

Schedule 1 — Ports and port authorities

[s. 4]

Item	Name of Port	Name of Port Authority
1	Port of Albany	Albany Port Authority
2	Port of Broome	Broome Port Authority
3	Port of Bunbury	Bunbury Port Authority
4	Port of Dampier	Dampier Port Authority
5	Port of Esperance	Esperance Port Authority
6	Port of Fremantle	Fremantle Port Authority
7	Port of Geraldton	Geraldton Port Authority
8	Port of Port Hedland	Port Hedland Port Authority

Schedule 2 — Provisions about the constitution and proceedings of boards

[s. 9]

1. Term of office

- (1) Subject to clause 2, a director holds office for such period, not exceeding 3 years, as is specified in the instrument appointing the director, and is eligible for reappointment.
- (2) A director's duties are not required to be performed on a full-time basis.
- (3) Periods of appointment are to be fixed in a way that results in approximately one third of the directors retiring each year.
- (4) Despite subclause (1), if the period of office of a director expires by effluxion of time without a person having been appointed to fill the vacancy, the director continues in office until —
 - (a) a person is appointed to fill the vacancy; or
 - (b) a period of 3 months elapses after the expiry of the period of office,

whichever occurs first.

2. Resignation and removal

- (1) A director may resign from office by notice in writing delivered to the Minister.
- (2) The Minister may at any time remove a director from office and is not required to give any reason for doing so.
- (3) The Minister must within 14 days after a director is removed from office under subclause (2) cause a statement of the reason for the removal to be laid before each House of Parliament or to be dealt with under section 133.
- (4) This clause extends to a director whose period of office is prolonged under clause 1(4).

3. Chairperson and deputy chairperson

- (1) The Minister is to appoint a director to be chairperson of a board and another to be deputy chairperson.
- (2) Where the chairperson is unable to act because of sickness, absence or other cause, the deputy chairperson is to act in the chairperson's place.
- (3) Where the deputy chairperson is acting in place of the chairperson at a meeting, clause 4(1) applies as if the deputy chairperson were absent from the meeting.

- (4) Despite section 10(2) —
 - (a) the chairperson is to be paid out of the funds of the port authority such additional remuneration and allowances as are determined by the Minister; and
 - (b) the deputy chairperson is to be paid additional remuneration and allowances out of the funds of the port authority if, and to the extent that, the Minister so determines.

4. Alternate directors

- (1) If a director is unable to act because of sickness, absence or other cause, the Minister may appoint another person as an alternate director to act temporarily in the director's place, and while so acting according to the tenor of the appointment that alternate director is to be taken to be a director and is entitled to remuneration under section 10.
- (2) No act or omission of an alternate director acting in place of a director under this clause may be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

5. Meetings

- (1) The first meeting of a board is to be convened by the chairperson and, subject to subclause (2), subsequent meetings are to be held at such times and places as the board determines.
- (2) A special meeting of a board may at any time be convened by the chairperson or any 2 directors.
- (3) The chairperson, or the deputy chairperson acting under clause 3(2), is to preside at all meetings of the board at or in which he or she is present, or participating under clause 6.
- (4) If both the chairperson and the deputy chairperson are not present or participating, the directors present or participating are to appoint a director to preside.
- (5) At any meeting of the board —
 - (a) 3 directors constitute a quorum; and
 - (b) in the case of an equality of votes the person presiding has a casting vote in addition to a deliberative vote.

6. Telephone and video meetings

Despite anything in this Schedule, a communication between directors constituting a quorum under clause 5(5)(a) by telephone or audio-visual means is a valid meeting of directors, but only if each participating director is able to communicate with every other participating director instantaneously at all times while participating in the proceedings.

7. Resolution may be passed without meeting

- (1) If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed is sent or given to all directors of a port authority and is assented to by not less than 3 directors that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the board of the port authority.
- (2) For the purposes of subclause (1) —
 - (a) the meeting is to be taken as having been held —
 - (i) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
 - (ii) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
 - (b) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken to constitute one document; and
 - (c) a director may signify assent to a document by signing the document or by notifying the port authority of the director's assent in person or by post, facsimile, telephone or other method of written, audio or audio-visual communication.
- (3) Where a director of a port authority signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the board of the port authority attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the board.

8. Voting by interested directors

- (1) A director of a port authority who has a material personal interest in a matter that is being considered by the board of the port authority —
 - (a) must not vote whether at a meeting or otherwise —
 - (i) on the matter; or
 - (ii) in relation to a proposed resolution under subclause (3) in relation to the matter, whether in relation to that or a different director;and
 - (b) must not be present while —
 - (i) the matter; or

- (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),
is being considered at a meeting.
- (2) For the purpose of subclause (1), a director does not have an interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure, the director against a liability incurred by the director in his or her capacity as a director. This subclause does not apply if the port authority is the insurer.
- (3) Subclause (1) does not apply if the board has at any time passed a resolution that —
 - (a) specifies the director, the interest and the matter; and
 - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.
- (4) Despite clause 5(5), if a director of a port authority is disqualified under subclause (1) in relation to a matter, a quorum is present during the consideration of that matter if at least 2 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (5) The Minister may deal with a matter in so far as a board cannot deal with it because of subclause (4).
- (6) The Minister may by writing declare that subclauses (1) and (4) do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (7) The Minister must within 14 days after a declaration under subclause (6) is made cause a copy of the declaration to be laid before each House of Parliament or to be dealt with under section 133.

9. Minutes of meetings etc.

A board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the board and of each resolution passed under clause 7.

10. Leave of absence

A board may, on such terms and conditions as it thinks fit, grant to a director leave of absence from a meeting, including the meeting at which it is intended to grant the leave.

11. Board to determine own procedures

Subject to this Act, a board may determine its own procedures.

Schedule 3 — Provisions about duties of CEO and staff

[s. 20]

Division 1 — General duties of CEO

1. Duties of CEO

- (1) It is declared that the CEO of a port authority has —
 - (a) the same fiduciary relationship with the port authority; and
 - (b) the same duties to the port authority to act with loyalty and in good faith,as a director of a company incorporated under the Corporations Act has with and to the company.
- (2) The duties referred to in subclause (1) are enforceable by the board of the port authority and not otherwise.

Division 2 — Particular duties stated

2. Interpretation

- (1) In this Division —

“**officer**” means —

 - (a) the CEO of a port authority; or
 - (b) an executive officer or other member of staff of a port authority;

“**summary conviction penalty**”, in relation to a crime, has the same meaning as in section 5 of *The Criminal Code*.
- (2) A person who attempts (within the meaning in section 4 of *The Criminal Code*) to commit an offence against a provision of this Division is guilty of that offence.
- (3) For the CEO of a port authority, the duties provided for by this Division are in addition to those in clause 1.

3. Duty to act honestly

- (1) The CEO or an executive officer of a port authority must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.
- (2) A person who contravenes subclause (1) —
 - (a) with intent to deceive or defraud —
 - (i) the port authority; or
 - (ii) creditors of the port authority or of any other person;or
 - (b) for any other fraudulent purpose,

is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

- (3) If subclause (2) does not apply a person who contravenes subclause (1) is liable to a fine of \$5 000.

4. Duty to exercise reasonable care and diligence

The CEO or an executive officer of a port authority must at all times exercise the degree of care and diligence in the performance of the functions of his or her office, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the port authority's circumstances.

Penalty: \$5 000.

5. Duty not to make improper use of information

- (1) An officer or a former officer of a port authority must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the port authority.

- (2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

6. Duty not to make improper use of position

- (1) An officer of a port authority must not, whether within or outside the State, make improper use of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the port authority.

- (2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

Division 3 — Compensation

7. Payment of compensation may be ordered

- (1) Where —
 - (a) a person is convicted of an offence for a contravention of clause 3, 4, 5 or 6; and

- (b) the court is satisfied that the port authority has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the port authority of such amount as the court specifies.

- (2) Any such order may be enforced as if it were a judgment of the court.

8. Civil proceedings for recovery

Where a person contravenes clause 3, 4, 5 or 6, the port authority may, whether or not the person has been convicted of an offence in respect of that contravention, recover from the person as a debt due to the port authority by action in any court of competent jurisdiction —

- (a) if that person or any other person made a profit as a result of the contravention, an amount equal to that profit; and
- (b) if the port authority has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

Division 4 — Relief from liability

9. Relief from liability

For the purposes of clause 1, 7 or 8, if it appears to the court that a person —

- (a) is, or may be, liable under that section;
- (b) has acted honestly; and
- (c) ought fairly to be excused having regard to all the circumstances of the case, including those connected with the person's appointment,

the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

10. Application for relief

- (1) Where a person has reason to believe that any claim will or might be made against him or her under clause 1, 7 or 8, the person may apply to the Supreme Court for relief.
- (2) On an application under subclause (1) the Supreme Court has the same power to relieve the person as it would have had under clause 9 if it had been a court exercising jurisdiction under clause 1, 7 or 8.

