

Western Australia

**Port Hedland Port Authority Act
1970**

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Port Hedland Port Authority Act 1970

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Western Australia

Port Hedland Port Authority Act 1970

An Act to establish the Port Hedland Port Authority and to provide for the Control and Management of the Port of Port Hedland and for incidental and other purposes.

[Assented to 20 May 1970.]

Be it enacted —

Part I — Preliminary

1. Citation

This Act may be cited as the *Port Hedland Port Authority Act 1970*.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation.¹

[3. *Repealed by No. 36 of 1986 s.4.*]

4. Interpretation

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

“**buoys and beacons**” include all marks and signs within the port in aid of navigation;

“**Chairman**” means the member appointed Chairman of the Port Authority;

“**goods**” includes wares and merchandise of every description and all chattels, livestock, minerals and mineral products and other articles;

“**master**” includes every person, other than a pilot, having for the time being the command, charge, or management of a vessel;

“**member**” means a person appointed to be a member of the Port Authority;

“**owner**” includes any person who is owner jointly or in common with another person; and when used in relation to goods includes a consignor, consignee, shipper or agent for sale or custody, loading or unloading of the goods as well as the owner thereof;

“**Port Authority**” means the Port Hedland Port Authority established under this Act;

“**ship**” includes every description of vessel used in navigation, and not propelled exclusively by oars;

“**the Account**” means the Port Hedland Port Authority Account;

“**the Pilotage Area**” means the area described in the Third Schedule;

“**the Port**” means so much of the port of Port Hedland as is contained within the boundaries described in the First Schedule to this Act;

“**vessel**” means any ship, lighter, barge, boat, raft or craft of whatever description and howsoever navigated.

(2) Nothing in this Act —

- (a) shall be construed so as to prejudice any right of the persons entitled thereto to receive the payments referred to in subclause (1) of clause 20 of the agreement a copy of which is set forth in the Schedule to the *Leslie Solar Salt Industry Agreement Act 1966*;
- (b) shall be construed so as to prejudice or, in any way affect any right or obligation of a party to the agreement a copy of which is set forth in the Schedule to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*;
- (c) shall be construed so as to prejudice or in any way affect any right or obligation of a party to the agreement a copy of which is set forth in the Schedule to the *Iron Ore (Mount Newman) Agreement Act 1964* as that agreement is amended or altered by the variation agreement a copy of which is set forth in the Second Schedule to the *Iron Ore (Mount Newman) Agreement Act 1964*.

[Section 4 amended by No. 36 of 1986 s.5; No. 46 of 1993 s.46.]

Part II — Establishment of port authority

Division 1 — Constitution

5. Port Hedland Port Authority

- (1) For the purposes of this Act, there is hereby established a body by the name of the Port Hedland Port Authority.
- (2) The Port Authority —
 - (a) is a body corporate, with perpetual succession;
 - (b) shall have a common seal;
 - (c) may acquire hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Port Authority affixed to a document and shall presume that it was duly affixed.

6. Membership of Port Authority

- (1) The Port Authority shall consist of five members.
- (2) Subject to subsections (3) and (4) of this section, the members shall be appointed by the Governor.
- (3) One of the members shall be appointed by the Governor on the written nomination of 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 therefor issued under the *Land Administration Act 1997*, and the *Iron Ore (Mt. Goldsworthy) Agreement Act 1964*.
- (4) One of the members shall be appointed by the Governor on the written nomination of 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 therefor issued

under the *Land Administration Act 1997*, and the *Iron Ore (Mt. Newman) Agreement Act 1964*.

- (5) One of the members, not being a member referred to in subsection (3) or (4) of this section, shall be appointed Chairman of the Port Authority by the Governor.
- (6) If at any time the appropriate registered lessee does not or the appropriate registered lessees do not, nominate a person for appointment as member under subsection (3) or (4) of this section or under section 8 of this Act or as a deputy member under section 9 of this Act, within thirty days after being requested in writing by the Minister so to do, the Governor may, without such nomination of the registered lessee or registered lessees, appoint any person who is otherwise eligible to be the member or deputy member, to represent the interests of the registered lessee or registered lessees in default.
- (7) A person appointed by the Governor under subsection (6) of this section shall, for all purposes, be deemed to be duly nominated and appointed as member or deputy member, as the case may require and to be the nominee and the representative of the respective lessee or lessees in default.

[Section 6 amended by No. 31 of 1997 s.141.]

7.² Period of office of member

Subject to this Act, a member —

- (a) holds office for such period not exceeding 3 years as is specified in the instrument of his appointment; and
- (b) is, on the expiry of his period of office —
 - (i) in the case of a member referred to in section 6 (3) or (4), eligible for renomination; and
 - (ii) eligible for reappointment,
as a member.

[Section 7 inserted by No. 79 of 1986 s.24.]

[8. *Repealed by No. 79 of 1986 s.24.*]

9. Deputy members

- (1) The Governor shall appoint a person to be the deputy of a member.
- (2) A person appointed under this section shall be nominated for, appointed to and removed from the office of deputy in like manner and for like cause as the member for whom he is deputy.
- (3) A person shall be the deputy of one member only.
- (4) The deputy of a member is entitled, in the event of the absence of a member from a meeting of the Port Authority, to attend that meeting, and when so attending, shall be deemed to be a member.

10. Disclosure by members

Section 10 of the *Ports (Functions) Act 1993* does not apply to a member appointed under section 6 (3), (4) or (6) in respect of a pecuniary interest of the member that consists only of being an employee of a registered lessee referred to in those subsections.

[Section 10 inserted by No. 46 of 1993 s.46.]

11. Removal from office

- (1) A member who is nominated and appointed under subsection (3) or (4) of section 6 of this Act or is appointed under subsection (6) of that section shall cease to be a member if the registered lessee or the registered lessees who so nominated him or who is or are deemed to have nominated him pursuant to subsection (7) of that section —
 - (a) ceases or cease to be the registered lessee or the registered lessees of the land referred to in the subsection pursuant to which he was nominated and appointed; or

- (b) by instrument in writing served on the Minister requests or request that the member shall cease to be a member.
- (2) The Governor may remove a member from office —
 - (a) for misbehaviour or incapacity;
 - (b) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of any moneys payable to him under this Act for the benefit of his creditors;
 - (c) if he is absent, except on leave of absence granted by the Minister, from three consecutive meetings of the Port Authority; or
 - (d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*.

[Section 11 amended by No. 46 of 1993 s.46.]

12. Remuneration and allowances

The Chairman and each other member shall be paid such remuneration and allowances as are prescribed.

13. Leave of absence

The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines.

14. Resignation of member

A member may resign his office by instrument in writing under his hand addressed to and delivered to the Governor.

15. Meetings of the Port Authority

- (1) (a) Subject to this section, the Port Authority shall meet at such times and places as the Chairman thinks necessary

for the efficient conduct of the affairs of the Port Authority.

- (b) Due notice of all meetings convened under this section shall be given to each member by the person convening the meeting.
- (2) The Chairman shall, upon the request in writing of not less than two members, convene a meeting of the Port Authority.
- (3) The Minister may at any time convene a meeting of the Port Authority.
- (4) The Chairman shall preside at all meetings of the Port Authority at which he is present, and, in the absence of the Chairman from any meeting or if after being present at a meeting he retires, the members present at that meeting shall elect one of their number to be acting Chairman for the meeting or for the remainder thereof.
- (5) A member while acting as Chairman of a meeting has the powers and shall perform the functions of the Chairman.
- (6) At a meeting of the Port Authority, three members constitute a quorum.
- (7) Questions arising at a meeting of the Port Authority shall be decided by a majority of the votes of the members present and voting.
- (8) The member presiding at a meeting of the Port Authority has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (9) The exercise of a power or the performance of a function by the Port Authority is not invalidated by reason only of there being a vacancy or vacancies in the membership of the Port Authority.

