

## EXPLANATORY STATEMENT

### Select Legislative Instrument 2013 No. 60

*Public Works Committee Amendment Regulation 2013 (No. 1)*

*Public Works Committee Act 1969*

The *Public Works Committee Act 1969* (PWC Act) established the Public Works Committee to inquire into and report on public works referred to it by the Parliament. A public work is a work that is proposed to be carried out by or for the Commonwealth, and for which moneys are appropriated by the Parliament.

Section 40 of the PWC Act provides, in part, that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that by that Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Subsection 6A(1) of the PWC Act provides that the Act applies to every authority of the Commonwealth. However, subsection 6A(3) provides that where the Governor-General is satisfied that an authority of the Commonwealth is engaging in trading or other activities, or is providing services, in competition with other bodies, the Governor-General may make regulations declaring that the Act does not apply to that authority.

The PWC Act recognises, there are certain circumstances, when a government owned body is corporatised and is competing directly with private entities, that the additional scrutiny of the Public Works Committee is an unfair burden on the corporation.

The Regulation amends the *Public Works Committee Regulations 1969*, to include Moorebank Intermodal Company Limited (MICL) as an exempt Commonwealth authority under subsection 6A(3) of the PWC Act<sup>1</sup>.

Requiring MICL to be subject to the Public Works Committee would place it at a competitive and commercial disadvantage with its competitors which are not subject to such scrutiny.

MICL was incorporated on 13 December 2012 and is expected to be prescribed as a Government Business Enterprise (GBE) under the *Commonwealth Authorities and Companies Act 1997* in late April 2013. As a wholly owned Commonwealth company limited by shares, MICL is subject to the full rigours of both the *Corporations Act 2001* and the *Commonwealth Authorities and Companies Act 1997*, including the relevant reporting and disclosure requirements, and review of MICL's financial statements by the Auditor-General. MICL is also classified as a Public Non-Financial Corporation (PNFC). By way of context, a PNFC sector comprises government-controlled corporations engaged in providing goods or services which are predominantly market, non-regulatory and non-financial in nature and mostly financed through consumers. PNFCs operate in infrastructure industries including rail, ports, and communications.

MICL has been established to facilitate the development and operation of the intermodal terminal (IMT) at Moorebank, Sydney by optimising private sector funding and operational expertise. Whilst established with government funding, the MICL will operate as a commercial enterprise and conduct ongoing capital structure reviews once it is fully operational to determine the appropriate mix of debt and equity. Some of the key activities of MICL include:

- running a competitive tender to select a private sector consortium (including construction and terminal operation companies) to design, construct, operate and maintain the Import-Export (IMEX) terminal; and
- entering into and managing a sub-lease/s with the consortium/s for the IMEX facility for a defined term post construction. The sub-lease/s would be on commercial terms at a market rate, with the operator paying MICL an annual fixed and variable infrastructure access payment for access to the base infrastructure.

An IMT is an area of land used to transfer freight between at least two modes of transport including road and rail. It is typically used to describe the transfer of international and local containers from road to rail and vice versa. The IMEX terminal is a component of the IMT commonly known as a port shuttle (between the IMT and a port), together with related infrastructure and rail sidings.

MICL will be engaged in trading activities similar to a range of private and State Government entities developing and operating IMTs such as those at Enfield and Chullora, both of which are based in Sydney. In addition, it is the intention of the Government to privatise MICL within five years of being built and fully operational, subject to market conditions. This approach is similar to the model applied to NBN Co.

MICL will remain subject to parliamentary oversight through the Senate Estimates Hearings. It will also be subject to an Environmental Impact Statement process under both Commonwealth and State regulatory regimes to address community concerns in relation to the design and purpose of the site, assessments into the effect of the facility on health, air quality, traffic, noise, vibrations, light spill, biodiversity, heritage and visual amenity. It is also subject to the statutory requirement to provide an annual Corporate Plan to Shareholder Ministers against which MICL's operational and financial performance will be measured through regular quarterly reporting requirements.

The regulation also provides for consequential amendment to the existing item numbers 26AA Hoxton Park Airport Limited and 26AB NBN Co Limited to be repealed and renumbered to enable the insertion of the details of the MICL and future amendments to this schedule as they arise.

The Office of Best Practice Regulation advised that a Regulatory Impact Statement was not required for the Regulation which is minor or machinery of government in nature and does not substantially alter existing arrangements. The Office of Parliamentary Counsel was consulted and drafted the instrument. The Secretary, Federal Executive Council, provided comment and cleared the Executive Council documents.

The Regulation amends the *Public Works Committee Regulations 1969*, to include Moorebank Intermodal Company Limited as an exempt Commonwealth authority under subsection 6A(3) of the PWC Act.

The PWC Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

*Public Works Committee Amendment Regulation 2013 (No. 1)*

This Legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

the purpose of the Legislative Instrument is to amend the *Public Works Committee Regulations 1969*, to include Moorebank Intermodal Company Limited (MICL) as an exempt Commonwealth authority under subsection 6A(3) of the *Public Works Committee Act 1069*.

### **Human Rights Implications**

This legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise and human rights issues.