

WESTERN AUSTRALIA

PORTS (FUNCTIONS) ACT 1993

(No. 46 of 1993)

ARRANGEMENT

PART 1 — PRELIMINARY

1. Short title
2. Commencement

PART 2 — PORT AUTHORITIES

Division 1 — Preliminary

3. Interpretation
4. Relationship with port authority Acts

Division 2 — Relationship with the Crown

5. Port authorities are agents of the Crown
6. Minister may give directions
7. Minister to have access to information

Ports (Functions) Act 1993

Division 3 — Additional provisions about members

8. Interpretation
9. Duties of members
10. Disclosure of interests
11. Continuation in office

Division 4 — Additional functions

12. Provision of facilities and services
13. Agreements and business arrangements
14. Granting easements, leases or licences

Division 5 — Pilotage

15. Interpretation
16. Port authority to approve pilots etc.
17. Pilotage compulsory in ports
18. Pilot under authority of master
19. Liability of owner or master of a vessel
20. Crown etc., pilot and employer not liable for pilot's negligence

Division 6 — Harbour masters

21. Interpretation
22. Appointment
23. Principal and other functions
24. Directions to masters etc.
25. Directions as to wreckage
26. Limit on power to order removal of vessel or wreckage
27. Removal of unowned vessels etc.
28. Offence of not obeying direction
29. Powers if direction not obeyed
30. Recovery of costs
31. Immunity from liability
32. Offence of hindering

Division 7 — Additional financial provision

33. Interest on overdue amounts

Ports (Functions) Act 1993

Division 8 — Additional powers to make regulations

34. Regulations about liability of port authorities

Division 9 — Regulations for Divisions 4 to 7

35. Power to make regulations
36. Governor may make model regulations

***Division 10 — General amendment to all
port authority Acts***

37. New section about funds

PART 3 — MARINE AND HARBOURS ACT 1981

38. Principal Act
39. Section 5A inserted
40. Section 14A inserted

PART 4 — SHIPPING AND PILOTAGE ACT 1967

41. Principal Act
42. Section 3 amended
43. Section 8 amended
44. Section 10 amended
45. Schedule amended

PART 5 — MISCELLANEOUS

46. Consequential and minor amendments
47. Validation (Port Hedland)
48. Harbour masters (transitional)
49. Dampier pilotage services agreements (transitional)
50. Existing port authority regulations (saving)

SCHEDULE 1

CONSEQUENTIAL AND MINOR AMENDMENTS

PART 1 — *ALBANY PORT AUTHORITY ACT 1926*

PART 2 — *BUNBURY PORT AUTHORITY ACT 1909*

PART 3 — *DAMPIER PORT AUTHORITY ACT 1985*

PART 4 — *ESPERANCE PORT AUTHORITY ACT 1968*

PART 5 — *FREMANTLE PORT AUTHORITY ACT 1902*

PART 6 — *GERALDTON PORT AUTHORITY ACT 1968*

PART 7 — *PORT HEDLAND PORT AUTHORITY ACT 1970*

PART 8 — *POLLUTION OF WATERS BY OIL AND NOXIOUS
SUBSTANCES ACT 1987*

PORTS (FUNCTIONS) ACT 1993

No. 46 of 1993

AN ACT to provide port authorities with added functions (including control over pilotage), to provide for other matters in relation to port authorities, to amend Acts relating to port authorities and the —

- *Marine and Harbours Act 1981*; and
- *Shipping and Pilotage Act 1967*,

and for other related or minor purposes.

[Assented to 20 December 1993.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Ports (Functions) Act 1993*.

Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

PART 2 — PORT AUTHORITIES

Division 1 — Preliminary

Interpretation

3. In this Part —

“port” means —

- (a) the port of Albany;
- (b) the port of Bunbury;
- (c) the port of Dampier;
- (d) the port of Esperance;
- (e) the port of Fremantle;
- (f) the port of Geraldton;
- (g) the port of Port Hedland,

as described in the port authority Act relating to that port;

“port authority” means a port authority constituted under a port authority Act;

“port authority Act” means the —

- (a) *Albany Port Authority Act 1926*;
- (b) *Bunbury Port Authority Act 1909*;
- (c) *Dampier Port Authority Act 1985*;
- (d) *Esperance Port Authority Act 1968*;

- (e) *Fremantle Port Authority Act 1902*;
- (f) *Geraldton Port Authority Act 1968*;
- (g) *Port Hedland Port Authority Act 1970*;

“**vessel**” means anything used, or capable of being used, to move people or things by water and it does not matter —

- (a) that such a thing is ordinarily stationary; or
- (b) how any such thing is moved or propelled.

Relationship with port authority Acts

4. (1) Each of the port authority Acts is to be read as one with this Part.

(2) If a provision in this Part conflicts or is inconsistent with an Act referred to in subsection (1), the provision in this Part prevails, except where one of those Acts expressly provides to the contrary.

Division 2 — Relationship with the Crown

Port authorities are agents of the Crown

5. (1) Subject to subsection (2), each port authority is an agent of the Crown in right of the State.

(2) If under section 13 (1) (b) a port authority participates in a business arrangement with any person, the business arrangement does not enjoy the status, immunities, or privileges of the Crown.

Minister may give directions

6. (1) The Minister may give directions in writing to a port authority with respect to the performance of its functions under this or another written law, either generally or in relation to a particular matter, and the port authority must give effect to any such direction.