16. Record proceedings

The Port Authority shall keep a record of its proceedings.

[Section 16 inserted by No. 98 of 1985 Schedule 1.]

Division 2 — Officers and other employees

17. Appointment of officers and employees

- (1) The Port Authority may —
 - (a) with the approval of the Governor, appoint a general manager, an assistant general manager and a secretary and with the like approval, dismiss any of them; and
 - (b) appoint such other officers and such employees as may be necessary for the administration of this Act, and at any time dismiss any of them.
- (2) All officers and employees appointed under this section are subject to the control of the Port Authority.
- (2a) Notwithstanding anything in this section, to the extent that there is in the case of a person appointed under subsection (1) to be a general manager, assistant general manager or secretary, or any other officer or employee, and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978* an inconsistency between this Act and that Act that Act shall prevail.
- (3) The appointment and dismissal of employees, at daily or weekly wages, is in the sole power of the Port Authority.
- (4) The Port Authority may appoint and dismiss persons as special constables, who, within the limits of the Port have, and may exercise and enjoy such powers, authorities, and immunities, and are subject to such duties and obligations as a police officer appointed under the *Police Act 1892*, now has or is subject to by law.

- (5) A person appointed a special constable under this section is not a member of the Police Force of — the State but is an employee of the Port Authority and under its direction and control.

[Section 17 amended by No. 113 of 1987 Schedule 2; No. 46 of 1993 s.46.]

18. Certain officers to give security

Before any officer entrusted by the Port Authority with the custody or control of money by virtue of his office enters upon his office, the Port Authority shall take sufficient security from him for the faithful execution thereof but instead of, or in addition to, taking security from an officer, the Port Authority may provide against any loss that may arise in the event of the dishonesty of the officer —

- (a) by taking out a guarantee policy and — paying the premiums thereon; or
- (b) by creating a special fund for the purpose,

or partly by one such method and partly by the other.

Division 3 — Vesting of property

19. Property vested in Port Authority

- (1) Subject to this section, there shall be vested in the Port Authority for the purposes of this Act —
- (a) all lands of the Crown within the boundaries of the Port, including the bed and shores of the Port;
 - (b) all harbour lifts, signals, buoys and beacons within the boundaries of the Port or used in connection with navigation into or out of the Port, not being the property of the Crown in the right of the Commonwealth;
 - (c) all wharves, docks, landing stages, piers, jetties, wharf sheds and railways belonging to the Crown in right of the State and all equipment and buildings thereon that are within the boundaries of the Port;

- (d) any improvements referred to in clause 3 (2) (a) of lease number 3116/3688 or referred to in clause 3 (8) (a) of lease number 3116/3689 or referred to in clause (3) (2) (a) of lease number 3116/4185 all of which leases are issued under the *Land Act 1933* that are acquired on the surrender of the demised premises referred to in those leases pursuant to those clauses or pursuant to any leases or clauses thereof in substitution therefor; and
- (e) subject to subsection (2) of section 4 of this Act, all such other property as the Port Authority may acquire or the Governor may at any time think fit to vest in the Port Authority for the purposes of this Act.

- (2) For the purposes of vesting in the Port Authority any improvements referred to in paragraph (d) of subsection (1) of this section, the Port Authority is empowered to reimburse or enter into any agreements with the lessees referred to in the leases specified in that paragraph in accordance with the terms of such leases.

20. Disposal of land with Governor's approval

The Port Authority shall not dispose of any land vested in it without the prior approval of the Governor.

21. Exemption from local government rates

- (1) Subject to this section, all land vested in the Port Authority under this Act is exempt from any rate, tax or imposition that might, but for this section, be lawfully levied or imposed by or under any Act.
- (2) Nothing in subsection (1) of this section precludes a local government, or other statutory authority from levying and collecting rates and other lawful charges in respect of land, houses and buildings of the Port Authority that are for the time being let or occupied for private purposes.

[Section 21 amended by No. 14 of 1996 s.4.]

Division 4 — Powers and duties of the Port Authority

22. Control of Port and maintenance of property by Port Authority

- (1) Subject to any direction even by the Minister under section 6 of the *Ports (Functions) Act 1993*, the Port Authority has the exclusive control of the Port and is charged with the maintenance and preservation of all property vested in it under this Act.
- (2) The Port Authority may do all such things as are necessary or convenient to be done for or in connection with the duties imposed on it under this section.

[Section 22 amended by No. 98 of 1987 s.34; No. 46 of 1993 s.46.]

23. Construction of port works

- (1) The Port Authority may, with the prior approval of the Minister, construct, complete and extend any port works or other works required for the purposes of this Act within the Port or approaches to the Port, for which purpose the Port Authority is a local authority within the meaning of the *Public Works Act 1902*.
- (2) In this section port works includes any pier, quay, wharf, jetty, bridge, viaduct, embankment or dam, or any reclamation of land from the sea or a river, or excavation, deepening, dredging or widening of any channel, basin or other part of the Port or of any channel to, or the approaches to, the Port.

[Section 23 amended by No. 78 of 1979 s.22; No. 36 of 1986 s.6.]

[24., 25 Repealed by No. 46 of 1993 s.46]

26. Power to acquire land compulsorily

Subject to this Act, wherever any land is required for the purposes of this Act, that land may be entered upon, surveyed and taken under the powers contained in and in accordance with the procedure prescribed by Part 9 of the *Land Administration Act 1997*.

[Section 26 amended by No. 31 of 1997 s.142.]

[27. Repealed by No. 46 of 1993 s.46.]

27A. Capital expenditure to be in financial interest of Port Authority

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

[Section 27A inserted by No. 98 of 1987 s.35.]

28. Goods not to remain on wharf etc. longer than prescribed time

- (1) Goods shall not be allowed to remain upon any wharf or on the approaches thereto, or in any store or warehouse in which goods may be placed, for a longer period than is allowed by the regulations.
- (2) If any goods so remain or if any goods within the Port are deemed by the Port Authority in its absolute discretion to be injurious to, or injuriously affect or be likely to injuriously affect, other goods, or any shed, store, or other premises or open yard or place within the Port, any person appointed by the Port Authority for the purpose may remove the goods to a convenient place within or without the Port, and keep the goods until payment to the Port Authority of the expenses of removal and of the keeping of the goods, including a reasonable charge for the storage thereof by the Port Authority after the expiration of the period allowed by the regulations.

- (3) If those expenses are not paid within seven days after demand therefor made upon the owner, or if the owner is unknown or cannot be found, then after public notice by advertisement, at least once in each of two consecutive weeks, in a newspaper circulating at the Port, the Port Authority may sell the goods by public auction, except that if the goods are perishable they may be sold by the Port Authority without such demand and at any time after twenty-four hours of their being so removed.
- (4) The proceeds of sale of the goods shall be applied in payment of all dues and charges payable in respect of the goods and the expenses of removal, keeping and sale thereof and the surplus, if any, shall be paid to the owner on demand but in the meantime shall be paid into the Treasury.

29. Disputes between Port Authority and Government Departments to be settled by Minister

Any dispute between the Port Authority and The Western Australian Government Railways Commission, or any other Government department, with respect to any land or other property vested in the Port Authority, shall be referred by the parties to the dispute to the Minister, whose decision is final and binding upon the parties.

[29A. and 30 Repealed by No. 46 of 1993 s.46.]

[PART III Repealed by No. 46 of 1993 s.46.]

Part IV — Damage

[Heading amended by No. 46 of 1993 s.46.]

[32. Repealed by No. 46 of 1993 s.46.]

33. Responsibility for injury to works

- (1) Where any damage is done by a vessel or any part of the equipment thereof, floating timber, or material, or by any person employed in or about any of them, to any part of the works or property of the Port Authority, the following persons, namely —
- (a) whether the damage is caused through negligence or not, the owner of the vessel, floating timber or material; and
 - (b) where the damage is caused through the wilful act or negligence of the master of the vessel, or of the person having charge of the timber or material, the master or person,

are each answerable in damages to the Port Authority for the whole of the damage, but neither the Port Authority nor any other person is entitled by virtue of this section to recover twice for the same cause of action.

