



Western Australia

Port Authorities Act 1999

Port Authorities Act 1999

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used	2
3A.	Relationship to GTE Act	6

Part 2 — Port authorities: establishment and administration

Division 1 — Establishment of port authorities

4.	Port authorities, establishment, nature and trading names of	7
5.	Port authorities not to be regarded as agents of Crown for purposes of State laws	7
6.	Port authorities and officers not part of public sector	8

Division 2 — Community consultation committees

14A.	Community consultation committees	8
------	-----------------------------------	---

Division 3 — Staff

16.	Staff	9
17.	Minimum standards for staff management	10
18.	Reports to Public Sector Commissioner as to s. 17 standards	11
19.	Superannuation	11

	Division 4 — Conduct and integrity of staff	
21.	Codes of conduct	12
22.	Reports to Public Sector Commissioner as to s. 21 codes	13
23.	Reports to Minister as to s. 21 codes	13
	Part 3 — Port areas and property of port authorities	
24.	Port areas defined	14
25.	Port authority, property vested in	14
26.	Port property may be taken back by Crown	15
27.	Power to sell land, restrictions on	15
27A.	Land, creating interests in	16
28.	Vested land, creating and dealing with interests in	16
29A.	Operation of <i>Planning and Development Act 2005</i> section 136 modified	17
29.	Disputes between port authority and Crown	17
	Part 4 — Functions and powers	
30.	Functions	18
31.	Relationship to <i>Environmental Protection Act 1986</i>	19
32.	Port authority has control of port	19
35.	Powers generally	19
36.	Port facilities and services, extended powers as to	23
37.	Fees and charges, power to levy	23
38.	Planning laws, application of to port authorities	24
44.	Delegation by port authority	25
92.	Annual financial targets, Minister may set	26
	Part 7 — Navigation and port matters	
	Division 1 — Navigational aids	
93.	Port authority may provide etc. navigational aids etc.	27
94.	Interference with navigational aids, offence	28
	Division 2 — Pilotage	
95.	Terms used in, and application of, this Division	28
96.	Port authority to approve pilots and ensure pilotage services are provided	29

97.	Pilotage compulsory in ports	30
98.	Pilot under authority of master	31
99.	Liability of owner or master of piloted vessel	31
100.	Immunity from liability for negligent provision of pilotage services	31
	Division 3 — Harbour masters	
101.	Port includes other declared areas	32
102.	Appointment of harbour master and deputy harbour master etc.	32
103.	Functions of harbour master	33
104.	Directions to masters etc.	34
105.	Directions as to dangerous things	34
106.	Limit on power to order removal of vessels or dangerous things	35
107.	Ownerless vessels and dangerous things, removal of	35
108.	Not obeying s. 104 or 106 direction, offence	35
109.	Powers if direction not obeyed	35
110.	Recovering port authority's s. 107 costs	36
111.	Immunity from liability for acts under this Division	37
112.	Hindering harbour master etc., offence	37
	Division 4 — Damage in a port caused by vessels etc.	
113.	Responsibility for damage to port facilities or property	37
	Division 5 — Port safety	
114.	Marine safety plan, port authority to have	39
	Division 6 — Powers of police officers and others	
114A.	Police officers and others may enter vessels and conduct examinations and enquiries	39
	Division 7 — Protection from liability	
114B.	Immunity from liability for damage to vessels	40
114C.	Immunity from liability for damaged goods	41
114D.	Immunity from liability for delay in delivery of goods	41

Contents

114EA.	Immunity from liability for acts or omissions of port users	41
114E.	Immunity from liability for certain events and actions	41

Part 8 — Port charges

115.	Term used: port charges; application of this Part	43
116.	Liability to pay port charges in respect of vessels	43
117.	Liability to pay port charges in respect of goods	43
118.	Recovery of port charges by port authority	44
119.	Collectors of port charges	44

Part 9 — Proceedings for offences

Division 1 — General

120.	Who can commence prosecutions	45
121.	Time limit for prosecutions	45
122.	Averment as to place of offence	45

Division 2 — Infringement notices

123.	Terms used	46
124.	Giving of notice	46
125.	Content of notice	46
126.	Extending time for paying modified penalty	47
127.	Withdrawing notice	47
128.	Benefit of paying modified penalty	47
129.	Application of penalties collected	48
130.	Authorised persons, appointment of	48

Part 10 — Miscellaneous

131.	Hindering, offence	49
132.	Individual port authorities, provisions for (Sch. 6)	49
133.	Laying documents before Parliament not sitting	50
136.	Overdue amounts, interest on	50
137.	Recovery of expenses due to offence	50
138.	<i>Government Agreements Act 1979</i> not affected	51
139A.	Transitional provisions	51

Part 11 — Regulations

139.	General power to make regulations	52
140.	Offences against regulations	52
141.	Adoption of other laws, codes etc.	53

142.	References to other approvals or decisions	53
143.	Licensing, provisions as to	54

Schedule 1 — Port authorities and ports

Schedule 6 — Provisions for Pilbara Ports Authority

Division 1 — Port of Dampier

1.1.	Application of Division	56
1.2.	Terms used	56
1.3.	Act does not affect State agreements	57
1.8.	Some property excepted from s. 26(1)	57
1.9.	Recovery of costs from users, functions include	57
1.10.	Companies, Joint Venturers and Salt Company, duties of	57
1.11.	Pilotage services, agreements with Companies etc. as to	59

Division 2 — Port of Port Hedland

2.1.	Application of Division	59
2.3.	Act does not affect State agreements	59
2.8.	Port includes pilotage area for some purposes	60

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

Schedule 8 — Transitional provisions

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

Subdivision 1 — Preliminary

1.	Terms used	65
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Subdivision 2 — Provisions for the Southern Ports Authority

2.	Terms used	66
3.	Merger of Albany Port Authority and Esperance Port Authority into Southern Ports Authority	66
4.	Directors and former directors	66
5.	Powers of new board in anticipation of merger	67

Contents

6.	CEOs and members of staff	68
7.	Preservation of rights	68
8.	Devolution of assets, liabilities, proceedings, remedies and immunities	69
9.	Completion of things commenced	70
10.	Continuing effect of things done	70
11.	Agreements, instruments and documents	71
12.	Port authorities to implement or facilitate merger and share costs	72
13.	Financial reporting	73
14.	Dividends	75
15.	Transitional regulations	75
	Subdivision 3 — Provisions for the Mid West Ports Authority	
16.	Terms used	76
17.	Directors and former directors	76
18.	Powers of new board in anticipation of renaming	77
19.	CEO and staff	77
20.	Agreements, instruments and documents	78
21.	Port authority to implement or facilitate renaming	79
22.	Transitional regulations	80
	Subdivision 4 — Provisions for the Pilbara Ports Authority	
23.	Terms used	80
24.	Merger of Dampier Port Authority into Pilbara Ports Authority	81
25.	Directors and former directors	81
26.	Powers of new board in anticipation of merger	82
27.	CEOs and members of staff	82
28.	Preservation of rights	83
29.	Devolution of assets, liabilities, proceedings, remedies and immunities	84
30.	Completion of things commenced	85
31.	Continuing effect of things done	85
32.	Agreements, instruments and documents	85
33.	Port authorities to implement or facilitate merger and share costs	86
34.	Financial reporting	87
35.	Dividends	89
36.	Transitional regulations	90

	Subdivision 5 — Provisions for the Kimberley Ports Authority	
37.	Terms used	90
38.	Directors and former directors	91
39.	Powers of new board in anticipation of renaming	91
40.	CEO and staff	92
41.	Agreements, instruments and documents	93
42.	Port authority to implement or facilitate renaming	93
43.	Transitional regulations	94
	Subdivision 6 — Provisions for certain directors	
44.	Certain directors to cease to hold office	95
	Subdivision 7 — General provisions	
45.	Terms used	95
46.	Exemption from State taxes	96
47.	Registration of documents	96
48.	Matters that a new board can deal with	96
49.	Operation of transitional regulations	98
50.	Saving	98
51.	Government agreements not affected	99
	Division 2 — Provisions for <i>Ports Legislation Amendment Act 2019</i>	
	Subdivision 1 — Preliminary	
52.	Terms used	99
	Subdivision 2 — Transfer of control and management of some existing ports to port authorities	
53.	Terms used	102
54.	Port transfer: preliminary requirements	102
55.	Port authority to implement and facilitate port transfer	103
56.	Cessation of responsibility for port	104
57.	Vesting of land, seabed and water in port authority	104
58.	Minister may make transitional orders	104
59.	Amending transitional order	106
60.	Provisions as to assets and liabilities	107
61.	Provisions as to agreements and proceedings	109
62.	Navigational aids	110
63.	Harbour masters and deputy harbour masters	110
64.	Pilotage: existing licences	111

Contents

65.	Pilotage: existing exemption certificates	112
66.	Jetty licences	113
	Subdivision 3 — General provisions	
67.	Registration of documents	116
68.	Exemption from State taxes	116
69.	Transitional regulations	116
70.	Saving	117
71.	Effect of affecting provisions	118
72.	No exclusion of operation of affecting provisions	118
73.	Effect of continued easements, leases and licences	118
74.	Government agreements not affected	118
75.	Preservation of mining, petroleum and other rights	119
76.	Transitional provision for Schedule 9	120

**Schedule 9 — Placing additional
ports under a port authority's
control and management**

1.	Terms used	121
2.	Regulations may place a port under the control and management of a port authority	121
3.	Port authority to implement or facilitate port addition	122
4.	Government agreements not affected	122

Notes

Compilation table	123
Uncommenced provisions table	126
Other notes	126

Defined terms

Western Australia

Port Authorities Act 1999

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

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Port Authorities Act 1999*.

2. Commencement

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

3. Terms used

- (1) In this Act, unless the contrary intention appears —
- channel*** includes a swinging basin, turning circle, area alongside a jetty, fairway or anchorage;
- control***, when used in the sense of being in control of a vessel, means to be in charge or command of, or to have the management of, the vessel;
- Crown land*** has the same meaning as it has in the *Land Administration Act 1997*;
- damage*** includes alter, destroy or remove;
- dangerous thing*** means —
- (a) a vessel or part of a vessel; or
 - (b) a wreck and any cargo, fuel or other thing on or in it; or
 - (c) any other thing,
- that is likely to be a danger to navigation or to port facilities or harmful to the environment;
- goods*** includes —
- (a) merchandise, wares, chattels and other articles, whether manufactured or of any other kind; and
 - (b) minerals and mineral products; and
 - (c) petroleum and hydrocarbon products; and
 - (d) forestry and agricultural products; and

- (e) livestock;

GTE Act means the *Government Trading Enterprises Act 2023*;

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

jetty includes —

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

but does not include a vessel;

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

maritime structure means —

- (a) a jetty; or
- (b) a breakwater, groyne or seawall; or
- (c) a dredged channel; or
- (d) a boat pen or vessel mooring; or
- (e) a navigational aid; or
- (f) a pipeline in, over, under or discharging into navigable waters (but not a pipeline discharging material from a dredging vessel);

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

mooring includes anchoring and berthing;

movement, in relation to —

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

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

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

owner, in relation to —

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

port means a port named in Schedule 1 or placed under the control and management of a port authority by regulations in accordance with Schedule 9 and the **port** or **its port**, in relation to a port authority, means —

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

port activities has the meaning given by section 35;

port authority means a body established by section 4;

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

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

- (a) maritime structures and other buildings, structures and enclosures; and

(b) railways; and

(c) machinery, equipment, vessels, vehicles and aircraft;

port land means vested land, land acquired by a port authority or other land that becomes the property of a port authority under this Act;

port operations means —

(a) the carrying out of port activities or port works; or

(b) the provision of port services; or

(c) the provision, management or operation of port facilities;

port property, in relation to a port authority, means —

(a) port facilities; or

(b) vested property; or

(c) other property held by the port authority;

port security means all matters relating to —

(a) the preservation and protection of —

(i) port property; or

(ii) any other vessel, vehicle or other property within the port,

from damage, destruction or unlawful activity; and

(b) the protection of people within the port from injury or unlawful activity;

port services has the meaning given by section 35;

port works has the meaning given by section 35;

potential supplier means —

(a) a person who might become a supplier of port services; or

(b) a person who might become a supplier of port services and, for that purpose, provide related port facilities;

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

s. 3A

vested means vested in a port authority under this Act;

vested land includes vested seabed and vested water.

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

[(4) *deleted*]

[Section 3 amended: No. 10 of 2001 s. 157; No. 74 of 2003 s. 93(2); No. 8 of 2009 s. 102(2) and (3); No. 46 of 2009 s. 17; No. 39 of 2010 s. 81(2); No. 9 of 2014 s. 4; No. 2 of 2019 s. 43; No. 13 of 2023 s. 219.]

3A. Relationship to GTE Act

The GTE Act is to be read with this Act as if they formed a single Act.

[Section 3A inserted: No. 13 of 2023 s. 220.]

Part 2 — Port authorities: establishment and administration

Division 1 — Establishment of port authorities

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

- (1) There are to be the port authorities named in column 2 of Schedule 1.
- (2A) A port authority named in column 2 of an item in Schedule 1 is to control and manage —
 - (a) any port named in column 3 of that item; and
 - (b) any port placed under the control and management of the port authority by regulations in accordance with Schedule 9.
- (2) A port authority is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against a port authority in its corporate name.
- (4) A port authority may use, and operate under, one or more trading names approved by the Minister.
- (5) A trading name can be —
 - (a) an abbreviation or adaptation of the port authority's corporate name; or
 - (b) a name other than the port authority's corporate name.

