

Western Australia

Ports (Functions) Act 1993

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Ports (Functions) Act 1993

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Schedule 1

**PART 1 — *ALBANY PORT AUTHORITY
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**PART 7 — *PORT HEDLAND PORT AUTHORITY
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**PART 8 — *POLLUTION OF WATERS BY OIL
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Notes

Western Australia

Ports (Functions) Act 1993

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

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

and for other related or minor purposes.

[Assented to 20 December 1993.]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

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

2. Commencement

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

Part 2 — Port authorities

Division 1 — Preliminary

3. Interpretation

In this Part —

“**port**” means —

[(a) – (g) deleted]

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

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

“**port authority Act**” means the —

[(a) – (g) deleted];

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

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

[Section 3 amended by No. 5 of 1999 ss.4(2), 5(2), 6(2), 7(2), 8(2), 9(2) and 10(2).]

4. Relationship with port authority Acts

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

Division 2 — Relationship with the Crown

5. Port authorities are agents of the Crown

- (1) Subject to subsection (2), each port authority is an agent of the Crown in right of the State.
- (2) If under section 13 (1) (b) a port authority participates in a business arrangement with any person, the business arrangement does not enjoy the status, immunities, or privileges of the Crown.

6. Minister may give directions

- (1) The Minister may give directions in writing to a port authority with respect to the performance of its functions under this or another written law, either generally or in relation to a particular matter, and the port authority must give effect to any such direction.
- (2) The text of any direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the port authority under section 66 of the *Financial Administration and Audit Act 1985*.
- (3) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
[Section 6 amended by No. 41 of 1996 s.3.]

7. Minister to have access to information

- (1) The Minister is entitled —
 - (a) to have information in the possession of a port authority; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —

- (a) request a port authority to furnish information to the Minister;
 - (b) request a port authority to give the Minister access to information;
 - (c) for the purposes of paragraph (b) make use of the staff and facilities of a port authority to obtain the information and furnish it to the Minister.
- (3) A port authority must comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- “document”** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
- “information”** means information specified, or of a description specified, by the Minister that relates to the functions of a port authority.

Division 3 — Additional provisions about members

8. Interpretation

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

[9. *Repealed by No. 41 of 1996 s.3.*]

10. Disclosure of interests

- (1) If a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the port authority the member is, as soon as practicable after the relevant facts come to the member’s knowledge, to disclose the nature of the interest to a meeting of the port authority.

- (2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting and, unless the port authority otherwise determines, the member is not —
- (a) to be present during any deliberation of the port authority in relation to the matter; or
 - (b) to take part in any decision by the port authority in relation to the matter.
- (3) For the purposes of making a determination by the port authority under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates is not —
- (a) to be present during any deliberation of the port authority for the purpose of making the determination; or
 - (b) to take part in the making by the port authority of the determination.
- (4) For the purposes of subsection (1) and without limiting its generality, a member is to be taken as having a direct or indirect pecuniary interest in a matter if his or her spouse, parent or child has such an interest.

11. Continuation in office

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

Division 4 — Additional functions

12. Provision of facilities and services

- (1) In this section —

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

“services” means —

- (a) lighterage, salvage, and towage;
 - (b) cargo handling, storage and transport, chandlery, dredging, engineering, marine civil construction, mechanical, mooring, pollution management, security, shipping movement control, shore stabilization, stevedoring, and waste management services;
 - (c) the use or hire of equipment, helicopters, machinery, plant, vehicles, and vessels;
 - (d) the use or hire of facilities;
 - (e) labour for any purpose; and
 - (f) any other service prescribed by regulation.
- (2) A port authority may provide such facilities and services as it considers are necessary for or in connection with the effective operation of its port as a port.
- (3) A port authority may —
- (a) with the approval of the Minister, provide a facility under subsection (2) outside its port;
 - (b) provide a service under subsection (2) outside its port.
- (4) Where a port authority provides a service under subsection (2), it may provide that service other than for or in connection with the operation of its port as a port if doing so does not adversely affect the provision of that service for or in connection with the operation of its port as a port.
- (5) A port authority is to ensure that facilities provided are maintained and kept in good repair.
- (6) A port authority may remove any facility provided under subsection (2), or any works provided under its Act.