- (2) Where the owner of any vessel, floating timber, or material pays any money in respect of any damage done to any part of the works or property of the Port Authority by any master or other person, or pays any fine by reason of any act or omission of any master or other person, he is entitled to recover the money so paid, with costs, from that master or other person.

34. Liability for damage to submarine cables

Where any damage is done to any submarine cable, the property of or vested in the Port Authority, within or partly within the Port, by any ship or any part of the equipment thereof, the damage shall forthwith be made good by, and at the expense of, the master, owner or agent of the ship; and in default, the Port

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Authority may cause repairs to be effected to the submarine cable and may recover the expense thereof from the master or owner or agent in a court of competent jurisdiction.

[35. Repealed by No. 46 of 1993 s.46.]

Part V — Port dues and wharfage charges

36. Port dues etc. fixed by regulations

- (1) Port dues and wharfage and service charges shall be made and levied by the Port Authority and are payable in accordance with the regulations.
- (2) Until the regulations are made, all port dues and wharfage charges or other charges now payable by law shall be continued to be levied and charged, and are payable to the Port Authority as if they had been made payable under this Act.

37. Power of Port Authority to levy port improvement rates

- (1) The Port Authority may, with the approval of the Treasurer, make regulations providing for the levying of port improvement rates for all or any of the following purposes —
 - (a) to raise funds to fulfil its obligations in respect of assets or improvements acquired by it for the purposes of this Act;
 - (b) for carrying out improvements to the Port; or
 - (c) to make capital repayments of funds borrowed for any of the purposes of carrying out improvements to the Port and the repayment of interest payable on the funds so borrowed.
- (2) Improvement rates levied under the regulations may be at such rate per tonne by weight or measurement as expressed in the regulations and shall be levied upon all goods shipped from or through the Port or entering the Port for discharge.
- (3) Those regulations may prescribe —
 - (a) Use manner of levying and collecting the rate; and
 - (b) the persons by whom, and the manner in which, the rate shall be paid to any authorized officer of the Port Authority or to any other person authorized by the Port Authority in that behalf.

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- (4) Those regulations may be prescribed to be of general application or to apply in particular cases or circumstances having regard to the use of the Port improvements by the person shipping or discharging goods in respect of which the improvement rate is levied and the regulations may prescribe a rate per tonne by weight or measurement which may differ in particular cases or circumstances.

[Section 37 amended by No. 94 of 1972 s.4 (as amended by No. 83 of 1973).]

38. Calculation of dues

- (1) Where a ship has been registered at a port in the United Kingdom or in the Commonwealth, the amount of tonnage specified in the certificate of such registry shall, for the purposes of this Act, be deemed to be the tonnage of such ship.
- (2) Where a ship is registered at a port in a country that has adopted the provisions of the *Merchant Shipping Act 1894* of the United Kingdom Parliament, in respect of the measurement of tonnage the ship shall be deemed to be of the tonnage denoted in its certificate of registry or other national papers.

39. Measurement of tonnage in other cases

Where any question arises as to the tonnage of any ship not registered as mentioned in section 38 of this Act, any office, of the Port Authority authorized by it in that behalf, may measure the ship in accordance with the regulations for the measurement of shipping for the time being in force in the State; or the Port Authority may accept, as the measurement of the ship, the measurement of the ship appearing in the latest edition of Lloyds Register that is in the possession of the Port Authority.

40. In case of difference power to weigh or measure goods

Where a difference arises between the officer authorized to collect any dues or charges payable under this Act to the Port

Authority and the owner of goods respecting the weight or quantity of any goods liable to those dues or charges —

- (a) that officer may cause the goods to be weighed or measured;
- (b) if the weight or quantity exceeds that alleged by the owner, the expenses of the weighing or measuring shall be paid to the Port Authority and is recoverable as dues owing to the Port Authority;
- (c) if the weight or quantity does not exceed that alleged by the owner, the expenses of the weighing or measuring shall be paid by the Port Authority and are recoverable from it in a court of competent jurisdiction.

Part VI — Liability for dues

41. Liability for dues payable by ships

The owner and master of a ship and any charterer thereof and any agent thereof as has paid, or made himself liable to pay, any other charge on account of the ship, is liable to pay the dues payable under this Act in respect of the ship.

42. Liability for dues payable for goods

The following persons are liable to pay the dues payable under this Act in respect of any goods carried in a ship, namely —

- (a) the owner of the goods;
- (b) any consignor, consignee, shipper or agent for sale or custody of the goods;
- (c) any person entitled to the possession of the goods, either as owner or agent for the owner; and
- (d) the owner or occupier of the wharf from which such goods are shipped or on to which such goods are discharged.

43. Power of person other than master or owner of ship to retain certain moneys for payment of dues

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

44. Recovery of dues

All dues, charges and rates payable to the Port Authority may be recovered by the Port Authority as a debt in a court of competent jurisdiction.

45. Power of persons authorized to collect dues to distrain

- (1) Any person authorized to collect dues may distrain any ship and the tackle thereof, or any goods in respect of which dues are payable, and may keep the ship and tackle or goods respectively until the dues are paid; and if they are not paid within seven days after the distress, may cause the property distrained or any part thereof to be sold and out of the proceeds of the sale may pay the amount of the dues and the expenses of the distress, keeping and sale.
- (2) The power conferred by this section is in addition to the other remedies provided by this Act for the recovery of dues.

46. Settlement of dispute concerning dues of charges occasioned by distress

- (1) Where a difference arises concerning the amount of any dues payable, or of the charges occasioned by any distress, the person distraining may detain the ship, tackle or goods distrained until such amount is ascertained by the Local Court at Port Hedland, or until he is satisfied that sufficient security has been given for the payment of such amount when ascertained, and of the expenses arising from non-payment thereof.
- (2) The court shall, upon application made for that purpose, determine the amount, and award such costs to be paid by either party to the other as the court thinks reasonable.

47. Penalty on evasion

If any master, owner, charterer, consignee, shipper or agent evades or attempts to evade the payment of any dues or charges payable under this Act he is guilty of an offence against

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this Act and he is liable to a fine of two hundred dollars, in addition to the amount of the dues or charges.

48. Power of Governor to revise port duties

- (1) If in the opinion of the Governor, the Port Authority —
- (a) has not, in any year, collected and received dues, charges, rents and other sources of revenue sufficient; or
 - (b) has, in any year, so collected and so received more than sufficient,

to provide for the lawful expenditure of the Port Authority, including interest and contributions to the sinking fund, in respect of the value of the property vested in and charged against it under sections 49 and 50 of this Act, or if for any other reason the Governor thinks fit so to do, the Governor may revise the port dues, wharfage charges and other dues, tolls, fees and charges prescribed by the regulations.

- (2) The Port Authority shall impose and collect such dues, charges, tolls and fees as so revised by the Governor until the Governor otherwise orders.

Part VII — Finance

49. Determination of value of property vested in Port Authority

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

50. Value of subsequent works

After the Minister determines the value under section 49 of this Act, the Minister shall, at the end of each financial year, cause a schedule to be made of the cost of all additional works and improvements constructed, and the proportionate cost of works in course of construction, and of all property acquired by the Port Authority during the preceding financial year to be charged against the Port Authority.

50A. Annual financial targets

- (1) The Minister shall, with the approval of the Treasurer, determine in writing delivered to the Port Authority by not later than 15 February in each year a financial target for the Port Authority for the next financial year and the Port Authority shall pursue a policy aimed at attaining that target, or that target as varied under subsection (4), during that financial year.
- (2) A financial target determined by the Minister under subsection (1) shall be expressed as a real rate of return after current cost depreciation but before interest on the written down current cost of the assets of the Port Authority as calculated in accordance with subsection (3).
- (3) The procedure to be used for the purposes of this section to calculate —
 - (a) the real return after current cost depreciation but before interest which the Port Authority has attained or is attaining; and

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- (b) the written down current cost of the assets of the Port Authority,

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

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

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

- (a) unlikely that the Port Authority will attain the financial target; or
- (b) likely that the Port Authority will exceed the financial target,

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

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

- (a) a report; and

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

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

[Section 50A inserted by No. 98 of 1987 s.37.]