[Section 4 amended: No. 9 of 2014 s. 5.]

5. Port authorities not to be regarded as agents of Crown for purposes of State laws

For the purposes of any law of the State, a port authority is to be regarded as not being an agent of the Crown and does not have the status, immunities and privileges of the Crown.

[Section 5 amended: No. 9 of 2014 s. 6.]

6. Port authorities and officers not part of public sector

- (1) A port authority is not, and is not to become, a public sector body under the *Public Sector Management Act 1994*.
- (2) Neither the CEO nor any member of staff is to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.

Division 2 — Community consultation committees

[Heading inserted: No. 13 of 2023 s. 221.]

[7-13. Deleted: No. 13 of 2023 s. 222.]

14A. Community consultation committees

- (1) In this section —
consultation committee means the committee established as required by subsection (2).
- (2) Without limiting the GTE Act section 26, the board of a port authority must establish a committee for each port for which it has the control and management for the purpose of promoting and facilitating communication, information sharing and consultation between the port authority and members of the public who are or may be affected by port operations.
- (3) A local government that has electors who are or may be affected by port operations at the port is to be represented on the consultation committee.
- (4) Minutes of the proceedings of the consultation committee are to be made available on the port authority's website or in a prescribed manner.
- (5) Subsection (2) does not apply if the regulations exempt the port from the operation of this section.

[Section 14A inserted: No. 9 of 2014 s. 9; amended: No. 13 of 2023 s. 223.]

Division 3 — Staff

[14-15. Deleted: No. 13 of 2023 s. 224.]

16. Staff

- (1) The power to engage and manage the staff of a port authority is vested in its board.
- (2) The power conferred by subsection (1) —
 - (a) includes powers to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate the employment of staff; and
 - (b) does not preclude the delegation of any matter under section 44.
- (3) The remuneration of and other terms and conditions of employment of staff are not to be less favourable than is provided for in —
 - (a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or
 - (b) the *Minimum Conditions of Employment Act 1993*.
- (4) There are excluded from the operation of sections 41, 41A and 43 of the *Industrial Relations Act 1979* —
 - (a) any matters dealt with by an instrument issued under section 17, except —
 - (i) rates of remuneration; and
 - (ii) leave; and
 - (iii) hours of duty; and

(iv) matters that are similar to matters prescribed for the purposes of section 99(1)(a)(iv) of the *Public Sector Management Act 1994*;

and

(b) matters concerning the management of the staff that are similar to matters prescribed for the purposes of section 99(1)(c) of the *Public Sector Management Act 1994*.

(4a) A matter referred to in subsection (4) cannot be varied or affected by an employer-employee agreement made under Part VID of the *Industrial Relations Act 1979*.

[(5) *deleted*]

(6) Nothing in this section other than subsection (4a) affects the operation of Part VID of the *Industrial Relations Act 1979*.

[Section 16 amended: No. 20 of 2002 s. 23; Gazette 15 Aug 2003 p. 3689.]

17. Minimum standards for staff management

(1) The board of a port authority must, after consultation with the Public Sector Commissioner, prepare and issue an instrument setting out minimum standards of merit, equity and probity applicable to the management of the staff of the port authority.

(2) In complying with subsection (1) a board is to have regard to the principles set out in section 8 of the *Public Sector Management Act 1994*.

(3) An instrument issued under subsection (1) may be expressed to apply to the chief executive officer of the corporation as if the chief executive officer were a member of staff.

(3A) If an instrument issued under subsection (1) applies to the chief executive officer of the corporation, subsection (2) does not affect the operation of the GTE Act section 37(5).

- (4) The Public Sector Commissioner may at any time recommend to a board any amendment that the Commissioner thinks should be made to an instrument issued under this section.

- (5) A board may —
- (a) amend an instrument issued under this section; or
 - (b) revoke it and substitute a new instrument,

but, except where subsection (4) applies, is to do so only after consultation with the Public Sector Commissioner.

[Section 17 amended: No. 39 of 2010 s. 81(3); No. 13 of 2023 s. 225.]

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

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

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

19. Superannuation

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

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

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

- (2) A port authority may make contributions to any fund or scheme referred to in subsection (1).
- (3) In subsection (1) —
members of staff includes the CEO.
- (4) Nothing in this section affects the operation of the *State Superannuation Act 2000* in relation to a port authority or members or former members of staff or their dependants.

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

Division 4 — Conduct and integrity of staff

[20. Deleted: No. 13 of 2023 s. 226.]

21. Codes of conduct

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

- (4) In this section and in sections 22 and 23 —

members of staff includes the CEO.

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

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

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

as the Commissioner may specify.

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

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

23. Reports to Minister as to s. 21 codes

- (1) A board, when it delivers to the Minister its annual report under the GTE Act section 81, is also to deliver to the Minister a separate report on the observance by members of staff of any code of conduct in force under section 21.
- (2) A board is to give to the Public Sector Commissioner a copy of each report under subsection (1).

[Section 23 amended: No. 39 of 2010 s. 81(3); No. 13 of 2023 s. 227.]

Part 3 — Port areas and property of port authorities

24. Port areas defined

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

25. Port authority, property vested in

- (1) The following property is vested in a port authority for the purposes of this Act —
 - (a) all Crown land in the port, including the seabed and shores;
 - (b) in the case of a port that was named in Schedule 1 before the coming into operation of the *Ports and Marine Legislation Amendment Act 2003* section 4, all navigational aids that, immediately before the coming into operation of that section —
 - (i) were in the port, or used in connection with navigation into or out of the port; and
 - (ii) belonged to the State;
 - (c) all fixtures on land in the port that belong to the State.

- (2) The property of a port authority also includes the following —
- (a) any improvements effected on vested land leased to another person that have been acquired on the termination of the lease concerned;
 - (b) any real or personal property (other than property referred to in subsection (1) or paragraph (a)) that —
 - (i) is acquired by the port authority; or
 - (ii) is vested in the port authority by the Governor for the purposes of this Act; or
 - (iii) is vested in, or becomes the property of, the port authority under this Act.

[Section 25 amended: No. 71 of 2003 s. 4(1)¹; No. 2 of 2019 s. 44.]

26. Port property may be taken back by Crown

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

27. Power to sell land, restrictions on

- (1) The power of a port authority to sell port land does not extend to Crown land.
- (2) A port authority must get the Minister's approval before it sells port land.

s. 27A

- (3) In this section —

sell means dispose of, convey and transfer, in fee simple or for a lesser estate, for consideration or by way of exchange, and includes grant an option to purchase or a right of first refusal to purchase.

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

27A. Land, creating interests in

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

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

28. Vested land, creating and dealing with interests in

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

29A. Operation of *Planning and Development Act 2005* section 136 modified

A port authority does not have to obtain approval under the *Planning and Development Act 2005* section 136 in order to grant a lease or licence in respect of port land.

[Section 29A inserted: No. 9 of 2014 s. 11.]

29. Disputes between port authority and Crown

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

Part 4 — Functions and powers

[Division 1 heading deleted: No. 13 of 2023 s. 228.]

30. Functions

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

[Section 30 amended: No. 71 of 2003 s. 6; No. 9 of 2014 s. 12.]

31. Relationship to *Environmental Protection Act 1986*

Nothing in this Act limits or otherwise affects the operation of the *Environmental Protection Act 1986* in relation to a port, a port authority or port operations.

[Section 31 inserted: No. 13 of 2023 s. 229.]

32. Port authority has control of port

Subject to any direction given by the Minister under the GTE Act Part 7 Division 4, a port authority has exclusive control of the port.

[Section 32 amended: No. 13 of 2023 s. 230.]

[33-34. Deleted: No. 13 of 2023 s. 231.]

35. Powers generally

- (1) A port authority has all the powers it needs to perform its functions under this Act or any other written law.
- (2) A port authority may for the purpose of performing a function mentioned in subsection (1) —
 - (a) subject to Part 3, acquire, hold and dispose of real or personal property; and
 - (b) manage, improve and develop real or personal property vested in it or acquired by it or arrange for property to be managed, improved or developed; and
 - (c) carry out port works or arrange for port works to be carried out; and
 - (d) provide, manage and operate port facilities or arrange for port facilities to be provided, managed and operated; and
 - (e) provide port services or arrange for port services to be provided; and

- (f) enter into any contract or arrangement including a contract or arrangement with any person for the performance of the function by that person on behalf of the port authority; and
- (g) apply for the grant of any licence or other authority required by the port authority; and
- (h) acquire, establish and operate —
 - (i) any undertaking necessary or convenient for the performance of the function; and
 - (ii) any associated undertaking;and
- (i) produce and deal in any equipment, facilities or system associated with, the performance of the function; and
- (j) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the port authority; and
- (k) participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and
- (l) carry out any investigation, survey, exploration or feasibility study; and
- (m) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research; and
- (n) develop and turn to account any technology, software or other intellectual property that relates to the function and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
- (o) issue licences and administer licensing schemes for activities and things in accordance with the regulations; and
- (p) promote and market the port authority and its activities.

- (3) Subsection (2) does not limit subsection (1) or the other powers of a port authority under this Act or any other written law.
- (3A) Subsections (1) and (2) have effect subject to the GTE Act.
- (4) A port authority must get the Minister's approval before it issues a licence giving a person an exclusive right to provide port services of a particular kind.
- (5) The Minister is not to give approval under subsection (4) unless the Minister considers that the public benefits of exclusivity exceed the public costs and on providing such approval, the Minister must table in Parliament within 14 days, full reasons for his decision to grant an exclusive licence.
- (6) In —
 - (a) entering into or negotiating a contract or arrangement for the purposes of subsection (2)(b) to (f); or
 - (b) issuing, or dealing with an application for, a licence authorising the holder to provide port services,a port authority must not —
 - (c) impose, or purport to impose, an obligation on any person; or
 - (d) seek an undertaking from any person,as to the method by which, or manner in which, the person's employees are to be employed other than an obligation or undertaking that the method or manner be lawful.
- (7) A port authority may —
 - (a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community;
 - (b) make any *ex gratia* payment that the board considers to be in the port authority's interest;

- (c) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the port authority.
- (8) For the purposes of port works and port facilities, a port authority is a local authority within the meaning of the *Public Works Act 1902*.
- (9A) Subject to the *Environmental Protection Act 1986*, port operations may take place on any day and at any time.
- (9) In this section —
 - business arrangement*** means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;
 - participate*** includes form, promote, establish, enter, manage, dissolve, wind up, and do things incidental to participating in a business arrangement;
 - port activities*** means —
 - (a) the movement, mooring, hauling out, maintenance and launching of vessels; and
 - (b) the movement of, and provision of services to, passengers of vessels; and
 - (c) the movement, handling and storage of goods;
 - port services*** means —
 - (a) carrying out port activities; and
 - (b) dredging, engineering, marine civil construction, pollution management, security, pilotage, towage, vessel movement control, emergency response, shore stabilization and waste management services; and
 - (c) supplying provisions or equipment to vessels; and
 - (d) supplying water, fuel or electricity; and
 - (e) providing for the use or hire of port facilities; and
 - (f) providing labour for any purpose; and

- (g) any other services prescribed by regulation for the purposes of this definition;

port works means works for port purposes and includes —

- (a) designing, constructing, extending, maintaining, removing or demolishing —
 - (i) maritime structures and other buildings, structures and enclosures; and
 - (ii) railways, roads, bridges, dams and embankments;

and

- (b) reclaiming land from the sea or a river.

[Section 35 amended: No. 9 of 2014 s. 16; No. 13 of 2023 s. 232.]

36. Port facilities and services, extended powers as to

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

- (a) providing, managing or operating port facilities outside the port; and
- (b) providing port services outside the port; and
- (c) providing a port service other than for or in connection with the operation of the port as a port if doing so does not adversely affect the provision of that service for or in connection with the operation of the port as a port.

37. Fees and charges, power to levy

- (1) A port authority may levy and collect, in relation to its functions under this Act or any other written law, such fees for licences and approvals as are provided for in the regulations and such port charges as the port authority determines.

- (2) Port charges are to be determined by the port authority in accordance with prudent commercial principles and may allow for —
 - (a) the making of a profit; and
 - (b) depreciation of assets.

38. Planning laws, application of to port authorities

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

[(4), (5) deleted]

- (6) If there is a dispute between a port authority and a local government with respect to a planning matter relating to port works or port facilities, the parties to the dispute are to refer it to the Minister.
- (7) The Minister may, after consulting the Minister administering the *Planning and Development Act 2005*, make a decision on the dispute and that decision is final and binding on the parties.

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

[39-43. Deleted: No. 13 of 2023 s. 233.]

44. Delegation by port authority

- (1) A port authority may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.
- (2) A delegation under subsection (1) may be made to —
 - (a) a director or directors; or
 - (b) the CEO; or
 - (c) a member of staff; or
 - (d) a committee established under the GTE Act section 26(1); or
 - (e) any other person.
- (3) A delegate cannot subdelegate the performance of any function unless the delegate is expressly authorised by the instrument of delegation to do so.
- (4) A function performed by a delegate of a port authority is to be taken to be performed by the port authority.
- (5) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section is to be read as limiting the ability of a port authority to act through its officers and agents in the normal course of business.
- (7) This section does not apply to the execution of documents.