- (7) Any charges for services are to be determined by the port authority in accordance with prudent commercial principles.
- (8) The functions conferred by this section on a port authority are in addition to functions conferred on it by its Act or another written law.

13. Agreements and business arrangements

- (1) For the purpose of performing its functions, whether under this Act or another written law, a port authority may —
 - (a) enter into an agreement with any person; or
 - (b) with the approval of the Minister and the Treasurer, participate in a business arrangement with any person.
- (2) For the purpose of subsection (1) (b), a port authority may acquire, hold and dispose of, shares, units or other interests in, or debentures or other securities of, a business arrangement.
- (3) Within 60 days after approval is given to a port authority to participate in a business arrangement, the Minister shall publish a notice in the *Gazette* of —
 - (a) the port authority concerned;
 - (b) the other parties to the business arrangement;
 - (c) the type of business arrangement concerned;
 - (d) the purpose or function of the business arrangement; and
 - (e) such other matters as the Minister thinks fit.
- (4) In subsection (1) —
 - “**business arrangement**” means a proprietary limited company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;
 - “**participate**” includes form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement with a person.

14. Granting easements, leases or licences

- (1) A port authority may grant an easement, lease or licence in respect of the whole or any part of the lands vested in it for any purpose it considers fit —
 - (a) without the approval of the Minister if the easement, lease or licence meets the criteria prescribed by regulations made by the Governor; or
 - (b) with the approval of the Minister otherwise.
- (2) A licence or lease is not to be granted for a period of more than 50 years.
- (3) For the purposes of this section and any prescribed criteria, the period for which an easement, lease or licence is granted includes any period for which the easement, lease or licence is renewable pursuant to an option to renew.

Division 5 — Pilotage

15. Interpretation

In this Division —

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

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

16. Port authority to approve pilots etc.

- (1) A port authority must approve one or more persons as pilots for its port and any such approval is to be in writing.
- (2) Charges for approving a person as a pilot may be prescribed under Division 9.
- (3) A port authority must ensure that pilotage services are provided in its port —
 - (a) by itself;

- (b) by a person under an agreement under section 13 (1) (a);
or
 - (c) by means of a business arrangement under
section 13 (1) (b).
- (4) Any charges for pilotage services —
- (a) are to be prescribed under Division 9; and
 - (b) are to be paid to the port authority, irrespective of how
or by whom they are provided.

17. Pilotage compulsory in ports

- (1) A vessel moving within a port must use the services of a person approved as a pilot for the port, except where regulations provide otherwise.
- (2) A person who moves a vessel within a port without the services of a person approved as a pilot for the port commits an offence unless under the regulations —
- (a) the vessel does not have to have an approved pilot; or
 - (b) the person is permitted to do so.

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

- (3) Neither the Crown, the Minister, a port authority, nor an employee of a port authority, is liable for —
- (a) any loss or damage caused by a vessel that; or
 - (b) the loss of, or damage to, a vessel or anything in or on a vessel while the vessel,

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

18. Pilot under authority of master

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

19. Liability of owner or master of a vessel

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

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

- (1) Neither the Crown, the Minister, nor the port authority, is liable for any act or omission by a person approved as a pilot by a port authority in the conduct or navigation of a vessel of which the person is the pilot.
- (2) An approved pilot is not personally liable for any act or omission by him or her in the conduct or navigation of a vessel of which he or she is the pilot.
- (3) The employer of a person who is an approved pilot is not liable for any act or omission by the person in the conduct or navigation of a vessel of which the person is the pilot.

Division 6 — Harbour masters

21. Interpretation

In this Division —

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

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

22. Appointment

- (1) A port authority may appoint a person to be the harbour master of its port.
- (2) The *Public Service Act 1978* does not apply to or in relation to a harbour master.
- (3) If no harbour master is appointed the functions of the harbour master may be performed by a person determined by the port authority.

23. Principal and other functions

- (1) The principal functions of a harbour master are —
 - (a) to control the movement of vessels in the port;
 - (b) to control the anchoring, mooring and berthing of vessels in the port;
 - (c) to ensure the port is kept free of obstructions or possible obstructions to vessels using the port;
 - (d) to ensure that the safety of people and property in the port is not endangered by vessels or wreckage;
 - (e) to ensure good order is maintained in the port; and
 - (f) to ensure that the operations of the port in relation to vessels are conducted safely and efficiently.
- (2) A harbour master has such other functions as the port authority determines.