50B. Payment of dividend to the State

- (1) The Port Authority shall, not later than one month after receiving the opinion of the Auditor General under section 93 of the *Financial Administration and Audit Act 1985*, beginning with the opinion received for the financial year ending on 30 June 1989, make a recommendation to the Minister as to whether a dividend should apply to the Port Authority for that financial year and if a dividend should apply, what that dividend should be.
- (2) Subject to this section, the Minister may, with the approval of the Treasurer, after receiving the recommendation of the Port Authority under subsection (1), determine the dividend that is to be paid by the Port Authority to the Treasurer for the credit of the Consolidated Fund for the relevant financial year.
- (3) A dividend under this section shall be expressed as a proportion of the State's equity in the Port Authority for the relevant financial year.
- (4) In making a determination under subsection (2) in respect of a financial year the Minister shall have regard to but shall not be bound by the recommendation of the Port Authority.
- (5) The Port Authority shall pay the amount of a dividend payable under this section within one month after receiving the

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determination of the Minister under subsection (2) or such longer period as the Minister directs.

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

A means the written down current cost of the assets considered assets of the Port Authority under section 50A (3), as calculated under that section in respect of the financial year, which were acquired by the Port Authority for consideration or vested in the Port Authority by the State; and

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

[Section 50B inserted by No. 98 of 1987 s.37; amended by No. 6 of 1993 s.11.]

50C. Information to be provided to Minister

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

- (a) necessary to enable the Minister to make or vary a determination or give a direction; or
- (b) relating to any recommendation made by the Port Authority,

under sections 50A or 50B.

[Section 50C inserted by No. 98 of 1987 s.37.]

51. Funds of the Port Authority

- (1) The funds of the Port Authority consist of —
 - (a) moneys from time to time appropriated by Parliament;

- (b) moneys received by the Port Authority in the performance of its functions;
 - (c) moneys borrowed by the Port Authority under this Act; and
 - (d) other moneys lawfully received by, or made available, given or payable to the Port Authority.
- (2) The funds referred to in subsection (1) are to be credited to one account called the “Port Hedland Port Authority Account” at either —
- (a) the Treasury and forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) with the approval of the Treasurer, a bank (as defined in section 3 of that Act).
- (3) The Account is to be charged with —
- (a) the remuneration and allowances payable to members;
 - (b) the salaries and wages of the Port Authority’s officers and employees;
 - (c) all capital expenditure incurred by the Port Authority under its Act in connection with the acquisition (whether by purchase or compulsory taking) of land, buildings or other property;
 - (d) all expenditure lawfully incurred by the Port Authority in the performance of its functions; and
 - (e) repayment of, and interest on, moneys borrowed by the Port Authority under this Act.

[Section 51 inserted by No. 46 of 1993 s.37; amended by No. 57 of 1997 s.97.]

52. Power of Port Authority to borrow money from Treasurer

- (1) The Port Authority in addition to the powers conferred on it by sections 53 and 54 of this Act may borrow from the Treasurer,

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to enable the Port Authority to defray expenditure incurred by it under this Act at any time when the moneys standing to the credit of the Account are not sufficient to meet that expenditure in full.

- (2) The Port Authority shall pay to the Treasurer in respect of moneys borrowed pursuant to subsection (1) of this section interest at such rate and at such times as the Treasurer determines.
- (3) The moneys so borrowed and the interest payable in respect thereof is a charge upon the moneys standing to the credit of the Account from time to time, and upon any works, undertakings and other assets vested in the Port Authority.

[Section 52 amended by No. 98 of 1985 Schedule 1; No. 49 of 1996 s.64.]

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

- (1) Subject to subsection (2) of this section, the Port Authority may at any time, and from time to time, with the approval of the Governor —
 - (a) borrow and reborrow moneys by the issue and creation and sale of debentures and of inscribed stock for the purpose of raising the funds of the Port Authority for the effectual exercise by it of the powers conferred by this Act;
 - (b) create and issue debentures and inscribed stock in exchange for any debentures and inscribed stock respectively issued in respect of moneys previously borrowed by the Port Authority, and not repaid;

- (c) create, issue and sell debentures and inscribed stock for the purpose of borrowing money for redeeming any loans owing by the Port Authority, and for paying the expenses incurred in the issue and creation of the debentures and inscribed stock and otherwise carrying out the provisions of this Act;
 - (d) effect any conversion authorized by this section either by arrangement with the holders of the existing debentures or registered owners of inscribed stock, or by the purchase of the debentures or inscribed stock out of moneys raised by the sale of debentures and inscribed stock, or partly in the one way and partly in the other.
- (2) The Governor shall not approve of the borrowing by the Port Authority of moneys under the provisions of this section, unless a proposal in writing showing —
- (a) the term and particulars of the proposed loan;
 - (b) the rate of interest to be paid on the loan;
 - (c) the purposes to which the money proposed to be borrowed is to be applied; and
 - (d) the manner in which the loan is to be repaid,
- is first submitted by the Port Authority to, and approved by, the Minister.
- (3) Any moneys borrowed by the Port Authority under the provisions of this section —
- (a) may be raised as one loan or, as several loans; and
 - (b) may be raised —
 - (i) by the issue of debentures with or without interest coupons attached;
 - (ii) by the creation and issue of inscribed stock to be called The Port Hedland Port Authority Inscribed Stock;

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- (iii) partly as provided by subparagraph (i) and partly as provided by subparagraph (ii) of this paragraph; or
- (iv) in such other manner as the Governor may approve.

54. Power of Port Authority to borrow to repay loan

For the purpose of making provision to repay either the whole or any part of any loan raised by the Port Authority under the provisions of this Act, the Port Authority may with the consent of the Governor and subject to subsection (2) of section 53 of this Act, borrow the moneys necessary for that purpose before the loan or part of it becomes payable.

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

- (1) Due payment of debentures and inscribed stock respectively issued or operated under the provisions of section 53 of this Act and sold by the Port Authority, with all interest thereon, shall be charged on and secured upon the revenues of the Port Authority.
- (2) For the purposes of subsection (1) of this section “**revenues of the Port Authority**” means all dues, charges, rents and other levies authorized to be collected and received by the Port Authority.
- (3) The due repayment of the principal moneys and the payment of all interest secured by debentures or inscribed stock issued or created by the Port Authority under the provisions of section 53 of this Act is hereby guaranteed by the Government of the State.
- (4) Any sums required by the Treasurer for fulfilling any guarantee given by this Act shall be charged to the Consolidated Fund which is hereby to the necessary extent appropriated accordingly, and any sums received or recovered by the Treasurer from the Port Authority or otherwise in respect of a

sum so charged by the Treasurer shall be credited to the Consolidated Fund.

[Section 55 amended by no. 98 of 1985 Schedule 1; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

56. Provisions of second schedule to apply to debentures and inscribed stock

- (1) The provisions of Part I of the Second Schedule to this Act apply with respect to debentures and inscribed stock issued by the Port Authority under the provisions of section 53 of this Act.
- (2) The provisions of Part II of that Schedule apply with respect to debentures issued under the provisions of section 53 of this Act.
- (3) The provisions of Part III of that Schedule apply with respect to inscribed stock issued in Perth in the State under the provisions of section 53 of this Act.

