



Western Australia

## **Port Authorities Act 1999**

Compare between:

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Western Australia

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## **Port Authorities Act 1999**

**An Act about port authorities, their functions, the areas that they are to control and manage, the way in which they are to operate, and related matters.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Port Authorities Act 1999*<sup>1</sup>.

### **2. Commencement**

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation<sup>1</sup>.

### **3. Terms used**

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

**board** means the board of directors of a port authority provided for by section 7;

**CEO** means the person holding the office of chief executive officer of a port authority created under section 14(1) and includes an acting chief executive officer under section 14(6);

**channel** includes a swinging basin, turning circle, area alongside a jetty, fairway or anchorage;

**control**, when used in the sense of being in control of a vessel, means to be in charge or command of, or to have the management of, the vessel;

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth;

**Crown land** has the same meaning as it has in the *Land Administration Act 1997*;

**damage** includes alter, destroy or remove;

**dangerous thing** means —

- (a) a vessel or part of a vessel; or
- (b) a wreck and any cargo, fuel or other thing on or in it; or
- (c) any other thing,

that is likely to be a danger to navigation or to port facilities or harmful to the environment;

**director** means a director appointed under section 7;

**executive officer** means a member of the staff of a port authority designated under section 20(2) as an executive officer;

**goods** includes —

- (a) merchandise, wares, chattels and other articles, whether manufactured or of any other kind; and
- (b) minerals and mineral products; and
- (c) petroleum and hydrocarbon products; and
- (d) forestry and agricultural products; and
- (e) livestock;

**harbour master** means a person appointed under section 102 as the harbour master or acting harbour master of a port or authorised under that section to perform the harbour master's functions;

**jetty** includes —

- (a) a pier, wharf, quay, grid, slipway, landing place, stage, platform or similar structure, whether fixed or floating, erected or placed, wholly or in part, in, on, over or alongside any waters; and
- (b) a ramp that is or may be used for the purpose of launching or landing a vessel,

but does not include a vessel;

**management**, in relation to staff, includes recruitment, selection, appointment, transfer, secondment, performance management, redeployment, discipline and termination of employment;

**maritime structure** means —

- (a) a jetty; or
- (b) a breakwater, groyne or seawall; or
- (c) a dredged channel; or
- (d) a boat pen or vessel mooring; or

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- (e) a navigational aid; or
- (f) a pipeline in, over, under or discharging into navigable waters (but not a pipeline discharging material from a dredging vessel);

**master** includes a person, other than an approved pilot provided under section 96(5), having control of a vessel for the time being;

**member of staff** means a person engaged under section 16;

**mooring** includes anchoring and berthing;

**movement**, in relation to —

- (a) goods, includes loading and unloading;
- (b) passengers, includes boarding and going ashore;

**navigational aid** means an apparatus, device, mark or structure that —

- (a) is or is intended to be an aid to marine navigation; or
- (b) emits or transmits a light, sound, radio, electronic or other signal that is or is intended to be an aid to marine navigation;

**owner**, in relation to —

- (a) property of any kind, includes a person who is an owner jointly or in common with another person;
- (b) goods, includes a consignor, consignee, shipper or agent for sale or custody, loading or unloading of the goods concerned;
- (c) a vessel, includes a charterer of the vessel;

**port** means a port named in Schedule 1 and the **port** or **its port**, in relation to a port authority, means ~~the port for which the port authority is established; —~~

- (a) the port that the port authority controls and manages; or
- (b) if the port authority controls and manages more than one port — each of those ports;

**port activities** has the meaning given by section 35;

**port authority** means a body established by section 4;

**port charges** has the meaning given by section 115 as affected by section 136(3);

**port facilities** means facilities provided for or in relation to port activities or the administration of the port and includes —

- (a) maritime structures and other buildings, structures and enclosures; and
- (b) railways; and
- (c) machinery, equipment, vessels, vehicles and aircraft;

**port land** means vested land or land acquired by a port authority;

**port services** has the meaning given by section 35;

**port works** has the meaning given by section 35;

**subsidiary** means —

- (a) a body determined to be a subsidiary of a port authority under subsection (4); or
- (b) an interest or other rights of a port authority in a unit trust, joint venture or partnership where the interest or other rights of the port authority in connection with the unit trust, joint venture or partnership entitle the port authority to —
  - (i) control the composition of the governing body of the unit trust, joint venture or partnership; or
  - (ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the unit trust, joint venture or partnership; or
  - (iii) control the business affairs of the unit trust, joint venture or partnership;

**Treasurer** means the Treasurer of the State;

**vessel** has the meaning given by subsections (2) and (3);

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*vested*, in relation to land or other property, means vested in a port authority under this Act.

- (2) A reference in this Act to a vessel is a reference to a thing used, or capable of being used, in navigation by water, and includes a reference to —
- (a) an air-cushion vehicle, seaplane or other similar craft; or
  - (b) a barge, lighter or other floating structure used for commercial purposes other than a structure of a class or kind prescribed for the purposes of this paragraph.
- (3) A thing can be a vessel for the purposes of this Act —
- (a) no matter how it is moved or propelled; and
  - (b) even if it is normally stationary.
- (4) Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of a port authority.

*[Section 3 amended by No. 10 of 2001 s. 157; No. 74 of 2003 s. 93(2); No. 8 of 2009 s. 102(2) and (3); No. 46 of 2009 s. 17; No. 39 of 2010 s. 81(2); [No. 9 of 2014 s. 4\(3\)](#).]*



## **Part 2 — Port authorities: establishment and administration**

### **Division 1 — Establishment of port authorities**

#### **4. Port authorities, establishment, nature and trading names of**

(1) ~~The~~ There are to be the port authorities named in column 2 of Schedule 1 ~~are established for the ports.~~

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

(2) A port authority is a body corporate with perpetual succession.

(3) Proceedings may be taken by or against a port authority in its corporate name.

(4) A port authority may use, and operate under, one or more trading names approved by the Minister.

(5) A trading name can be —

(a) an abbreviation or adaptation of the port authority's corporate name; or

(b) a name other than the port authority's corporate name.

*[Section 4 amended by No. 9 of 2014 s. 5(1).]*

#### **5. Port authorities not agents of Crown**

A port authority is not an agent of the Crown and does not have the status, immunities and privileges of the Crown.

#### **6. Port authorities and officers not part of public sector**

(1) A port authority is not, and is not to become, a public sector body under the *Public Sector Management Act 1994*.

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- (2) Neither the CEO nor any member of staff is to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.

**Division 2 — Boards of directors**

**7. Port authorities to have board of directors**

- (1) A port authority is to have a board of directors comprising ~~5~~[not less than 5 or more than 7](#) persons appointed in writing by the Minister.
- (2) In appointing a person as a director the Minister must have regard to all relevant guidelines published, approved, endorsed or administered by the Public Sector Commissioner.
- (3) A member of staff is not eligible to be appointed as, or be, a director.
- (4) Without limiting section 132, if a Division of Schedule 6 applies to a port authority any provisions of that Division in relation to the appointment of directors of the port authority have effect despite anything in this section.

*[Section 7 amended by No. 39 of 2010 s. ~~89~~[89](#); No. 9 of 2014 s. 7(1).]*

**8. Boards, role of**

- (1) The board of a port authority is its governing body.
- (2) The board, in the name of the port authority, is to perform the functions, determine the policies and control the affairs of the port authority.

**9. Boards, constitution and proceedings of (Sch. 2)**

Schedule 2 has effect with respect to directors and boards.

**10. Directors, remuneration of**

- (1) A director is to be paid out of the funds of the port authority such remuneration and allowances as are determined in the case of that port authority by the Minister.
- (2) Subject to subsection (3) and Schedule 2, clause 3(4), the same rates of remuneration and allowances are to apply to all directors of the port authority.
- (3) Remuneration is not to be paid to a director who holds a full-time office or position that is remunerated out of moneys appropriated by Parliament.

**11. Conflict of duties**

- (1) If a person is both a public service officer and a director —
  - (a) the person's duties as a director are to prevail if a conflict arises between those duties and the person's other duties as a public service officer; and
  - (b) the person does not have any immunity of the Crown in respect of the duties and liabilities imposed on directors by this Act.
- (2) In this section —

**public service officer** means a person who is employed in the Public Service under Part 3 of the *Public Sector Management Act 1994*.

**12. Notifiable interests, disclosing**

- (1) A director of a port authority who has a notifiable interest in a matter involving the port authority must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the board of the port authority.  
Penalty: \$5 000.

- (2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting.
- (3) In subsection (1) —  
*notifiable interest* means an interest in the matter that will, under Schedule 2, clause 8(1), disqualify the director from voting on the matter at a meeting of the board unless allowed to do so by a resolution under clause 8(3) or a declaration under clause 8(6).

**13. Committees**

- (1) A board may —
  - (a) appoint committees of directors or other persons; and
  - (b) discharge, alter or reconstitute any committee.
- (2) A committee is to comply with any direction or requirement of the board.
- (3) A committee may, with the approval of the board, invite any person, including a member of staff, to participate in a meeting of the committee but such a person cannot vote on any resolution before the committee.
- (4) Subject to subsection (2), a committee may determine its own procedures.

**Division 3 — Staff**

**14. Chief executive officer**

- (1) A port authority is to have a chief executive officer.
- (2) The powers —
  - (a) to appoint and remove the chief executive officer; and
  - (b) subject to the *Salaries and Allowances Act 1975*, to fix and alter the terms and conditions of service of the chief executive officer,

are vested in the board.

- (3) The board must get the Minister's approval before it exercises any of the powers conferred by subsection (2).
- (4) The chief executive officer of a port authority may resign from office by giving notice in writing to the board.
- (5) If the chief executive officer's terms and conditions of service deal with the matter of resignation, the right to resign under subsection (4) can only be exercised in accordance with those terms and conditions.
- (6) The board may appoint a person to act in the office of chief executive officer during any period when the chief executive officer is, or is expected to be, absent from the State or on leave or unable for any other reason to carry out the duties of the office.

**15. CEO's functions**

Subject to the control of the board, the CEO of a port authority is responsible for, and has all the powers needed to administer, the day to day operations of the port authority.

**16. Staff**

- (1) The power to engage and manage the staff of a port authority is vested in its board.
- (2) The power conferred by subsection (1) —
  - (a) includes powers to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate the employment of staff; and
  - (b) does not preclude the delegation of any matter under section 44.

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- (3) The remuneration of and other terms and conditions of employment of staff are not to be less favourable than is provided for in —
- (a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or
  - (b) the *Minimum Conditions of Employment Act 1993*.
- (4) There are excluded from the operation of sections 41, 41A and 43 of the *Industrial Relations Act 1979* —
- (a) any matters dealt with by an instrument issued under section 17, except —
    - (i) rates of remuneration; and
    - (ii) leave; and
    - (iii) hours of duty; and
    - (iv) matters that are similar to matters prescribed for the purposes of section 99(1)(a)(iv) of the *Public Sector Management Act 1994*;and
  - (b) matters concerning the management of the staff that are similar to matters prescribed for the purposes of section 99(1)(c) of the *Public Sector Management Act 1994*.
- (4a) A matter referred to in subsection (4) cannot be varied or affected by an employer-employee agreement made under Part VID of the *Industrial Relations Act 1979*.
- [(5) *deleted*]
- (6) Nothing in this section other than subsection (4a) affects the operation of Part VID of the *Industrial Relations Act 1979*.
- [Section 16 amended by No. 20 of 2002 s. 23; amended in Gazette 15 Aug 2003 p. 3689.]

**17. Minimum standards for staff management**

- (1) The board of a port authority must, after consultation with the Public Sector Commissioner, prepare and issue an instrument setting out minimum standards of merit, equity and probity applicable to the management of the staff of the port authority.
- (2) In complying with subsection (1) a board is to have regard to the principles set out in section 8 of the *Public Sector Management Act 1994*.
- (3) Section 14(3) is not affected by the requirements of subsection (2).
- (4) The Public Sector Commissioner may at any time recommend to a board any amendment that the Commissioner thinks should be made to an instrument issued under this section.
- (5) A board may —
  - (a) amend an instrument issued under this section; or
  - (b) revoke it and substitute a new instrument,but, except where subsection (4) applies, is to do so only after consultation with the Public Sector Commissioner.  
*[Section 17 amended by No. 39 of 2010 s. 81(3).]*

**18. Reports to Public Sector Commissioner as to s. 17 standards**

- (1) The Public Sector Commissioner may in writing direct a board —
  - (a) to report to the Commissioner on the observance of the minimum standards in force under section 17; and
  - (b) to make the reports at such times, but not more often than half-yearly,as the Commissioner may specify.
- (2) A board must comply with a direction given to it made under subsection (1).

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- (3) The Public Sector Commissioner may at any time report to the Minister on the content or observance of the minimum standards in force under section 17.

*[Section 18 amended by No. 39 of 2010 s. 81(3).]*

**19. Superannuation**

- (1) A port authority may grant, or make provision for the grant of, retirement benefits to members and former members of staff and their dependants and for that purpose may, subject to section 30 of the *State Superannuation Act 2000* —

- (a) establish, manage and control; or
- (b) enter into an arrangement with any body for the establishment, management and control by that body either alone or jointly with the port authority of,

any fund or scheme for the purpose of providing for such retirement benefits.

- (2) A port authority may make contributions to any fund or scheme referred to in subsection (1).

- (3) In subsection (1) —  
***members of staff*** includes the CEO.

- (4) Nothing in this section affects the operation of the *State Superannuation Act 2000* in relation to a port authority or members or former members of staff or their dependants.

*[Section 19 amended by No. 43 of 2000 s. 58.]*

**Division 4 — Conduct and integrity of staff**

**20. CEO and staff, duties of (Sch. 3) etc.**

- (1) Schedule 3 has effect in relation to the CEO, former CEOs, members of staff and former members of staff.



- (2) For the purposes of Schedule 3, the board of a port authority may designate a member of staff as an executive officer by resolution —
- (a) passed by the board; and
  - (b) notified in writing to the member of staff,
- and may in the same manner revoke such a designation.

**21. Codes of conduct**

- (1) The board of a port authority must, after consultation with the Public Sector Commissioner, prepare and issue a code or codes of conduct setting out minimum standards of conduct and integrity to be observed by members of staff.
- (2) In complying with subsection (1) a board is to have regard to the principles set out in section 9 of the *Public Sector Management Act 1994*.
- (3) A board may, after consultation with the Public Sector Commissioner, amend any code of conduct in force under subsection (1) or revoke it and substitute a new code of conduct.
- (4) In this section and in sections 22 and 23 —  
*members of staff* includes the CEO.

*[Section 21 amended by No. 39 of 2010 s. 81(3).]*

**22. Reports to Public Sector Commissioner as to s. 21 codes**

- (1) The Public Sector Commissioner may in writing direct a board —
- (a) to report to the Commissioner on the observance by members of staff of any code of conduct in force under section 21; and
  - (b) to make the reports at such times, but not more often than half-yearly,
- as the Commissioner may specify.

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- (2) A board must comply with a direction given to it under subsection (1).
- (3) The Public Sector Commissioner may at any time report to the Minister on any matter relating to the observance by members of staff of a port authority of a code of conduct in force under section 21 that the Commissioner thinks should be brought to the Minister's attention.

*[Section 22 amended by No. 39 of 2010 s. 81(3).]*

**23. Reports to Minister as to s. 21 codes**

- (1) A board, when it delivers to the Minister its annual report under section 68, is also to deliver to the Minister a separate report on the observance by members of staff of any code of conduct in force under section 21.
- (2) A board is to give to the Public Sector Commissioner a copy of each report under subsection (1).

*[Section 23 amended by No. 39 of 2010 s. 81(3).]*

### Part 3 — Port areas and property of port authorities

#### 24. Port areas defined

- (1) A port consists of the area or areas described in relation to that port by order made by the Governor and published in the *Gazette*.
- (2) The Governor may, by order published in the *Gazette*, amend the description of a port so as to —
  - (a) include an area in, or exclude an area from, that description; or
  - (b) correct any error in that description.
- (3) In this section —  
**area** means an area of land, water or seabed.

#### 25. Port authority, property vested in

- (1) The following property is vested in a port authority for the purposes of this Act —
  - (a) all Crown land in the port, including the seabed and shores;
  - (b) all navigational aids that, immediately before the coming into operation of section 4 of the *Ports and Marine Legislation Amendment Act 2003*<sup>1</sup> —
    - (i) were in the port, or used in connection with navigation into or out of the port; and
    - (ii) belonged to the State;
  - (c) all fixtures on land in the port that belong to the State.
- (2) The property of a port authority also includes the following —
  - (a) any improvements effected on vested land leased to another person that have been acquired on the termination of the lease concerned;

- (b) any real or personal property (other than property referred to in paragraph (a)) acquired by the port authority or vested in the port authority by the Governor for the purposes of this Act.

*[Section 25 amended by No. 71 of 2003 s. 4(1)<sup>2</sup>.]*

**26. Port property may be taken back by Crown**

- (1) For the purposes of this Act, the Governor may by order withdraw any vested real or personal property, or any property referred to in section 25(2)(a), from a port authority and vest or re-vest that property in the Crown.
- (2) If as a result of an order under subsection (1) a port authority will lose the use of improvements that it has effected on land in performing its functions, the port authority is entitled to compensation from the State for the depreciated value of those improvements.

**27. Power to sell land, restrictions on**

- (1) The power of a port authority to sell port land does not extend to Crown land.
- (2) A port authority must get the Minister's approval before it sells port land.
- (3) In this ~~subsection~~ section — **sell** means dispose of, convey and transfer, in fee simple or for a lesser estate, for consideration or by way of exchange, and includes grant an option to purchase or a right of first refusal to purchase.

*[Section 27 amended by No. 9 of 2014 s. 10.]*

**27A. Land, creating interests in**

The power of a port authority to grant easements, leases or licences in respect of port land extends to easements, leases or licences for any purposes the port authority thinks fit.

*[Section 27A inserted by No. 71 of 2003 s. 5.]*

**28. Vested land, creating and dealing with interests in**

- (1) A port authority must get the Minister's approval before it grants an easement, lease or licence in respect of vested land.
- (2) Subsection (1) does not apply if the easement, lease or licence meets the prescribed criteria.
- (3) The period for which a lease or licence of vested land is granted cannot exceed 50 years.
- (4) 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.
- (5) A port authority does not have to get approval under section 18 of the *Land Administration Act 1997* in order to create or deal with an interest in respect of vested land.

**29. Disputes between port authority and Crown**

- (1) If there is a dispute between a port authority and any department, instrumentality or agency of the State with respect to any port land or any other property of the port authority, the parties to that dispute are to refer it to the Minister, and the Minister's decision on it is final and binding on the parties.
- (2) This section does not apply to a dispute relating to the proposed acquisition by a port authority of freehold title to Crown land.

## **Part 4 — Functions and powers**

### **Division 1 — Functions, powers and related provisions**

#### **30. Functions**

- (1) The functions of a port authority are —
  - (a) to facilitate trade within and through the port and plan for future growth and development of the port; and
  - (b) to undertake or arrange for activities that will encourage and facilitate the development of trade and commerce generally for the economic benefit of the State through the use of the port and related facilities; and
  - (c) to control business and other activities in the port or in connection with the operation of the port; and
  - (d) to be responsible for the safe and efficient operation of the port; and
  - (e) to be responsible for the maintenance and preservation of vested property and other property held by it; and
  - (f) to protect the environment of the port and minimise the impact of port activities on that environment.
- (2) It is also a function of a port authority —
  - (a) to do things that its board determines to be conducive or incidental to the performance of a function referred to in subsection (1); or
  - (aa) to use or exploit its fixed assets for profit so long as the proper performance of its functions under subsection (1) is not affected; or
  - (b) to do things that it is authorised to do by any other written law.
- (3) A port authority may perform any of its functions in the State or elsewhere.

*[Section 30 amended by No. 71 of 2003 s. 6.]*

**31. Port authorities can act at their discretion**

- (1) The fact that a port authority has a function given to it by section 30 does not impose a duty on it to do any particular thing and, subject to this Act and any direction given to the port authority by the Minister, it has a discretion as to how and when it performs the function.
- (2) Nothing in this Act limits or otherwise affects the operation of the *Environmental Protection Act 1986* in relation to a port, a port authority or port activities.

**32. Control of port, port authority has**

Subject to any direction given by the Minister, a port authority has exclusive control of the port.

**33. Duty to act in accordance with policy instruments**

A port authority is to perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

**34. Duty to act on commercial principles**

- (1) A port authority in performing its functions must —
  - (a) act in accordance with prudent commercial principles; and
  - (b) endeavour to make a profit.
- (2) If there is any conflict or inconsistency between the duty imposed by subsection (1) and the duty imposed by section 33, the duty imposed by section 33 prevails.