(2) The text of any direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the port authority under section 66 of the *Financial Administration and Audit Act 1985*.

Minister to have access to information

7. (1) The Minister is entitled —

- (a) to have information in the possession of a port authority; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request a port authority to furnish information to the Minister;
- (b) request a port authority to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff and facilities of a port authority to obtain the information and furnish it to the Minister.

(3) A port authority must comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the functions of a port authority.

Division 3 — Additional provisions about members

Interpretation

8. In this Division **“member”** means a member of a port authority and, in the case of the Fremantle Port Authority, a commissioner of that port authority.

Duties of members

9. (1) A member must at all times act honestly, and exercise a reasonable degree of care and diligence, in the performance of his or her functions as a member.

(2) A member must not make improper use of information acquired by virtue of the performance of his or her functions as a member to gain, directly or indirectly, an advantage for himself or herself or to cause detriment to the port authority.

Disclosure of interests

10. (1) If a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the port authority the member is, as soon as practicable after the

relevant facts come to the member's knowledge, to disclose the nature of the interest to a meeting of the port authority.

(2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting and, unless the port authority otherwise determines, the member is not —

- (a) to be present during any deliberation of the port authority in relation to the matter; or
- (b) to take part in any decision by the port authority in relation to the matter.

(3) For the purposes of making a determination by the port authority under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates is not —

- (a) to be present during any deliberation of the port authority for the purpose of making the determination; or
- (b) to take part in the making by the port authority of the determination.

(4) For the purposes of subsection (1) and without limiting its generality, a member is to be taken as having a direct or indirect pecuniary interest in a matter if his or her spouse, parent or child has such an interest.

Continuation in office

11. Subject to a direction to the contrary made at any time by the Minister, a member whose period of office expires due to the effluxion of time continues in office until he or she is reappointed or a successor comes into office (as the case may be).

Division 4 — Additional functions**Provision of facilities and services**

12. (1) In this section —

“**facilities**” means structures and associated machinery for the movement, handling or storage of goods;

“**services**” means —

- (a) lighterage, salvage, and towage;
- (b) cargo handling, storage and transport, chandlery, dredging, engineering, marine civil construction, mechanical, mooring, pollution management, security, shipping movement control, shore stabilization, stevedoring, and waste management services;
- (c) the use or hire of equipment, helicopters, machinery, plant, vehicles, and vessels;
- (d) the use or hire of facilities;
- (e) labour for any purpose; and
- (f) any other service prescribed by regulation.

(2) A port authority may provide such facilities and services as it considers are necessary for or in connection with the effective operation of its port as a port.

(3) A port authority may —

- (a) with the approval of the Minister, provide a facility under subsection (2) outside its port;
- (b) provide a service under subsection (2) outside its port.

(4) Where a port authority provides a service under subsection (2), it may provide that service other than for or in connection with the operation of its port as a port if doing so does not adversely affect the provision of that service for or in connection with the operation of its port as a port.

(5) A port authority is to ensure that facilities provided are maintained and kept in good repair.

(6) A port authority may remove any facility provided under subsection (2), or any works provided under its Act.

(7) Any charges for services are to be determined by the port authority in accordance with prudent commercial principles.

(8) The functions conferred by this section on a port authority are in addition to functions conferred on it by its Act or another written law.

Agreements and business arrangements

13. (1) For the purpose of performing its functions, whether under this Act or another written law, a port authority may —

- (a) enter into an agreement with any person; or
- (b) with the approval of the Minister and the Treasurer, participate in a business arrangement with any person.

(2) For the purpose of subsection (1) (b), a port authority may acquire, hold and dispose of, shares, units or other interests in, or debentures or other securities of, a business arrangement.

(3) Within 60 days after approval is given to a port authority to participate in a business arrangement, the Minister shall publish a notice in the *Gazette* of —

- (a) the port authority concerned;

- (b) the other parties to the business arrangement;
- (c) the type of business arrangement concerned;
- (d) the purpose or function of the business arrangement;
and
- (e) such other matters as the Minister thinks fit.

(4) In subsection (1) —

“business arrangement” means a proprietary limited company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;

“participate” includes form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement with a person.

Granting easements, leases or licences

14. (1) A port authority may grant an easement, lease or licence in respect of the whole or any part of the lands vested in it for any purpose it considers fit —

- (a) without the approval of the Minister if the easement, lease or licence meets the criteria prescribed by regulations made by the Governor; or
- (b) with the approval of the Minister otherwise.

(2) A licence or lease is not to be granted for a period of more than 50 years.

(3) For the purposes of this section and any prescribed criteria, the period for which an easement, lease or licence is granted includes any period for which the easement, lease or licence is renewable pursuant to an option to renew.

Division 5 — Pilotage

Interpretation

15. In this Division —

“**approved**”, in relation to a pilot, means approved under section 16;

“**port**” includes, in the case of the port of Port Hedland, the Pilotage Area.

Port authority to approve pilots etc.

16. (1) A port authority must approve one or more persons as pilots for its port and any such approval is to be in writing.

(2) Charges for approving a person as a pilot may be prescribed under Division 9.

(3) A port authority must ensure that pilotage services are provided in its port —

(a) by itself;

(b) by a person under an agreement under section 13 (1) (a); or

(c) by means of a business arrangement under section 13 (1) (b).

(4) Any charges for pilotage services —

(a) are to be prescribed under Division 9; and

(b) are to be paid to the port authority, irrespective of how or by whom they are provided.