57. Debentures and inscribed stock authorized trustee investments

- (1) Debentures and inscribed stock issued and created by the Port Authority under section 53 shall have the status of Government securities of the State of Western Australia.
- [(2) repealed.]*
- (3) The debentures and inscribed stock are a lawful investment for moneys that a body corporate is authorized or directed to invest, in addition to any other investments expressly authorized for the investment of the moneys.
- (4) A trustee or body corporate may pursuant to this Act convert the debentures in his or its hands into inscribed stock.

[Section 57 amended by No. 1 of 1997 s.18; No. 26 of 1999 s.97.]

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57B. Validation

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

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

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

[Section 57B inserted by No. 78 of 1979 s.23.]

58. Contribution of interest and sinking fund

- (1) There shall be entered and debited each year in the Account such amounts as are fixed by the Treasurer as the interest and sinking fund contributions payable for the year in respect of such portion of the Consolidated Fund as have been applied to the exercise by the Port Authority of any of the powers conferred upon it or the discharge of the duties imposed upon it by this Act.
- (2) Those contributions shall be paid to the Treasurer.
- (3) The accrued interest in the sinking fund contributions as certified by the Under Treasurer shall be incorporated in the accounts of the Port Authority in relation to the exercise by it of the powers conferred upon it by this Act.

[Section 58 amended by No. 98 of 1985 Schedule 1; No. 6 of 1993 s.15.]

59. Interest on daily balance

- (1) Interest on the daily balance of money charged to the Consolidated Fund for the purposes of this Act shall be charged in the books of account of the Port Authority in relation to the exercise of its powers and the discharge of its duties under this Act, and the amount of that interest shall be credited to the Consolidated Fund half-yearly or at such other times as the Treasurer may direct.
- (2) The rate of interest shall be fixed from time to time by the Treasurer.

[Section 59 amended by No. 98 of 1985 Schedule 1; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

60. Financial self sufficiency

- (1) In managing its financial resources and performing its functions under this Act the Port Authority shall act in accordance with prudent commercial principles and shall aim —
 - (a) to make loan principal payments;
 - (b) to make any deferred interest payments;
 - (c) to meet all other liabilities; and
 - (d) to pay any dividend determined by the Minister under section 50B,

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

[(2) repealed]

[Section 60 inserted by No. 98 of 1985 s.38; amended by No. 46 of 1993 s.46.]

61. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and

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reporting of statutory authorities apply to and in respect of the Port Authority and its operations.

[Section 61 inserted by No. 98 of 1985 Schedule 1.]

[62, 63, 64 and 65 repealed by No. 98 of 1985 Schedule 1.]

Part VIII — Miscellaneous

[66., 67., 68. and 69 Repealed by No. 46 of 1993 s.46.]

70. Offences of depositing ballast or rubbish

- (1) A person who commits any of the following offences, so as to be or tend to the injury of navigation, that is to say —
- (a) casts, or causes to be cast, or suffers to fall, either from on board ship or from land, any ballast, rock, stone, slate, shingle, gravel, sand, earth, cinders, rubbish, or other substance or thing, on any tidal land, or into the Port, or tidal water, or into the sea below low water-mark; or
 - (b) casts, or causes to be cast, or suffers to fall, any such substance or thing on land, in a position where it may be liable to fall or descend, or be carried or washed down by ordinary or high tides, or by any stream or flow of water, or by any storm or flood, or otherwise, into the harbour or tidal water, or into the sea; or
 - (c) casts, or places or leaves, or causes to be cast, placed, or left, any vessel laid by or neglected as unfit for sea service, any floating or other timber, or any other thing on any tidal lands, or in the Port or tidal water, or in the sea,

is guilty of an offence against this Act.

Penalty: One hundred dollars.

- (2) In addition to any penalty for which the offender may be liable for committing an offence under subsection (1) of this section, he is also liable to pay to the Port Authority the expenses incurred by it in removing any substance or thing mentioned in that subsection to a proper position.

71. Offence of damaging lights, buoys, beacons, etc

- (1) A person who wilfully or negligently —

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- (a) injures any harbour light, or the lights exhibited therein, or any buoy or beacon;
- (b) removes, alters, or destroys any harbour light, light-ship, buoy, or beacon;
- (c) rides by, makes fast to, or runs foul of any harbour light, light-ship, buoy, or beacon; or
- (d) removes, alters, injures, or destroys any signal or signal staff used for purposes in aid of vessels navigating,

commits an offence against this Act.

- (2) For each offence the offender is, in addition to the expenses of making good any damages so occasioned, liable to a fine not exceeding two hundred and fifty dollars or twelve months' imprisonment.

[72. *Repealed by No. 46 of 1993 s.46.*]

73. Penalty for wilful damage to lights

A person commits an offence against this Act who wilfully or knowingly breaks, throws down, damages or takes away any lamp, lamp post or other appliance used for the purpose of lighting any wharf, quay, pier, or any road or dock or other place within the Port or wilfully extinguishes any light within the lamp.

Penalty: One hundred dollars and in addition the offender is liable to make good the amount of the injury or damage occasioned thereby.

74. Other offences

A person commits an offence against this Act who —

- (a) fails, refuses, or neglects to do, or in any manner obstructs, impedes or interferes with the doing of anything enjoined or authorized to be done under this Act;
- (b) wilfully does anything prohibited by this Act;

- (c) molests or makes use of any threatening language to any harbour master, pilot, engineer, surveyor, other officer or person while in the execution of his duty under this Act; or
- (d) in any other respect offends against the provisions of this Act or a regulation.

75. Offence of offering bribes to officers

A person commits an offence against this Act, who gives or offers any money or thing by way of reward or bribe to any harbour master or other officer or employee of the Port Authority employed about the Port, for the purpose of gaining an undue preference in the execution of his office or for the purpose of inducing him to do or omit to do anything relating to his office.

Penalty: Two hundred dollars or twelve months imprisonment.

76. General penalty

A person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine not exceeding one hundred dollars.

77. Averment as to Port

In any proceedings for an offence against this Act the averment that the offence was committed within the limits of the Port or the Pilotage Area is sufficient without proof of those limits, unless the contrary is proved.

[Section 77 amended by No. 36 of 1986 s.8.]

78. Application of penalties

The amount of all fines and other amounts recovered for or in respect of offences against this Act or a regulation shall be paid to the Port Authority and are hereby appropriated for the purposes of this Act.

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79. Police officer to report breaches of the Act

A police officer of the Police Force of the State who is aware or has reason to believe that any of the provisions of this Act are being contravened shall forthwith report the matter to the Secretary to the Port Authority.

80. Power of Port Authority to give security

The Port Authority may give such securities as the Customs may require and take pursuant to the provisions of the *Customs Act 1901*, as amended from time to time, of the Parliament of the Commonwealth.

81. Power of Governor to ratify irregularities etc.

Where, by misadventure or accident anything is at any time done after the time required by this Act, or is otherwise irregularly done in matter of form, the Governor may, from time to time, by Order in Council, make provision for any such case or may extend the time within which anything is required to be done, or may validate anything so done after the time required or so irregularly done in the matter of form, so that the true intent and purpose of this Act may have effect.

Part IX — Regulations

82. Power of Port Authority to make regulations

The Port Authority may with the approval of the Governor make regulations under this Act for all or any of the following purposes, namely —

- (1) The general conduct of its business and proceedings.
- (2) Prescribing the days upon which the ordinary meetings of the Port Authority shall be held.
- (3) The control, supervision and guidance of its officers and employees.
- (4) Regulating, controlling and prohibiting —
 - (a) the entering, or remaining, within the boundaries of the Port or any specified part or parts of the Port by any person or class of persons, or any thing or class of thing;
 - (b) the doing or omission of any thing or class of thing within the boundaries of the Port or any specified part or parts of the Port,

either at all times and on all occasions or at any time or times, or on any occasion or occasions; the intention being that the generality of the authority delegated by this paragraph is not affected by authority delegated by any other paragraph of this section.
- (5) Regulating all matters relating to the protection of life and property, and the safe navigation of the Port.
- (6) The prevention of overloading or overcrowding of vessels.
- (7) Regulating the landing, shipping, transshipping, deposit, removal and keeping of gunpowder and other explosive substances and compounds, or other dangerous goods.