**35. Powers generally**

- (1) A port authority has all the powers it needs to perform its functions under this Act or any other written law.

- (2) A port authority may for the purpose of performing a function mentioned in subsection (1) —
- (a) subject to Part 3, acquire, hold and dispose of real or personal property; and
  - (b) manage, improve and develop real or personal property vested in it or acquired by it or arrange for property to be managed, improved or developed; and
  - (c) carry out port works or arrange for port works to be carried out; and
  - (d) provide, manage and operate port facilities or arrange for port facilities to be provided, managed and operated; and
  - (e) provide port services or arrange for port services to be provided; and
  - (f) enter into any contract or arrangement including a contract or arrangement with any person for the performance of the function by that person on behalf of the port authority; and
  - (g) apply for the grant of any licence or other authority required by the port authority; and
  - (h) acquire, establish and operate —
    - (i) any undertaking necessary or convenient for the performance of the function; and
    - (ii) any associated undertaking;and
  - (i) produce and deal in any equipment, facilities or system associated with, the performance of the function; and
  - (j) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the port authority; and



- (k) subject to sections 39 and 40, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and
  - (l) carry out any investigation, survey, exploration or feasibility study; and
  - (m) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research; and
  - (n) develop and turn to account any technology, software or other intellectual property that relates to the function and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
  - (o) issue licences and administer licensing schemes for activities and things in accordance with the regulations; and
  - (p) promote and market the port authority and its activities.
- (3) Subsection (2) does not limit subsection (1) or the other powers of a port authority under this Act or any other written law.
- (4) A port authority must get the Minister's approval before it issues a licence giving a person an exclusive right to provide port services of a particular kind.
- (5) The Minister is not to give approval under subsection (4) unless the Minister considers that the public benefits of exclusivity exceed the public costs and on providing such approval, the Minister must table in Parliament within 14 days, full reasons for his decision to grant an exclusive licence.
- (6) In —
- (a) entering into or negotiating a contract or arrangement for the purposes of subsection (2)(b) to (f); or

- (b) issuing, or dealing with an application for, a licence authorising the holder to provide port services,

a port authority must not —

- (c) impose, or purport to impose, an obligation on any person; or
- (d) seek an undertaking from any person,

as to the method by which, or manner in which, the person's employees are to be employed other than an obligation or undertaking that the method or manner be lawful.

- (7) A port authority may —

- (a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community;
- (b) make any *ex gratia* payment that the board considers to be in the port authority's interest;
- (c) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the port authority.

- (8) For the purposes of port works and port facilities, a port authority is a local authority within the meaning of the *Public Works Act 1902*.

- (9) In this section —

***business arrangement*** means a 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 things incidental to participating in a business arrangement;

***port activities*** means —

- (a) the movement, mooring, hauling out, maintenance and launching of vessels; and

- (b) the movement of, and provision of services to, passengers of vessels; and
- (c) the movement, handling and storage of goods;

**port services** means —

- (a) carrying out port activities; and
- (b) dredging, engineering, marine civil construction, pollution management, security, pilotage, towage, vessel movement control, emergency response, shore stabilization and waste management services; and
- (c) supplying provisions or equipment to vessels; and
- (d) supplying water, fuel or electricity; and
- (e) providing for the use or hire of port facilities; and
- (f) providing labour for any purpose; and
- (g) any other services prescribed by regulation for the purposes of this definition;

**port works** means works for port purposes and includes —

- (a) designing, constructing, extending, maintaining, removing or demolishing —
    - (i) maritime structures and other buildings, structures and enclosures; and
    - (ii) railways, roads, bridges, dams and embankments;
- and
- (b) reclaiming land from the sea or a river.

**36. Port facilities and services, extended powers as to**

A port authority's powers under section 35(2)(d) and (e) extend to —

- (a) providing, managing or operating port facilities outside the port; and
- (b) providing port services outside the port; and

- (c) providing a port service other than for or in connection with the operation of the port as a port if doing so does not adversely affect the provision of that service for or in connection with the operation of the port as a port.

**37. Fees and charges, power to levy**

- (1) A port authority may levy and collect, in relation to its functions under this Act or any other written law, such fees for licences and approvals as are provided for in the regulations and such port charges as the port authority determines.
- (2) Port charges are to be determined by the port authority in accordance with prudent commercial principles and may allow for —
  - (a) the making of a profit; and
  - (b) depreciation of assets.

**38. Planning laws, application of to port authorities**

- (1) In this section —  
*port authority* includes —
  - (a) a lessee or tenant of a port authority; and
  - (b) a person acting on behalf of a port authority under an arrangement under section 35(2).
- (2) For the purposes of port works and port facilities, the *Planning and Development Act 2005* section 6 applies to a port authority as if it were an agency of the Crown in right of the State.
- (3) Without limiting section 35(8), port works and port facilities are to be regarded as being public works for the purposes of section 6 of the *Planning and Development Act 2005* as applied by subsection (2).

*[(4), (5) deleted]*

- (6) If there is a dispute between a port authority and a local government with respect to a planning matter relating to port

works or port facilities, the parties to the dispute are to refer it to the Minister.

- (7) The Minister may, after consulting the Minister administering the *Planning and Development Act 2005*, make a decision on the dispute and that decision is final and binding on the parties.

*[Section 38 amended by No. 74 of 2003 s. 93(3); No. 38 of 2005 s. 15; No. 24 of 2011 s. 169.]*

**39. Subsidiaries of port authorities, acquisition of etc.**

- (1) A port authority must obtain the approval of the Minister before it acquires a subsidiary or enters into any transaction that will result in the acquisition of a subsidiary.
- (2) The Minister is not to give approval under subsection (1) except with the Treasurer's concurrence.
- (3) A port authority must ensure that the memorandum and articles of association of every subsidiary of the port authority that under a written law is required to have a memorandum and articles of association —
- (a) contain provisions to the effect of those required by Schedule 4; and
  - (b) are consistent with this Act; and
  - (c) are not amended in a way that is inconsistent with this Act.
- (4) A port authority must, to the maximum extent practicable, ensure that every subsidiary of the port authority complies with its memorandum and articles of association and with this Act.
- (5) The provisions of this Act prevail to the extent of any inconsistency with the articles of association of any subsidiary of a port authority.

**40. Ministerial approval, transactions requiring**

- (1) Despite sections 30 and 35, a port authority must get the Minister's approval before it enters into a transaction to which this section applies.
- (2) The Minister is not to give approval under subsection (1) except with the Treasurer's concurrence.
- (3) This section applies to a transaction if —
  - (a) it is to be entered into by a port authority or a subsidiary of a port authority; and
  - (b) it is not exempt under section 41; and
  - (c) the port authority's liability exceeds the prescribed amount.
- (4) For the purposes of subsection (3)(c) a port authority's liability is the amount or value of the consideration or the amount to be paid or received by the port authority or a subsidiary, ascertained as at the time when the transaction is entered into.

**41. Exemptions from s. 40**

- (1) The Minister, with the Treasurer's concurrence, may by order exempt a transaction or class of transaction from the operation of section 40 either unconditionally or on specified conditions.
- (2) An order under subsection (1) may be revoked or amended by the Minister with the Treasurer's concurrence.
- (3) An order under subsection (1) or (2) is to show sufficient particulars of the transaction or class of transaction to which it relates to enable the transaction or class to be identified.
- (4) The Minister must, within 14 days after an order under subsection (1) or (2) is made, cause it to be laid before each House of Parliament or dealt with in accordance with section 133.

**42. Term used: transaction**

In sections 40 and 41 —

**transaction** —

- (a) includes a contract or other arrangement or any exercise of the power conferred by section 35(2)(k); and
- (b) does not include any acquisition or transaction referred to in section 39(1) or any transaction under section 85 or 87.

**43. Major initiatives etc., Minister to be consulted on**

A port authority must consult the Minister before it enters upon a course of action that in its opinion —

- (a) amounts to a major initiative; or
- (b) is likely to be of significant public interest,

whether or not the course of action involves a transaction to which section 40 applies.

**44. Delegation by port authority**

- (1) A port authority may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.
- (2) A delegation under subsection (1) may be made to —
  - (a) a director or directors; or
  - (b) the CEO; or
  - (c) a member of staff; or
  - (d) a committee established under section 13; or
  - (e) any other person.
- (3) A delegate cannot subdelegate the performance of any function unless the delegate is expressly authorised by the instrument of delegation to do so.

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- (4) A function performed by a delegate of a port authority is to be taken to be performed by the port authority.
- (5) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section is to be read as limiting the ability of a port authority to act through its officers and agents in the normal course of business.
- (7) This section does not apply to the execution of documents but authority to execute documents on behalf of a port authority can be given under section 134.

**Division 2 — Protection of people dealing with port authorities**

**45. People dealing with port authorities may make assumptions**

- (1) A person having dealings with a port authority is entitled to make the assumptions mentioned in section 47.
- (2) In any proceedings in relation to the dealings, any assertion by the port authority that the matters that the person is entitled to assume were not correct must be disregarded.

**46. Third parties may make assumptions**

- (1) A person (the *third party*) having dealings with a person (the *new owner*) who has acquired, or purports to have acquired, title to property from a port authority (whether directly or indirectly) is entitled to make the assumptions mentioned in section 47.
- (2) In any proceedings in relation to the dealings, any assertion by the port authority or the new owner that the matters that the third party is entitled to assume were not correct must be disregarded.



**47. Assumptions that may be made under s. 45 and 46**

The assumptions that a person is, because of section 45 or 46, entitled to make are —

- (a) that, at all relevant times, this Act has been complied with; and
- (b) that a person who is held out by a port authority to be a director, the CEO, an executive officer, a member of staff or an agent of a particular kind —
  - (i) has been properly appointed; and
  - (ii) has authority to perform the functions customarily performed by a director, the CEO, an executive officer, a member of staff or an agent of that kind, as the case may require;and
- (c) that a member of staff or agent of a port authority who has authority to issue a document on behalf of the port authority has authority to warrant that the document is genuine; and
- (d) that a member of staff or agent of a port authority who has authority to issue a certified copy of a document on behalf of the port authority has authority to warrant that the copy is a true copy; and
- (e) that a document has been properly sealed by a port authority if —
  - (i) it bears what appears to be an imprint of the port authority's seal; and
  - (ii) the sealing of the document appears to comply with section 134;and
- (f) that the directors, CEO, members of staff and agents of a port authority have properly performed their duties to the port authority.

**48. Exception to s. 45 and 46**

- (1) Despite sections 45 and 46, a person is not entitled to assume a matter mentioned in section 47 if —
  - (a) the person has actual knowledge that the assumption would be incorrect; or
  - (b) because of the person's connection or relationship with the port authority, the person ought to know that the assumption would be incorrect.
- (2) If, because of subsection (1), a person is not entitled to make a particular assumption in relation to dealings with the port authority, section 45(2) does not apply to any assertion by the port authority in relation to the assumption.
- (3) If, because of subsection (1), a person is not entitled to make a particular assumption in relation to an acquisition or purported acquisition from the port authority of title to property, section 46(2) does not apply to any assertion by the port authority or another person in relation to the assumption.

## **Part 5 — Provisions about accountability**

### **Division 1 — Strategic development plans**

#### **49. Draft strategic development plan to be submitted to Minister**

- (1) The board of a port authority must in each year prepare, and submit to the Minister for the Minister's agreement, a draft strategic development plan for the port authority and any subsidiary.
- (2) The Minister may from time to time, with the concurrence of the Treasurer, by written notice to the board of a port authority —
  - (a) fix a day in each year by which a draft strategic development plan is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).
- (3) Each draft strategic development plan is to be submitted not later than —
  - (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed — 3 months before the start of the next financial year.

*[Section 49 amended by No. 77 of 2006 s. 11(2).]*

#### **50. Period to which strategic development plan relates**

A strategic development plan is to cover a forecast period of 5 years or a lesser period agreed with the Minister.

#### **51. Matters to be included in strategic development plan**

- (1) A strategic development plan must set out —
  - (a) the port authority's medium to long term objectives (including economic and financial objectives) and

operational targets and how those objectives and targets will be achieved; and

(b) an environmental management plan for the port.

(2) The matters that are to be considered by a board in the preparation of a strategic development plan include —

(a) competitive strategies, pricing, service efficiency and effectiveness, strategies for land use and infrastructure maintenance, financial requirements, capital expenditure, investment strategy, customer service arrangements, relevant government policy, personnel requirements, trade projections, trade facilitation and the environmental management of the port; and

(b) any other matters that the Minister and the board agree should be considered.

**52. Strategic development plan to be agreed if possible**

A board and the Minister must try to reach agreement on a draft strategic development plan as soon as possible, and in any event not later than one month before the start of the next financial year.

**53. Minister's powers in relation to draft strategic development plan**

(1) The Minister may return a draft strategic development plan to a board and request it to —

(a) consider or further consider any matter and deal with the matter in the draft plan; and

(b) revise the draft plan in the light of its consideration or further consideration.

(2) A board must comply with a request under subsection (1) as soon as is practicable.

(3) If a board and the Minister have not reached agreement on a draft strategic development plan by one month before the start

of the next financial year, the Minister may, by written notice, direct the board —

- (a) to take specified steps in relation to the draft plan; or
  - (b) to make specified modifications to the draft plan.
- (4) A board must comply with a direction under subsection (3) as soon as is practicable.
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

**54. Strategic development plan pending agreement**

- (1) If the board of a port authority and the Minister have not reached agreement on a draft strategic development plan before the start of a financial year, the latest draft plan is to be the strategic development plan for the port authority and any subsidiary until a draft strategic development plan is agreed to under section 55.
- (2) In subsection (1) —
- latest draft plan* means the draft strategic development plan submitted, or last submitted, by the board to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.

**55. Agreed draft becomes strategic development plan**

When a board and the Minister reach agreement on a draft strategic development plan, it becomes the strategic development plan for the relevant financial year or the remainder of the year, as the case may be.

**56. Modifying strategic development plan**

- (1) A strategic development plan may be modified by a board with the agreement of the Minister.

- (2) The Minister may, by written notice, direct a board to modify a strategic development plan and the board must comply with any such direction.
- (3) Before giving a direction to a board under subsection (2) the Minister must consult with the board and take its views into account.
- (4) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

**57. Treasurer's concurrence needed by Minister for s. 55 or 56**

The Minister is not to —

- (a) agree to a draft strategic development plan under section 55; or
- (b) agree to or direct any modification of a strategic development plan under section 56,

except with the Treasurer's concurrence.

**Division 2 — Statement of corporate intent**

**58. Draft statement of corporate intent to be submitted to Minister**

- (1) The board of a port authority must in each year prepare, and submit to the Minister for the Minister's agreement, a draft statement of corporate intent for the port authority and any subsidiary.
- (2) The Minister may from time to time, with the concurrence of the Treasurer, by written notice to the board of a port authority —
  - (a) fix a day in each year by which a draft statement of corporate intent is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).

- (3) Each draft statement of corporate intent is to be submitted not later than —
- (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed — 3 months before the start of the next financial year.

*[Section 58 amended by No. 77 of 2006 s. 11(3).]*

**59. Period to which statement of corporate intent relates**

A statement of corporate intent is to cover a financial year.

**60. Matters to be included in statement of corporate intent**

- (1) A statement of corporate intent must be consistent with the strategic development plan under Division 1 for the port authority and any subsidiary.
- (2) A statement of corporate intent for a port authority and any subsidiary must specify —
- (a) an outline of the port authority's objectives; and
  - (b) an outline of major planned achievements; and
  - (c) proposed arrangements to facilitate trade; and
  - (d) estimates of operating revenue and expenditure; and
  - (e) an outline of capital expenditure and borrowing requirements; and
  - (f) proposed pricing arrangements; and
  - (g) proposed provisions for dividends; and
  - (h) the performance targets and other measures by which performances may be judged and related to objectives; and
  - (i) accounting policies that apply to the preparation of accounts; and

- (j) the type of information to be given to the Minister, including information to be given in half-yearly and annual reports; and
  - (k) the nature and extent of community service obligations that are to be performed; and
  - (l) the costings of, funding for, or other arrangements to make adjustments relating to, community service obligations; and
  - (m) the ways in which, and the extent to which, compensation will be made for performing community service obligations; and
  - (n) such other matters as may be agreed on by the Minister and the board of the port authority.
- (3) The Minister may exempt a port authority from including any matter, or any aspect of a matter, mentioned in subsection (2) in the statement of corporate intent and any such exemptions are to be noted in the statement of corporate intent of the relevant port authority.
- (4) A community service obligation arises for the purposes of subsection (2) if—
- (a) the Minister specifically requires a port authority to do something; and
  - (b) for commercial reasons, the port authority would not do the thing if it did not have to; and
  - (c) the Government does not require things of that kind to be done by businesses in the public or private sector generally.

**61. Statement of corporate intent to be agreed if possible**

A board and the Minister must try to reach agreement on a statement of corporate intent as soon as possible and, in any event not later than the start of the next financial year.



**62. Minister's powers in relation to draft statement of corporate intent**

- (1) The Minister may return a draft statement of corporate intent to a board and request it to —
  - (a) consider or further consider any matter and deal with the matter in the draft statement; and
  - (b) revise the draft statement in the light of its consideration or further consideration.
- (2) A board must comply with a request under subsection (1) as soon as is practicable.
- (3) If a board and the Minister have not reached agreement on a draft statement of corporate intent by one month before the start of the financial year, the Minister may, by written notice, direct the board —
  - (a) to take specified steps in relation to the draft statement; or
  - (b) to make specified modifications to the draft statement.
- (4) A board must comply with a direction under subsection (3) as soon as is practicable.
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

**63. Statement of corporate intent pending agreement**

- (1) If the board of a port authority and the Minister have not reached agreement on a draft statement of corporate intent before the start of a financial year, the latest draft statement is to be the statement of corporate intent for the port authority and any subsidiary until a draft statement of corporate intent is agreed to under section 64.
- (2) In subsection (1) —

*latest draft statement* means the draft statement of corporate intent submitted, or last submitted, by the board to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.

**64. Agreed draft becomes statement of corporate intent**

- (1) When a board and the Minister reach agreement on a draft statement of corporate intent, it becomes the statement of corporate intent for the relevant financial year or the remainder of the year as the case may be.
- (2) The Minister must within 14 days after agreeing to a draft statement of corporate intent under subsection (1) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.
- (3) A board may request the Minister to delete from the copy of a statement of corporate intent that is to be laid before Parliament a matter that is of a commercially sensitive nature, and the Minister may, despite subsection (2), comply with the request.
- (4) Any copy of a statement of corporate intent to which subsection (3) applies must contain a statement detailing the reasons for the deletion at the place in the document where the information deleted would otherwise appear and be accompanied by an opinion from the Auditor General stating whether or not the information deleted is commercially sensitive.

**65. Modifying statement of corporate intent**

- (1) A statement of corporate intent may be modified by a board with the agreement of the Minister.
- (2) The Minister may, by written notice, direct a board to modify the statement of corporate intent, and the board must comply with any such direction.

- (3) Before giving a direction to a board under subsection (2), the Minister must consult with the board and take its views into account.
- (4) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

**66. Treasurer's concurrence needed by Minister for s. 64 and 65**

The Minister is not to —

- (a) agree to a draft statement of corporate intent under section 64; or
- (b) agree to or direct any modification of a statement of corporate intent under section 65,

except with the Treasurer's concurrence.

**Division 3 — Reporting requirements**

**67. Half-yearly reports**

- (1) A port authority must, for the first half of a financial year, give to the Minister a report on the operations of the port authority and of each subsidiary.
- (2) A half-yearly report is to be prepared on a consolidated basis.
- (3) A half-yearly report must be given to the Minister —
  - (a) within 2 months after the end of the reporting period; or
  - (b) if another period after the end of the reporting period is agreed between the board and the Minister, within the agreed period.
- (4) The port authority must give a copy of each half-yearly report to the Treasurer.

- (5) A half-yearly report must include the information required to be given in the report by a relevant statement of corporate intent under Division 2.

**68. Annual reports**

- (1) A port authority must prepare and deliver to the Minister in each year separate annual reports on the operations of the port authority and of each subsidiary in accordance with Schedule 5, clauses 34 and 35.
- (2) All of the reports under subsection (1) are to be sent to the Minister at the same time.
- (3) The Minister must within 21 days after the day on which a copy of an annual report of a port authority is delivered to the Minister cause a copy of the report to be laid before each House of Parliament or dealt with in accordance with section 133.
- (4) An annual report on the operations of a subsidiary is not required to be laid before Parliament or dealt with under section 133.

