

Reprinted under the *Reprints Act 1984* as at 2 January 1991.

WESTERN AUSTRALIA

**BUNBURY PORT AUTHORITY
ACT 1909**

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NOTES

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WESTERN AUSTRALIA

BUNBURY PORT AUTHORITY ACT 1909

AN ACT to constitute the Bunbury Port Authority; to regulate the appointment of the members of the Bunbury Port Authority; to define its powers and authorities and for other purposes incidental thereto.

[*Long title inserted by No. 5 of 1967 s. 3.*]

Short title and commencement

1. This Act may be cited as the *Bunbury Port Authority Act 1909*¹, and shall come into force on a day to be fixed by proclamation.

[*Section 1 amended by No. 5 of 1967 s. 1 (3).*]

Change of name of Board to Bunbury Port Authority

1A. (1) The name of the body corporate constituted under section 3 is changed to the Bunbury Port Authority.

(2) Notwithstanding the change of name effected by subsection (1), the body corporate constituted under this Act by the name of the Bunbury Harbour Board is preserved and continues in existence as a body corporate under and subject to the provisions of this Act, under the name Bunbury Port Authority, but so that the corporate identity of the body corporate and its rights, powers, functions, duties and liabilities, subject to those provisions, shall not be affected.

(3) A reference—

- (a) in law of the State; and
- (b) in any document,

in force immediately before the date of the coming into operation of the *Bunbury Harbour Board Act Amendment Act 1967*, to the Bunbury Harbour shall be read as a reference to the Bunbury Port Authority.

[*Section 1A inserted by No. 5 of 1967 s. 4.*]

Interpretation

2. In this Act, and any regulations thereunder, the following words shall have the meaning stated, unless the contrary intention appears—

- “Berthing master” includes assistant berthing master;
- “Buoys and beacons” include all other marks and signs placed for the purpose of navigation;
- “Chief Harbour Master” means the person for the time being holding the office of Manager of the Department of Marine and Harbours² of the State;
- “Goods” all wares and merchandise, and all chattels, live stock, and other things of whatsoever description;
- “Harbour master” includes assistant harbour master;
- “Master” includes every person having the command, charge, or management of a vessel for the time being;
- “Members” means the members of the Port Authority;
- “Owner” includes any person who is owner jointly with any other person, and any joint stock company; and when used in relation to goods, includes any consignor, consignee, shipper, or agent for the sale or custody, loading or unloading of goods;
- “Ship” every description of vessel used in navigation and not propelled exclusively by oars;
- “the Port Authority” means the Bunbury Port Authority constituted under this Act;
- “The port” so much of the port of Bunbury as is contained within the boundaries described in the First Schedule or as altered from time to time by the Governor;
- “Vessel” any ship, lighter, barge, boat, raft, or craft, of whatever description, and howsoever navigated.

[*Section 2 amended by No. 8 of 1963 s. 2; No. 5 of 1967 s. 5.*]

Constitution of the Port Authority

[Heading inserted by No. 5 of 1967 s. 6.]

The Bunbury Port Authority

3. There shall be 5 persons for carrying this Act into execution, who shall be a body corporate by the name of the Bunbury Port Authority, with perpetual succession, a common seal, and power to hold land.

[Section 3 amended by No. 5 of 1967 s. 7.]

Appointment of member

4. (1) The members shall be appointed by the Governor.

(2) One of the members shall be appointed by the Governor as the chairman of the Port Authority for such period not exceeding the remainder of the period of office of that member as is specified in the instrument of his appointment as that chairman.

[Section 4 amended by No. 79 of 1986 s. 8.]

Seal of Port Authority

5. Judicial notice shall be taken of the incorporation and common seal of the Port Authority, and every deed, instrument, or writing, when sealed, shall be admissible in evidence on the mere production thereof, without any other or further proof of the making of such deed, instrument, or writing.

[Section 5 amended by No. 5 of 1967 s. 8.]

Period of office of member

6. Subject to this Act, a member—

- (a) holds office for such period not exceeding 3 years as is specified in the instrument of his appointment; and
- (b) is, on the expiry of his period of office, eligible for reappointment as a member.

[Section 6³ inserted by No. 79 of 1986 s. 9.]

[7. Section 7 repealed by No. 79 of 1986 s. 9.]

Deputy members

8. (1) In the case of illness, suspension, or absence of any member, the Governor may appoint some person to act as the deputy of such member during such illness, suspension or absence, and until such appointment is terminated by notice in the *Government Gazette*. Every person so appointed shall, while so acting, have all the powers and perform all the duties of such member.

(2) If such member is the chairman, the Governor may temporarily appoint another member acting chairman, who while so acting shall have all the powers and perform all the duties of the chairman.

Tenure of office

9. The Governor may remove a member from his office—

- (a) for misbehavior or incompetence; or
- (b) if he becomes bankrupt, or applies to take the benefit of any Act for the relief of bankrupt debtors; or
- (c) if he absents himself from 3 consecutive meetings of the Port Authority (except on leave granted by the Governor) or becomes incapable of performing his duties; or
- (d) if he becomes concerned or interested in any written contract made by or on behalf of the Port Authority, or participates or claims to be entitled to participate in the profits thereof, or in any benefit or emolument arising therefrom.

Provided that this subsection shall not extend to an interest as a shareholder in an incorporated company of at least 20 members.

[Section 9 amended by No. 5 of 1967 s. 9.]

Remuneration of members of Port Authority

10. The chairman and the other members of the Port Authority shall be paid such remuneration respectively as the Governor shall from time to time determine.

[Section 10 inserted by No. 9 of 1965 s. 2; amended by No. 5 of 1967 s. 10.]

[11. Section 11 repealed by No. 9 of 1965 s. 3.]

[12. Section 12 repealed by No. 51 of 1957 s. 2.]

Quorum

13. For the conduct of business, any 3 members shall be a quorum, and shall have all the powers and authorities vested in the Port Authority.

[Section 13 amended by No. 5 of 1967 s. 11.]

Acting chairman

14. In the absence of the chairman from any meeting of the Port Authority, or if after being present he retires, the members present may elect one of their number to be acting chairman for that meeting or for the remainder of the meeting.

[Section 14 amended by No. 5 of 1967 s. 12.]

Procedure on difference of opinion

15. If at any meeting the members are equally divided in opinion, the chairman or acting chairman shall have a casting as well as a deliberative vote.

Acts of Port Authority not invalidated by vacancy

16. No act or proceeding of the Port Authority shall be invalidated or prejudiced by reason only of the fact that at the time when such proceeding or act was taken, done, or commenced, there was a vacancy in the office of any member.

[Section 16 amended by No. 5 of 1967 s. 13.]

Minutes of proceedings

17. The Port Authority shall keep minutes of its proceedings in such manner and form as the Minister shall direct.

[Section 17 inserted by No. 98 of 1985 s. 3.]

Appointment of officers and servant employees

18. (1) The Governor, on the nomination of the Port Authority, may appoint a general manager, berthing master (who shall be the person appointed as harbour master of the port), and wharf manager and on recommendation of the Port Authority may dismiss the general manager, berthing master or wharf manager.

(2) The Port Authority may appoint such other officers and servants as may be necessary for the administration of this Act and may dismiss any of those officers or servants.

(3) All persons appointed pursuant to subsection (1) or (2) are subject to the control of the Port Authority.

(4) Notwithstanding anything in this Act, to the extent that there is in the case of a person who is appointed under subsection (1) or (2) and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978* an inconsistency between this Act and that Act that Act shall prevail.

[Section 18 inserted by No. 5 of 1967 s. 15; amended by No. 113 of 1987 s. 32.]

Certain officers to give security

19. Before any officer or servant, entrusted with the custody of money or other property, shall enter upon the duties of his office, the Port Authority shall take from him sufficient security for the faithful execution thereof.

[Section 19 amended by No. 5 of 1967 s. 16.]

Vesting of Property

Property vested in Port Authority

20. There shall be vested in the Port Authority for the purposes of this Act—

- (1) All lands of the Crown within the boundaries of the port, as described in the First Schedule, including the bed and shores of the port.
- (2) All wharfs, docks, landing stages, piers, jetties, wharf sheds, and railways belonging to the Government and within the boundaries of the port.
- (3) All such other property as the Port Authority may acquire or the Governor may at any time think fit to vest in the Port Authority for the purposes of this Act.