Pilotage compulsory in ports

17. (1) A vessel moving within a port must use the services of a person approved as a pilot for the port, except where regulations provide otherwise.

(2) A person who moves a vessel within a port without the services of a person approved as a pilot for the port commits an offence unless under the regulations —

- (a) the vessel does not have to have an approved pilot; or
- (b) the person is permitted to do so.

Penalty: A fine of double the charges for pilotage services that the port authority could have demanded for moving the vessel.

(3) Neither the Crown, the Minister, a port authority, nor an employee of a port authority, is liable for —

- (a) any loss or damage caused by a vessel that; or
- (b) the loss of, or damage to, a vessel or anything in or on a vessel while the vessel,

is being moved within the port without the services of a person approved as a pilot for the port, whether or not it is being so moved by reason of an exemption under the regulations.

Pilot under authority of master

18. An approved pilot who as pilot has the conduct of a vessel is subject to the authority of the master of the vessel and the master is not relieved from responsibility for the conduct and navigation of the vessel by reason only of those circumstances.

Liability of owner or master of a vessel

19. The owner or master of a vessel moving under circumstances in which pilotage is compulsory under this Act is liable for any loss or damage caused by the vessel, or by a fault of the navigation of the vessel, in the same manner as he or she would if pilotage were not compulsory.

Crown etc., pilot and employer not liable for pilot's negligence

20. (1) Neither the Crown, the Minister, nor the port authority, is liable for any act or omission by a person approved as a pilot by a port authority in the conduct or navigation of a vessel of which the person is the pilot.

(2) An approved pilot is not personally liable for any act or omission by him or her in the conduct or navigation of a vessel of which he or she is the pilot.

(3) The employer of a person who is an approved pilot is not liable for any act or omission by the person in the conduct or navigation of a vessel of which the person is the pilot.

Division 6 — Harbour masters

Interpretation

21. In this Division —

“port” includes a prescribed control area and, in the case of the port of Port Hedland, the Pilotage Area;

“prescribed control area” means an area outside but contiguous with a port which is declared as such in relation to a port by the Governor by notice in the *Gazette*.

Appointment

22. (1) A port authority may appoint a person to be the harbour master of its port.

(2) The *Public Service Act 1978* does not apply to or in relation to a harbour master.

(3) If no harbour master is appointed the functions of the harbour master may be performed by a person determined by the port authority.

Principal and other functions

23. (1) The principal functions of a harbour master are —

- (a) to control the movement of vessels in the port;
- (b) to control the anchoring, mooring and berthing of vessels in the port;
- (c) to ensure the port is kept free of obstructions or possible obstructions to vessels using the port;
- (d) to ensure that the safety of people and property in the port is not endangered by vessels or wreckage;
- (e) to ensure good order is maintained in the port; and
- (f) to ensure that the operations of the port in relation to vessels are conducted safely and efficiently.

(2) A harbour master has such other functions as the port authority determines.

Directions to masters etc.

24. (1) For the purpose of performing his or her principal functions a harbour master may direct the owner, master, or person in charge, of a vessel in the port to do any or all of the following:

- (a) To navigate the vessel in a specified manner.
- (b) To anchor, moor, or berth the vessel at a specified place and in a specified manner.
- (c) To move the vessel out of the port or to another place within it.
- (d) To do anything to or in relation to the means by which the vessel is anchored or attached to a mooring or berth.

(2) When the safety of people or valuable property is in danger from a vessel in a port and no other direction is reasonable in the circumstances, a harbour master may direct the owner, master, or person in charge, of the vessel to scuttle it immediately.

Directions as to wreckage

25. (1) In this section —

“owner” means —

- (a) in relation to a vessel or part of a vessel — the owner immediately prior to the time of the loss or abandonment of the vessel or part of the vessel;
- (b) in relation to anything in the water which was in or on a vessel — the owner of the vessel;

“wreckage” includes a vessel or part of a vessel which is wrecked, stranded, sunk, derelict or unfit for sea service and anything in the water that is not a vessel.

(2) For the purpose of performing his or her principal functions a harbour master may direct the owner of wreckage in the port to do any or all of the following:

- (a) To move the wreckage out of the port or to another place within it.
- (b) To destroy the wreckage.
- (c) To sink the wreckage.

Limit on power to order removal of vessel or wreckage

26. Under section 24 or 25, a harbour master is not to direct that a vessel or wreckage be moved out of the port unless he or she is satisfied there is no other place within the port where the vessel or wreckage can lie without obstructing other vessels, hindering the efficiency of the operations of the port, endangering the safety of people or property or polluting the waters of the port.

Removal of unowned vessels etc.

27. For the purpose of performing his or her principal functions a harbour master may remove from the waters of the port, destroy, or sink any vessel or wreckage the owner of which cannot, after reasonable enquiries, be ascertained or found.

Offence of not obeying direction

28. A person who without reasonable excuse (proof of which lies on him or her) does not comply with a direction under section 24 or 25 commits an offence.

Penalty: \$10 000.

Powers if direction not obeyed

29. (1) If a person does not comply with a direction under section 24 (1) (b), (c), or (d) or (2) or section 25 within a reasonable time after being given it, the harbour master may cause the direction to be complied with using such means as he or she thinks fit.

(2) When causing a vessel to be moved under subsection (1) a harbour master may cause the vessel to be made fast to another vessel in the port which is anchored, moored or berthed.