11. Case may be withdrawn from jury

Where a case to which clause 9 applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the person ought under that section to be relieved either wholly or partly from liability sought to be enforced against the person —

- (a) withdraw the case in whole or in part from the jury; and
- (b) direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.

12. Compliance with directions

- (1) A person does not contravene clause 1, 3 or 4 by doing or omitting to do anything in compliance with a direction received in the course of the person's employment.
- (2) Subclause (1) does not extend to the manner in which a thing is done or omitted if it is done or omitted in a manner that is contrary to clause 3 or 4 and the direction did not require that it be done in that manner.

Division 5 — Restrictions on indemnities and exemptions

13. Indemnification and exemption of CEO and executive officers

- (1) A port authority or a subsidiary must not exempt a person (whether directly or through an interposed entity) from a liability to the port authority incurred as the CEO or an executive officer of the port authority.
- (2) A port authority or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as the CEO or an executive officer of the port authority —
 - (a) a liability owed to the port authority or a subsidiary; or
 - (b) a liability that is owed to someone other than the port authority or a subsidiary and did not arise out of conduct in good faith.
- (3) Subclause (2) does not apply to a liability for legal costs.
- (4) A port authority or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as the CEO or an executive officer of the port authority if the costs are incurred —
 - (a) in defending or resisting a proceeding in which the person is found to have a liability for which the person could not be indemnified under subclause (2);
 - (b) in defending or resisting criminal proceedings in which the person is found guilty; or
 - (c) in connection with proceedings for relief under clause 9 or 10 in which the Supreme Court denies the relief.
- (5) In determining the outcome of proceedings for the purposes of subclause (4), the result of any appeal in relation to the proceedings is to be taken into account.

14. Insurance premiums for certain liabilities of CEO and executive officers

- (1) A port authority or a subsidiary must not pay, or agree to pay, a premium for a contract insuring the CEO or an executive officer of the port authority against a liability (other than one for legal costs) arising out of —
 - (a) conduct involving a wilful breach of duty in relation to the port authority; or
 - (b) a contravention of clause 5 or 6;
- (2) Subclause (1) applies to a premium whether it is paid directly or through an interposed entity.

15. Certain indemnities, exemptions, payments and agreements not authorized and certain documents void

- (1) Clauses 13 and 14 do not authorize anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify or insure a person against a liability or exempt a person from a liability is void to the extent that it contravenes clause 13 or 14.

[Schedule 3 amended by No. 10 of 2001 s.160.]

Schedule 4 — Provisions to be included in articles of association of subsidiaries

[s. 39]

1. Disposal of shares

- (1) The port authority is not to sell or otherwise dispose of shares in the subsidiary other than as approved by the Minister.
- (2) The Minister is empowered to execute a transfer of any shares in the subsidiary held by the port authority.

2. Directors

- (1) The directors of the subsidiary are to be appointed by the port authority, but no such director may be appointed except with the prior written approval of the Minister.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the port authority and the subsidiary.
- (3) The board of the subsidiary is accountable to the Minister in the manner set out in Part 5 and in the memorandum and articles of association of the subsidiary.

3. Further shares

Shares may not be issued or transferred except with the prior written approval of the Minister.

4. Subsidiaries of subsidiary

- (1) The subsidiary may not form, participate in the formation of, or acquire any subsidiary without the prior written approval of the Minister given with the Treasurer's concurrence.
- (2) The subsidiary must ensure that the memorandum and articles of association of each of its subsidiaries at all times comply with this Act.
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its memorandum and articles of association and with the requirements of this Act.

Schedule 5 — Financial administration and audit

[s. 91(1)]

Division 1 — Preliminary

1. Interpretation

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

“**accounting records**” means financial records within the meaning of the Corporations Act;

“**accounts**” means profit and loss accounts and balance sheets and includes statements, reports and notes, other than auditors’ reports and directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance sheets;

“**Board**” means the Australian Accounting Standards Board referred to in section 226 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

“**chief entity**” has the meaning given by clause 14(2);

“**Commission**” means the Australian Securities Commission referred to in section 8 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

“**consolidated accounts**”, in relation to a port authority, means all of the following —

- (a) a consolidated profit and loss account that clause 15 requires to be made out in relation to a financial year of the port authority;
- (b) a consolidated balance sheet that clause 16 requires to be made out in relation to that financial year;
- (c) statements, reports and notes, other than a director’s report or an auditor’s report, attached to, or intended to be read with, that consolidated profit and loss account or consolidated balance sheet;

“**control**”, in relation to an entity, has the meaning given by clause 13;

“**economic entity**” has the meaning given by clause 12;

“**entity**” has the meaning given by clause 12;

“**financial statements**”, in relation to a financial year of a port authority, means the accounts and consolidated accounts (if any) of the port authority required by this Schedule to be made out in relation to that financial year;

“**financial year**” means the 12 month period ending on 30 June but where this Act applies to a port authority on and from a day other than the commencement of a financial year the period of the first financial year for that port authority is the period commencing on that day and ending on 30 June;

“parent entity” has the meaning given by clause 12;

“profit and loss” means —

- (a) in relation to a port authority, the profit and loss resulting from operations of the port authority;
- (b) in relation to an entity, the profit and loss resulting from operations of the entity; and
- (c) in relation to 2 or more entities, or in relation to an economic entity, constituted by 2 or more such entities, the profit or loss resulting from the operations of those entities;

“regulations” means regulations made under the Corporations Act;

“reporting entity” has the meaning given by clause 12.

- (2) In this Schedule, unless the contrary intention appears, expressions (including the expressions **“accounting standard”**, **“company”**, and **“corporation”**) have the respective meanings given to them by Part 1.2 of the Corporations Act.

Division 2 — Accounting standards

2. Application of accounting standards — general *(cf. s. 284 Corporations Act)*

The accounting standards as applied from time to time to listed companies pursuant to the Corporations Act apply to a port authority.

3. Application of accounting standards — financial years *(cf. s. 285 Corporations Act)*

- (1) Except so far as the contrary intention appears in an accounting standard, an accounting standard applies to —
 - (a) the first financial year of a port authority that ends after the commencement of the last-mentioned accounting standard; and
 - (b) later financial years of the port authority.
- (2) Despite anything in an accounting standard, but subject to subclause (4), an accounting standard does not apply to a financial year of a port authority ending before the commencement of the last-mentioned accounting standard.
- (3) A port authority may elect in writing that an accounting standard that, apart from subclause (4), does not apply to a particular financial year of the port authority will apply to that financial year.
- (4) An election under subclause (3) has effect accordingly.

4. Interpreting accounting standards

(cf. s. 286 Corporations Act)

- (1) An expression has in an accounting standard the same meaning as it has in this Schedule.
- (2) Part 1.2 of the Corporations Act applies in relation to an accounting standard as if the accounting standard's provisions were provisions of this Schedule.
- (3) This clause has effect except so far as the contrary intention appears in an accounting standard.

5. Severing invalid provisions

(cf. s. 286A Corporations Act)

- (1) An accounting standard is to be interpreted subject to the Corporations Act.
- (2) It is intended that where, but for this clause, an accounting standard would have been interpreted as being inconsistent with the Corporations Act, the accounting standard is nevertheless to be valid insofar as it is not so inconsistent.

6. Evidence of text of accounting standard

(cf. s. 286B Corporations Act)

A document that purports —

- (a) to be issued or published by or on behalf of the Board or the Commission; and
- (b) to set out the text of —
 - (i) a specified instrument as in force at a specified time under section 32 of the *Corporations Act 1989* of the Commonwealth; or
 - (ii) a specified provision of such an instrument,

or a copy of such a document, is, in proceedings under this Act, *prima facie* evidence that —

- (c) the specified instrument was in force at that time under that section; and
- (d) the text set out in the document is the text referred to in paragraph (b).