24. 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 in the port to do any or all of the following:

- (a) To navigate the vessel in a specified manner.
 - (b) To anchor, moor, or berth the vessel at a specified place and in a specified manner.
 - (c) To move the vessel out of the port or to another place within it.
 - (d) To do anything to or in relation to the means by which the vessel is anchored or attached to a mooring or berth.
- (2) When the safety of people or valuable property is in danger from a vessel in a port and no other direction is reasonable in the circumstances, a harbour master may direct the owner, master, or person in charge, of the vessel to scuttle it immediately.

25. Directions as to wreckage

- (1) In this section —
- “**owner**” means —
- (a) in relation to a vessel or part of a vessel — the owner immediately prior to the time of the loss or abandonment of the vessel or part of the vessel;
 - (b) in relation to anything in the water which was in or on a vessel — the owner of the vessel;
- “**wreckage**” includes a vessel or part of a vessel which is wrecked, stranded, sunk, derelict or unfit for sea service and anything in the water that is not a vessel.
- (2) For the purpose of performing his or her principal functions a harbour master may direct the owner of wreckage in the port to do any or all of the following:
- (a) To move the wreckage out of the port or to another place within it.
 - (b) To destroy the wreckage.
 - (c) To sink the wreckage.

26. Limit on power to order removal of vessel or wreckage

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

27. Removal of unowned vessels etc.

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

28. Offence of not obeying direction

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

Penalty: \$10 000.

29. Powers if direction not obeyed

- (1) If a person does not comply with a direction under section 24 (1) (b), (c), or (d) or (2) or section 25 within a reasonable time after being given it, the harbour master may cause the direction to be complied with using such means as he or she thinks fit.
- (2) When causing a vessel to be moved under subsection (1) a harbour master may cause the vessel to be made fast to another vessel in the port which is anchored, moored or berthed.
- (3) Subsection (2) does not disentitle the owner or master of a vessel to which another vessel is made fast under that subsection from recovering from the owner or master of that other vessel damages for loss or damage occasioned thereby.

30. Recovery of costs

- (1) A port authority may recover, as a debt due to the port authority, the costs of exercising the powers —
 - (a) in section 27 — from the owner of the vessel or wreckage; or
 - (b) in section 29 — from the owner, master, or person in charge, of the vessel or the owner of the wreckage.
- (2) A port authority may recover the costs of exercising the powers in section 27 by selling the vessel or wreckage.
- (3) The proceeds of a sale are to be applied —
 - (a) firstly to the expenses of the sale; and
 - (b) secondly to the costs of exercising the powers in section 27,

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

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

31. Immunity from liability

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

32. Offence of hindering

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

Penalty: \$2 000.

Division 7 — Additional financial provision

33. Interest on overdue amounts

- (1) If money due to a port authority is not paid in full by the time when it is due, or such time after then as the port authority may allow, interest on the amount outstanding at the rate prescribed by regulations is to be paid to the port authority.
- (2) Interest under subsection (1) may be recovered by a port authority in the same way as the money due to it may be recovered.
- (3) Unless the context requires otherwise, a reference in a port authority Act to dues or charges is to be taken as including a reference to interest under subsection (1) payable on such dues or charges if overdue.
- (4) Subsection (1) does not apply in respect of money due under a written agreement where the rate of interest to be paid is specified in the agreement.

Division 8 — Additional powers to make regulations

34. Regulations about liability of port authorities

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

- (a) binding the owners of goods to —
 - (i) descriptions of and statements about goods (including as to value) in; and
 - (ii) the terms and conditions of, bills of lading, manifests or receipts;
- (b) exempting the port authority from liability for —

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

Division 9 — Regulations for Divisions 4 to 7

35. Power to make regulations

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

36. Governor may make model regulations

- (1) The Governor may make model regulations prescribing all matters that are required or permitted by Divisions 4 to 7 to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of those Divisions.
- (2) Subsection (1) does not limit the operation of section 35.
- (3) Model regulations do not have effect in relation to a port unless the port authority adopts them under subsection (5).
- (4) The *Interpretation Act 1984* (other than section 41 (1) (b)) and the *Reprints Act 1984* apply to model regulations as if they are subsidiary legislation.
- (5) By regulations made under its Act a port authority may adopt the whole of any model regulations without modification.

