

## Notes

<sup>1</sup> This is a compilation of the *Port Authorities Act 1999* and includes all amendments effected by the other written laws referred to in the following table <sup>1a</sup>.

### Compilation table

Short Title	Number and Year	Assent	Commencement
<i>Port Authorities Act 1999</i>	22 of 1999	29 Jun 1999	Act, other than Sch. 1 Item 2, 14 Aug 1999 (see s. 2 and <i>Gazette</i> 13 Aug 1999 p. 3823); Sch. 1 Item 2: 1 Jan 2000 (see s. 2 and <i>Gazette</i> 24 Dec 1999 p. 6871)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 58	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(1) and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 45	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Labour Relations Reform Act 2002</i> s. 23	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Port Authorities (Act Amendment) Regulations 2003</i> (see <i>Gazette</i> 4 Mar 2003 p. 711-22)			4 Mar 2003
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 11 <sup>2</sup>	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and <i>Cwlth Gazette</i> 24 Oct 2001 (No. GN42))
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003</i> r. 12 (see <i>Gazette</i> 15 Aug 2003 p. 3685-92)			15 Sep 2003 (see r. 2)
<i>Ports and Marine Legislation Amendment Act 2003</i> Pt. 2 (other than s. 7) <sup>3</sup>	71 of 2003	15 Dec 2003	s. 4, 8 & 9: 15 Dec 2003 (see s. 2(1)); s. 5 & 6: 14 Aug 1999 (see s. 2(2))
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 93	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and Year	Assent	Commencement
<i>Ports and Marine Legislation Amendment Act 2003</i> s. 7 <sup>4</sup>	71 of 2003	15 Dec 2003	To be proclaimed (see s. 2(3))

NB. Section 3 and Part 3 of the *Port Authorities (Consequential Provisions) Act 1999* (Act No. 5 of 1999) have interpretation and transitional provisions that affect this Act. They read as follows:

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### 3. Interpretation

(1) In this Act —

**“continuing port authority”** means an existing port authority that continues in existence as a port authority established under the PA Act;

**“existing Act”** means the —

- (a) Albany Port Authority Act 1926;
- (b) Bunbury Port Authority Act 1909;
- (c) Dampier Port Authority Act 1985;
- (d) Esperance Port Authority Act 1968;
- (e) Fremantle Port Authority Act 1902;
- (f) Geraldton Port Authority Act 1968; or
- (g) Port Hedland Port Authority Act 1970;

**“existing port authority”** means a port authority constituted or established under an existing Act;

**“first financial year”**, in relation to a port authority, means the first financial year of that port authority to start after the commencement of the item relating to that port authority;

**“item”** has the meaning given by subsection (2);

**“PA Act”** means the *Port Authorities Act 1999*.

- (2) A reference in this Act to an item is a reference to an item in Schedule 1 to the PA Act.

### **Part 3 — Transitional and saving provisions**

#### **12. Application of *Interpretation Act 1984***

- (1) The provisions of the *Interpretation Act 1984* about the repeal of written laws and the substitution of other written laws for those so repealed (for example, sections 16(1), 36 and 38) apply to the repeal of an existing Act relating to a port authority and the amendment of the *Ports (Functions) Act 1993* in relation to that existing Act and that port authority as if the PA Act —
  - (a) repealed that existing Act; and
  - (b) repealed the *Ports (Functions) Act 1993* insofar as it applied to that port authority,when the item relating to that port authority comes into operation.
- (2) The other provisions of this Part are additional to the provisions applied by subsection (1).

#### **13. Existing port authorities continue**

- (1) If, immediately before the commencement of an item, there was an existing port authority with the name set out in that item, the port authority named in that item is a continuation of, and the same legal entity as, the existing port authority and the rights and obligations of the existing port authority are not affected.
- (2) If in a written law or other document or instrument there is —
  - (a) a reference to an existing port authority constituted or established under an existing Act; or
  - (b) a reference that is to be read and construed as a reference to an existing port authority,

that reference may, where the context so requires, be read as if it had been amended to be a reference to the port authority as established under the PA Act.

#### **14. Membership**

- (1) The persons who were members or commissioners of a continuing port authority (including the chairman) immediately before the commencement of the item relating to that port authority continue in office, under and subject to the PA Act, as the chairperson and directors of that port authority.
- (2) Subsection (1) does not apply to a person holding office under section 8(1)(d) of the *Dampier Port Authority Act 1985*.
- (3) A person to whom subsection (1) applies is to be regarded as having been appointed under section 7 of the PA Act.

**15. Staff**

- (1) A person who was the general manager of a continuing port authority immediately before the commencement of the item relating to that port authority continues in office, under and subject to the PA Act, as the chief executive officer of that port authority.
- (2) Other people who were in the employment of a continuing port authority immediately before the commencement of the item relating to that port authority continue, under and subject to the PA Act, as members of staff of that port authority.
- (3) Except as otherwise agreed by a chief executive officer or member of staff, the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of a chief executive officer or member of staff of a continuing port authority are not affected, prejudiced or interrupted by —
  - (a) the operation of subsection (1) or (2); or
  - (b) that port authority ceasing to be an SES organization under the *Public Sector Management Act 1994*.
- (4) A person mentioned in subsection (1) or (2) is to be regarded as an employee of an organization for the purposes of Part 6 of the *Public Sector Management Act 1994*.
- (5) Subsection (4) ceases to apply in relation to a continuing port authority at the expiration of 2 years after the item relating to that port authority commences.
- (6) A person mentioned in subsection (2) is to be regarded as having been engaged under section 16 of the PA Act.