**69. Annual reports, contents of**

- (1) The annual report in respect of a port authority or a subsidiary must —
- (a) contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of the operations of the port authority or the subsidiary; and
  - (b) include a commentary on any significant issues relating to the performance of the port authority or the subsidiary that were raised in any relevant statement of corporate intent; and
  - (c) include particulars of any directions given by the Minister under section 53(3), 56(2), 62(3), 65(2), 72(1) or 84(3) that —

- (i) apply to the port authority or the subsidiary; and
  - (ii) were given during the relevant financial year, or at any other time to the extent that they continued to be material during that year;
- and
- (d) include particulars of the impact on the financial position, profits and losses and prospects of the port authority or the subsidiary of any directions that were given by the Minister under section 72(1) during the relevant financial year; and
  - (e) include total value of payments and details of remuneration made to directors of the board of the port authority; and
  - (f) provide a summary of the performance of the port authority in relation to its function under section 30(1)(f).
- (2) The requirements of this section are in addition to Schedule 5, clauses 34 and 35.

**70. Commercially sensitive matters, deletion of from reports**

- (1) A board may request the Minister to delete a matter from the copies of a report (and accompanying documents) that are to be made public if the board believes, on reasonable grounds, that the disclosure of the matter would compromise the competitiveness or commercial operations of another person.
- (2) The Minister may comply with a request under subsection (1) unless the matter is one that is required under Schedule 5, clause 35 to be included in the report.
- (3) If the Minister complies with a request under subsection (1) the copies of the report are to include a statement that a matter has been deleted from it under this section.

**Division 4 — Ministerial directions, general provisions**

**71. Which directions port authority obliged to obey**

Except as provided by this Act or any other written law, a port authority is not required to comply with any direction or administrative request given or made by or on behalf of the Government.

**72. Minister may give directions**

- (1) The Minister may give directions in writing to a port authority with respect to the performance of its functions, either generally or in relation to a particular matter, and, subject to section 73, the port authority is to give effect to any such direction.
- (2) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament or dealt with under section 133 —
  - (a) within 14 days after the direction is given; or
  - (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.

**73. When s. 72(1) direction takes effect**

- (1) A direction under section 72(1) becomes effective —
  - (a) on the expiry of 7 days after its receipt by a board or of such longer period as the Minister may, at the request of the board, determine; or
  - (b) if it is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, on its being confirmed under that section.
- (2) If a board asks the Minister to extend the 7 day period under subsection (1), the Minister must decide whether or not to agree

to the request and notify the board of that decision before the 7 day period has expired.

### **Division 5 — Consultation and provision of information**

#### **74. Consultation between board and Minister**

The board of a port authority and the Minister, at the request of either, are to consult together, either personally or through appropriate representatives, in relation to any aspect of the operations of the port authority.

#### **75. Minister to have access to information**

- (1) The Minister is entitled —
  - (a) to have information in the possession of a port authority and any subsidiary; 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 the CEO or the board of the port authority to furnish information to the Minister;
  - (b) request the CEO or the board of the port authority to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the staff of the port authority and any subsidiary to obtain the information and furnish it to the Minister.
- (3) The CEO or the board of a port authority is to —
  - (a) comply with a request under subsection (2); and
  - (b) make staff and facilities available to the Minister for the purposes of subsection (2)(c).
- (4) Where the CEO or the board of a port authority furnishes or gives access to information to the Minister, the Minister is to be advised whether or not in the opinion of the CEO or the board

the public disclosure of the information would adversely affect the commercial interests of the port authority or any subsidiary or of any other person.

(5) 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 the port authority.

**76. Minister to be kept informed**

A port authority must —

- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the port authority and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the port authority and its subsidiaries; and
- (b) give the Minister reports and information that the Minister requires for the making of informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the opinion of the board of the port authority may prevent, or significantly affect, achievement of the port authority's —
  - (i) objectives outlined in its statement of corporate intent; or
  - (ii) targets under its strategic development plan,promptly inform the Minister of the matters and its opinion in relation to them.

**77. Financial difficulty, board to notify Minister of etc.**

- (1) The board of a port authority must notify the Minister if the board forms the opinion that the port authority or a subsidiary is



unable to, or will be unlikely to be able to, satisfy any financial obligation, of the port authority or the subsidiary from the financial resources available or likely to be available to the port authority or the subsidiary at the time the financial obligation is due.

- (2) The notice must —
  - (a) be in writing; and
  - (b) provide the reasons for the board's opinion; and
  - (c) provide such other information as the board considers relevant.
- (3) Within 7 days of receipt of the notice, the Minister must —
  - (a) confer with the Treasurer and the board for the purpose of determining what action is required to ensure that the port authority or subsidiary is able to satisfy the relevant financial obligation when it is due; and
  - (b) initiate such action as is required to ensure that the port authority or subsidiary is able to satisfy the relevant financial obligation when it is due.
- (4) For the purposes of subsection (3) the Minister may give a port authority a direction under section 72 requiring the port authority or any subsidiary to cease or limit the performance of any function.
- (5) In giving effect to a direction under subsection (4) a board must ensure that it is complied with in relation to any relevant subsidiary.

### **Division 6 — Protection from liability**

#### **78. No liability for things done under this Part**

- (1) A port authority, a subsidiary of a port authority or a person performing functions under this Act is not liable —

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- (a) in respect of any claim arising as a consequence of the disclosure of information or documents under section 67, 68, 74, 75, 76 or 77; or
  - (b) for the fact of having done or omitted a thing that is required to be done or omitted by a direction given under section 53(3), 56(2), 62(3), 65(2), 72(1) or 84(3).
- (2) Subsection (1) does not extend to the manner in which a thing is done or omitted if it is done or omitted contrary to section 9 or 10 of the *Statutory Corporations (Liability of Directors) Act 1996* or Schedule 3, clause 3 or 4.

## Part 6 — Financial provisions

### Division 1 — General

**79. Bank account**

(1) In this section —

*account* means an account at a bank as defined by section 3 of the *Financial Management Act 2006*;

*Public Bank Account* has the meaning given by section 3 of the *Financial Management Act 2006*.

(2) A port authority is to maintain one or more accounts.

(3) An account maintained by a port authority may form part of the Public Bank Account.

(3a) Without limiting section 90 —

(a) sections 12 and 35 of the *Financial Management Act 2006* do not apply to an account maintained by a port authority that forms part of the Public Bank Account; and

(b) section 37(1) of that Act does not apply to money standing to the credit of an account referred to in paragraph (a).

(4) Money received by and expenditure of a port authority is to be credited to or paid from an account.

*[Section 79 amended by No. 77 of 2006 Sch. 1 cl. 131(1) and (2).]*

**80. Investing funds**

Funds of a port authority that are not in an account at the Treasury and are not being used for the performance of the port authority's functions may be invested in such investments as the board of the port authority determines.

**81. Exemption from rates**

- (1) Subject to subsection (2), port land, or land under the management and control of a port authority, is not rateable land for the purposes of the *Local Government Act 1995*.
- (2) If a port authority leases or lets port land, or land under its management and control, the land is by reason of the lease or tenancy rateable land for the purposes of the *Local Government Act 1995* in the hands of the lessee or tenant.

**Division 2 — Payments to State**

**82. Payment of amount in lieu of rates**

- (1) A port authority is to pay to the Treasurer in respect of a financial year an amount equal to the sum of all local government rates and charges that, but for —
  - (a) section 81(1); and
  - (b) section 6.26(2)(a)(i) of the *Local Government Act 1995*,the port authority would have been liable to pay in respect of that financial year.
- (2) Subsection (1) does not apply in relation to —
  - (a) land that is rateable under section 81(2); or
  - (b) land used or reserved for a purpose prescribed for the purposes of this section; or
  - (c) an area of land prescribed for the purposes of this section.

**83. Determining amounts under s. 82**

Amounts payable under section 82 —

- (a) are to be determined in accordance with such principles; and

(b) are to be paid at such time or times,  
as the Treasurer may direct.

**84. Dividends**

- (1) A dividend under this section is to be —
- (a) calculated with respect to the net profits of a port authority for a financial year after first taking into account —
    - (i) any amounts payable to the Treasurer under section 82 and the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*; and
    - (ii) any formula for calculation agreed between the Minister and the Treasurer;
- and
- (b) paid to the Treasurer, in accordance with subsection (4).
- (2) The board of a port authority, as soon as practicable after the end of each financial year, is to make a recommendation to the Minister as to the amount of the dividend (if any) that the board recommends as appropriate for that financial year.
- (3) The Minister, with the Treasurer's concurrence —
- (a) may accept a recommendation under subsection (2); or
  - (b) after consultation with the board, is to direct that the amount of the dividend is to be some other amount.
- (4) A port authority is to pay the dividend —
- (a) as soon as practicable after the amount is fixed under subsection (3); and
  - (b) in any case not later than —
    - (i) 6 months after the end of the financial year to which the dividend relates; or
    - (ii) such other time as may be agreed between the Treasurer and the board.

- (5) The Minister must within 14 days after a direction is given under subsection (3) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

### **Division 3 — Borrowing**

#### **85. Borrowing powers**

- (1) A port authority may, subject to section 86 —
- (a) borrow or re-borrow moneys; or
  - (b) obtain credit; or
  - (c) issue, acquire, hold or dispose of debt paper; or
  - (d) create and issue capital instruments; or
  - (e) otherwise arrange for financial accommodation to be extended to the port authority.
- (2) Capital instruments under subsection (1)(d) are to be created and issued on such terms as a port authority determines and the Minister approves.
- (3) A port authority is to keep such registers for the purposes of this section as may be prescribed.
- (4) In subsection (1) —
- debt paper* means inscribed stock, bonds, debentures with coupons annexed, bills of exchange, promissory notes or bearer securities, or other similar instruments evidencing indebtedness.

#### **86. Borrowing limits**

- (1) The Minister, with the Treasurer's concurrence and in accordance with subsections (2), (3) and (4), may, by notice to a port authority, impose monetary limits on the exercise of the powers conferred by section 85.

- (2) The monetary limit is to be determined for the exercise of those powers in a financial year specified by the Minister and may relate to —
  - (a) the total amount that can be outstanding at any one time during that year as a result of the exercise of those powers; or
  - (b) the total liabilities that can be incurred during that year as a result of the exercise of those powers.
- (3) A limit for the time being in force may be varied for a subsequent financial year.
- (4) A limit for the time being in force continues to apply until it is so varied.
- (5) A port authority must comply with any limit for the time being in force in relation to it.
- (6) A liability of a port authority is not unenforceable or in any way affected by a failure of the port authority to comply with this section.
- (7) No person dealing with a port authority is bound or concerned to enquire whether the port authority has complied or is complying with this section.

**87. Hedging transactions**

- (1) A port authority may, for the purpose of managing, limiting or reducing perceived risks or anticipated costs in connection with the exercise of any power conferred by section 85 —
  - (a) enter into an agreement or arrangement to effect any of the following transactions —
    - (i) a foreign exchange transaction; or
    - (ii) a forward foreign exchange transaction; or
    - (iii) a currency swap; or
    - (iv) a forward currency swap; or

- (v) a foreign currency cap, a foreign currency collar or a foreign currency floor; or
- (vi) a forward interest rate agreement; or
- (vii) an interest rate swap; or
- (viii) a forward interest rate swap; or
- (ix) an interest rate cap, an interest rate collar or an interest rate floor; or
- (x) an option for interest rate or currency management purposes; or
- (xi) a futures contract or a futures option; or
- (xii) a transaction of such other class as is approved in writing by the Minister, with the Treasurer's concurrence, as a class of transactions to which this paragraph applies;

or

- (b) enter into an agreement or arrangement to effect any transaction which is a combination of —
  - (i) 2 or more transactions permitted under paragraph (a); or
  - (ii) one or more transactions permitted under paragraph (a) and one or more transactions permitted under section 85.

- (2) In subsection (1)(a) —

***interest rate*** includes coupon rate, discount rate and yield.

*[Section 87 amended by No. 10 of 2001 s. 158; No. 21 of 2003 s. 19.]*

#### **Division 4 — Guarantees**

##### **88. Guarantees by Treasurer**

- (1) The Treasurer, with the Minister's concurrence, may, in the name and on behalf of the State, guarantee the performance by a



port authority, in the State or elsewhere, of any financial obligation of the port authority arising under section 85.

- (2) A guarantee is to be in such form and subject to such terms and conditions as the Treasurer determines.
- (3) The due payment of moneys payable by the Treasurer under a guarantee —
  - (a) is by this subsection guaranteed by the State; and
  - (b) is to be made by the Treasurer and charged to the Consolidated Account, and this subsection appropriates that Account accordingly.
- (4) The Treasurer is to cause any amounts received or recovered from a port authority or otherwise in respect of any payment made by the Treasurer under a guarantee to be credited to the Consolidated Account.

*[Section 88 amended by No. 77 of 2006 s. 4, 5(1).]*

**89. Charges for Treasurer's guarantee**

- (1) The Treasurer may, after consultation with the board of a port authority, fix charges to be paid by the port authority to the Treasurer for the benefit of the Consolidated Account in respect of a guarantee given under section 88.
- (2) Payments by a port authority to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines.

*[Section 89 amended by No. 77 of 2006 s. 4.]*

**Division 5 — Financial administration and audit**

**90. *Financial Management Act 2006 and Auditor General Act 2006, limited application of***

- (1) Despite anything in the *Financial Management Act 2006* or the *Auditor General Act 2006*, those Acts, other than the provisions

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referred to in subsection (2) and Schedule 5, clauses 37(2) and 44(4), do not apply to a port authority or any person performing functions under this Act.

(2) The Minister and the board of a port authority must comply with sections 81 and 82 of the *Financial Management Act 2006* as if —

- (a) the port authority were a statutory authority; and
- (b) the board were its accountable authority,

within the meaning of that Act.

*[Section 90 amended by No. 77 of 2006 Sch. 1 cl. 131(3) and (4).]*

**91. Financial administration and audit (Sch. 5)**

(1) Schedule 5 has effect in relation to the financial administration and audit of a port authority.

(2) That Schedule may be amended by regulations made by the Governor in accordance with subsections (3) and (4).

(3) If —

(a) a provision of Schedule 5 that set out the substance of a provision of —

(i) the Corporations Law (as in force at any time before the commencement of the Corporations Act); or

(ii) the Corporations Act,

does not accurately reflect the corresponding provision of the Corporations Act; or

(b) the Corporations Act does not contain a provision that corresponds to a provision of Schedule 5 that set out the substance of a provision of —

(i) the Corporations Law (as in force at any time before the commencement of the Corporations Act); or

- (ii) the Corporations Act;
- or
- (c) the Corporations Act contains a provision relating to a matter provided for by Schedule 5, the substance of which is not set out in Schedule 5,

the Minister may recommend to the Governor, as soon as practicable after the circumstance in paragraph (a), (b) or (c) arises, that regulations be made under subsection (2).

- (4) The regulations are to be in such form that Schedule 5 as amended will, in the opinion of the Minister, be substantially the same as the corresponding provisions of the Corporations Act, but with such modifications as are consistent with the policy of this Act.

*[Section 91 amended by No. 10 of 2001 s. 159.]*

### **Division 6 — Financial targets**

#### **92. Annual financial targets, Minister may set**

- (1) The Minister, with the Treasurer's concurrence, may, by written notice given to a port authority on or before 31 December preceding the start of a financial year, determine a financial target for the port authority for that financial year.
- (2) If a port authority has a financial target for a financial year under subsection (1), the port authority must pursue a policy aimed at attaining the target, or the target as varied under subsection (4), during that financial year.
- (3) A notice under subsection (1) has to describe the procedure to be used to ascertain whether or not the financial target will be, or has been attained.
- (4) If a port authority has a financial target for a financial year under subsection (1), and during that financial year, economic

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conditions beyond the control of the port authority are such that it is —

- (a) unlikely that the port authority will attain the target; or
- (b) likely that the port authority will exceed the target,

the Minister may, with the Treasurer's concurrence, vary the target by written notice given to the port authority.

## **Part 7 — Navigation and port matters**

### **Division 1 — Navigational aids**

**93. Port authority may provide etc. navigational aids etc.**

- (1) A port authority may —
  - (a) provide navigational aids for the port; or
  - (b) agree to take over the control of a navigational aid for the port; or
  - (c) maintain, move, remove, discontinue or replace any navigational aid provided by or under the control of the port authority; or
  - (d) vary the character of, or the mode of display or operation of, any navigational aid provided by or under the control of the port authority.
- (2) If a port authority enters into an agreement under subsection (1)(b), provision is to be made in the agreement for the payment from time to time of the expense incurred in the exercise of the powers conferred by subsection (1)(c) or (d).
- (3) A person to whom this subsection applies is not liable for any loss or damage resulting from —
  - (a) a thing done or omitted to be done in good faith in relation to a navigational aid for a port; or
  - (b) any defect in, or in the placing or operation of, a navigational aid for a port.
- (4) Subsection (3) applies to —
  - (a) the State; and
  - (b) the port authority; and
  - (c) the CEO and members of staff of the port authority; and
  - (d) if the control of the navigational aid has been taken over by the port authority under an agreement under

subsection (1)(b), a person who is or was the owner, lessee or bailee of the navigational aid.

**94. Interference with navigational aids, offence**

- (1) A person must not, without lawful excuse (proof of which lies on the person) do any of the following things in relation to a navigational aid for a port —
- (a) damage it;
  - (b) make a vessel fast to it or otherwise use a vessel in a way that might damage it;
  - (c) obstruct or interfere with its display or operation;
  - (d) obstruct or interfere with any emission or transmission from it.

Penalty: \$20 000 or imprisonment for 20 months.

- (2) A person who is convicted of an offence under subsection (1)(a) is liable, in addition to suffering any penalty imposed in respect of that offence, to pay to the port authority for the port all expenses reasonably incurred by the port authority in making good the damage and the port authority may recover those expenses from that person in a court of competent jurisdiction as a debt due to the port authority.
- (3) Subsection (2) does not affect the operation of section 113 in relation to damage to which that section applies.

**Division 2 — Pilotage**

**95. Terms used in, and application of, this Division**

- (1) In this Division —
- approved*, in relation to a pilot, means approved under section 96;
- under compulsory pilotage*, in relation to a vessel, means under the control of a pilot as required by section 97.

- (2) A reference in this Division to a port includes a reference to any area that is outside the port and is declared by the regulations to be associated with the port and to be an area in which pilotage services are to be used.
- (3) This Division applies to vessels —
  - (a) moving in a port in the course of entering or leaving the port; or
  - (b) moving between places in a port.

**96. Port authority to approve pilots and ensure pilotage services are provided**

- (1) A port authority may approve a competent and suitably qualified person as a pilot for the port and is to ensure that there is at all times at least one approved pilot for the port.
- (2) An approval under subsection (1) has effect for the period set out in the approval unless it is revoked by the port authority before that period ends.
- (3) An approval under subsection (1), or any revocation of such an approval, is to be in writing.
- (4) No person is to act as a pilot in a port unless the person is approved as a pilot for the port.  
Penalty: \$10 000.
- (5) A port authority is responsible for ensuring that pilotage services are provided in its port —
  - (a) by the port authority; or
  - (b) if regulations under section 143 provide that a person providing pilotage services in the port needs a licence referred to in that section, by a person who holds such a licence; or
  - (c) partly under paragraph (a) and partly under paragraph (b).

- (6) A reference in subsection (5) to pilotage services provided by the port authority includes a reference to pilotage services provided under a contract or arrangement under section 35(2).
- (7) Despite section 37, any charges for pilotage services provided in a port —
  - (a) are to be determined in accordance with the regulations; and
  - (b) are to be paid to the port authority, irrespective of how or by whom they are provided.
- (8) If regulations under section 143 provide that a person providing pilotage services in the port needs a licence referred to in that section, subsection (7) does not apply in relation to pilotage services provided by a person who holds such a licence.

**97. Pilotage compulsory in ports**

- (1) Except as otherwise provided by the regulations, a vessel moving in a port must use pilotage services.
- (2) A person who moves a vessel in a port without it being under the control 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: \$10 000.
- (3) If a vessel is being moved in a port without it being under the control of a person approved as a pilot for the port, neither the State nor the port authority is liable for —
  - (a) any loss or damage caused by the vessel; or
  - (b) the loss of, or damage to, the vessel or a thing in or on the vessel,

while the vessel is being so moved, whether or not it is being so moved by reason of an exemption under the regulations.



**98. Pilot under authority of master**

An approved pilot who as pilot has control of a vessel in a port 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.

**99. Liability of owner or master of piloted vessel**

The owner or master of a vessel moving under compulsory pilotage in a port is liable for any loss or damage caused by the vessel, or by a fault in the conduct or navigation of the vessel, in the same manner as the owner or master would be liable if pilotage were not compulsory.

**100. Immunity from liability for pilot's negligence**

- (1) Neither the State nor the port authority is liable for any loss or damage resulting from an act or omission by a person approved as a pilot by a port authority in the conduct or navigation of a vessel of which the person is the pilot.
- (2) An approved pilot is not personally liable for any loss or damage resulting from an 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 loss or damage resulting from an act or omission by the person in the conduct or navigation of a vessel of which the person is the pilot.