Division 10 — General amendment to all port authority Acts

37. New section about funds

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

“

Funds of the Port Authority

- (1) The funds of the Port Authority consist of —
 - (a) moneys from time to time appropriated by Parliament;
 - (b) moneys received by the Port Authority in the performance of its functions;
 - (c) moneys borrowed by the Port Authority under this Act; and

- (d) other moneys lawfully received by, or made available, given or payable to the Port Authority.
- (2) The funds referred to in subsection (1) are to be credited to one account called the “[name of the port authority] Account” at either —
- (a) the Treasury and forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) with the approval of the Treasurer, at a bank (as defined in section 3 of that Act).
- (3) The Account is to be charged with —
- (a) the remuneration and allowances payable to members;
 - (b) the salaries and wages of the Port Authority’s officers and employees;
 - (c) all capital expenditure incurred by the Port Authority under its Act in connection with the acquisition (whether by purchase or compulsory taking) of land, buildings or other property;
 - (d) all expenditure lawfully incurred by the Port Authority in the performance of its functions; and
 - (e) repayment of, and interest on, moneys borrowed by the Port Authority under this Act.
- ”.
- (2) The sections repealed are —
- (a) *Albany Port Authority Act 1926*, section 54;
 - (b) *Bunbury Port Authority Act 1909*, section 54;
 - (c) *Dampier Port Authority Act 1985*, section 61;
 - (d) *Esperance Port Authority Act 1968*, section 52;

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Part 2 Port authorities

Division 10 General amendment to all port authority Acts

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- (e) *Fremantle Port Authority Act 1902*, section 58;
 - (f) *Geraldton Port Authority Act 1968*, section 52; and
 - (g) *Port Hedland Port Authority Act 1970*, section 51.
- (3) The section substituted by subsection (1) is to have the section designation of the relevant section repealed by subsection (2).
- (4) In subsection (2) of the section substituted by subsection (1) the name of the port authority concerned is to be inserted at the place indicated.
- (5) Section 58 (3) (a) of the *Fremantle Port Authority Act 1902* as substituted by subsection (1) is to have “members” deleted and “Commissioners” substituted.

Part 3 — *Marine and Harbours Act 1981*

38. Principal Act

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

*[*Act No. 21 of 1981.*

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

39. Section 5A inserted

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

“

5A. Provision of services at Broome and Wyndham

(1) In this section —

“**services**” means —

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

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- (2) The Department may provide such services as it considers are necessary for or in connection with the effective operation of the ports of Broome and Wyndham as ports.
- (3) Charges for services are to be determined by the Department in accordance with prudent commercial principles.
- (4) The functions conferred by this section on the Department are in addition to the functions conferred on it by section 5.
- (5) For the purpose of enabling the Department to perform its functions under this section, the Minister may enter into an agreement with any person.

”.

40. Section 14A inserted

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

“

14A. Interest on overdue amounts

- (1) If any dues or charges payable to the Department for the use of facilities, or for services provided by the Department, at the ports of Broome and Wyndham are not paid in full by the time when they are payable, or such time after then as the Department may allow, interest on the amount outstanding at the rate prescribed by regulations is to be paid to the Department.
- (2) Interest under subsection (1) may be recovered by the Department in the same way as moneys, dues or charges payable to it may be recovered.

”.

Part 4 — Shipping and Pilotage Act 1967

41. Principal Act

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

*[*Reprinted as approved 9 November 1984.*

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 193 and Act No. 6 of 1993.]

42. Section 3 amended

Section 3 of the principal Act is amended —

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

“

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

- (a) *Albany Port Authority Act 1926*;
- (b) *Bunbury Port Authority Act 1909*;
- (c) *Dampier Port Authority Act 1985*;
- (d) *Esperance Port Authority Act 1968*;
- (e) *Fremantle Port Authority Act 1902*;
- (f) *Geraldton Port Authority Act 1968*; or
- (g) *Port Hedland Port Authority Act 1970*.

”.

43. Section 8 amended

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

“

or port authority port.

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

“

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

”.

44. Section 10 amended

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

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

“

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

”.

45. Schedule amended

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

Albany.
Bunbury.
Dampier.
Esperance.
Fremantle.
Geraldton.

Port Hedland.

Part 5 — Miscellaneous

46. Consequential and minor amendments

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

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.

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.

49. Dampier pilotage services agreements (transitional)

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

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.