Note for this subsection:

Authority to execute documents on behalf of a port authority can be given under the GTE Act section 156.

[Section 44 amended: No. 13 of 2023 s. 234.]

[Division 2 (s. 45-48) deleted: No. 13 of 2023 s. 235.]

[Part 5 (s. 49-78) deleted: No. 13 of 2023 s. 236.]

[Part 6 heading deleted: No. 13 of 2023 s. 237.]

[Divisions 1 to 5 (s. 79-120) deleted: No. 13 of 2023 s. 238.]

[Division 6 heading deleted: No. 13 of 2023 s. 239.]

92. Annual financial targets, Minister may set

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

Part 7 — Navigation and port matters

Division 1 — Navigational aids

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

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

- (d) if the control of the navigational aid has been taken over by the port authority under an agreement under subsection (1)(b), a person who is or was the owner, lessee or bailee of the navigational aid.

94. Interference with navigational aids, offence

- (1) A person must not, without lawful excuse (proof of which lies on the person) do any of the following things in relation to a navigational aid for a port —

- (a) damage it;
- (b) make a vessel fast to it or otherwise use a vessel in a way that might damage it;
- (c) obstruct or interfere with its display or operation;
- (d) obstruct or interfere with any emission or transmission from it.

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

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

Division 2 — Pilotage

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

- (1) In this Division —
approved, in relation to a pilot, means approved under section 96;

under compulsory pilotage, in relation to a vessel, means under the control of a pilot as required by section 97.

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

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

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

referred to in that section, by a person who holds such a licence; or

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

[Section 96 amended: No. 9 of 2014 s. 23; No. 2 of 2019 s. 48.]

97. Pilotage compulsory in ports

- (1) Except as otherwise provided by the regulations, a vessel moving in a port must use pilotage services.
- (2) A person who moves a vessel in a port without it being under the control of a person approved as a pilot for the port commits an offence unless under the regulations —
 - (a) the vessel does not have to have an approved pilot; or
 - (b) the person is permitted to do so.

Penalty: \$10 000.

- (3) If a vessel is being moved in a port without it being under the control of a person approved as a pilot for the port, neither the State nor the port authority is liable for —
 - (a) any loss or damage caused by the vessel; or

- (b) the loss of, or damage to, the vessel or a thing in or on the vessel,

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

98. Pilot under authority of master

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

99. Liability of owner or master of piloted vessel

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

100. Immunity from liability for negligent provision of pilotage services

- (1) Neither the State nor the port authority is liable for any loss or damage resulting from —
 - (a) an act or omission by a port authority, a harbour master or a member of staff of a port authority in connection with the provision of pilotage services; or
 - (b) an act or omission by a person approved as a pilot by a port authority in the conduct or navigation of a vessel of which the person is the pilot.
- (2) An approved pilot is not personally liable for any loss or damage resulting from an act or omission by him or her in the conduct or navigation of a vessel of which he or she is the pilot.
- (3) The employer of a person who is an approved pilot is not liable for any loss or damage resulting from an act or omission by the

person in the conduct or navigation of a vessel of which the person is the pilot.

[Section 100 amended: No. 9 of 2014 s. 24.]

Division 3 — Harbour masters

101. Port includes other declared areas

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

- (a) any area that is outside, but contiguous with, a port and is declared by the regulations to be an adjacent area in relation to the port; and
- (b) any area that is declared under section 95(2) in relation to the port.

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

- (1) In this section —

eligible person means —

- (a) the CEO; or
 - (b) a member of staff who is competent and suitably qualified; or
 - (c) any other person who is competent and suitably qualified.
- (2) The board of a port authority is to appoint an eligible person as the harbour master of the port.
- (3) The board of a port authority may appoint an eligible person as the deputy harbour master of the port.
- (4) Subject to subsection (5), the deputy harbour master may perform the functions of the harbour master if the harbour master is absent from the port or on leave, or unable for any other reason to perform those functions.

- (5) The board of a port authority may appoint an eligible person to act in the office of harbour master of the port if the harbour master is, or is expected to be, absent from the port, or on leave, or unable for any other reason to perform the functions of the office.
- (6) If there is no person appointed under subsection (2), (3) or (5) who is able to perform the functions of the harbour master, those functions may be performed by a person determined by the board of the port authority.
- (7) The harbour master may, in writing, delegate any of his or her functions, other than this power of delegation, to a member of staff.

103. Functions of harbour master

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

104. Directions to masters etc.

- (1) For the purpose of performing his or her principal functions a harbour master may direct the owner, master, or person in charge of a vessel to do any or all of the following —
 - (a) to ensure that the vessel does not enter the port;
 - (b) to navigate the vessel in a specified manner while it is in the port;
 - (c) to moor the vessel in the port at a specified place and in a specified manner;
 - (d) to move the vessel out of the port or to another place in it;
 - (e) to take any action specified by the harbour master in relation to the means by which the vessel is moored in the port.
- (2) When the safety of people or valuable property is in danger from a vessel in a port and no other direction is reasonable in the circumstances, the harbour master may direct the owner, master, or person in charge of the vessel to scuttle it immediately.

105. Directions as to dangerous things

- (1) In this section —

owner, in relation to —

 - (a) a vessel or part of a vessel, means the owner immediately prior to the time of the loss or abandonment of the vessel or part of the vessel;
 - (b) a thing in the water that was in or on a vessel, means the owner of the vessel.
- (2) For the purpose of performing his or her principal functions a harbour master may direct the owner of a dangerous thing in the port to do any or all of the following —

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

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

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

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

107. Ownerless vessels and dangerous things, removal of

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

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

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

Penalty: \$20 000.

109. Powers if direction not obeyed

- (1) If a person does not comply with a direction under section 104(1)(c), (d) or (e) or (2) or section 105 within a reasonable time after being given it, the harbour master may

cause the direction to be complied with using such means as the harbour master thinks fit.

- (2) When causing a vessel to be moved under subsection (1) the harbour master may cause the vessel to be made fast to another vessel that is moored in the port.
- (3) Subsection (2) does not prevent the owner or master of a vessel to which another vessel is made fast under that subsection from recovering from the owner or master of that other vessel damages for loss or damage occasioned by that making fast.

110. Recovering port authority's s. 107 costs

- (1) A port authority may recover —
 - (a) the costs of exercising the powers in section 107 from the owner of the vessel or dangerous thing; or
 - (b) the cost of exercising the powers in section 109 from the owner, master, or person in charge, of the vessel or the owner of the dangerous thing,

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

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

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

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

111. Immunity from liability for acts under this Division

Neither the State, the port authority, the harbour master, nor any person acting under the direction of the harbour master, is liable for any loss or damage occasioned by —

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

112. Hindering harbour master etc., offence

A person who hinders a harbour master, or a person acting under the direction of a harbour master, in the exercise of the powers in section 107 or 109 commits an offence.

Penalty: \$10 000.

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

113. Responsibility for damage to port facilities or property

(1A) In this section —

prescribed thing means —

- (a) any floating object; or
 - (b) any material, product or substance (whether solid, liquid or gas); or
 - (c) any vehicle, plant, machinery, equipment or infrastructure.
- (1) This section applies if any port facility or other property of a port authority is damaged by —
- (a) a vessel or its equipment or cargo; or
 - (b) a prescribed thing; or
 - (c) any person employed in, on or in relation to, a vessel, or its equipment or cargo, or a prescribed thing.

[(d) deleted]

- (2) If this section applies, the owner of the vessel or prescribed thing is answerable in damages to the port authority for the whole of the damage whether or not the damage is caused through a person's wilful or negligent act or omission.
- (3) If the damage is caused through the wilful or negligent act or omission of the master of the vessel or of the person having charge or control of the prescribed thing, that master or person (as well as the owner) is answerable in damages to the port authority for the whole of the damage.
- (4) Neither the port authority nor any other person is entitled under this section to recover more than once for the same cause of action.
- (5) If the owner of any vessel or prescribed thing —
 - (a) pays any money in respect of any damage to which this section applies caused through the wilful or negligent act or omission of a master or other person referred to in subsection (3); or
 - (b) pays any fine by reason of any act or omission of a master or other person referred to in subsection (3),the owner may recover the money or fine so paid, with costs, from that master or other person in a court of competent jurisdiction as a debt due to the owner.
- (6) In an action under this section the damages recoverable are to be determined on the basis of —
 - (a) the actual cost incurred in repairing or replacing the damaged port facility or property without taking into account any betterment or depreciation; and
 - (b) any economic loss suffered by the port authority as a result of the damage.

[Section 113 amended: No. 9 of 2014 s. 25.]

Division 5 — Port safety

114. Marine safety plan, port authority to have

- (1) In this section —
marine safety plan means a plan prepared by a port authority and approved by the Minister setting out the arrangements for marine safety at the port.
- (2) A port authority is to have, maintain and implement a marine safety plan for its port.
- (3) The Minister is to monitor the maintenance of a port authority's marine safety plan and may —
 - (a) give directions to the port authority as to the maintenance of the plan; and
 - (b) direct the port authority to review the plan from time to time and submit modifications of it to the Minister for approval.
- (4) The port authority is to give effect to any direction under subsection (3).
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

Division 6 — Powers of police officers and others

[Heading inserted: No. 71 of 2003 s. 7.]

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

- (1) An authorised officer may at any time enter a vessel in a port and conduct any examination or enquiry that the authorised officer considers necessary to determine whether there has been compliance with this Act.

- (2) In this section —

authorised officer means —

- (a) a police officer; or
- (b) a member of staff of the port authority, or another person, authorised by the port authority for the purposes of this section.

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

Division 7 — Protection from liability

[Heading inserted: No. 71 of 2003 s. 7.]

114B. Immunity from liability for damage to vessels

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

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

114C. Immunity from liability for damaged goods

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

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

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

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

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

114EA. Immunity from liability for acts or omissions of port users

- (1) A port authority is not liable for any loss or damage resulting from an act or omission of a person who is, or is acting on behalf of, a user of its port.
- (2) Subsection (1) does not affect any liability a port authority might have for breach of contract.

[Section 114EA inserted: No. 9 of 2014 s. 26.]

114E. Immunity from liability for certain events and actions

- (1) A port authority is not liable for any loss or damage resulting from an event outside the control of the port authority, including —
 - (a) an act of God; or

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

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

Part 8 — Port charges

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

- (1) In this Part —

port charges means —

- (a) port dues and wharfage, berthage, tonnage and access charges; or
- (b) port improvement rates; or
- (c) charges for port services or navigational aids provided by or under the control of a port authority.

- (2) This Part applies to the payment and recovery of port charges levied by a port authority.

116. Liability to pay port charges in respect of vessels

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

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

117. Liability to pay port charges in respect of goods

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

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

s. 118

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

118. Recovery of port charges by port authority

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

119. Collectors of port charges

A port authority may, in writing —

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

Part 9 — Proceedings for offences

Division 1 — General

120. Who can commence prosecutions

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

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

121. Time limit for prosecutions

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

122. Averment as to place of offence

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

Division 2 — Infringement notices

123. Terms used

In this Division —

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

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

124. Giving of notice

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

125. Content of notice

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

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

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

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

126. Extending time for paying modified penalty

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

127. Withdrawing notice

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

128. Benefit of paying modified penalty

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

129. Application of penalties collected

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

130. Authorised persons, appointment of

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

Part 10 — Miscellaneous

131. Hindering, offence

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

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

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

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

133. Laying documents before Parliament not sitting

If a provision of this Act requires the Minister to cause a document to be laid before a House of Parliament and the House is not sitting, the GTE Act section 159 applies as if the reference in that section to a provision of the GTE Act were a reference to the provision of this Act.

[Section 133 amended: No. 13 of 2023 s. 240.]

[134, 135. Deleted: No. 13 of 2023 s. 240.]

136. Overdue amounts, interest on

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

137. Recovery of expenses due to offence

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

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

138. Government Agreements Act 1979 not affected

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

- (a) Schedule 6 clause 1.3 or 2.3 or the mention of particular agreements in those clauses; or
- (b) the affecting provisions as defined in Schedule 8 clause 45 or 52; or
- (c) Schedule 9 or regulations referred to in Schedule 9.

[Section 138 inserted: No. 9 of 2014 s. 28(1); amended: No. 9 of 2014 s. 28(2); No. 2 of 2019 s. 49.]

139A. Transitional provisions

Schedule 8 sets out transitional provisions.

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

Part 11 — Regulations

139. General power to make regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1) regulations may be made for all or any of the purposes, or about all or any of the matters, set out in Schedule 7.
- (3) Regulations under this Act may be expressed to prevail over regulations made under the GTE Act.
- (4) Regulations in reliance on subsection (3) must not be made except on the recommendation of —
 - (a) the Minister; and
 - (b) the Minister to whom the administration of the GTE Act is committed.
- (5) If and to the extent that regulations under this Act are so expressed, in the event of a conflict or inconsistency between a provision of those regulations and a provision of regulations made under the GTE Act, the former provision prevails.

[Section 139 amended: No. 13 of 2023 s. 241.]