**Division 3 — Harbour masters**

**101. Port includes other declared areas**

A reference in this Division to a port includes a reference to —

- (a) any area that is outside, but contiguous with, a port and is declared by the regulations to be an adjacent area in relation to the port; and

- (b) any area that is declared under section 95(2) in relation to the port.

**102. Appointment of harbour master and deputy harbour master etc.**

- (1) In this section —  
*eligible person* means —
  - (a) the CEO; or
  - (b) a member of staff who is competent and suitably qualified; or
  - (c) any other person who is competent and suitably qualified.
- (2) The board of a port authority is to appoint an eligible person as the harbour master of the port.
- (3) The board of a port authority may appoint an eligible person as the deputy harbour master of the port.
- (4) Subject to subsection (5), the deputy harbour master may perform the functions of the harbour master if the harbour master is absent from the port or on leave, or unable for any other reason to perform those functions.
- (5) The board of a port authority may appoint an eligible person to act in the office of harbour master of the port if the harbour master is, or is expected to be, absent from the port, or on leave, or unable for any other reason to perform the functions of the office.
- (6) If there is no person appointed under subsection (2), (3) or (5) who is able to perform the functions of the harbour master, those functions may be performed by a person determined by the board of the port authority.
- (7) The harbour master may, in writing, delegate any of his or her functions, other than this power of delegation, to a member of staff.

**103. Functions of harbour master**

- (1) The principal functions of a harbour master are —
  - (a) to control the movement and mooring of vessels in the port; and
  - (b) to ensure the port is kept free of obstructions or possible obstructions to vessels using the port; and
  - (c) to ensure that the safety of people and property in the port is not endangered by vessels or dangerous things; and
  - (d) 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.
- (3) The fact that a harbour master is a member of staff does not affect the powers of the CEO in relation to that member of staff.
- (4) If a harbour master is a person referred to in section 102(1)(c), the CEO may give directions to the harbour master as to the performance of his or her functions and the harbour master is to comply with those directions.

**104. Directions to masters etc.**

- (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 to do any or all of the following —
  - (a) to ensure that the vessel does not enter the port;
  - (b) to navigate the vessel in a specified manner while it is in the port;
  - (c) to moor the vessel in the port at a specified place and in a specified manner;
  - (d) to move the vessel out of the port or to another place in it;

- (e) to take any action specified by the harbour master in relation to the means by which the vessel is moored in the port.
- (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, the harbour master may direct the owner, master, or person in charge of the vessel to scuttle it immediately.

**105. Directions as to dangerous things**

- (1) In this section —  
*owner*, in relation to —
  - (a) a vessel or part of a vessel, means the owner immediately prior to the time of the loss or abandonment of the vessel or part of the vessel;
  - (b) a thing in the water that was in or on a vessel, means the owner of the vessel.
- (2) For the purpose of performing his or her principal functions a harbour master may direct the owner of a dangerous thing in the port to do any or all of the following —
  - (a) to move the dangerous thing out of the port or to another place within it;
  - (b) to destroy the dangerous thing;
  - (c) to sink the dangerous thing.

**106. Limit on power to order removal of vessels or dangerous things**

A harbour master must not direct that a vessel or dangerous thing be moved out of a port unless satisfied that there is no other place in the port where the vessel or dangerous thing can lie without —

- (a) obstructing other vessels; or

- (b) hindering the efficiency of the operations of the port; or
- (c) endangering the safety of people or property; or
- (d) polluting the waters of the port.

**107. Ownerless vessels and dangerous things, removal of**

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 dangerous thing the owner of which cannot, after reasonable enquiries, be ascertained or found.

**108. Not obeying s. 104 or 106 direction, offence**

A person who without reasonable excuse (proof of which lies on that person) does not comply with a direction under section 104 or 105 commits an offence.

Penalty: \$20 000.

**109. Powers if direction not obeyed**

- (1) If a person does not comply with a direction under section 104(1)(c), (d) or (e) or (2) or section 105 within a reasonable time after being given it, the harbour master may cause the direction to be complied with using such means as the harbour master thinks fit.
- (2) When causing a vessel to be moved under subsection (1) the harbour master may cause the vessel to be made fast to another vessel that is moored in the port.
- (3) Subsection (2) does not prevent 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 by that making fast.

**110. Recovering port authority's s. 107 costs**

- (1) A port authority may recover —

- (a) the costs of exercising the powers in section 107 from the owner of the vessel or dangerous thing; or
- (b) the cost of exercising the powers in section 109 from the owner, master, or person in charge, of the vessel or the owner of the dangerous thing,

in a court of competent jurisdiction as a debt due to the port authority.

- (2) A port authority may recover the costs of exercising the powers in section 107 by selling the vessel or dangerous thing.
- (3) The proceeds of a sale are to be applied —
  - (a) first to the expenses of the sale; and
  - (b) second to the costs of exercising the powers in section 107,

and the balance, if any, is to be paid to the owner of the vessel or dangerous thing but, if the identity or whereabouts, or both, of the owner cannot be ascertained, that balance is to be paid to the Treasurer.

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

**111. Immunity from liability for acts under this Division**

Neither the State, 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 —

- (a) complying with a direction under section 104 or 105 given in good faith; or
- (b) the exercise in good faith of the powers in section 107, 109 or 110(2).

**112. Hindering harbour master etc., offence**

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 107 or 109 commits an offence.

Penalty: \$10 000.

**Division 4 — Damage in a port caused by vessels etc.**

**113. Responsibility for damage to port facilities or property**

- (1) This section applies if any port facility or other property of a port authority is damaged by —
  - (a) a vessel or its equipment or cargo; or
  - (b) any floating object; or
  - (c) any material; or
  - (d) any person employed in, on or in relation to, a thing referred to in paragraph (a), (b) or (c).
- (2) If this section applies, the owner of the vessel, floating object or material is answerable in damages to the port authority for the whole of the damage whether or not the damage is caused through a person's wilful or negligent act or omission.
- (3) If the damage is caused through the wilful or negligent act or omission of the master of the vessel or of the person having charge of the floating object or the material, that master or person (as well as the owner) is answerable in damages to the port authority for the whole of the damage.
- (4) Neither the port authority nor any other person is entitled under this section to recover more than once for the same cause of action.
- (5) If the owner of any vessel, floating object or material —
  - (a) pays any money in respect of any damage to which this section applies caused through the wilful or negligent act

or omission of a master or other person referred to in subsection (3); or

- (b) pays any fine by reason of any act or omission of a master or other person referred to in subsection (3),

the owner may recover the money or fine so paid, with costs, from that master or other person in a court of competent jurisdiction as a debt due to the owner.

- (6) In an action under this section the damages recoverable are to be determined on the basis of —
  - (a) the actual cost incurred in repairing or replacing the damaged port facility or property without taking into account any betterment or depreciation; and
  - (b) any economic loss suffered by the port authority as a result of the damage.

### **Division 5 — Port safety**

#### **114. Marine safety plan, port authority to have**

- (1) In this section —

*marine safety plan* means a plan prepared by a port authority and approved by the Minister setting out the arrangements for marine safety at the port.
- (2) A port authority is to have, maintain and implement a marine safety plan for its port.
- (3) The Minister is to monitor the maintenance of a port authority's marine safety plan and may —
  - (a) give directions to the port authority as to the maintenance of the plan; and
  - (b) direct the port authority to review the plan from time to time and submit modifications of it to the Minister for approval.



- (4) The port authority is to give effect to any direction under subsection (3).
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

### **Division 6 — Powers of police officers and others**

*[Heading inserted by No. 71 of 2003 s. 7.]*

#### **114A. Police officers and others may enter vessels and conduct examinations and enquiries**

- (1) An authorised officer may at any time enter a vessel in a port and conduct any examination or enquiry that the authorised officer considers necessary to determine whether there has been compliance with this Act.
- (2) In this section —  
**authorised officer** means —
  - (a) a police officer; or
  - (b) a member of staff of the port authority, or another person, authorised by the port authority for the purposes of this section.

*[Section 114A inserted by No. 71 of 2003 s. 7.]*

### **Division 7 — Protection from liability**

*[Heading inserted by No. 71 of 2003 s. 7.]*

#### **114B. Immunity from liability for damage to vessels**

- (1) Without limiting any other provision of this Part, a port authority is not liable for any loss or damage caused to a vessel in its port.

- (2) Without limiting subsection (1) or any other provision of this Part, a port authority is not liable for any loss or damage caused to a vessel in its port —
- (a) that results from —
    - (i) the master of the vessel complying with a direction given in good faith; or
    - (ii) a thing done or omitted to be done in good faith in respect of the vessel, by the harbour master or a member of the staff of the port authority; or
  - (b) that results from a defect in a mooring, anchorage or berth, or anything else, provided by the port authority.

*[Section 114B inserted by No. 71 of 2003 s. 7.]*

**114C. Immunity from liability for damaged goods**

- (1) A port authority is not liable for any loss or damage caused to any goods that a person (other than the port authority) —
- (a) loads on to or unloads from a vessel at the port; or
  - (b) stores at the port.
- (2) The port authority does not become liable for any loss or damage caused to any goods referred to in subsection (1)(b) stored in an uncovered or unprotected manner at the port because the port authority provides, or attempts to provide, any temporary cover or protection for those goods.

*[Section 114C inserted by No. 71 of 2003 s. 7.]*

**114D. Immunity from liability for delay in delivery of goods**

A port authority is not liable for any loss caused by or relating to a delay in the delivery of any goods loaded on to or unloaded from a vessel at the port.

*[Section 114D inserted by No. 71 of 2003 s. 7.]*

**114E. Immunity from liability for certain events and actions**

- (1) A port authority is not liable for any loss or damage resulting from an event outside the control of the port authority, including —
- (a) an act of God; or
  - (b) an act of war; or
  - (c) an act of public enemies; or
  - (d) any insurrection, revolution or civil disorder; or
  - (e) the unlawful seizure or control of any people or any vessels, vehicles or other property; or
  - (f) any industrial disputes of any kind, including strikes, lockouts, stoppages or restraints of labour (whether partial or general) from any cause; or
  - (g) the use for the purpose of war or defence, or training or preparation for war or defence, of any port facilities or other property of the port authority.
- (2) A port authority is not liable for any loss or damage resulting from any action taken or caused to be taken by the port authority under section 27 or 28 of the *Pollution of Waters by Oil and Noxious Substances Act 1987*.

*[Section 114E inserted by No. 71 of 2003 s. 7.]*

## **Part 8 — Port charges**

### **115. Term used: port charges; application of this Part**

- (1) In this Part —  
*port charges* means —
- (a) port dues and wharfage, berthage, tonnage and access charges; or
  - (b) port improvement rates; or
  - (c) charges for port services or navigational aids provided by or under the control of a port authority.
- (2) This Part applies to the payment and recovery of port charges levied by a port authority.

### **116. Liability to pay port charges in respect of vessels**

The following people are jointly and severally liable to pay port charges payable in respect of a vessel —

- (a) the owner of the vessel;
- (b) the master of the vessel;
- (c) each person who is —
  - (i) a consignee, consignor or shipper of goods carried on the vessel; or
  - (ii) an agent of the vessel,and has paid or undertaken to pay any charge on account of the vessel.

### **117. Liability to pay port charges in respect of goods**

The following people are jointly and severally liable to pay port charges payable in respect of goods carried on a vessel —

- (a) the owner of the goods;
- (b) the owner of the vessel;
- (c) each consignor, consignee or shipper of the goods;

- (d) each agent for the sale of or custody of the goods;
- (e) each person entitled, either as the owner of the goods or on behalf of that owner, to the possession of the goods.

**118. Recovery of port charges by port authority**

A port authority may recover any port charges payable to it in a court of competent jurisdiction as a debt due to the port authority.

**119. Collectors of port charges**

A port authority may, in writing —

- (a) authorise an officer or employee or any other person to collect port charges on its behalf; or
- (b) revoke an authorisation made under this section.

## **Part 9 — Proceedings for offences**

### **Division 1 — General**

#### **120. Who can commence prosecutions**

- (1) Proceedings for an offence against this Act may be taken —
  - (a) by a person authorised to do so by the port authority for the port within or in relation to which the offence is alleged to have been committed; or
  - (b) by a police officer.
- (2) An authorisation under subsection (1)(a) may be given generally or in relation to a specified offence or specified offences.
- (3) If a prosecution notice alleging an offence under this Act purports to be made or sworn by a person authorised by a port authority to take proceedings for offences of that kind, it is to be presumed, in the absence of proof to the contrary, that the prosecution notice was made or sworn by such a person.

*[Section 120 amended by No. 84 of 2004 s. 80.]*

#### **121. Time limit for prosecutions**

Proceedings for an offence against this Act cannot be commenced more than 2 years after the offence is committed.

#### **122. Averment as to place of offence**

- (1) In proceedings for an offence under this Act, an averment that that offence was committed in a port is sufficient proof that the act or omission alleged to constitute that offence occurred in the port, unless the contrary is proved.
- (2) Where appropriate, a reference in subsection (1) to a port includes a reference to any area declared under section 95(2) or 101(a) in relation to the port.

## **Division 2 — Infringement notices**

### **123. Terms used**

In this Division —

*authorised person* in section 124, 125, 126 or 127 means a person appointed under section 130(1) by the port authority to be an authorised person for the purposes of the section in which the term is used;

*port authority* means the port authority for the port where the offence is alleged to have been committed.

### **124. Giving of notice**

An authorised person who has reason to believe that a person has committed a prescribed offence under this Act may, within 21 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

### **125. Content of notice**

- (1) An infringement notice is to be in the prescribed form and is to —
  - (a) contain a description of the alleged offence; and
  - (b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorised person within a period of 28 days after the giving of the notice; and
  - (c) inform the alleged offender as to who are authorised persons for the purposes of receiving payment of modified penalties.
- (2) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be

the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

- (3) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

*[Section 125 amended by No. 84 of 2004 s. 80.]*

**126. Extending time for paying modified penalty**

An authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

**127. Withdrawing notice**

- (1) Within 28 days after the giving of an infringement notice, an authorised person may, whether or not the modified penalty has been paid, withdraw the infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (2) Where an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

**128. Benefit of paying modified penalty**

- (1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.
- (2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.



**129. Application of penalties collected**

An amount paid as a modified penalty for an offence is, subject to section 127(2), to be dealt with as if it were a fine imposed by a court as a penalty for that offence.

**130. Authorised persons, appointment of**

- (1) A port authority may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of section 124, 125, 126 or 127 or for the purposes of 2 or more of those sections, but a person who is authorised to give infringement notices under section 124 is not eligible to be an authorised person for the purposes of any of the other sections.
- (2) The port authority is to issue to each person who is authorised to give infringement notices under this Division a certificate stating that the person is so authorised, and the authorised person is to produce the certificate whenever required to do so by a person to whom an infringement notice has been or is about to be given.

## **Part 10 — Miscellaneous**

### **131.    Hindering, offence**

- (1) A person who hinders the operation of this Act commits an offence.  
Penalty: \$5 000.
- (2) A person hinders the operation of this Act if the person —
- (a) obstructs, impedes or interferes with the doing of, a thing required or authorised to be done by or under this Act; or
  - (aa) obstructs, impedes or interferes with —
    - (i) port facilities or other property of a port authority; or
    - (ii) the operation of port facilities or other property of a port authority;
- or
- (ab) causes a nuisance in a port; or
  - (b) uses any threatening language to —
    - (i) the CEO or a member of staff of a port authority; or
    - (ii) the harbour master of a port,who is acting in the performance of functions under this Act.

*[Section 131 amended by No. 71 of 2003 s. 8.]*

### **132.    Individual port authorities, provisions for (Sch. 6)**

If a Division of Schedule 6 applies to a port authority, the provisions of that Division have effect in relation to that port authority and its port even though they override, are inconsistent with, or are additional to, other provisions of this Act.

**133. Supplementary provision about laying documents before Parliament**

- (1) If —
  - (a) at the commencement of a period referred to in section 35(5), 41(4), 53(5), 56(4), 62(5), 64(2), 65(4), 68(3), 72(2), 84(5) or 114(5) or Schedule 2, clause 2(3) or 8(7) or Schedule 5, clause 33(6) or 37(1) in respect of a document a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is taken to have been laid before that House.
- (3) The laying of a copy of a document that is taken to have occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

*[Section 133 amended by No. 8 of 2009 s. 102(4) and (5).]*

**134. Execution of documents by port authority**

- (1) A port authority is to have a common seal.
- (2) A document is duly executed by a port authority if —
  - (a) the common seal of the port authority is affixed to it in the presence of 2 directors or of a director and the CEO; or
  - (b) it is signed on behalf of the port authority by a person or persons referred to in subsection (4).
- (3) The common seal of a port authority is not to be affixed to a document except in accordance with this section.

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- (4) A port authority may, by writing under its common seal, authorise a director, the CEO, a member of staff or other agent of the port authority to execute documents on its behalf.
- (5) An authorisation under subsection (4) —
  - (a) may be given —
    - (i) either generally or in respect of a specified matter or specified matters; and
    - (ii) so as to authorise 2 or more persons to execute documents jointly;
  - and
  - (b) may be presumed by a person dealing with the port authority to continue —
    - (i) during any period for which it is conferred; or
    - (ii) if subparagraph (i) does not apply, until notice of termination of the authority is given to the person so dealing.
- (6) A document purporting to be executed in accordance with this section is to be taken to be duly executed until the contrary is shown.

**135. Contracts with port authority, formalities of**

- (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of a port authority may make, vary or discharge a contract in the name of or on behalf of the port authority in the same manner as if that contract were made, varied or discharged by a natural person.
- (2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the port authority and other parties to the contract.
- (3) Subsection (1) does not prevent a port authority from making, varying or discharging a contract under its common seal.

**136. Overdue amounts, interest on**

- (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 this Act to port charges is to be taken as including a reference to interest under subsection (1) payable on those port charges if they are 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.

**137. Recovery of expenses due to offence**

Without affecting the operation of section 94(2) or 113, a person who is convicted of an offence under this Act is liable, in addition to suffering any penalty imposed in respect of that offence, to pay to a port authority all expenses incurred by the port authority by reason of the commission of that offence, and the port authority may recover those expenses from that person in a court of competent jurisdiction as a debt due to the port authority.

**138. Government Agreements Act 1979 not affected**

~~The mention of particular agreements in Schedule 6, clauses 1.3 and 2.3 does not limit or otherwise affect the~~ \_\_\_\_\_

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

- (a) Schedule 6 clause 1.3 or 2.3 or the mention of particular agreements in those clauses; or

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(b) the affecting provisions as defined in Schedule 8  
clause 45.

*[Section 138 inserted by No. 9 of 2014 s. 28(1).]*

**139A. Transitional provisions**

Schedule 8 sets out transitional provisions.

*[Section 139A inserted by No. 9 of 2014 s. 29.]*

## **Part 11 — Regulations**

### **139. General power to make regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1) regulations may be made for all or any of the purposes, or about all or any of the matters, set out in Schedule 7.

### **140. Offences against regulations**

Regulations may create offences and provide, in respect of an offence so created, for the imposition of a penalty not exceeding a fine of \$12 000 with or without imprisonment for a term not exceeding 12 months.

### **141. Adoption of other laws, codes etc.**

- (1) Regulations may adopt, either wholly or in part or with modifications —
  - (a) any rules, regulations, codes, instructions or other subsidiary legislation made, determined or issued under any other Act or under any Imperial Act or Commonwealth Act; or
  - (b) any of the standards, rules, codes or specifications of the bodies known as the International Maritime Organization, Standards Australia, the British Standards Institution or The Association of Australian Port and Marine Authorities or of any other like body that is specified in those regulations.
- (2) If regulations adopt any subsidiary legislation, standard, rule, code or specification under subsection (1), it is adopted as in force from time to time unless those regulations specify that a particular text is adopted.

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- (3) Regulations may provide that if by reason of unavailability of materials or for any other reason that a port authority considers valid any requirement of any subsidiary legislation or standard, rule, code or specification adopted by those regulations in accordance with subsection (1) cannot be conformed to, a port authority may approve such use of materials or other matters as it considers to be consistent with the achievement of the objects of those regulations.

*[Section 141 amended by No. 74 of 2003 s. 93(4).]*

**142. References to other approvals or decisions**

Regulations may be made so as to apply according to an approval or other administrative decision of a person or body specified in those regulations even if that approval or other decision may not have been, or may not have been primarily, given or made for the purposes of this Act.