Schedule 1

[s. 46]

CONSEQUENTIAL AND MINOR AMENDMENTS

PART 1 — *ALBANY PORT AUTHORITY ACT 1926**

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

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

PART 2 — BUNBURY PORT AUTHORITY ACT 1909*

- s. 2 Delete the definition of “Berthing master”.

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

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- s. 54I (1) Insert after “Port Authority” where it first occurs the following —
“
shall act in accordance with prudent commercial principles and
”.
- s. 54I (2) Repeal the subsection.
- s. 55 Repeal the section.
- s. 61 Delete paragraphs (11), (12) and (23).
- s. 66 Repeal the section.
- s. 71 (c) Delete “berthing master” and substitute the following —
“ harbour master ”.

PART 3 — DAMPIER PORT AUTHORITY ACT 1985*

- s. 3 (1) Delete the definition of “approved pilot”.
Delete the definition of “Harbour Master” and substitute the following definition —
“
“**Harbour Master**” means person appointed as harbour master of the Port under section 22 of the *Ports (Functions) Act 1993*;
”.
- Delete the definition of “pilotage services”.
Delete the definition of “port charges” and substitute the following definition —
“
“**port charges**” means —
(a) port dues and wharfage charges; or
(b) port improvement rates,
Levied under regulations made under section 99 for the purposes of section 48, and includes charges for pilotage and other services provided under Part 2 of the *Ports (Functions) Act 1993*;
”.
- In the definition of “the Account” delete “(a) (ii)”.

- s. 9 (4) Delete “section 11 (1) or 14 (11)” and substitute the following —
- “ section 10 of the *Ports (Functions) Act 1993* ”.
- s. 11 Repeal the section and substitute the following section —
- “
- 11. Disclosure by members**
- Section 10 of the *Ports (Functions) Act 1993* does not apply —
- (a) to the Company member in respect of a pecuniary interest of the member that consists only of being an employee of the Company;
- (b) to the Joint Venturers member in respect of a pecuniary interest of the member that consists only of being an employee of one of the Joint Venturers.
- ”.
- s. 14 (11) Repeal the subsection.
- s. 17 (1) (a) Delete “and a Harbour Master”.
- s. 17 (2) Repeal the subsection.
- s. 24 Repeal the section.
- s. 25 Repeal the section.
- s. 26 Repeal the section.
- s. 31 (1) (c) Delete the paragraph.
- s. 34 Repeal the section.
- s. 35 Repeal the section.
- s. 36 (4) Repeal the subsection.
- s. 37 (1) Repeal the subsection.
- s. 37 (2) Repeal the subsection.
- s. 39 Repeal the section and substitute the following section —

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“

39. Pilotage services agreements

- (1) Having entered into an agreement with the Port Authority under section 13 of the *Ports (Functions) Act 1993* for the provision of pilotage services —
- (a) the Company may for its own requirements under the Iron Ore (Hamersley Range) Agreement;
 - (b) the Salt Company may for its own requirements under the Dampier Solar Salt Industry Agreement; and
 - (c) the Joint Venturers may for their own requirements under the North West Gas Development (Woodside) Agreement,
- provide its own or their own pilotage services in the Port in accordance with that agreement.

”.

Part VI Repeal the Part.

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

s. 44 Repeal the section.

s. 45 Repeal the section.

s. 48 (1) In paragraph (a) delete “and service”.
After paragraph (a) insert the following —
“ and ”.

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

Delete paragraph (c).

s. 48 (5) Repeal the subsection.

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

“

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

- ”.
- s. 62 Repeal the section.
- s. 67 Insert after the section designation “67.” the subsection designation “(1)”.
- Insert the following subsection —
- “
- (2) Such moneys as are paid to the Port authority under an agreement under subsection (1) shall be applied only to the purposes specified in the agreement.
- ”.
- Part X Repeal the Part.
- s. 89 Repeal the section.
- s. 102 Repeal the section.
- Schedule III Delete items 10, 14, 18, 30, 31, 32, 33, 34, 35, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 54.
- In item 11, delete “items 9 and 10” and substitute the following —
- “ item 9 ”.

