

Western Australia

Ports Legislation Amendment Act 2014

As at 20 May 2014

No. 9 of 2014

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Ports Legislation Amendment Act 2014

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Western Australia

Ports Legislation Amendment Act 2014

No. 9 of 2014

An Act to amend the —

- *Port Authorities Act 1999*; and
 - *Shipping and Pilotage Act 1967*,
- and other written laws, and for related purposes.**

[Assented to 20 May 2014]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Ports Legislation Amendment Act 2014*.

2. Commencement

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) the heading to Part 2 and sections 3, 4(3), 5(1), 7(1), 10, 28(1), 29, 30, 32 and 35 — on the day after assent day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

(2) The day fixed under subsection (1)(c) for the coming into operation of sections 4(4), 5(2), 28(2) and 36 cannot be earlier than the day on which section 31 comes into operation.

Part 2 — *Port Authorities Act 1999* amended

3. Act amended

This Part amends the *Port Authorities Act 1999*.

4. Section 3 amended

- (1) In section 3(1) insert in alphabetical order:

port operations means —

- (a) the carrying out of port activities or port works;
or
- (b) the provision of port services; or
- (c) the provision, management or operation of port facilities;

port property, in relation to a port authority, means —

- (a) port facilities; or
- (b) vested property; or
- (c) other property held by the port authority;

port security means all matters relating to —

- (a) the preservation and protection of —
 - (i) port property; or
 - (ii) any other vessel, vehicle or other property within the port,
from damage, destruction or unlawful activity;
and
- (b) the protection of people within the port from injury or unlawful activity;

potential supplier means —

- (a) a person who might become a supplier of port services; or

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- (b) a person who might become a supplier of port services and, for that purpose, provide related port facilities;

- (2) In section 3(1) in the definition of *member of staff* delete “section 16;” and insert:

section 16 or who becomes a member of staff by operation of this Act;

- (3) In section 3(1) in the definition of *port* delete “means the port for which the port authority is established;” and insert:

means —

- (a) the port that the port authority controls and manages; or
 - (b) if the port authority controls and manages more than one port — each of those ports;
- (4) In section 3(1) in the definition of *port* after “Schedule 1” insert:

or placed under the control and management of a port authority by regulations in accordance with Schedule 9

5. Section 4 amended

- (1) Delete section 4(1) and insert:

- (1) There are to be the port authorities named in column 2 of Schedule 1.

(2A) A port authority named in column 2 of an item in Schedule 1 is to control and manage any port named in column 3 of that item.

(2) Delete section 4(2A) as inserted by subsection (1) and insert:

(2A) A port authority named in column 2 of an item in Schedule 1 is to control and manage —

- (a) any port named in column 3 of that item; and
- (b) any port placed under the control and management of the port authority by regulations in accordance with Schedule 9.

6. Section 5 amended

In section 5 delete “A port authority is not” and insert:

For the purposes of any law of the State, a port authority is to be regarded as not being

Note: The heading to amended section 5 is to read:

Port authorities not to be regarded as agents of Crown for purposes of State laws

7. Section 7 amended

(1) In section 7(1) delete “5” and insert:

not less than 5 or more than 7

(2) Delete section 7(4).

8. Section 13 amended

After section 13(4) insert:

- (5) The port authority is to provide a committee with such —
- (a) administrative support; and
 - (b) facilities,
- as the committee may reasonably require for the performance of its functions.

9. Section 14A inserted

At the end of Part 2 Division 2 insert:

14A. Community consultation committees

- (1) In this section —
- consultation committee* means the committee established as required by subsection (2).
- (2) Without limiting section 13, a port authority must, under that section, establish a committee for the port for the purpose of promoting and facilitating communication, information sharing and consultation between the port authority and members of the public who are or may be affected by port operations.
- (3) A local government that has electors who are or may be affected by port operations at the port is to be represented on the consultation committee.
- (4) Minutes of the proceedings of the consultation committee are to be made available on the port authority's website or in a prescribed manner.
- (5) Subsection (2) does not apply if the regulations exempt the port from the operation of this section.

10. Section 27 amended

In section 27(3) delete “subsection —” and insert:

section —

11. Section 29A inserted

After section 28 insert:

**29A. Operation of *Planning and Development Act 2005*
section 136 modified**

A port authority does not have to obtain approval under the *Planning and Development Act 2005* section 136 in order to grant a lease or licence in respect of port land.

12. Section 30 amended

In section 30(1):

(a) delete paragraph (e) and insert:

(e) to be responsible for maintaining port property;
and

(fa) to be responsible for port security; and

(b) in paragraph (f) delete “activities” and insert:

operations

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13. Section 31 amended

In section 31(2) delete “activities.” and insert:

operations.

14. Section 33 amended

In section 33 delete “A” and insert:

Subject to section 34A, a

15. Section 34A inserted

After section 33 insert:

34A. Duty to comply with State budgetary requirements

(1) In this section —

approved means approved from time to time by the Government for the port authority and communicated in writing by the Treasurer to the port authority;

Government includes —

- (a) Cabinet; and
- (b) a committee of Cabinet; and
- (c) a subcommittee of a committee of Cabinet; and
- (d) the Treasurer.

(2) A port authority in performing its functions must —

- (a) comply with approved requirements as to capital works expenditure limits and associated funding; and

- (b) endeavour to achieve financial outcomes that are consistent with forecasts contained in approved income and cash flow statements and approved statements of financial position.
- (3) If there is any conflict or inconsistency between the duty imposed by subsection (2) and the duty imposed by section 33, the duty imposed by subsection (2) prevails.

16. Section 35 amended

After section 35(8) insert:

- (9A) Subject to the *Environmental Protection Act 1986*, port operations may take place on any day and at any time.

17. Section 51 amended

In section 51(2)(a) after “effectiveness,” insert:

participation of potential suppliers,

18. Section 57 amended

- (1) In section 57 delete “The” and insert:

- (1) The

- (2) At the end of section 57 insert:

- (2) Without limiting section 34A, any agreement or concurrence mentioned in subsection (1) has effect

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subject to the reservation that the port authority must —

- (a) comply with the requirements mentioned in section 34A(2)(a); and
- (b) endeavour to achieve the financial outcomes mentioned in section 34A(2)(b),

whether or not they are consistent with the strategic development plan or modified strategic development plan, as the case may be.

19. Section 60 amended

After section 60(2)(j) insert:

- (ka) proposed arrangements to facilitate the participation of potential suppliers in the provision of port services or, if no arrangements are proposed, the reason and justification for their absence; and

20. Section 66 amended

- (1) In section 66 delete “The” and insert:

(1) The

- (2) At the end of section 66 insert:

- (2) Without limiting section 34A, any agreement or concurrence mentioned in subsection (1) has effect subject to the reservation that the port authority must —

- (a) comply with the requirements mentioned in section 34A(2)(a); and
- (b) endeavour to achieve the financial outcomes mentioned in section 34A(2)(b),

whether or not they are consistent with the statement of corporate intent or modified statement of corporate intent, as the case may be.