**143. Licensing, provisions as to**

- (1) Regulations may control an activity or thing by prohibiting it from being carried out or done in a port except under a licence issued by the port authority.
- (2) Regulations may provide for the following —
- (a) the calling of applications or tenders for licences;
  - (b) the method of applying or tendering for licences;
  - (c) the issue, duration, renewal, suspension or cancellation of licences;
  - (d) the imposition of conditions or restrictions on licences.
- (3) Neither the port authority, nor a person acting on its behalf, needs a licence referred to in this section.
- (4) This section does not limit the methods by which the regulations may control an activity or thing.



## **Part 12 — Review of Act**

### **144. Minister to review and report on Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from the commencement of section 4.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

Schedule 1 — ~~Ports and port~~ — Port authorities and ports

[s. 4]

*[Heading inserted by No. 9 of 2014 s. 30.]*

| <u>Column 1</u> | <u>Column 2</u>   | <u>Name of Column 3</u>  |
|-----------------|---|--|
| Item            | Name of <del>Port</del> port<br>authority                                 | Port <del>Authority</del> or ports   |
| 1               | <del>Fremantle</del> Port of<br><del>Albany</del> Authority               | <del>Albany</del> -Port <del>Authority</del> of<br><u>Fremantle</u>                |
| 2               | <del>Albany</del> Port of<br><del>Broome</del> Authority                  | <del>Broome</del> -Port <del>Authority</del> of<br><u>Albany</u>                   |
| 3               | <del>Port of</del> Bunbury Port<br>Authority                              | <u>Port of</u> Bunbury- <del>Port</del><br><del>Authority</del>                    |
| 4               | <del>Esperance</del> Port of<br><del>Dampier</del> Authority              | <del>Dampier</del> -Port <del>Authority</del> of<br><u>Esperance</u>               |
| 5               | <del>Geraldton</del> Port of<br><del>Esperance</del> Authority            | <del>Esperance</del> -Port<br><del>Authority</del> of <u>Geraldton</u>             |
| 6               | <del>Dampier</del> Port of<br><del>Fremantle</del> Authority              | <del>Fremantle</del> -Port <del>Authority</del> of<br><u>Dampier</u>               |
| 7               | Port of <del>Geraldton</del> <u>Hedland</u><br>Port Authority             | <del>Geraldton</del> -Port <del>Authority</del> of<br><u>Port Hedland</u>          |
| 8               | <del>Broome</del> Port of <del>Port</del><br><del>Hedland</del> Authority | Port <del>Hedland</del> - <del>Port</del><br><del>Authority</del> of <u>Broome</u> |

*[Schedule 1 inserted by No. 9 of 2014 s. 30.]*

## Schedule 2 — Provisions about the constitution and proceedings of boards

[s. 9]

### 1. Term of office

- (1) Subject to clause 2, a director holds office for such period, not exceeding 3 years, as is specified in the instrument appointing the director, and is eligible for reappointment.
- (2) A director's duties are not required to be performed on a full-time basis.
- (3) Periods of appointment are to be fixed in a way that results in approximately one third of the directors retiring each year.
- (4) Despite subclause (1), if the period of office of a director expires by effluxion of time without a person having been appointed to fill the vacancy, the director continues in office until —
  - (a) a person is appointed to fill the vacancy; or
  - (b) a period of 3 months elapses after the expiry of the period of office,whichever occurs first.

### 2. Resignation and removal

- (1) A director may resign from office by notice in writing delivered to the Minister.
- (2) The Minister may at any time remove a director from office and is not required to give any reason for doing so.
- (3) The Minister must within 14 days after a director is removed from office under subclause (2) cause a statement of the reason for the removal to be laid before each House of Parliament or to be dealt with under section 133.
- (4) This clause extends to a director whose period of office is prolonged under clause 1(4).

**cl. 3**

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**3. Chairperson and deputy chairperson**

- (1) The Minister is to appoint a director to be chairperson of a board and another to be deputy chairperson.
- (2) Where the chairperson is unable to act because of sickness, absence or other cause, the deputy chairperson is to act in the chairperson's place.
- (3) Where the deputy chairperson is acting in place of the chairperson at a meeting, clause 4(1) applies as if the deputy chairperson were absent from the meeting.
- (4) Despite section 10(2) —
  - (a) the chairperson is to be paid out of the funds of the port authority such additional remuneration and allowances as are determined by the Minister; and
  - (b) the deputy chairperson is to be paid additional remuneration and allowances out of the funds of the port authority if, and to the extent that, the Minister so determines.

**4. Alternate directors**

- (1) If a director is unable to act because of sickness, absence or other cause, the Minister may appoint another person as an alternate director to act temporarily in the director's place, and while so acting according to the tenor of the appointment that alternate director is to be taken to be a director and is entitled to remuneration under section 10.
- (2) No act or omission of an alternate director acting in place of a director under this clause may be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

**5. Meetings**

- (1) The first meeting of a board is to be convened by the chairperson and, subject to subclause (2), subsequent meetings are to be held at such times and places as the board determines.
- (2) A special meeting of a board may at any time be convened by the chairperson or any 2 directors.

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- (3) The chairperson, or the deputy chairperson acting under clause 3(2), is to preside at all meetings of the board at or in which he or she is present, or participating under clause 6.
  - (4) If both the chairperson and the deputy chairperson are not present or participating, the directors present or participating are to appoint a director to preside.
  - (5) At any meeting of the board —
    - (a) ~~3~~ a number of directors ~~constitute~~ equal to at least half the number of directors in office constitutes a quorum; and
    - (b) in the case of an equality of votes the person presiding has a casting vote in addition to a deliberative vote.

*[Clause 5 amended by No. 9 of 2014 s. 32.]*

#### **6. Telephone and video meetings**

Despite anything in this Schedule, a communication between directors constituting a quorum under clause 5(5)(a) by telephone or audio-visual means is a valid meeting of directors, but only if each participating director is able to communicate with every other participating director instantaneously at all times while participating in the proceedings.

#### **7. Resolution may be passed without meeting**

- (1) If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed is sent or given to all directors of a port authority and is assented to by not less than 3 directors that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the board of the port authority.
- (2) For the purposes of subclause (1) —
  - (a) the meeting is to be taken as having been held —
    - (i) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or

**cl. 8**

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- (ii) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
  - and
  - (b) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken to constitute one document; and
  - (c) a director may signify assent to a document by signing the document or by notifying the port authority of the director's assent in person or by post, facsimile, telephone or other method of written, audio or audio-visual communication.
- (3) Where a director of a port authority signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the board of the port authority attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the board.

**8. Directors with material personal interests, voting by etc.**

- (1) A director of a port authority who has a material personal interest in a matter that is being considered by the board of the port authority —
- (a) must not vote whether at a meeting or otherwise —
    - (i) on the matter; or
    - (ii) in relation to a proposed resolution under subclause (3) in relation to the matter, whether in relation to that or a different director;
- and
- (b) must not be present while —
    - (i) the matter; or
    - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),is being considered at a meeting.

- (2) For the purpose of subclause (1), a director does not have an interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure, the director against a liability incurred by the director in his or her capacity as a director. This subclause does not apply if the port authority is the insurer.
- (3) Subclause (1) does not apply if the board has at any time passed a resolution that —
  - (a) specifies the director, the interest and the matter; and
  - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.
- (4) Despite clause 5(5), if a director of a port authority is disqualified under subclause (1) in relation to a matter, a quorum is present during the consideration of that matter if at least 2 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (5) The Minister may deal with a matter in so far as a board cannot deal with it because of subclause (4).
- (6) The Minister may by writing declare that subclauses (1) and (4) do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (7) The Minister must within 14 days after a declaration under subclause (6) is made cause a copy of the declaration to be laid before each House of Parliament or to be dealt with under section 133.

**9. Minutes of meetings etc.**

A board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the board and of each resolution passed under clause 7.

**10. Leave of absence**

A board may, on such terms and conditions as it thinks fit, grant to a director leave of absence from a meeting, including the meeting at which it is intended to grant the leave.

**cl. 11**

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**11. Board to determine own procedures**

Subject to this Act, a board may determine its own procedures.



## Schedule 3 — Provisions about duties of CEO and staff

[s. 20]

### Division 1 — General duties of CEO

#### 1. Duties of CEO

- (1) It is declared that the CEO of a port authority has —
- (a) the same fiduciary relationship with the port authority; and
  - (b) the same duties to the port authority to act with loyalty and in good faith,
- as a director of a company incorporated under the Corporations Act has with and to the company.
- (2) The duties referred to in subclause (1) are enforceable by the board of the port authority and not otherwise.

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

### Division 2 — Particular duties stated

#### 2. Term used: officer and interpretation

- (1) In this Division —
- officer*** means —
- (a) the CEO of a port authority; or
  - (b) an executive officer or other member of staff of a port authority.
- (2) A person who attempts (within the meaning in section 4 of *The Criminal Code*) to commit an offence against a provision of this Division is guilty of that offence.
- (3) For the CEO of a port authority, the duties provided for by this Division are in addition to those in clause 1.

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

**3. Duty to act honestly**

- (1) The CEO or an executive officer of a port authority must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.
- (2) A person who contravenes subclause (1) —
  - (a) with intent to deceive or defraud —
    - (i) the port authority; or
    - (ii) creditors of the port authority or of any other person;or
  - (b) for any other fraudulent purpose,is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.  
Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.
- (3) If subclause (2) does not apply a person who contravenes subclause (1) is liable to a fine of \$5 000.

**4. Duty to exercise reasonable care and diligence**

The CEO or an executive officer of a port authority must at all times exercise the degree of care and diligence in the performance of the functions of his or her office, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the port authority's circumstances.

Penalty: \$5 000.

**5. Duty not to make improper use of information**

- (1) An officer or a former officer of a port authority must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the port authority.

- (2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.  
Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

**6. Duty not to make improper use of position**

- (1) An officer of a port authority must not, whether within or outside the State, make improper use of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the port authority.
- (2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.  
Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

**Division 3 — Compensation**

**7. Compensation may be ordered if cl. 3, 4, 5 or 6 offence**

- (1) Where —
- (a) a person is convicted of an offence for a contravention of clause 3, 4, 5 or 6; and
  - (b) the court is satisfied that the port authority has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the port authority of such amount as the court specifies.

- (2) Any such order may be enforced as if it were a judgment of the court.

**8. Civil recovery if cl. 3, 4, 5 or 6 offence**

Where a person contravenes clause 3, 4, 5 or 6, the port authority may, whether or not the person has been convicted of an offence in respect of that contravention, recover from the person as a debt due to the port authority by action in any court of competent jurisdiction —

- (a) if that person or any other person made a profit as a result of the contravention, an amount equal to that profit; and
- (b) if the port authority has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

#### **Division 4 — Relief from liability**

#### **9. Relief from liability under cl. 1, 7 and 8**

For the purposes of clause 1, 7 or 8, if it appears to the court that a person —

- (a) is, or may be, liable under that section; and
- (b) has acted honestly; and
- (c) ought fairly to be excused having regard to all the circumstances of the case, including those connected with the person's appointment,

the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

#### **10. Application for relief from liability under cl. 1, 7 or 8**

- (1) Where a person has reason to believe that any claim will or might be made against him or her under clause 1, 7 or 8, the person may apply to the Supreme Court for relief.
- (2) On an application under subclause (1) the Supreme Court has the same power to relieve the person as it would have had under clause 9 if it had been a court exercising jurisdiction under clause 1, 7 or 8.

#### **11. Case as to cl. 9 may be withdrawn from jury**

Where a case to which clause 9 applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the person ought under that section to be relieved either wholly or partly from liability sought to be enforced against the person —

- (a) withdraw the case in whole or in part from the jury; and
- (b) direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.

**12. Compliance with directions is not contravention of cl. 1, 3 or 4**

- (1) A person does not contravene clause 1, 3 or 4 by doing or omitting to do anything in compliance with a direction received in the course of the person's employment.
- (2) Subclause (1) does not extend to the manner in which a thing is done or omitted if it is done or omitted in a manner that is contrary to clause 3 or 4 and the direction did not require that it be done in that manner.

**Division 5 — Restrictions on indemnities and exemptions**

**13. CEO and executive officers not to be exempted or indemnified for some liability**

- (1) A port authority or a subsidiary must not exempt a person (whether directly or through an interposed entity) from a liability to the port authority incurred as the CEO or an executive officer of the port authority.
- (2) A port authority or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as the CEO or an executive officer of the port authority —
  - (a) a liability owed to the port authority or a subsidiary; or
  - (b) a liability that is owed to someone other than the port authority or a subsidiary and did not arise out of conduct in good faith.
- (3) Subclause (2) does not apply to a liability for legal costs.
- (4) A port authority or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as the CEO or an executive officer of the port authority if the costs are incurred —
  - (a) in defending or resisting a proceeding in which the person is found to have a liability for which the person could not be indemnified under subclause (2); or

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- (b) in defending or resisting criminal proceedings in which the person is found guilty; or
  - (c) in connection with proceedings for relief under clause 9 or 10 in which the Supreme Court denies the relief.
- (5) In determining the outcome of proceedings for the purposes of subclause (4), the result of any appeal in relation to the proceedings is to be taken into account.

**14. Insurance premiums for certain liabilities of CEO and executive officers**

- (1) A port authority or a subsidiary must not pay, or agree to pay, a premium for a contract insuring the CEO or an executive officer of the port authority against a liability (other than one for legal costs) arising out of —
- (a) conduct involving a wilful breach of duty in relation to the port authority; or
  - (b) a contravention of clause 5 or 6.
- (2) Subclause (1) applies to a premium whether it is paid directly or through an interposed entity.

**15. Certain indemnities, exemptions, payments and agreements not authorised and certain documents void**

- (1) Clauses 13 and 14 do not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify or insure a person against a liability or exempt a person from a liability is void to the extent that it contravenes clause 13 or 14.

**Schedule 4 — Provisions to be included in articles of association of subsidiaries**

[s. 39]

**1. Disposal of shares**

- (1) The port authority is not to sell or otherwise dispose of shares in the subsidiary other than as approved by the Minister.
- (2) The Minister is empowered to execute a transfer of any shares in the subsidiary held by the port authority.

**2. Directors**

- (1) The directors of the subsidiary are to be appointed by the port authority, but no such director may be appointed except with the prior written approval of the Minister.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the port authority and the subsidiary.
- (3) The board of the subsidiary is accountable to the Minister in the manner set out in Part 5 and in the memorandum and articles of association of the subsidiary.

**3. Further shares**

Shares may not be issued or transferred except with the prior written approval of the Minister.

**4. Subsidiaries of subsidiary**

- (1) The subsidiary may not form, participate in the formation of, or acquire any subsidiary without the prior written approval of the Minister given with the Treasurer's concurrence.
- (2) The subsidiary must ensure that the memorandum and articles of association of each of its subsidiaries at all times comply with this Act.

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**cl. 4**

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- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its memorandum and articles of association and with the requirements of this Act.





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

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

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

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

- (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; and
  - (b) specify a place in Australia where the records are to be produced (the place must be reasonable in the circumstances); and
  - (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

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

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

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

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

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

### **Division 3 — Financial reporting**

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

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

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

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

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

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

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

- (1) The financial report for a financial year consists of —
  - (a) the financial statements for the year; and
  - (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; and
  - (b) a balance sheet as at the end of the year; and
  - (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; and
  - (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; and
  - (b) that the financial statements and notes give a true and fair view; and
  - (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; and
  - (b) specify the date on which the declaration is made; and
  - (c) be signed by at least 2 directors.

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

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

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

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

**9. True and fair view**

*(cf. Corporations Act s. 297)*

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

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

**10. Annual directors' report**

*(cf. Corporations Act s. 298)*

- (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; and
  - (b) specify the date on which the report is made; and
  - (c) be signed by at least 2 directors.

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

**11. Annual directors' report, general information in**

*(cf. Corporations Act s. 299)*

- (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; and
  - (b) give details of any significant changes in the port authority's state of affairs during the year; and

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

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

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

- (1) The directors' report for a financial year must include details of —
  - (a) dividends or distributions paid during the year; and
  - (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; and
  - (b) the number of meetings of the board held during the year and each director's attendance at those meetings; and
  - (c) the number of meetings of each board committee held during the year and each director's attendance at those meetings.

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

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

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

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

**14. Audit of annual financial report**

*(cf. Corporations Act s. 301)*

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

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

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

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

**15. Audit opinion**

*(cf. Corporations Act s. 307)*

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);and
- (b) whether he or she has been given all information, explanation and assistance necessary for the conduct of the audit; and
- (c) whether the port authority has kept financial records sufficient to enable a financial report to be prepared and audited; and
- (d) whether the port authority has kept other records and registers as required by this Schedule.

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

**16. Auditor General's report on annual financial report**

*(cf. Corporations Act s. 308)*

- (1) The Auditor General must report to the Minister on whether he or she is of the opinion that the financial report is in accordance with this Schedule, including —



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

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

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

The Auditor General —

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

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

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

An officer of the port authority must —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**22.      Application of cl. 19 to 21 to entity that has ceased to be controlled**  
*(cf. Corporations Act s. 323C)*

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

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

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

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

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

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

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

**Division 4 — Accounting standards**

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

**24. Accounting standards**

*(cf. Corporations Act s. 334)*

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

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

**25. Equity accounting**

*(cf. Corporations Act s. 335)*

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

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

**26. Interpretation of accounting standards**

*(cf. Corporations Act s. 337)*

In interpreting an accounting standard —

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

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

**27. Evidence of text of accounting standard**

- (1) This clause applies to a document that purports to be published by or on behalf of the AASB or ASIC and to set out the text of —

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

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

#### **Division 5 — Extension of time**

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

#### **28. Extension of time**

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

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

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

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

**29. Contravention of Div. 2 and 3**  
*(cf. Corporations Act s. 344)*

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

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

**Division 7 — Miscellaneous**

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

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

- (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; and
  - (b) in writing and signed by a director; and
  - (c) lodged with the Treasurer.
- (4) The Treasurer must give the port authority concerned written notice of the making, revocation or suspension of the order.
- (6) If the Treasurer makes an order under subclause (1) the Treasurer is to cause the text of the order to be laid before each House of Parliament or dealt with under section 133 within 14 days after the order is made.  
*[Clause 33 inserted in Gazette 4 Mar 2003 p. 720-1.]*

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

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; or
- (b) be inappropriate in the circumstances; or
- (c) impose unreasonable burdens.

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

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

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

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

**35. Annual report to Minister, content of**  
*(cf. Corporations Act s. 314)*

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

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

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

**37. Audit, deadline for; interim report**

- (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 21 of the *Auditor General Act 2006* applies to the audit of a port authority.

*[Clause 37 inserted in Gazette 4 Mar 2003 p. 721; amended by No. 77 of 2006 Sch. 1 cl. 131(5).]*

**44. Auditor General, duties and powers of**

- (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 14, 16 to 18, 24 to 37, 45 and 46 of the *Auditor General Act 2006* apply to a port authority as if it were a statutory authority named in Schedule 1 to the *Financial Management Act 2006*.

*[Clause 44 inserted in Gazette 4 Mar 2003 p. 722; amended by No. 77 of 2006 Sch. 1 cl. 131(6).]*

## Schedule 6 — Provisions for particular port authorities

[s. 132]

### Division 1 — Dampier Port Authority

#### 1.1. Application of Division

This Division applies to the Dampier Port Authority and the Port of Dampier.

#### 1.2. Terms used

In this Division —

**Company** has the meaning given by the Iron Ore (Hamersley Range) Agreement;

**Company appointee** means the director —

- (a) appointed under clause 1.4(1)(a); or
- (b) appointed under clause 1.4(3) in default of a nomination for appointment as the Company appointee by the Company;

**Dampier Solar Salt Industry Agreement** means the agreement a copy of which is set forth in the First Schedule to the *Dampier Solar Salt Industry Agreement Act 1967*, as that agreement is amended from time to time;

**Iron Ore (Hamersley Range) Agreement** means the agreement a copy of which is set forth in the First Schedule to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as that agreement is amended from time to time;

**Joint Venturers** has the meaning given by the North West Gas Development (Woodside) Agreement;

**Joint Venturers appointee** means the director —

- (a) appointed under clause 1.4(1)(b); or
- (b) appointed under clause 1.4(4) in default of a nomination for appointment as the Joint Venturers appointee by the Joint Venturers;

**Ministerial appointee** means a director appointed under clause 1.4(1)(c);

**North West Gas Development (Woodside) Agreement** means the agreement a copy of which is set forth in the Schedule to the *North West Gas Development (Woodside) Agreement Act 1979*, as that agreement is amended from time to time;

**Salt Company** means the Company within the meaning of the Dampier Solar Salt Industry Agreement.

**1.3. Act does not affect State agreements**

This Act does not prejudice or in any way affect —

- (a) any right or obligation of a party to the Dampier Solar Salt Industry Agreement; or
- (b) any right or obligation of a party to the Iron Ore (Hamersley Range) Agreement; or
- (c) any right or obligation of a party to the North West Gas Development (Woodside) Agreement.