Division 3 — Accounting records

7. Accounting records

(cf. s. 289 Corporations Act)

- (1) A port authority must —

- (a) keep such accounting records as correctly record and explain its transactions (including any transactions as trustee) and financial position; and
 - (b) so keep its accounting records that —
 - (i) true and fair accounts of the port authority can be prepared from time to time; and
 - (ii) its accounts can be conveniently and properly audited or reviewed.
- (2) A port authority must retain the accounting records kept by it under this clause for 7 years after the completion of the transactions to which they relate.
- (3) A port authority must keep its accounting records at such place or places as the board thinks fit.
- (4) The Minister may by writing require a port authority to produce —
 - (a) at a specified place within Australia that is reasonable in the circumstances; and
 - (b) within a specified period of at least 14 days,specified accounting records of the port authority that are kept outside Australia.
- (5) Where accounting records of a port authority are kept outside Australia, the port authority must keep at a place within Australia determined by the board such statements and records with respect to the matters dealt with in the records kept outside Australia as would enable true and fair accounts, and any documents required by this Schedule to be attached to the accounts, to be prepared.
- (6) A port authority must lodge written notice with the Treasurer of the place in Australia where statements and records kept under subclause (3) are kept, unless the statements and records are kept at the principal place of business of the port authority.
- (7) The Supreme Court may, on application by a director of a port authority, make an order authorizing a registered company auditor acting for the director to inspect the accounting records of the port authority.
- (8) Where a registered company auditor inspects the accounting records pursuant to an order of the Supreme Court under subclause (7), he or she must not disclose to a person other than the director on whose application the order was made any information acquired by him or her in the course of his or her inspection.

**Division 4 — Financial years of a port authority and
the entities it controls**

8. Synchronization

(cf. s. 290 Corporations Act)

- (1) Subject to this clause, the board must do whatever is necessary to ensure that the financial year of each entity that a port authority controls coincides with the financial year of the port authority.
- (2) Subclause (1) must be complied with in relation to a particular entity within 12 months after the port authority began to control the entity.
- (3) Subject to any order of the Minister under this clause, where the financial year of a port authority coincides with the financial year of an entity that the port authority controls, the board must do whatever is necessary to prevent either financial year from being changed in such a way that those financial years no longer coincide.
- (4) Where the board of a port authority is of the opinion that there is good reason why the financial year of an entity that the port authority controls should not coincide with the financial year of the port authority they may apply in writing to the Minister for an order authorizing the entity to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the port authority.
- (5) The application must be supported by a statement in writing made in accordance with a resolution of the board signed by not less than 2 directors and stating the reasons for seeking the order.
- (6) The Minister may require the directors making the application to supply such information relating to the operations of the port authority, and of any entity that the port authority controls or has controlled during a financial year, as the Minister thinks necessary for the purpose of determining the application.
- (7) The Minister may engage a registered company auditor to investigate and report to him or her on the application.
- (8) The Minister may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as he or she thinks fit, and is to serve a copy of the order on the port authority.
- (9) Where an application is made under subclause (4) in relation to an entity —
 - (a) subclause (1) does not apply in relation to the entity until the day on which the Minister's order on the application is served on the port authority; and

- (b) subject to subclause (10), the period within which the board is required to comply with subclause (1) in relation to the entity is the period of 12 months beginning on that day.
- (10) Where an order is made under this clause authorizing an entity controlled by a port authority to have, or to adopt, a financial year that does not coincide with that of the port authority, compliance with the order (including any limitations, terms or conditions set out in it) are to be taken to be compliance with subclause (1) in relation to the entity.
- (11) Where an application is made under subclause (4) in relation to an entity, another application cannot be made under that subclause in relation to the entity within 3 years after the date of the first-mentioned application unless —
 - (a) the first-mentioned application resulted in the making of an order granting the application or granting it subject to limitations, terms or conditions; or
 - (b) the Minister is satisfied that there has been a substantial change in the relevant facts or circumstances since that day.

Division 5 — Accounts of a port authority

9. Profit and loss account

(cf. s. 292 Corporations Act)

The board of a port authority must, before 30 September in each year, cause to be made out a profit and loss account for the immediately preceding financial year that gives a true and fair view of the port authority's profit or loss for that financial year.

10. Balance sheet

(cf. s. 293 Corporations Act)

The board of a port authority must, before 30 September in each year, cause to be made out a balance sheet as at the end of the immediately preceding financial year that gives a true and fair view of the port authority's state of affairs as at the end of that financial year.

11. Steps to be taken before accounts made out

(cf. s. 294 Corporations Act)

- (1) This clause has to be complied with before a port authority's accounts are made out under clauses 9 and 10 in relation to a financial year.
- (2) The board must take reasonable steps —
 - (a) to find out what has been done about writing off bad debts and making provision for doubtful debts; and
 - (b) to cause all known bad debts to be written off and adequate provision to be made for doubtful debts.

- (3) The board must take reasonable steps to find out whether any current assets, other than bad or doubtful debts, are unlikely to realize (whether directly or indirectly) in the ordinary course of business their value as shown in the port authority's accounting records and, if so, to cause —
 - (a) the value of those assets to be written down to an amount that they might be expected so to realize; or
 - (b) adequate provision to be made for the difference between their value as so shown and the amount that they might be expected to realize.
- (4) The board must take reasonable steps —
 - (a) to find out whether the value of any non-current asset is shown in the port authority's accounting records at an amount that, having regard to the asset's value to the port authority as a going concern, exceeds the amount that it would have been reasonable for the port authority to spend to acquire the asset as at the end of the financial year; and
 - (b) unless adequate provision for writing down the value of that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading because of the overstatement of the value of that asset.

Division 6 — Consolidated accounts of a port authority and the entities it controls

12. Entities, parent entities, economic entities and reporting entities *(cf. s. 294A Corporations Act)*

- (1) Where regulations define the expression “entity”, “parent entity”, “economic entity”, or “reporting entity”, those definitions apply for the purposes of this Schedule in relation to a port authority in relation to prescribed financial years.
- (2) Regulations in force because of subclause (1) have effect in relation to this Schedule accordingly.
- (3) Subject to subclause (2), where an accounting standard —
 - (a) deals with the making out of consolidated accounts by companies;
 - (b) applies to a financial year of a company; and
 - (c) defines the expression “entity”, “parent entity”, “economic entity” or “reporting entity”,

the definition in the accounting standard also has effect for the purposes of this Schedule as it applies in relation to a port authority in relation to that financial year.

- (4) Despite subclauses (2) and (3), each of the following is an entity for the purposes of this Schedule —
 - (a) a company;
 - (b) a recognized company;
 - (c) any other corporation;
 - (d) a partnership;
 - (e) an unincorporated body;
 - (f) a person in a capacity as trustee of a trust that has only one trustee.
- (5) Despite subclauses (2) and (3), where a trust has 2 or more trustees, those trustees, in their capacity as such, together constitute an entity.

13. When one entity controls another
(cf. s. 294B Corporations Act)

- (1) Where regulations make provision for or in relation to determining, as they apply in relation to a company in relation to prescribed financial years, whether or not an entity controls another entity, those regulations apply for the purposes of this Schedule.
- (2) Regulations in force because of subclause (1) have effect in relation to this Schedule accordingly.
- (3) Subject to subclause (2), where, because of a provision of an accounting standard that —
 - (a) deals with the making out of consolidated accounts by companies; and
 - (b) applies to a financial year of a company,

an entity is taken for the purposes of that accounting standard to control another entity, the first-mentioned entity is also taken to control the other entity for the purposes of this Schedule as it applies in relation to a port authority in relation to that financial year.

14. Application of Division
(cf. s. 295 Corporations Act)

- (1) The later provisions of this Division apply where a port authority —
 - (a) controlled another entity during all or part of a financial year of the port authority; or
 - (b) controls another entity at the end of a financial year of the port authority,

and, for the purposes of this Schedule as it applies in relation to the port authority in relation to that financial year, the port authority is the parent entity in an economic entity that is a reporting entity.

- (2) A port authority is a chief entity in relation to that financial year for the purposes of this Schedule.

15. Consolidated profit and loss account
(*cf. s. 295A Corporations Act*)

- (1) The board of a port authority must cause to be made out, before 3 September in each year immediately following the relevant financial year, a consolidated profit and loss account that gives a true and fair view of the profit or loss, for that financial year, of the economic entity constituted by the port authority and the entities it controlled from time to time during that financial year (even if the port authority did not control the same entities throughout that financial year).
- (2) To avoid doubt, if the port authority did not control a particular entity throughout that financial year, the consolidated profit and loss account must relate to the entity's profit or loss for each part of that financial year throughout which the port authority controlled the entity, but not to the entity's profit or loss for any other part.