PART 4 — *ESPERANCE PORT AUTHORITY ACT 1968**

- s. 3 Repeal the section.
- s. 5 Delete the definition of “berthing master”.
- Delete the definition of “harbour master”.
- In the definition of “the Account”, delete “kept at the Treasury pursuant to” and substitute the following —
- “ referred to in ”.
- s. 11 Repeal the section.
- s. 12 (c) Before “is absent” insert the following —
- “ if he ”.
- s. 12 (d) Delete the paragraph and substitute the following paragraph —
- “
- (d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*.
- ”.

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- s. 18 (1) Delete “, berthing master (who shall be the person appointed as harbour master of the port), and wharf manager”.
Delete “, berthing master or wharf manager”.
- s. 18 (4) Delete “berthing master or wharf manager,”.
- s. 23 Delete “section 30A,” and substitute the following —
“ section 6 of the *Ports (Functions) Act 1993*, ”.
- s. 25 Repeal the section.
- s. 26 Repeal the section.
- s. 27 Repeal the section.
- s. 30A Repeal the section.
- Part III Repeal the Part.
- Part V In the Part heading delete “WRECKS, OBSTRUCTIONS, AND”.
- s. 34 Repeal the section.
- s. 37 Repeal the section.
- s. 61 (1) Insert after “Port Authority” where it first occurs the following —
“
shall act in accordance with prudent commercial principles and
”.
- s. 61 (2) Repeal the subsection.
- s. 63 Repeal the section.
- s. 71 Repeal the section.
- s. 75 Repeal the section.
- s. 82 Delete “managing secretary to” and substitute the following —
“ general manager of ”.
- s. 84 (2) Delete paragraphs (i), (j) and (u).

PART 5 — FREMANTLE PORT AUTHORITY ACT 1902*

- s. 2 Delete the definition of “Harbour master”.
- s. 4 (2) Repeal the subsection and substitute the following subsection —

- “
- (2) The Governor shall appoint —
- (a) one of the commissioners as chairman; and
- (b) another of the commissioners as deputy chairman,
- of the Port Authority for such period as is specified in the instrument of appointment, but the period shall not exceed the remainder of the period of office of the commissioner being appointed.
- ”.
- s. 9 (1) Delete paragraph (d) and the proviso to the subsection and substitute the following paragraph —
- “
- (d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*.
- ”.
- s. 14 Repeal the section and substitute the following section —
- “
- 14. Acting chairman**
- If neither the chairman nor the deputy chairman is able to preside at a meeting or at a part of a meeting of the Port Authority, the commissioners present may elect one of their number to be acting chairman for the meeting or the part of the meeting as the case may be.
- ”.
- s. 15 Delete “chairman or acting chairman” and substitute the following —
- “ person presiding ”.
- s. 19 (1) Delete “, a wharf manager, a harbour master,”.
- s. 19 (2a) Delete “, wharf manager, harbour master”.
- s. 21 Repeal the section.
- s. 24 Delete “section 30A,” and substitute the following —
- “ section 6 of the Ports (Functions) Act 1993, ”.
- s. 26 Repeal the section.

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- s. 27 Repeal the section.
- s. 27B Repeal the section.
- s. 27C Repeal the section.
- s. 28 Repeal the section.
- s. 30A Repeal the section.
- s. 31 Repeal the section.
- s. 31A Repeal the section.
- s. 32 Repeal the section and the heading “Pilotage” before it and the heading “Lights, Buoys, and Signals” after it.
- s. 35 Repeal the section and in the heading before it delete “Wrecks, Obstructions, and”.
- s. 39 Repeal the section and the heading “Actions against Port Authority and Officers” before it.
- s. 39A Repeal the section.
- s. 39B Repeal the section.
- s. 41 Delete “and service”.
Delete the paragraph commencing “Provided that” and ending “such workers.”.
- s. 58A Repeal the section.
- s. 58K (1) Insert after “Port Authority” where it first occurs the following —
“

shall act in accordance with prudent commercial principles and

”.
- s. 58K (2) Repeal the subsection.
- s. 65 Delete paragraphs (7), (8), (14), (15), (26), (27), (28), (29), (30), (31), (39), (40), (41), (42), (43), (44), (45), (46), (47), (48) and (48a).
- s. 70A Repeal the section.
- s. 71 Repeal the section.
- s. 72 Repeal the section.
- s. 73 Repeal the section.
- s. 74 Repeal the section.

s. 78 Repeal the section.