(3) Subsection (2) does not disentitle the owner or master of a vessel to which another vessel is made fast under that subsection from recovering from the owner or master of that other vessel damages for loss or damage occasioned thereby.

Recovery of costs

30. (1) A port authority may recover, as a debt due to the port authority, the costs of exercising the powers —

- (a) in section 27 — from the owner of the vessel or wreckage; or
- (b) in section 29 — from the owner, master, or person in charge, of the vessel or the owner of the wreckage.

(2) A port authority may recover the costs of exercising the powers in section 27 by selling the vessel or wreckage.

(3) The proceeds of a sale are to be applied —

- (a) firstly to the expenses of the sale; and

s. 31

- (b) secondly to the costs of exercising the powers in section 27,

and the balance, if any, is to be paid to the owner of the vessel or wreckage, if ascertainable, or otherwise kept by the port authority.

(4) The powers in subsections (1) and (2) may be exercised together.

Immunity from liability

31. Neither the Crown, the Minister, the port authority, the harbour master, nor any person acting under the direction of the harbour master, is liable for any loss or damage occasioned by complying with a direction under section 24 or 25 given in good faith or by the exercise in good faith of the powers in section 27, 29 or 30 (2).

Offence of hindering

32. A person who hinders a harbour master, or a person acting under the direction of a harbour master, in the exercise of the powers in section 27 or 29 commits an offence.

Penalty: \$2 000.

Division 7 — Additional financial provision**Interest on overdue amounts**

33. (1) If money due to a port authority is not paid in full by the time when it is due, or such time after then as the port authority may allow, interest on the amount outstanding at the rate prescribed by regulations is to be paid to the port authority.

(2) Interest under subsection (1) may be recovered by a port authority in the same way as the money due to it may be recovered.

(3) Unless the context requires otherwise, a reference in a port authority Act to dues or charges is to be taken as including a reference to interest under subsection (1) payable on such dues or charges if overdue.

(4) Subsection (1) does not apply in respect of money due under a written agreement where the rate of interest to be paid is specified in the agreement.

Division 8 — Additional powers to make regulations

Regulations about liability of port authorities

34. In addition to the powers in its Act or another written law to make regulations, and without limiting such powers, a port authority may make regulations in accordance with its Act for any of the following purposes —

- (a) binding the owners of goods to —
 - (i) descriptions of and statements about goods (including as to value) in; and
 - (ii) the terms and conditions of, bills of lading, manifests or receipts;
- (b) exempting the port authority from liability for —
 - (i) loss of or damage to goods delivered to its port but for which the port authority has not issued a receipt;

- (ii) loss of or damage to goods handled in wet weather or outside the ordinary working hours fixed by the port authority;
 - (iii) loss of or damage to goods caused or contributed to by insufficient protection or packaging;
 - (iv) damage caused or contributed to by goods that are insufficiently protected or packaged;
 - (v) loss of or damage to goods the nature of which is not ascertainable (visually or from documents) without unpacking them;
 - (vi) delay in the delivery or the incorrect delivery of goods;
- (c) limiting the port authority's liability for —
- (i) loss of or damage to goods in its port;
 - (ii) loss of or damage to vessels due to stevedoring carried out by the port authority;
- (d) limiting the time for making a claim against the port authority for loss of or damage to goods or vessels and exempting the port authority from liability where such a claim is not made in time.

Division 9 — Regulations for Divisions 4 to 7

Power to make regulations

35. A port authority may make regulations in accordance with its Act prescribing all matters that are required or permitted by Divisions 4 to 7 to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of those Divisions.

Governor may make model regulations

36. (1) The Governor may make model regulations prescribing all matters that are required or permitted by Divisions 4 to 7 to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of those Divisions.

(2) Subsection (1) does not limit the operation of section 35.

(3) Model regulations do not have effect in relation to a port unless the port authority adopts them under subsection (5).

(4) The *Interpretation Act 1984* (other than section 41 (1) (b)) and the *Reprints Act 1984* apply to model regulations as if they are subsidiary legislation.

(5) By regulations made under its Act a port authority may adopt the whole of any model regulations without modification.

Division 10 — General amendment to all port authority Acts

New section about funds

37. (1) Each of the sections listed in subsection (2) is repealed and in each case the following section, with the amendments in subsections (3) and (4) (and, in the case of the *Fremantle Port Authority Act 1902*, with the amendments in subsection (5)), is substituted —

“

Funds of the Port Authority

(1) The funds of the Port Authority consist of —

(a) moneys from time to time appropriated by Parliament;

- (b) moneys received by the Port Authority in the performance of its functions;
- (c) moneys borrowed by the Port Authority under this Act; and
- (d) other moneys lawfully received by, or made available, given or payable to the Port Authority.

(2) The funds referred to in subsection (1) are to be credited to one account called the “[name of the port authority] Account” at either —

- (a) the Treasury and forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
- (b) with the approval of the Treasurer, at a bank (as defined in section 3 of that Act).

(3) The Account is to be charged with —

- (a) the remuneration and allowances payable to members;
- (b) the salaries and wages of the Port Authority’s officers and employees;
- (c) all capital expenditure incurred by the Port Authority under its Act in connection with the acquisition (whether by purchase or compulsory taking) of land, buildings or other property;
- (d) all expenditure lawfully incurred by the Port Authority in the performance of its functions; and

- (e) repayment of, and interest on, moneys borrowed by the Port Authority under this Act.