16. Consolidated balance sheet
(*cf. s. 295B Corporations Act*)

The board of a port authority must cause to be made out, before 30 September in each year immediately following the relevant financial year, a consolidated balance sheet, as at the year's end, that gives a true and fair view of the state of affairs, as at the year's end, of the economic entity constituted by the port authority and the entities that it controls at the year's end.

Division 7 — Requirements for financial statements

17. Audit of financial statements
(*cf. s. 296 Corporations Act*)

- (1) The board of a port authority must take reasonable steps to ensure that the port authority's financial statements for a financial year are audited by the Auditor General as required by this Schedule before 30 September in each year immediately following the relevant financial year.
- (2) The board must cause to be attached to or endorsed on the port authority's financial statements for a financial year the Auditor General's report on those financial statements.

18. Financial statements to comply with Corporations Act Regulations
(*cf. s. 297 Corporations Act*)

The board of a port authority must ensure that the port authority's financial statements for a financial year comply with such of the requirements as are prescribed from time to time for a company under the Corporations Act and as are relevant to the financial statements.

19. Financial statements to comply with applicable accounting standards

(cf. s. 298 Corporations Act)

Subject to clause 18 the board of a port authority must ensure that the port authority's financial statements for a financial year are made out in accordance with applicable accounting standards.

20. Additional information to give a true and fair view

(cf. s. 299 Corporations Act)

- (1) If a port authority's financial statements for a financial year, as prepared in accordance with clauses 18 and 19, would not otherwise give a true and fair view of the matters with which this Schedule requires them to deal, the board must add such information and explanations as will give a true and fair view of those matters.
- (2) Nothing in subclause (1), or in clause 18 or 19, limits the generality of a provision of this Division or of Division 5 or 6, other than this clause or clause 18 or 19.

21. Inclusion of comparative amounts for items required by accounting standards

(cf. s. 300 Corporations Act)

- (1) Where —
 - (a) clause 19 requires a port authority's financial statements for a financial year to specify a particular amount (in this subclause called the "**current year amount**"); and
 - (b) that clause required the port authority's financial statements for the previous financial year to specify an amount that, within the meaning of an applicable accounting standard, is a corresponding amount in relation to the current year amount,the board must ensure that the first-mentioned financial statements —
 - (c) set out the corresponding amount in such a way as to allow easy comparison between the current year amount and the corresponding amount; and
 - (d) if the current year amount has been determined on a different basis from the corresponding amount —
 - (i) include a note to that effect; and
 - (ii) set out the corresponding amount in such a way as to draw attention to the note.
- (2) For the purposes of this clause, clause 19 requires a port authority's financial statements for a financial year to specify an amount if, and only if, the board —
 - (a) is required to ensure that the financial statements included an amount relating to the matter to which the first-mentioned amount relates; and

- (b) would not have been so required if that clause had not applied in relation to the financial year.

Division 8 — Directors' statements

22. Statement to be attached to accounts *(cf. s. 301 Corporations Act)*

- (1) The board of a port authority must cause to be attached to the port authority's accounts that are or are included in the port authority's financial statements for a financial year a statement complying with this clause and clause 24(2).
- (2) The statement has to state whether or not, in the board's opinion —
 - (a) the profit and loss account gives a true and fair view of the port authority's profit or loss for the financial year; and
 - (b) the balance sheet gives a true and fair view of the port authority's state of affairs as at the end of the financial year.
- (3) In forming its opinion for the purposes of subclause (2), the board must have regard to circumstances that have arisen, and information that has become available, since the end of the financial year and that would, if the accounts had been made out when the statement is made, have affected the determination of an amount or particular in them.
- (4) If adjustments have not been made in the accounts to reflect circumstances or information of a kind referred to in subclause (3) that are or is relevant to understanding the accounts or an amount or particular in them, the statement has to include such information and explanations as will prevent the accounts, or that amount or particular, from being misleading because adjustments have not been so made.
- (5) The statement has to state whether or not, in the board's opinion, there are, when the statement is made, reasonable grounds to believe that the port authority will be able to pay its debts as and when they fall due.
- (6) If the applicable accounting standards in relation to the accounts include accounting standards that apply to the financial year because of an election under clause 3 the statement has to specify those accounting standards and state that they so apply.

23. Statement to be attached to consolidated accounts *(cf. s. 302 Corporations Act)*

- (1) Where Division 6 requires consolidated accounts to be made out in relation to a financial year of a port authority, the board must cause to be attached to them a statement that complies with this clause and clause 24(2).
- (2) The statement has to state whether or not, in the board's opinion, the consolidated accounts —

- (a) have been made out in accordance with Divisions 6 and 7; and
 - (b) in particular, give a true and fair view of the matters with which they deal.
- (3) In forming their opinion for the purposes of subclause (2), the board must have regard to circumstances that have arisen, and information that has become available, since the end of that financial year and that would, if the consolidated accounts had been made out when the statement is made, have affected the determination of an amount or a particular in them.
- (4) If adjustments have not been made in the consolidated accounts to reflect circumstances or information of a kind referred to in subclause (3) that are or is relevant to understanding the consolidated accounts or an amount or particular in them, the statement has to include such information and explanations as will prevent the consolidated accounts, or that amount or particular, from being misleading because adjustments have not been so made.
- (5) If the applicable accounting standards include in relation to the consolidated accounts accounting standards that apply to the financial year because of an election made under clause 3, the statement has to specify those accounting standards and state they so apply.

24. Statements under this Division
(cf. s. 303 Corporations Act)

- (1) The board of a port authority must comply with clause 22, or clauses 22 and 23, as the case requires, in relation to a financial year before 30 September in each year immediately following the relevant financial year.
- (2) A statement required by clause 22 or 23 in relation to a financial year of a port authority has to —
 - (a) be made in accordance with a resolution of the board;
 - (b) be made out not later than 30 September in each year in respect of the immediately preceding financial year;
 - (c) specify the day on which it was made; and
 - (d) be signed by at least 2 directors.

Division 9 — Directors' reports

25. Report on a port authority where it is not a chief entity
(cf. s. 304 Corporations Act)

- (1) If a port authority is not a chief entity in relation to a particular financial year the board must cause to be made out a report complying with this Division other than clause 26.

- (2) The report has to state the names of the directors in office on the day the report is made out.
- (3) The report has to state the port authority's principal activities in the course of the financial year and any significant change in the nature of those activities that occurred during the financial year.
- (4) The report has to state the net amount of the port authority's profit or loss for the financial year after provision for amounts paid or payable in lieu of Commonwealth income tax under the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*.
- (5) The report has to state the amount (if any) that the board recommends should be paid by way of dividend under section 84.
- (6) The report has to contain a review of the port authority's operations during the financial year and of the results of those operations.
- (7) The report has to give particulars of any significant change in the port authority's state of affairs that occurred during the financial year.
- (8) The report has to give particulars of any matter or circumstance that has arisen since the end of the financial year and has significantly affected, or may significantly affect —
 - (a) the port authority's operations;
 - (b) the results of those operations; or
 - (c) the port authority's state of affairs,in financial years after the financial year.
- (9) The report has to refer to —
 - (a) likely developments in the port authority's operations; and
 - (b) the expected results of those operations,in financial years after the financial year.

26. Report on port authority where it is a chief entity
(*cf. s. 305 Corporations Act*)

- (1) If a port authority is a chief entity in relation to a particular financial year the board must cause to be made out a report complying with this Division, other than clause 25.
- (2) The report has to state the names of the directors in office on the day the report is made out.
- (3) The report has to state —
 - (a) the principal activities, during the financial year, of the economic entity constituted by the port authority and the entities it controlled from time to time during the financial year (even if the port authority did not control the same entities throughout the financial year); and

- (b) any significant change in the nature of those activities that occurred during the financial year.
- (4) The report has to state the net amount of the consolidated profit or loss, for the financial year, of the economic entity referred to in subclause (3), after —
 - (a) provision for income tax and amounts paid or payable in lieu of Commonwealth income tax under the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*; and
 - (b) deducting any amounts that should properly be attributed to an entity that is neither the port authority nor an entity that the port authority controlled at the relevant time.
- (5) The report has to state the amount (if any) that the board recommends should be paid by way of dividend under section 84.
- (6) The report has to contain a review of —
 - (a) the operations, during the financial year, of the economic entity constituted by the port authority and the entities it controlled from time to time during the financial year (even if the port authority did not control the same entities throughout the year); and
 - (b) the results of those operations.
- (7) The report has to give particulars of any significant change in the state of affairs of the economic entity referred to in subclause (3)(a) that occurred during the financial year.
- (8) To avoid doubt, if the port authority controlled a particular entity throughout some, but not all, of the financial year, the report need not relate to the entity's activities, operations or state of affairs during a period throughout which the port authority did not control the entity, or to the results of such operations.
- (9) The report has to give particulars of any matters or circumstance that have arisen since the end of the financial year and have significantly affected, or may significantly affect —
 - (a) the operations, in financial years after the financial year, of the economic entity constituted by the port authority and the entities it controls from time to time; or
 - (b) the results of those operations; or
 - (c) the state of affairs, in financial years after the financial year, of that economic entity.
- (10) The report has to refer to —
 - (a) likely developments in the operations referred to in subclause (9)(a); and
 - (b) the expected results of those operations.

