

## Schedule 1 — Ports and port authorities

[s. 4]

<b>Item</b>	<b>Name of Port</b>	<b>Name of Port Authority</b>
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.

*[Clause 1 amended by No. 10 of 2001 s. 160.]*

### 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.
- (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.

*[Clause 2 amended by No. 4 of 2004 s. 58.]*

#### 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 authorised and certain documents void**

- (1) Clauses 13 and 14 do not authorise 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 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)]

*[Heading inserted in Gazette 4 Mar 2003 p. 711.]*

### Division 1 — Preliminary

*[Heading inserted in Gazette 4 Mar 2003 p. 711.]*

#### 1. Interpretation

- (1) In this Schedule, unless the contrary intention appears —  
“**financial year**” has the meaning given by clause 23(1);  
“**regulations**” means regulations made under the Corporations Act.
- (2) In this Schedule, unless the contrary intention appears, expressions (including the expressions “**accounting standard**”, “**company**” and “**financial records**”) have the respective meanings given to them by Part 1.2 of the Corporations Act.

*[Clause 1 inserted in Gazette 4 Mar 2003 p. 711.]*

### Division 2 — Financial records

*[Heading inserted in Gazette 4 Mar 2003 p. 712.]*

#### 2. Obligation to keep financial records

*(cf. s. 286 Corporations Act)*

- (1) A port authority must keep written financial records that —
  - (a) correctly record and explain its transactions and financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared and audited.
- (2) The obligation to keep financial records of transactions extends to transactions undertaken as trustee.
- (3) The financial records must be retained for 7 years after the transaction covered by the records are completed.

*[Clause 2 inserted in Gazette 4 Mar 2003 p. 712.]*

#### 3. Physical format

*(cf. s. 288 Corporations Act)*

If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

*[Clause 3 inserted in Gazette 4 Mar 2003 p. 712.]*

**4. Place where records are kept**  
*(cf. s. 289 Corporations Act)*

- (1) A port authority may decide where to keep the financial records.
- (2) If financial records about particular matters are kept outside Australia, sufficient written information about those matters must be kept in Australia to enable true and fair financial statements to be prepared.
- (3) A port authority must give the Treasurer written notice of the place where the information is kept.
- (4) The Minister may direct a port authority to produce specified financial records that are kept outside Australia.
- (5) The direction must —
  - (a) be in writing;
  - (b) specify a place in Australia where the records are to be produced (the place must be reasonable in the circumstances); and
  - (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

*[Clause 4 inserted in Gazette 4 Mar 2003 p. 712.]*

**5. Director access**  
*(cf. s. 290 Corporations Act)*

- (1) A director has a right of access to the financial records at all reasonable times.
- (2) On application by a director, the Supreme Court may authorise a person to inspect the financial records on the director's behalf.
- (3) A person authorised to inspect records may make copies of the records unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make any other orders it considers appropriate, including either or both of the following —
  - (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;
  - (b) an order limiting the right of a person who inspects the records to make copies in accordance with subclause (3).

*[Clause 5 inserted in Gazette 4 Mar 2003 p. 712-13.]*

**Division 3 — Financial reporting**

*[Heading inserted in Gazette 4 Mar 2003 p. 713.]*

## **Subdivision 1 — Annual financial reports and directors' reports**

*[Heading inserted in Gazette 4 Mar 2003 p. 713.]*

### **6. Preparation of annual financial reports and directors' reports** *(cf. s. 292 Corporations Act)*

A financial report and a directors' report must be prepared for each financial year by a port authority before 30 September.