Provided that the Governor may from time to time, by notification in the *Government Gazette*—

- (a) alter the boundaries of the port; and
- (b) withdraw any land or other property of any kind from the Port Authority, and re-vest the same in the Crown.

[Section 20 amended by No. 8 of 1963 s. 3; No. 5 of 1967 s. 17.]

Lands vested in Port Authority free from municipal rates

21. All lands vested in the Port Authority under this Act shall be exempt from any rate, tax, or imposition which any local authority might, but for this section, lawfully levy or impose; but nothing herein contained shall preclude a local authority from levying and collecting rates and other lawful charges in respect of land, houses, and buildings of the Port Authority leased and occupied for private purposes, and by persons other than the Port Authority, its officers and servants.

[Section 21 amended by No. 5 of 1967 s. 18.]

Powers and Duties of the Port Authority

[Heading inserted by No. 5 of 1967 s. 19.]

Port Authority to control, maintain and preserve

22. Subject to any direction given by the Minister under section 28A, the Port Authority shall have the exclusive control of the port and shall be charged with the maintenance and preservation of all property vested in it under this Act.

[Section 22 amended by No. 5 of 1967 s. 20; No. 98 of 1987 s. 10.]

Port extensions

23. (1) The completion and extension within the port of all port works and the construction therein of all new works shall be deemed Government work within the meaning of the *Public Works Act 1902*, and—

- (a) for the purpose, the Port Authority is a local authority within the meaning of that expression as defined in that Act; and
- (b) subject to this Act, when and as often as land is required for the purposes of this Act, the land may be entered upon, surveyed and taken or resumed under the powers contained in and in accordance with the procedure prescribed by that Act.

(2) The Port Authority may, subject to the prior approval of the Minister, undertake the construction, completion and extension within the port of any port works or other works required for the purposes of this Act.

(3) In this section the expression "port works" includes pier, quay, wharf, jetty, dock, landing stage, slip, bridge, viaduct, embankment or drain or the reclamation of land from the sea or a river, or excavation, deepening, dredging or widening of any channel, basin or other part of the port.

[Section 23 amended by No. 5 of 1967 s. 21; No. 78 of 1979 s. 7.]

Roadways and approaches

24. The Port Authority—

- (a) shall maintain the roads and approaches to all wharves, docks, piers, jetties, landing stages, slips, platforms, depots, and sheds that are now or may hereafter be erected on the lands vested in it; and
- (b) shall cause such wharves, docks, piers, jetties, landing stages, slips, platforms, depots, and sheds, and the roads and approaches thereto, to be kept in good repair.

[Section 24 amended by No. 5 of 1967 s. 22.]

Power of Port Authority to lease certain lands

25. (1) The Port Authority may, with the approval of the Minister, grant leases of any of the lands vested in it by or under this Act, as yards or sites for shipbuilding, boat building, storage of timber, coal, merchandise or other property, or for the erection of workshops or foundries or for any other purpose approved by the Minister.

(2) Subject to subsections (3) and (4), every lease granted under this section—

- (a) shall be granted on such terms and conditions as the Port Authority thinks fit; and
- (b) shall not be granted for a longer term than 21 years.

(3) When the Minister is of opinion that because of the special circumstances of the case the granting of a lease for a term exceeding 21 years is justified, the Minister may, by instrument in writing and containing such conditions, if any, as he thinks fit, authorize the Port Authority to grant the lease for such term exceeding 21 years but not exceeding 50 years as the Minister specifies in the instrument.

(4) A lease for a term exceeding 3 years shall not be granted under this section unless applications have first been advertised twice in the *Government Gazette* and twice in a newspaper circulating in Bunbury.

[Section 25 inserted by No. 57 of 1987 s. 2.]

Power of Port Authority to grant licences

25A. (1) Subject to subsection (2) the Port Authority may, with the approval of the Minister, grant a licence for the occupation or use of any of the lands vested in it by or under this Act for any purpose that it considers fit.

(2) A licence granted under subsection (1) for a term not exceeding 60 days may be granted without the approval of the Minister.

[Section 25A inserted by No. 57 of 1987 s. 2.]

Port Authority may make contracts, etc.

26. The Port Authority may, by its corporate name, enter into contracts with any person for the execution of any work it may think proper to do, or to direct to be done, under the powers conferred by this Act, or for furnishing materials or labour, or for providing proper engines or other power, or for any other matters and things whatsoever necessary to enable it to carry the purposes of this Act into effect, in such manner, and upon such terms, and under such stipulations, regulations, and restrictions as it may think proper.

[Section 26 amended by No. 5 of 1967 s. 24.]

Capital expenditure to be in financial interest of Port Authority

26A. Before incurring any capital expenditure the Port Authority shall consider whether the expenditure is in the financial interest of the Port Authority.

[Section 26A inserted by No. 98 of 1987 s. 11.]

Goods left on wharves, etc., may be advertised and sold

27. (1) If any goods remain upon any wharf or the approaches thereto, or in any store or warehouse, for a longer time than allowed by the regulations, any person authorized by the Port Authority may remove the goods to a convenient place, and keep the same until payment of the expenses of such removal and keeping.

(2) If such expenses are not paid within 7 days after demand thereof made upon the owner, or if the owner is unknown or cannot be found, then after public notice by advertisement, at least once in each of 2 consecutive weeks, in a newspaper circulating in Bunbury, the Port Authority may sell such goods by public auction; provided that goods, if perishable, may be sold without demand after 24 hours.

(3) The proceeds of sale shall be applied in payment of all dues and charges payable in respect of such goods, and the expenses of removal, keeping, and sale thereof, and the surplus shall be rendered to the owner on demand, and in the meantime shall be paid into the Treasury.

[Section 27 amended by No. 5 of 1967 s. 26.]

Disputes between departments to be settled by Minister

28. Any dispute between the Port Authority and the Commissioner of Railways, or any other department of the Government, with respect to any land or other property vested in the Port Authority, shall be referred to the Minister, whose decision shall be final and binding upon the parties.

[Section 28 amended by No. 5 of 1967 s. 27.]

Minister may give directions to Port Authority

28A. The Minister may from time to time give directions to the Port Authority with respect to the performance of its functions, either generally or with respect to a particular matter, and the Port Authority shall give effect to those directions.

[Section 28A inserted by No. 98 of 1987 s. 12.]

Pilotage

Pilotage

29. (1) Except as otherwise provided by regulations, pilotage shall be compulsory within the boundaries of the port.

(2) If, after a qualified pilot has offered to take charge of the ship, or has made a signal for the purpose, the master of any ship not exempted from pilotage by regulations, pilots the ship himself, he shall be liable for each offence to a fine of double the amount of the pilotage dues that could be demanded for the conduct of the ship.

[Section 29 amended by No. 5 of 1967 s. 28.]

Lights, Buoys, and Signals

Harbour lights, etc., not to be erected or removed without sanction of Chief Harbour Master

30. The Port Authority shall not erect or place any harbour light, signal, buoy, or beacon within the boundaries of the port or alter or remove the position of any light, signal, buoy, or beacon without the sanction of the Chief Harbour Master.

[Section 30 amended by No. 5 of 1967 s. 29.]

Chief Harbour Master may erect and maintain harbour lights, etc.

31. The Chief Harbour Master may, with the approval of the Minister, erect, maintain, replace, remove, or discontinue any harbour lights, signals, buoys, or beacons, or make any variation in the character of any such lights or signals, or in the mode of exhibiting the same, as he may from time to time consider necessary.

Wrecks, Obstructions, and Damage

Removal of wreck

32. If any vessel is sunk, stranded, or abandoned within the limits of the port in such way as to tend to the injury of navigation, such vessel, together with the tackle thereof, and the goods if any therein (all of which are in this section hereinafter included under the term "the wreck"), may be removed in the following manner—

- (1) The Port Authority shall give notice in writing to the owner of such vessel, or to an agent of such owner, that he is required, within the time specified in such notice, either to remove the wreck in a manner satisfactory to the Port Authority, or to undertake, under security satisfactory to the Port Authority to remove the wreck in a manner satisfactory to and within a time to be fixed by the Port Authority.
- (2) In case the owner or agent cannot be found within the State, or fails within the time specified in the notice to remove the whole of the wreck in a way satisfactory to the Port Authority or to enter into such undertaking as aforesaid to remove the same, or, having undertaken to remove the wreck, fails to remove it in accordance with his undertaking, then the Port Authority may remove the wreck, and recover from the owner, in any court of competent jurisdiction, the expenses incurred in removing it (in this section referred to as "the expenses of removal").