(2) The sections repealed are —

- (a) *Albany Port Authority Act 1926*, section 54;
- (b) *Bunbury Port Authority Act 1909*, section 54;
- (c) *Dampier Port Authority Act 1985*, section 61;
- (d) *Esperance Port Authority Act 1968*, section 52;
- (e) *Fremantle Port Authority Act 1902*, section 58;
- (f) *Geraldton Port Authority Act 1968*, section 52; and
- (g) *Port Hedland Port Authority Act 1970*, section 51.

(3) The section substituted by subsection (1) is to have the section designation of the relevant section repealed by subsection (2).

(4) In subsection (2) of the section substituted by subsection (1) the name of the port authority concerned is to be inserted at the place indicated.

(5) Section 58 (3) (a) of the *Fremantle Port Authority Act 1902* as substituted by subsection (1) is to have “members” deleted and “Commissioners” substituted.

PART 3 — MARINE AND HARBOURS ACT 1981**Principal Act**

38. In this Part the *Marine and Harbours Act 1981** is referred to as the principal Act.

[* *Act No. 21 of 1981.*

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 127 and Act No. 6 of 1993.]

Section 5A inserted

39. After section 5 of the principal Act the following section is inserted —

“

Provision of services at Broome and Wyndham

5A. (1) In this section —

“**services**” means —

- (a) lighterage, salvage, and towage;
- (b) cargo handling, storage and transport, chandlery, dredging, engineering, marine civil construction, mechanical, mooring, pollution management, security, shipping movement control, shore stabilization, stevedoring, and waste management services;
- (c) the use or hire of equipment, helicopters, machinery, plant, vehicles, and vessels;

- (d) the use or hire of facilities for the movement, storage, or handling of goods;
- (e) labour for any purpose; and
- (f) any other service prescribed by regulation.

(2) The Department may provide such services as it considers are necessary for or in connection with the effective operation of the ports of Broome and Wyndham as ports.

(3) Charges for services are to be determined by the Department in accordance with prudent commercial principles.

(4) The functions conferred by this section on the Department are in addition to the functions conferred on it by section 5.

(5) For the purpose of enabling the Department to perform its functions under this section, the Minister may enter into an agreement with any person.

”

Section 14A inserted

40. After section 14 of the principal Act the following section is inserted —

“

Interest on overdue amounts

14A. (1) If any dues or charges payable to the Department for the use of facilities, or for services provided by the Department, at the ports of Broome and Wyndham are not paid in full by the time when they are payable, or such time after then as the

Department may allow, interest on the amount outstanding at the rate prescribed by regulations is to be paid to the Department.

(2) Interest under subsection (1) may be recovered by the Department in the same way as moneys, dues or charges payable to it may be recovered.

”

PART 4 — SHIPPING AND PILOTAGE ACT 1967

Principal Act

41. In this Part the *Shipping and Pilotage Act 1967** is referred to as the principal Act.

[* *Reprinted as approved 9 November 1984.*
For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 193 and Act No. 6 of 1993.]

Section 3 amended

42. Section 3 of the principal Act is amended —

- (a) by deleting the fullstop after the definition of “port” and substituting a semicolon; and
- (b) by inserting after the definition of “port” the following definition —

“

“port authority port” means a port described in the —

- (a) *Albany Port Authority Act 1926*;
- (b) *Bunbury Port Authority Act 1909*;
- (c) *Dampier Port Authority Act 1985*;
- (d) *Esperance Port Authority Act 1968*;

- (e) *Fremantle Port Authority Act 1902;*
- (f) *Geraldton Port Authority Act 1968; or*
- (g) *Port Hedland Port Authority Act 1970.*

”.

Section 8 amended

43. (1) Section 8 (1) of the principal Act is amended by inserting after “port” in the 2 places where it occurs the following —

“ or port authority port ”.

(2) Section 8 of the principal Act is amended by inserting after subsection (2) the following subsection —

“

(3) Regulations under this Act which relate to matters referred to in this section apply in respect of port authority ports.

”.

Section 10 amended

44. Section 10 (3) of the principal Act is amended —

- (a) by deleting paragraph (a); and
- (b) by deleting paragraph (c) and substituting the following paragraph —

“

- (c) the regulations in force under this Act apply in respect of any port, fishing boat harbour or mooring control area

referred to in a proclamation made under paragraph (b), only insofar as they relate to a provision of this Act that is applicable in respect of that port, fishing boat harbour or mooring control area.

”.

Schedule amended

45. The Schedule to the principal Act is amended by deleting the following ports:

Albany.

Bunbury.

Dampier.

Esperance.

Fremantle.

Geraldton.

Port Hedland.

PART 5 — MISCELLANEOUS**Consequential and minor amendments**

46. The Acts referred to in Schedule 1 are amended in the manner set out in that Schedule.

Validation (Port Hedland)

47. For the avoidance of doubt, any business arrangement (as defined in section 13 (4)) entered into by the Port Hedland Port Authority before the coming into operation of section 13 that it would have been empowered to enter into if that section had then been in force is validated.

Harbour masters (transitional)

48. On the commencement of section 22, a person who immediately before then was appointed under a port authority Act (as defined in section 3) to be a harbour master of a port, becomes, by force of this section, appointed under section 22 as the harbour master of that port.

