

Western Australia

Dampier Port Authority Act 1985

As at 15 Dec 1997

Version 00-k0-03

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Dampier Port Authority Act 1985

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Schedule III

Notes

Western Australia

Dampier Port Authority Act 1985

An Act to establish the Dampier Port Authority, to provide for the control and management of the Port of Dampier and to amend section 10 of the *Shipping and Pilotage Act 1967*, and for matters incidental thereto or connected therewith.

[Assented to 20 May 1985]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows: —

Part I — Preliminary

1. Short title

This Act may be cited as the *Dampier Port Authority Act 1985*.

2. Commencement

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

3. Interpretation

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

“**appointed member**” means member other than the member referred to in section 8 (1) (d);

“**Chairman**” means Ministerial member appointed under section 8 (2) to be Chairman of the Port Authority;

“**collector of port charges**” means officer or employee or other person for the time being authorized under section 55 to collect port charges on behalf of the Port Authority;

“**Company member**” means —

(a) member appointed under section 8 (1) (a) or his deputy; or

(b) person appointed under section 8 (5) in default of a nomination for appointment as the Company member by the Company;

“**Dampier Solar Salt Industry Agreement**” means 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;

“**debentures**” means debentures referred to in section 65;

“**deputy**” means person appointed under section 10 to be the deputy of a member;

“**employee**” means employee appointed under section 17 (1);

“General Manager” means person for the time being holding or acting in the office of General Manager under section 17;

“goods” includes —

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

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

“inscribed stock” means inscribed stock referred to in section 65;

“Iron Ore (Hamersley Range) Agreement” means 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 member” means —

- (a) member appointed under section 8 (1) (b) or his deputy; or
- (b) person appointed under section 8 (5) in default of a nomination for appointment as the Joint Venturers member by the Joint Venturers;

“marine navigational aid” means lighthouse, light ship, port light, buoy, beacon, sign, signal or other structure, mark, device or apparatus that is or is intended to be an aid to marine navigation, and includes radio beacon or electronic aid;

“master” includes person, other than an approved pilot provided or arranged by the Port Authority or the Company, the Salt Company or the Joint Venturers, having for the time being the charge, command or management of a vessel;

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“member” means member of the Port Authority or his deputy;

“Ministerial member” means member appointed under section 8 (1) (c) or his deputy;

“North West Gas Development (Woodside) Agreement” means 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;

“officer” means officer appointed under section 17 (1) and includes General Manager and Harbour Master;

“owner”, in relation to —

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

“port charges” means —

- (a) port dues and wharfage charges; or
- (b) port improvement rates,

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

“port installation” means facility (whether above or below high water mark and whether or not within the Port) that is for the improvement, protection, management, maintenance, repair or use of the Port or a wharf and, without limiting the generality of the foregoing, includes any marine navigational aid;

“Port land” means land vested in the Port Authority by or under this Act or land acquired under this Act by the Port Authority;

“port works” includes —

- (a) bridge, dam, embankment, slip, viaduct and wharf;
- (b) reclamation of land from the sea or a river; and
- (c) deepening, dredging, excavating and widening any basin, channel or other part of the Port;

“seabed” includes, subject to Part III of Schedule I, land below high water mark;

“sinking fund” means amounts set aside under section 71 (1) by way of a sinking fund;

“the Account” means the Dampier Port Authority Account referred to in section 61 (2);

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

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

“the Port” means the areas contained within the land area, water area and seabed area referred to in section 6;

“the Port Authority” means the Dampier Port Authority established by section 4 (1);

“the regulations” means the regulations made under section 99;

“the Salt Company” means the Company within the meaning of the Dampier Solar Salt Industry Agreement;

“Treasurer” means Treasurer of the State;

“vessel” means any kind of vessel used or capable of being used in navigation by water, however propelled or moved, and includes —

- (a) a barge, lighter, floating restaurant or other floating vessel; and
- (b) an air-cushion vehicle or other similar craft used wholly or primarily in navigation by water;

“weigh” means ascertain mass of;

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“**wharf**” includes dock, landing stage, jetty, pier, quay and platform.

- (2) Nothing in this Act shall be construed so as to prejudice or in any way affect —
- (a) any right or obligation of a party to the Dampier Solar Salt Industry Agreement;
 - (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.
- (3) Unless the contrary intention is expressly stated, the provisions of this Act shall be construed as being additional to, and not in substitution for, provisions applying to acts, matters or things in or related to a port contained in any other Act.

[Section 3 amended by No. 98 of 1985 Schedule 1; No. 46 of 1993 s.46.]

Part II — Establishment, composition and proceedings of Port Authority

4. Dampier Port Authority

- (1) There is hereby established a body corporate by the name of the Dampier Port Authority.
- (2) Under its corporate name, the Port Authority —
 - (a) has perpetual succession;
 - (b) shall have a common seal;
 - (c) subject to this Act, may acquire, hold and dispose of real and personal property;
 - (d) may sue and be sued in any court;
 - (e) has the functions imposed on it by or under this Act; and
 - (f) subject to this Act is capable of doing and suffering all that bodies corporate may by law do and suffer.