140. Offences against regulations

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

141. Adoption of other laws, codes etc.

- (1) Regulations may adopt, either wholly or in part or with modifications —
 - (a) any rules, regulations, codes, instructions or other subsidiary legislation made, determined or issued under any other Act or under any Imperial Act or Commonwealth Act; or
 - (b) any of the standards, rules, codes or specifications of the bodies known as the International Maritime Organization, Standards Australia, the British Standards Institution or The Association of Australian Port and Marine Authorities or of any other like body that is specified in those regulations.
- (2) If regulations adopt any subsidiary legislation, standard, rule, code or specification under subsection (1), it is adopted as in force from time to time unless those regulations specify that a particular text is adopted.
- (3) Regulations may provide that if by reason of unavailability of materials or for any other reason that a port authority considers valid any requirement of any subsidiary legislation or standard, rule, code or specification adopted by those regulations in accordance with subsection (1) cannot be conformed to, a port authority may approve such use of materials or other matters as it considers to be consistent with the achievement of the objects of those regulations.

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

142. References to other approvals or decisions

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

143. Licensing, provisions as to

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

[Part 12 (s. 144) deleted: No. 13 of 2023 s. 242.]

Schedule 1 — Port authorities and ports

[s. 4]

[Heading inserted: No. 9 of 2014 s. 30.]

Column 1	Column 2	Column 3
Item	Name of port authority	Port or ports
1	Fremantle Port Authority	Port of Fremantle
[2	<i>deleted]</i>	
3	Southern Ports Authority	Port of Albany Port of Bunbury Port of Esperance
[4	<i>deleted]</i>	
5	Mid West Ports Authority	Port of Geraldton
[6	<i>deleted]</i>	
7	Pilbara Ports Authority	Port of Ashburton Port of Dampier Port of Port Hedland Port of Varanus Island
8	Kimberley Ports Authority	Port of Broome Port of Derby Port of Wyndham Port of Yampi Sound

[Schedule 1 inserted: No. 9 of 2014 s. 30; amended: No. 9 of 2014 s. 31; No. 2 of 2019 s. 50(2)(d) and (3).]

[Schedules 2-5 deleted: No. 13 of 2023 s. 243.]

Schedule 6 — Provisions for Pilbara Ports Authority

[s. 132]

[Heading amended: No. 9 of 2014 s. 34(1).]

Division 1 — Port of Dampier

[Heading amended: No. 9 of 2014 s. 34(2).]

1.1. Application of Division

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

[Clause 1.1 amended: No. 9 of 2014 s. 34(3).]

1.2. Terms used

In this Division —

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

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

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

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

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

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

[Clause 1.2 amended: No. 9 of 2014 s. 33(1).]

1.3. Act does not affect State agreements

This Act does not prejudice or in any way affect —

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

[1.4-1.7. Deleted: No. 9 of 2014 s. 33(2).]

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

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

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

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

1.9. Recovery of costs from users, functions include

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

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

- (1) Despite anything in section 30 —
 - (a) the Company, for its own requirements under the Iron Ore (Hamersley Range) Agreement; and

- (b) the Salt Company, for its own requirements under the Dampier Solar Salt Industry Agreement; and
- (c) the Joint Venturers, for their own requirements under the North West Gas Development (Woodside) Agreement,

are to maintain and keep in repair and proper working order all necessary dredged channels, berthing basins and navigational aids required and used by the Company, the Salt Company or the Joint Venturers, as the case requires.

- (2) Despite anything in section 30, the port authority may from time to time direct the Salt Company, the Company or the Joint Venturers or any 2 or all 3 of them —
 - (a) to provide, maintain and keep in repair and proper working order all dredged channels, berthing basins and navigational aids required and used by it or them in its or their operations under the Dampier Solar Salt Industry Agreement, the Iron Ore (Hamersley Range) Agreement or the North West Gas Development (Woodside) Agreement, as the case requires; and
 - (b) for the purpose of determining whether or not any dredged channels, berthing basins and navigational aids referred to in paragraph (a) are being maintained and kept in repair and proper working order, to provide the port authority at its or their cost with such information, reports and hydrographic surveys as are specified in that direction.
- (3) The Salt Company, the Company or the Joint Venturers must, without delay, comply with any direction given to it or them, as the case requires, by the port authority under subclause (2).
- (4) If the Salt Company, the Company or the Joint Venturers does not or do not comply with —
 - (a) subclause (1), the port authority is to cause the requisite works to be undertaken and the cost of those works is to be borne by the person which has not complied with that subclause; or
 - (b) a direction given under subclause (2), the port authority is to cause —
 - (i) the requisite work to be undertaken; or

- (ii) the requisite information, reports or hydrographic surveys to be provided,

and the cost of those works or the cost of that provision be borne by the person which has not complied with that direction.

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

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

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

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

Division 2 — Port of Port Hedland

[Heading amended: No. 9 of 2014 s. 34(4).]

2.1. Application of Division

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

[Clause 2.1 amended: No. 9 of 2014 s. 34(5).]

[2.2. Deleted: No. 9 of 2014 s. 33(3).]

2.3. Act does not affect State agreements

This Act does not prejudice or in any way affect —

- (a) any right of the persons entitled to them to receive the payments referred to in clause 20(1) of the agreement a copy of which is set forth in the Schedule to the *Leslie Solar Salt*

Industry Agreement Act 1966, as that agreement is amended from time to time;

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

[2.4-2.7. Deleted: No. 9 of 2014 s. 33(3).]

2.8. Port includes pilotage area for some purposes

A

reference in Part 7, Divisions 2 and 3 and, where appropriate, in section 122(1) to the **port** includes a reference to the pilotage area set out below:

The Pilotage Area

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

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

[s. 139(2)]

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

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

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

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

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

Schedule 8 — Transitional provisions

[s. 139A]

[Heading inserted: No. 9 of 2014 s. 35.]

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

[Heading inserted: No. 9 of 2014 s. 35.]

Subdivision 1 — Preliminary

[Heading inserted: No. 9 of 2014 s. 35.]

1. Terms used

In this Division —

agreement includes a Government agreement;

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

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

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

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

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

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

Subdivision 2 — Provisions for the Southern Ports Authority

[Heading inserted: No. 9 of 2014 s. 35.]

2. Terms used

In this Subdivision —

continuing authority means the Bunbury Port Authority;

merger means —

- (a) the actions effected by the coming into operation of section 31(1) of the amending Act; and
- (b) the merging of the Albany Port Authority and the Esperance Port Authority into the SPA under clause 3(1);

merger time means the time at which section 31(1) of the amending Act comes into operation;

merging authority means the Albany Port Authority or the Esperance Port Authority;

new board means the board of directors established under clause 4(3);

SPA means the continuing authority as renamed as the Southern Ports Authority by operation of section 31(1)(a) of the amending Act;

transitional regulations has the meaning given in clause 15(1).

[Clause 2 inserted: No. 9 of 2014 s. 35.]

3. Merger of Albany Port Authority and Esperance Port Authority into Southern Ports Authority

- (1) At the merger time the Albany Port Authority and the Esperance Port Authority cease to be port authorities under this Act and merge into the SPA.
- (2) From the merger time the SPA is a continuation of each of the merging authorities.

[Clause 3 inserted: No. 9 of 2014 s. 35.]

4. Directors and former directors

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

6. CEOs and members of staff

- (1) Immediately before the merger time a person then holding office as the CEO of the continuing authority or a merging authority ceases to hold that office.
- (2) At the merger time, a person who was —
 - (a) the CEO of the continuing authority; or
 - (b) the CEO or a member of staff of a merging authority,immediately before the merger time becomes a member of staff of the SPA.
- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the merger time the continuing authority or a merging authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
 - (a) terminate the contract of employment of the CEO or member of staff; or
 - (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 5 include the power to appoint a person as the CEO of the SPA before the merger time.
- (6) Until the merger time a person appointed under subclause (5) may, as CEO of the SPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the merger.

[Clause 6 inserted: No. 9 of 2014 s. 35.]

7. Preservation of rights

- (1) Except as otherwise agreed by the relevant CEO or member of staff, the operation of clause 6(1) or (2) does not —
 - (a) affect his or her remuneration; or
 - (b) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or

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

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

- (3) In determining the net profits of the SPA for the purposes of section 84, assets that become the property of the SPA by force of subclause (1)(a) are not to be regarded as income.
- (4) From the merger time, any proceedings or remedy that, immediately before that time, might have been brought or continued by or available against or to a merging authority may be brought or continued by, and are or is available against or to, the SPA.
- (5) Where a merging authority had the benefit of any immunity in respect of an act, matter or thing done or omitted before the merger time, that immunity continues in that respect for the benefit of the SPA.
- (6) As soon as is practicable after the merger time, all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of a merging authority are to be delivered to the SPA.

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

9. Completion of things commenced

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

[Clause 9 inserted: No. 9 of 2014 s. 35.]

10. Continuing effect of things done

- (1) In this clause —
relevant act means an act, matter or thing done or omitted to be done before the merger time by, to or in respect of a merging authority.
- (2) To the extent that a relevant act has force or significance at the merger time it is to be taken, from the merger time, to have been done or omitted by, to or in respect of the SPA so far as the act, matter or thing is relevant to the SPA.
- (3) This clause does not affect the operation of any other provision of this Schedule.

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

11.

- (1)

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

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

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

- (1) A port authority is to do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) Subclause (1) applies —
 - (a) before the merger time — to the merging authorities and the continuing authority; and
 - (b) after the merger time — to the SPA.
- (3) The function conferred by subclause (1) is in addition to any other function that a port authority has.
- (4) The following amounts payable before the merger time are to be paid out of the funds of the continuing authority —
 - (a) any remuneration or allowances payable to a director appointed under clause 4(3);
 - (b) any remuneration payable to a person appointed under clause 6(5);
 - (c) the costs of the appointment process under clause 6(5);
 - (d) any other costs incurred by the new board under clause 5.
- (5) Each of the merging authorities is to make a contribution to the continuing authority of one-third (or such other proportion as is agreed) of the amounts paid by the continuing authority in respect of —
 - (a) remuneration or costs mentioned in subclause (4)(a) to (c); and
 - (b) costs mentioned in subclause (4)(d) to the extent that they were reasonably incurred.
- (6) Any dispute as to —
 - (a) a contribution to be made under subclause (5); or

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

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

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

13. Financial reporting

- (1) In this clause —
- former directors** of a merging authority means the persons holding office as directors of the merging authority immediately before the merger time;
- reporting board**, in relation to a merging authority, means the reporting board constituted for the merging authority under subclause (2);
- reporting provisions** means sections 68 and 69, Schedule 5 Division 3 Subdivision 1 and Schedule 5 clauses 34 and 35.
- (2) A reporting board is constituted by force of this clause to perform the duties set out in this clause in respect of a merging authority.
- (3) The constitution of a reporting board under subclause (2) has effect for a period of 3 months commencing at the merger time but that period may be extended by the Minister if the Minister considers that the extension is needed in order to enable the reporting board to perform its duties under this clause.
- (4) If the merger time coincides with the end of a financial year of a merging authority, the reporting board for the merging authority is to comply with the reporting provisions in respect of the merging authority for that financial year.
- (5) If the merger time is after the end of a financial year of a merging authority (the **last financial year**), the reporting board for the merging authority is to —
- (a) comply with the reporting provisions in respect of the merging authority to the extent that those provisions have not been complied with for the last financial year; and

- (b) comply with the reporting provisions in respect of the merging authority for the period starting from the end of the last financial year and ending at the merger time as if that period were a financial year.
- (6) A reporting board must comply with any written directions given to it by the Minister as to the performance of its duties under this clause.
- (7) In order to enable a reporting board to perform its duties under this clause the reporting provisions apply with —
 - (a) any modifications prescribed by transitional regulations; or
 - (b) any other appropriate modifications.
- (8) For the purposes of this clause, a reporting board —
 - (a) is entitled to be provided with reasonable assistance and facilities and to have full and free access at all reasonable times to all accounts, and any other information, documents and records, that the reporting board considers necessary for those purposes; and
 - (b) may make copies of, or take extracts from, any of those accounts, documents or records or make a record of any of that information.
- (9) A person who has possession of any accounts, information, documents or records of the kind referred to in subclause (8)(a) must at any reasonable time, on the request of the reporting board, produce any of those accounts, documents or records, or any of that information, specified in the request.

Penalty: a fine of \$10 000.
- (10) Subject to subclauses (11) to (13), the provisions of this Act that apply to the board of directors of a port authority and those directors (other than sections 7(1) and 8 and Schedule 2 clause 1(1), (3) and (4)) apply, with any modifications that may be necessary or appropriate, to a reporting board and its members.
- (11) The former directors of a merging authority are to hold office as members of the reporting board of the merging authority for as long as the reporting board remains constituted under subclause (2).

- (12) If the office of a member of a reporting board becomes vacant the Minister may appoint a replacement member to hold office for as long as the reporting board remains constituted under subclause (2).
- (13) Any remuneration or allowances payable to a member of a reporting board are to be paid from the funds of the SPA.
- (14) A member of a reporting board is to be taken to be a director of the SPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.

[Clause 13 inserted: No. 9 of 2014 s. 35.]

14. Dividends

- (1) In this clause —
dividend function means a function of a port authority or its board under section 84.
- (2) If immediately before the merger time a dividend function has yet to be performed by a merging authority or its board, the SPA or its board is to perform the function after the merger time as if the SPA were the merging authority.
- (3) If the merger time coincides with the end of a financial year of a merging authority, the SPA or its board is to perform the dividend functions in relation to that financial year as if the SPA were the merging authority.
- (4) Any amount that has to be paid to the Treasurer in accordance with subclause (2) or (3) is to be paid from the funds of the SPA.

[Clause 14 inserted: No. 9 of 2014 s. 35.]