Dampier pilotage services agreements (transitional)

49. On the commencement of Part 2, an agreement for the provision of pilotage services entered into under section 41 (3) of the *Dampier Port Authority Act 1985* and in force immediately before then is, by force of this section, to be taken as being made under section 13 in respect of pilotage services.

Existing port authority regulations (saving)

50. Where this Act repeals a provision of a port authority Act (as defined in section 3) and enacts a provision in substitution

therefor, regulations made under or in respect of the repealed provision and in operation immediately before the commencement of this Act shall, so far as they are consistent with this Act, continue in operation and have effect for all purposes as if made under the port authority Act as read with this Act.

SCHEDULE 1

[s. 46]

CONSEQUENTIAL AND MINOR AMENDMENTS

PART 1 — ALBANY PORT AUTHORITY ACT 1926*

- s. 2 Delete the definition of “Berthing master”.
Delete the definition of “Harbour master”.
- s. 9 Delete paragraph (d) and the proviso and substitute the following paragraph —
“ (d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*. ”.
- s. 18 (1) Delete “, berthing master (who shall be the person appointed as harbour master of the port) and wharf manager”.
Delete “, berthing master or wharf manager”.
- s. 18 (4) Delete “, berthing master or wharf manager”.
- s. 22 Delete “section 28A,” and substitute the following —
“ section 6 of the *Ports (Functions) Act 1993*, ”.
- s. 24 Repeal the section.
- s. 25 Repeal the section.
- s. 26 Repeal the section.
- s. 28A Repeal the section.
- s. 29 Repeal the section and the heading “*Pilotage.*” before it.
- s. 32 Repeal the section and in the heading before it delete “*Wrecks, Obstructions, and*”.
- s. 36 Repeal the section and delete the heading “*Action against Port Authority and Officers.*” before it.
- s. 54I (1) Insert after “Port Authority” where it first occurs the following —
“ shall act in accordance with prudent commercial principles and ”.

- s. 54I (2) Repeal the subsection.
- s. 55 Repeal the section.
- s. 61 Delete paragraphs (11), (12) and (23).
- s. 66 Repeal the section.
- s. 71 (c) Delete “berthing master” and substitute the following —
“ harbour master ”.

[* *Reprinted as approved 24 March 1971.*
For subsequent amendments see 1992 Index to Legislation of
Western Australia, Table 1, p. 8 and Act No. 6 of 1993.]

PART 2 — BUNBURY PORT AUTHORITY ACT 1909*

- s. 2 Delete the definition of "Berthing master".
Delete the definition of "Harbour master".
- s. 9 Delete paragraph (d) and the proviso and substitute the following paragraph —
" (d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*. "
- s. 18 (1) Delete " berthing master (who shall be the person appointed as harbour master of the port), and wharf manager".
Delete " , berthing master or wharf manager".
- s. 22 Delete "section 28A," and substitute the following —
" section 6 of the *Ports (Functions) Act 1993*, "
- s. 24 Repeal the section.
- s. 25 Repeal the section.
- s. 25A Repeal the section.
- s. 26 Repeal the section.
- s. 28A Repeal the section.
- s. 29 Repeal the section and the heading "Pilotage" before it.
- s. 32 Repeal the section and in the heading before it delete "Wrecks, Obstructions, and".
- s. 36 Repeal the section and delete the heading "Actions against Port Authority and Officers" before it.
- s. 54I (1) Insert after "Port Authority" where it first occurs the following —
" shall act in accordance with prudent commercial principles and "
- s. 54I (2) Repeal the subsection.
- s. 55 Repeal the section.
- s. 61 Delete paragraphs (11), (12) and (23).

- s. 66 Repeal the section.
- s. 71 (c) Delete “berthing master” and substitute the following —
 “ harbour master ”.

[* *Reprinted as at 2 January 1991.*
For subsequent amendments see 1992 Index to Legislation of
Western Australia, Table 1, p. 22 and Act No. 6 of 1993.]

PART 3 — DAMPIER PORT AUTHORITY ACT 1985*

s. 3 (1) Delete the definition of “approved pilot”.

Delete the definition of “Harbour Master” and substitute the following definition —

“ **“Harbour Master”** means person appointed as harbour master of the Port under section 22 of the *Ports (Functions) Act 1993*; ”.

Delete the definition of “pilotage services”.

Delete the definition of “port charges” and substitute the following definition —

“ **“port charges”** means —

(a) port dues and wharfage charges;
or

(b) port improvement rates,

levied under regulations made under section 99 for the purposes of section 48, and includes charges for pilotage and other services provided under Part 2 of the *Ports (Functions) Act 1993*; ”.

In the definition of “the Account” delete “(a) (ii)”.

s. 9 (4) Delete “section 11 (1) or 14 (11)” and substitute the following —

“ section 10 of the *Ports (Functions) Act 1993* ”.

s. 11 Repeal the section and substitute the following section —

“ **Disclosure by members**

11. Section 10 of the *Ports (Functions) Act 1993* does not apply —

(a) to the Company member in respect of a pecuniary interest of the member that consists only of being an employee of the Company;

- (b) to the Joint Venturers member in respect of a pecuniary interest of the member that consists only of being an employee of one of the Joint Venturers. ”.