- (3) The Port Authority may, for the purpose of removal, destroy the wreck or any part of it, and may remove and take possession of the wreck or any part of it, and may sell the same, and may, out of the proceeds, if any, of such sale, without any reference to the part of the wreck from the sale of which such proceeds may accrue, reimburse itself for the whole of the expenses of removal, and shall, after reimbursing itself, render the surplus, if any, to the owner.
- (4) If the proceeds of such sale are insufficient to pay the whole expenses of removal, the Port Authority may recover the balance from the owner of the vessel, if such vessel was stranded or sunk by his fault or negligence, or from any other person by whose fault or negligence the vessel was stranded or sunk.

For the purposes of this section the term "owner" shall mean and include not only the owner of the wreck at the time of the sinking, stranding, or abandonment thereof, but also any purchaser of any such wreck, or the materials of which the same may be or may have been composed, so long as the same shall be and remain sunk, stranded, or abandoned.

[Section 32 amended by No. 5 of 1967 s. 30.]

Responsibility for injury to works of Port Authority

33. When any injury is done by a vessel, floating timber, or material, or by any person employed about the same, to any part of the works or property of the Port Authority—

- (1) the owner of such vessel, floating timber, and material; and
- (2) in case the injury is caused through the act or negligence of the master of such vessel, or of the person having charge of such timber or material, the owner and also such master or person,

shall be answerable in damages to the Port Authority for the injury, but the Port Authority shall not recover twice for the same cause of action.

[Section 33 amended by No. 5 of 1967 s. 31.]

Recovery by owner from master of ship

34. When the owner of any vessel, floating timber, or material pays any money in respect of any injury done to any part of the works or property of the Port Authority by any master or other person, or pays

any pecuniary penalty by reason of any act or omission of any master or other person, he shall be entitled to recover the money so paid with costs from such master or other person.

[Section 34 amended by No. 5 of 1967 s. 32.]

Damage to cables

35. If any damage is done to any submarine cable, the property of or vested in the Port Authority, within or partly within the port, by any ship, or any part of the equipment of any ship, such damage shall forthwith be made good by and at the expense of the master, owner, or agent of such ship; and in default, the Port Authority may cause such repairs to be effected, and may recover the expense thereof from the master or owner or agent in any court of competent jurisdiction.

[Section 35 amended by No. 5 of 1967 s. 33.]

Actions against Port Authority and Officers

[Heading inserted by No. 5 of 1967 s. 34.]

Port Authority not liable for acts or omissions of pilots

36. The Port Authority shall not be liable for any act or omission of any qualified pilot or of the harbour master or berthing master in case he is a qualified pilot.

[Section 36 amended by No. 5 of 1967 s. 35.]

[37. Section 37 repealed by No. 73 of 1954 s. 5.]

Port Dues and Wharfage Charges

[Heading amended by No. 5 of 1967 s. 36.]

Port dues, etc., to be made by regulation

38. Port dues and wharfage charges shall be made and levied, and shall be payable in accordance with regulations under this Act.

[Section 38 amended by No. 5 of 1967 s. 36.]

[39. Section 39 repealed by No. 5 of 1967 s. 37.]

Tonnage of registered vessels

40. (1) Where any vessel has been registered at a port in the United Kingdom, or any British possession, the amount of tonnage specified in the certificate of such registry shall, for the purposes of this Act, be deemed to be the tonnage of such vessel.

(2) In the case of vessels belonging to any foreign country which has adopted the provisions of the *Merchant Shipping Act 1894*, in respect of tonnage, such vessels shall be deemed to be of the tonnage denoted in the certificate of registry or other national papers.

Ascertainment of tonnage of unregistered foreign vessels

41. In order to ascertain the tonnage of any vessel not registered as aforesaid as to which any question arises, any officer appointed in that behalf by the Port Authority may measure such vessel according to the regulations for the measurement of shipping for the time being in force in the State; or the Port Authority may, in its discretion, accept as the measurement of the vessel the measurement appearing in the latest edition of Lloyd's Register in the possession of the Port Authority.

[Section 41 amended by No. 5 of 1967 s. 38.]

Lists of dues to be exhibited

42. The Port Authority shall at all times keep exhibited in front of its principal office, lists of all dues and charges payable for the time being.

[Section 42 amended by No. 5 of 1967 s. 39.]

In case of difference, power to weigh or measure goods

43. Where a difference arises between any officer authorized to collect any such dues or charges and the owner of goods respecting the weight or quantity of any goods—

- (1) the officer authorized to collect such dues or charges may cause the goods to be weighed or measured;
- (2) if the weight or quantity exceeds that alleged by the owner, the expenses of the weighing or measuring shall be paid to the Port Authority and shall be recoverable as dues are recoverable; and
- (3) if the weight or quantity does not exceed that alleged as aforesaid, the expenses of the weighing or measuring shall be paid by and shall be recoverable from the Port Authority in any court of competent jurisdiction.

[Section 43 amended by No. 5 of 1967 s. 40.]

Liability for dues payable by ship

44. The owner and master of any ship, and such consignee or agent thereof as may have paid or made himself liable to pay any charge on account of the ship, shall be liable to pay the dues payable in respect of such ship.

Liability for dues payable for goods

45. The following persons shall be liable to pay the dues payable in respect of any goods carried in any ship, that is to say, the owner of such goods, and also any consignor, consignee, shipper or agent for the sale of or custody of such goods, and also any person entitled, either as owner or agent for the owner, to the possession of goods.

Persons other than master or owner of ship liable for dues may retain moneys received on account of master or owner of ship for such payments

46. Every consignor, consignee, shipper, or agent, not being the owner or master of any ship or goods, by this Act made liable for the payment of any dues in respect of any ship or goods, as the case may be, may, out of any moneys in his hands received on account of such ship or goods, or belonging to the owner thereof, retain the amount of dues so paid by him, together with any reasonable expenses he may have incurred by reason of payment and liability.

Recovery of dues

47. All dues may be recovered by the Port Authority in any court of competent jurisdiction as a debt due to it.

[Section 47 amended by No. 5 of 1967 s. 41.]

Persons authorized to collect dues may distrain

48. Any officer authorized to collect dues may distrain any ship and the tackle thereof, or any goods in respect of which dues are payable, and may keep such ship and tackle or goods respectively until such dues are paid; and if the same are not paid within 7 days after the distress, may cause the property distrained or any part thereof to be sold, and out of the proceeds of the sale may pay the amount of such dues and the expenses of the distress, keeping, and sale.

Settlement of dispute concerning dues or charges occasioned by distress

49. Where a difference arises concerning the amount of any dues payable, or of the charges occasioned by any distress, the person distraining may detain the ship, tackle, or goods distrained until such

amount is ascertained by the Local Court at Bunbury, or until he is satisfied that sufficient security has been given for the payment of such amount when ascertained, and of the expenses arising from non-payment thereof. The Court shall, upon application made for that purpose, determine the amount, and award such costs to be paid by either party to the other as the Court thinks reasonable.

Penalty on evasion

50. If any master, owner, consignor, consignee, shipper, or agent evades, or attempts to evade, the payment of any dues, he shall incur a penalty either not exceeding \$200, or in case the amount of the dues which he has evaded or has attempted to evade, exceeds \$200, then not exceeding such amount, and the penalty is in addition to the dues payable by him.

[Section 50 amended by No. 113 of 1965 s. 4 (1); No. 5 of 1967 s. 42.]

Power to Governor to revise port dues

51. If in the opinion of the Governor the Port Authority shall not, in any year, have collected and received from dues, charges, rents, and other sources of revenue sufficient, or shall in any year have collected and received as aforesaid more than sufficient, to provide for the lawful expenditure of the Port Authority, including interest and contribution to the sinking fund, in respect of the value of the property vested in and charged against it under sections 52 and 53, or if for any other reason the Governor thinks fit so to do, the Governor may revise the port dues, port improvement rates, wharfage charges, and other dues, tolls, rates, fees, and charges prescribed by the regulations under this Act, and it shall be the duty of the Port Authority to impose and collect such dues and charges in accordance with such revision until the Governor shall otherwise order.