21. Section 84 amended

(1) After section 84(1)(a)(i) insert:

- (iia) any interim dividend paid to the Treasurer in relation to that financial year in accordance with subsections (5) to (8); and

(2) After section 84(1) insert:

- (2A) In calculating a dividend under this section no account is to be taken of a payment made to the port authority by another person for application towards the capital cost of providing port facilities if the Minister, with the concurrence of the Treasurer, has declared the payment to be an exempt payment for the purposes of this section.
- (2B) A declaration under subsection (2A) can be made before or after the payment is received by the port authority.

(3) In section 84(3)(b) delete “is to” (1st occurrence) and insert:

may

- (4) Delete section 84(5) and insert:
- (5) If the Minister considers that payment by a port authority of an interim dividend in relation to a financial year is justified, the Minister may give written notice to the board of the port authority informing it that an interim dividend is to be paid to the Treasurer.
- (6) As soon as practicable after it receives a notice under subsection (5) the board of a port authority is to make a recommendation to the Minister as to the amount of the interim dividend that the board recommends as appropriate.
- (7) The Minister, with the Treasurer's concurrence —
- (a) may accept a recommendation under subsection (6); or
 - (b) after consultation with the board, may direct that the amount of the interim dividend is to be some other amount.
- (8) A port authority is to pay the interim dividend —
- (a) as soon as practicable after the amount is fixed under subsection (7); and
 - (b) in any case not later than the end of the financial year to which the interim dividend relates.
- (9) The Minister must within 14 days after a direction is given under subsection (3) or (7) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

22. Section 87 amended

Delete section 87(2) and insert:

- (2) A port authority may also enter into a hedging arrangement for the purpose of managing, limiting or reducing perceived risks or anticipated costs in connection with a transaction that involves capital expenditure and is undertaken in, or based on, a foreign currency as long as the port authority, with advice from the Treasury Corporation —
- (a) identifies, considers and takes steps to minimise any foreign exchange risks before entering into the hedging arrangement; and
 - (b) monitors any foreign exchange risks that may result from entering into the hedging arrangement.
- (3) In this section —
- hedging arrangement* means an agreement or arrangement described in subsection (1)(a) or (b);
- interest rate* includes coupon rate, discount rate and yield;
- Treasury Corporation* means the Western Australian Treasury Corporation established under the *Western Australian Treasury Corporation Act 1986*.

23. Section 96 amended

In section 96(7):

- (a) delete “Despite section 37,” and insert:

Subject to subsection (8),

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- (b) in paragraph (a) delete “in accordance with the regulations; and” and insert:

under section 37; and

24. Section 100 amended

Delete section 100(1) and insert:

- (1) Neither the State nor the port authority is liable for any loss or damage resulting from —
- (a) an act or omission by a port authority, a harbour master or a member of staff of a port authority in connection with the provision of pilotage services; or
 - (b) an act or omission by a person approved as a pilot by a port authority in the conduct or navigation of a vessel of which the person is the pilot.

Note: The heading to amended section 100 is to read:

Immunity from liability for negligent provision of pilotage services

25. Section 113 amended

- (1) At the beginning of section 113 insert:

(1A) In this section —

prescribed thing means —

- (a) any floating object; or
- (b) any material, product or substance (whether solid, liquid or gas); or

(c) any vehicle, plant, machinery, equipment or infrastructure.

(2) In section 113(1) delete paragraphs (b), (c) and (d) and insert:

(b) a prescribed thing; or

(c) any person employed in, on or in relation to, a vessel, or its equipment or cargo, or a prescribed thing.

(3) In section 113(2) delete “vessel, floating object or material” and insert:

vessel or prescribed thing

(4) In section 113(3) delete “of the floating object or the material,” and insert:

or control of the prescribed thing,

(5) In section 113(5) delete “vessel, floating object or material —” and insert:

vessel or prescribed thing —

26. Section 114EA inserted

After section 114D insert:

114EA. Immunity from liability for acts or omissions of port users

- (1) A port authority is not liable for any loss or damage resulting from an act or omission of a person who is, or is acting on behalf of, a user of its port.
- (2) Subsection (1) does not affect any liability a port authority might have for breach of contract.

27. Section 133 amended

In section 133(1)(a) delete “84(5)” and insert:

84(9)

28. Section 138 replaced

- (1) Delete section 138 and insert:

138. Government Agreements Act 1979 not affected

The operation of the *Government Agreements Act 1979* in relation to this Act is not limited or otherwise affected by —

- (a) Schedule 6 clause 1.3 or 2.3 or the mention of particular agreements in those clauses; or
 - (b) the affecting provisions as defined in Schedule 8 clause 45.
- (2) In section 138 as inserted by subsection (1):
 - (a) in paragraph (b) delete “clause 45.” and insert:

clause 45; or

(b) after paragraph (b) insert:

(c) Schedule 9 or regulations referred to in Schedule 9.

29. Section 139A inserted

At the end of Part 10 insert:

139A. Transitional provisions

Schedule 8 sets out transitional provisions.

30. Schedule 1 replaced

Delete Schedule 1 and insert:

Schedule 1 — Port authorities and ports

[s. 4]

Column 1	Column 2	Column 3
Item	Name of port authority	Port or ports
1	Fremantle Port Authority	Port of Fremantle
2	Albany Port Authority	Port of Albany
3	Bunbury Port Authority	Port of Bunbury
4	Esperance Port Authority	Port of Esperance
5	Geraldton Port Authority	Port of Geraldton

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6	Dampier Port Authority	Port of Dampier
7	Port Hedland Port Authority	Port of Port Hedland
8	Broome Port Authority	Port of Broome

31. Schedule 1 amended

(1) In Schedule 1:

(a) in item 3 column 2 delete “Bunbury Port Authority” and insert:

Southern Ports Authority

(b) in item 3 column 3 above “Port of Bunbury” insert:

Port of Albany

(c) in item 3 column 3 below “Port of Bunbury” insert:

Port of Esperance

(d) delete items 2 and 4.

(2) In Schedule 1 item 5 column 2 delete “Geraldton Port Authority” and insert:

Mid West Ports Authority

(3) In Schedule 1:

(a) delete item 6;

(b) in item 7 column 2 delete “Port Hedland Port Authority” and insert:

Pilbara Ports Authority

- (c) in item 7 column 3 above “Port of Port Hedland” insert:

Port of Ashburton

Port of Dampier

- (4) In Schedule 1 item 8 column 2 delete “Broome Port Authority” and insert:

Kimberley Ports Authority

32. Schedule 2 amended

Delete Schedule 2 clause 5(5)(a) and insert:

- (a) a number of directors equal to at least half the number of directors in office constitutes a quorum; and

33. Schedule 6 amended

- (1) In Schedule 6 clause 1.2 delete the definitions of:

Company appointee

Joint Venturers appointee

Ministerial appointee

- (2) Delete Schedule 6 clauses 1.4 to 1.7.
(3) Delete Schedule 6 clauses 2.2 and 2.4 to 2.7.

s. 34

34. Schedule 6 further amended

- (1) In the heading to Schedule 6 delete “**particular port authorities**” and insert:

Pilbara Ports Authority

- (2) In the heading to Schedule 6 Division 1 delete “**Dampier Port Authority**” and insert:

Port of Dampier

- (3) In Schedule 6 clause 1.1 delete “Dampier Port” and insert:

Pilbara Ports

- (4) In the heading to Schedule 6 Division 2 delete “**Port Hedland Port Authority**” and insert:

Port of Port Hedland

- (5) In Schedule 6 clause 2.1 delete “Port Hedland Port” and insert:

Pilbara Ports

35. Schedule 8 inserted

After Schedule 7 insert:

Schedule 8 — Transitional provisions

[s. 139A]

Division 1 — Provisions for *Ports Legislation Amendment Act 2014*

Subdivision 1 — Preliminary

1. Terms used

In this Division —

agreement includes a Government agreement;

amending Act means the *Ports Legislation Amendment Act 2014*;

asset means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description and includes any money, security, chose in action or document;

Government agreement means an agreement referred to in paragraph (a) of the definition of ***Government agreement*** in the *Government Agreements Act 1979* section 2 and, if the agreement has been varied, means the agreement as varied;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

right means any right, power, privilege or immunity whether actual, prospective or contingent.

Subdivision 2 — Provisions for the Southern Ports Authority

2. Terms used

In this Subdivision —

continuing authority means the Bunbury Port Authority;

merger means —

- (a) the actions effected by the coming into operation of section 31(1) of the amending Act; and
- (b) the merging of the Albany Port Authority and the Esperance Port Authority into the SPA under clause 3(1);

merger time means the time at which section 31(1) of the amending Act comes into operation;

merging authority means the Albany Port Authority or the Esperance Port Authority;

new board means the board of directors established under clause 4(3);

SPA means the continuing authority as renamed as the Southern Ports Authority by operation of section 31(1)(a) of the amending Act;

transitional regulations has the meaning given in clause 15(1).

3. Merger of Albany Port Authority and Esperance Port Authority into Southern Ports Authority

- (1) At the merger time the Albany Port Authority and the Esperance Port Authority cease to be port authorities under this Act and merge into the SPA.
- (2) From the merger time the SPA is a continuation of each of the merging authorities.

4. Directors and former directors

- (1) Immediately before the merger time a person then holding office as a director of a merging authority or the continuing authority ceases to hold that office.
- (2) From the merger time —
 - (a) a former director of a merging authority is to be taken to be a former director of the SPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*; and

- (b) a former director of the continuing authority is a former director of the SPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.
- (3) The board of directors of the SPA may be established by the appointment of directors before the merger time.
- (4) For the purposes of Schedule 2 clause 1 the term of office of a director appointed under subclause (3) does not begin until the merger time.
- (5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

5. Powers of new board in anticipation of merger

- (1) The new board may —
 - (a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the merger; and
 - (b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48.
- (3) For the purposes of subclause (1) the new board may incur costs for which the continuing authority is liable.

6. CEOs and members of staff

- (1) Immediately before the merger time a person then holding office as the CEO of the continuing authority or a merging authority ceases to hold that office.
- (2) At the merger time, a person who was —
 - (a) the CEO of the continuing authority; or

- (b) the CEO or a member of staff of a merging authority,
immediately before the merger time becomes a member of staff of the SPA.
- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the merger time the continuing authority or a merging authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
 - (a) terminate the contract of employment of the CEO or member of staff; or
 - (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 5 include the power to appoint a person as the CEO of the SPA before the merger time.
- (6) Until the merger time a person appointed under subclause (5) may, as CEO of the SPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the merger.

7. Preservation of rights

- (1) Except as otherwise agreed by the relevant CEO or member of staff, the operation of clause 6(1) or (2) does not —
 - (a) affect his or her remuneration; or
 - (b) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of his or her service.
- (2) For the purposes of subclause (1)(d), the service of a CEO or member of staff with a merging authority is to be taken to have been with the SPA.

- (3) If a person who is the CEO or a member of staff of the continuing authority or a merging authority is appointed under clause 6(5), the appointment does not —
- (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (b) affect any rights under a superannuation scheme; or
 - (c) interrupt the continuity of his or her service,

and, if the person was the CEO or a member of staff of a merging authority, his or her service with the merging authority is to be taken, for the purposes of paragraph (c), to have been with the SPA.

- (4) Nothing in clause 6 or this clause prevents the exercise by the SPA of its powers in relation to the management of members of staff.

8. Devolution of assets, liabilities, proceedings, remedies and immunities

- (1) At the merger time —
- (a) the assets and rights of a merging authority that were immediately before that time vested in or the property of the merging authority vest in or become the property of the SPA by force of this clause; and
 - (b) the liabilities of a merging authority immediately before that time become, by force of this clause, the liabilities of the SPA.
- (2) For the purposes of section 26, property referred to in section 25(2)(a) that becomes the property of the SPA by force of subclause (1)(a) continues to be regarded as property referred to in section 25(2)(a).
- (3) In determining the net profits of the SPA for the purposes of section 84, assets that become the property of the SPA by force of subclause (1)(a) are not to be regarded as income.
- (4) From the merger time, any proceedings or remedy that, immediately before that time, might have been brought or

continued by or available against or to a merging authority may be brought or continued by, and are or is available against or to, the SPA.

- (5) Where a merging authority had the benefit of any immunity in respect of an act, matter or thing done or omitted before the merger time, that immunity continues in that respect for the benefit of the SPA.
- (6) As soon as is practicable after the merger time, all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of a merging authority are to be delivered to the SPA.

9. Completion of things commenced

Anything commenced to be done by a merging authority before the merger time may be continued by the SPA.

10. Continuing effect of things done

- (1) In this clause —
relevant act means an act, matter or thing done or omitted to be done before the merger time by, to or in respect of a merging authority.
- (2) To the extent that a relevant act has force or significance at the merger time it is to be taken, from the merger time, to have been done or omitted by, to or in respect of the SPA so far as the act, matter or thing is relevant to the SPA.
- (3) This clause does not affect the operation of any other provision of this Schedule.

11. Agreements, instruments and documents

- (1) In this clause —
former name means “Bunbury Port Authority”;
new name means “Southern Ports Authority”;

subsisting, in relation to an agreement, instrument or document, means subsisting immediately before the merger time.

- (2) A subsisting agreement, instrument or document that contains a reference to the SPA by its former name has effect from the merger time as if that reference were amended to be a reference to the SPA by its new name.
- (3) Subclause (2) does not apply to an agreement or instrument to which the continuing authority was a party.
- (4) If the continuing authority was a party to a subsisting agreement or instrument then, from the merger time —
 - (a) the SPA is a party to the agreement or instrument under its new name; and
 - (b) the agreement or instrument has effect as if a reference in it to the SPA by its former name were amended to be a reference to the SPA by its new name.
- (5) A subsisting agreement, instrument or document that contains a reference to a merging authority has effect from the merger time as if that reference were amended to be or include a reference to the SPA.
- (6) Subclause (5) does not apply to an agreement or instrument to which a merging authority was a party.
- (7) A subsisting agreement or instrument to which a merging authority was a party has effect from the merger time as if —
 - (a) the SPA were substituted for the merging authority as a party to the agreement or instrument; and
 - (b) a reference to the merging authority in the agreement or instrument were amended to be a reference to the SPA.
- (8) Subclause (2), (4)(b), (5) or (7)(b) does not apply to a reference if —
 - (a) transitional regulations provide otherwise; or

- (b) that application would be inappropriate in the context in which the reference occurs.