**16. Port descriptions**

- (1) Until an order is made under section 24(1) of the PA Act in relation to a port referred to in item 1, 3, 4, 5, 6, 7 or 8 the description of that port for the purposes of the PA Act is the description that had effect under the relevant existing Act immediately before the commencement of that item.
- (2) Until an order is made under section 24(1) of the PA Act in relation to the Port of Broome the description of that port for the purposes of the PA Act is as follows —

*Port of Broome*

- (a) all that portion of water and seabed bounded by lines starting from the high water mark of Roebuck Bay at the southern extremity of Fall Point and extending south to an east-west line situate 3 nautical miles south from the southern extremity of Entrance Point; then west to a north-south line situate 3 nautical miles west from the southern extremity of Entrance Point; then north to a point situate west of the summit of Station Hill; then east to the high water mark of the Indian Ocean and then generally southwesterly and generally southeasterly along that mark and generally northeasterly, generally northwesterly, again generally northeasterly and generally easterly along the high water mark of Roebuck Bay to the starting point and including all of the waters of Dampier Creek; and
- (b) all that portion of land comprised within Broome Lots 616, 698, 848 and 956 as shown bordered in red on Lands and Surveys Reserve Plan 108.

Lands and Surveys Public Plans: Broome Regional 1:10 000 Sheet 1, Sheet 2, Sheet 3; Roebuck Plains 1:250 000; La Grange 1:250 000.

- (3) A description that has effect under subsection (1) or (2) may be amended under section 24(2) of the PA Act.

**17. Strategic development plans**

The first strategic development plan for a port authority under Part 5, Division 1 of the PA Act is to be for a period starting when the first financial year starts.

**18. Statement of corporate intent**

The first statement of corporate intent for a port authority under Part 5, Division 2 of the PA Act is to be for the first financial year.

**19. Borrowing limits**

The first monetary limits under section 86 of the PA Act are to be determined in relation to the first financial year.

**20. Regulations**

- (1) Regulations made by a continuing port authority that were in force immediately before the commencement of the item relating to that port authority continue in force after that commencement as if they were regulations made by the Governor under section 139 of the PA Act in relation to the port of that port authority.
- (2) Subsection (1) does not continue the operation of any regulation that could not be made under section 139 of the PA Act.

2 The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

“

**2. Commencement**

- (1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.
- (2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

**3. Interpretation**

In this Part —

“**Financial Services Reform Act**” means the *Financial Services Reform Act 2001* of the Commonwealth;

“**FSR commencement time**” means the time when Schedule 1 to the Financial Services Reform Act comes into operation;

“**statutory rule**” means a regulation, rule or by-law.

**4. Validation**

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.
- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —

- (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
- (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,

is taken not to be valid, and to never have been valid.

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3

The *Ports and Marine Legislation Amendment Act 2003* s. 4(2) reads as follows:

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- (2) The amendment made by subsection (1) does not affect the operation of the *Port Authorities (Withdrawal and Revesting of Property) Order 2000* published in the *Gazette* on 2 June 2000.

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On the date as at which this compilation was prepared, the *Ports and Marine Legislation Amendment Act 2003* s. 7 had not come into operation. It reads as follows:

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**7. Part 7 Divisions 6 and 7 inserted**

After section 114 the following Divisions are inserted in Part 7 —

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**Division 6 — Powers of police officers and others**

**114A. Police officers and others may enter vessels and conduct examinations and enquiries**

- (1) An authorised officer may at any time enter a vessel in a port and conduct any examination or enquiry that the authorised officer considers necessary to determine whether there has been compliance with this Act.
- (2) In this section —  
“authorised officer” means —
  - (a) a police officer; or
  - (b) a member of staff of the port authority, or another person, authorised by the port authority for the purposes of this section.

**Division 7 — Protection from liability**

**114B. Immunity from liability for damage to vessels**

- (1) Without limiting any other provision of this Part, a port authority is not liable for any loss or damage caused to a vessel in its port.
- (2) Without limiting subsection (1) or any other provision of this Part, a port authority is not liable for any loss or damage caused to a vessel in its port —
  - (a) that results from —
    - (i) the master of the vessel complying with a direction given in good faith; or
    - (ii) a thing done or omitted to be done in good faith in respect of the vessel, by the harbour master or a member of the staff of the port authority; or
  - (b) that results from a defect in a mooring, anchorage or berth, or anything else, provided by the port authority.

**114C. Immunity from liability for damaged goods**

- (1) A port authority is not liable for any loss or damage caused to any goods that a person (other than the port authority) —
  - (a) loads on to or unloads from a vessel at the port; or

- (b) stores at the port.
- (2) The port authority does not become liable for any loss or damage caused to any goods referred to in subsection (1)(b) stored in an uncovered or unprotected manner at the port because the port authority provides, or attempts to provide, any temporary cover or protection for those goods.

**114D. Immunity from liability for delay in delivery of goods**

A port authority is not liable for any loss caused by or relating to a delay in the delivery of any goods loaded on to or unloaded from a vessel at the port.

**114E. Immunity from liability for certain events and actions**

- (1) A port authority is not liable for any loss or damage resulting from an event outside the control of the port authority, including —
  - (a) an act of God;
  - (b) an act of war;
  - (c) an act of public enemies;
  - (d) any insurrection, revolution or civil disorder;
  - (e) the unlawful seizure or control of any people or any vessels, vehicles or other property;
  - (f) any industrial disputes of any kind, including strikes, lockouts, stoppages or restraints of labour (whether partial or general) from any cause; or
  - (g) the use for the purpose of war or defence, or training or preparation for war or defence, of any port facilities or other property of the port authority.
- (2) A port authority is not liable for any loss or damage resulting from any action taken or caused to be taken by the port authority under section 27 or 28 of the *Pollution of Waters by Oil and Noxious Substances Act 1987*.

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