*[Clause 6 inserted in Gazette 4 Mar 2003 p. 713.]*

### **7. Contents of annual financial report** *(cf. s. 295 Corporations Act)*

- (1) The financial report for a financial year consists of —
  - (a) the financial statements for the year;
  - (b) the notes to the financial statements; and
  - (c) the directors' declaration about the statements and notes.
- (2) The financial statements for the year are —
  - (a) a profit and loss statement for the year;
  - (b) a balance sheet as at the end of the year;
  - (c) a statement of cash flows for the year; and
  - (d) if required by the accounting standards — a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (3) The notes to the financial statements are —
  - (a) disclosures required by the regulations;
  - (b) notes required by the accounting standards; and
  - (c) any other information necessary to give a true and fair view.
- (4) The directors' declaration is a declaration by the directors —
  - (a) that the financial statements, and the notes referred to in subclause (3)(b), comply with the accounting standards;
  - (b) that the financial statements and notes give a true and fair view;
  - (c) whether, in the directors' opinion, there are reasonable grounds to believe that the port authority will be able to pay its debts as and when they become due and payable; and
  - (d) whether, in the directors' opinion, the financial statements and notes are in accordance with this Schedule, including —
    - (i) clause 8 (compliance with accounting standards and regulations); and
    - (ii) clause 9 (true and fair view).
- (5) The declaration must —

- (a) be made in accordance with a resolution of the directors;
- (b) specify the date on which the declaration is made; and
- (c) be signed by at least 2 directors.

*[Clause 7 inserted in Gazette 4 Mar 2003 p. 713-14.]*

**8. Compliance with accounting standards and regulations**  
*(cf. s. 296 Corporations Act)*

- (1) The financial report for a financial year must comply with the accounting standards.
- (2) The financial report must comply with any further requirements in the regulations.

*[Clause 8 inserted in Gazette 4 Mar 2003 p. 714.]*

**9. True and fair view**  
*(cf. s. 297 Corporations Act)*

- (1) The financial statements and notes for a financial year must give a true and fair view of —
  - (a) the financial position and performance of the port authority; and
  - (b) if consolidated financial statements are required — the financial position and performance of the consolidated entity.
- (2) This clause does not affect the obligation under clause 8 for a financial report to comply with accounting standards.

*[Clause 9 inserted in Gazette 4 Mar 2003 p. 714.]*

**10. Annual directors' report**  
*(cf. s. 298 Corporations Act)*

- (1) A port authority must prepare a directors' report for each financial year.
- (2) The report must include —
  - (a) the general information required by clause 11; and
  - (b) the specific information required by clause 12.
- (3) The report must —
  - (a) be made in accordance with a resolution of the directors;
  - (b) specify the date on which the report is made; and
  - (c) be signed by at least 2 directors.

*[Clause 10 inserted in Gazette 4 Mar 2003 p. 714-15.]*

**11. Annual directors' report — general information**  
*(cf. s. 299 Corporations Act)*

- (1) The directors' report for a financial year must —
  - (a) contain a review of operations during the year of the port authority and the results of those operations;
  - (b) give details of any significant changes in the port authority's state of affairs during the year;
  - (c) state the port authority's principal activities during the year and any significant changes in the nature of those activities during the year;
  - (d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect —
    - (i) the port authority's operations in future financial years;
    - (ii) the results of those operations in future financial years; or
    - (iii) the port authority's state of affairs in future financial years;
  - (e) refer to likely developments in the port authority's operations in future financial years and the expected results of those operations; and
  - (f) if the port authority's operations are subject to any particular and significant environmental regulation under a law of the State or of the Commonwealth or of another State or a Territory — give details of the port authority's performance in relation to environmental regulation.
- (2) If accounting standards require consolidated financial statements, the report must be on the consolidated entity of which the port authority is part.
- (3) The report may omit material that would otherwise be included under subclause (1)(e) if it is likely to result in unreasonable prejudice to —
  - (a) the port authority; or
  - (b) if consolidated financial statements are required — the consolidated entity or any entity (including the port authority) that is part of the consolidated entity.
- (4) If material is omitted from the report, the report must say so.