[(8) and (9) deleted]

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- (10) Regulating the times, places, order and mode of the shipping, unshipping, landing, warehousing, stowing and depositing of goods (with special regulations and restrictions in the case of dangerous goods), and the landing and embarking of passengers, and the taking in and delivery of ballast.
- (11) Imposing, levying, and receiving all port dues, including tonnage dues, light dues, berthing dues, and other tolls, rates or charges.
- (12) The exemption of ships in the service of Her Majesty or of any country that is a member of the British Commonwealth of Nations or in the naval service of any foreign power and of other vessels from port dues.
- (13) Regulating the use of wharves, wharf loading areas or docks, quays, landing stages and other landing places, and generally regulating the traffic on the same.
- (14) Fixing scales of dues, tolls and charges to be paid for the use thereof.

[(15) and (16) deleted]

- (17) Regulating the cleansing, repair and effectual preservation of docks and wharves and providing for the keeping and maintenance of the docks and wharves in a fit state for the convenience of persons walking upon or landing on or embarking from any wharf.
- (18) Regulating the duties and conduct of all persons, including the employees of the Port Authority not being officers of Customs, who are employed in the Port.
- (19) Providing for the control and management of steam or other ferry boats plying for hire at wharves or public thoroughfares.
- (20) The granting of licences for tugs to conduct vessels into or out of port, and the fees to be paid for the licences.

- (21) Providing for the registration and licensing of all ballast boats, tank boats, cargo boats, lighters and other vessels and boats plying for hire either for goods or passengers within the Port, and for the registration and licensing of master boatmen and others, and to prevent unlicensed boatmen plying for hire.
- (22) Providing for the inspection of all such boats or vessels as are referred to in paragraph (21) of this section and preventing the use of such of them as are unseaworthy or insufficient.
- (23) Providing for the name of each boat or vessel and the name of its owner being shown thereon.
- (24) Fixing the fees to be paid for licensing any boats or vessels referred to in paragraph (21) of this section, and the fares and charges for the carriage of persons and goods licensed boats of the several kinds hereinbefore mentioned, or any of them, according to either time or distance.
- (25) Regulating the conduct, and for the punishment of misconduct, of licensed boatmen when practising their calling.
- (26) The guidance of porters, carters, truck drivers and others carrying goods or driving horses, carriages, wagons, carts, drays, trucks or other vehicles for conveying passengers or goods, and other commodities on any wharf.
- [(27), (28), (29), (30), (31) and (32) deleted]*
- (33) Empowering a collector of dues, either alone or with other persons, to enter a ship in order to ascertain the dues payable in respect of the ship or of the goods therein.
- (34) Requiring the master of every ship to report his arrival within a specified time after this arrival.

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- (35) Requiring the master of every ship to produce the certificate of registry to any officer on demand.
- (36) Requiring the master of every ship to give as many copies as may be required by the Port Authority of the bill of lading or manifest of the cargo, or other proper account of goods intended to be unshipped, and the name of the consignee or other person to whom they are intended to be delivered, and as many copies as may be required by the Port Authority of all alterations in or additions to the bill of lading, manifest, or other proper account.
- (37) Requiring the master of every ship to give notice of the intended time of unshipment.
- (38) Requiring the shippers of goods to furnish accounts of the goods intended to be shipped.
- (39) Regulating the time when dues on goods shipped or unshipped are to be payable.
- [(40), (41), (42), (43), (44), (45), (46), (47), (48) and (49) deleted]*
- (50) Regulating the charges to be made by licensed boatmen, porters and other carriers.
- (51) Prohibiting persons from acting as boatmen, plying for hire, porters, carters, truck drivers or otherwise in the carriage of goods or passengers without previously obtaining and continuing to hold the licence or the Port Authority, and prescribing the duration of and the fees for the licences, and providing that the issue of any such licence and the cancellation thereof shall be at the absolute discretion of the Port Authority.

- (52) Authorizing and empowering the Port Authority, in its discretion, to adopt the weight or measurement of goods set forth in the bill of lading or manifest of the goods, for the purpose of levying, imposing, charging and collecting port dues, wharfage and handling and storage charges.
- (53) Regulating and limiting the speed of vessels within the Port.
- (54) Authorizing and empowering the Port Authority to cause the removal from the Port to some other place or places within or outside the limits of the Port of goods that the Port Authority or its wharf manager, in its or his absolute discretion, considers to be injurious to or that may injuriously affect other goods or any shed, store, or other premises or open yard or place within the Port.
- Any regulation made pursuant to this paragraph —
- (a) may provide for and authorize the storage of such goods in any shed or store, or in or on any exposed or open place, and in any and every case at the risk and expense of the owner of the goods; and that shed, store or place may be within or outside the limits of the Port as the Port Authority or its wharf manager thinks fit;
 - (b) may provide that the cost of the removal and the keeping and storage of the goods, whether within or outside those limits shall be chargeable against the owner of the goods, and may be recovered from him by the Port Authority in an action in the Local Court held at Port Hedland; and
 - (c) shall be read and construed as being in addition to and not in derogation of or in substitution for any of the powers conferred on the Port Authority by section 28 of this Act.

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- (55) Limiting or exempting the Port Authority from liability for damage or loss suffered by any, person in consequence of —
- (i) act of God;
 - (ii) act of war;
 - (iii) act of public enemies;
 - (iv) strikes, lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
 - (v) riots and civil commotions;
 - (vi) the use for purposes of war or defence or training or preparation for war or defence of any of the Property vested in the Port Authority.
- (55a) Prescribing, for the purposes of fixing the boundaries of the Pilotage Area, a radius greater than the radius of 20 nautical miles prescribed by the Third Schedule.
- (56) And for other purposes relating to the convenience of shipping, or of the public, within the Port and generally for duly administering and carrying out the powers vested in the Port Authority by this Act.

[Section 82 amended by No. 36 of 1986 s.9; No. 46 of 1993 s.46.]

83. Penalties for breach of regulations

Every regulation —

- (a) may impose a penalty not exceeding two hundred dollars for the breach thereof; and
- (b) may provide that, in addition to the penalty, any expense incurred by the Pore Authority in consequence of the breach of a regulation shall be paid by the person committing the breach.

84. Adoption of rules, codes, etc.

Any regulations made under this Act may —

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

[Section 84 inserted by No. 12 of 1976 s.17.]

First Schedule

First Schedule

[Ss.3 and 19.]

All that area bounded by lines starting from a point on the High Water Mark of the Indian Ocean, west of the Hunt Point Beacon, being the intersection of that mark with an arc of 10 nautical miles radius from the Hunt Point Beacon and extending generally northerly and generally southerly along that arc to its intersection with the High Water Mark aforesaid, east of the Hunt Point Beacon; thence generally westerly along that mark to its intersection with the northernmost eastern boundary of the Port Hedland Port Area, as shown on Lands and Surveys Miscellaneous Plan 417; thence generally southerly, generally easterly, south-south-easterly and generally westerly along boundaries of that Port Area to its intersection with the north-eastern boundary of Port Hedland Lot 1410; thence north-westerly, south-westerly and south-easterly along boundaries of that lot to its southern corner; thence south-easterly and easterly along boundaries of Lot 1408 to the north-western corner of Forrest Location 42; thence southerly and easterly along boundaries of that location to its south-eastern corner; thence easterly along southern boundaries of Location 41 and Location 40 to a point situate in prolongation northerly of the western boundary of Location 38; thence southerly to and along that boundary to the south-western corner of Location 38 aforesaid; thence south-westerly to the northern corner of Port Hedland Lot 1790; thence south-westerly and south-south-westerly along boundaries of that lot and onwards to the intersection with the prolongation east of the northern boundary of Lot 1647; thence west to and along the northern boundary of that lot and Lots 1808, 1807, 1645, 1644 and 1643 to a point situate 2 chains west of the north-eastern corner of that last mentioned lot; thence north about 10 chains, west about 11 chains 50 links and south about 10 chains to the prolongation west of the northern boundary of Lot 1641; thence west along that prolongation to the intersection with an eastern boundary of Forrest Location 47; thence generally northerly along that boundary to the south-western boundary of Location 46; thence south-easterly, generally north-easterly and generally north-westerly along boundaries of that location to its north-western corner; thence north to a point situate on the High Water Mark aforesaid and thence generally westerly along that mark to the starting

point. Excluding Wharf, Mooring Dolphins, Approach Structures and Conveying System within Forrest Locations 45 and 48.