15. Transitional regulations

- (1) Regulations (***transitional regulations***) may prescribe —
 - (a) things to be done by a port authority, or the new board, to provide for, implement or facilitate the merger; and
 - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the merger.

- (2) Transitional regulations may provide that specific provisions of any written law —
- (a) do not apply to or in relation to any matter; or
 - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the merger time, the regulations have effect according to their terms.
- [Clause 15 inserted: No. 9 of 2014 s. 35.]*

Subdivision 3 — Provisions for the Mid West Ports Authority

[Heading inserted: No. 9 of 2014 s. 35.]

16. Terms used

In this Subdivision, unless the contrary intention appears —

MWPA means the port authority as renamed as the Mid West Ports Authority by operation of section 31(2) of the amending Act;

new board means the board of directors established under clause 17(3);

port authority means the Geraldton Port Authority;

renaming means the action effected by the coming into operation of section 31(2) of the amending Act;

renaming time means the time at which section 31(2) of the amending Act comes into operation;

transitional regulations has the meaning given in clause 22(1).

[Clause 16 inserted: No. 9 of 2014 s. 35.]

17. Directors and former directors

- (1) Immediately before the renaming time a person then holding office as a director of the port authority ceases to hold that office.

- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the renaming time the port authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
 - (a) terminate the contract of employment of the CEO or member of staff; or
 - (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 18 include the power to appoint a person as the CEO of the MWPA before the renaming time.
- (6) Until the renaming time a person appointed under subclause (5) may, as CEO of the MWPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the renaming.
- (7) If a person who is the CEO or a member of staff of the port authority is appointed under subclause (5) the appointment does not —
 - (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (b) affect any rights under a superannuation scheme; or
 - (c) interrupt the continuity of his or her service.

[Clause 19 inserted: No. 9 of 2014 s. 35.]

20. Agreements, instruments and documents

- (1) In this clause —
former name means “Geraldton Port Authority”;
new name means “Mid West Ports Authority”.
- (2) A subsisting agreement, instrument or document that contains a reference to the MWPA by its former name has effect from the renaming time as if that reference were amended to be a reference to the MWPA by its new name.

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

- (4) If the port authority was a party to a subsisting agreement or instrument then, from the renaming time —
 - (a) the MWPA is a party to the agreement or instrument under its new name; and
 - (b) the agreement or instrument has effect as if a reference in it to the MWPA by its former name were amended to be a reference to the MWPA by its new name.

- (5) Subclause (2) or (4)(b) does not apply to a reference if —
 - (a) transitional regulations provide otherwise; or
 - (b) that application would be inappropriate in the context in which the reference occurs.

[Clause 20 inserted: No. 9 of 2014 s. 35.]

21. Port authority to implement or facilitate renaming

- (1) Anything that is prescribed by transitional regulations, and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming, is to be done —

- (a) before the renaming time — by the port authority; and
 - (b) after the renaming time — by the MWPA.
- (2) The function conferred by subclause (1) is in addition to any other function that a port authority has.
- (3) The following amounts payable before the renaming time are to be paid out of the funds of the port authority —
 - (a) any remuneration or allowances payable to a director appointed under clause 17(3);
 - (b) any remuneration payable to a person appointed under clause 19(5);
 - (c) the costs of the appointment process under clause 19(5);
 - (d) any other costs incurred by the new board under clause 18.

[Clause 21 inserted: No. 9 of 2014 s. 35.]

22. Transitional regulations

- (1) Regulations (*transitional regulations*) may prescribe —
- (a) things to be done by the port authority, the new board or the MWPA to provide for, implement or facilitate the renaming; and
 - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the renaming.
- (2) Transitional regulations may provide that specific provisions of any written law —
- (a) do not apply to or in relation to any matter; or
 - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the renaming time, the regulations have effect according to their terms.

[Clause 22 inserted: No. 9 of 2014 s. 35.]

Subdivision 4 — Provisions for the Pilbara Ports Authority

[Heading inserted: No. 9 of 2014 s. 35.]

23. Terms used

In this Subdivision —

continuing authority means the Port Hedland Port Authority;

merger means —

- (a) the actions effected by the coming into operation of section 31(3) of the amending Act; and
- (b) the merging of the Dampier Port Authority into the PPA under clause 24(1);

merger time means the time at which section 31(3) of the amending Act comes into operation;

merging authority means the Dampier Port Authority;

new board means the board of directors established under clause 25(3);

PPA means the continuing authority as renamed as the Pilbara Ports Authority by operation of section 31(3)(b) of the amending Act;

transitional regulations has the meaning given in clause 36(1).

[Clause 23 inserted: No. 9 of 2014 s. 35.]

24. Merger of Dampier Port Authority into Pilbara Ports Authority

- (1) At the merger time the Dampier Port Authority ceases to be a port authority under this Act and merges into the PPA.
- (2) From the merger time the PPA is a continuation of the merging authority.

[Clause 24 inserted: No. 9 of 2014 s. 35.]

25. Directors and former directors

- (1) Immediately before the merger time a person then holding office as a director of the merging authority or the continuing authority ceases to hold that office.
- (2) From the merger time —
 - (a) a former director of the merging authority is to be taken to be a former director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*; and
 - (b) a former director of the continuing authority is a former director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.
- (3) The board of directors of the PPA may be established by the appointment of directors before the merger time.
- (4) For the purposes of Schedule 2 clause 1, the term of office of a director appointed under subclause (3) does not begin until the merger time.
- (5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

[Clause 25 inserted: No. 9 of 2014 s. 35.]

26. Powers of new board in anticipation of merger

- (1) The new board may —
 - (a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the merger; and
 - (b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48.
- (3) For the purposes of subclause (1) the new board may incur costs for which the continuing authority is liable.

[Clause 26 inserted: No. 9 of 2014 s. 35.]

27. CEOs and members of staff

- (1) Immediately before the merger time a person then holding office as the CEO of the continuing authority or the merging authority ceases to hold that office.
- (2) At the merger time, a person who was —
 - (a) the CEO of the continuing authority; or
 - (b) the CEO or a member of staff of the merging authority,immediately before the merger time becomes a member of staff of the PPA.
- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the merger time the continuing authority or the merging authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
 - (a) terminate the contract of employment of the CEO or member of staff; or
 - (b) arrange for and accept the resignation of the CEO or member of staff.

- (5) The powers of the new board under clause 26 include the power to appoint a person as the CEO of the PPA before the merger time.
- (6) Until the merger time a person appointed under subclause (5) may, as CEO of the PPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the merger.

[Clause 27 inserted: No. 9 of 2014 s. 35.]

28. Preservation of rights

- (1) Except as otherwise agreed by the relevant CEO or member of staff, the operation of clause 27(1) or (2) does not —
 - (a) affect his or her remuneration; or
 - (b) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of his or her service.
- (2) For the purposes of subclause (1)(d), the service of a CEO or member of staff with the merging authority is to be taken to have been with the PPA.
- (3) If a person who is the CEO or a member of staff of the continuing authority or the merging authority is appointed under clause 27(5), the appointment does not —
 - (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (b) affect any rights under a superannuation scheme; or
 - (c) interrupt the continuity of his or her service,

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

- (4) Nothing in clause 27 or this clause prevents the exercise by the PPA of its powers in relation to the management of members of staff.

[Clause 28 inserted: No. 9 of 2014 s. 35.]

29. Devolution of assets, liabilities, proceedings, remedies and immunities

- (1) At the merger time —
- (a) the assets and rights of the merging authority that were immediately before that time vested in or the property of the merging authority vest in or become the property of the PPA by force of this clause; and
 - (b) the liabilities of the merging authority immediately before that time become, by force of this clause, the liabilities of the PPA.
- (2) For the purposes of section 26, property referred to in section 25(2)(a) that becomes the property of the PPA by force of subclause (1)(a) continues to be regarded as property referred to in section 25(2)(a).
- (3) In determining the net profits of the PPA for the purposes of section 84, assets that become the property of the PPA by force of subclause (1)(a) are not to be regarded as income.
- (4) From the merger time, any proceedings or remedy that, immediately before that time, might have been brought or continued by or available against or to the merging authority may be brought or continued by, and are or is available against or to, the PPA.
- (5) Where the merging authority had the benefit of any immunity in respect of an act, matter or thing done or omitted before the merger time, that immunity continues in that respect for the benefit of the PPA.
- (6) As soon as is practicable after the merger time, all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of the merging authority are to be delivered to the PPA.

[Clause 29 inserted: No. 9 of 2014 s. 35.]

30. Completion of things commenced

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

[Clause 30 inserted: No. 9 of 2014 s. 35.]

31. Continuing effect of things done

- (1) In this clause —

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

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

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

[Clause 31 inserted: No. 9 of 2014 s. 35.]

32. Agreements, instruments and documents

- (1) In this clause —

former name means “Port Hedland Port Authority”;

new name means “Pilbara Ports Authority”;

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

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

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

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

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

- (b) the agreement or instrument has effect as if a reference in it to the PPA by its former name were amended to be a reference to the PPA by its new name.
- (5) A subsisting agreement, instrument or document that contains a reference to the merging authority has effect from the merger time as if that reference were amended to be or include a reference to the PPA.
- (6) Subclause (5) does not apply to an agreement or instrument to which the merging authority was a party.
- (7) A subsisting agreement or instrument to which the merging authority was a party has effect from the merger time as if —
 - (a) the PPA were substituted for the merging authority as a party to the agreement or instrument; and
 - (b) a reference to the merging authority in the agreement or instrument were amended to be a reference to the PPA.
- (8) Subclause (2), (4)(b), (5) or (7)(b) does not apply to a reference if —
 - (a) transitional regulations provide otherwise; or
 - (b) that application would be inappropriate in the context in which the reference occurs.

[Clause 32 inserted: No. 9 of 2014 s. 35.]

33. Port authorities to implement or facilitate merger and share costs

- (1) A port authority is to do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) Subclause (1) applies —
 - (a) before the merger time — to the merging authority and the continuing authority; and
 - (b) after the merger time — to the PPA.
- (3) The function conferred by subclause (1) is in addition to any other function that a port authority has.
- (4) The following amounts payable before the merger time are to be paid out of the funds of the continuing authority —

- (3) The constitution of the reporting board under subclause (2) has effect for a period of 3 months commencing at the merger time but that period may be extended by the Minister if the Minister considers that the extension is needed in order to enable the reporting board to perform its duties under this clause.
- (4) If the merger time coincides with the end of a financial year of the merging authority, the reporting board is to comply with the reporting provisions in respect of the merging authority for that financial year.
- (5) If the merger time is after the end of a financial year of the merging authority (the *last financial year*), the reporting board is to —
 - (a) comply with the reporting provisions in respect of the merging authority to the extent that those provisions have not been complied with for the last financial year; and
 - (b) comply with the reporting provisions in respect of the merging authority for the period starting from the end of the last financial year and ending at the merger time as if that period were a financial year.
- (6) The reporting board must comply with any written directions given to it by the Minister as to the performance of its duties under this clause.
- (7) In order to enable the reporting board to perform its duties under this clause the reporting provisions apply with —
 - (a) any modifications prescribed by transitional regulations; or
 - (b) any other appropriate modifications.
- (8) For the purposes of this clause, the reporting board —
 - (a) is entitled to be provided with reasonable assistance and facilities and to have full and free access at all reasonable times to all accounts, and any other information, documents and records, that the reporting board considers necessary for those purposes; and
 - (b) may make copies of, or take extracts from, any of those accounts, documents or records or make a record of any of that information.

- (9) A person who has possession of any accounts, information, documents or records of the kind referred to in subclause (8)(a) must at any reasonable time, on the request of the reporting board, produce any of those accounts, documents or records, or any of that information, specified in the request.
Penalty: a fine of \$10 000.
- (10) Subject to subclauses (11) to (13), the provisions of this Act that apply to the board of directors of a port authority and those directors (other than sections 7(1) and 8 and Schedule 2 clause 1(1), (3) and (4)) apply, with any modifications that may be necessary or appropriate, to the reporting board and its members.
- (11) The former directors of the merging authority are to hold office as members of the reporting board for as long as the reporting board remains constituted under subclause (2).
- (12) If the office of a member of the reporting board becomes vacant the Minister may appoint a replacement member to hold office for as long as the reporting board remains constituted under subclause (2).
- (13) Any remuneration or allowances payable to a member of the reporting board are to be paid from the funds of the PPA.
- (14) A member of the reporting board is to be taken to be a director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.

[Clause 34 inserted: No. 9 of 2014 s. 35.]

35. Dividends

- (1) In this clause —
dividend function means a function of a port authority or its board under section 84.
- (2) If immediately before the merger time a dividend function has yet to be performed by the merging authority or its board, the PPA or its board is to perform the function after the merger time as if the PPA were the merging authority.

- (3) If the merger time coincides with the end of a financial year of the merging authority, the PPA or its board is to perform the dividend functions in relation to that financial year as if the PPA were the merging authority.
- (4) Any amount that has to be paid to the Treasurer in accordance with subclause (2) or (3) is to be paid from the funds of the PPA.

[Clause 35 inserted: No. 9 of 2014 s. 35.]

36. Transitional regulations

- (1) Regulations (*transitional regulations*) may prescribe —
 - (a) things to be done by a port authority, or the new board, to provide for, implement or facilitate the merger; and
 - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the merger.
- (2) Transitional regulations may provide that specific provisions of any written law —
 - (a) do not apply to or in relation to any matter; or
 - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the merger time, the regulations have effect according to their terms.