[Section 51 amended by No. 5 of 1967 s. 43.]

Finance

Minister to declare value of property vested in Port Authority

52. The Minister shall, on the commencement of this Act, cause a schedule to be made of all property vested in the Port Authority, and shall determine the value thereof to be charged against the Port Authority.

[Section 52 amended by No. 5 of 1967 s. 44.]

Subsequent works

53. After the determination of such value, the Minister shall at the end of each financial year, cause a schedule to be made of the cost of all additional works and improvements constructed, and the proportionate cost of works in course of construction, and of all property acquired by the Port Authority during the preceding financial year, to be charged as aforesaid.

[Section 53 amended by No. 5 of 1967 s. 45.]

Annual financial targets

53A. (1) The Minister shall, with the approval of the Treasurer, determine in writing delivered to the Port Authority by not later than 15 February in each year a financial target for the Port Authority for the next financial year and the Port Authority shall pursue a policy aimed at attaining that target, or that target as varied under subsection (4), during that financial year.

(2) A financial target determined by the Minister under subsection (1) shall be expressed as a real rate of return after current cost depreciation but before interest on the written down current cost of the assets of the Port Authority as calculated in accordance with subsection (3).

(3) The procedure to be used for the purposes of this section to calculate—

- (a) the real return after current cost depreciation but before interest which the Port Authority has attained or is attaining; and
- (b) the written down current cost of the assets of the Port Authority,

in respect of any financial year shall be as approved by the Minister and shall include—

- (c) the method to be used to calculate the return referred to in paragraph (a);
- (d) the assets, or classes of assets, to be considered assets of the Port Authority for the purposes of this section;
- (e) the method to be used to calculate the written down current cost of the assets of the Port Authority; and
- (f) where relevant, any transaction, resource or liability, or classes of transactions, resources or liabilities, to be adjusted and any method to be used for any such adjustments.

(4) Where, during a financial year, economic conditions beyond the control of the Port Authority are such that it is—

- (a) unlikely that the Port Authority will attain the financial target; or

(b) likely that the Port Authority will exceed the financial target, determined by the Minister under subsection (1), the Minister may, with the approval of the Treasurer, vary, in writing delivered to the Port Authority, the financial target determined under subsection (1).

(5) The annual report submitted by the Port Authority in accordance with section 66 (1) of the *Financial Administration and Audit Act 1985* shall include—

(a) a report; and

(b) supplementary financial statements, based on the procedure approved by the Minister under subsection (3), which for the purposes of that Act shall be deemed to be part of the financial statements prepared in accordance with section 66 (1) (a) of that Act for that annual report,

on the extent to which the Port Authority attained its financial target determined by the Minister under this section for the financial year the subject of the annual report.

[Section 53A inserted by No. 98 of 1987 s. 13.]

Payment of dividend to the State

53B. (1) The Port Authority shall, not later than one month after receiving the opinion of the Auditor General under section 93 of the *Financial Administration and Audit Act 1985*, beginning with the opinion received for the financial year ending on 30 June 1989, make a recommendation to the Minister as to whether a dividend should apply to the Port Authority for that financial year and, if a dividend should apply, what that dividend should be.

(2) Subject to this section, the Minister may, with the approval of the Treasurer, after receiving the recommendation of the Port Authority under subsection (1), determine the dividend that is to be paid by the Port Authority to the Treasurer for the credit of the Consolidated Revenue Fund for the relevant financial year.

(3) A dividend under this section shall be expressed as a proportion of the State's equity in the Port Authority for the relevant financial year.

(4) In making a determination under subsection (2) in respect of a financial year the Minister shall have regard to but shall not be bound by the recommendation of the Port Authority.

(5) The Port Authority shall pay the amount of a dividend payable under this section within one month after receiving the determination of the Minister under subsection (2) or such longer period as the Minister directs.

(6) In this section "State's equity in the Port Authority" in relation to a financial year means the amount calculated in accordance with the formula (A—L) where—

A means the written down current cost of the assets considered assets of the Port Authority under section 53A (3), as calculated under that section in respect of the financial year, which were acquired by the Port Authority for consideration or vested in the Port Authority by the State; and

L means the liabilities of the Port Authority that are identified, using the method approved by the Minister, as relating to the assets referred to in this subsection.

[Section 53B inserted by No. 98 of 1987 s. 13.]

Information to be provided to Minister

53C. The Minister may request, and the Port Authority shall provide, information and documents, including lists of assets, valuations, accounts and calculations—

(a) necessary to enable the Minister to make or vary a determination or give a direction; or

(b) relating to any recommendation made by the Port Authority, under sections 53A or 53B.

[Section 53C inserted by No. 98 of 1987 s. 13.]

Funds

54. (1) The funds necessary for the effectual exercise by the Port Authority of the powers conferred by this Act shall be—

(a) such moneys as are from time to time appropriated by Parliament for that purpose;

(b) the income derived by the Port Authority from all dues, charges, rents and other levies under the authority of this Act; and

(c) such moneys as the Port Authority may borrow under and subject to the provisions of this Act.

(2) All moneys referred to in subsection (1) shall be paid into and be placed to the credit of an account at the Treasury to be called "Bunbury Port Authority Account", and shall be applied to the purposes of this Act.

(3) The moneys from time to time in the Bunbury Port Authority Account shall be chargeable with—

(a) all capital expenditure incurred in connection with the acquisition by purchase or compulsory taking of land or land

and buildings or other property, or in connection with the establishment and maintenance of any works or undertakings vested in or to be carried on by the Port Authority under this Act;

- (b) the fees or remuneration and allowances payable to the chairman and other members of the Port Authority;
- (c) the salaries and wages of officers and servants employed in or in connection with the activities carried on by the Port Authority; and
- (d) all other expenditure lawfully incurred by the Port Authority in the exercise of its powers or the discharge of its duties or obligations under this Act.

[Section 54 inserted by No. 8 of 1963 s. 4; amended by No. 5 of 1967 s. 46.]

Power of Port Authority to borrow money from Treasurer

54A. (1) The Port Authority in addition to the powers conferred on it by sections 54B and 54C may borrow from the Treasurer to enable the Port Authority to defray expenditure incurred by it under this Act at any time when the moneys in the Bunbury Port Authority Account are not sufficient to meet that expenditure in full.

(2) The Port Authority shall pay to the Treasurer in respect of moneys borrowed pursuant to subsection (1) interest at such rate and at such times as the Treasurer shall determine.

(3) The moneys borrowed and the interest payable in respect thereof shall be a charge upon the moneys in the Bunbury Port Authority Account from time to time, and upon any works, undertakings and other assets vested in the Port Authority.

[Section 54A inserted by No. 8 of 1963 s. 5; amended by No. 5 of 1967 s. 47; No. 98 of 1985 s. 3.]

Power of Port Authority to borrow money on issue of debentures or inscribed stock

54B. (1) Subject to subsection (2), the Port Authority may at any time, and from time to time, with the approval of the Governor—

- (a) borrow and reborrow moneys by the issue and creation and sale of debentures and of inscribed stock for the purpose of raising the funds of the Port Authority for the effectual exercise by it of the powers conferred by this Act;
- (b) issue and create debentures and inscribed stock in exchange for any debentures and inscribed stock respectively issued in respect of moneys previously borrowed by the Port Authority and not repaid;

- (c) issue, create and sell debentures and inscribed stock for the purpose of borrowing money for redeeming any loans owing by the Port Authority, and for paying the expenses incurred in the issue and creation of the debentures and inscribed stock and otherwise carrying out the provisions of this Act; or
- (d) effect any conversion authorized by this section either by arrangement with the holders of the existing debentures or registered owners of inscribed stock, or by the purchase of the debentures or inscribed stock out of moneys raised by the sale of debentures and inscribed stock, or partly in the one way and partly in the other.

(2) The Governor shall not approve of the borrowing by the Port Authority of moneys under the provisions of this section, unless a proposal in writing showing—

- (a) the term and particulars of the proposed loan;
- (b) the rate of interest to be paid on the loan;
- (c) the purposes to which the money proposed to be borrowed is to be applied; and
- (d) the manner in which the loan is to be repaid,

is first submitted by the Port Authority to, and approved by, the Minister.