27. Report may omit prejudicial information
(cf. s. 306 Corporations Act)

If the board of a port authority believes on reasonable grounds that to include in the report particular information clause 25(9) or 26(10) requires would be likely to result in unreasonable prejudice to the port authority —

- (a) the first-mentioned information need not be so included; and
- (b) if it is not so included, the report has to state that some or all, as the case requires, of the information required by that subclause has not been so included.

28. Additional information required in report
(cf. s. 307 Corporations Act)

- (1) The report has to contain, or have attached to it, a statement that, in relation to each of the directors, sets out, as at the day the report is made out —
 - (a) particulars of the director's qualifications, experience and special responsibilities (if any); and
 - (b) particulars of any interest which the director has disclosed —
 - (i) in accordance with section 12; and
 - (ii) since the date of the last report made out in relation to the port authority under this Division.
- (2) The report has to also contain, or have attached to it, a statement that sets out —
 - (a) how many meetings of the board (including meetings of committees of directors) were held during a financial year, or would have been held if a quorum had been present; and
 - (b) in relation to each person who was a director of the port authority throughout the financial year, how many of the meetings referred to in paragraph (a) the person attended; and
 - (c) in relation to each person who was such a director during some but not all of the financial year —
 - (i) how many of the meetings referred to in paragraph (a) were held while the person was such a director; and
 - (ii) how many of the meetings referred to in paragraph (a) the person attended while he or she was such a director.

29. Benefits under contracts with directors
(cf. s. 309 Corporations Act)

- (1) The report has to set out whether or not, during or since the financial year, a director has received, or has become entitled to receive, a benefit because of a contract that —
 - (a) the director; or

- (b) a firm of which the director is a member; or
 - (c) an entity in which the director has a substantial financial interest,
- has made (during that or any other financial year) with —
- (d) the port authority; or
 - (e) an entity that the port authority controlled, or a body corporate that was related to the port authority, when the contract was made or when the director received, or became entitled to receive, the benefit (if any).
- (2) If so, the report has to set out the general nature of each such benefit that a director has so received or to which a director has so become entitled.
- (3) Subclauses (1) and (2) do not apply to —
- (a) a benefit included in the aggregate amount of emoluments received, or due and receivable, by directors shown, in accordance with the regulations in force for the purposes of clause 18, in the port authority's financial statements for the financial year; or
 - (b) the fixed salary of a full-time employee of —
 - (i) the port authority; or
 - (ii) an entity that controlled, or a body corporate that was related to the port authority, at a relevant time.

30. Reports generally
(cf. s. 310 Corporations Act)

- (1) The board of a port authority must comply with this Division in relation to a financial year before 30 September in each year immediately following the relevant financial year.
- (2) A report that this Division requires in relation to a financial year has to —
 - (a) be made out in accordance with a resolution of the board;
 - (b) be made out not later than 30 September in each year immediately following the relevant financial year;
 - (c) specify the day on which it was made out; and
 - (d) be signed by at least 2 directors.

Division 10 — Financial statements and directors' reports

31. Rounding off amounts
(cf. s. 311 Corporations Act)

Regulations made under section 139 may permit a port authority subject to such conditions, exceptions or qualifications (if any) as are specified in the regulations, to insert in any accounts or report under

this Schedule in substitution for an amount that the port authority would, but for this clause, be required or permitted to set out in the accounts or report an amount that is ascertained in accordance with the regulations and is not more than \$500 greater or less than the first-mentioned amount.

32. Where port authority is a chief entity, board to obtain all necessary information
(cf. s. 312 Corporations Act)

- (1) Subject to subclause (3), where a port authority is a chief entity in relation to a particular financial year, the board must not cause to be made out the consolidated accounts referred to in Division 6, the statement referred to in clause 23 or the report referred to in clause 26 unless it has available to it sufficient information, about each entity that the port authority controlled during all or part of, or at the end of the financial year, to enable it to ensure —
 - (a) that the consolidated accounts —
 - (i) will be made out in accordance with Divisions 6 and 7; and
 - (ii) in particular, will give a true and fair view of the matters with which they must deal;
 - and
 - (b) that neither the statement nor the report will be false or misleading in a material particular.
- (2) Reporting officers of an entity that a port authority controlled during all or part of, or at the end of, a particular financial year of the port authority must, at the request of the board, supply to the port authority all the information that is required by the board for the preparation of the consolidated accounts, the statement and the report referred to in subclause (1).
- (3) Where the board, having taken all such steps as are reasonably available to it, is unable to obtain from the reporting officers of an entity the information required by the board for the preparation of the consolidated accounts, the statement and the report referred to in subclause (1) within the period by which those consolidated accounts, that statement and that report are respectively required, by the provisions referred to in that subclause, to be prepared —
 - (a) the board must cause to be made out those consolidated accounts, that statement and that report without incorporating in, or including with, those consolidated accounts, or incorporating in that statement or report, as the case requires, the information relating to the entity but —
 - (i) it must include in those consolidated accounts, that statement or that report, as the case requires, a description of the nature of the information that has not been obtained, and must include in those

consolidated accounts, that statement and that report such qualifications and explanations as are necessary to prevent those consolidated accounts, that statement and that report from being misleading; and

- (ii) it may qualify accordingly that part of that statement that is made under clause 23(2);

and

- (b) where the board has caused to be made out those consolidated accounts, that statement and that report in accordance with paragraph (a), it must, within one month after receiving any of that information from the reporting officers of the entity lodge with the Minister a statement setting out or summarizing the information and containing such qualifications and explanations, by the board, of those consolidated accounts, that statement or that report as are necessary having regard to the information received from those reporting officers of the entity.

- (4) In this clause —

“reporting officers”, in relation to an entity, means —

- (a) in the case of a port authority, the port authority’s directors; or
- (b) otherwise, the entity’s officers.

33. Relief from requirements as to accounts and reports
(cf. s. 313 Corporations Act)

- (1) The board of a port authority may apply to the Treasurer for an order relieving it or relieving the port authority from compliance with specified requirements of this Schedule relating to accounts or consolidated accounts or to the report required by Division 9.
- (2) On an application under subclause (1), the Treasurer may make an order relieving the board or the port authority from compliance with all or any of the specified requirements either unconditionally or on condition that the board or the port authority complies with such other requirements relating to the accounts or consolidated accounts or to the report as the Treasurer imposes.
- (3) An application under subclause (1) has to be in writing supported by a statement in writing made in accordance with a resolution of the board, signed by not less than 2 directors and stating the reasons for seeking an order.
- (4) If the board of a port authority makes an application under subclause (1), the Treasurer may require it to supply such information relating to the operations of the port authority and of any entity which the port authority controls or has controlled during a financial year, as the Treasurer thinks necessary for the purpose of determining the application.

- (5) A reference in subclause (2) to requirements of this Schedule relating to accounts or consolidated accounts does not include a reference to the requirements of clause 7.
- (6) Where the Treasurer makes an order under subclause (2), the Treasurer is to cause the text of the order to be laid before each House of Parliament or dealt with under section 133 within 14 days after the order is made.
- (7) The Treasurer is not to make an order in relation to a port authority unless in relation to each requirement of this Schedule that is specified in the order, the Treasurer is of the opinion that compliance with the requirement —
 - (a) would render accounts or consolidated accounts, or a report required by Division 9 misleading;
 - (b) would be inappropriate to the circumstances of the port authority; or
 - (c) would impose unreasonable burdens on the port authority or an officer of the port authority.
- (8) The reference in subclause (7) to an order in relation to the port authority is a reference to an order under subclause (2) relieving the board or the port authority from compliance with specified requirements of this Schedule.
- (9) The Treasurer may make an order under subclause (2) that is limited to a specified period and may from time to time either on application by the board, or without any such application, revoke or suspend the operation of the order.
- (10) The revocation or suspension under subclause (8) of an order does not take effect until notice of the revocation or suspension is served on the port authority.