**1.4. Directors of board**

- (1) The board of the port authority is to comprise —
  - (a) one director appointed by the Minister on the nomination in writing of the Company; and
  - (b) one director appointed by the Minister on the nomination in writing of the Joint Venturers; and
  - (c) not more than 5 other directors appointed by the Minister.
- (2) The Minister is to appoint one of the Ministerial appointees to be chairperson of the board.
- (3) If the Company does not nominate a person for appointment as the Company appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such nomination by the Company appoint a person who is otherwise eligible for appointment as a director to be the Company appointee.
- (4) If the Joint Venturers do not nominate a person for appointment as the Joint Venturers appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such nomination by the Joint Venturers appoint a person who is otherwise

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**Schedule 6** Provisions for particular port authorities

**Division 1** Dampier Port Authority

**cl. 1.5**

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eligible for appointment as a director to be the Joint Venturers appointee.

- (5) A person appointed by the Minister under subclause (3) or (4) is to be regarded as having been duly nominated and appointed as the Company appointee or the Joint Venturers appointee, as the case requires.
- (6) The Company appointee ceases to hold office as a director if the Company by instrument in writing served on the Minister so requests.
- (7) The Joint Venturers appointee ceases to hold office as a director if the Joint Venturers by instrument in writing served on the Minister so request.

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

**1.5. Alternate directors**

- (1) Schedule 2, clause 4 does not apply to the port authority.
- (2) The Minister may appoint a person as an alternate director for a director.
- (3) A person cannot be appointed as an alternate director for more than one director.
- (4) Clauses 1.4(1)(a) and (b), and (3) to (7) and 1.6 apply (with any necessary changes) in relation to alternate directors for the Company appointee and the Joint Venturers appointee.
- (5) If a person is nominated by the Company or the Joint Venturers (whether at the Minister's request or not) for appointment as an alternate director for the Company appointee or the Joint Venturers appointee, as the case may be, the Minister is to appoint the person as an alternate director.
- (6) When a director is unable to act because of sickness, absence or other cause, the alternate director for that director may act in the director's place, and while so acting that alternate director is to be taken to be a director and is entitled to remuneration under section 10.

- (7) No act or omission of an alternate director acting in place of a director under this clause may be questioned on the ground that the occasion for acting had not arisen or had ceased.

**1.6. Some material personal interests excluded from s. 2 and Sch. 2 cl. 8**

Section 12 and Schedule 2, clause 8 do not apply —

- (a) to the Company appointee in respect of a material personal interest that consists only of being an employee of the Company; or
- (b) to the Joint Venturers appointee in respect of a material personal interest that consists only of being an employee of one of the Joint Venturers.

**1.7. Quorum**

At a meeting of the port authority, 3 directors —

- (a) one of whom is the company appointee or the Joint Venturers appointee; and
- (b) one of whom is a Ministerial appointee,

constitute a quorum.

**1.8. Some property excepted from s. 26(1)**

Except with the consent of the port authority, an order is not to be made under section 26(1) in respect of any real or personal property —

- (a) which is a facility improved or expanded, or an additional facility provided, under an agreement with the port authority, the capital cost of which improvement or expansion or provision has been wholly met by payments made under that agreement; or
- (b) which has been vested free of cost in the port authority; or
- (c) which has been acquired or constructed by the port authority with moneys provided,

by the Company, the Salt Company or the Joint Venturers or any 2 or all 3 of them.

**1.9. Recovery of costs from users, functions include**

The functions of the port authority include recovering as far as possible, the cost of the facilities and services provided by the port authority from the users of those facilities and services.

**1.10. Companies, Joint Venturers and Salt Company, duties of**

- (1) Despite anything in section 30 —
  - (a) the Company, for its own requirements under the Iron Ore (Hamersley Range) Agreement; and
  - (b) the Salt Company, for its own requirements under the Dampier Solar Salt Industry Agreement; and
  - (c) the Joint Venturers, for their own requirements under the North West Gas Development (Woodside) Agreement,are to maintain and keep in repair and proper working order all necessary dredged channels, berthing basins and navigational aids required and used by the Company, the Salt Company or the Joint Venturers, as the case requires.
- (2) Despite anything in section 30, the port authority may from time to time direct the Salt Company, the Company or the Joint Venturers or any 2 or all 3 of them —
  - (a) to provide, maintain and keep in repair and proper working order all dredged channels, berthing basins and navigational aids required and used by it or them in its or their operations under the Dampier Solar Salt Industry Agreement, the Iron Ore (Hamersley Range) Agreement or the North West Gas Development (Woodside) Agreement, as the case requires; and
  - (b) for the purpose of determining whether or not any dredged channels, berthing basins and navigational aids referred to in paragraph (a) are being maintained and kept in repair and proper working order, to provide the port authority at its or their cost with such information, reports and hydrographic surveys as are specified in that direction.

- (3) The Salt Company, the Company or the Joint Venturers must, without delay, comply with any direction given to it or them, as the case requires, by the port authority under subclause (2).
- (4) If the Salt Company, the Company or the Joint Venturers does not or do not comply with —
- (a) subclause (1), the port authority is to cause the requisite works to be undertaken and the cost of those works is to be borne by the person which has not complied with that subclause; or
  - (b) a direction given under subclause (2), the port authority is to cause —
    - (i) the requisite work to be undertaken; or
    - (ii) the requisite information, reports or hydrographic surveys to be provided,and the cost of those works or the cost of that provision be borne by the person which has not complied with that direction.

**1.11. Pilotage services, agreements with Companies etc. as to**

Having entered into a contract or other arrangement with the port authority under section 35(2) for the provision of pilotage services —

- (a) the Company may for its own requirements under the Iron Ore (Hamersley Range) Agreement; or
- (b) the Salt Company may for its own requirements under the Dampier Solar Salt Industry Agreement; or
- (c) the Joint Venturers may for their own requirements under the North West Gas Development (Woodside) Agreement,

provide its own or their own pilotage services in the port in accordance with that contract or arrangement and section 96(7) does not apply in relation to pilotage services so provided.

## **Division 2 — Port Hedland Port Authority**

### **2.1. Application of Division**

This Division applies to the Port Hedland Port Authority and the Port of Port Hedland.

### **2.2. Terms used**

In this Division —

*first lessee* means the registered lessee or registered lessees, for the time being, of the land the subject of lease number 3116/3445 or any lease in substitution for it issued under the *Land Act 1933*<sup>3</sup>, and the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*;

*first lessee appointee* means the director —

- (a) appointed under clause 2.4(1)(a); or
- (b) appointed under clause 2.4(3) in default of a nomination for appointment as the first lessee appointee by the first lessee;

*Ministerial appointee* means a director appointed under clause 2.4(1)(c);

*second lessee* means the registered lessee or the registered lessees, for the time being, of the land the subject of lease number 3116/3692 or any lease in substitution for it issued under the *Land Act 1933*<sup>3</sup>, and the *Iron Ore (Mount Newman) Agreement Act 1964*;

*second lessee appointee* means the director —

- (a) appointed under clause 2.4(1)(b); or
- (b) appointed under clause 2.4(4) in default of a nomination for appointment as the second lessee appointee by the second lessee.

### **2.3. Act does not affect State agreements**

This Act does not prejudice or in any way affect —

- (a) any right of the persons entitled to them to receive the payments referred to in clause 20(1) of the agreement a copy of which is set forth in the Schedule to the *Leslie Solar Salt Industry Agreement Act 1966*, as that agreement is amended from time to time;



- (b) any right or obligation of a party to the agreement a copy of which is set forth in the First Schedule to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, as that agreement is amended from time to time;
- (c) any right or obligation of a party to the agreement a copy of which is set forth in the First Schedule to the *Iron Ore (Mount Newman) Agreement Act 1964*, as that agreement is amended from time to time.

#### **2.4. Directors of board**

- (1) The board of the port authority is to comprise —
  - (a) one director appointed by the Minister on the nomination in writing of the first lessee; and
  - (b) one director appointed by the Minister on the nomination in writing of the second lessee; and
  - (c) not more than 5 other directors appointed by the Minister.
- (2) The Minister is to appoint one of the Ministerial appointees to be chairperson of the board.
- (3) If the first lessee does not nominate a person for appointment as the first lessee appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such nomination by the first lessee appoint a person who is otherwise eligible for appointment as a director to be the first lessee appointee.
- (4) If the second lessee does not nominate a person for appointment as the second lessee appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such nomination by the second lessee appoint a person who is otherwise eligible for appointment as a director to be the second lessee appointee.
- (5) A person appointed by the Minister under subclause (3) or (4) is to be regarded as having been duly nominated and appointed as the first lessee appointee or the second lessee appointee, as the case requires.
- (6) The first lessee appointee ceases to hold office as a director if —
  - (a) the person or persons who nominated him or her ceases or cease to be the registered lessee or registered lessees of the

- land referred to in the definition of *first lessee* in clause 2.2;  
or
- (b) the first lessee by instrument in writing served on the Minister so requests.
- (7) The second lessee appointee ceases to hold office as a director if —
- (a) the person or persons who nominated him or her ceases or cease to be the registered lessee or registered lessees of the land referred to in the definition of *second lessee* in clause 2.2; or
  - (b) the second lessee by instrument in writing served on the Minister so requests.

**2.5. Alternate directors**

- (1) Schedule 2, clause 4 does not apply to the port authority.
- (2) The Minister may appoint a person as an alternate director for a director.
- (3) A person cannot be appointed as an alternate director for more than one director.
- (4) Clauses 2.4(1)(a) and (b), and (3) to (7) and 2.6 apply (with any necessary changes) in relation to alternate directors for the first lessee appointee and the second lessee appointee.
- (5) If a person is nominated by the first lessee or the second lessee (whether at the Minister's request or not) for appointment as an alternate director for the first lessee appointee or the second lessee appointee, as the case may be, the Minister is to appoint the person as an alternate director.
- (6) When a director is unable to act because of sickness, absence or other cause, the alternate director for that director may act in the director's place, and while so acting that alternate director is to be taken to be a director and is entitled to remuneration under section 10.
- (7) No act or omission of an alternate director acting in place of a director under this clause may be questioned on the ground that the occasion for acting had not arisen or had ceased.



**Schedule 7 — Purposes for which, or matters about which, regulations may be made**

[s. 139(2)]

1. The control, duties, supervision and guidance of the CEO and members of staff of a port authority.
2. The control or prohibition of —
  - (a) entry into or presence in a port or any specified part or parts of a port by or of a person or class of persons or by or of a thing or class of things; or
  - (b) doing or omitting to do a thing or class of things in a port or any specified part or parts of a port.
3. All matters relating to the protection of life and property and safe navigation in a port.
4. The use of tide signals and other signals in a port.
5. Prevention of overloading or overcrowding of vessels.
6. The powers, duties and obligations of the harbour master of a port in respect of the matters referred to in item 5 and the rights and liabilities of persons affected by the exercise of such a power or connected with a vessel in respect of which such a power is exercised.
7.
  - (1) The landing, shipping, trans-shipping, unshipping, warehousing, stowing, depositing, removal or keeping of dangerous goods as defined by the *Dangerous Goods Safety Act 2004* and of such other substances as the Minister may specify as being dangerous goods for the purposes of the regulations.
  - (2) The landing, shipping, trans-shipping, unshipping, warehousing, stowing, depositing, removal or keeping of goods other than those substances referred to in subitem (1).
8. The movement, mooring, loading and unloading of vessels.
9. The control of the provision, at or in relation to a port, of —
  - (a) pilotage services; or
  - (b) towage services; or
  - (c) stevedoring services; or
  - (d) port services of any other kind.

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10. The taking on and landing of passengers.
  11. The taking in, management and discharge or delivery of ballast.
  12. The use, cleaning, repair, maintenance and effective preservation of jetties and wharf loading areas.
  13. Traffic in a port.
  14. The powers of a port authority to —
    - (a) move; or
    - (b) remove from the port,vehicles or other things that are obstructing, or may obstruct, traffic in the port.
  15. Parking of vehicles in a port.
  16. The powers of a port authority to deal with or sell or otherwise dispose of goods that have remained in the port for longer than a prescribed period or are affecting or may affect any property of the port authority or any other goods in the port, and —
    - (a) the liability of persons for any charges imposed or expenses incurred by the port authority in the exercise of its powers under regulations made under this item; and
    - (b) the manner in which the proceeds of goods sold by a port authority under its powers under regulations made under this item may be applied.
  17. Regulation of the duties and conduct of persons in a port.
  18. The control and management of ferries operating for hire at jetties or public thoroughfares.
  19. The control of the operation of vessels operating for hire either for goods or passengers in a port.
  20. The control of the operation of machinery on jetties and wharf loading areas.
  21. The conduct of persons operating vessels or machinery referred to in item 19 or 20.
  22. The control of the installation and use of moorings.

23. The calculation or ascertainment of port charges and the powers of a collector of port charges, either alone or with other persons, to enter a vessel in order to calculate or ascertain the port charges payable in respect of the vessel or of goods on the vessel.
24. To require the master of every vessel to give notice of arrival at a port within a specified time before arrival.
25. To require the master of every vessel to produce the certificate of registry or other national papers of that vessel to a collector of port charges or to any other member of staff on demand.
26. To require the master of a vessel to give documentation or information in such form as may be required by a port authority of all goods to be loaded or unloaded on to or from the vessel at the port.
27. To require the master of a vessel to obtain permission to load or unload goods at a port before doing so.
28. To require the shippers of goods to furnish information as to the goods intended to be shipped.
29. To give binding effect to —
  - (a) descriptions of and statements about goods (including as to value) in bills of lading, manifests or receipts; and
  - (b) the terms and conditions of bills of lading, manifests or receipts.
30. Pilotage matters generally and, in particular —
  - (a) procedures for and matters relating to the approval of persons as pilots for a port; and
  - (b) vessels that do not have to have an approved pilot; and
  - (c) procedures for and matters relating to pilotage exemption certificates.
31. The speed of vessels in a port.
32. The recovery of expenses incurred by a port authority in exercising powers under the regulations.
33. Limitation of the liability of a port authority for damage or loss either generally or in circumstances specified in the regulations.

34. Exemption of a port authority from liability for damage or loss in circumstances specified in the regulations.
35. Limitation of the time for making a claim against a port authority for loss or damage.
36. Conditions to be inserted in a lease granted under this Act.
37. The powers of members of staff and police officers in relation to persons who are committing or have committed or are believed to be committing, or to have committed, offences under this Act.
38. The deposit of litter, rubbish or waste substances of any kind and the abandonment or neglect of vessels or other material —
  - (a) in a port; or
  - (b) outside a port so as to affect or potentially affect, a port.
39. The protection of port facilities or other property of a port authority.
40. Liability for loss or damage occurring because of obstruction of or interference with the operation of a navigational aid.
41. The protection of the environment of a port.
42. Any other matters relating to —
  - (a) the convenience of shipping, or of operations to do with the storage, loading or unloading of cargo, or of the public, in a port; or
  - (b) the performance of the functions imposed on a port authority by this Act.

*[Schedule 7 amended by No. 71 of 2003 s. 9; No. 7 of 2004 s. 70.]*

## **Schedule 8 — Transitional provisions**

[s. 139A]

*[Heading inserted by No. 9 of 2014 s. 35.]*

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

*[Heading inserted by No. 9 of 2014 s. 35.]*

#### **Subdivision 1 — Preliminary**

*[Heading inserted by No. 9 of 2014 s. 35.]*

#### **1. Terms used**

In this Division —

**agreement** includes a Government agreement;

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

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

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

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

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

*[Clause 1 inserted by No. 9 of 2014 s. 35.]*

#### **Subdivision 2 — Provisions for the Southern Ports Authority**

*[Heading inserted by No. 9 of 2014 s. 35.]*

#### **2. Terms used**

In this Subdivision —





(b) a former director of the continuing authority is a former director of the SPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.

(3) The board of directors of the SPA may be established by the appointment of directors before the merger time.

(4) For the purposes of Schedule 2 clause 1 the term of office of a director appointed under subclause (3) does not begin until the merger time.

(5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

*[Clause 4 inserted by No. 9 of 2014 s. 35.]*

**5. Powers of new board in anticipation of merger**

(1) The new board may —

(a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the merger; and

(b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.

(2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48.

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

*[Clause 5 inserted by No. 9 of 2014 s. 35.]*

**6. CEOs and members of staff**

(1) Immediately before the merger time a person then holding office as the CEO of the continuing authority or a merging authority ceases to hold that office.

(2) At the merger time, a person who was —

(a) the CEO of the continuing authority; or



(3) If a person who is the CEO or a member of staff of the continuing authority or a merging authority is appointed under clause 6(5), the appointment does not —

(a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or

(b) affect any rights under a superannuation scheme; or

(c) interrupt the continuity of his or her service,

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

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

[Clause 7 inserted by No. 9 of 2014 s. 35.]

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

(1) At the merger time —

(a) the assets and rights of a merging authority that were immediately before that time vested in or the property of the merging authority vest in or become the property of the SPA by force of this clause; and

(b) the liabilities of a merging authority immediately before that time become, by force of this clause, the liabilities of the SPA.

(2) For the purposes of section 26, property referred to in section 25(2)(a) that becomes the property of the SPA by force of subclause (1)(a) continues to be regarded as property referred to in section 25(2)(a).

(3) In determining the net profits of the SPA for the purposes of section 84, assets that become the property of the SPA by force of subclause (1)(a) are not to be regarded as income.

(4) From the merger time, any proceedings or remedy that, immediately before that time, might have been brought or continued by or

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

(5) Where a merging authority had the benefit of any immunity in respect of an act, matter or thing done or omitted before the merger time, that immunity continues in that respect for the benefit of the SPA.

(6) As soon as is practicable after the merger time, all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of a merging authority are to be delivered to the SPA.

*[Clause 8 inserted by No. 9 of 2014 s. 35.]*

#### **9. Completion of things commenced**

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

*[Clause 9 inserted by No. 9 of 2014 s. 35.]*

#### **10. Continuing effect of things done**

(1) In this clause —

*relevant act* means an act, matter or thing done or omitted to be done before the merger time by, to or in respect of a merging authority.

(2) To the extent that a relevant act has force or significance at the merger time it is to be taken, from the merger time, to have been done or omitted by, to or in respect of the SPA so far as the act, matter or thing is relevant to the SPA.

(3) This clause does not affect the operation of any other provision of this Schedule.

*[Clause 10 inserted by No. 9 of 2014 s. 35.]*

#### **11. Agreements, instruments and documents**

(1) In this clause —

*former name* means “Bunbury Port Authority”;

*new name* means “Southern Ports Authority”;

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

(2) A subsisting agreement, instrument or document that contains a reference to the SPA by its former name has effect from the merger time as if that reference were amended to be a reference to the SPA by its new name.

(3) Subclause (2) does not apply to an agreement or instrument to which the continuing authority was a party.

(4) If the continuing authority was a party to a subsisting agreement or instrument then, from the merger time —

(a) the SPA is a party to the agreement or instrument under its new name; and

(b) the agreement or instrument has effect as if a reference in it to the SPA by its former name were amended to be a reference to the SPA by its new name.

(5) A subsisting agreement, instrument or document that contains a reference to a merging authority has effect from the merger time as if that reference were amended to be or include a reference to the SPA.

(6) Subclause (5) does not apply to an agreement or instrument to which a merging authority was a party.

(7) A subsisting agreement or instrument to which a merging authority was a party has effect from the merger time as if —

(a) the SPA were substituted for the merging authority as a party to the agreement or instrument; and

(b) a reference to the merging authority in the agreement or instrument were amended to be a reference to the SPA.

(8) Subclause (2), (4)(b), (5) or (7)(b) does not apply to a reference if —

(a) transitional regulations provide otherwise; or

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

*[Clause 11 inserted by No. 9 of 2014 s. 35.]*

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

(1) A port authority is to do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.

(2) Subclause (1) applies —

(a) before the merger time — to the merging authorities and the continuing authority; and

(b) after the merger time — to the SPA.

(3) The function conferred by subclause (1) is in addition to any other function that a port authority has.

(4) The following amounts payable before the merger time are to be paid out of the funds of the continuing authority —

(a) any remuneration or allowances payable to a director appointed under clause 4(3);

(b) any remuneration payable to a person appointed under clause 6(5);

(c) the costs of the appointment process under clause 6(5);

(d) any other costs incurred by the new board under clause 5.

(5) Each of the merging authorities is to make a contribution to the continuing authority of one-third (or such other proportion as is agreed) of the amounts paid by the continuing authority in respect of —

(a) remuneration or costs mentioned in subclause (4)(a) to (c); and

(b) costs mentioned in subclause (4)(d) to the extent that they were reasonably incurred.

(6) Any dispute as to —

(a) a contribution to be made under subclause (5); or

(b) the relevance or amount of a cost mentioned in subclause (4)(d),

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

[Clause 12 inserted by No. 9 of 2014 s. 35.]