*[Clause 11 inserted in Gazette 4 Mar 2003 p. 714-15.]*

**12. Annual directors' report — specific information**  
*(cf. s. 300 Corporations Act)*

- (1) The directors' report for a financial year must include details of —
  - (a) dividends or distributions paid during the year;



- (b) dividends or distributions recommended or declared for payment, but not paid, during the year; and
  - (c) the name of each person who has been a director of the port authority at any time during or since the end of the year and the period for which they were a director.
- (2) The report must also include details of —
- (a) each director's qualifications, experience and special responsibilities;
  - (b) the number of meetings of the board held during the year and each director's attendance at those meetings; and
  - (c) the number of meetings of each board committee held during the year and each director's attendance at those meetings.

*[Clause 12 inserted in Gazette 4 Mar 2003 p. 715-16.]*

**13. Annual directors' report — other specific information**  
*(cf. s. 300A Corporations Act)*

The directors' report for a financial year must also include —

- (a) discussion of board policy for determining the nature and amount of emoluments of board members and senior executives of the port authority;
- (b) discussion of the relationship between such policy and the port authority's performance; and
- (c) details of the nature and amount of each element of the emolument of each director and —
  - (i) in the case of the Fremantle Port Authority, each of the 5 named officers of the port authority;
  - (ii) in the case of a port authority other than the Fremantle Port Authority, each of the 3 named officers of the port authority, receiving the highest emolument.

*[Clause 13 inserted in Gazette 4 Mar 2003 p. 716.]*

**14. Audit of annual financial report**  
*(cf. s. 301 Corporations Act)*

The port authority must have the financial report for a financial year audited by the Auditor General in accordance with Subdivision 2 and clauses 37 and 44 and obtain an auditor's report.

*[Clause 14 inserted in Gazette 4 Mar 2003 p. 716.]*

**Subdivision 2 — Audit and auditor's report**

*[Heading inserted in Gazette 4 Mar 2003 p. 716.]*

**15. Audit opinion**  
*(cf. s. 307 Corporations Act)*

The Auditor General must form an opinion about —

- (a) whether the financial report is in accordance with this Schedule, including —
  - (i) clause 8 (compliance with accounting standards and regulations); and
  - (ii) clause 9 (true and fair view);
- (b) whether he or she has been given all information, explanation and assistance necessary for the conduct of the audit;
- (c) whether the port authority has kept financial records sufficient to enable a financial report to be prepared and audited; and
- (d) whether the port authority has kept other records and registers as required by this Schedule.

*[Clause 15 inserted in Gazette 4 Mar 2003 p. 716.]*

**16. Auditor General's report on annual financial report**  
*(cf. s. 308 Corporations Act)*

- (1) The Auditor General must report to the Minister on whether he or she is of the opinion that the financial report is in accordance with this Schedule, including —
  - (a) clause 8 (compliance with accounting standards and regulations); and
  - (b) clause 9 (true and fair view).
- (2) If not of that opinion, the Auditor General's report must say why.
- (3) If the Auditor General is of the opinion that the financial report does not comply with an accounting standard, his or her report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report.
- (4) If it is not practicable to quantify the effect fully, the report must say why.
- (5) The Auditor General's report must describe —
  - (a) any defect or irregularity in the financial report; and
  - (b) any deficiency, failure or shortcoming in respect of the matters referred to in clause 15.
- (6) The report must specify the date on which it is made.
- (7) The Auditor General must give a copy of the report to the directors as soon as practicable after it has been given to the Minister.

*[Clause 16 inserted in Gazette 4 Mar 2003 p. 717.]*

**17. Auditor General's power to obtain information**  
(*cf. s. 310 Corporations Act*)

The Auditor General —

- (a) has a right of access at all reasonable times to the books of the port authority; and
- (b) may require any officer to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.

*[Clause 17 inserted in Gazette 4 Mar 2003 p. 717.]*

**18. Assisting Auditor General**  
(*cf. s. 312 Corporations Act*)

An officer of the port authority must —

- (a) allow the Auditor General access to the books of the port authority; and
- (b) give the Auditor General any information, explanation or assistance required under clause 17.