34. Minister to receive a copy of the annual report
(cf. s. 315 Corporations Act)

- (1) A port authority must as soon as practicable but not later than the close of business on the prescribed day in each year send to the Minister a copy of the annual report required by section 68.
- (2) In subclause (1) —
“**the prescribed day**” is the 10th working day after receipt by the port authority under clause 38(2) of the Auditor General’s report.

35. Minister entitled to financial statements and reports
(cf. s. 316 Corporations Act)

The annual report of a port authority required by section 68 has to contain the following documents relevant to the financial year to which the report relates —

- (a) a copy of the port authority's financial statements for that financial year;
- (b) a copy of each statement that Division 8 requires in relation to that financial year;
- (c) a copy of each statement that Division 9 requires in relation to that financial year;
- (d) a copy of the Auditor General's report on the financial statements; and
- (e) a copy of any order of the Treasurer under clause 33.

36. Contravention
(cf. s. 318 Corporations Act)

- (1) Subject to this clause, if a director fails to take all reasonable steps to comply with, or to secure compliance with, or has knowingly been the cause of any default under, any of the provisions of this Schedule other than Divisions 2 and 3, the director contravenes this subclause.
- (2) The penalty applicable to a contravention of subclause (1) is —
 - (a) in a case to which paragraph (b) does not apply, \$5 000; or
 - (b) if the offence was committed with intent to deceive or defraud the Minister or the Treasurer or creditors of the port authority, \$20 000 or imprisonment for 5 years or both.
- (3) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the provisions of this Schedule relating to the form and content of the accounts or consolidated accounts of a port authority by reason of an omission from the accounts or consolidated accounts, it is a defence if it is proved that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by Divisions 5 and 6 to be dealt with in the accounts or consolidated accounts, as the case may be.
- (4) After the end of the period within which Division 5, 6, 7 or 8 requires the board of a port authority to cause a document to be made out, the Minister may require the board to produce the document on a specified day, at a specified place, to a specified person.
- (5) A request under subclause (4) must be made by written notice given to each of the directors.
- (6) In a proceeding for a contravention of Division 5, 6, 8 or 9, proof of contravention of a requirement made under subclause (4) is *prima facie* evidence that the document was not made out within the period referred to in that subclause.

37. Audit

- (1) If the Auditor General cannot complete the audit of a port authority by 30 September in any year he or she is to submit an interim report to

the Minister setting out the reasons for the inability to complete the audit by that date, and the Minister is to cause copies of the report to be laid before each House of Parliament or dealt with under section 133 within 14 days after receiving that report.

- (2) Section 92 of the *Financial Administration and Audit Act 1985* applies to the audit of a port authority.

38. Auditor General must report
(*cf. s. 331A Corporations Act*)

- (1) The Auditor General is to send a report to the Minister on —
 - (a) a port authority's financial statements required for the purposes of clause 35; and
 - (b) a port authority's accounting records and other records relating to those financial statements.
- (2) The Auditor General is to give the report to the directors as soon as is practicable after it has been given to the Minister under subclause (1).

39. Report to state whether financial statements properly drawn up
(*cf. s. 331B Corporations Act*)

- (1) The report has to state whether or not, in the Auditor General's opinion, the financial statements are properly drawn up —
 - (a) so as to give a true and fair view of the matters with which Divisions 5, 6 and 7 require them to deal;
 - (b) in accordance with this Schedule; and
 - (c) in accordance with applicable accounting standards.
- (2) If, in the Auditor General's opinion, the financial statements are not drawn up in accordance with a particular applicable accounting standard, the report has to give particulars of the quantified financial effect on the financial statements of failing to draw them up in accordance with that accounting standard.
- (3) If the Auditor General is not satisfied about a matter referred to in subclause (1) or (2), the report has to state why not.

40. Matters affecting consolidated accounts
(*cf. s. 331C Corporations Act*)

- (1) If the financial statements include consolidated accounts, the report must specify each entity that the port authority controlled during all or a part of, or at the end of, the financial year, but of which the Auditor General has not acted as auditor.
- (2) If —
 - (a) the financial statements include consolidated accounts prepared on the basis of information derived from accounts of an entity of the kind referred to in subclause (1); and

- (b) the Auditor General has not examined those accounts and the auditor's report (if any) on those accounts,

the report on the financial statements must specify that entity.

(3) If —

- (a) the financial statements include consolidated accounts prepared on the basis of information derived from accounts of an entity that the port authority controlled during all or part of, or at the end of, the financial year; and
- (b) the Auditor General's report on those accounts was made subject to any qualification, or included any comment made under clause 42,

the report on the financial statements has to —

- (c) specify the entity; and
- (d) give particulars of the qualification or comment.

41. Defects, irregularities and omissions
(cf. s. 331D Corporations Act)

The report must describe —

- (a) any defect or irregularity in the financial statements; and
- (b) any matter that the financial statements do not set out and to which one must have regard in order to obtain a true and fair view of the matters with which the financial statements deal.

42. Auditor General's report to cover adequacy of information
(cf. s. 331E Corporations Act)

- (1) It is the Auditor General's duty to form an opinion about each of the matters set out in subclause (2), and the report must set out particulars of any deficiency, failure or shortcoming in respect of any of those matters.
- (2) These are the matters —
 - (a) whether the Auditor General has obtained all the information and explanations he or she needed;
 - (b) whether a port authority has kept proper accounting records, and other records (including registers), as required by this Schedule;
 - (c) if a port authority is a chief entity in relation to the financial year concerned —
 - (i) whether the accounts of entities that were used in preparing the consolidated accounts of the port authority in relation to the financial year are in form and content appropriate and proper for such use;
 - (ii) whether the Auditor General has received satisfactory information and explanations as required by the

Auditor General for the purposes of forming an opinion about the matter referred to in subparagraph (i);

- (iii) whether the procedures and methods used in arriving at the amounts taken into the consolidated accounts were appropriate to the circumstances of preparing the consolidated accounts.

43. Minister entitled to inspect auditor's report
(*cf. s. 331F Corporations Act*)

The Minister is entitled to inspect the report at any reasonable time.

44. Powers and duties of Auditor General as to reports on accounts
(*cf. s. 332 Corporations Act*)

- (1) Where Division 6 requires consolidated accounts to be made out in relation to a financial year of a port authority —
 - (a) the Auditor General has a right of access at all reasonable times to the accounting records and other records, including registers, of each entity that the port authority controlled during all or part of, or at the end of, that financial year, even if the port authority no longer controls the entity; and
 - (b) the Auditor General is entitled to require from any officer or auditor of such an entity (at the port authority's expense), such information and explanations about the entity's affairs as the Auditor General needs in order to report on the consolidated accounts.
- (2) The Auditor General has a right of access at all reasonable times to the accounting records and other records, including registers of a port authority, and is entitled to require from any officer of a port authority such information and explanations as the Auditor General desires for the purposes of audit.
- (3) If the Auditor General in the course of the performance of duties as auditor of a port authority and its subsidiaries, is satisfied that —
 - (a) there has been a contravention of any provision of this Schedule; and
 - (b) the circumstances are such that in the Auditor General's opinion the matter has not been or will not be adequately dealt with by comment in the Auditor General's report on the financial statements or by bringing the matter to the notice of the board of the port authority,the Auditor General is to report the matter to the Minister, in writing, as soon as is practicable.
- (4) The provisions of sections 78 to 91 (inclusive) and section 95 of the *Financial Administration and Audit Act 1985* apply to a port authority as if it were a statutory authority named in Schedule 1 to that Act.

45. Extension of time

- (1) Where any provision of this Schedule requires any act or thing to be observed or performed by a certain date or within a specified time by a person, other than the Auditor General, the Minister may on application by that person extend the date of, or the time for observance or performance of such act or thing to such date or time as the Minister thinks appropriate.
- (2) Where the Minister grants an extension of time under subclause (1), the provisions of clause 33(6) apply (with all necessary changes) to the memorandum evidencing the extension as if it were an order under clause 33(2).

[Schedule 5 amended by No. 10 of 2001 s.161.]

Schedule 6 — Provisions for particular port authorities

[s. 132]

Division 1 — Dampier Port Authority

1.1. Application

This Division applies to the Dampier Port Authority and the Port of Dampier.