**13. Financial reporting**

(1) In this clause —

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

*reporting board*, in relation to a merging authority, means the reporting board constituted for the merging authority under subclause (2);

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

(2) A reporting board is constituted by force of this clause to perform the duties set out in this clause in respect of a merging authority.

(3) The constitution of a reporting board under subclause (2) has effect for a period of 3 months commencing at the merger time but that period may be extended by the Minister if the Minister considers that the extension is needed in order to enable the reporting board to perform its duties under this clause.

(4) If the merger time coincides with the end of a financial year of a merging authority, the reporting board for the merging authority is to comply with the reporting provisions in respect of the merging authority for that financial year.

(5) If the merger time is after the end of a financial year of a merging authority (the *last financial year*), the reporting board for the merging authority is to —

(a) comply with the reporting provisions in respect of the merging authority to the extent that those provisions have not been complied with for the last financial year; and

(b) comply with the reporting provisions in respect of the merging authority for the period starting from the end of the last financial year and ending at the merger time as if that period were a financial year.

(6) A reporting board must comply with any written directions given to it by the Minister as to the performance of its duties under this clause.



(7) In order to enable a reporting board to perform its duties under this clause the reporting provisions apply with —

- (a) any modifications prescribed by transitional regulations; or
- (b) any other appropriate modifications.

(8) For the purposes of this clause, a reporting board —

- (a) is entitled to be provided with reasonable assistance and facilities and to have full and free access at all reasonable times to all accounts, and any other information, documents and records, that the reporting board considers necessary for those purposes; and
- (b) may make copies of, or take extracts from, any of those accounts, documents or records or make a record of any of that information.

(9) A person who has possession of any accounts, information, documents or records of the kind referred to in subclause (8)(a) must at any reasonable time, on the request of the reporting board, produce any of those accounts, documents or records, or any of that information, specified in the request.

Penalty: a fine of \$10 000.

(10) Subject to subclauses (11) to (13), the provisions of this Act that apply to the board of directors of a port authority and those directors (other than sections 7(1) and 8 and Schedule 2 clause 1(1), (3) and (4)) apply, with any modifications that may be necessary or appropriate, to a reporting board and its members.

(11) The former directors of a merging authority are to hold office as members of the reporting board of the merging authority for as long as the reporting board remains constituted under subclause (2).

(12) If the office of a member of a reporting board becomes vacant the Minister may appoint a replacement member to hold office for as long as the reporting board remains constituted under subclause (2).

(13) Any remuneration or allowances payable to a member of a reporting board are to be paid from the funds of the SPA.

(14) A member of a reporting board is to be taken to be a director of the SPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.

[Clause 13 inserted by No. 9 of 2014 s. 35.]

#### **14. Dividends**

(1) In this clause —

*dividend function* means a function of a port authority or its board under section 84.

(2) If immediately before the merger time a dividend function has yet to be performed by a merging authority or its board, the SPA or its board is to perform the function after the merger time as if the SPA were the merging authority.

(3) If the merger time coincides with the end of a financial year of a merging authority, the SPA or its board is to perform the dividend functions in relation to that financial year as if the SPA were the merging authority.

(4) Any amount that has to be paid to the Treasurer in accordance with subclause (2) or (3) is to be paid from the funds of the SPA.

[Clause 14 inserted by No. 9 of 2014 s. 35.]

#### **15. Transitional regulations**

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

(a) things to be done by a port authority, or the new board, to provide for, implement or facilitate the merger; and

(b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the merger.

(2) Transitional regulations may provide that specific provisions of any written law —

(a) do not apply to or in relation to any matter; or

(b) apply with specific modifications to or in relation to any matter.

- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the merger time, the regulations have effect according to their terms.

[Clause 15 inserted by No. 9 of 2014 s. 35.]

**Subdivision 3 — Provisions for the Mid West Ports Authority**

[Heading inserted by No. 9 of 2014 s. 35.]

**16. Terms used**

In this Subdivision, unless the contrary intention appears —

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

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

*port authority* means the Geraldton Port Authority;

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

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

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

[Clause 16 inserted by No. 9 of 2014 s. 35.]

**17. Directors and former directors**

- (1) Immediately before the renaming time a person then holding office as a director of the port authority ceases to hold that office.

- (2) From the renaming time a former director of the port authority is a former director of the MWPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.

- (3) The board of directors of the MWPA may be established by the appointment of directors before the renaming time.

(4) For the purposes of Schedule 2 clause 1, the term of office of a director appointed under subclause (3) does not begin until the renaming time.

(5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

*[Clause 17 inserted by No. 9 of 2014 s. 35.]*

**18. Powers of new board in anticipation of renaming**

(1) The new board may —

(a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the renaming; and

(b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming.

(2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48 to the extent that they are relevant to the renaming.

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

*[Clause 18 inserted by No. 9 of 2014 s. 35.]*

**19. CEO and staff**

(1) Immediately before the renaming time a person then holding office as the CEO of the port authority ceases to hold that office.

(2) At the renaming time, a person who was the CEO of the port authority immediately before the renaming time becomes a member of staff of the MWPA.

(3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.

(4) Before the renaming time the port authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —

- (a) terminate the contract of employment of the CEO or member of staff; or
- (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 18 include the power to appoint a person as the CEO of the MWPA before the renaming time.
- (6) Until the renaming time a person appointed under subclause (5) may, as CEO of the MWPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the renaming.
- (7) If a person who is the CEO or a member of staff of the port authority is appointed under subclause (5) the appointment does not —
  - (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
  - (b) affect any rights under a superannuation scheme; or
  - (c) interrupt the continuity of his or her service.

[Clause 19 inserted by No. 9 of 2014 s. 35.]

**20. Agreements, instruments and documents**

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

(b) the agreement or instrument has effect as if a reference in it to the MWPA by its former name were amended to be a reference to the MWPA by its new name.

(5) Subclause (2) or (4)(b) does not apply to a reference if —

(a) transitional regulations provide otherwise; or

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

*[Clause 20 inserted by No. 9 of 2014 s. 35.]*

**21. Port authority to implement or facilitate renaming**

(1) Anything that is prescribed by transitional regulations, and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming, is to be done —

(a) before the renaming time — by the port authority; and

(b) after the renaming time — by the MWPA.

(2) The function conferred by subclause (1) is in addition to any other function that a port authority has.

(3) The following amounts payable before the renaming time are to be paid out of the funds of the port authority —

(a) any remuneration or allowances payable to a director appointed under clause 17(3);

(b) any remuneration payable to a person appointed under clause 19(5);

(c) the costs of the appointment process under clause 19(5);

(d) any other costs incurred by the new board under clause 18.

*[Clause 21 inserted by No. 9 of 2014 s. 35.]*

**22. Transitional regulations**

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

(a) things to be done by the port authority, the new board or the MWPA to provide for, implement or facilitate the renaming; and

(b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the renaming.

(2) Transitional regulations may provide that specific provisions of any written law —

(a) do not apply to or in relation to any matter; or

(b) apply with specific modifications to or in relation to any matter.

(3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the renaming time, the regulations have effect according to their terms.

[Clause 22 inserted by No. 9 of 2014 s. 35.]

#### **Subdivision 4 — Provisions for the Pilbara Ports Authority**

[Heading inserted by No. 9 of 2014 s. 35.]

### **23. Terms used**

In this Subdivision —

*continuing authority* means the Port Hedland Port Authority;

*merger* means —

(a) the actions effected by the coming into operation of section 31(3) of the amending Act; and

(b) the merging of the Dampier Port Authority into the PPA under clause 24(1);

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

*merging authority* means the Dampier Port Authority;

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

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

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

*[Clause 23 inserted by No. 9 of 2014 s. 35.]*

**24. Merger of Dampier Port Authority into Pilbara Ports Authority**

(1) At the merger time the Dampier Port Authority ceases to be a port authority under this Act and merges into the PPA.

(2) From the merger time the PPA is a continuation of the merging authority.

*[Clause 24 inserted by No. 9 of 2014 s. 35.]*

**25. Directors and former directors**

(1) Immediately before the merger time a person then holding office as a director of the merging authority or the continuing authority ceases to hold that office.

(2) From the merger time —

(a) a former director of the merging authority is to be taken to be a former director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*; and

(b) a former director of the continuing authority is a former director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.

(3) The board of directors of the PPA may be established by the appointment of directors before the merger time.

(4) For the purposes of Schedule 2 clause 1, the term of office of a director appointed under subclause (3) does not begin until the merger time.

(5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

*[Clause 25 inserted by No. 9 of 2014 s. 35.]*

**26. Powers of new board in anticipation of merger**

(1) The new board may —

(a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the merger; and



(b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.

(2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48.

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

*[Clause 26 inserted by No. 9 of 2014 s. 35.]*

**27. CEOs and members of staff**

(1) Immediately before the merger time a person then holding office as the CEO of the continuing authority or the merging authority ceases to hold that office.

(2) At the merger time, a person who was —

(a) the CEO of the continuing authority; or

(b) the CEO or a member of staff of the merging authority,

immediately before the merger time becomes a member of staff of the PPA.

(3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.

(4) Before the merger time the continuing authority or the merging authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —

(a) terminate the contract of employment of the CEO or member of staff; or

(b) arrange for and accept the resignation of the CEO or member of staff.

(5) The powers of the new board under clause 26 include the power to appoint a person as the CEO of the PPA before the merger time.

(6) Until the merger time a person appointed under subclause (5) may, as CEO of the PPA, perform any function of a CEO of a port authority

for the purpose of providing for, implementing or facilitating the merger.

[Clause 27 inserted by No. 9 of 2014 s. 35.]

**28. Preservation of rights**

(1) Except as otherwise agreed by the relevant CEO or member of staff, the operation of clause 27(1) or (2) does not —

(a) affect his or her remuneration; or

(b) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or

(c) affect any rights under a superannuation scheme; or

(d) interrupt the continuity of his or her service.

(2) For the purposes of subclause (1)(d), the service of a CEO or member of staff with the merging authority is to be taken to have been with the PPA.

(3) If a person who is the CEO or a member of staff of the continuing authority or the merging authority is appointed under clause 27(5), the appointment does not —

(a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or

(b) affect any rights under a superannuation scheme; or

(c) interrupt the continuity of his or her service,

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

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

[Clause 28 inserted by No. 9 of 2014 s. 35.]

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

(1) At the merger time —

(a) the assets and rights of the merging authority that were immediately before that time vested in or the property of the merging authority vest in or become the property of the PPA by force of this clause; and

(b) the liabilities of the merging authority immediately before that time become, by force of this clause, the liabilities of the PPA.

(2) For the purposes of section 26, property referred to in section 25(2)(a) that becomes the property of the PPA by force of subclause (1)(a) continues to be regarded as property referred to in section 25(2)(a).

(3) In determining the net profits of the PPA for the purposes of section 84, assets that become the property of the PPA by force of subclause (1)(a) are not to be regarded as income.

(4) From the merger time, any proceedings or remedy that, immediately before that time, might have been brought or continued by or available against or to the merging authority may be brought or continued by, and are or is available against or to, the PPA.

(5) Where the merging authority had the benefit of any immunity in respect of an act, matter or thing done or omitted before the merger time, that immunity continues in that respect for the benefit of the PPA.

(6) As soon as is practicable after the merger time, all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of the merging authority are to be delivered to the PPA.

*[Clause 29 inserted by No. 9 of 2014 s. 35.]*

**30. Completion of things commenced**

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

*[Clause 30 inserted by No. 9 of 2014 s. 35.]*

**31. Continuing effect of things done**

(1) In this clause —

*relevant act* means an act, matter or thing done or omitted to be done before the merger time by, to or in respect of the merging authority.

(2) To the extent that a relevant act has force or significance at the merger time it is to be taken, from the merger time, to have been done or omitted by, to or in respect of the PPA so far as the act, matter or thing is relevant to the PPA.

(3) This clause does not affect the operation of any other provision of this Schedule.

[Clause 31 inserted by No. 9 of 2014 s. 35.]

**32. Agreements, instruments and documents**

(1) In this clause —

*former name* means “Port Hedland Port Authority”;

*new name* means “Pilbara Ports Authority”;

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

(2) A subsisting agreement, instrument or document that contains a reference to the PPA by its former name has effect from the merger time as if that reference were amended to be a reference to the PPA by its new name.

(3) Subclause (2) does not apply to an agreement or instrument to which the continuing authority was a party.

(4) If the continuing authority was a party to a subsisting agreement or instrument then, from the merger time —

(a) the PPA is a party to the agreement or instrument under its new name; and

(b) the agreement or instrument has effect as if a reference in it to the PPA by its former name were amended to be a reference to the PPA by its new name.

(5) A subsisting agreement, instrument or document that contains a reference to the merging authority has effect from the merger time as

if that reference were amended to be or include a reference to the PPA.

(6) Subclause (5) does not apply to an agreement or instrument to which the merging authority was a party.

(7) A subsisting agreement or instrument to which the merging authority was a party has effect from the merger time as if —

(a) the PPA were substituted for the merging authority as a party to the agreement or instrument; and

(b) a reference to the merging authority in the agreement or instrument were amended to be a reference to the PPA.

(8) Subclause (2), (4)(b), (5) or (7)(b) does not apply to a reference if —

(a) transitional regulations provide otherwise; or

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

[Clause 32 inserted by No. 9 of 2014 s. 35.]

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

(1) A port authority is to do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.

(2) Subclause (1) applies —

(a) before the merger time — to the merging authority and the continuing authority; and

(b) after the merger time — to the PPA.

(3) The function conferred by subclause (1) is in addition to any other function that a port authority has.

(4) The following amounts payable before the merger time are to be paid out of the funds of the continuing authority —

(a) any remuneration or allowances payable to a director appointed under clause 25(3);

(b) any remuneration payable to a person appointed under clause 27(5);

(c) the costs of the appointment process under clause 27(5);

(d) any other costs incurred by the new board under clause 26.

(5) The merging authority is to make a contribution to the continuing authority of one-half (or such other proportion as is agreed) of the amounts paid by the continuing authority in respect of —

(a) remuneration or costs mentioned in subclause (4)(a) to (c); and

(b) costs mentioned in subclause (4)(d) to the extent that they were reasonably incurred.

(6) Any dispute as to —

(a) a contribution to be made under subclause (5); or

(b) the relevance or amount of a cost mentioned in subclause (4)(d).

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

[Clause 33 inserted by No. 9 of 2014 s. 35.]

#### **34. Financial reporting**

(1) In this clause —

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

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

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

(2) A reporting board is constituted by force of this clause to perform the duties set out in this clause in respect of the merging authority.

(3) The constitution of the reporting board under subclause (2) has effect for a period of 3 months commencing at the merger time but that period may be extended by the Minister if the Minister considers that

the extension is needed in order to enable the reporting board to perform its duties under this clause.

(4) If the merger time coincides with the end of a financial year of the merging authority, the reporting board is to comply with the reporting provisions in respect of the merging authority for that financial year.

(5) If the merger time is after the end of a financial year of the merging authority (the *last financial year*), the reporting board is to —

(a) comply with the reporting provisions in respect of the merging authority to the extent that those provisions have not been complied with for the last financial year; and

(b) comply with the reporting provisions in respect of the merging authority for the period starting from the end of the last financial year and ending at the merger time as if that period were a financial year.

(6) The reporting board must comply with any written directions given to it by the Minister as to the performance of its duties under this clause.

(7) In order to enable the reporting board to perform its duties under this clause the reporting provisions apply with —

(a) any modifications prescribed by transitional regulations; or

(b) any other appropriate modifications.

(8) For the purposes of this clause, the reporting board —

(a) is entitled to be provided with reasonable assistance and facilities and to have full and free access at all reasonable times to all accounts, and any other information, documents and records, that the reporting board considers necessary for those purposes; and

(b) may make copies of, or take extracts from, any of those accounts, documents or records or make a record of any of that information.

(9) A person who has possession of any accounts, information, documents or records of the kind referred to in subclause (8)(a) must at any reasonable time, on the request of the reporting board, produce any of those accounts, documents or records, or any of that information, specified in the request.

Penalty: a fine of \$10 000.

(10) Subject to subclauses (11) to (13), the provisions of this Act that apply to the board of directors of a port authority and those directors (other than sections 7(1) and 8 and Schedule 2 clause 1(1), (3) and (4)) apply, with any modifications that may be necessary or appropriate, to the reporting board and its members.

(11) The former directors of the merging authority are to hold office as members of the reporting board for as long as the reporting board remains constituted under subclause (2).

(12) If the office of a member of the reporting board becomes vacant the Minister may appoint a replacement member to hold office for as long as the reporting board remains constituted under subclause (2).

(13) Any remuneration or allowances payable to a member of the reporting board are to be paid from the funds of the PPA.

(14) A member of the reporting board is to be taken to be a director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.

[Clause 34 inserted by No. 9 of 2014 s. 35.]

### **35. Dividends**

(1) In this clause —

*dividend function* means a function of a port authority or its board under section 84.

(2) If immediately before the merger time a dividend function has yet to be performed by the merging authority or its board, the PPA or its board is to perform the function after the merger time as if the PPA were the merging authority.

(3) If the merger time coincides with the end of a financial year of the merging authority, the PPA or its board is to perform the dividend functions in relation to that financial year as if the PPA were the merging authority.

(4) Any amount that has to be paid to the Treasurer in accordance with subclause (2) or (3) is to be paid from the funds of the PPA.



*[Clause 35 inserted by No. 9 of 2014 s. 35.]*

**36. Transitional regulations**

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

- (a) things to be done by a port authority, or the new board, to provide for, implement or facilitate the merger; and
- (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the merger.

(2) Transitional regulations may provide that specific provisions of any written law —

- (a) do not apply to or in relation to any matter; or
- (b) apply with specific modifications to or in relation to any matter.

(3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the merger time, the regulations have effect according to their terms.

*[Clause 36 inserted by No. 9 of 2014 s. 35.]*

**Subdivision 5 — Provisions for the Kimberley Ports Authority**

*[Heading inserted by No. 9 of 2014 s. 35.]*

**37. Terms used**

In this Subdivision —

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

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

*port authority* means the Broome Port Authority;

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

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

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

[Clause 37 inserted by No. 9 of 2014 s. 35.]

**38. Directors and former directors**

(1) Immediately before the renaming time a person then holding office as a director of the port authority ceases to hold that office.

(2) From the renaming time a former director of the port authority is a former director of the KPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.

(3) The board of directors of the KPA may be established by the appointment of directors before the renaming time.

(4) For the purposes of Schedule 2 clause 1 the term of office of a director appointed under subclause (3) does not begin until the renaming time.

(5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

[Clause 38 inserted by No. 9 of 2014 s. 35.]

**39. Powers of new board in anticipation of renaming**

(1) The new board may —

(a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the renaming; and

(b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming.

(2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48 to the extent that they are relevant to the renaming.

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

*[Clause 39 inserted by No. 9 of 2014 s. 35.]*

**40. CEO and staff**

(1) Immediately before the renaming time a person then holding office as the CEO of the port authority ceases to hold that office.

(2) At the renaming time, a person who was the CEO of the port authority immediately before the renaming time becomes a member of staff of the KPA.

(3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.

(4) Before the renaming time the port authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —

(a) terminate the contract of employment of the CEO or member of staff; or

(b) arrange for and accept the resignation of the CEO or member of staff.

(5) The powers of the new board under clause 39 include the power to appoint a person as the CEO of the KPA before the renaming time.

(6) Until the renaming time a person appointed under subclause (5) may, as CEO of the KPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the renaming.

(7) If a person who is the CEO or a member of staff of the port authority is appointed under subclause (5) the appointment does not —

(a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or

(b) affect any rights under a superannuation scheme; or

(c) interrupt the continuity of his or her service.

*[Clause 40 inserted by No. 9 of 2014 s. 35.]*

**41. Agreements, instruments and documents**

(1) In this clause —

*former name* means “Broome Port Authority”;

*new name* means “Kimberley Ports Authority”.

(2) A subsisting agreement, instrument or document that contains a reference to the KPA by its former name has effect from the renaming time as if that reference were amended to be a reference to the KPA by its new name.

(3) Subclause (2) does not apply to an agreement or instrument to which the port authority was a party.

(4) If the port authority was a party to a subsisting agreement or instrument then, from the renaming time —

(a) the KPA is a party to the agreement or instrument under its new name; and

(b) the agreement or instrument has effect as if a reference in it to the KPA by its former name were amended to be a reference to the KPA by its new name.

(5) Subclause (2) or (4)(b) does not apply to a reference if —

(a) transitional regulations provide otherwise; or

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

*[Clause 41 inserted by No. 9 of 2014 s. 35.]*

**42. Port authority to implement or facilitate renaming**

(1) Anything that is prescribed by transitional regulations, and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming, is to be done —

(a) before the renaming time — by the port authority; and

(b) after the renaming time — by the KPA.