(3) Any moneys borrowed by the Port Authority under the provisions of this section—

- (a) may be raised as one loan or as several loans; and
- (b) may be raised—
 - (i) by the issue of debentures with or without interest coupons attached;
 - (ii) by the creation and issue of inscribed stock to be called "The Bunbury Port Authority Inscribed Stock";
 - (iii) partly as provided by subparagraph (i), and partly as provided by subparagraph (ii); or
 - (iv) in such other manner as the Governor may approve.

[Section 54B inserted by No. 8 of 1963 s. 5; amended by No. 5 of 1967 s. 48.]

Power to borrow to repay loan

54C. For the purpose of making provision to repay either the whole or any part of any loan raised by the Port Authority under the provisions of this Act, the Port Authority may with the consent of the Governor, and subject to section 54B (2), borrow the moneys necessary for that purpose before the loan or part of it becomes payable.

[Section 54C inserted by No. 8 of 1963 s. 5; amended by No. 5 of 1967 s. 49.]

Moneys borrowed charged on revenues of Port Authority and guaranteed by the State

54D. (1) Due payment of debentures and inscribed stock respectively issued or created under the provisions of section 54B and sold by the Port Authority, with all interest thereon, shall be charged on and secured upon the revenues of the Port Authority.

(2) For the purposes of subsection (1) "revenues" of the Port Authority means all dues, charges, rents and other levies authorized to be collected and received by the Port Authority.

(3) The due repayment of the principal moneys and the payment of all interest secured by debentures or inscribed stock issued or created by the Port Authority under the provisions of section 54B is hereby guaranteed by the Government of the State.

(4) Any sums required by the Treasurer for fulfilling any guarantee given by this Act shall be paid out of the Consolidated Revenue Fund which is hereby to the necessary extent appropriated accordingly, and any sums received or recovered by the Treasurer from the Port Authority or otherwise in respect of a sum so paid by the Treasurer shall be paid into the Consolidated Revenue Fund.

[Section 54D inserted by No. 8 of 1963 s. 5; amended by No. 5 of 1967 s. 50; No. 98 of 1985 s. 3.]

Provisions of Second Schedule to apply to debentures and inscribed stock

54E. (1) The provisions of Part I of the Second Schedule shall apply with respect to debentures and inscribed stock issued by the Port Authority under the provisions of section 54B.

(2) The provisions of Part II of that Schedule shall apply with respect to debentures issued under the provisions of section 54B.

(3) The provisions of Part III of that Schedule shall apply with respect to inscribed stock issued in Bunbury in the State under the provisions of section 54B.

[Section 54E inserted by No. 8 of 1963 s. 5; amended by No. 5 of 1967 s. 51.]

Debentures and inscribed stock authorized trustee investments

54F. (1) Debentures and inscribed stock issued and created by the Port Authority under the provisions of section 54B shall—

- (a) be securities authorized by the laws relating to the investment of trust moneys; and

- (b) have the status of Government securities within the meaning of any Act in force for the time being relating to friendly societies.

(2) Unless he is expressly forbidden by the instrument, if any, creating the trust, a trustee may invest trust funds in his hands in the debentures and inscribed stock referred to in subsection (1).

(3) The debentures and inscribed stock shall be a lawful investment for moneys which a body corporate is authorized or directed to invest, in addition to any other investments expressly authorized for the investment of the moneys.

(4) A trustee or body corporate may pursuant to this Act convert the debentures in his or its hands into inscribed stock.

[Section 54F inserted by No. 8 of 1963 s. 5; amended by No. 5 of 1967 s. 52.]

Validation

54FA. Notwithstanding that prior to the coming into operation of the *Acts Amendment (Port Authorities) Act 1979*, the Port Authority has—

- (a) borrowed moneys; or
- (b) used income derived by the Port Authority under this Act or moneys appropriated by Parliament,

for a purpose which would have been within the power of the Port Authority had that Act been in operation at the time but which was not then a purpose within the powers of the Port Authority, such borrowing and the use of such income or appropriated moneys, and the doing of any act, matter or thing with respect thereto, shall be deemed to be and to have been duly authorized and lawfully done and is hereby validated.

[Section 54FA inserted by No. 78 of 1979 s. 9.]

Contribution of interest and sinking fund

54G. (1) There shall be entered and debited each year in the Bunbury Port Authority Account such amounts as shall be fixed by the Treasurer as the interest and sinking fund contributions payable for the year in respect of such portion of the General Loan and Capital Works Fund as shall have been applied to the exercise by the Port Authority of any of the powers conferred upon it or the discharge of the duties imposed upon it by this Act.

- (2) Such contributions shall be paid to the Treasurer.

(3) The accrued interest in the sinking fund contributions as certified by the Under Treasurer shall be incorporated in the accounts of the Port Authority in relation to the exercise by it of the powers conferred upon it by this Act.

[Section 54G inserted by No. 8 of 1963 s. 5; amended by No. 5 of 1967 s. 53; No. 98 of 1985 s. 3.]

Interest on daily balance

54H. (1) Interest on the daily balance of money provided out of the Consolidated Revenue Fund for the purposes of this Act shall be charged in the books of account of the Port Authority in relation to the exercise of its powers and the discharge of its duties under this Act, and the amount of that interest shall be paid to the credit of the Consolidated Revenue Fund half-yearly or at such other times as the Treasurer may direct.

(2) The rate of interest shall be fixed from time to time by the Treasurer.

[Section 54H inserted by No. 8 of 1963 s. 5; amended by No. 5 of 1967 s. 54; No. 98 of 1985 s. 3.]

Financial self sufficiency

54I. (1) In managing its financial resources and performing its functions under this Act the Port Authority shall aim—

- (a) to make loan principal payments;
- (b) to make any deferred interest payments;
- (c) to meet all other liabilities; and
- (d) to pay any dividend determined by the Minister under section 53B,

as and when they fall due and to retain sufficient resources in the Port Authority to enable it to meet, in part, its future capital expenditure.

(2) Unless or until required by the Port Authority for any purpose referred to in subsection (1), all moneys available to the Port Authority may be used by it for any of the purposes of this Act and section 14 of the *Financial Administration and Audit Act 1985* has no application to those moneys.

[Section 54I inserted by No. 98 of 1987 s. 14.]

Application of *Financial Administration and Audit Act 1985*

54J. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Port Authority and its operations.

[*Section 54J inserted by No. 98 of 1985 s. 3.*]

Signatures on drafts and cheques

55. All drafts upon the Treasury or cheques drawn for expenditure by the Port Authority shall be signed by one member and countersigned by the general manager to the Port Authority.

[*Section 55⁴ inserted by No. 48 of 1959 s. 2; amended by No. 5 of 1967 s. 57.*]

[*56. Section 56 repealed by No. 98 of 1985 s. 3.*]

Reserve accounts

56A. The Port Authority may in respect of its works and undertakings establish in its books such reserve accounts as the Port Authority thinks fit subject to the approval of the Treasurer, and may in every year credit to each reserve account so established such sums as the Port Authority thinks fit.

[*Section 56A inserted by No. 8 of 1963 s. 6; amended by No. 5 of 1967 s. 59.*]

[*57., 58., 59., 60. Sections 57, 58, 59 and 60 repealed by No. 98 of 1985 s. 3.*]

Regulations

Power to make regulations

61. The Port Authority may make regulations under this Act for all or any of the following purposes—

- (1) The general conduct of its business and proceedings.
- (2) Prescribing the days upon which the ordinary meetings of the Port Authority shall be held.

[*(2a) deleted*]

- (3) The control, supervision, and guidance of its officers and servants.
- (4) Regulating all matters relating to the protection of life and property.