12. Port authorities to implement or facilitate merger and share costs

- (1) A port authority is to do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) Subclause (1) applies —
 - (a) before the merger time — to the merging authorities and the continuing authority; and
 - (b) after the merger time — to the SPA.
- (3) The function conferred by subclause (1) is in addition to any other function that a port authority has.
- (4) The following amounts payable before the merger time are to be paid out of the funds of the continuing authority —
 - (a) any remuneration or allowances payable to a director appointed under clause 4(3);
 - (b) any remuneration payable to a person appointed under clause 6(5);
 - (c) the costs of the appointment process under clause 6(5);
 - (d) any other costs incurred by the new board under clause 5.
- (5) Each of the merging authorities is to make a contribution to the continuing authority of one-third (or such other proportion as is agreed) of the amounts paid by the continuing authority in respect of —
 - (a) remuneration or costs mentioned in subclause (4)(a) to (c); and
 - (b) costs mentioned in subclause (4)(d) to the extent that they were reasonably incurred.
- (6) Any dispute as to —

- (a) a contribution to be made under subclause (5); or
- (b) the relevance or amount of a cost mentioned in subclause (4)(d),

may be referred to the Minister whose determination on the matter is final and the continuing authority and merging authorities are to have regard and give effect to the determination.

13. Financial reporting

- (1) In this clause —
former directors of a merging authority means the persons holding office as directors of the merging authority immediately before the merger time;
reporting board, in relation to a merging authority, means the reporting board constituted for the merging authority under subclause (2);
reporting provisions means sections 68 and 69, Schedule 5 Division 3 Subdivision 1 and Schedule 5 clauses 34 and 35.
- (2) A reporting board is constituted by force of this clause to perform the duties set out in this clause in respect of a merging authority.
- (3) The constitution of a reporting board under subclause (2) has effect for a period of 3 months commencing at the merger time but that period may be extended by the Minister if the Minister considers that the extension is needed in order to enable the reporting board to perform its duties under this clause.
- (4) If the merger time coincides with the end of a financial year of a merging authority, the reporting board for the merging authority is to comply with the reporting provisions in respect of the merging authority for that financial year.
- (5) If the merger time is after the end of a financial year of a merging authority (the *last financial year*), the reporting board for the merging authority is to —

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- (a) comply with the reporting provisions in respect of the merging authority to the extent that those provisions have not been complied with for the last financial year; and
 - (b) comply with the reporting provisions in respect of the merging authority for the period starting from the end of the last financial year and ending at the merger time as if that period were a financial year.
- (6) A reporting board must comply with any written directions given to it by the Minister as to the performance of its duties under this clause.
- (7) In order to enable a reporting board to perform its duties under this clause the reporting provisions apply with —
 - (a) any modifications prescribed by transitional regulations; or
 - (b) any other appropriate modifications.
- (8) For the purposes of this clause, a reporting board —
 - (a) is entitled to be provided with reasonable assistance and facilities and to have full and free access at all reasonable times to all accounts, and any other information, documents and records, that the reporting board considers necessary for those purposes; and
 - (b) may make copies of, or take extracts from, any of those accounts, documents or records or make a record of any of that information.
- (9) A person who has possession of any accounts, information, documents or records of the kind referred to in subclause (8)(a) must at any reasonable time, on the request of the reporting board, produce any of those accounts, documents or records, or any of that information, specified in the request.
Penalty: a fine of \$10 000.
- (10) Subject to subclauses (11) to (13), the provisions of this Act that apply to the board of directors of a port authority and

those directors (other than sections 7(1) and 8 and Schedule 2 clause 1(1), (3) and (4)) apply, with any modifications that may be necessary or appropriate, to a reporting board and its members.

- (11) The former directors of a merging authority are to hold office as members of the reporting board of the merging authority for as long as the reporting board remains constituted under subclause (2).
- (12) If the office of a member of a reporting board becomes vacant the Minister may appoint a replacement member to hold office for as long as the reporting board remains constituted under subclause (2).
- (13) Any remuneration or allowances payable to a member of a reporting board are to be paid from the funds of the SPA.
- (14) A member of a reporting board is to be taken to be a director of the SPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.

14. Dividends

- (1) In this clause —
dividend function means a function of a port authority or its board under section 84.
- (2) If immediately before the merger time a dividend function has yet to be performed by a merging authority or its board, the SPA or its board is to perform the function after the merger time as if the SPA were the merging authority.
- (3) If the merger time coincides with the end of a financial year of a merging authority, the SPA or its board is to perform the dividend functions in relation to that financial year as if the SPA were the merging authority.
- (4) Any amount that has to be paid to the Treasurer in accordance with subclause (2) or (3) is to be paid from the funds of the SPA.

15. Transitional regulations

- (1) Regulations (*transitional regulations*) may prescribe —
 - (a) things to be done by a port authority, or the new board, to provide for, implement or facilitate the merger; and
 - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the merger.
- (2) Transitional regulations may provide that specific provisions of any written law —
 - (a) do not apply to or in relation to any matter; or
 - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the merger time, the regulations have effect according to their terms.

Subdivision 3 — Provisions for the Mid West Ports Authority

16. Terms used

In this Subdivision, unless the contrary intention appears —

MWPA means the port authority as renamed as the Mid West Ports Authority by operation of section 31(2) of the amending Act;

new board means the board of directors established under clause 17(3);

port authority means the Geraldton Port Authority;

renaming means the action effected by the coming into operation of section 31(2) of the amending Act;

renaming time means the time at which section 31(2) of the amending Act comes into operation;

transitional regulations has the meaning given in clause 22(1).

17. Directors and former directors

- (1) Immediately before the renaming time a person then holding office as a director of the port authority ceases to hold that office.
- (2) From the renaming time a former director of the port authority is a former director of the MWPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.
- (3) The board of directors of the MWPA may be established by the appointment of directors before the renaming time.
- (4) For the purposes of Schedule 2 clause 1, the term of office of a director appointed under subclause (3) does not begin until the renaming time.
- (5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

18. Powers of new board in anticipation of renaming

- (1) The new board may —
 - (a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the renaming; and
 - (b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming.
- (2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48 to the extent that they are relevant to the renaming.

- (3) For the purposes of subclause (1) the new board may incur costs for which the port authority is liable.