Second Schedule

[s.56.]

Part I — Debentures and inscribed stock

The following provisions apply to debentures and inscribed stock issued by the Port Authority under the provisions of section 53 of this Act: —

1. All debentures and inscribed stock —

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

2. When interest payable

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

3. Debentures and stock interchangeable

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

4. Brokerage

The Port Authority may pay moneys by way of brokerage for the making, procuring, negotiating, or obtaining the loan of any money borrowed under the authority conferred by section 53 of this Act.

5. Sinking fund

- (1) The Port Authority shall set aside half-yearly by way of a sinking fund for the purpose of redeeming any loans raised by them pursuant

to section 53 of this Act an amount calculated at a rate approved by the Treasurer and sanctioned by the Governor.

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

6. Notice of trust not receivable

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

7. Owners of securities not responsible for application of moneys

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

Part II — Debentures

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

1. Form of debenture

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

2. A debenture shall —

- (a) be sealed with the common seal of the Port Authority in the manner prescribed by the regulations; and

Second Schedule

- (b) be numbered consecutively beginning with the number one and proceeding in an arithmetical progression whereof the common difference is one.

3. Pass by delivery

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

4. Rights of bearer

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

5. Payment of interest

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

6. Register of debentures

- (1) The Port Authority shall cause to be kept in one or more books a register of debentures, and within a reasonable time after the date of a debenture shall cause to be made an entry in the register specifying the number, date and amount of the debenture.
- (2) The register of debentures —
 - (a) may be inspected at all reasonable times by a person on payment of ten cents for each inspection; and
 - (b) shall be evidence of any matters required or authorized by or under this Act to be inserted therein.
- (3) A person is entitled to obtain from the Port Authority copies or extracts certified by the officer in whose custody the register is kept to be true copies of or extracts from the register upon payment for each copy or extract of a fee of twenty-five cents and two cents for every folio of seventy-two words; and any copy or extract so certified is admissible in evidence.

7. Provision for lost debentures

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

8. Provision for defaced debentures

If a debenture is defaced by accident —

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

9. Discharged debentures to be destroyed

- (1) A debenture paid off, discharged, exchanged or converted into stock —
 - (a) shall be cancelled by the secretary to the Port Authority; and
 - (b) shall be burnt in the presence of the secretary and the Auditor General or one of his officers thereto authorized by him in writing.
- (2) The Auditor General or such officer (as the case may be) before the debenture is burnt shall audit the same and allow the accounts thereof and furnish the Port Authority with a certificate particularising the debenture so burnt; and the secretary shall file that certificate in the office of the Port Authority.

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Part III — Stock

The following provisions apply to The Port Hedland Port Authority inscribed Stock issued in Perth, Western Australia (in this Part called “stock”): —

1. Establishment of registry and appointment of Registrar

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

2. Parcels of stock

Stock may be sold by the Port Authority for ready money in parcels or amounts of twenty dollars or some multiple of twenty dollars.

3. Stock ledgers

- (1) The Port Authority shall cause to be provided and kept at the office of the Port Authority books to be called stock ledgers.
- (2) All stock issued shall be inscribed in the stock ledgers by entering the names of the purchasers of stock and the amount of stock purchased by them respectively.
- (3) In the case of joint purchasers of stock the names of not more than four of them shall be inscribed as the joint purchasers.
- (4) The stock ledgers are evidence of any matters appearing therein and required or authorized by or under this Act to be inserted therein.

4. Stock how transferable

- (1) Stock or any share therein is transferable in the manner prescribed by the regulations from one person to another by instrument in the form so prescribed and not otherwise.
- (2) A person is not entitled or allowed to transfer any fraction of a dollar or any smaller sum than twenty dollars unless that smaller sum is the full amount of the balance standing to his credit in the stock ledger.

- (3) An instrument of transfer of the stock or any share therein shall be executed by all parties and the signatures to the instrument shall be attested in the manner prescribed by the regulations.
- (4) An instrument of transfer when executed shall be delivered to the registrar who shall register it by entering a memorial of it in the stock ledger and shall inscribe the name of the transferee in the stock ledger as the owner of the stock.

5. Application for transmission (other than transfer) of stock

- (1) A person to whom stock is transmitted in consequence of the death or bankruptcy or insolvency of the registered owner of the stock or by any other lawful means than by a transfer in accordance with this Act may apply in the form prescribed by the regulations to the registrar at the registry to be inscribed as the owner of the stock.
- (2) An application for transmission shall be verified by statutory declaration or in such other manner as is so prescribed, and —
 - (a) in the case of a transmission consequent on death — the probate of the will or the letters of administration shall be produced to the registrar or in the case of transmission to a survivor or the survivors of a joint owner a certificate of the death of the owner who has died accompanied by a statutory declaration identifying the person named in the death certificate with the person who is shown as the registered owner of the stock may if the registrar approves be produced to him in lieu of probate or letters of administration; and
 - (b) in the case of a transmission consequent on bankruptcy or insolvency — an office copy of the adjudication or order of sequestration shall be delivered to the registrar.
- (3) The registrar shall if he is satisfied that the provisions of this Act have been complied with, register any such transmission by entering a memorial of it in the stock ledger and inscribe the name of the person to whom the stock has been transmitted in the stock ledger as the registered owner of the stock.

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6. Power of Attorney

- (1) A person may by power of attorney under his hand and seal and attested by two or more credible witnesses appoint some person to be his attorney for any purpose in relation to stock (including an application for conversion or to receive interest or redemption money).
- (2) A power of attorney is valid and effectual for all purposes therein mentioned until notice of its revocation or of the bankruptcy, insolvency, lunacy, unsoundness of mind or death of the principal has been received by the registrar at the registry.

7. When transfer books to be closed and ledgers balanced

- (1) An instrument of transfer of stock or of any part thereof shall not be registered on any Saturday or holiday or within the period of fourteen days or within such period (not exceeding twenty-one days) as is prescribed, next before any of the days on which the interest thereon is payable.
- (2) During the periods referred to in subclause (1) of this clause the Port Authority shall cause the amount of the stock respectively standing to the credit of the several registered owners thereof to be ascertained and the balances to be struck and carried forward in the proper stock ledger.
- (3) An instrument of transfer of stock or of any part thereof shall not be registered during the period of twenty-one days immediately preceding the date of maturity of stock.

8. Receipt of registered stockholders to discharge without regard to trust

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

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

Third Schedule

Third Schedule

The Pilotage Area

All that area of the sea beyond the boundaries of the Port that is within a radius of 20 nautical miles, or such greater distance as may be prescribed by regulations, from the Hunt Point Beacon.

[Third Schedule inserted by No. 36 of 1986 s.10.]