5. Judicial notice of common seal

When a document purporting to bear the common seal of the Port Authority is produced before any court, judge or person acting judicially, that court, judge or person shall, unless the contrary is proved, presume that —

- (a) that document bears the common seal of the Port Authority; and
- (b) the common seal of the Port Authority was duly affixed to that document.

6. Areas of Port

- (1) The land area of the Port consists of the land described in Part I of Schedule 1.
- (2) The water area of the Port consists of those waters contained within the boundaries described in Part II of Schedule 1 and extending downwards from the surface of those waters to a

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point immediately above the seabed, but excludes any improvements situated on the seabed outside the seabed area of the Port referred to in subsection (3) but underneath that surface.

- (3) The seabed area of the Port consists of that seabed contained within the boundaries described in Part III of Schedule I.
- (4) The Governor may by order amend Schedule 1 by redefining the boundaries of the land area, water area or seabed area referred to in this section so as to —
 - (a) include an area in, or exclude an area from, that land area, water area or seabed area; or
 - (b) correct any error or inaccuracy in the description of those boundaries.

7. Right of passage between land area and water area of Port

- (1) Subject to subsection (2), the occupier of any land situated between the land area and the water area referred to in section 6 shall allow —
 - (a) a member, officer or employee; or
 - (b) a labourer engaged and provided under section 39,acting in the performance of his functions as such, free passage over that land between that land area and that water area.
- (2) A member, officer or employee or a labourer referred to in subsection (1) shall not exercise the right of free passage conferred by that subsection in such a manner as unduly to prejudice or interfere with the operations of the occupier of the land over which that right is exercised.

8. Membership of Port Authority

- (1) Subject to this section, the Port Authority shall consist of 5 members —
 - (a) 1 of whom shall be appointed by the Governor on the nomination in writing of the Company;

- (b) 1 of whom shall be appointed by the Governor on the nomination in writing of the Joint Venturers;
 - (c) 2 of whom shall be appointed by the Governor on the nomination in writing of the Minister; and
 - (d) 1 of whom —
 - (i) while there is a person for the time being holding or acting in the office of General Manager under section 17, shall be the General Manager; or
 - (ii) while there is no person holding or acting in the office of General Manager under section 17, shall be the Harbour Master.
- (2) The Governor shall appoint 1 of the Ministerial members to be Chairman of the Port Authority.
- (3) The Chairman shall hold office for such period not exceeding 3 years as is specified in the instrument of his appointment as Chairman and is eligible for reappointment.
- (4) The office of Chairman becomes vacant if —
- (a) his period of office as Chairman expires;
 - (b) he resigns his office as Chairman by instrument in writing addressed to and delivered to the Minister; or
 - (c) he ceases to be a Ministerial member.
- (5) The Governor may, if —
- (a) the Company does not nominate a person for appointment as the Company member or the deputy of the Company member, as the case requires, within 30 days after being requested in writing by the Minister to do so, without any such nomination by the Company appoint a person who is otherwise eligible for appointment as a member to be the Company member or the deputy of the Company member; or
 - (b) the Joint Venturers do not nominate a person for appointment as the Joint Venturers member or the

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deputy of the Joint Venturers member, as the case requires, within 30 days after being requested in writing by the Minister to do so, without any such nomination by the Joint Venturers appoint a person who is otherwise eligible for appointment as a member to be the Joint Venturers member or the deputy of the Joint Venturers member.

- (6) A person appointed by the Governor under subsection (5) shall for all purposes be deemed to be duly nominated and appointed as the Company member or the deputy of the Company member or the Joint Venturers member or the deputy of the Joint Venturers member, as the case requires.

9. Term of office of appointed member

- (1) Subject to this Act, an appointed member —
- (a) holds office for such period not exceeding 3 years as is specified in the instrument of his appointment; and
 - (b) is, on the expiry of his period of office, eligible for renomination and reappointment as an appointed member.
- (2) An appointed member who is —
- (a) the Company member shall cease to be the Company member if the Company by instrument in writing served on the Minister so requests; or
 - (b) the Joint Venturers member shall cease to be the Joint Venturers member if the Joint Venturers by instrument in writing served on the Minister so request.
- (3) The Governor may remove an appointed member from office for inability, inefficiency or misbehaviour.
- (4) Without limiting the generality of subsection (3), the failure of an appointed member to comply with section 10 of the *Ports (Functions) Act 1993* constitutes sufficient grounds for his removal from office under subsection (3).

- (5) The office of an appointed member becomes vacant if —
- (a) his period of office expires;
 - (b) being the Company member or the Joint Venturers member, he is the subject of a request made under subsection (2) (a) or (b), as the case requires;
 - (c) he is removed from office under subsection (3);
 - (d) he becomes an insolvent under administration within the meaning of the *Companies (Western Australia) Code*;
 - (e) he becomes permanently incapable of performing his duties as an appointed member;
 - (f) he resigns his office by instrument in writing addressed to and delivered to the Minister; or
 - (g) he is absent, except on leave granted under section 13, from 3 consecutive meetings of the Port Authority, of which meetings he has received the prescribed notice or the shorter notice referred to in section 14 (4).