*[Clause 18 inserted in Gazette 4 Mar 2003 p. 717.]*

**Subdivision 3 — Special provisions about consolidated financial statements**

*[Heading inserted in Gazette 4 Mar 2003 p. 717.]*

**19. Directors and officers of controlled entity to give information**  
(*cf. s. 323 Corporations Act*)

If a port authority has to prepare consolidated financial statements, a director or officer of a controlled entity must give the port authority all information requested that is necessary to prepare the consolidated financial statements and the notes to those statements.

*[Clause 19 inserted in Gazette 4 Mar 2003 p. 717-18.]*

**20. Auditor General's power to obtain information from controlled entity**  
(*cf. s. 323A Corporations Act*)

- (1) Where the financial report includes consolidated financial statements, the Auditor General —
  - (a) has a right of access at all reasonable times to the books of any controlled entity; and
  - (b) may require any officer of the entity to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.
- (2) The information, explanations or other assistance required under subclause (1)(b) is to be given at the expense of the port authority.

*[Clause 20 inserted in Gazette 4 Mar 2003 p. 718.]*

**21. Controlled entity to assist the Auditor General**  
(*cf. s. 323B Corporations Act*)

If a port authority has to prepare a financial report that includes consolidated financial statements, an officer or auditor of a controlled entity must —

- (a) allow the Auditor General access to the controlled entity's books; and
- (b) give the Auditor General any information, explanation or assistance required under clause 20.

*[Clause 21 inserted in Gazette 4 Mar 2003 p. 718.]*

**22. Application of subdivision to entity that has ceased to be controlled**  
(*cf. s. 323C Corporations Act*)

Clauses 19, 20 and 21 apply to the preparation or audit of a financial report that covers a controlled entity even if the entity is no longer controlled by the port authority concerned when its financial report is being prepared or audited.

*[Clause 22 inserted in Gazette 4 Mar 2003 p. 718.]*

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

*[Heading inserted in Gazette 4 Mar 2003 p. 718.]*

**23. Financial years**  
(*cf. s. 323D Corporations Act*)

- (1) The financial year of a port authority is the 12 month period ending on 30 June.
- (2) Where a port authority has to prepare consolidated financial statements, it must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years.
- (3) It must achieve this synchronisation by the end of 12 months after the situation that calls for consolidation arises.

*[Clause 23 inserted in Gazette 4 Mar 2003 p. 718.]*

**Division 4 — Accounting standards**

*[Heading inserted in Gazette 4 Mar 2003 p. 719.]*

**24. Accounting standards**  
(*cf. s. 334 Corporations Act*)

- (1) An accounting standard applies to —
  - (a) periods ending after the commencement of the standard; or

- (b) periods ending, or starting, on or after a later date specified in the standard.
- (2) A port authority may elect to apply the accounting standard to an earlier period unless the standard says otherwise.
- (3) The election must be made in writing by the directors.

*[Clause 24 inserted in Gazette 4 Mar 2003 p. 719.]*

**25. Equity accounting**  
*(cf. s. 335 Corporations Act)*

This Schedule (and, in particular, the provisions on consolidation of financial statements) does not prevent accounting standards from incorporating equity accounting principles.

*[Clause 25 inserted in Gazette 4 Mar 2003 p. 719.]*

**26. Interpretation of accounting standards**  
*(cf. s. 337 Corporations Act)*

In interpreting an accounting standard —

- (a) unless the contrary intention appears, expressions used in the standard have the same meaning as they have in Chapter 2M of the Corporations Act; and
- (b) the provisions of Part 1.2 of the Corporations Act apply as if the standard's provisions were provisions of that Chapter.

*[Clause 26 inserted in Gazette 4 Mar 2003 p. 719.]*

**27. Evidence of text of accounting standard**  
*(cf. s. 339 Corporations Act)*

- (1) This clause applies to a document that purports to be published by or on behalf of the AASB or ASIC and to set out the text of —
  - (a) a specified standard as in force at a specified time under section 334 of the Corporations Act; or
  - (b) a specified provision of a standard of that kind.
- (2) It also applies to a copy of a document of that kind.
- (3) In the absence of evidence to the contrary, a document to which this clause applies is proof in proceedings under this Act that —
  - (a) the specified standard was in force at that time under that section; and
  - (b) the text set out in the document is the text of the standard referred to in subclause (1)(a) or the provision referred to in subclause (1)(b).