19. CEO and staff

- (1) Immediately before the renaming time a person then holding office as the CEO of the port authority ceases to hold that office.
- (2) At the renaming time, a person who was the CEO of the port authority immediately before the renaming time becomes a member of staff of the MWPA.
- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the renaming time the port authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
 - (a) terminate the contract of employment of the CEO or member of staff; or
 - (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 18 include the power to appoint a person as the CEO of the MWPA before the renaming time.
- (6) Until the renaming time a person appointed under subclause (5) may, as CEO of the MWPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the renaming.
- (7) If a person who is the CEO or a member of staff of the port authority is appointed under subclause (5) the appointment does not —
 - (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (b) affect any rights under a superannuation scheme; or
 - (c) interrupt the continuity of his or her service.

20. Agreements, instruments and documents

- (1) In this clause —
former name means “Geraldton Port Authority”;
new name means “Mid West Ports Authority”.
- (2) A subsisting agreement, instrument or document that contains a reference to the MWPA by its former name has effect from the renaming time as if that reference were amended to be a reference to the MWPA by its new name.
- (3) Subclause (2) does not apply to an agreement or instrument to which the port authority was a party.
- (4) If the port authority was a party to a subsisting agreement or instrument then, from the renaming time —
 - (a) the MWPA is a party to the agreement or instrument under its new name; and
 - (b) the agreement or instrument has effect as if a reference in it to the MWPA by its former name were amended to be a reference to the MWPA by its new name.
- (5) Subclause (2) or (4)(b) does not apply to a reference if —
 - (a) transitional regulations provide otherwise; or
 - (b) that application would be inappropriate in the context in which the reference occurs.

21. Port authority to implement or facilitate renaming

- (1) Anything that is prescribed by transitional regulations, and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming, is to be done —
 - (a) before the renaming time — by the port authority;
and
 - (b) after the renaming time — by the MWPA.
- (2) The function conferred by subclause (1) is in addition to any other function that a port authority has.

- (3) The following amounts payable before the renaming time are to be paid out of the funds of the port authority —
- (a) any remuneration or allowances payable to a director appointed under clause 17(3);
 - (b) any remuneration payable to a person appointed under clause 19(5);
 - (c) the costs of the appointment process under clause 19(5);
 - (d) any other costs incurred by the new board under clause 18.

22. Transitional regulations

- (1) Regulations (*transitional regulations*) may prescribe —
- (a) things to be done by the port authority, the new board or the MWPA to provide for, implement or facilitate the renaming; and
 - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the renaming.
- (2) Transitional regulations may provide that specific provisions of any written law —
- (a) do not apply to or in relation to any matter; or
 - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the renaming time, the regulations have effect according to their terms.

Subdivision 4 — Provisions for the Pilbara Ports Authority

23. Terms used

In this Subdivision —

continuing authority means the Port Hedland Port Authority;

merger means —

- (a) the actions effected by the coming into operation of section 31(3) of the amending Act; and
- (b) the merging of the Dampier Port Authority into the PPA under clause 24(1);

merger time means the time at which section 31(3) of the amending Act comes into operation;

merging authority means the Dampier Port Authority;

new board means the board of directors established under clause 25(3);

PPA means the continuing authority as renamed as the Pilbara Ports Authority by operation of section 31(3)(b) of the amending Act;

transitional regulations has the meaning given in clause 36(1).

24. Merger of Dampier Port Authority into Pilbara Ports Authority

- (1) At the merger time the Dampier Port Authority ceases to be a port authority under this Act and merges into the PPA.
- (2) From the merger time the PPA is a continuation of the merging authority.

25. Directors and former directors

- (1) Immediately before the merger time a person then holding office as a director of the merging authority or the continuing authority ceases to hold that office.
- (2) From the merger time —
 - (a) a former director of the merging authority is to be taken to be a former director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*; and

- (b) a former director of the continuing authority is a former director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.
- (3) The board of directors of the PPA may be established by the appointment of directors before the merger time.
- (4) For the purposes of Schedule 2 clause 1, the term of office of a director appointed under subclause (3) does not begin until the merger time.
- (5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

26. Powers of new board in anticipation of merger

- (1) The new board may —
 - (a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the merger; and
 - (b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48.
- (3) For the purposes of subclause (1) the new board may incur costs for which the continuing authority is liable.

27. CEOs and members of staff

- (1) Immediately before the merger time a person then holding office as the CEO of the continuing authority or the merging authority ceases to hold that office.
- (2) At the merger time, a person who was —
 - (a) the CEO of the continuing authority; or

- (b) the CEO or a member of staff of the merging authority,
immediately before the merger time becomes a member of staff of the PPA.
- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the merger time the continuing authority or the merging authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
 - (a) terminate the contract of employment of the CEO or member of staff; or
 - (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 26 include the power to appoint a person as the CEO of the PPA before the merger time.
- (6) Until the merger time a person appointed under subclause (5) may, as CEO of the PPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the merger.

28. Preservation of rights

- (1) Except as otherwise agreed by the relevant CEO or member of staff, the operation of clause 27(1) or (2) does not —
 - (a) affect his or her remuneration; or
 - (b) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of his or her service.
- (2) For the purposes of subclause (1)(d), the service of a CEO or member of staff with the merging authority is to be taken to have been with the PPA.

- (3) If a person who is the CEO or a member of staff of the continuing authority or the merging authority is appointed under clause 27(5), the appointment does not —
- (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (b) affect any rights under a superannuation scheme; or
 - (c) interrupt the continuity of his or her service,

and, if the person was the CEO or a member of staff of the merging authority, his or her service with the merging authority is to be taken, for the purposes of paragraph (c), to have been with the PPA.

- (4) Nothing in clause 27 or this clause prevents the exercise by the PPA of its powers in relation to the management of members of staff.

29. Devolution of assets, liabilities, proceedings, remedies and immunities

- (1) At the merger time —
- (a) the assets and rights of the merging authority that were immediately before that time vested in or the property of the merging authority vest in or become the property of the PPA by force of this clause; and
 - (b) the liabilities of the merging authority immediately before that time become, by force of this clause, the liabilities of the PPA.
- (2) For the purposes of section 26, property referred to in section 25(2)(a) that becomes the property of the PPA by force of subclause (1)(a) continues to be regarded as property referred to in section 25(2)(a).
- (3) In determining the net profits of the PPA for the purposes of section 84, assets that become the property of the PPA by force of subclause (1)(a) are not to be regarded as income.
- (4) From the merger time, any proceedings or remedy that, immediately before that time, might have been brought or

continued by or available against or to the merging authority may be brought or continued by, and are or is available against or to, the PPA.

- (5) Where the merging authority had the benefit of any immunity in respect of an act, matter or thing done or omitted before the merger time, that immunity continues in that respect for the benefit of the PPA.
- (6) As soon as is practicable after the merger time, all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of the merging authority are to be delivered to the PPA.

30. Completion of things commenced

Anything commenced to be done by the merging authority before the merger time may be continued by the PPA.

31. Continuing effect of things done

- (1) In this clause —
relevant act means an act, matter or thing done or omitted to be done before the merger time by, to or in respect of the merging authority.
- (2) To the extent that a relevant act has force or significance at the merger time it is to be taken, from the merger time, to have been done or omitted by, to or in respect of the PPA so far as the act, matter or thing is relevant to the PPA.
- (3) This clause does not affect the operation of any other provision of this Schedule.