[Section 9 amended by No. 46 of 1993 s.46.]

10. Deputy members

- (1) The Governor shall, subject to this section, appoint in respect of each member a person to be the deputy of that member.
- (2) A person appointed under subsection (1) to be the deputy of —
- (a) an appointed member shall be nominated for, appointed to and cease to hold the office of deputy in like manner and for like cause as the appointed member whose deputy he is; and
 - (b) the member referred to in section 8 (1) (d) shall —
 - (i) be an officer;
 - (ii) be so appointed on the nomination in writing of the Port Authority; and
 - (iii) cease to hold office as that deputy when he ceases to be an officer or the Port Authority by

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instrument in writing served on the Minister so requests.

- (3) A person shall be the deputy of 1 member only.
- (4) The deputy of a member is entitled, in the event of the absence of the member from the whole or any part of a meeting of the Port Authority, to attend that whole or part, as the case requires, and, when so attending, is deemed to be a member and has all the functions, entitlements and immunities of a member.

11. Disclosure by members

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

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

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

12. Remuneration of Ministerial members, and relationship of *Public Service Act 1978* and certain other Acts to members generally.

- (1) A Ministerial member shall be paid such fees or remuneration and allowances as are determined by the Minister on the recommendation of the Public Service Board in his case.
- (2) Acceptance of or acting in the office of a member does not itself render the provisions of Part 3 of the *Public Sector Management Act 1994* or any other Act applying to persons as officers of the Public Service applicable to the member or affect or prejudice the application to him of those provisions if they applied to him at the time of that acceptance or acting.

[Section 12 amended by No. 32 of 1994 s.19.]

13. Leave of absence

The Port Authority may grant leave of absence to a member on such terms and conditions relating to remuneration or other matters as the Minister determines in his case.

14. Meetings of Port Authority

- (1) Subject to this Act, the Port Authority shall meet at such times and places as the Chairman thinks necessary for the efficient conduct of the affairs of the Port Authority.
- (2) The Chairman shall, on the request in writing of not less than 2 members, convene a meeting of the Port Authority.
- (3) The Minister may at any time convene a meeting of the Port Authority.
- (4) A person convening a meeting of the Port Authority under this section shall give the prescribed notice, or such shorter notice as may be agreed by all members, of that meeting to each member.
- (5) The Chairman shall preside at all meetings of the Port Authority or parts of those meetings at which he is present.
- (6) In the absence of the Chairman from the whole or any part of a meeting of the Port Authority, the members present at that meeting shall elect 1 of their number to act as Chairman for that whole or part, as the case requires.
- (7) A member, while acting as Chairman of a meeting of the Port Authority, shall perform the functions of the Chairman.
- (8) At a meeting of the Port Authority, 3 members —
 - (a) 1 of whom shall be the company member or the Joint Venturers member; and
 - (b) 1 of whom shall be a Ministerial member,constitute a quorum.

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- (9) Questions arising at a meeting of the Port Authority shall be decided by a majority of the votes of the members present and voting.
- (10) The member presiding at a meeting of the Port Authority has a deliberative vote, but no casting vote.

[(11) Repealed]

- (12) The Port Authority shall cause accurate minutes to be kept of its proceedings at its meetings.
- (13) To the extent that its own procedure is not set out in this Act, the Port Authority shall determine its own procedure.

[Section 14 amended by No. 46 of 1993 s.46.]

15. Performance of functions of Port Authority unaffected by vacancies

Subject to section 14 (8), an Act, proceeding or determination of the Port Authority is not invalidated by reason only of there being —

- (a) any vacancy in the membership of the Port Authority; or
- (b) any defect in the appointment of any member.

[16. Repealed by No. 98 of 1985 Schedule 1]

Part III — Staff of Port Authority

17. Appointment and dismissal of officers and employees

- (1) The Port Authority may —
 - (a) with the approval of the Governor, appoint a General Manager; and
 - (b) appoint such officers, other than those referred to in paragraph (a), and such employees as may be necessary to enable the Port Authority to perform the functions imposed on it by or under this Act or any other Act.
- [(2) Repealed]*
- (3) Subject to any relevant awards or industrial agreements applying to the Port, the Port Authority shall, with the approval of the Minister, determine the terms and conditions of employment of officers and employees, including the salaries and wages payable to them.
- (4) Part 3 of the *Public Sector Management Act 1994* does not apply to or in relation to officers and employees.
- (5) Notwithstanding anything in this section, the appointment and dismissal of employees, at daily or weekly wages, is in the sole power of the Port Authority.
- (6) Notwithstanding anything in this section, if there is, in the case of a person referred to in subsection (1) who is a member of the Senior Executive Service (within the meaning of the *Public Sector Management Act 1994*) an inconsistency between this Act and that Act, that Act prevails.

[Section 17 amended by No. 46 of 1993 s.46; No. 32 of 1994 s.19.]

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18. Special constables

- (1) Without limiting the generality of paragraph (b) of section 17 (1), the Port Authority may under that paragraph appoint special constables.
- (2) Within the Port a special constable appointed under section 17 (1) (b) —
 - (a) has and may exercise and enjoy such powers, authorities and immunities; and
 - (b) is subject to such duties and obligations, as a police officer now has or is subject to by law.
- (3) Notwithstanding anything in this section, a person appointed as a special constable under section 17 (1) (b) is not a police officer.