(2) The function conferred by subclause (1) is in addition to any other function that a port authority has.

(3) The following amounts payable before the renaming time are to be paid out of the funds of the port authority —

- (a) any remuneration or allowances payable to a director appointed under clause 38(3);
- (b) any remuneration payable to a person appointed under clause 40(5);
- (c) the costs of the appointment process under clause 40(5);
- (d) any other costs incurred by the new board under clause 39.

[Clause 42 inserted by No. 9 of 2014 s. 35.]

**43. Transitional regulations**

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

- (a) things to be done by the port authority, the new board or the KPA to provide for, implement or facilitate the renaming; and
- (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the renaming.

(2) Transitional regulations may provide that specific provisions of any written law —

- (a) do not apply to or in relation to any matter; or
- (b) apply with specific modifications to or in relation to any matter.

(3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the renaming time, the regulations have effect according to their terms.

[Clause 43 inserted by No. 9 of 2014 s. 35.]

**Subdivision 6 — Provisions for certain directors**

[Heading inserted by No. 9 of 2014 s. 35.]

**44. Certain directors to cease to hold office**

(1) In this clause —

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

(2) On commencement —

(a) the Company appointee and the Joint Venturers appointee, as defined in Schedule 6 clause 1.2 as enacted before commencement, cease to be directors of the Dampier Port Authority; and

(b) the first lessee appointee and the second lessee appointee, as defined in Schedule 6 clause 2.2 as enacted before commencement, cease to be directors of the Port Hedland Port Authority.

[Clause 44 inserted by No. 9 of 2014 s. 35.]

**Subdivision 7 — General provisions**

[Heading inserted by No. 9 of 2014 s. 35.]

**45. Terms used**

In this Subdivision —

*affecting provisions* means —

(a) section 31 of the amending Act; and

(b) this Division and transitional regulations;

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

*relevant officials* means —

(a) the Registrar of Titles under the *Transfer of Land Act 1893*;  
or

(b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; or

(c) the Minister administering the *Land Administration Act 1997*;  
or

(d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property;

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

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

*[Clause 45 inserted by No. 9 of 2014 s. 35.]*

#### **46. Exemption from State taxes**

State tax is not payable in relation to —

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

*[Clause 46 inserted by No. 9 of 2014 s. 35.]*

#### **47. Registration of documents**

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

*[Clause 47 inserted by No. 9 of 2014 s. 35.]*

#### **48. Matters that a new board can deal with**

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

- (a) staff issues including organisational structure, reporting accountabilities and employee roles and responsibilities;
- (b) preparation for staff transfer including confirmation of employee details and entitlements;
- (c) recruitment of staff if necessary;
- (d) identification and assessment of issues relating to —
  - (i) port boundaries;
  - (ii) agreements affecting the port;
  - (iii) mining tenements over port areas;

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- (iv) contaminated sites;
- (v) waters in the port reserved under the *Conservation and Land Management Act 1984* Part II Division 3;
- (vi) native title issues;
- (vii) operating and maintenance costs;
- (viii) community service obligations;
- (ix) leases, licences and permits;
- (x) port fees and charges;
- (xi) existing legal and commercial disputes and contingent liabilities;
- (xii) long term commitments,  
and resolution of those issues so far as that is within the new board's powers;
- (e) review, and if necessary modification, of the existing port operating model;
- (f) harmonisation of internal policies, standards, procedures, processes and reporting requirements on services and systems including —
  - (i) operating activities;
  - (ii) administrative functions;
  - (iii) pricing and marketing principles and practices;
  - (iv) financial and accounting systems, including the chart of accounts;
  - (v) human resource services;
  - (vi) information and communication activities;
- (g) development of a draft strategic development plan, a draft statement of corporate intent, a draft income and cash flow statement and a draft statement of financial position;
- (h) development of any other plans that a port authority is required to have under any written law;
- (i) budgetary matters;
- (j) matters relating to the transfer of assets and liabilities including —



(i) asset and liability inventories;

(ii) valuation of assets and liabilities;

(iii) processes for transfer;

(k) employment or engagement of persons to provide management, financial, legal or other services or advice.

[Clause 48 inserted by No. 9 of 2014 s. 35.]

**49. Operation of transitional regulations**

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

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Clause 49 inserted by No. 9 of 2014 s. 35.]

**50. Saving**

(1) The operation of any of the affecting provisions is not to be regarded —

(a) as a breach of contract or confidence or otherwise as a civil wrong; or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or

(c) as giving rise to any right to damages or compensation; or

(d) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or

(e) as causing any contract or instrument to be void or otherwise unenforceable; or

(f) as releasing or allowing the release of any surety.

(2) This Division and transitional regulations are additional to any relevant provisions of the *Interpretation Act 1984*.

*[Clause 50 inserted by No. 9 of 2014 s. 35.]*

**51. Government agreements not affected**

(1) The affecting provisions do not prejudice or in any way affect any right or obligation of a party to a Government agreement.

(2) This clause does not limit or otherwise affect the operation of Schedule 6 clauses 1.3 and 2.3.

*[Clause 51 inserted by No. 9 of 2014 s. 35.]*

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## Notes

- <sup>1</sup> This reprint is a compilation ~~as at 7 September 2012~~ of the *Port Authorities Act 1999* and includes the amendments made by the other written laws referred to in the following table<sup>4,6</sup>. The table also contains information about any reprint.

## Compilation table

| Short title   | Number and year | Assent      | Commencement   |
|---|-----------------|-------------|--|
| <i>Port Authorities Act 1999</i>  | 22 of 1999      | 29 Jun 1999 | s. 1 and 2: 29 Jun 1999; Act other than s. 1 and 2 and Sch. 1 it. 2: 14 Aug 1999 (see s. 2 and <i>Gazette</i> 13 Aug 1999 p. 3823); Sch. 1 it. 2: 1 Jan 2000 (see s. 2 and <i>Gazette</i> 24 Dec 1999 p. 6871) |
| <i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 58  | 43 of 2000      | 2 Nov 2000  | 17 Feb 2001 (see s. 2(1) and <i>Gazette</i> 16 Feb 2001 p. 903)  |
| <i>Corporations (Consequential Amendments) Act 2001</i> Pt. 45  | 10 of 2001      | 28 Jun 2001 | 15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth. <i>Gazette</i> 13 Jul 2001 No. S285)   |
| <i>Labour Relations Reform Act 2002</i> s. 23   | 20 of 2002      | 8 Jul 2002  | 15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)  |
| <i>Port Authorities (Act Amendment) Regulations 2003</i> published in <i>Gazette</i> 4 Mar 2003 p. 711-22                           |                 |             | 4 Mar 2003   |
| <i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 11 <sup>7</sup>   | 21 of 2003      | 23 Apr 2003 | 11 Mar 2002 (see s. 2 and Cwlth. <i>Gazette</i> 24 Oct 2001 No. GN42)  |
| <i>Labour Relations Reform (Consequential Amendments) Regulations 2003</i> r. 12 published in <i>Gazette</i> 15 Aug 2003 p. 3685-92 |                 |             | 15 Sep 2003 (see r. 2)   |

**Port Authorities Act 1999**

| <b>Short title</b>  | <b>Number and year</b> | <b>Assent</b> | <b>Commencement</b>  |
|---|------------------------|---------------|--|
| <i>Ports and Marine Legislation Amendment Act 2003 Pt. 2</i> <sup>2</sup>   | 71 of 2003             | 15 Dec 2003   | s. 5 and 6: 14 Aug 1999 (see s. 2(2));<br>s. 4, 8 and 9: 15 Dec 2003 (see s. 2(1));<br>s. 7: 14 Feb 2004 (see s. 2(3) and <i>Gazette</i> 13 Feb 2004 p. 537) |
| <i>Statutes (Repeals and Minor Amendments) Act 2003 s. 93</i>   | 74 of 2003             | 15 Dec 2003   | 15 Dec 2003 (see s. 2)   |
| <i>Criminal Code Amendment Act 2004 s. 58</i>   | 4 of 2004              | 23 Apr 2004   | 21 May 2004 (see s. 2)   |
| <i>Dangerous Goods Safety Act 2004 s. 70</i>  | 7 of 2004              | 10 Jun 2004   | 1 Mar 2008 (see s. 2 and <i>Gazette</i> 29 Feb 2008 p. 669)  |
| <b>Reprint 1: The Port Authorities Act 1999 as at 1 Oct 2004</b> (includes amendments listed above except those in the <i>Dangerous Goods Safety Act 2004</i> ) |                        |               |  |
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>   | 84 of 2004             | 16 Dec 2004   | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))   |
| <i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>  | 38 of 2005             | 12 Dec 2005   | 9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)   |
| <i>Financial Legislation Amendment and Repeal Act 2006 s. 4, 5(1), 11 and Sch. 1 cl. 131</i>  | 77 of 2006             | 21 Dec 2006   | 1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)   |
| <b>Reprint 2: The Port Authorities Act 1999 as at 4 Jul 2008</b> (includes amendments listed above)   |                        |               |  |
| <i>Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 102</i>  | 8 of 2009              | 21 May 2009   | 22 May 2009 (see s. 2(b))  |
| <i>Statutes (Repeals and Minor Amendments) Act 2009 s. 17</i>   | 46 of 2009             | 3 Dec 2009    | 4 Dec 2009 (see s. 2(b))   |
| <i>Public Sector Reform Act 2010 s. 81 and 89</i>   | 39 of 2010             | 1 Oct 2010    | 1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)   |

| Short title   | Number and year | Assent      | Commencement  |
|---|-----------------|-------------|---|
| <i>Building Act 2011</i> s. 169   | 24 of 2011      | 11 Jul 2011 | 2 Apr 2012 (see s. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033) |
| <b>Reprint 3: The Port Authorities Act 1999 as at 7 Sep 2012</b> (includes amendments listed above) |                 |             |   |

|   |                           |                             |  |
|---|---------------------------|-----------------------------|--|
| <a href="#"><i>Ports Legislation Amendment Act 2014</i></a> | <a href="#">9 of 2014</a> | <a href="#">20 May 2014</a> | <a href="#">Heading to Pt. 2, s. 3, 4(3), 5(1), 7(1), 10, 28(1), 29, 30, 32 and 35: 21 May 2014 (see s. 2(1)(b))</a> |
|---|---------------------------|-----------------------------|--|

<sup>1a</sup> [On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.](#)

### Provisions that have not come into operation

| <u>Short title</u>   | <u>Number and year</u>    | <u>Assent</u>               | <u>Commencement</u>                                       |
|--|---------------------------|-----------------------------|---|
| <a href="#"><i>Ports Legislation Amendment Act 2014</i></a><br>(s. 4(1), (2) and (4), 5(2), 6, 7(2), 8, 9, 11-27, 28(2), 31, 33, 34 and 36) <sup>8</sup> | <a href="#">9 of 2014</a> | <a href="#">20 May 2014</a> | <a href="#">To be proclaimed (see s. 2(1)(c) and (2))</a> |

<sup>2</sup> The *Ports and Marine Legislation Amendment Act 2003* s. 4(2) reads as follows:

- (2) The amendment made by subsection (1) does not affect the operation of the *Port Authorities (Withdrawal and Revesting of Property) Order 2000* published in the *Gazette* on 2 June 2000.

<sup>3</sup> The *Land Act 1933* was repealed by the *Land Administration Act 1997* s. 281.

<sup>4</sup> The *Port Authorities (Consequential Provisions) Act 1999* s. 3 and Pt. 3 have interpretation and transitional provisions.

<sup>5</sup> Lands and Surveys plans are now held by the Western Australian Land Information Authority (see the *Land Information Authority Act 2006* s. 100).

<sup>6</sup> The amendment in the *State Superannuation Amendment Act 2007* s. 84 is not included because it was repealed by the *State Superannuation Amendment Act 2011* s. 4 before the amendment purported to come into operation.

<sup>7</sup> The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 contain validation provisions.

<sup>8</sup> On the date as at which this compilation was prepared, the *Ports Legislation Amendment Act 2014* s. 4(1), (2) and (4), 5(2), 6, 7(2), 8, 9, 11-27, 28(2), 31, 33, 34 and 36 have not come into operation. They read as follows:

**4. Section 3 amended**

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

*port operations* means —

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

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

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

*port security* means all matters relating to —

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

*potential supplier* means —

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

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

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

(4) In section 3(1) in the definition of *port* after “Schedule 1” insert:

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

**5. Section 4 amended**

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

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

(a) any port named in column 3 of that item; and

(b) any port placed under the control and management of the port authority by regulations in accordance with Schedule 9.

**6. Section 5 amended**

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

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

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

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

**7. Section 7 amended**

(2) Delete section 7(4).

**8. Section 13 amended**

After section 13(4) insert:

(5) The port authority is to provide a committee with such —

(a) administrative support; and

(b) facilities,

as the committee may reasonably require for the performance of its functions.

**9. Section 14A inserted**

At the end of Part 2 Division 2 insert:

**14A. Community consultation committees**

(1) In this section —

*consultation committee* means the committee established as required by subsection (2).

(2) Without limiting section 13, a port authority must, under that section, establish a committee for the port for the purpose of promoting and facilitating communication, information sharing and consultation between the port authority and members of the public who are or may be affected by port operations.

(3) A local government that has electors who are or may be affected by port operations at the port is to be represented on the consultation committee.

(4) Minutes of the proceedings of the consultation committee are to be made available on the port authority's website or in a prescribed manner.

(5) Subsection (2) does not apply if the regulations exempt the port from the operation of this section.

**11. Section 29A inserted**

After section 28 insert:

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

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

**12. Section 30 amended**

In section 30(1):

(a) delete paragraph (e) and insert:

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

(fa) to be responsible for port security; and



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

operations

**13. Section 31 amended**

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

operations.

**14. Section 33 amended**

In section 33 delete “A” and insert:

Subject to section 34A, a

**15. Section 34A inserted**

After section 33 insert:

**34A. Duty to comply with State budgetary requirements**

(1) In this section —

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

*Government* includes —

(a) Cabinet; and

(b) a committee of Cabinet; and

(c) a subcommittee of a committee of Cabinet; and

(d) the Treasurer.

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

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

(b) endeavour to achieve financial outcomes that are consistent with forecasts contained in approved income and cash flow statements and approved statements of financial position.

(3) If there is any conflict or inconsistency between the duty imposed by subsection (2) and the duty imposed by section 33, the duty imposed by subsection (2) prevails.

**16. Section 35 amended**

After section 35(8) insert:

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

**17. Section 51 amended**

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

participation of potential suppliers.

**18. Section 57 amended**

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

(1) The

(2) At the end of section 57 insert:

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

(a) comply with the requirements mentioned in section 34A(2)(a); and

(b) endeavour to achieve the financial outcomes mentioned in section 34A(2)(b).

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

**19. Section 60 amended**

After section 60(2)(j) insert:

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

**20. Section 66 amended**

- (1) In section 66 delete “The” and insert:
- (1) The
- (2) At the end of section 66 insert:
- (2) Without limiting section 34A, any agreement or concurrence mentioned in subsection (1) has effect subject to the reservation that the port authority must —
- (a) comply with the requirements mentioned in section 34A(2)(a); and
- (b) endeavour to achieve the financial outcomes mentioned in section 34A(2)(b),
- whether or not they are consistent with the statement of corporate intent or modified statement of corporate intent, as the case may be.

**21. Section 84 amended**

- (1) After section 84(1)(a)(i) insert:
- (ii) any interim dividend paid to the Treasurer in relation to that financial year in accordance with subsections (5) to (8); and
- (2) After section 84(1) insert:
- (2A) In calculating a dividend under this section no account is to be taken of a payment made to the port authority by another person for application towards the capital cost of providing port facilities if the Minister, with the concurrence of the Treasurer, has declared the payment to be an exempt payment for the purposes of this section.
- (2B) A declaration under subsection (2A) can be made before or after the payment is received by the port authority.

- (3) In section 84(3)(b) delete “is to” (1<sup>st</sup> occurrence) and insert:
- may
- (4) Delete section 84(5) and insert:
- (5) If the Minister considers that payment by a port authority of an interim dividend in relation to a financial year is justified, the Minister may give written notice to the board of the port authority informing it that an interim dividend is to be paid to the Treasurer.
- (6) As soon as practicable after it receives a notice under subsection (5) the board of a port authority is to make a recommendation to the Minister as to the amount of the interim dividend that the board recommends as appropriate.
- (7) The Minister, with the Treasurer’s concurrence —
- (a) may accept a recommendation under subsection (6); or
- (b) after consultation with the board, may direct that the amount of the interim dividend is to be some other amount.
- (8) A port authority is to pay the interim dividend —
- (a) as soon as practicable after the amount is fixed under subsection (7); and
- (b) in any case not later than the end of the financial year to which the interim dividend relates.
- (9) The Minister must within 14 days after a direction is given under subsection (3) or (7) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

**22. Section 87 amended**

Delete section 87(2) and insert:

- (2) A port authority may also enter into a hedging arrangement for the purpose of managing, limiting or reducing perceived risks or anticipated costs in connection with a transaction that involves capital expenditure and is undertaken in, or based on, a foreign currency as long as the port authority, with advice from the Treasury Corporation —

- (a) identifies, considers and takes steps to minimise any foreign exchange risks before entering into the hedging arrangement; and
- (b) monitors any foreign exchange risks that may result from entering into the hedging arrangement.

(3) In this section —

*hedging arrangement* means an agreement or arrangement described in subsection (1)(a) or (b);

*interest rate* includes coupon rate, discount rate and yield;

*Treasury Corporation* means the Western Australian Treasury Corporation established under the *Western Australian Treasury Corporation Act 1986*.

**23. Section 96 amended**

In section 96(7):

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

Subject to subsection (8).

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

under section 37; and

**24. Section 100 amended**

Delete section 100(1) and insert:

(1) Neither the State nor the port authority is liable for any loss or damage resulting from —

- (a) an act or omission by a port authority, a harbour master or a member of staff of a port authority in connection with the provision of pilotage services; or
- (b) an act or omission by a person approved as a pilot by a port authority in the conduct or navigation of a vessel of which the person is the pilot.

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

**Immunity from liability for negligent provision of pilotage services**

**25. Section 113 amended**

(1) At the beginning of section 113 insert:

(1A) In this section —

*prescribed thing* means —

- (a) any floating object; or
- (b) any material, product or substance (whether solid, liquid or gas); or
- (c) any vehicle, plant, machinery, equipment or infrastructure.

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

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

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

vessel or prescribed thing

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

or control of the prescribed thing.

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

vessel or prescribed thing —

**26. Section 114EA inserted**

After section 114D insert:

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

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

**27. Section 133 amended**

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

84(9)

**28. Section 138 replaced**

(2) In section 138 as inserted by subsection (1):

(a) in paragraph (b) delete “clause 45.” and insert:

clause 45; or

(b) after paragraph (b) insert:

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

**31. Schedule 1 amended**

(1) In Schedule 1:

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

Southern Ports Authority

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

Port of Albany

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

Port of Esperance

(d) delete items 2 and 4.

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

Mid West Ports Authority

(3) In Schedule 1:

(a) delete item 6;

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

Pilbara Ports Authority

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

Port of Ashburton

Port of Dampier

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

Kimberley Ports Authority

**33. Schedule 6 amended**

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

*Company appointee*

*Joint Venturers appointee*

*Ministerial appointee*

(2) Delete Schedule 6 clauses 1.4 to 1.7.

(3) Delete Schedule 6 clauses 2.2 and 2.4 to 2.7.



**34. Schedule 6 further amended**

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

**Pilbara Ports Authority**

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

**Port of Dampier**

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

**Pilbara Ports**

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

**Port of Port Hedland**

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

**Pilbara Ports**

**36. Schedule 9 inserted**

After the last Schedule insert:

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

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

**1. Terms used**

In this Schedule —

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

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

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

**2. Regulations may place a port under the control and management of a port authority**

(1) Regulations may place a port specified in the regulations under the control and management of a port authority specified in the regulations.

(2) Regulations may prescribe any matter that may be necessary or expedient to provide for, implement or facilitate a port addition.

**3. Port authority to implement or facilitate port addition**

(1) If a port addition places, or will place, a port under the control and management of a port authority, the port authority is to do anything that is prescribed by regulations referred to in clause 2 and anything else that may be necessary or expedient to provide for, implement or facilitate the port addition.

(2) The function conferred on a port authority by subclause (1) is in addition to any other function that it has.

**4. Government agreements not affected**

(1) The provisions of this Schedule or regulations referred to in this Schedule do not prejudice or in any way affect any right or obligation of a party to a Government agreement.

(2) This clause does not limit or otherwise affect the operation of Schedule 6 clauses 1.3 and 2.3.

**Defined Terms**

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