates an arbitration or elects not to be bound by an award, the proponent must bear the costs in their entirety.
- (3) The costs of an arbitration are recoverable as a debt.

Division 11—Segregation of accounts

42—Accounts and records relating to the provision of regulated services

- (1) A regulated operator must keep accounts and records relating to the provision of regulated services separately from accounts and records related to other aspects of the business or businesses carried on by the operator.
- (2) If regulated services are provided at different ports, separate accounts must be kept for each port.
- (3) The accounts and records must be prepared and maintained in accordance with guidelines issued by the Commission.
- (4) A regulated operator must, at the request of the Commission, make the accounts and records available for inspection by the Commission.

Division 12—Expiry of this Part

43—Review and expiry of Part

- (2) The Commission must, within the last year of each prescribed period, conduct a review of the industries subject to this Part to determine whether this Part should continue to apply to those industries.
- (3) The Commission must give reasonable notice of the review in a newspaper circulating generally throughout the State inviting written submissions on the matters under review within a reasonable time specified in the notice.
- (4) The Commission must consider submissions made in response to the notice and other submissions made in the course of other forms of public consultation undertaken by the Commission in connection with the review.
- (5) On completing the review, the Commission must forward to the Minister a report on the review and the conclusions reached by the Commission as a result of the review and, in particular, must recommend either—
 - (a) that this Part should continue in operation for a further prescribed period; or
 - (b) that this Part should expire at the end of the existing prescribed period.
- (6) The Minister must have copies of the report laid before both Houses of Parliament and must have the Commission's recommendation published in the Gazette.
- (7) This Part expires at the end of a prescribed period unless—
 - (a) the Commission has, in the report of a review conducted during the prescribed period, recommended that it should continue in operation for a further prescribed period; and
 - (b) a regulation has been made extending the period of its operation accordingly.
- (8) In this section—

prescribed period means—

 - (a) the period ending 30 October 2012; and
 - (b) each successive period of 5 years thereafter.

Part 4—Miscellaneous

44—Hindering access

A person must not prevent or hinder a person who is entitled to a maritime service from access to that service.

Maximum penalty: \$20 000.

45—Variation or revocation of proclamations

- (1) A proclamation under this Act may, on the recommendation of the Commission, be varied or revoked by a subsequent proclamation.

Exception—

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

- (2) A proclamation under this Act may confer discretionary powers on the Commission or any other person.

46—Transitional provision

- (1) An agreement or award in force under the *South Australian Ports (Bulk Handling Facilities) Act 1996* immediately before the commencement of this Act is, as from the commencement of this Act, taken to be an agreement or award under this Act.
- (2) Despite any other law, an agreement entered into before the commencement of this Act between a Minister or instrumentality of the Crown and a user of maritime services under which the user is entitled to maritime services at a concessional rate continues in force (with necessary adaptations and modifications) until the date of its intended expiry as an agreement between the user and the current provider of the relevant maritime services.
- (3) A reference in any such agreement to charges fixed under an Act, or by the Minister or an instrumentality of the Crown, for specified services is to be read as a reference to the corresponding prices for the relevant services fixed under a pricing determination.
- (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.

47—Regulations

- (1) The Governor may make regulations and proclamations for the purposes of this Act.
- (2) The regulations may—
 - (a) confer discretionary powers on the Commission or any other person;
 - (b) impose fines, not exceeding \$2 500, for offences against the regulations.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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.

Legislation amended by principal Act

The *Maritime Services (Access) Act 2000* amended the following:

South Australian Ports (Bulk Handling Facilities) Act 1996

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2000	82	<i>Maritime Services (Access) Act 2000</i>	14.12.2000	31.10.2001 (<i>Gazette</i> 25.10.2001 p4686)
2002	14	<i>Essential Services Commission Act 2002</i>	5.9.2002	Sch 3 (cl 2)—12.9.2002 (<i>Gazette</i> 12.9.2002 p3393)
2005	47	<i>Maritime Services (Access) (Functions of Commission) Amendment Act 2005</i>	27.10.2005	15.12.2005 (<i>Gazette</i> 15.12.2005 p4326)
2009	21	<i>Maritime Services (Access) (Miscellaneous) Amendment Act 2009</i>	4.6.2009	1.11.2009 (<i>Gazette</i> 29.10.2009 p4983)

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 under <i>Legislation Revision and Publication Act 2002</i>	15.12.2005
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	15.12.2005
s 3	amended by 21/2009 s 4	1.11.2009
s 4		
s 4(1)		
Commission	inserted by 14/2002 Sch 3 cl 2	12.9.2002
Industry Regulator	<i>deleted by 14/2002 Sch 3 cl 2</i>	12.9.2002