19. Officers and employees subject to direction and control of Port Authority

All officers and employees, including special constables appointed under section 17 (1) (b), are subject to the direction and control of the Port Authority.

20. Certain officers and employees to give security

- (1) Before an officer or employee takes up an office or position by virtue of which he will have receipt, custody or control of moneys of the Port Authority, the Port Authority may, subject to this section, obtain from him such security as is prescribed or, if no security is prescribed, such security as the Port Authority considers sufficient for rendering a just and true account of all money received and paid by him for the Port Authority and for payment of all money due from him to the Port Authority.
- (2) Instead of, or in addition to, obtaining security from an officer or employee under subsection (1), the Port Authority may provide against any loss that may arise in the event of the dishonesty of the officer or employee —

- (a) by taking out a guarantee policy and paying the premiums thereon; or
 - (b) by creating a special fund for the purpose,
- or partly by one such method and partly by the other.

Part IV — Property of Port Authority

21. Property of Port Authority

- (1) Subject to this section, there are hereby vested in the Port Authority for the purposes of this Act —
 - (a) all lands of the Crown within the Port, including the seabed area referred to in section 6 and the shores of the Port;
 - (b) all marine navigational aids within the Port or used in connection with navigation into or out of the Port, not being property of the Crown in right of the Commonwealth or of the Company; and
 - (c) all wharves, wharf sheds and railways, and all other equipment and buildings belonging to the Crown in right of the State, that are within the Port.
- (2) The property of the Port Authority includes, in addition to the property vested in it by subsection (1) —
 - (a) any improvements effected on land leased to another person under section 24 that are acquired on the termination of the lease concerned;
 - (b) subject to section 3 (2), all such personal and real property, other than property referred to in subsection (1) or in paragraph (a), as the Port Authority may from time to time acquire or as the Governor may from time to time think fit to vest in the Port Authority for the purposes of this Act.

22. Governor may vest or revest property of Port Authority in the Crown

- (1) For the purposes of this Act and subject to subsection (2), the Governor may by order withdraw any real or personal property of the Port Authority and vest or revest that property in the Crown.

- (2) The Governor shall not without the consent of the Port Authority make an order under subsection (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 entered into under section 67, the capital cost of which improvement or expansion or provision has been wholly met by payments made under that agreement;
 - (b) which is vested free of cost in the Port Authority; or
 - (c) which is 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.

23. Sale or other disposal of Port land only with approval

- (1) The Port Authority shall not sell any Port land —
- (a) being Crown land, without the prior approval of the Governor; or
 - (b) not being Crown land, without the prior approval of the Minister.
- (2) In subsection (1) —
- “**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.

[24, 25 and 26. Repealed by No. 46 of 1993 s.46.]

27. Power to acquire land compulsorily

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

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[Section 27 amended by No. 31 of 1997 s.142.]

28. Exemption from rates, taxes and impositions

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

[Section 28 amended by No. 14 of 1996 s.4.]

29. Disputes between Port Authority and Crown

Any dispute between the Port Authority and any department, instrumentality or agency of the Crown in right of the State with respect to any Port land or any other property of the Port Authority shall be referred by the parties to that dispute to the Minister, whose decision thereon is final and binding on those parties.

Part V — Functions of Port Authority

30. Principal functions of Port Authority

Subject to this Act, the Port Authority shall operate as a commercial organization and its principal functions are —

- (a) to operate the Port safely and efficiently;
- (b) to manage its affairs so as to ensure that its revenues, taking 1 year with another, are not less than sufficient to meet all its expenditures;
- (c) to recover, as far as possible, the cost of the facilities and services provided by the Port Authority from the users of those facilities and services; and
- (d) subject to the functions referred to in paragraphs (a), (b) and (c) —
 - (i) to control, manage and develop the Port in the manner best suited to the trade being carried through it and such other trade as may be attracted to the Port; and
 - (ii) to protect and enhance the environment of the Port.

31. Duties of Port Authority

- (1) The Port Authority shall —
 - (a) subject to —
 - (i) the Dampier Solar Salt Industry Agreement;
 - (ii) the Iron Ore (Hamersley Range) Agreement; and
 - (iii) the North West Gas Development (Woodside) Agreement,plan the development, and the safe and efficient operation, of the Port;
 - (b) cause to be maintained and preserved all property of the Port Authority;

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[(c) deleted]

- (d) ensure safety within the Port; and
- (e) ensure the optimum use of the services provided by the Port Authority.

(2) Notwithstanding anything in subsection (1) —

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

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

(3) Notwithstanding anything in subsection (1), 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 marine 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 marine 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.