Notes

- ^{1.} This is a compilation of the *Port Hedland Port Authority Act 1970* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Port Hedland Port Authority Act 1970</i>	30 of 1970	20 May 1970	15 Jun 1971 (see <i>Gazette</i> 14 Jun 1971 p.2146)
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 83 of 1973)	4 Dec 1972	24 May 1974 (see <i>Gazette</i> 24 May 1974 p.1633)
	12 of 1976	27 May 1976	27 May 1976
	78 of 1979	6 Dec 1979	6 Dec 1979
	98 of 1985	4 Dec 1985	1 Jul 1986 (see <i>Gazette</i> 30 Jun 1986 p.2926)
	36 of 1986	1 Aug 1986	15 Aug 1986 (see <i>Gazette</i> 15 Aug 1986 p.2926)
	79 of 1986	4 Dec 1986	4 Dec 1986
	98 of 1987	16 Dec 1987	Sections 8, 14, 20, 26, 32 and 38 operative 1 Jul 1987 (see section 2): balance on assent
	113 of 1987	31 Dec 1987	16 Mar 1988 (see <i>Gazette</i> 16 Mar 1988 p.813)
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993
<i>Ports (Functions) Act 1993, sections 37 and 46^{3, 4, 5}</i>	46 of 1993	20 Dec 1993	15 Jun 1994 (see <i>Gazette</i> 10 Jun 1994 p.2373)
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see section 2)
<i>Financial Legislation</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see section 2 (1))

Port Hedland Port Authority Act 1970

Short title	Number and year	Assent	Commencement
<i>Amendment Act 1996</i> , section 64			
<i>Trustees Amendment Act 1997</i> , section 18	1 of 1997	6 May 1997	16 Jun 1997 (see section 2 and <i>Gazette</i> 10 Jun 1997 p.2661)
<i>Acts Amendment (Land Administration) Act 1997</i> , sections 141 and 142	31 of 1997	3 Oct 1997	30 Mar 1998 (see section 2 and <i>Gazette</i> 27 Mar 1998 p.1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> , section 97	57 of 1997	15 Dec 1997	15 Dec 1997 (see section 2)
<i>Port Authorities (Consequential Provisions) Act 1999</i> , Part 2 and Part 3 (other than section 16(2)) ⁶	5 of 1999	13 Apr 1999	14 Aug 1999 (see section 2 and <i>Gazette</i> 13 Aug 1999 p.3823)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> , section 97	26 of 1999	29 Jun 1999	1 Jul 1999 (see section 2(1) and <i>Gazette</i> 30 Jun 1999 p.2905)

² Section 25 of No. 79 of 1986 reads as follows —

“

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

”.

³ Section 47 of the *Ports (Functions) Act 1993* (Act No. 46 of 1993) reads as follows —

“

47. Validation (Port Hedland)

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

”.

⁴ Section 48 of the Ports (Functions) Act 1993 (Act No. 46 of 1993) reads as follows —

“

48. Harbour masters (transitional)

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

”.

⁵ Section 50 of Act No. 46 of 1993 reads as follows —

“

50. Existing port authority regulations (saving)

Where this Act repeals a provision of a port authority Act (as defined in section 3) and enacts a provision in substitution therefor, regulations made under or in respect of the repealed provision and in operation immediately before the commencement of this Act shall, so far as they are consistent with this Act, continue in operation and have effect for all purposes as if made under the port authority Act as read with this Act.

”.

⁶ Part 3 of the *Port Authorities (Consequential Provisions) Act 1999* (Act No. 5 of 1999) reads as follows —

“

Part 3 — Transitional and saving provisions

12. Application of *Interpretation Act 1984*

- (1) The provisions of the *Interpretation Act 1984* about the repeal of written laws and the substitution of other written laws for those so repealed (for example, sections 16(1), 36 and 38) apply to the repeal of an existing Act relating to a port authority and the amendment of the *Ports (Functions) Act 1993* in relation to that existing Act and that port authority as if the PA Act —
 - (a) repealed that existing Act; and
 - (b) repealed the *Ports (Functions) Act 1993* insofar as it applied to that port authority,when the item relating to that port authority comes into operation.
- (2) The other provisions of this Part are additional to the provisions applied by subsection (1).

13. Existing port authorities continue

- (1) If, immediately before the commencement of an item, there was an existing port authority with the name set out in that item, the port authority named in that item is a continuation of, and the same legal entity as, the existing port authority and the rights and obligations of the existing port authority are not affected.
- (2) If in a written law or other document or instrument there is —
 - (a) a reference to an existing port authority constituted or established under an existing Act; or
 - (b) a reference that is to be read and construed as a reference to an existing port authority,

that reference may, where the context so requires, be read as if it had been amended to be a reference to the port authority as established under the PA Act.

14. Membership

- (1) The persons who were members or commissioners of a continuing port authority (including the chairman) immediately before the commencement of the item relating to that port authority continue in office, under and subject to the PA Act, as the chairperson and directors of that port authority.
- (2) Subsection (1) does not apply to a person holding office under section 8(1)(d) of the *Dampier Port Authority Act 1985*.

- (3) A person to whom subsection (1) applies is to be regarded as having been appointed under section 7 of the PA Act.

15. Staff

- (1) A person who was the general manager of a continuing port authority immediately before the commencement of the item relating to that port authority continues in office, under and subject to the PA Act, as the chief executive officer of that port authority.
- (2) Other people who were in the employment of a continuing port authority immediately before the commencement of the item relating to that port authority continue, under and subject to the PA Act, as members of staff of that port authority.
- (3) Except as otherwise agreed by a chief executive officer or member of staff, the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of a chief executive officer or member of staff of a continuing port authority are not affected, prejudiced or interrupted by —
- (a) the operation of subsection (1) or (2); or
 - (b) that port authority ceasing to be an SES organization under the *Public Sector Management Act 1994*.
- (4) A person mentioned in subsection (1) or (2) is to be regarded as an employee of an organization for the purposes of Part 6 of the *Public Sector Management Act 1994*.
- (5) Subsection (4) ceases to apply in relation to a continuing port authority at the expiration of 2 years after the item relating to that port authority commences.
- (6) A person mentioned in subsection (2) is to be regarded as having been engaged under section 16 of the PA Act.

16. Port descriptions

- (1) Until an order is made under section 24(1) of the PA Act in relation to a port referred to in item 1, 3, 4, 5, 6, 7 or 8 the description of that port for the purposes of the PA Act is the description that had effect under the relevant existing Act immediately before the commencement of that item.
- (2) Until an order is made under section 24(1) of the PA Act in relation to the Port of Broome the description of that port for the purposes of the PA Act is as follows —
- Port of Broome*
- (a) all that portion of water and seabed bounded by lines starting from the high water mark of Roebuck Bay at the southern extremity of Fall Point and extending south to

an east-west line situate 3 nautical miles south from the southern extremity of Entrance Point; then west to a north-south line situate 3 nautical miles west from the southern extremity of Entrance Point; then north to a point situate west of the summit of Station Hill; then east to the high water mark of the Indian Ocean and then generally southwesterly and generally southeasterly along that mark and generally northeasterly, generally northwesterly, again generally northeasterly and generally easterly along the high water mark of Roebuck Bay to the starting point and including all of the waters of Dampier Creek; and

- (b) all that portion of land comprised within Broome Lots 616, 698, 848 and 956 as shown bordered in red on Lands and Surveys Reserve Plan 108.

Lands and Surveys Public Plans: Broome Regional 1:10 000 Sheet 1, Sheet 2, Sheet 3; Roebuck Plains 1:250 000; La Grange 1:250 000.

- (3) A description that has effect under subsection (1) or (2) may be amended under section 24(2) of the PA Act.

17. Strategic development plans

The first strategic development plan for a port authority under Part 5, Division 1 of the PA Act is to be for a period starting when the first financial year starts.

18. Statement of corporate intent

The first statement of corporate intent for a port authority under Part 5, Division 2 of the PA Act is to be for the first financial year.

19. Borrowing limits

The first monetary limits under section 86 of the PA Act are to be determined in relation to the first financial year.

20. Regulations

- (1) Regulations made by a continuing port authority that were in force immediately before the commencement of the item relating to that port authority continue in force after that commencement as if they were regulations made by the Governor under section 139 of the PA Act in relation to the port of that port authority.
- (2) Subsection (1) does not continue the operation of any regulation that could not be made under section 139 of the PA Act.

”.