32. Agreements, instruments and documents

- (1) In this clause —
former name means “Port Hedland Port Authority”;
new name means “Pilbara Ports Authority”;

subsisting, in relation to an agreement, instrument or document, means subsisting immediately before the merger time.

- (2) A subsisting agreement, instrument or document that contains a reference to the PPA by its former name has effect from the merger time as if that reference were amended to be a reference to the PPA by its new name.
- (3) Subclause (2) does not apply to an agreement or instrument to which the continuing authority was a party.
- (4) If the continuing authority was a party to a subsisting agreement or instrument then, from the merger time —
 - (a) the PPA is a party to the agreement or instrument under its new name; and
 - (b) the agreement or instrument has effect as if a reference in it to the PPA by its former name were amended to be a reference to the PPA by its new name.
- (5) A subsisting agreement, instrument or document that contains a reference to the merging authority has effect from the merger time as if that reference were amended to be or include a reference to the PPA.
- (6) Subclause (5) does not apply to an agreement or instrument to which the merging authority was a party.
- (7) A subsisting agreement or instrument to which the merging authority was a party has effect from the merger time as if —
 - (a) the PPA were substituted for the merging authority as a party to the agreement or instrument; and
 - (b) a reference to the merging authority in the agreement or instrument were amended to be a reference to the PPA.
- (8) Subclause (2), (4)(b), (5) or (7)(b) does not apply to a reference if —
 - (a) transitional regulations provide otherwise; or

- (b) that application would be inappropriate in the context in which the reference occurs.

33. Port authorities to implement or facilitate merger and share costs

- (1) A port authority is to do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) Subclause (1) applies —
 - (a) before the merger time — to the merging authority and the continuing authority; and
 - (b) after the merger time — to the PPA.
- (3) The function conferred by subclause (1) is in addition to any other function that a port authority has.
- (4) The following amounts payable before the merger time are to be paid out of the funds of the continuing authority —
 - (a) any remuneration or allowances payable to a director appointed under clause 25(3);
 - (b) any remuneration payable to a person appointed under clause 27(5);
 - (c) the costs of the appointment process under clause 27(5);
 - (d) any other costs incurred by the new board under clause 26.
- (5) The merging authority is to make a contribution to the continuing authority of one-half (or such other proportion as is agreed) of the amounts paid by the continuing authority in respect of —
 - (a) remuneration or costs mentioned in subclause (4)(a) to (c); and
 - (b) costs mentioned in subclause (4)(d) to the extent that they were reasonably incurred.
- (6) Any dispute as to —

- (a) a contribution to be made under subclause (5); or
- (b) the relevance or amount of a cost mentioned in subclause (4)(d),

may be referred to the Minister whose determination on the matter is final and the continuing authority and merging authority are to have regard and give effect to the determination.

34. Financial reporting

- (1) In this clause —

former directors of the merging authority means the persons holding office as directors of the merging authority immediately before the merger time;

reporting board means the reporting board constituted for the merging authority under subclause (2);

reporting provisions means sections 68 and 69, Schedule 5 Division 3 Subdivision 1 and Schedule 5 clauses 34 and 35.

- (2) A reporting board is constituted by force of this clause to perform the duties set out in this clause in respect of the merging authority.
- (3) The constitution of the reporting board under subclause (2) has effect for a period of 3 months commencing at the merger time but that period may be extended by the Minister if the Minister considers that the extension is needed in order to enable the reporting board to perform its duties under this clause.
- (4) If the merger time coincides with the end of a financial year of the merging authority, the reporting board is to comply with the reporting provisions in respect of the merging authority for that financial year.
- (5) If the merger time is after the end of a financial year of the merging authority (the *last financial year*), the reporting board is to —
 - (a) comply with the reporting provisions in respect of the merging authority to the extent that those

- provisions have not been complied with for the last financial year; and
- (b) comply with the reporting provisions in respect of the merging authority for the period starting from the end of the last financial year and ending at the merger time as if that period were a financial year.
- (6) The reporting board must comply with any written directions given to it by the Minister as to the performance of its duties under this clause.
- (7) In order to enable the reporting board to perform its duties under this clause the reporting provisions apply with —
- (a) any modifications prescribed by transitional regulations; or
- (b) any other appropriate modifications.
- (8) For the purposes of this clause, the reporting board —
- (a) is entitled to be provided with reasonable assistance and facilities and to have full and free access at all reasonable times to all accounts, and any other information, documents and records, that the reporting board considers necessary for those purposes; and
- (b) may make copies of, or take extracts from, any of those accounts, documents or records or make a record of any of that information.
- (9) A person who has possession of any accounts, information, documents or records of the kind referred to in subclause (8)(a) must at any reasonable time, on the request of the reporting board, produce any of those accounts, documents or records, or any of that information, specified in the request.
- Penalty: a fine of \$10 000.
- (10) Subject to subclauses (11) to (13), the provisions of this Act that apply to the board of directors of a port authority and those directors (other than sections 7(1) and 8 and Schedule 2 clause 1(1), (3) and (4)) apply, with any

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modifications that may be necessary or appropriate, to the reporting board and its members.

- (11) The former directors of the merging authority are to hold office as members of the reporting board for as long as the reporting board remains constituted under subclause (2).
- (12) If the office of a member of the reporting board becomes vacant the Minister may appoint a replacement member to hold office for as long as the reporting board remains constituted under subclause (2).
- (13) Any remuneration or allowances payable to a member of the reporting board are to be paid from the funds of the PPA.
- (14) A member of the reporting board is to be taken to be a director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.

35. Dividends

- (1) In this clause —
dividend function means a function of a port authority or its board under section 84.
- (2) If immediately before the merger time a dividend function has yet to be performed by the merging authority or its board, the PPA or its board is to perform the function after the merger time as if the PPA were the merging authority.
- (3) If the merger time coincides with the end of a financial year of the merging authority, the PPA or its board is to perform the dividend functions in relation to that financial year as if the PPA were the merging authority.
- (4) Any amount that has to be paid to the Treasurer in accordance with subclause (2) or (3) is to be paid from the funds of the PPA.

36. Transitional regulations

- (1) Regulations (*transitional regulations*) may prescribe —

- (a) things to be done by a port authority, or the new board, to provide for, implement or facilitate the merger; and
 - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the merger.
- (2) Transitional regulations may provide that specific provisions of any written law —
- (a) do not apply to or in relation to any matter; or
 - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the merger time, the regulations have effect according to their terms.

Subdivision 5 — Provisions for the Kimberley Ports Authority

37. Terms used

In this Subdivision —

KPA means the port authority as renamed as the Kimberley Ports Authority by operation of section 31(4) of the amending Act;

new board means the board of directors established under clause 38(3);

port authority means the Broome Port Authority;

renaming means the action effected by the coming into operation of section 31(4) of the amending Act;

renaming time means the time at which section 31(4) of the amending Act comes into operation;

transitional regulations has the meaning given in clause 43(1).