- s. 14 (11) Repeal the subsection.
- s. 17 (1) (a) Delete “and a Harbour Master”.
- s. 17 (2) Repeal the subsection.
- s. 24 Repeal the section.
- s. 25 Repeal the section.
- s. 26 Repeal the section.
- s. 31 (1) (c) Delete the paragraph.
- s. 34 Repeal the section.
- s. 35 Repeal the section.
- s. 36 (4) Repeal the subsection.
- s. 37 (1) Repeal the subsection.
- s. 37 (2) Repeal the subsection.
- s. 39 Repeal the section and substitute the following section —

“ **Pilotage services agreements**

39. (1) Having entered into an agreement with the Port Authority under section 13 of the *Ports (Functions) Act 1993* for the provision of pilotage services —

- (a) the Company may for its own requirements under the Iron Ore (Hamersley Range) Agreement;
- (b) the Salt Company may for its own requirements under the Dampier Solar Salt Industry Agreement; and

- (c) the Joint Venturers may for their own requirements under the North West Gas Development (Woodside) Agreement,

provide its own or their own pilotage services in the Port in accordance with that agreement. ”.

Part VI Repeal the Part.

Part VII In the Part heading delete “WRECKS, OBSTRUCTIONS AND”.

s. 44 Repeal the section.

s. 45 Repeal the section.

s. 48 (1) In paragraph (a) delete “and service”.

After paragraph (a) insert the following —

“ and ”.

Delete “; and” after paragraph (b) and substitute a fullstop.

Delete paragraph (c).

s. 48 (5) Repeal the subsection.

s. 48 (7) Repeal the subsection and substitute the following subsection —

“ (7) Charges under Part 2 of the *Ports (Functions) Act 1993* for services provided by the Port Authority and for pilotage services shall each be separately charged. ”.

s. 62 Repeal the section.

s. 67 Insert after the section designation “67.” the subsection designation “(1)”.

Insert the following subsection —

“ (2) Such moneys as are paid to the Port authority under an agreement under subsection (1) shall be applied only to the purposes specified in the agreement. ”.

Part X Repeal the Part.

s. 89 Repeal the section.

s. 102 Repeal the section.

Schedule Delete items 10, 14, 18, 30, 31, 32, 33, 34, 35, 44, 45, 46,
III 47, 48, 49, 50, 51, 52 and 54.

In item 11, delete "items 9 and 10" and substitute the following —

“ item 9 ”.

[* *Act No. 39 of 1985.*

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 54 and Act No. 6 of 1993.]

PART 4 — ESPERANCE PORT AUTHORITY ACT 1968*

- s. 3 Repeal the section.
- s. 5 Delete the definition of “berthing master”.
Delete the definition of “harbour master”.
In the definition of “the Account”, delete “kept at the Treasury pursuant to” and substitute the following —
“ referred to in ”.
- s. 11 Repeal the section.
- s. 12 (c) Before “is absent” insert the following —
“ if he ”.
- s. 12 (d) Delete the paragraph and substitute the following paragraph —
“ (d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*. ”.
- s. 18 (1) Delete “, berthing master (who shall be the person appointed as harbour master of the port), and wharf manager”.
Delete “, berthing master or wharf manager”.
- s. 18 (4) Delete “berthing master or wharf manager,”.
- s. 23 Delete “section 30A,” and substitute the following —
“ section 6 of the *Ports (Functions) Act 1993*, ”.
- s. 25 Repeal the section.
- s. 26 Repeal the section.
- s. 27 Repeal the section.
- s. 30A Repeal the section.
- Part III Repeal the Part.
- Part V In the Part heading delete “WRECKS, OBSTRUCTIONS, AND”.
- s. 34 Repeal the section.

- s. 37 Repeal the section.
- s. 61 (1) Insert after "Port Authority" where it first occurs the following —
- " shall act in accordance with prudent
 commercial principles and ".
- s. 61 (2) Repeal the subsection.
- s. 63 Repeal the section.
- s. 71 Repeal the section.
- s. 75 Repeal the section.
- s. 82 Delete "managing secretary to" and substitute the following —
- " general manager of ".
- s. 84 (2) Delete paragraphs (i), (j) and (u).

[* *Act No. 11 of 1968.*
For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 68 and Act No. 6 of 1993.]

PART 5 — FREMANTLE PORT AUTHORITY ACT 1902*

- s. 2 Delete the definition of "Harbour master".
- s. 4 (2) Repeal the subsection and substitute the following subsection —
- “ (2) The Governor shall appoint —
- (a) one of the commissioners as chairman; and
- (b) another of the commissioners as deputy chairman,
- of the Port Authority for such period as is specified in the instrument of appointment, but the period shall not exceed the remainder of the period of office of the commissioner being appointed. ”.
- s. 9 (1) Delete paragraph (d) and the proviso to the subsection and substitute the following paragraph —
- “ (d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*. ”.
- s. 14 Repeal the section and substitute the following section —
- “ **Acting chairman**
14. If neither the chairman nor the deputy chairman is able to preside at a meeting or at a part of a meeting of the Port Authority, the commissioners present may elect one of their number to be acting chairman for the meeting or the part of the meeting as the case may be. ”.
- s. 15 Delete "chairman or acting chairman" and substitute the following —
- “ person presiding ”.
- s. 19 (1) Delete “, a wharf manager, a harbour master,”.
- s. 19 (2a) Delete “, wharf manager, harbour master”.
- s. 21 Repeal the section.
- s. 24 Delete "section 30A," and substitute the following —
- “ section 6 of the *Ports (Functions) Act 1993*, ”.