*[Clause 27 inserted in Gazette 4 Mar 2003 p. 719.]*

## **Division 5 — Extension of time**

*[Heading inserted in Gazette 4 Mar 2003 p. 720.]*

### **28. 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 to the memorandum evidencing the extension as if it were an order under clause 33(1).

*[Clause 28 inserted in Gazette 4 Mar 2003 p. 720.]*

## **Division 6 — Sanctions for contraventions of this Schedule**

*[Heading inserted in Gazette 4 Mar 2003 p. 720.]*

### **29. Contravention of Divisions 2 and 3**

*(cf. s. 344 Corporations Act)*

- (1) A director of a port authority contravenes this subclause if he or she fails to take all reasonable steps to comply with, or to secure compliance with, Division 2 or 3.
- (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) Subclause (1) does not apply to clause 17, 18, 20 or 21.

*[Clause 29 inserted in Gazette 4 Mar 2003 p. 720.]*

## **Division 7 — Miscellaneous**

*[Heading inserted in Gazette 4 Mar 2003 p. 720.]*

### **33. Treasurer's power to make specific exemption orders**

*(cf. s. 340 Corporations Act)*

- (1) On an application made in accordance with subclause (3) in relation to a port authority, the Treasurer may make an order in writing relieving any of the following from all or specified requirements of Divisions 2 and 3 —
  - (a) the directors;
  - (b) the port authority;

- (c) the Auditor General.
- (2) The order may —
  - (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (3) The application must be —
  - (a) authorised by a resolution of the directors;
  - (b) in writing and signed by a director; and
  - (c) lodged with the Treasurer.
- (4) The Treasurer must give the port authority concerned written notice of the making, revocation or suspension of the order.
- (6) If the Treasurer makes an order under subclause (1) 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.

*[Clause 33 inserted in Gazette 4 Mar 2003 p. 720-1.]*

**33A. Criteria for specific exemption orders and class orders**  
*(cf. s. 342 Corporations Act)*

To make an order under clause 33, the Treasurer must be satisfied that complying with the relevant requirements of Divisions 2 and 3 would —

- (a) make the financial report or other reports misleading;
- (b) be inappropriate in the circumstances; or
- (c) impose unreasonable burdens.

*[Clause 33A inserted in Gazette 4 Mar 2003 p. 721.]*

**34. Deadline for reporting to the Minister**  
*(cf. s. 315 Corporations Act)*

- (1) In subclause (2) —  
“**the prescribed day**” means the tenth working day after receipt by the directors under clause 16 of the Auditor General’s report.
- (2) 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.

*[Clause 34 inserted in Gazette 4 Mar 2003 p. 721.]*

**35. Annual financial reporting to the Minister**  
*(cf. s. 314 Corporations Act)*

The annual report of a port authority under section 68 is to contain the following documents —

- (a) the financial report for the year;

- (b) the directors' report for the year;
- (c) the Auditor General's report on the financial report;
- (d) a copy of any order of the Treasurer under clause 33.

[Clause 35 inserted in Gazette 4 Mar 2003 p. 721.]

**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 sitting days after receiving that report.
- (2) Section 92 of the *Financial Administration and Audit Act 1985* applies to the audit of a port authority.

[Clause 37 inserted in Gazette 4 Mar 2003 p. 721.]

**44. Powers and duties of the Auditor General**

- (1) 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 80 and 82 to 91 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 of that Act.

[Clause 44 inserted in Gazette 4 Mar 2003 p. 722.]



# 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) 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 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.

*[Clause 1.4 amended by No. 74 of 2003 s. 93(5).]*

### **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*<sup>3</sup>, 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*<sup>3</sup>, 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 protection 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.

*[Schedule 7 amended by No. 71 of 2003 s. 9.]*