[Clause 36 inserted: No. 9 of 2014 s. 35.]

Subdivision 5 — Provisions for the Kimberley Ports Authority

[Heading inserted: No. 9 of 2014 s. 35.]

37. Terms used

In this Subdivision —

KPA means the port authority as renamed as the Kimberley Ports Authority by operation of section 31(4) of the amending Act;

- (2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48 to the extent that they are relevant to the renaming.
- (3) For the purposes of subclause (1) the new board may incur costs for which the port authority is liable.

[Clause 39 inserted: No. 9 of 2014 s. 35.]

40. CEO and staff

- (1) Immediately before the renaming time a person then holding office as the CEO of the port authority ceases to hold that office.
- (2) At the renaming time, a person who was the CEO of the port authority immediately before the renaming time becomes a member of staff of the KPA.
- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the renaming time the port authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
 - (a) terminate the contract of employment of the CEO or member of staff; or
 - (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 39 include the power to appoint a person as the CEO of the KPA before the renaming time.
- (6) Until the renaming time a person appointed under subclause (5) may, as CEO of the KPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the renaming.
- (7) If a person who is the CEO or a member of staff of the port authority is appointed under subclause (5) the appointment does not —
 - (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or

- [Clause 40 inserted: No. 9 of 2014 s. 35.]*

(1) In this clause —

new name means “Kimberley Ports Authority”.

- [Clause 41 inserted: No. 9 of 2014 s. 35.]*

- (1) Anything that is prescribed by transitional regulations, and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming, is to be done —

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- page 93

- (b) after the renaming time — by the KPA.
- (2) The function conferred by subclause (1) is in addition to any other function that a port authority has.
- (3) The following amounts payable before the renaming time are to be paid out of the funds of the port authority —
 - (a) any remuneration or allowances payable to a director appointed under clause 38(3);
 - (b) any remuneration payable to a person appointed under clause 40(5);
 - (c) the costs of the appointment process under clause 40(5);
 - (d) any other costs incurred by the new board under clause 39.

[Clause 42 inserted: No. 9 of 2014 s. 35.]

43. Transitional regulations

- (1) Regulations (*transitional regulations*) may prescribe —
 - (a) things to be done by the port authority, the new board or the KPA to provide for, implement or facilitate the renaming; and
 - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the renaming.
- (2) Transitional regulations may provide that specific provisions of any written law —
 - (a) do not apply to or in relation to any matter; or
 - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the renaming time, the regulations have effect according to their terms.

[Clause 43 inserted: No. 9 of 2014 s. 35.]

[Heading inserted: No. 9 of 2014 s. 35.]

(1) In this clause —

(2) On commencement —

- [Clause 44 inserted: No. 9 of 2014 s. 35.]*

[Heading inserted: No. 9 of 2014 s. 35.]

In this Subdivision —

affecting provisions means —

- new board** has the meaning given in clause 2, 16, 23 or 37;

relevant officials means —

- As at 01 Jul 2023
[PCO 03-j0-02]

- (d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property;

State tax includes duty under the *Duties Act 2008* and any other tax under a written law;

transitional regulations has the meaning given in clause 15(1), 22(1), 36(1) or 43(1).

[Clause 45 inserted: No. 9 of 2014 s. 35.]

46. Exemption from State taxes

State tax is not payable in relation to —

- (a) anything that occurs by the operation of the affecting provisions; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Division, or to give effect to the affecting provisions, or for a purpose connected with or arising out of giving effect to the affecting provisions.

[Clause 46 inserted: No. 9 of 2014 s. 35.]

47. Registration of documents

The relevant officials are to take notice of the affecting provisions and are to record and register in the appropriate manner the documents necessary to show the effect of the affecting provisions.

[Clause 47 inserted: No. 9 of 2014 s. 35.]

48. Matters that a new board can deal with

The matters referred to in clauses 5(2), 18(2), 26(2) and 39(2) are —

- (a) staff issues including organisational structure, reporting accountabilities and employee roles and responsibilities;
- (b) preparation for staff transfer including confirmation of employee details and entitlements;
- (c) recruitment of staff if necessary;

- (h) development of any other plans that a port authority is required to have under any written law;
- (i) budgetary matters;
- (j) matters relating to the transfer of assets and liabilities including —
 - (i) asset and liability inventories;
 - (ii) valuation of assets and liabilities;
 - (iii) processes for transfer;
- (k) employment or engagement of persons to provide management, financial, legal or other services or advice.

[Clause 48 inserted: No. 9 of 2014 s. 35.]

49. Operation of transitional regulations

If transitional regulations contain a provision referred to in clause 15(3), 22(3), 36(3) or 43(3), the provision does not operate so as —

- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Clause 49 inserted: No. 9 of 2014 s. 35.]

50. Saving

- (1) The operation of any of the affecting provisions is not to be regarded —
 - (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
 - (c) as giving rise to any right to damages or compensation; or

- (d) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
- (e) as causing any contract or instrument to be void or otherwise unenforceable; or
- (f) as releasing or allowing the release of any surety.

- (2) This Division and transitional regulations are additional to any relevant provisions of the *Interpretation Act 1984*.

[Clause 50 inserted: No. 9 of 2014 s. 35.]

51. Government agreements not affected

- (1) The affecting provisions do not prejudice or in any way affect any right or obligation of a party to a Government agreement.
- (2) This clause does not limit or otherwise affect the operation of Schedule 6 clauses 1.3 and 2.3.

[Clause 51 inserted: No. 9 of 2014 s. 35.]

Division 2 — Provisions for *Ports Legislation Amendment Act 2019*

[Heading inserted: No. 2 of 2019 s. 51.]

Subdivision 1 — Preliminary

[Heading inserted: No. 2 of 2019 s. 51.]

52. Terms used

- (1) In this Division, unless the contrary intention appears —
 - affecting provisions*** means —
 - (a) the transfer provisions; and
 - (b) this Division and transitional regulations; and
 - (c) transitional orders and schedules referred to in transitional orders;
 - amending Act*** means the *Ports Legislation Amendment Act 2019*;

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

asset of the State includes, but is not limited to, property vested in or acquired by the Transport Minister for the purposes of a Marine Act;

existing S&P Act port, in relation to a port named in a transfer provision, means —

- (a) in the case of a port named in section 50(1)(a) or (b) of the amending Act — the Port of Carnarvon as declared before the transfer time under the *Shipping and Pilotage Act 1967* section 10(1); or
- (b) in the case of a port named in any other transfer provision — the port with that name as declared before the transfer time under the *Shipping and Pilotage Act 1967* section 10(1);

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

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

liability of the State includes, but is not limited to, a liability incurred by the Transport Minister for the purposes of a Marine Act;

Marine Act means the *Jetties Act 1926*, the *Lights (Navigation Protection) Act 1938*, the *Marine and Harbours Act 1981*, the *Marine Navigational Aids Act 1973* or the *Shipping and Pilotage Act 1967*;

port transfer or **transfer**, in relation to a port, means —

- (a) the placement of the port under the control and management of a port authority by the insertion of the port in column 3 of an item in Schedule 1 by a transfer provision; and
- (b) the cessation of the existing S&P Act port as a port for the administration and operation of which the Transport Department is responsible by force of clause 56;

Transport Minister means the Minister administering the Marine Acts and includes —

- (a) that Minister as a body corporate under the *Marine and Harbours Act 1981* section 8; and
 - (b) a delegate of that Minister under a Marine Act.
- (2) A reference in this Division to an agreement, instrument or document does not include a reference to a Government agreement.

[Clause 52 inserted: No. 2 of 2019 s. 51.]

Subdivision 2 — Transfer of control and management of some existing ports to port authorities

[Heading inserted: No. 2 of 2019 s. 51.]

53. Terms used

- (1) In this Subdivision, unless the contrary intention appears —
- Agreements Minister** means the Minister administering the *Government Agreements Act 1979*;
- port** means the port named in a transfer provision;
- port authority** means the port authority under the control and management of which a port is placed by a port transfer.
- (2) A reference in another clause of this Subdivision to **this Subdivision** includes a reference to —
- (a) transitional regulations relating to a port transfer; and
 - (b) transitional orders and schedules referred to in transitional orders.

[Clause 53 inserted: No. 2 of 2019 s. 51.]

54. Port transfer: preliminary requirements

- (1) Before the transfer time of a port transfer, an order is to be made and published under section 24(1) describing the area or areas of which the port is to consist.
- (2) An area described in the order referred to in subclause (1) may be —
- (a) land; or

56. Cessation of responsibility for port

At the transfer time of a port transfer the existing S&P Act port ceases to be a port for the administration and operation of which the Transport Minister and Transport Department are responsible under the *Marine and Harbours Act 1981*.

[Clause 56 inserted: No. 2 of 2019 s. 51.]

57. Vesting of land, seabed and water in port authority

- (1) At the transfer time of a port transfer the following are vested in the port authority for the purposes of this Act —
 - (a) all land, seabed and water in the area or areas described in the order made and published for the port as required by clause 54(1);
 - (b) all fixtures on land or seabed referred to in paragraph (a) that belong to the State.
- (2) The operation of subclause (1) is subject to clauses 60(4) and 62(1).
- (3) Subclause (1) displaces the operation that section 25(1) would otherwise have had in relation to the port transfer.

[Clause 57 inserted: No. 2 of 2019 s. 51.]

58. Minister may make transitional orders

- (1) To provide for, implement or facilitate a port transfer, the Minister may make and publish in the *Gazette* before the transfer time of the port transfer one or more orders that —
 - (a) specify assets of the State that are to vest in, or become the property of, the port authority in addition to anything mentioned in clause 57(1); and
 - (b) specify liabilities of the State that are to become liabilities of the port authority; and
 - (c) specify anything that is not to vest in the port authority under clause 57(1); and
 - (d) specify any agreement or instrument in which the port authority, or the CEO, is to be substituted, in accordance with

- the order, for the State, the Transport Minister or the Transport CEO as a party; and
- (e) specify any agreement, instrument or document that is to have effect as if references to the port authority, or the CEO or a member of staff, were substituted, in accordance with the order, for references in it to the State, the Transport Minister, the Transport Department or the Transport CEO (however expressed); and
 - (f) specify any agreement, instrument or document that is to have effect as if references to this Act or a provision of this Act were substituted, in accordance with the order, for references in it to another enactment; and
 - (g) in the case of a port named in section 50(1)(a) or (b) of the amending Act, specify any agreement, instrument or document that is to have effect as if references to the port were substituted, in accordance with the order, for references in it to the existing S&P Act port; and
 - (h) specify proceedings in which the port authority is to be substituted, in accordance with the order, for the State or the Transport Minister as a party.
- (2) In a transitional order an asset of the State may be specified under subclause (1)(a) if the Minister considers that the asset —
- (a) relates to, or was used in connection with, the administration or operation of the existing S&P Act port; and
 - (b) should vest in, or become the property of, the port authority; and
 - (c) will not or might not otherwise be vested in the port authority under clause 57(1).
- (3) In a transitional order a liability of the State may be specified under subclause (1)(b) if the Minister considers that the liability —
- (a) relates to, or arose in connection with, the administration or operation of the existing S&P Act port; and
 - (b) should become a liability of the port authority.
- (4) A transitional order may —
- (a) deal with incidental or supplementary matters; and

- (b) clarify, or remove doubt as to, the operation of this Subdivision in relation to any specified matter or thing, and has effect accordingly.
- (5) A transitional order may specify things by reference to schedules which —
 - (a) need not be published in the *Gazette*; but
 - (b) must be available for public inspection,and anything specified in a schedule is to be taken to be specified in the order.
- (6) A thing may be specified in a transitional order by describing the class to which it belongs.
- (7) Before a transitional order is made, the Transport CEO is to consult with the port authority as to the form and content of the order and any schedule to which it refers.
- (8) Before a transitional order is made specifying anything by reference to a schedule, the Transport CEO is to consult with the relevant officials as to the form and content of the schedule.
- (9) The Minister must obtain the written concurrence of the Agreements Minister before making a transitional order relating to a port named in section 50(1)(a) or (b) or (2)(a), (b), (c) or (e) of the amending Act.
- (10) The Minister is to cause a copy of each transitional order and any schedule to which it refers to be delivered to the port authority and each relevant official.

[Clause 58 inserted: No. 2 of 2019 s. 51.]

59. Amending transitional order

- (1) The Minister may, by order published in the *Gazette* before or after the transfer time, make any provision that the Minister considers to be needed in order to —
 - (a) correct any error or omission in a transitional order or a schedule to which a transitional order refers; or
 - (b) clarify, or remove doubt as to, the operation of a transitional order; or

transferred liabilities, in relation to a port transfer, means liabilities that become liabilities of the port authority under subclause (3)(b).