- s. 26 Repeal the section.
- s. 27 Repeal the section.
- s. 27B Repeal the section.
- s. 27C Repeal the section.
- s. 28 Repeal the section.
- s. 30A Repeal the section.
- s. 31 Repeal the section.
- s. 31A Repeal the section.
- s. 32 Repeal the section and the heading "*Pilotage*" before it and the heading "*Lights, Buoys, and Signals*" after it.
- s. 35 Repeal the section and in the heading before it delete "*Wrecks, Obstructions, and*".
- s. 39 Repeal the section and the heading "*Actions against Port Authority and Officers*" before it.
- s. 39A Repeal the section.
- s. 39B Repeal the section.
- s. 41 Delete "and service".
Delete the paragraph commencing "Provided that" and ending "such workers."
- s. 58A Repeal the section.
- s. 58K (1) Insert after "Port Authority" where it first occurs the following —
" shall act in accordance with prudent commercial principles and "
- s. 58K (2) Repeal the subsection.
- s. 65 Delete paragraphs (7), (8), (14), (15), (26), (27), (28), (29), (30), (31), (39), (40), (41), (42), (43), (44), (45), (46), (47), (48) and (48a).
- s. 70A Repeal the section.
- s. 71 Repeal the section.
- s. 72 Repeal the section.

Sch. 1

- s. 73 Repeal the section.
- s. 74 Repeal the section.
- s. 78 Repeal the section.

[* *Reprinted as at 23 January 1989.
For subsequent amendments see 1992 Index to Legislation of
Western Australia, Table 1, pp. 81-2 and Act No. 6 of 1993.*]

PART 6 — GERALDTON PORT AUTHORITY ACT 1968*

- s. 3 Repeal the section.
- s. 5 Delete the definition of “berthing master”.
Delete the definition of “harbour master”.
In the definition of “the Account”, delete “kept at the Treasury pursuant to” and substitute the following —
“ referred to in ”.
- s. 11 Repeal the section.
- s. 12 (c) Before “is absent” insert the following —
“ if he ”.
- s. 12 (d) Delete the paragraph and substitute the following paragraph —
“ (d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*. ”.
- s. 18 (1) Delete “, berthing master (who shall be the person appointed as harbour master of the port), and wharf manager”.
Delete “, berthing master or wharf manager”.
- s. 18 (4) Delete “berthing master or wharf manager”.
- s. 23 Delete “section 30A,” and substitute the following —
“ section 6 of the *Ports (Functions) Act 1993*, ”.
- s. 25 Repeal the section.
- s. 26 Repeal the section.
- s. 27 Repeal the section.
- s. 30A Repeal the section.
- Part III Repeal the Part.
- Part V In the Part heading delete “WRECKS, OBSTRUCTIONS, AND”.
- s. 34 Repeal the section.

Sch. 1

- s. 37 Repeal the section.
- s. 61 (1) Insert after "Port Authority" where it first occurs the following —
" shall act in accordance with prudent commercial principles and ".
- s. 61 (2) Repeal the subsection.
- s. 63 Repeal the section.
- s. 71 Repeal the section.
- s. 75 Repeal the section.
- s. 82 Delete "managing secretary to" and substitute the following —
" general manager of ".
- s. 84 (2) Delete paragraphs (i), (j) and (u).

[* *Act No. 10 of 1968.*

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 86 and Act No. 6 of 1993.]

PART 7 — PORT HEDLAND PORT AUTHORITY ACT 1970*

- s. 4 Delete the definition of “harbour master”.
- In the definition of “master”, delete “not being a pilot appointed by the Port Authority” and substitute the following —
- “ other than a pilot ”.
- s. 10 Repeal the section and substitute the following section —
- “ **Disclosure by members**
10. Section 10 of the *Ports (Functions) Act 1993* does not apply to a member appointed under section 6 (3), (4) or (6) in respect of a pecuniary interest of the member that consists only of being an employee of a registered lessee referred to in those subsections. ”.
- s. 11 (2) (c) Before “is absent” insert the following —
- “ if he ”.
- s. 11 (2) (d) Delete the paragraph and substitute the following paragraph —
- “ (d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*. ”.
- s. 17 (1) Delete “, a wharf manager, a harbour master”.
- s. 17 (2a) Delete “, wharf manager, harbour master”.
- s. 22 (1) Delete “section 29A,” and substitute the following —
- “ section 6 of the *Ports (Functions) Act 1993*, ”.
- s. 24 Repeal the section.
- s. 25 Repeal the section.
- s. 27 Repeal the section.
- s. 29A Repeal the section.
- s. 30 Repeal the section.
- Part III Repeal the Part.

Sch. 1

- Part IV In the Part heading delete "WRECKS, OBSTRUCTIONS AND".
- s. 32 Repeal the section.
- s. 35 Repeal the section.
- s. 60 (1) Insert after "Port Authority" where it first occurs the following —
- " shall act in accordance with prudent commercial principles and ".
- s. 60 (2) Repeal the subsection.
- s. 66 Repeal the section.
- s. 67 Repeal the section.
- s. 68 Repeal the section.
- s. 69 Repeal the section.
- s. 72 Repeal the section.
- s. 82 Delete paragraphs (8), (9), (15), (16), (27), (28), (29), (30), (31), (32), (40), (41), (42), (43), (44), (45), (46), (47), (48) and (49).

[* Act No. 30 of 1970.

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 166 and Act No. 6 of 1993.]