- (4) The Salt Company, the Company or the Joint Venturers shall forthwith comply with any direction given to it or them, as the case requires, by the Port Authority under subsection (3).
- (5) If the Salt Company, the Company or the Joint Venturers does not or do not comply with —
 - (a) subsection (2), the Port Authority shall cause the requisite works to be undertaken and the cost of those works shall be borne by the person which has not complied with that subsection; or
 - (b) a direction given under subsection (3), the Port Authority shall cause —
 - (i) the requisite work to be undertaken and the costs of those works; or
 - (ii) the requisite information, reports or hydrographic surveys to be provided and the cost of that provision,

shall be borne by the person which has not complied with that direction.

[Section 31 amended by No. 46 of 1993 s.46.]

32. Duties in respect of environmental protection

- (1) For the purposes of section 30 (d) (ii), the Port Authority shall formulate and maintain an environmental management plan for the Port.
- (2) In formulating and maintaining an environmental management plan for the Port under subsection (1) the Port Authority shall —
 - (a) have regard and endeavour to give effect to any declaration of the State environmental protection policy that is in force under section 39 of the *Environmental Protection Act 1971* and is applicable in relation to the Port; and

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- (b) consult with, and have regard to and endeavour to give effect to any advice given by, the Environmental Protection Authority.
- (3) In the event of a dispute arising between the Environmental Protection Authority and the Port Authority, that dispute shall be referred to the Minister for determination.
- (4) The Port Authority shall implement the environmental management plan formulated and maintained by it under subsection (1).
- (5) In this section —
“the Environmental Protection Authority” means the Environmental Protection Authority established under section 9 of the *Environmental Protection Act 1971*.

33. General powers of Port Authority

The Port Authority may do all such things as are necessary or convenient to be done for or in connection with the performance of its functions under this Act.

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

36. Powers and duties of Port Authority in relation to port and other works

- (1) The Port Authority, except in the case of port works or other works provided by the users thereof —
 - (a) may with the prior approval of the Minister design, construct, complete and extend within the Port port works and other works required for the purposes of this Act;
 - (b) may make and maintain roads, railways and approaches to all wharves, slips, depots, warehouses and sheds on any Port land; and
 - (c) shall cause the wharves, slips, depots, warehouses and sheds referred to in paragraph (b) and the roads, railways

and approaches thereto to be kept in good repair and to be well and sufficiently lighted, but a breach of a duty imposed by this paragraph does not confer a right of action on any person who may suffer damage therefrom.

- (2) For the purpose of subsection (1) (a), the Port Authority is a local authority within the meaning of the *Public Works Act 1902*.
- (3) Without limiting the generality of section 37, the Port Authority may, with the prior approval of the Minister, arrange for port works within the Port to be constructed, completed or extended by a person who uses or proposes to use the Port.
- [(4) Repealed]*
- (5) The Port Authority may —
 - (a) erect or place, or alter the position of, any marine navigational aid within the Port; and
 - (b) remove, discontinue or replace, or vary the character of or the mode of exhibiting, any marine navigational aid within the Port as may from time to time be required.
- (6) The Port Authority may exercise such powers additional to those referred to in subsections (1), (3), (4) and (5) as —
 - (a) improve the use of its available resources;
 - (b) do not adversely affect the ability of the Port Authority efficiently to perform its functions under this Act; and
 - (c) relate to the activities of a port.

[Section 36 amended by No. 46 of 1993 s.46.]

37. Power of Port Authority to make contracts

- (1) [Repealed]*
- [(2) Repealed]*

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- (3) The Port Authority may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf, and a deed executed by such an agent or attorney on behalf of the Port Authority binds the Port Authority and has the same effect as if it were under the common seal of the Port Authority.
- (4) The authority of an agent or attorney empowered by the Port Authority under subsection (3) shall be deemed as between the Port Authority and a person dealing with him, to have continued during the period (if any) specified in the instrument conferring his authority or, if no period is so specified, until notice of the revocation or termination of his authority was given to the person dealing with him.
- (5) Insofar as the formalities of making, varying or discharging a contract are concerned a person acting under the express or implied authority of the Port Authority may make, vary or discharge a contract in the name of or on behalf of the Port Authority in the same manner as if the Port Authority were a natural person.
- (6) The making, varying or discharging of a contract in accordance with subsection (5) is effectual in law and binds the Port Authority and other parties to the contract.
- (7) Subsection (5) does not prevent the Port Authority from making, varying or discharging a contract under its common seal.

[Section 37 amended by No. 46 of 1993 s.46.]

38. Port Authority may give security for customs purposes

The Port Authority may give such securities as the Customs may require and take under the *Customs Act 1901* of the Commonwealth.

39. Pilotage services agreements

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

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

[Section 39 inserted by No. 46 of 1993 s.46.]

[PART VI (Sections 40, 41, 42 and 43). Repealed by No. 46 of 1993 s.46.]

Part VII — Damage

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

[44 and 45. Repealed by No. 46 of 1993 s.46.]

46. Responsibility for damage to property or works of Port Authority

- (1) If any damage is done by a vessel or any part of the equipment thereof or goods or cargo therein, by any floating object, by any material or by any person employed in or about any of them to any part of the property or works of the Port Authority —
 - (a) whether or not the damage is caused through the wilful or negligent act or omission of any person, the owner of the vessel, floating object or material; and
 - (b) if the damage is caused through the wilful or negligent act or omission of the master of the vessel or of the person having charge of the floating object or the material, that master or that person,

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

- (2) If the owner of any vessel, floating object or material pays any money in respect of any damage done to any part of the property or works of the Port Authority by, or pays any fine by reason of any act or omission of, any master or other person referred to in subsection (1) (b), that owner may recover the money or fine so paid, with costs, from that master or other person in a court of competent jurisdiction.