- (2) This clause applies if a transitional order is made in relation to a port transfer.
- (3) At the transfer time of the port transfer by force of this clause —
 - (a) assets specified in the transitional order under clause 58(1)(a) vest in, or become the property of, the port authority in accordance with the order; and
 - (b) liabilities specified in the transitional order under clause 58(1)(b) become liabilities of the port authority.
- (4) By force of this clause, anything specified in the transitional order under clause 58(1)(c) does not vest in the port authority under clause 57(1).
- (5) At the transfer time of the port transfer any right of the State in relation to transferred assets or transferred liabilities becomes by force of this clause a right of the port authority.
- (6) From the transfer time of the port transfer by force of this clause —
 - (a) any proceedings or remedy that might have been commenced by, or available against or to, the State or the Transport Minister in relation to transferred assets or transferred liabilities may be commenced by, or are available against or to, the port authority; and
 - (b) anything commenced to be done before the transfer time in relation to transferred assets or transferred liabilities by the State, the Transport Minister or the Transport Department may be continued by the port authority; and
 - (c) anything done or omitted to be done in relation to transferred assets or transferred liabilities before the transfer time by, to or in respect of the State, the Transport Minister or the Transport Department (to the extent that that thing has any effect) is to be taken to have been done or omitted by, to or in respect of the port authority.
- (7) In determining the net profits of the port authority for the purposes of section 84, transferred assets are not to be regarded as income.

- (8) If at the transfer time of the port transfer a transferred asset or transferred liability is not properly assigned to the port authority by the operation of this Subdivision (whether because the matter is governed otherwise than by the law of the State or for any other reason) —
- (a) the State is to be taken to continue to hold that transferred asset or be liable for that transferred liability until it is effectively assigned to the port authority; and
 - (b) the Transport Department is to take all practicable steps for the purpose of ensuring that the transferred asset or transferred liability is effectively assigned to the port authority.
- (9) The fact that subclause (8)(a) applies to a transferred asset or transferred liability does not affect a duty imposed by section 90(2).
- (10) By force of this clause, any previous vesting of a transferred asset under another written law ceases to have effect at the transfer time of the port transfer.

[Clause 60 inserted: No. 2 of 2019 s. 51.]

61. Provisions as to agreements and proceedings

- (1) If a transitional order is made in relation to a port transfer then, by force of this clause —
- (a) at the transfer time of the port transfer the port authority is substituted in accordance with the order for the State or the Transport Minister as a party to an agreement or instrument specified in the order under clause 58(1)(d); and
 - (b) from the transfer time of the port transfer an agreement, instrument or document specified in the order under clause 58(1)(e) has effect as if references to the port authority or the CEO or a member of staff were, at the transfer time, substituted in accordance with the order for references in it to the State, the Transport Minister, the Transport Department or the Transport CEO (however expressed); and
 - (c) from the transfer time of the port transfer an agreement, instrument or document specified in the order under clause 58(1)(f) has effect as if references to this Act or a

provision of this Act were, at the transfer time, substituted in accordance with the order for references in it to another enactment; and

- (d) from the transfer time of the port transfer an agreement, instrument or document specified in the order under clause 58(1)(g) has effect as if references to the port were, at the transfer time, substituted in accordance with the order for references in it to the existing S&P Act port; and
 - (e) at the transfer time of the port transfer the port authority is substituted in accordance with the order for the State or the Transport Minister as a party to proceedings specified in the order under clause 58(1)(h).
- (2) If subclause (1)(a) applies to an easement, lease or licence in respect of land that becomes vested land at the transfer time of the port transfer, from the transfer time the easement, lease or licence is to be taken to have been granted under this Act with any approval needed under this Act.
- (3) Subclause (2) has effect even if a lease or licence was granted for a period exceeding 50 years.

[Clause 61 inserted: No. 2 of 2019 s. 51.]

62. Navigational aids

- (1) Clause 57(1) does not apply to navigational aids.
- (2) Without limiting clause 58(2), a navigational aid in, or used in connection with, the existing S&P Act port may be vested in the port authority by a transitional order.

[Clause 62 inserted: No. 2 of 2019 s. 51.]

63. Harbour masters and deputy harbour masters

- (1) In this clause —
deputy harbour master of the port means a person appointed under the *Shipping and Pilotage Act 1967* section 7A to be a deputy harbour master;

harbour master has the meaning given in paragraph (a) or (b) of the definition of **harbour master** in the *Shipping and Pilotage Act 1967* section 3.

- (2) At the transfer time the appointment of any person who was the harbour master or a deputy harbour master of the existing S&P Act port immediately before the transfer time is revoked by force of this clause.
- (3) This clause does not apply to the harbour master or a deputy harbour master of the Port of Derby.

[Clause 63 inserted: No. 2 of 2019 s. 51.]

64. Pilotage: existing licences

- (1) In this clause —
condition includes restriction;
controlled area has the meaning given in the *Shipping and Pilotage Act 1967* section 3.
- (2) From the transfer time of a port transfer, a person who, immediately before the transfer time, held a licence under the *Shipping and Pilotage Act 1967* to act as a pilot for the existing S&P Act port (the *licence*) is to be taken to have the approval of the port authority under section 96(1) as a pilot for the port (the *transitional approval*).
- (3) The effect that the transitional approval has by force of subclause (2) extends to any place within the boundaries of the port or within an area referred to in section 95(2) outside the port as long as that place was, immediately before the transfer time, within the boundaries of the existing S&P Act port or within a controlled area outside the existing S&P Act port.
- (4) The effect that the transitional approval has by force of subclause (2) is subject to any condition to which the licence was subject immediately before the transfer time and to any other condition imposed under the regulations.
- (5) The transitional approval continues to have effect until —
 - (a) the period for which the licence would have had effect ends;
 - or

- (b) the transitional approval is revoked under section 96(2); or
 - (c) the person concerned is approved as a pilot for the port under section 96(1); or
 - (d) the period of 2 years beginning at the transfer time ends,
- whichever occurs first.
- (6) Without limiting clause 70(1), its provisions apply if a transitional approval is revoked under section 96(2).
 - (7) This clause does not apply to a person if, before the transfer time, the person is approved as a pilot for the port under section 96(1) in accordance with clause 55(1) or the *Interpretation Act 1984* section 25.

[Clause 64 inserted: No. 2 of 2019 s. 51.]

65. Pilotage: existing exemption certificates

- (1) In this clause —
condition includes restriction;
controlled area has the meaning given in the *Shipping and Pilotage Act 1967* section 3;
S&P Act certificate means a pilotage exemption certificate issued under the *Shipping and Pilotage Act 1967*.
- (2) From the transfer time of a port transfer, an S&P Act certificate for the existing S&P Act port in force immediately before the transfer time (the **existing certificate**) is to be taken to be a pilotage exemption certificate in respect of the port issued under the regulations (the **transitional certificate**).
- (3) The effect that the transitional certificate has by force of subclause (2) extends to any place within the boundaries of the port or within an area referred to in section 95(2) outside the port as long as that place was, immediately before the transfer time, within the boundaries of the existing S&P Act port or within a controlled area outside the existing S&P Act port.

- (4) The effect that the transitional certificate has by force of subclause (2) is subject to any condition to which the existing certificate was subject immediately before the transfer time and to any other condition imposed under the regulations.
- (5) The transitional certificate continues to have effect until —
- (a) the transitional certificate expires under the regulations; or
 - (b) the transitional certificate is revoked under the regulations; or
 - (c) a pilotage exemption certificate in respect of the port is issued to the holder of the transitional certificate under the regulations; or
 - (d) the period of 2 years beginning at the transfer time ends,
- whichever occurs first.
- (6) Without limiting clause 70(1), its provisions apply if a transitional certificate is revoked under the regulations.
- (7) This clause does not apply to an S&P Act certificate if, before the transfer time, a pilotage exemption certificate in respect of the port is issued to the holder of the S&P Act certificate under the regulations in accordance with clause 55(1) or the *Interpretation Act 1984* section 25.

[Clause 65 inserted: No. 2 of 2019 s. 51.]

66. Jetty licences

- (1) In this clause —
- continued licence*** means a jetty licence to which subclause (9) applies;
- converted licence*** means a jetty licence to which subclause (5) applies;
- existing jetty*** means a jetty that, immediately before the transfer time of a port transfer, was wholly or partly within the boundaries of the existing S&P Act port or was used in connection with the operation of the existing S&P Act port;
- jetty*** has the meaning given in the *Jetties Act 1926* section 3;

jetty licence means a licence granted under the *Jetties Act 1926*;

licensee includes sub-licensee.

- (2) Subject to subclause (3) if —
- (a) immediately before the transfer time of a port transfer, an existing jetty was the subject of a jetty licence; and
 - (b) from the transfer time the existing jetty is wholly on port land,
- subclause (5) applies to the jetty licence.
- (3) If the port is a port named in section 50(1)(a) or (b) or (2)(a), (b), (c) or (e) of the amending Act, subclause (5) does not apply to the jetty licence unless transitional regulations provide that it does.
- (4) Regulations cannot be made for subclause (3) except with the written concurrence of the Agreements Minister.
- (5) If this subclause applies to a jetty licence —
- (a) at the transfer time the licence ceases to be a licence under the *Jetties Act 1926*; and
 - (b) at the transfer time the port authority is substituted for the Transport Minister or the Transport CEO (as the case may be) as the grantor of the licence; and
 - (c) from the transfer time the licence is to be taken to have been granted under this Act with any approval needed under this Act even if the licence was granted for a period exceeding 50 years.
- (6) Subject to subclause (7) if, immediately before the transfer time of a port transfer, an existing jetty was the subject of a jetty licence, transitional regulations may prescribe that subclause (9) applies to the jetty licence.
- (7) If the port is a port named in section 50(1)(a) or (b) or (2)(a), (b), (c) or (e) of the amending Act, transitional regulations cannot be made for subclause (6) except with the written concurrence of the Agreements Minister.

Subdivision 3 — General provisions

[Heading inserted: No. 2 of 2019 s. 51.]

67. Registration of documents

The relevant officials are to take notice of the affecting provisions and are to record and register in the appropriate manner the documents necessary to show the effect of the affecting provisions.

[Clause 67 inserted: No. 2 of 2019 s. 51.]

68. Exemption from State taxes

(1) In this clause —

State tax includes duty under the *Duties Act 2008* and any other tax under a written law.

(2) State tax is not payable in relation to —

- (a) anything that occurs by force or because of the affecting provisions; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Division, or to give effect to the affecting provisions, or for a purpose connected with or arising out of giving effect to the affecting provisions.

[Clause 68 inserted: No. 2 of 2019 s. 51.]

69. Transitional regulations

(1) Regulations (*transitional regulations*) may prescribe —

- (a) things to be done by a Minister, the Transport Department, the Transport CEO or a port authority, to provide for, implement or facilitate a port transfer; and
- (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to a port transfer.

(2) Transitional regulations may provide that specific provisions of any written law —

- (a) do not apply to or in relation to any matter; or

- (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations relating to a port transfer provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the transfer time, the regulations have effect according to their terms.
- (4) If transitional regulations contain a provision referred to in subclause (3), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Clause 69 inserted: No. 2 of 2019 s. 51.]

70. Saving

- (1) The operation of any of the affecting provisions is not to be regarded —
 - (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
 - (c) as giving rise to any right to damages or compensation; or
 - (d) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
 - (e) as causing any contract or instrument to be void or otherwise unenforceable; or
 - (f) as releasing or allowing the release of any surety.

- (2) This Division and transitional regulations are additional to any relevant provisions of the *Interpretation Act 1984*.

[Clause 70 inserted: No. 2 of 2019 s. 51.]

71. Effect of affecting provisions

Subject to clauses 74 and 75, the affecting provisions have effect despite any provision of this Act or another written law.

[Clause 71 inserted: No. 2 of 2019 s. 51.]

72. No exclusion of operation of affecting provisions

A provision of an agreement or instrument that purports to in any way exclude the agreement or instrument from the operation of future legislation has no effect in relation to the affecting provisions.

[Clause 72 inserted: No. 2 of 2019 s. 51.]

73. Effect of continued easements, leases and licences

- (1) This clause applies if under clause 61(2) or 66(5) an easement, lease or licence is to be taken, from the transfer time of a port transfer, to have been granted under this Act.
- (2) The rights and powers that the grantee, lessee or licensee had under the easement, lease or licence before the transfer time are not adversely affected except to the extent (if any) requested or agreed under subclause (3).
- (3) The port authority may, at the request or with the agreement of the grantee, lessee or licensee, renew or vary the easement, lease or licence under this Act.
- (4) Subclause (2) does not affect the operation of clause 66(9) or (10).

[Clause 73 inserted: No. 2 of 2019 s. 51.]

74. Government agreements not affected

The affecting provisions do not prejudice or in any way affect any right or obligation of a party to a Government agreement.

[Clause 74 inserted: No. 2 of 2019 s. 51.]

75. Preservation of mining, petroleum and other rights

- (1) In this clause —
authorisation means —
- (a) a mining tenement as defined in the *Mining Act 1978* section 8(1); or
 - (b) an authority to occupy or right of occupancy of any land to which the *Mining Act 1978* Second Schedule clause 1(1) applies; or
 - (c) an exploration licence, retention licence, mining licence, works licence, special purpose consent or other right under the *Offshore Minerals Act 2003*; or
 - (d) a drilling reservation, lease, licence, permit, pipeline licence, special prospecting authority, access authority or other right under the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982*; or
 - (e) any other authorisation of a kind provided for under a written law and prescribed for this paragraph by transitional regulations.
- (2) Without limiting clause 74, the affecting provisions as they apply to a port transfer do not —
- (a) prejudice or in any way affect an authorisation in effect before the transfer time; or
 - (b) prejudice or in any way affect any right or obligation of a person under an authorisation in effect before the transfer time; or
 - (c) prevent an application for an authorisation made but not disposed of before the transfer time from being dealt with after the transfer time; or
 - (d) prejudice or in any way affect the manner in which an application mentioned in paragraph (c) is dealt with after the transfer time.