- (5) Regulating the landing, shipping, transshipping, deposit, removal, and keeping of gunpowder and other explosive substances and compounds, or other dangerous goods.
- (6) Regulating the times, places, order, and mode of the shipping, unshipping, landing, warehousing, stowing, and depositing of goods (with special regulations and restrictions in the case of dangerous goods), and the landing and embarking of passengers, and the taking in and discharge of ballast.
- (7) Imposing, levying and receiving all berthing dues, wharfage dues, and other tolls, rates, or charges.
- (8) The exemption of ships in the service of the Sovereign or of any British possession, or in the naval service of any foreign power, and of other vessels from port dues.
- (9) Regulating the use of wharfs or docks, quays, landing stages, and other landing places, and generally regulating the traffic on the same.
- (10) Fixing scales of dues, tolls, and charges to be paid for the use thereof.
- (11) Fixing scales of dues for the storage of goods and charges to be paid for taking into and delivering the same from warehouses or buildings belonging to or in the occupation of the Port Authority.
- (12) Regulating the use of cranes, weighing and other machines, weights and measures, conveniences or appliances belonging to the Port Authority, and fixing charges to be paid for the use of the same.
- (13) Regulating the cleansing, repair, and effectual preservation of docks and wharves and providing for the keeping and maintenance of the same in a fit state for the convenience of persons walking upon or landing or embarking from any such wharf.
- (14) Regulating the duties and conduct of all persons, as well the servants of the Port Authority as others not being officers of customs, who are employed or engaged in the port.
- (15) The guidance of porters, cabdrivers, carters, carmen, and others carrying goods or driving horses, cabs, carriages, wagons, carts, drays, trucks, or other vehicles for conveying passengers or goods, and other commodities on any wharf.
- (16) Empowering a collector of dues, either alone or with other persons, to enter a ship in order to ascertain the dues payable in respect of the ship or of the goods therein.
- (17) Requiring the master of every ship to report his arrival within a specified time after his arrival.
- (18) Requiring the master of every ship to produce his certificate of registry to any officer on demand.

- (19) Requiring the master of every ship to give as many copies as may be required by the Port Authority of the bill of lading or manifest of the cargo, or other proper account of goods intended to be unshipped, and the name of the consignee or other person to whom they are intended to be delivered, and as many copies as may be required by the Port Authority of all alterations in or additions to such bill of lading, manifest, or other proper account.
- (20) Requiring the master of every ship to obtain permission to discharge cargo before doing so.
- (21) Requiring the shippers of goods to furnish accounts of the goods intended to be shipped.
- (22) Regulating the time when dues on goods shipped or unshipped are to be payable.
- (23) Limiting the liability of the Port Authority for goods deposited, stored, in transit, warehoused, landed, lodged, or left on any part of the property of the Port Authority, including all wharves and sheds, in case of damage to or loss of such goods from any cause whatever.
- (24) Prohibiting persons from acting as porters, cab-drivers, carters, carmen or otherwise in the carriage of goods or passengers without previously obtaining and continuing to hold the licence of the Port Authority and prescribing the duration of and the fees for such licences, and providing that the issue of any such licence and the cancellation thereof shall be at the absolute discretion of the Port Authority.
- (25) Authorizing and empowering the Port Authority in its discretion, to adopt the weight or measurement of goods set forth in the bill of lading or manifest of the goods, for the purpose of levying, imposing, charging, and collecting dues, and charges under this Act.
- (26) Regulating and limiting the speed of vessels within the port.
- (26a) Prescribing all matters and things which are required to be prescribed or which it may be necessary or convenient to prescribe with respect to debentures and inscribed stock issued and created by the Port Authority under this Act.
- (27) And for other purposes relating to the convenience of shipping, or of the public, within the port, and generally for duly administering and carrying out the powers vested in the Port Authority by this Act.

[Section 61 amended by No. 51 of 1957 s. 3; No. 48 of 1959 s. 2; No. 8 of 1963 s. 6; No. 9 of 1965 s. 4; No. 5 of 1967 s. 64.]

Penalties for breach of regulations**62.** Every regulation—

- (1) may impose a penalty not exceeding \$200 for the breach thereof; and
- (2) may provide that, in addition to the penalty, any expense incurred by the Port Authority in consequence of the breach of such regulation shall be paid by the person committing such breach.

[Section 62 amended by No. 113 of 1965 s. 4 (1); No. 5 of 1967 s. 65.]

Adoption of rules, codes, etc.**62A.** Any regulations made under this Act may—

- (a) adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, regulations, codes, instructions or other subordinate legislation made, determined or issued under any other Act or under any Act of the Parliament of the Commonwealth or the United Kingdom, or any of the standards, rules, codes or specifications of the bodies known as the Standards Association of Australia, the British Standards Institution, The Association of Australian Port and Marine Authorities, or other like body specified in the regulations; and
- (b) provide that where by reason of unavailability of materials or other reason that the Port Authority considers valid any requirement adopted by the regulations cannot be conformed to, the Port Authority may approve such use of materials or other matters as it considers to be consistent with the achievement of the objects of the regulations.

[Section 62A inserted by No. 12 of 1976 s. 5.]

[63. Section 63 repealed by No. 5 of 1967 s. 66.]

Miscellaneous

[64. Section 64 repealed by No. 5 of 1967 s. 67.]

Governor may rectify irregularities

65. Whenever by any misadventure or accident anything is at any time done after the time required by this Act or the regulations, or is otherwise irregularly done in matter of form, the Governor may, from time to time, make provision for any such case, or may extend the time

within which anything is required to be done, or may validate anything so done after the time required, or irregularly done in the matter of form, so that the true intent and purpose of this Act and the regulations may have effect.

Penalty for not complying with directions of berthing master

66. The master of any vessel who, after the service on him of notice in writing signed by the berthing master or any officer acting on behalf of the berthing master, does not forthwith regulate such vessel according to such directions, shall be liable to a penalty not exceeding \$200.

[Section 66 amended by No. 113 of 1965 s. 4 (1); No. 5 of 1967 s. 68.]

Restriction on deposit of ballast or rubbish

67. If any person commits any of the following offences, so as to be or tend to the injury of navigation, that is to say—

- (1) casts, or causes to be cast, or suffers to fall, either from on board ship or from land, any ballast, rock, stone, slate, shingle, gravel, sand, earth, cinders, rubbish, or other substance or thing, on any tidal land, or into the port, or tidal water, or into the sea below low water-mark; or
- (2) casts, or causes to be cast, or suffers to fall, any such substance or thing on land, in a position where the same may be liable to fall or descend, or be carried or washed down by ordinary or high tides, or by any stream or flow of water, or by any storm or flood, or otherwise, into the port or tidal water, or into the sea; or
- (3) casts, or places or leaves, or causes to be cast, placed, or left, any ship or boat laid by or neglected as unfit for sea service, any floating or other timber, or any other thing on any tidal lands, or in the port or tidal water, or in the sea,

he shall be guilty of an offence, and for each offence shall be liable to a penalty not exceeding \$100, and to pay the expenses of the removal to a proper position of any substance or thing.

[Section 67 amended by No. 113 of 1965 s. 4 (1); No. 5 of 1967 s. 69.]

Series of acts tending to the injury of navigation

68. Any act shall be deemed to tend to the injury of navigation, within the meaning of this Act, in any case where a series of like acts has produced or would produce injury to navigation.

Penalty for wilful damage to works

69. Any person who wilfully destroys or in any way damages or injures any wharf, shed, roadway, building, or other port work whatsoever, or any part thereof, constructed or in course of construction, shall be liable for every such offence, to a fine not exceeding \$300, or to imprisonment not exceeding 12 calendar months, with or without hard labour.

[Section 69 amended by No. 113 of 1965 s. 4 (1); No. 5 of 1967 s. 70.]

Penalty for wilful damage to lights

70. If any person wilfully or negligently breaks or damages or takes away any lamp or other appliance used for the purpose of lighting any wharf, quay, pier, or any road or dock, or other place, or wilfully extinguishes any light, every person so offending shall be liable to a penalty not exceeding \$100.

[Section 70 amended by No. 113 of 1965 s. 4 (1); No. 5 of 1967 s. 71.]

Offence incurring penalty

71. If any person—

- (a) fails, refuses, or neglects to do, or in any manner obstructs, impedes, or interferes with the doing of anything enjoined or authorized to be done; or
- (b) wilfully does anything prohibited by this Act; or
- (c) molests or makes use of any threatening language to any engineer, surveyor, berthing master, pilot, or other officer or person acting in the execution of his duty, and whether under the authority of the Governor or the Minister, or of the Port Authority; or
- (d) in any other respect offends against any of the provisions of this Act or any regulation thereunder,

every such person in any such case so offending shall, where no other penalty is in that behalf specifically provided, be liable to a penalty not exceeding \$100.

[Section 71 amended by No. 113 of 1965 s. 4 (1); No. 5 of 1967 s. 72.]