47. Responsibility for damage to pipelines, etc.

- (1) If any damage is done to any pipeline, conveyor belt, cableway, submarine cable, road, railway, tunnel or other facility for the conveyance of people or of goods or other things which is —

- (a) the property of the Port Authority; and
- (b) situated within or partly within the Port,

by a vessel or any part of the equipment thereof, the master, owner or agent of the vessel shall forthwith make good the damage at his own expense.

- (2) If the master, owner or agent of a vessel does not make good any damage to a pipeline, conveyor belt, cableway, submarine cable, road, railway, tunnel or other facility for the conveyance of people or of goods or other things in accordance with subsection (1), the Port Authority may itself make good the damage to the pipeline, conveyor belt, cableway, submarine cable, road, railway, tunnel or other facility for the conveyance of people or of goods, or other things and may recover the expense of so doing from that master, owner or agent in a court of competent jurisdiction.

Part VIII — Port charges

48. Port charges may be levied in accordance with regulations

- (1) Subject to this section, the Port Authority may, with the approval of the Minister and subject to the Dampier Solar Salt Industry Agreement, the Iron Ore (Hamersley Range) Agreement and the North West Gas Development (Woodside) Agreement, make regulations under section 99 for the purposes of this section providing for the levying of —
- (a) such port dues and wharfage charges as are prescribed; and
 - (b) such port improvement rates as are prescribed for —
 - (i) raising funds to fulfil its obligations in respect of assets or improvements acquired by it for the purposes of this Act;
 - (ii) carrying out improvements to the Port; or
 - (iii) making capital repayments of, and payments of interest payable on, funds borrowed for the purpose of carrying out improvements to the Port,or for any 2 or all 3 of the purposes referred to in subparagraphs (i), (ii) and (iii).
- [(c) deleted]*
- (2) Regulations referred to in subsection (1) may, subject to this section —
- (a) prescribe the manner of collecting port charges;
 - (b) prescribe the persons who are liable to pay port charges;
 - (c) provide for port charges to be paid to a collector of port charges and prescribe the manner and time of that payment;
 - (d) prescribe cases in which, and means by which, a person liable to pay port charges may recover the whole or any part of any amount paid by him by way of port charges,

together with expenses incurred by reason of liability and payment, from any other person so liable.

- (3) Port dues prescribed in regulations referred to in subsection (1) shall be —
- (a) separately charged;
 - (b) payable on each vessel entering the Port at a rate assessed on the gross tonnage of that vessel; and
 - (c) applied only to defraying the cost incurred by the Port Authority in —
 - (i) administering the Port;
 - (ii) ensuring the control and safety of shipping in the Port; and
 - (iii) operating and maintaining equipment, marine navigational aids and buildings in the Port.
- (4) Wharfage charges prescribed in regulations referred to in subsection (1) shall be —
- (a) separately charged;
 - (b) payable only on vessels using wharf facilities of the Port Authority.
- [(5) Repealed]*
- (6) Port improvement rates prescribed in regulations referred to in subsection (1) shall be —
- (a) at a rate per tonne ascertained by mass or measurement specified in those regulations which may differ in particular cases or circumstances;
 - (b) levied on goods shipped from, through or to the Port, except for goods so shipped in or on ships which do not use the assets or improvements in respect of which those port improvement rates are so prescribed;
 - (c) of general application or shall apply in particular cases or circumstances having regard to the use of the assets or

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improvements referred to in paragraph (b) by the person shipping or discharging goods in respect of which those port improvement rates are so prescribed; and

(d) payable in respect of all goods or goods of a prescribed class.

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

[Section 48 amended by No. 46 of 1993 s.46.]

49. Liability to pay port charges in respect of vessels

The owner and master of a vessel, and such consignee or consignor of goods carried thereon or agent thereof as may have paid or made himself liable to pay any charge on account of the vessel, shall be jointly and severally liable to pay the port charges in respect of the vessel.

50. Liability to pay port charges in respect of goods

The owner of any goods carried in a vessel, the owner of the vessel, any consignor, consignee or shipper of, or agent for the sale of or custody of, those goods, and any person entitled, either as the owner of those goods or on behalf of that owner, to the possession of those goods are jointly and severally liable to pay the port charges payable in respect of those goods.

51. Right of recovery of port charges by persons paying same from other liable to pay same

When a person other than —

- (a) the owner or master of a vessel is by this Act made liable for the payment of any port charges in respect of the vessel; or
- (b) the owner of any goods is by this Act made liable for the payment of any port charges in respect of the goods,

and pays those port charges, that person may, out of any moneys in his hands —

- (c) received on account of; or
- (d) belonging to the owner of,

the vessel or the goods, as the case requires, retain the amount of those port charges so paid by him, together with any reasonable expenses he may have incurred by reason of that liability or payment.