<i>initial period of price regulation</i>	<i>deleted by 21/2009 s 5</i>	<i>1.11.2009</i>
pricing determination	amended by 14/2002 Sch 3 cl 2	12.9.2002
Pt 2		
Pt 2 Div 1		
s 6		
s 6(1)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 6(2)	substituted by 21/2009 s 6(1)	1.11.2009
s 6(3)	deleted by 14/2002 Sch 3 cl 2	12.9.2002
	inserted by 21/2009 s 6(1)	1.11.2009
s 6(4)	<i>amended by 14/2002 Sch 3 cl 2</i>	<i>12.9.2002</i>
	<i>deleted by 21/2009 s 6(1)</i>	<i>1.11.2009</i>
s 6(5)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 6(6)	amended by 14/2002 Sch 3 cl 2	12.9.2002
	amended by 21/2009 s 6(2)	1.11.2009
s 6(7)	inserted by 21/2009 s 6(3)	1.11.2009
<i>s 7 before deletion by 21/2009</i>		
s 7(1)—(5)	<i>amended by 14/2002 Sch 3 cl 2</i>	<i>12.9.2002</i>
s 7	<i>deleted by 21/2009 s 7</i>	<i>1.11.2009</i>
Pt 2 Div 2		
s 8		
s 8(2)	amended by 14/2002 Sch 3 cl 2	12.9.2002
Pt 2 Div 3	heading amended by 14/2002 Sch 3 cl 2	12.9.2002
s 8A	inserted by 47/2005 s 4	15.12.2005
s 9		
s 9(1)—(3)	amended by 14/2002 Sch 3 cl 2	12.9.2002
Pt 3	will expire; s 43 and <i>Maritime Services (Access) Regulations 2012</i> , r 5	(31.10.2022)
s 11		
s 11(2)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 12		
s 12(1)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 13		
s 13(4)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 15		
s 15(2)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 16		
s 16(1)—(3)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 17		
s 17(1)—(3)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 18		
s 18(1)	amended by 14/2002 Sch 3 cl 2	12.9.2002

	amended by 21/2009 s 8(1)	1.11.2009
s 18(2)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 18(3)	amended by 14/2002 Sch 3 cl 2	12.9.2002
	amended by 21/2009 s 8(2)	1.11.2009
s 18(4)	<i>amended by 14/2002 Sch 3 cl 2</i>	<i>12.9.2002</i>
	deleted by 21/2009 s 8(3)	1.11.2009
s 18(5)	amended by 14/2002 Sch 3 cl 2	12.9.2002
	amended by 21/2009 s 8(4)	1.11.2009
s 22		
s 22(1) and (2)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 29		
s 29(2)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 30		
s 30(2)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 30A	inserted by 21/2009 s 9	1.11.2009
s 31		
s 31(2)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 32		
s 32(1)	s 32 amended and redesignated as s 32(1) by 21/2009 s 10(1), (2)	1.11.2009
s 32(2)	inserted by 21/2009 s 10(2)	1.11.2009
s 33		
s 33(1)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 35		
s 35(1)—(4)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 38		
s 38(5), (7) and (8)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 39		
s 39(1)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 40		
s 40(4)	inserted by 21/2009 s 11	1.11.2009
s 42		
s 42(3) and (4)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 43		
s 43(1)	deleted by 21/2009 s 12(1)	1.11.2009
s 43(2)	amended by 14/2002 Sch 3 cl 2	12.9.2002
	amended by 21/2009 s 12(2)	1.11.2009
s 43(3) and (4)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 43(5)	amended by 14/2002 Sch 3 cl 2	12.9.2002
	amended by 21/2009 s 12(3), (4)	1.11.2009
s 43(6)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 43(7)	amended by 14/2002 Sch 3 cl 2	12.9.2002
	amended by 21/2009 s 12(5)—(7)	1.11.2009

s 43(8)	inserted by 21/2009 s 12(8)	1.11.2009
Pt 4		
s 45		
s 45(1) and (2)	amended by 14/2002 Sch 3 cl 2	12.9.2002
s 46		
s 46(3)	amended by 21/2009 s 13(1)	1.11.2009
s 46(4)	inserted by 21/2009 s 13(2)	1.11.2009
s 47		
s 47(2)	amended by 14/2002 Sch 3 cl 2	12.9.2002
<i>Sch</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>15.12.2005</i>

Historical versions

Reprint No 1—12.9.2002
15.12.2005