Penalty for offering bribes to officers

72. Any person who gives or offers any reward or bribe to any officer or servant of the Port Authority for the purpose of gaining an undue preference in the execution of his office, or for the purpose of inducing him to do or omit to do anything relating to his office, shall,

for every such offence, be liable to a penalty not exceeding \$300, or to imprisonment not exceeding 12 calendar months, with or without hard labour.

[Section 72 amended by No. 113 of 1965 s. 4 (1); No. 5 of 1967 s. 73.]

Summary procedure for offence, or breach of regulations

73. Any offence against this Act, and any breach of any of the provisions thereof or of any regulation thereunder, may be heard and determined summarily by any 2 or more Justices of the Peace in the manner provided by the *Justices Act 1902*.

What shall be sufficient averment

74. In any proceedings for any offence, the averment that such offence was committed within the limits of the port, shall be sufficient, without proof of such limits, unless the contrary is proved.

[Section 74 amended by No. 5 of 1967 s. 74.]

Application of penalties

75. All penalties recovered for offences against this Act, or against all regulations thereunder, shall be paid to the Port Authority, and the proceeds of such penalties are hereby appropriated for the purposes of this Act.

[Section 75 amended by No. 5 of 1967 s. 75.]

Police officers to report on any offence, or breach of regulations

76. It shall be the duty of every police officer and constable who is aware or has reason to believe that any of the provisions of the Act or the regulations thereunder are being contravened, to forthwith report the matter to the general manager to the Port Authority.

[Section 76 amended by No. 5 of 1967 s. 76.]

Offenders may be prosecuted under other Acts

77. When an offender is punishable under the provisions of this Act, and also under the provisions of some other Act, he may be prosecuted and convicted under the provisions of either Act, so that he is not punished twice for the same offence.

FIRST SCHEDULE

Bounded by lines starting from the intersection of the West side of the Breakwater with the sea coast at Casuarina Point and extending North-Easterly along said side of Breakwater and onwards to the South-West corner of Leschenault Location 24; thence South-Westerly and Westerly along the Eastern and Southern shores of Koombana Bay to Point Macleod at the entrance to Leschenault Estuary; thence Easterly and North-Easterly along the Northern and North-Western Shores of Leschenault Inlet to a point North of the right bank of the Preston River at its mouth; thence South to the said right bank; thence Westerly, South-Westerly, and Westerly following the Eastern and Southern Shores of the Leschenault Estuary aforesaid and the Western Shore of Koombana Bay to the shore end of the jetty; and thence North-Westerly along the sea coast to the starting point.

[First Schedule amended by No. 8 of 1963 s. 8; also amended in Gazettes 2 July 1976 pp. 2307-8; 4 February 1978 p. 576; 6 March 1981 p. 911.]

SECOND SCHEDULE

PART I—DEBENTURES AND INSCRIBED STOCK

The following provisions shall apply to debentures and inscribed stock issued by the Port Authority under the provisions of section 54B:—

Interest, redemption and paying off

1. All debentures and inscribed stock—
 - (a) shall bear interest at such rate and be redeemable on such date and at such place as the Port Authority may, with the approval of the Governor, determine; and
 - (b) may with the consent of the holder or the registered owner thereof, as the case may be, be paid off at any time before the due date for repayment, at not more than the face value thereof.

When interest payable

2. Interest secured by any debentures or inscribed stock issued or created pursuant to this Act shall be payable half-yearly on such days at such places as the Port Authority determines.

Debentures and stock interchangeable

3. The Port Authority may, at the request of the holder of a debenture or of the registered owner of inscribed stock issued or created pursuant to this Act, in lieu thereof issue to him inscribed stock or debentures, as the case may be, in respect of the same loan, and of the same amount, and of the same currency, and bearing the same interest.

Brokerage

4. The Port Authority may pay moneys by way of brokerage for the making, procuring, negotiating, or obtaining the loan or any money borrowed under the authority conferred by section 54B.

Sinking fund

5. (1) The Port Authority shall set aside half-yearly by way of a sinking fund for the purpose of redeeming any loans raised by the Port Authority pursuant to section 54B an amount calculated at a rate approved by the Treasurer and sanctioned by the Governor.

(2) When it is necessary to have resort to any sinking fund referred to in subclause (1) for the purpose of paying off either the whole or any part of any loan in respect of which the fund is provided, the Port Authority may sell any securities in which the fund is invested, or may obtain an advance thereon from any bank or from the Treasurer of the State.

Notice of trust not receivable

6. No notice of any trust, express, implied or constructive, shall be received by the Port Authority or by an officer of the Port Authority in relation to a debenture or inscribed stock issued or created pursuant to this Act, and the Port Authority or the officer shall not be bound to see to the execution of the trust to which the debenture or inscribed stock may be subject.

Owners of securities not responsible for application of moneys

7. A person advancing money to the Port Authority and receiving in consideration of the advance a debenture or inscribed stock issued under this Act shall not be bound to inquire into the application of the money advanced or be in any way responsible for the non-application or misapplication thereof.

PART II—DEBENTURES

The following provisions shall apply to debentures issued by the Port Authority under this Act:—

Form of debenture

1. A debenture shall be in the form prescribed by the regulations.

Sealing and numbering

2. A debenture shall—

- (a) be sealed with the common seal of the Port Authority in the manner prescribed by the regulations; and
- (b) be numbered consecutively beginning with the number one and proceeding in an arithmetical progression whereof the common difference is one.

Pass by delivery

3. A debenture with the interest coupons annexed thereto and every interest coupon after being detached therefrom shall pass by delivery and without any assignment or endorsement.

Rights of bearer

4. The bearer of a debenture or detached interest coupon shall have the same rights as if he were expressly named as payee therein.

Payment of interest

5. No interest shall be payable in respect of a debenture except to the holder of the coupon representing the interest claimed and upon delivery of the same.

Register of debentures

6. (1) The Port Authority shall cause to be kept in one or more books a register of debentures, and within a reasonable time after the date of a debenture shall cause to be made an entry in the register specifying the number, date and amount of the debenture.

(2) The register of debentures—

- (a) may be inspected at all reasonable times by a person on payment of 10 cents for each inspection; and
- (b) shall be evidence of any matters required or authorized by or under this Act to be inserted therein.

(3) A person shall be entitled to obtain from the Port Authority copies or extracts certified by the officer in whose custody the register is kept to be true copies of or extracts from such register upon payment for each copy or extract of a fee of 25 cents and 2 cents for every folio of 72 words; and any copy or extract so certified shall be admissible in evidence.

Provision for lost debentures

7. Upon proof being made before a judge in chambers by affidavit of any credible person that a debenture issued by the Port Authority under this Act and held by such person the number and sum whereof is specified by him has been lost or accidentally burnt or otherwise destroyed before the same has been paid off, and after the insertion of such advertisements as the judge directs and upon the judge certifying that he is satisfied with the proof, the Port Authority may after the expiration of 6 months cause a new debenture with interest coupons attached to be made having the like currency and bearing the same number, date principal sum and rate of interest as the debenture so lost or destroyed and to be delivered to the person upon his giving sufficient security to the Port Authority to indemnify it against any double payment.

Provision for defaced debentures

8. If a debenture is defaced by accident—

- (a) the Port Authority may cancel the same and cause a new debenture to be made in lieu thereof; and
- (b) the new debenture shall have the like currency and be in all respects subject to the same provisions and bear the same number, date and principal sum and rate of interest as the cancelled debenture.

Discharged debentures to be destroyed

9. (1) A debenture paid off, discharged, exchanged or converted into stock shall—

- (a) be cancelled by the general manager to the Port Authority; and
- (b) be burnt in the presence of the general manager and the Auditor General or one of his officers thereto authorized by him in writing.

(2) The Auditor General or such officer (as the case may be) before the debenture is burnt shall audit the same and allow the accounts thereof and furnish the Port Authority with a certificate particularizing the debenture so burnt; and the general manager shall file that certificate in the office of the Port Authority.

PART III—STOCK

The following provisions shall apply to The Bunbury Port Authority Inscribed Stock issued at Bunbury, Western Australia (in this Part called "stock"):

Establishment of registry and appointment of registrar

1. The Port Authority may establish at its office a registry for the inscription of stock created and issued under the authority of this Act and appoint an officer of the Port Authority to be registrar of stock.