[Clause 75 inserted: No. 2 of 2019 s. 51.]

76. Transitional provision for Schedule 9

If a transfer provision has not come into operation, the reference in the definition of *unassigned port* in Schedule 9 clause 1 to a port named in Schedule 1 includes a reference to the existing S&P Act port for the port named in that transfer provision.

[Clause 76 inserted: No. 2 of 2019 s. 51.]

Schedule 9 — Placing additional ports under a port authority's control and management

[s. 4(2A)(b)]

[Heading inserted: No. 9 of 2014 s. 36.]

1. Terms used

In this Schedule —

Government agreement has the meaning given in Schedule 8 clause 1;

port addition means the placing of a port under the control and management of a port authority by regulations referred to in clause 2(1), whether or not those regulations have come into operation;

unassigned port means a port that —

- (a) is not named in Schedule 1; and
- (b) has not been placed under the control and management of a port authority by regulations in accordance with this Schedule.

[Clause 1 inserted: No. 9 of 2014 s. 36; amended: No. 2 of 2019 s. 52(1)-(3).]

2. Regulations may place a port under the control and management of a port authority

- (1) Regulations may place an unassigned port specified in the regulations under the control and management of a port authority specified in the regulations.
- (2) Regulations may prescribe any matter that may be necessary or expedient to provide for, implement or facilitate a port addition.
- (3) Without limiting subclause (2) regulations may —
 - (a) vest land, seabed, water or other property in a port authority or otherwise provide for the vesting of, land, seabed, water or other property in a port authority; and

cl. 3

- (b) specify liabilities of the State that are to become liabilities of a port authority or otherwise provide for liabilities of the State to become liabilities of a port authority; and
- (c) displace the operation of section 25(1) in relation to a port addition.

[Clause 2 inserted: No. 9 of 2014 s. 36; amended: No. 2 of 2019 s. 52(4) and (5).]

3. Port authority to implement or facilitate port addition

- (1) If a port addition places, or will place, a port under the control and management of a port authority, the port authority is to do anything that is prescribed by regulations referred to in clause 2 and anything else that may be necessary or expedient to provide for, implement or facilitate the port addition.
- (2) The function conferred on a port authority by subclause (1) is in addition to any other function that it has.

[Clause 3 inserted: No. 9 of 2014 s. 36.]

4. Government agreements not affected

- (1) The provisions of this Schedule or regulations referred to in this Schedule do not prejudice or in any way affect any right or obligation of a party to a Government agreement.
- (2) This clause does not limit or otherwise affect the operation of Schedule 6 clauses 1.3 and 2.3.

[Clause 4 inserted: No. 9 of 2014 s. 36.]

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Notes

This is a compilation of the *Port Authorities Act 1999* and includes amendments made by other written laws^{2,3}. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Port Authorities Act 1999</i>	22 of 1999	29 Jun 1999	s. 1 and 2: 29 Jun 1999; Act other than s. 1 and 2 and Sch. 1 it. 2: 14 Aug 1999 (see s. 2 and <i>Gazette</i> 13 Aug 1999 p. 3823); Sch. 1 it. 2: 1 Jan 2000 (see s. 2 and <i>Gazette</i> 24 Dec 1999 p. 6871)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 58	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(1) and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 45	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth. <i>Gazette</i> 13 Jul 2001 No. S285)
<i>Labour Relations Reform Act 2002</i> s. 23	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Port Authorities (Act Amendment) Regulations 2003</i> published in <i>Gazette</i> 4 Mar 2003 p. 711-22			4 Mar 2003
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 11 ⁴	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and Cwlth. <i>Gazette</i> 24 Oct 2001 No. GN42)
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003</i> r. 12 published in <i>Gazette</i> 15 Aug 2003 p. 3685-92			15 Sep 2003 (see r. 2)

Port Authorities Act 1999**Notes**

Compilation table

Short title	Number and year	Assent	Commencement
<i>Ports and Marine Legislation Amendment Act 2003 Pt. 2</i> ¹	71 of 2003	15 Dec 2003	s. 5 and 6: 14 Aug 1999 (see s. 2(2)); s. 4, 8 and 9: 15 Dec 2003 (see s. 2(1)); s. 7: 14 Feb 2004 (see s. 2(3) and <i>Gazette</i> 13 Feb 2004 p. 537)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 93</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Criminal Code Amendment Act 2004 s. 58</i>	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Dangerous Goods Safety Act 2004 s. 70</i>	7 of 2004	10 Jun 2004	1 Mar 2008 (see s. 2 and <i>Gazette</i> 29 Feb 2008 p. 669)
Reprint 1: The Port Authorities Act 1999 as at 1 Oct 2004 (includes amendments listed above except those in the <i>Dangerous Goods Safety Act 2004</i>)			
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4, 5(1), 11 and Sch. 1 cl. 131</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
Reprint 2: The Port Authorities Act 1999 as at 4 Jul 2008 (includes amendments listed above)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 102</i>	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Statutes (Repeals and Minor Amendments) Act 2009 s. 17</i>	46 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(b))
<i>Public Sector Reform Act 2010 s. 81 and 89</i>	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)

Short title	Number and year	Assent	Commencement
<i>Building Act 2011</i> s. 169	24 of 2011	11 Jul 2011	2 Apr 2012 (see s. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033)
Reprint 3: The Port Authorities Act 1999 as at 7 Sep 2012 (includes amendments listed above)			
<i>Ports Legislation Amendment Act 2014</i>	9 of 2014	20 May 2014	Heading to Pt. 2, s. 3, 4(3), 5(1), 7(1), 10, 28(1), 29, 30, 32 and 35: 21 May 2014 (see s. 2(1)(b)); s. 4(1) and (2), 6, 7(2), 8, 9, 11-27 and 33: 31 May 2014 (see s. 2(1)(c) and <i>Gazette</i> 30 May 2014 p. 1680); s. 4(4), 5(2), 28(2), 31(2)-(4), 34 and 36: 1 July 2014 (see s. 2(1)(c) and (2) and <i>Gazette</i> 20 Jun 2014 p. 2023); s. 31(1): 1 Oct 2014 (see s. 2(1)(c) and <i>Gazette</i> 19 Sep 2014 p. 3329)
<i>Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2016</i> Pt. 3 Div. 4	46 of 2016	7 Dec 2016	8 Dec 2016 (see s. 2(b))
<i>Ports Legislation Amendment Act 2019</i> Pt. 6 (other than s. 50(1) and (2)(a)-(c) and (e))	2 of 2019	26 Feb 2019	Pt. 6 (other than s. 50): 27 Feb 2019 (see s. 2(b)); s. 50(2)(d) and (3): 1 Jul 2021 (see s. 2(e) and SL 2021/50 cl. 2)
<i>Government Trading Enterprises Act 2023</i> Pt. 12 Div. 5	13 of 2023	22 Jun 2023	1 Jul 2023 (see s. 2(b) and SL 2023/89 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Ports Legislation Amendment Act 2019</i> s. 50(1) and (2)(a)-(c) and (e)	2 of 2019	26 Feb 2019	To be proclaimed (see s. 2(e))

Other notes

¹ The *Ports and Marine Legislation Amendment Act 2003* s. 4(2) reads as follows:

- (2) The amendment made by subsection (1) does not affect the operation of the *Port Authorities (Withdrawal and Revesting of Property) Order 2000* published in the *Gazette* on 2 June 2000.

² The *Port Authorities (Consequential Provisions) Act 1999* s. 3 and Pt. 3 have interpretation and transitional provisions.

³ The amendment in the *State Superannuation Amendment Act 2007* s. 84 is not included because it was repealed by the *State Superannuation Amendment Act 2011* s. 4 before the amendment purported to come into operation.

⁴ The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 contain validation provisions.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
affecting provisions.....	Sch. 8 cl. 45 and 52(1)
agreement.....	Sch. 8 cl. 1
Agreements Minister.....	Sch. 8 cl. 53(1)
amending Act.....	Sch. 8 cl. 1 and 52(1)
approved	95(1)
area.....	24(3)
asset.....	Sch. 8 cl. 1 and 52(1)
asset of the State	Sch. 8 cl. 52(1)
authorisation.....	Sch. 8 cl. 75(1)
authorised officer	114A(2)
authorised person	123
business arrangement.....	35(9)
channel.....	3(1)
commencement	Sch. 8 cl. 44(1)
Company.....	Sch. 6 cl. 1.2
condition	Sch. 8 cl. 64(1) and 65(1)
consultation committee	14A(1)
continued licence	Sch. 8 cl. 66(1)
continuing authority	Sch. 8 cl. 2 and 23
control	3(1)
controlled area.....	Sch. 8 cl. 64(1) and 65(1)
converted licence	Sch. 8 cl. 66(1)
Crown land.....	3(1)
damage.....	3(1)
Dampier Solar Salt Industry Agreement.....	Sch. 6 cl. 1.2
dangerous thing.....	3(1)
deputy harbour master.....	Sch. 8 cl. 63(1)
dividend function	Sch. 8 cl. 14(1) and 35(1)
eligible person.....	102(1)
existing certificate.....	Sch. 8 cl. 65(2)
existing jetty.....	Sch. 8 cl. 66(1)
existing S&P Act port	Sch. 8 cl. 52(1)
former directors.....	Sch. 8 cl. 13(1) and 34(1)
former name	Sch. 8 cl. 11(1), 20(1), 32(1) and 41(1)
goods.....	3(1)
Government agreement.....	Sch. 8 cl. 1 and 52(1), Sch. 9 cl. 1
GTE Act.....	3(1)
harbour master	3(1), Sch. 8 cl. 63(1)
Iron Ore (Hamersley Range) Agreement	Sch. 6 cl. 1.2

Defined terms

jetty	3(1), Sch. 8 cl. 66(1)
jetty licence	Sch. 8 cl. 66(1)
Joint Venturers	Sch. 6 cl. 1.2
KPA	Sch. 8 cl. 37
last financial year	Sch. 8 cl. 13(5) and 34(5)
liability	Sch. 8 cl. 1 and 52(1)
liability of the State	Sch. 8 cl. 52(1)
licence	Sch. 8 cl. 64(2)
licensee	Sch. 8 cl. 66(1)
management	3(1)
Marine Act	Sch. 8 cl. 52(1)
marine safety plan	114(1)
maritime structure	3(1)
master	3(1)
members of staff	19(3), 21(4)
merger	Sch. 8 cl. 2 and 23
merger time	Sch. 8 cl. 2 and 23
merging authority	Sch. 8 cl. 2 and 23
mooring	3(1)
movement	3(1)
MWPA	Sch. 8 cl. 16
navigational aid	3(1)
new board	Sch. 8 cl. 2, 16, 23, 37 and 45
new name	Sch. 8 cl. 11(1), 20(1), 32(1) and 41(1)
North West Gas Development (Woodside) Agreement	Sch. 6 cl. 1.2
owner	3(1), 105(1)
participate	35(9)
port	3(1), Sch. 6 cl. 2.8, Sch. 8 cl. 53(1)
port activities	3(1), 35(9)
port addition	Sch. 9 cl. 1
port authority	3(1), 38(1), 123, Sch. 8 cl. 16, 37 and 53(1)
port charges	3(1), 115(1)
port facilities	3(1)
port land	3(1)
port operations	3(1)
port property	3(1)
port security	3(1)
port services	3(1), 35(9)
port transfer	Sch. 8 cl. 52(1)
port works	3(1), 35(9)
potential supplier	3(1)
PPA	Sch. 8 cl. 23
prescribed thing	113(1A)
relevant act	Sch. 8 cl. 10(1) and 31(1)

relevant official	Sch. 8 cl. 52(1)
relevant officials	Sch. 8 cl. 45
renaming	Sch. 8 cl. 16 and 37
renaming time	Sch. 8 cl. 16 and 37
renew.....	Sch. 8 cl. 52(1)
reporting board,.....	Sch. 8 cl. 13(1)
reporting board.....	Sch. 8 cl. 34(1)
reporting provisions	Sch. 8 cl. 13(1) and 34(1)
requirement under this Act.....	Sch. 8 cl. 52(1)
right.....	Sch. 8 cl. 1 and 52(1)
Salt Company.....	Sch. 6 cl. 1.2
sell.....	27(3)
SPA.....	Sch. 8 cl. 2
S&P Act certificate	Sch. 8 cl. 65(1)
State tax	Sch. 8 cl. 45 and 68(1)
subsisting	Sch. 8 cl. 11(1) and 32(1)
this Subdivision.....	Sch. 8 cl. 53(2)
transfer	Sch. 8 cl. 52(1)
transfer provision	Sch. 8 cl. 52(1)
transferred assets	Sch. 8 cl. 60(1)
transferred liabilities	Sch. 8 cl. 60(1)
transfer time	Sch. 8 cl. 52(1)
transitional approval.....	Sch. 8 cl. 64(2)
transitional certificate.....	Sch. 8 cl. 65(2)
transitional order	Sch. 8 cl. 52(1)
transitional regulations.....	Sch. 8 cl. 2, 15(1), 16, 22(1), 23, 36(1), 37, 43(1), 45, 52(1) and 69(1)
Transport CEO.....	Sch. 8 cl. 52(1)
Transport Department	Sch. 8 cl. 52(1)
Transport Minister	Sch. 8 cl. 52(1)
unassigned port	Sch. 9 cl. 1
under compulsory pilotage.....	95(1)
vessel.....	3(1)
vested	3(1)
vested land	3(1)

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