1.2. Definitions

In this Division —

“**Company appointee**” means the director —

- (a) appointed under clause 1.4(1)(a); or
- (b) appointed under clause 1.4(3) in default of a nomination for appointment as the Company appointee by the Company;

“**Dampier Solar Salt Industry Agreement**” means the agreement a copy of which is set forth in the First Schedule to the *Dampier Solar Salt Industry Agreement Act 1967*, as that agreement is amended from time to time;

“**Iron Ore (Hamersley Range) Agreement**” means the agreement a copy of which is set forth in the First Schedule to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as that agreement is amended from time to time;

“**Joint Venturers appointee**” means the director —

- (a) appointed under clause 1.4(1)(b); or
- (b) appointed under clause 1.4(4) in default of a nomination for appointment as the Joint Venturers appointee by the Joint Venturers;

“**Ministerial appointee**” means a director appointed under clause 1.4(1)(c);

“**North West Gas Development (Woodside) Agreement**” means the agreement a copy of which is set forth in the Schedule to the *North West Gas Development (Woodside) Agreement Act 1979*, as that agreement is amended from time to time;

“**the Company**” has the meaning given by the Iron Ore (Hamersley Range) Agreement;

“**the Joint Venturers**” has the meaning given by the North West Gas Development (Woodside) Agreement;

“**the Salt Company**” means the Company within the meaning of the Dampier Solar Salt Industry Agreement.

1.3. Act does not affect State agreements

This Act does not prejudice or in any way affect —

- (a) any right or obligation of a party to the Dampier Solar Salt Industry Agreement;
- (b) any right or obligation of a party to the Iron Ore (Hamersley Range) Agreement; or
- (c) any right or obligation of a party to the North West Gas Development (Woodside) Agreement.

1.4. Membership of port authority

- (1) The board of the port authority is to comprise —
 - (a) one director appointed by the Minister on the nomination in writing of the Company;
 - (b) one director appointed by the Minister on the nomination in writing of the Joint Venturers; and
 - (c) 3 other directors appointed by the Minister.
- (2) The Minister is to appoint one of the Ministerial appointees to be chairperson of the board.
- (3) If the Company does not nominate a person for appointment as the Company appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such nomination by the Company appoint a person who is otherwise eligible for appointment as a director to be the Company appointee.
- (4) If the Joint Venturers do not nominate a person for appointment as the Joint Venturers appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such nomination by the Joint Venturers appoint a person who is otherwise eligible for appointment as a director to be the Joint Venturers appointee.
- (5) A person appointed by the Minister under subclause (3) or (4) is to be regarded as having been duly nominated and appointed as the Company appointee or the Joint Venturers appointee, as the case requires.
- (6) The Company appointee ceases to hold office as a director if the Company by instrument in writing served on the Minister so requests.
- (7) The Joint Venturers appointee ceases to hold office as a director if the Joint Venturers by instrument in writing served on the Minister so request.

1.5. Alternate members

- (1) Schedule 2, clause 4 does not apply to the port authority.

- (2) The Minister may appoint a person as an alternate director for a director.
- (3) A person cannot be appointed as an alternate director for more than one director.
- (4) Clauses 1.4(1)(a) and (b), and (3) to (7) and 1.6 apply (with any necessary changes) in relation to alternate directors for the Company appointee and the Joint Venturers appointee.
- (5) If a person is nominated by the Company or the Joint Venturers (whether at the Minister's request or not) for appointment as an alternate director for the Company appointee or the Joint Venturers appointee, as the case may be, the Minister is to appoint the person as an alternate director.
- (6) When a director is unable to act because of sickness, absence or other cause, the alternate director for that director may act in the director's place, and while so acting that alternate director is to be taken to be a director and is entitled to remuneration under section 10.
- (7) No act or omission of an alternate director acting in place of a director under this clause may be questioned on the ground that the occasion for acting had not arisen or had ceased.

1.6. Disclosure by directors

Section 12 and Schedule 2, clause 8 do not apply —

- (a) to the Company appointee in respect of a material personal interest that consists only of being an employee of the Company; or
- (b) to the Joint Venturers appointee in respect of a material personal interest that consists only of being an employee of one of the Joint Venturers.

1.7. Quorum

At a meeting of the port authority, 3 directors —

- (a) one of whom is the company appointee or the Joint Venturers appointee; and
- (b) one of whom is a Ministerial appointee,

constitute a quorum.

1.8. Property

Except with the consent of the port authority, an order is not to be made under section 26(1) in respect of any real or personal property —

- (a) which is a facility improved or expanded, or an additional facility provided, under an agreement with the port authority, the capital cost of which improvement or expansion or

provision has been wholly met by payments made under that agreement;

- (b) which has been vested free of cost in the port authority; or
- (c) which has been acquired or constructed by the port authority with moneys provided,

by the Company, the Salt Company or the Joint Venturers or any 2 or all 3 of them.

1.9. Cost recovery

The functions of the port authority include recovering as far as possible, the cost of the facilities and services provided by the port authority from the users of those facilities and services.

1.10. Duties of companies and joint venturers

- (1) Despite anything in section 30 —
 - (a) the Company, for its own requirements under the Iron Ore (Hamersley Range) Agreement;
 - (b) the Salt Company, for its own requirements under the Dampier Solar Salt Industry Agreement; and
 - (c) the Joint Venturers, for their own requirements under the North West Gas Development (Woodside) Agreement,

are to maintain and keep in repair and proper working order all necessary dredged channels, berthing basins and navigational aids required and used by the Company, the Salt Company or the Joint Venturers, as the case requires.

- (2) Despite anything in section 30, the port authority may from time to time direct the Salt Company, the Company or the Joint Venturers or any 2 or all 3 of them —
 - (a) to provide, maintain and keep in repair and proper working order all dredged channels, berthing basins and navigational aids required and used by it or them in its or their operations under the Dampier Solar Salt Industry Agreement, the Iron Ore (Hamersley Range) Agreement or the North West Gas Development (Woodside) Agreement, as the case requires; and
 - (b) for the purpose of determining whether or not any dredged channels, berthing basins and navigational aids referred to in paragraph (a) are being maintained and kept in repair and proper working order, to provide the port authority at its or their cost with such information, reports and hydrographic surveys as are specified in that direction.
- (3) The Salt Company, the Company or the Joint Venturers must, without delay, comply with any direction given to it or them, as the case requires, by the port authority under subclause (2).

- (4) If the Salt Company, the Company or the Joint Venturers does not or do not comply with —
- (a) subclause (1), the port authority is to cause the requisite works to be undertaken and the cost of those works is to be borne by the person which has not complied with that subclause; or
 - (b) a direction given under subclause (2), the port authority is to cause —
 - (i) the requisite work to be undertaken; or
 - (ii) the requisite information, reports or hydrographic surveys to be provided,and the cost of those works or the cost of that provision be borne by the person which has not complied with that direction.

1.11. Pilotage services agreements

Having entered into a contract or other arrangement with the port authority under section 35(2) for the provision of pilotage services —

- (a) the Company may for its own requirements under the Iron Ore (Hamersley Range) Agreement;
- (b) the Salt Company may for its own requirements under the Dampier Solar Salt Industry Agreement; or
- (c) the Joint Venturers may for their own requirements under the North West Gas Development (Woodside) Agreement,

provide its own or their own pilotage services in the port in accordance with that contract or arrangement and section 96(7) does not apply in relation to pilotage services so provided.

Division 2 — Port Hedland Port Authority

2.1. Application

This Division applies to the Port Hedland Port Authority and the Port of Port Hedland.

2.2. Definitions

In this Division —

“**first lessee**” means the registered lessee or registered lessees, for the time being, of the land the subject of lease number 3116/3445 or any lease in substitution for it issued under the *Land Act 1933*, and the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*;

“**first lessee appointee**” means the director —

- (a) appointed under clause 2.4(1)(a); or

- (b) appointed under clause 2.4(3) in default of a nomination for appointment as the first lessee appointee by the first lessee;

“**Ministerial appointee**” means a director appointed under clause 2.4(1)(c);

“**second lessee**” means the registered lessee or the registered lessees, for the time being, of the land the subject of lease number 3116/3692 or any lease in substitution for it issued under the *Land Act 1933*, and the *Iron Ore (Mount Newman) Agreement Act 1964*;

“**second lessee appointee**” means the director —

- (a) appointed under clause 2.4(1)(b); or
- (b) appointed under clause 2.4(4) in default of a nomination for appointment as the second lessee appointee by the second lessee.

2.3. Act does not affect State agreements

This Act does not prejudice or in any way affect —

- (a) any right of the persons entitled to them to receive the payments referred to in clause 20(1) of the agreement a copy of which is set forth in the Schedule to the *Leslie Solar Salt Industry Agreement Act 1966*, as that agreement is amended from time to time;
- (b) any right or obligation of a party to the agreement a copy of which is set forth in the First Schedule to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, as that agreement is amended from time to time;
- (c) any right or obligation of a party to the agreement a copy of which is set forth in the First Schedule to the *Iron Ore (Mount Newman) Agreement Act 1964*, as that agreement is amended from time to time.