38. Directors and former directors

- (1) Immediately before the renaming time a person then holding office as a director of the port authority ceases to hold that office.
- (2) From the renaming time a former director of the port authority is a former director of the KPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.
- (3) The board of directors of the KPA may be established by the appointment of directors before the renaming time.
- (4) For the purposes of Schedule 2 clause 1 the term of office of a director appointed under subclause (3) does not begin until the renaming time.
- (5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

39. Powers of new board in anticipation of renaming

- (1) The new board may —
 - (a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the renaming; and
 - (b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming.
- (2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48 to the extent that they are relevant to the renaming.
- (3) For the purposes of subclause (1) the new board may incur costs for which the port authority is liable.

40. CEO and staff

- (1) Immediately before the renaming time a person then holding office as the CEO of the port authority ceases to hold that office.
- (2) At the renaming time, a person who was the CEO of the port authority immediately before the renaming time becomes a member of staff of the KPA.
- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the renaming time the port authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
 - (a) terminate the contract of employment of the CEO or member of staff; or
 - (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 39 include the power to appoint a person as the CEO of the KPA before the renaming time.
- (6) Until the renaming time a person appointed under subclause (5) may, as CEO of the KPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the renaming.
- (7) If a person who is the CEO or a member of staff of the port authority is appointed under subclause (5) the appointment does not —
 - (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (b) affect any rights under a superannuation scheme; or
 - (c) interrupt the continuity of his or her service.

41. Agreements, instruments and documents

- (1) In this clause —
former name means “Broome Port Authority”;
new name means “Kimberley Ports Authority”.
- (2) A subsisting agreement, instrument or document that contains a reference to the KPA by its former name has effect from the renaming time as if that reference were amended to be a reference to the KPA by its new name.
- (3) Subclause (2) does not apply to an agreement or instrument to which the port authority was a party.
- (4) If the port authority was a party to a subsisting agreement or instrument then, from the renaming time —
 - (a) the KPA is a party to the agreement or instrument under its new name; and
 - (b) the agreement or instrument has effect as if a reference in it to the KPA by its former name were amended to be a reference to the KPA by its new name.
- (5) Subclause (2) or (4)(b) does not apply to a reference if —
 - (a) transitional regulations provide otherwise; or
 - (b) that application would be inappropriate in the context in which the reference occurs.

42. Port authority to implement or facilitate renaming

- (1) Anything that is prescribed by transitional regulations, and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming, is to be done —
 - (a) before the renaming time — by the port authority;
and
 - (b) after the renaming time — by the KPA.
- (2) The function conferred by subclause (1) is in addition to any other function that a port authority has.

- (3) The following amounts payable before the renaming time are to be paid out of the funds of the port authority —
- (a) any remuneration or allowances payable to a director appointed under clause 38(3);
 - (b) any remuneration payable to a person appointed under clause 40(5);
 - (c) the costs of the appointment process under clause 40(5);
 - (d) any other costs incurred by the new board under clause 39.

43. Transitional regulations

- (1) Regulations (*transitional regulations*) may prescribe —
- (a) things to be done by the port authority, the new board or the KPA to provide for, implement or facilitate the renaming; and
 - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the renaming.
- (2) Transitional regulations may provide that specific provisions of any written law —
- (a) do not apply to or in relation to any matter; or
 - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the renaming time, the regulations have effect according to their terms.

Subdivision 6 — Provisions for certain directors

44. Certain directors to cease to hold office

- (1) In this clause —

commencement means the coming into operation of section 33 of the amending Act.

- (2) On commencement —
- (a) the Company appointee and the Joint Venturers appointee, as defined in Schedule 6 clause 1.2 as enacted before commencement, cease to be directors of the Dampier Port Authority; and
 - (b) the first lessee appointee and the second lessee appointee, as defined in Schedule 6 clause 2.2 as enacted before commencement, cease to be directors of the Port Hedland Port Authority.

Subdivision 7 — General provisions

45. Terms used

In this Subdivision —

affecting provisions means —

- (a) section 31 of the amending Act; and
- (b) this Division and transitional regulations;

new board has the meaning given in clause 2, 16, 23 or 37;

relevant officials means —

- (a) the Registrar of Titles under the *Transfer of Land Act 1893*; or
- (b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; or
- (c) the Minister administering the *Land Administration Act 1997*; or
- (d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property;

State tax includes duty under the *Duties Act 2008* and any other tax under a written law;

transitional regulations has the meaning given in clause 15(1), 22(1), 36(1) or 43(1).

46. Exemption from State taxes

State tax is not payable in relation to —

- (a) anything that occurs by the operation of the affecting provisions; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Division, or to give effect to the affecting provisions, or for a purpose connected with or arising out of giving effect to the affecting provisions.

47. Registration of documents

The relevant officials are to take notice of the affecting provisions and are to record and register in the appropriate manner the documents necessary to show the effect of the affecting provisions.

48. Matters that a new board can deal with

The matters referred to in clauses 5(2), 18(2), 26(2) and 39(2) are —

- (a) staff issues including organisational structure, reporting accountabilities and employee roles and responsibilities;
- (b) preparation for staff transfer including confirmation of employee details and entitlements;
- (c) recruitment of staff if necessary;
- (d) identification and assessment of issues relating to —
 - (i) port boundaries;
 - (ii) agreements affecting the port;
 - (iii) mining tenements over port areas;
 - (iv) contaminated sites;
 - (v) waters in the port reserved under the *Conservation and Land Management Act 1984* Part II Division 3;

- (vi) native title issues;
- (vii) operating and maintenance costs;
- (viii) community service obligations;
- (ix) leases, licences and permits;
- (x) port fees and charges;
- (xi) existing legal and commercial disputes and contingent liabilities;
- (xii) long term commitments,
and resolution of those issues so far as that is within
the new board's powers;
- (e) review, and if necessary modification, of the
existing port operating model;
- (f) harmonisation of internal policies, standards,
procedures, processes and reporting requirements
on services and systems including —
 - (i) operating activities;
 - (ii) administrative functions;
 - (iii) pricing and marketing principles and
practices;
 - (iv) financial and accounting systems, including
the chart of accounts;
 - (v) human resource services;
 - (vi) information and communication activities;
- (g) development of a draft strategic development plan,
a draft statement of corporate intent, a draft income
and cash flow statement and a draft statement of
financial position;
- (h) development of any other plans that a port authority
is required to have under any written law;
- (i) budgetary matters;
- (j) matters relating to the transfer of assets and
liabilities including —
 - (i) asset and liability inventories;

- (ii) valuation of assets and liabilities;
- (iii) processes for transfer;
- (k) employment or engagement of persons to provide management, financial, legal or other services or advice.

49. Operation of transitional regulations

If transitional regulations contain a provision referred to in clause 15(3), 22(3), 36(3) or 43(3), the provision does not operate so as —

- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

50. Saving

- (1) The operation of any of the affecting provisions is not to be regarded —
 - (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
 - (c) as giving rise to any right to damages or compensation; or
 - (d) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or

- (e) as causing any contract or instrument to be void or otherwise unenforceable; or
 - (f) as releasing or allowing the release of any surety.
- (2) This Division and transitional regulations are additional to any relevant provisions of the *Interpretation Act 1984*.