52. Ascertainment of tonnage of vessels

- (1) When it is necessary to ascertain the tonnage of a vessel for the purpose of calculating port charges payable to the Port Authority, the tonnage of the vessel shall be ascertained in accordance with the regulations.
- (2) The Port Authority may make regulations under section 99 for the purposes of this section —
 - (a) requiring persons to comply with directions given or requirements made under the authority of those regulations and providing, if a person does not comply with such a direction or requirement, for measures to be taken at the risk and expense of the person for the purpose of achieving the purposes of that direction or requirement;
 - (b) empowering persons authorized in that behalf in accordance with those regulations to board vessels and enter places for the purposes of enforcing this Act and take such other action as appears to them appropriate for the purposes of this Act;
 - (c) authorizing the calculation or determination of tonnage —
 - (i) by measurement;
 - (ii) by estimation; or

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- (iii) by reference to information appearing in the certificate of registry or certificate of tonnage of a vessel or in any record or publication specified in those regulations,
or partly by 1 of those methods and partly by either or both of the other 2 methods;
- (d) making provision concerning the spaces, whether covered or closed or not, to be included and the spaces to be excluded in the ascertainment of the tonnage of any vessel and prescribing the method by which any space to be included or excluded is to be calculated;
- (e) conferring power on an authorized person —
 - (i) to board, inspect, measure or survey the whole or any part of vessel, or any goods therein or thereon;
 - (ii) to detain a vessel; and
 - (iii) to require the unshipment of any goods in or on a vessel at the expense and risk of the owner of those goods,
for the purpose of ascertaining the tonnage of the vessel or enabling that tonnage to be ascertained;
- (f) exempting the Port Authority and any authorized person from liability for any loss or damage occasioned by any act done in good faith under powers conferred by those regulations;
- (g) requiring the owner or master of a vessel to produce the certificate of registry, and any certificate of tonnage, of the vessel if and when requested to do so by an authorized person; and
- (h) requiring the owner, master or agent of a vessel, on request by an authorized person, to afford all necessary facilities to enable the vessel or any goods therein or thereon or both the vessel and those goods to be

inspected, measured or surveyed for the purpose of ascertaining the tonnage of the vessel.

(3) In subsection (2) —

“authorized person” means officer, employee or other person appointed by the Port Authority to ascertain the tonnage of vessels generally or to ascertain the tonnage of a particular vessel.

53. Weighing or measuring goods in case of difference

If a difference arises between a collector of port charges and any person liable to pay any port charges in respect of any goods concerning the mass or measurement of those goods —

- (a) the collector of port charges may cause those goods to be weighed or measured; and
- (b) if the mass or measurement of those goods —
 - (i) exceeds that alleged by the person so liable, the expenses of weighing or measuring those goods shall be paid to the Port Authority by that person and are recoverable by the Port Authority as if they were port charges owing to the Port Authority;
or
 - (ii) does not exceed that alleged by the person so liable, the expenses of weighing or measuring those goods shall be paid by the Port Authority to that person and are recoverable from the Port Authority in a court of competent jurisdiction.

54. Recovery of port charges by Port Authority

The Port Authority may recover any port charges payable to it as a debt due to the Port Authority in a court of competent jurisdiction.

55. Collectors of port charges

The Port Authority may for the purposes of this Act —

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

56. Power to distrain certain property for recovery of port charges

(1) A collector of port charges may —

(a) distrain —

- (i) any vessel and the equipment thereof; or
- (ii) any goods,

in respect of which port charges are payable and have not been paid;

(b) subject to paragraph (c), store any property distrained under this section until the port charges payable in respect of that property and the expenses of distraining and storing that property are paid; and

(c) if the port charges and expenses referred to in paragraph (b) are not paid within 7 days after the distress concerned, cause the property distrained under this subsection or any part thereof to be sold, pay out of the proceeds of that sale the amount of those port charges and of the expenses of distraining, storing and selling that property under this subsection and pay the balance, if any, of those proceeds to the owner of the property concerned or, if the identity or whereabouts or both of that owner cannot be ascertained after diligent inquiries, to the credit of the Account.

(2) The powers conferred by subsection (1) are in addition to any other remedy provided by this Act for the recovery of port charges.

[Section 56 amended by No. 49 of 1996 s.64.]

57. Settlement by Local Court of difference over amount of port charges distrained for or expenses of recovery thereof

- (1) If a difference arises concerning the amount of —
- (a) any port charges in respect of which the powers conferred by section 56 (1) have been exercised; or
 - (b) any expenses of distraining, storing and selling property referred to in section 56 (1) (c),

the collector of port charges who has distrained the property concerned may detain that property or the proceeds of sale thereof until —

- (c) that amount is ascertained by the Local Court held in or nearest to the Port; or
 - (d) he is satisfied that sufficient security has been given for the payment of that amount, when ascertained, and of the expenses arising from the non-payment of that amount.
- (2) The Local Court referred to in subsection (1) shall, on application being made for that purpose, ascertain the amount referred to in paragraph (a) or (b) of subsection (1) and award such costs to be paid by either party to the other as that Local Court thinks reasonable.