Parcels of stock

2. Stock may be sold by the Port Authority for ready money in parcels or amounts of \$20 or some multiple of \$20.

Stock ledgers

3. (1) The Port Authority shall cause to be provided and kept at the office of the Port Authority books to be called "stock ledgers".

(2) All stock issued shall be inscribed in the stock ledgers by entering the names of the purchasers of stock and the amount of stock purchased by them respectively.

(3) In the case of joint purchasers of stock the names of not more than 4 of them shall be inscribed as the joint purchasers.

(4) The stock ledgers shall be evidence of any matters appearing therein and required or authorized by or under this Act to be inserted therein.

Transfer of stock

4. (1) Stock or any share therein shall be transferable in the manner prescribed by the regulations from one person to another by instrument in the form so prescribed and not otherwise.

(2) A person shall not be entitled or allowed to transfer any fraction of one dollar or any smaller sum than \$20 unless that smaller sum is the full amount of the balance standing to his credit in the stock ledger.

(3) An instrument of transfer of the stock or any share therein shall be executed by all parties and the signatures to the instrument shall be attested in the manner prescribed by the regulations.

(4) An instrument of transfer when executed shall be delivered to the registrar who shall register the same by entering a memorial of it in the stock ledger and shall inscribe the name of the transferee in the stock ledger as the owner of the stock.

Application for transmission (other than transfer) of stock

5. (1) A person to whom stock is transmitted in consequence of the death or bankruptcy or insolvency of the registered owner of the stock or by any other lawful means than by a transfer in accordance with this Act may apply in the form prescribed by the regulations to the registrar at the registry to be inscribed as the owner of the stock.

(2) An application for transmission shall be verified by statutory declaration or in such other manner as is so prescribed, and—

- (a) in the case of a transmission consequent on death—the probate of the will or the letters of administration shall be produced to the registrar or in the case of transmission to a survivor or the survivors of a joint owner a certificate of the death of the owner who has died accompanied by a statutory declaration identifying the person named in the death certificate with the person who is shown as the registered owner of the stock may if the registrar approved be produced to him in lieu of probate or letters of administration; and
- (b) in the case of a transmission consequent on bankruptcy or insolvency—an office copy of the adjudication or order of sequestration shall be delivered to the registrar.

(3) The registrar shall if he is satisfied that the provisions of this Act have been complied with register any such transmission by entering a memorial of it in the stock ledger and inscribe the name of the person to whom the stock has been transmitted in the stock ledger as the registered owner of the stock.

Power of attorney

6. (1) A person may by power of attorney under his hand and seal and attested by 2 or more credible witnesses appoint some person to be his attorney for any purpose in relation to stock (including an application for conversion or to receive interest or redemption money).

(2) A power of attorney shall be valid and effectual for all purposes therein mentioned until notice of its revocation or of the bankruptcy, insolvency, lunacy, unsoundness of mind or death of the principal has been received by the registrar at the registry.

When transfer books to be closed and ledgers balanced

7. (1) An instrument of transfer of stock or of any part thereof shall not be registered on any Saturday or holiday or within the period of 14 days or within such period (not exceeding 21 days) as is prescribed next before any of the days on which the interest thereon is payable.

(2) During the periods referred to in the last preceding subclause the Port Authority shall cause the amount of the stock respectively standing to the credit of the several registered owners thereof to be ascertained and the balances to be struck and carried forward in the proper stock ledger.

(3) An instrument of transfer of stock or of any part thereof shall not be registered during the period of 21 days immediately preceding the date of maturity of stock.

Receipt of registered stockholders to discharge without regard to trust

8. (1) The receipt of the person in whose name stock stands in the stock ledger, or if it stands in the names of more persons than one the receipt of one of the persons named in the stock ledger shall be a sufficient discharge to the Port Authority for any interest payable in respect of the stock, notwithstanding any trusts to which the stock may then be subject and whether or not the Port Authority has had notice of the trusts, and the Port Authority shall not be bound to see to the application of the money paid upon such receipt.

(2) If stock is held in joint names and one or more of the registered owners of the stock dies, becomes bankrupt, insolvent or otherwise legally incapable, the receipt of any one of the other joint owners or survivors shall be a sufficient discharge to the Port Authority for any interest payable in respect of the stock, notwithstanding that a transmission has not been registered as required by this Act.

[Second Schedule inserted by No. 8 of 1963 s. 9; amended by No. 113 of 1965 s. 4 (1); No. 5 of 1967 s. 77; No. 113 of 1987 s. 32.]

NOTES

¹ This reprint is a compilation as at 2 January 1991 of the *Bunbury Port Authority Act 1909* and includes all amendments effected by the other Acts referred to in Part I of the following table and the notices referred to in Part II of the following Table.

Table of Acts and Notices

Part I—Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Bunbury Port Authority Act 1909</i>	22 of 1909	6 February 1909	20 May 1909 (see <i>Gazette</i> 21 May 1909 p. 1613)	Short title subsequently amended (see footnote to section 1.)
<i>Limitation Act 1935, Section 48A</i>	35 of 1935	7 January 1936	The relevant amendment as set out in the Second Schedule took effect on 1 March 1955 (see <i>Gazette</i> 18 February 1955 p. 343)	
<i>Bunbury Harbour Board Act Amendment Act 1957</i>	51 of 1957	9 December 1957	9 December 1957	
<i>Bunbury Harbour Board Act Amendment Act 1959</i>	48 of 1959	20 November 1959	20 November 1959	
<i>Bunbury Harbour Board Act Amendment Act 1963</i>	8 of 1963	15 October 1963	15 October 1963	
<i>Bunbury Harbour Board Act Amendment Act 1965</i>	9 of 1965	15 September 1965	15 September 1965	
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see section 2 (2)); Balance: 21 December 1965	
<i>Bunbury Harbour Board Act Amendment Act 1967</i>	5 of 1967	5 October 1967	1 December 1955 (see <i>Gazette</i> 18 February 1955)	
<i>Acts Amendment (Port and Marine Regulations) Act 1976, Part II</i>	12 of 1976	27 May 1976	27 May 1976	

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Port Authorities) Act 1979, Part II</i>	78 of 1979	6 December 1979	6 December 1979	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, Section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p. 2255)	
<i>Acts Amendment (Port Authorities) Act 1986, Part III</i>	79 of 1986	4 December 1986	4 December 1986	
<i>Bunbury Port Authority Amendment Act 1987</i>	53 of 1987	5 November 1987	3 December 1987	
<i>Acts Amendment (Port Authorities) Act 1987, Part III</i>	98 of 1987	16 December 1987	Sections 8, 14, 20, 26, 32 and 38: 1 July 1988 (see section 2 (2)); Balance: 16 December 1987	
<i>Acts Amendment (Public Service) Act 1987, Section 30</i>	113 of 1987	31 December 1987	16 March 1988 (see <i>Gazette</i> 16 March 1988 p. 813)	

Part II—Notices

Notice	Gazettal	Commencement	Miscellaneous
<i>Amendment Notice</i>	2 July 1976 pp. 2307-08	2 July 1976	
<i>Amendment Notice</i>	24 February 1978 p. 576	24 February 1978	
<i>Amendment Notice</i>	6 March 1981 p. 911	6 March 1981	

N.B. The *Bunbury Port Authority Act 1909* is affected by the *Harbours and Jetties Act 1928* (section 2) and the *Unclaimed Money Act 1990* (Section 9).

2. Title of department changed pursuant to section 7 (3) (b) of the *Reprints Act 1984*.

3. Section 10 of Act No. 79 of 1986 reads as follows:

10. (1) A person who was immediately before the coming into operation of this Act a member of the Port Authority within the meaning of the principal Act shall, subject to the principal Act, continue to hold office as such a member for the remainder of his period of office as if the principal Act had not been amended by this Act.

(2) A member of the Port Authority within the meaning of the principal Act who was immediately before the coming into operation of this Act the chairman of that Port Authority shall, subject to the principal Act, continue to hold office as that chairman for the remainder of his period of office as—

(a) that chairman; or

(b) a member of that Port Authority,

whichever is the shorter period, as if the principal Act had not been amended by this Act.

4. Section 55 (2) of Act No. 48 of 1959 reads as follows:

(2) This section shall come into operation on the first day of December, 1959.