51. Government agreements not affected

- (1) The affecting provisions do not prejudice or in any way affect any right or obligation of a party to a Government agreement.
- (2) This clause does not limit or otherwise affect the operation of Schedule 6 clauses 1.3 and 2.3.

36. Schedule 9 inserted

After the last Schedule insert:

Schedule 9 — Placing additional ports under a port authority's control and management

[s. 4(2A)(b)]

1. Terms used

In this Schedule —

Government agreement has the meaning given in Schedule 8 clause 1;

port means a port other than a port named in regulations referred to in the *Shipping and Pilotage Act 1967* section 10(1a);

port addition means the placing of a port under the control and management of a port authority by regulations referred to in clause 2(1), whether or not those regulations have come into operation.

- 2. Regulations may place a port under the control and management of a port authority**
 - (1) Regulations may place a port specified in the regulations under the control and management of a port authority specified in the regulations.
 - (2) Regulations may prescribe any matter that may be necessary or expedient to provide for, implement or facilitate a port addition.

- 3. Port authority to implement or facilitate port addition**
 - (1) If a port addition places, or will place, a port under the control and management of a port authority, the port authority is to do anything that is prescribed by regulations referred to in clause 2 and anything else that may be necessary or expedient to provide for, implement or facilitate the port addition.
 - (2) The function conferred on a port authority by subclause (1) is in addition to any other function that it has.

- 4. Government agreements not affected**
 - (1) The provisions of this Schedule or regulations referred to in this Schedule do not prejudice or in any way affect any right or obligation of a party to a Government agreement.
 - (2) This clause does not limit or otherwise affect the operation of Schedule 6 clauses 1.3 and 2.3.

Part 3 — *Shipping and Pilotage Act 1967* amended

37. Act amended

This Part amends the *Shipping and Pilotage Act 1967*.

38. Section 6 amended

Delete section 6(4).

39. Section 6A inserted

After section 6 insert:

6A. Extended application of sections 5 and 6

(1) In this section —

declared area means a fishing boat harbour or mooring control area.

(2) If the Department is the controlling authority of a declared area the provisions of sections 5 and 6 apply in relation to the declared area as if —

(a) a reference to a port were a reference to the declared area; and

(b) a reference to a harbour master were a reference to the CEO.

(3) If a body corporate is the controlling authority of a declared area the provisions of sections 5 and 6 apply in relation to the declared area as if —

(a) a reference to a port were a reference to the declared area; and

(b) a reference to a harbour master (other than a reference to which paragraph (c) or (e) applies) were a reference to the body corporate; and

- (c) the reference in section 6(1) to the opinion of a harbour master were a reference to the opinion of a delegate of the body corporate; and
- (d) the reference in section 6(2) to the Crown were a reference to the body corporate; and
- (e) the reference in section 6(3) to the harbour master being satisfied were a reference to a delegate of the body corporate being satisfied.

40. Section 7 amended

Delete section 7(2).

41. Section 8A inserted

After section 7A insert:

8A. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person for anything the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The Minister and the Crown are also relieved of any liability that either of them might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) or (2) may have been capable of being done whether or not this Act had been enacted.

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- (4) The protection given by this section extends to anything done by a person in good faith —
 - (a) under the authority of a harbour master, to assist the harbour master to perform a function under this Act; or
 - (b) in compliance with an order, direction or requirement given or made by a harbour master.
- (5) In subsection (4), a reference to a harbour master includes a reference to a controlling authority or the CEO.
- (6) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

42. Section 11 amended

- (1) In section 11:
 - (a) in paragraph (a) delete “5 or 7;” and insert:

5, 6 or 7; or
 - (b) after paragraph (a) insert:
 - (ba) fails to comply with any order or direction of the CEO or a controlling authority given or made under the powers conferred by section 5 or 6 as applied by section 6A; or

43. Section 11A amended

- (1) After section 11A(2) insert:
- (3A) The CEO may delegate to any officer of the Department or another person —
 - (a) any power or duty of the CEO under another provision of this Act; or
 - (b) if the Department is the controlling authority of a fishing boat harbour or mooring control area, any power or duty of that controlling authority under a provision of this Act.
 - (3B) The delegation must be in writing signed by the CEO.
 - (3C) If the controlling authority of a fishing boat harbour or mooring control area is a body corporate, the controlling authority may delegate any power or duty of the controlling authority under another provision of this Act to any of its officers or employees.
 - (3D) The delegation must be in writing executed by the controlling authority.
- (2) Delete section 11A(5) and insert:
- (5) Nothing in this section limits the ability of the Minister, the CEO or a controlling authority to perform a function through an officer, employee or agent.

Part 4 — Consequential amendments

44. Constitution Acts Amendment Act 1899 amended

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 3:
 - (a) delete the items relating to the Albany Port Authority, the Bunbury Port Authority and the Esperance Port Authority;
 - (b) before the item relating to the State Advisory Committee on Publications insert:

The Southern Ports Authority established under the *Port Authorities Act 1999*.

- (3) In Schedule V Part 3:
 - (a) delete the item relating to the Geraldton Port Authority;
 - (b) before the item relating to the Mines Occupational Safety and Health Advisory Board insert:

The Mid West Ports Authority established under the *Port Authorities Act 1999*.

- (4) In Schedule V Part 3:
 - (a) delete the items relating to the Dampier Port Authority and the Port Hedland Port Authority;
 - (b) before the item relating to the Plumbers Licensing Board insert:

The Pilbara Ports Authority established under the *Port Authorities Act 1999*.

- (5) In Schedule V Part 3:
- (a) delete the item relating to the Broome Port Authority;
 - (b) before the item relating to the Land Surveyors Licensing Board insert:

The Kimberley Ports Authority established under the *Port Authorities Act 1999*.

45. *Statutory Corporations (Liability of Directors) Act 1996 amended*

- (1) This section amends the *Statutory Corporations (Liability of Directors) Act 1996*.
- (2) In Schedule 1:
- (a) delete the items relating to Albany Port Authority, Bunbury Port Authority and Esperance Port Authority;
 - (b) insert in alphabetical order:

Southern Ports Authority	a director of the Authority	<i>Port Authorities Act 1999</i>
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- (3) In Schedule 1:
- (a) delete the item relating to Geraldton Port Authority;
 - (b) insert in alphabetical order:

Mid West Ports Authority	a director of the Authority	<i>Port Authorities Act 1999</i>
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- (4) In Schedule 1:
- (a) delete the items relating to Dampier Port Authority and Port Hedland Port Authority;

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(b) insert in alphabetical order:

Mid West Ports Authority	a director of the Authority	<i>Port Authorities Act 1999</i>
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(5) In Schedule 1:

(a) delete the item relating to Broome Port Authority;

(b) insert in alphabetical order:

Kimberley Ports Authority	a director of the Authority	<i>Port Authorities Act 1999</i>
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