PART 6 — GERALDTON PORT AUTHORITY ACT 1968*

s. 3 Repeal the section.

s. 5 Delete the definition of “berthing master”.
Delete the definition of “harbour master”.
In the definition of “the Account”, delete “kept at the Treasury pursuant to” and substitute the following —
“ referred to in ”.

s. 11 Repeal the section.

s. 12 (c) Before “is absent” insert the following —
“ if he ”.

s. 12 (d) Delete the paragraph and substitute the following paragraph —
“
(d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*.
”.

s. 18 (1) Delete “, berthing master (who shall be the person appointed as harbour master of the port), and wharf manager”.

Delete “, berthing master or wharf manager”.

s. 18 (4) Delete “berthing master or wharf manager,”.

s. 23 Delete “section 30A,” and substitute the following —
“ section 6 of the *Ports (Functions) Act 1993*, ”.

s. 25 Repeal the section.

s. 26 Repeal the section.

s. 27 Repeal the section.

s. 30A Repeal the section.

Part III Repeal the Part.

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

s. 34 Repeal the section.

s. 37 Repeal the section.

s. 61 (1) Insert after “Port Authority” where it first occurs the

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following —

“

shall act in accordance with prudent commercial principles and

”.

- s. 61 (2) Repeal the subsection.
- s. 63 Repeal the section.
- s. 71 Repeal the section.
- s. 75 Repeal the section.
- s. 82 Delete “managing secretary to” and substitute the following —
“ general manager of ”.
- s. 84 (2) Delete paragraphs (i), (j) and (u).

**PART 7 — *PORT HEDLAND PORT AUTHORITY*
*ACT 1970****

- s. 4 Delete the definition of “harbour master”.
In the definition of “master”, delete “not being a pilot appointed by the Port Authority” and substitute the following —
“ other than a pilot ”.
- s. 10 Repeal the section and substitute the following section —
“
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.
”.
- s. 11 (2) (c) Before “is absent” insert the following —
“ if he ”.
- s. 11 (2) (d) Delete the paragraph and substitute the following paragraph —
“
(d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*.
”.

- ”.
- s. 17 (1) Delete “, a wharf manager, a harbour master”.
- s. 17 (2a) Delete “, wharf manager, harbour master”.
- s. 22 (1) Delete “section 29A,” and substitute the following —
“ section 6 of the Ports (Functions) Act 1993, ”.
- s. 24 Repeal the section.
- s. 25 Repeal the section.
- s. 27 Repeal the section.
- s. 29A Repeal the section.
- s. 30 Repeal the section.
- Part III Repeal the Part.
- Part IV In the Part heading delete “WRECKS, OBSTRUCTIONS AND”.
- s. 32 Repeal the section.
- s. 35 Repeal the section.
- s. 60 (1) Insert after “Port Authority” where it first occurs the following —
“
shall act in accordance with prudent commercial principles and
”.
- s. 60 (2) Repeal the subsection.
- s. 66 Repeal the section.
- s. 67 Repeal the section.
- s. 68 Repeal the section.
- s. 69 Repeal the section.
- s. 72 Repeal the section.
- s. 82 Delete paragraphs (8), (9), (15), (16), (27), (28), (29), (30), (31), (32), (40), (41), (42), (43), (44), (45), (46), (47), (48) and (49).

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

- s. 3 In the definition of “harbour master” delete “, section 19 of the

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Fremantle Port Authority Act 1902 or section 17 of the *Port Hedland Port Authority Act 1970* for any” and substitute the following —

“ or section 22 of the *Ports (Functions) Act 1993* for a ”.

Notes

- ^{1.} This is a compilation of the *Ports (Functions) Act 1993* 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>Ports (Functions) Act 1993</i>	46 of 1993	20 Dec 1993	15 Jun 1994 (see <i>Gazette</i> 10 Jun 1994 p.2373.)
<i>Statutory Corporations (Liability of Directors) Act 1996</i> , section 3	41 of 1996	10 Oct 1996	1 Dec 1996 (see section 2 and <i>Gazette</i> 12 Nov 1996 p.6301)
<i>Port Authorities (Consequential Provisions) Act 1999</i> , Part 2 and Part 3 (other than s.16(2))	5 of 1999	13 Apr 1999	14 Aug 1999 (see section 2 and <i>Gazette</i> 13 Aug 1999 p.3823)

- ² 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.

”.