2.4. Membership of port authority

- (1) The board of the port authority is to comprise —
 - (a) one director appointed by the Minister on the nomination in writing of the first lessee;
 - (b) one director appointed by the Minister on the nomination in writing of the second lessee; and
 - (c) not more than 5 other directors appointed by the Minister.
- (2) The Minister is to appoint one of the Ministerial appointees to be chairperson of the board.
- (3) If the first lessee does not nominate a person for appointment as the first lessee appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such

nomination by the first lessee appoint a person who is otherwise eligible for appointment as a director to be the first lessee appointee.

- (4) If the second lessee does not nominate a person for appointment as the second lessee appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such nomination by the second lessee appoint a person who is otherwise eligible for appointment as a director to be the second lessee appointee.
- (5) A person appointed by the Minister under subclause (3) or (4) is to be regarded as having been duly nominated and appointed as the first lessee appointee or the second lessee appointee, as the case requires.
- (6) The first lessee appointee ceases to hold office as a director if —
 - (a) the person or persons who nominated him or her ceases or cease to be the registered lessee or registered lessees of the land referred to in the definition of “first lessee” in clause 2.2; or
 - (b) the first lessee by instrument in writing served on the Minister so requests.
- (7) The second lessee appointee ceases to hold office as a director if —
 - (a) the person or persons who nominated him or her ceases or cease to be the registered lessee or registered lessees of the land referred to in the definition of “second lessee” in clause 2.2; or
 - (b) the second lessee by instrument in writing served on the Minister so requests.

2.5. Alternate members

- (1) Schedule 2, clause 4 does not apply to the port authority.
- (2) The Minister may appoint a person as an alternate director for a director.
- (3) A person cannot be appointed as an alternate director for more than one director.
- (4) Clauses 2.4(1)(a) and (b), and (3) to (7) and 2.6 apply (with any necessary changes) in relation to alternate directors for the first lessee appointee and the second lessee appointee.
- (5) If a person is nominated by the first lessee or the second lessee (whether at the Minister’s request or not) for appointment as an alternate director for the first lessee appointee or the second lessee appointee, as the case may be, the Minister is to appoint the person as an alternate director.
- (6) When a director is unable to act because of sickness, absence or other cause, the alternate director for that director may act in the director’s

place, and while so acting that alternate director is to be taken to be a director and is entitled to remuneration under section 10.

- (7) No act or omission of an alternate director acting in place of a director under this clause may be questioned on the ground that the occasion for acting had not arisen or had ceased.

2.6. Disclosure by directors

Section 12 and Schedule 2, clause 8 do not apply —

- (a) to the first lessee appointee in respect of a material personal interest that consists only of being an employee of the first lessee; or
- (b) to the second lessee appointee in respect of a material personal interest that consists only of being an employee of one of the second lessees.

2.7. Quorum

At a meeting of the port authority, a number of directors equal to at least half the number of directors in office constitutes a quorum.

2.8. Port includes pilotage area for some purposes

A reference in Part 7, Divisions 2 and 3 and, where appropriate, in section 122(1) to “the port” includes a reference to the pilotage area set out below:

The Pilotage Area

All that area of the sea beyond the boundaries of the Port of Port Hedland that is within a radius of 20 nautical miles, or such greater distance as may be prescribed by regulations, from the Hunt Point Beacon.

Schedule 7 — Purposes for which, or matters about which, regulations may be made

[s. 139(2)]

1. The control, duties, supervision and guidance of the CEO and members of staff of a port authority.
2. The control or prohibition of —
 - (a) entry into or presence in a port or any specified part or parts of a port by or of a person or class of persons or by or of a thing or class of things; or
 - (b) doing or omitting to do a thing or class of things in a port or any specified part or parts of a port.
3. All matters relating to the protection of life and property and safe navigation in a port.
4. The use of tide signals and other signals in a port.
5. Prevention of overloading or overcrowding of vessels.
6. The powers, duties and obligations of the harbour master of a port in respect of the matters referred to in item 5 and the rights and liabilities of persons affected by the exercise of such a power or connected with a vessel in respect of which such a power is exercised.
7. (1) The landing, shipping, trans-shipping, unshipping, warehousing, stowing, depositing, removal or keeping of explosives and dangerous goods as respectively defined by the *Explosives and Dangerous Goods Act 1961* and of such other substances as the Minister may specify as being dangerous goods for the purposes of the regulations.
(2) The landing, shipping, trans-shipping, unshipping, warehousing, stowing, depositing, removal or keeping of goods other than those substances referred to in subitem (1).
8. The movement, mooring, loading and unloading of vessels.
9. The control of the provision, at or in relation to a port, of —
 - (a) pilotage services;
 - (b) towage services;
 - (c) stevedoring services; or
 - (d) port services of any other kind.
10. The taking on and landing of passengers.
11. The taking in, management and discharge or delivery of ballast.
12. The use, cleaning, repair, maintenance and effective preservation of jetties and wharf loading areas.
13. Traffic in a port.

14. The powers of a port authority to —
 - (a) move; or
 - (b) remove from the port,vehicles or other things that are obstructing, or may obstruct, traffic in the port.
15. Parking of vehicles in a port.
16. The powers of a port authority to deal with or sell or otherwise dispose of goods that have remained in the port for longer than a prescribed period or are affecting or may affect any property of the port authority or any other goods in the port, and —
 - (a) the liability of persons for any charges imposed or expenses incurred by the port authority in the exercise of its powers under regulations made under this item; and
 - (b) the manner in which the proceeds of goods sold by a port authority under its powers under regulations made under this item may be applied.
17. Regulation of the duties and conduct of persons in a port.
18. The control and management of ferries operating for hire at jetties or public thoroughfares.
19. The control of the operation of vessels operating for hire either for goods or passengers in a port.
20. The control of the operation of machinery on jetties and wharf loading areas.
21. The conduct of persons operating vessels or machinery referred to in item 19 or 20.
22. The control of the installation and use of moorings.
23. The calculation or ascertainment of port charges and the powers of a collector of port charges, either alone or with other persons, to enter a vessel in order to calculate or ascertain the port charges payable in respect of the vessel or of goods on the vessel.
24. To require the master of every vessel to give notice of arrival at a port within a specified time before arrival.
25. To require the master of every vessel to produce the certificate of registry or other national papers of that vessel to a collector of port charges or to any other member of staff on demand.
26. To require the master of a vessel to give documentation or information in such form as may be required by a port authority of all goods to be loaded or unloaded on to or from the vessel at the port.
27. To require the master of a vessel to obtain permission to load or unload goods at a port before doing so.

28. To require the shippers of goods to furnish information as to the goods intended to be shipped.
29. To give binding effect to —
 - (a) descriptions of and statements about goods (including as to value) in bills of lading, manifests or receipts; and
 - (b) the terms and conditions of bills of lading, manifests or receipts.
30. Pilotage matters generally and, in particular —
 - (a) procedures for and matters relating to the approval of persons as pilots for a port;
 - (b) vessels that do not have to have an approved pilot; and
 - (c) procedures for and matters relating to pilotage exemption certificates.
31. The speed of vessels in a port.
32. The recovery of expenses incurred by a port authority in exercising powers under the regulations.
33. Limitation of the liability of a port authority for damage or loss either generally or in circumstances specified in the regulations.
34. Exemption of a port authority from liability for damage or loss in circumstances specified in the regulations.
35. Limitation of the time for making a claim against a port authority for loss or damage.
36. Conditions to be inserted in a lease granted under this Act.
37. The powers of members of staff and police officers in relation to persons who are committing or have committed or are believed to be committing, or to have committed, offences under this Act.
38. The deposit of litter, rubbish or waste substances of any kind and the abandonment or neglect of vessels or other material —
 - (a) in a port; or
 - (b) outside a port so as to affect or potentially affect, a port.
39. The —
 - (a) protection of;
 - (b) prevention of obstruction of or interference with; or
 - (c) prevention of obstruction of or interference with the operation of,

port facilities or other property of a port authority.
40. Liability for loss or damage occurring because of obstruction of or interference with the operation of a navigational aid.

41. The protection of the environment of a port.
42. Any other matters relating to —
 - (a) the convenience of shipping, or of operations to do with the storage, loading or unloading of cargo, or of the public, in a port; or
 - (b) the performance of the functions imposed on a port authority by this Act.