

— PART 1 —

TRANSPORT

TR301*

Port Authorities Act 1999

Port Authorities (Act Amendment) Regulations 2003

Made by the Governor in Executive Council under section 91(2) of the Act on the recommendation of the Minister.

1. Citation

These regulations may be cited as the *Port Authorities (Act Amendment) Regulations 2003*.

2. The Act amended

The amendments in these regulations are to the *Port Authorities Act 1999**.

[* *Act No. 22 of 1999*.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 295, and Act No. 20 of 2002.]

3. Schedule 5 replaced

Schedule 5 is repealed and the following Schedule is inserted instead —

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Schedule 5 — Financial administration and audit

[s. 91(1)]

Division 1 — Preliminary

1. Interpretation

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

“**financial year**” has the meaning given by clause 23(1);

“**regulations**” means regulations made under the Corporations Act.

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

Division 2 — Financial records**2. Obligation to keep financial records***(cf. s. 286 Corporations Act)*

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

3. Physical format*(cf. s. 288 Corporations Act)*

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

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

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

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

- (1) A director has a right of access to the financial records at all reasonable times.
- (2) On application by a director, the Supreme Court may authorise a person to inspect the financial records on the director's behalf.

- (3) A person authorised to inspect records may make copies of the records unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make any other orders it considers appropriate, including either or both of the following —
 - (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;
 - (b) an order limiting the right of a person who inspects the records to make copies in accordance with subclause (3).

Division 3 — Financial reporting

Subdivision 1 — Annual financial reports and directors' reports

6. Preparation of annual financial reports and directors' reports

(cf. s. 292 Corporations Act)

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

7. Contents of annual financial report

(cf. s. 295 Corporations Act)

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

- (d) whether, in the directors' opinion, the financial statements and notes are in accordance with this Schedule, including —
 - (i) clause 8 (compliance with accounting standards and regulations); and
 - (ii) clause 9 (true and fair view).
- (5) The declaration must —
 - (a) be made in accordance with a resolution of the directors;
 - (b) specify the date on which the declaration is made; and
 - (c) be signed by at least 2 directors.
- 8. Compliance with accounting standards and regulations**
(cf. s. 296 Corporations Act)
 - (1) The financial report for a financial year must comply with the accounting standards.
 - (2) The financial report must comply with any further requirements in the regulations.
- 9. True and fair view**
(cf. s. 297 Corporations Act)
 - (1) The financial statements and notes for a financial year must give a true and fair view of —
 - (a) the financial position and performance of the port authority; and
 - (b) if consolidated financial statements are required — the financial position and performance of the consolidated entity.
 - (2) This clause does not affect the obligation under clause 8 for a financial report to comply with accounting standards.
- 10. Annual directors' report**
(cf. s. 298 Corporations Act)
 - (1) A port authority must prepare a directors' report for each financial year.
 - (2) The report must include —
 - (a) the general information required by clause 11; and
 - (b) the specific information required by clause 12.
 - (3) The report must —
 - (a) be made in accordance with a resolution of the directors;
 - (b) specify the date on which the report is made; and
 - (c) be signed by at least 2 directors.
- 11. Annual directors' report — general information**
(cf. s. 299 Corporations Act)
 - (1) The directors' report for a financial year must —
 - (a) contain a review of operations during the year of the port authority and the results of those operations;

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

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

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

- (b) the number of meetings of the board held during the year and each director's attendance at those meetings; and
- (c) the number of meetings of each board committee held during the year and each director's attendance at those meetings.

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

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

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

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

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

Subdivision 2 — Audit and auditor's report

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

The Auditor General must form an opinion about —

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

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

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

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

The Auditor General —

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

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

An officer of the port authority must —

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

Subdivision 3 — Special provisions about consolidated financial statements

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

If a port authority has to prepare consolidated financial statements, a director or officer of a controlled entity must

give the port authority all information requested that is necessary to prepare the consolidated financial statements and the notes to those statements.

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

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

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

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

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

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

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

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

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

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

Division 4 — Accounting standards**24. Accounting standards**
(cf. s. 334 Corporations Act)

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

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

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

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

In interpreting an accounting standard —

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

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

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

Division 5 — Extension of time**28. Extension of time**

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

Division 6 — Sanctions for contraventions of this Schedule**29. Contravention of Divisions 2 and 3
(cf. s. 344 Corporations Act)**

- (1) A director of a port authority contravenes this subclause if he or she fails to take all reasonable steps to comply with, or to secure compliance with, Division 2 or 3.
- (2) The penalty applicable to a contravention of subclause (1) is —
 - (a) in a case to which paragraph (b) does not apply, \$5 000; or
 - (b) if the offence was committed with intent to deceive or defraud the Minister or the Treasurer or creditors of the port authority, \$20 000 or imprisonment for 5 years or both.
- (3) Subclause (1) does not apply to clause 17, 18, 20 or 21.

Division 7 — Miscellaneous**33. Treasurer's power to make specific exemption orders
(cf. s. 340 Corporations Act)**

- (1) On an application made in accordance with subclause (3) in relation to a port authority, the Treasurer may make an order in writing relieving any of the following from all or specified requirements of Divisions 2 and 3 —
 - (a) the directors;
 - (b) the port authority;
 - (c) the Auditor General.
- (2) The order may —
 - (a) be expressed to be subject to conditions; and
 - (b) be indefinite or limited to a specified period.
- (3) The application must be —
 - (a) authorised by a resolution of the directors;
 - (b) in writing and signed by a director; and
 - (c) lodged with the Treasurer.

- (4) The Treasurer must give the port authority concerned written notice of the making, revocation or suspension of the order.
- (6) If the Treasurer makes an order under subclause (1) the Treasurer is to cause the text of the order to be laid before each House of Parliament or dealt with under section 133 within 14 days after the order is made.

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

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

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

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

- (1) In subclause (2) —
“the prescribed day” means the tenth working day after receipt by the directors under clause 16 of the Auditor General’s report.
- (2) A port authority must as soon as practicable but not later than the close of business on the prescribed day in each year send to the Minister a copy of the annual report required by section 68.

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

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

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

37. Audit

- (1) If the Auditor General cannot complete the audit of a port authority by 30 September in any year he or she is to submit an interim report to the Minister setting out the reasons for the inability to complete the audit by that date, and the Minister is to cause copies of the report to be laid before each House of Parliament or dealt with under section 133 within 14 sitting days after receiving that report.
- (2) Section 92 of the *Financial Administration and Audit Act 1985* applies to the audit of a port authority.

44. Powers and duties of the Auditor General

- (1) If the Auditor General in the course of the performance of duties as auditor of a port authority and its subsidiaries, is satisfied that —
- (a) there has been a contravention of any provision of this Schedule; and
 - (b) the circumstances are such that in the Auditor General's opinion the matter has not been or will not be adequately dealt with by comment in the Auditor General's report on the financial statements or by bringing the matter to the notice of the board of the port authority,
- the Auditor General is to report the matter to the Minister, in writing as soon as is practicable.
- (4) The provisions of sections 78 to 80 and 82 to 91 and section 95 of the *Financial Administration and Audit Act 1985* apply to a port authority as if it were a statutory authority named in Schedule 1 of that Act.

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Recommended by the Minister for Planning and Infrastructure.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.