58. Evasion of payment of port charges penalized

A person who evades or attempts to evade payment of any port charges payable by him commits an offence and is liable, in addition to paying the amount of those port charges, to a penalty not exceeding \$200, or, if the amount of those port charges exceeds \$200, a penalty not exceeding that amount.

59. Power of Governor to revise port charges

- (1) Notwithstanding anything in this Part, if —

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- (a) in the opinion of the Governor, the Port Authority —
 - (i) has not, in any financial year, collected and received port charges, rents and other revenues sufficient;
or
 - (ii) has, in any financial year, collected and received port charges, rents and other revenues more than sufficient,to provide for the lawful expenditure of the Port Authority, including interest and contributions to sinking funds, in respect of the value of the property of the Port Authority to be charged against it under section 60; or
- (b) for any reason other than that set out in paragraph (a) the Governor thinks fit so to do,

the Governor may by order revise the prescribed port charges.

- (2) When the Governor has revised any port charges under subsection (1), the Port Authority shall, until the Governor otherwise orders, impose and collect those revised port charges by notice published in the *Gazette*.

Part IX — Finance

60. Inventory of property of Port Authority and valuation thereof

- (1) The Minister shall, on the coming into operation of this section, cause an inventory to be made of all property of the Port Authority and shall determine the value thereof to be charged against the Port Authority.
- (2) When the Minister has made a determination under subsection (1), the Minister shall, at the end of the financial year in which the determination was made and at the end of each succeeding financial year, cause an inventory to be made of —
 - (a) the cost of all additional improvements and works constructed;
 - (b) the proportionate cost of improvements and works in the course of construction; and
 - (c) all property acquired by or vested in the Port Authority,during that financial year and shall determine the value thereof to be charged against the Port Authority.

61. Funds of the Port Authority

- (1) The funds of the Port Authority consist of —
 - (a) moneys from time to time appropriated by Parliament;
 - (b) moneys received by the Port Authority in the performance of its functions;
 - (c) moneys borrowed by the Port Authority under this Act; and
 - (d) other moneys lawfully received by, or made available, given or payable to the Port Authority.

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

[Section 61 inserted by No. 46 of 1993 s.37; amended by No. 57 of 1997 s.46.]

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

63. Temporary investment of moneys in Account

Moneys standing to the credit of the Account may, until required by the Port Authority for the purposes of this Act, be invested in such manner as the Treasurer approves and all interest derived from any moneys so invested shall be dealt with in the prescribed manner.

64. Power of Port Authority to borrow moneys from Treasurer or bank or other financial institution

- (1) The Port Authority may borrow moneys from —
- (a) the Treasurer; or
 - (b) any bank or other financial institution —
 - (i) approved by the Treasurer; and
 - (ii) carrying on business within the State,

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

- (2) The Port Authority shall pay to —
- (a) the Treasurer in respect of moneys borrowed from him under subsection (1) interest at such rate and at such times as the Treasurer determines; or
 - (b) a bank or other financial institution referred to in subsection (1) (b) in respect of moneys borrowed from it under that subsection interest at such rate and at such times as are agreed between the Port Authority and that bank or other financial institution and approved by the Treasurer.
- (3) Moneys borrowed under subsection (1) and the interest and any other charges payable in respect thereof are a charge on —
- (a) the moneys standing to the credit of the Account; and
 - (b) the property of the Port Authority,

and, in the case of moneys so borrowed from a bank or other financial institution, the due repayment of those moneys, including the interest and any other charges payable thereon, is hereby guaranteed by the Treasurer on behalf of the State.

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65. Power of Port Authority to borrow moneys on debentures or inscribed stock

- (1) Subject to subsection (2), the Port Authority may, with the approval of the Governor —
- (a) issue debentures and create and sell inscribed stock for the purposes of —
 - (i) borrowing moneys required by the Port Authority for the effectual performance of its functions under this Act;
 - (ii) redeeming any loans owing by the Port Authority; or
 - (iii) paying the expenses incurred in the issue of debentures or creation and sale of inscribed stock;
 - (b) issue debentures or create inscribed stock in exchange for any debentures or inscribed stock issued or created in respect of moneys previously borrowed by the Port Authority and not repaid; and
 - (c) effect any exchange authorized by this section by —
 - (i) arrangement with the holders of the existing debentures or the registered owners of inscribed stock; or
 - (ii) the payment off or purchase of the existing debentures or inscribed stock out of moneys raised by the issue of debentures or the creation and sale of inscribed stock,or partly in the one way and partly in the other.
- (2) The Governor shall not approve under subsection (1) of the issue of debentures or the creation and sale of inscribed stock by the Port Authority for the purpose of borrowing moneys unless a proposal in writing showing —
- (a) the term and particulars of the proposed loan;
 - (b) the rate of interest to be paid on the proposed loan;

- (c) the purposes to which the moneys proposed to be borrowed are to be applied; and
- (d) the manner in which any moneys borrowed are to be repaid,

has first been submitted by the Port Authority to, and approved by, the Minister.

- (3) Any moneys borrowed by the Port Authority under this section —
 - (a) may be raised as one loan or as several loans; and
 - (b) may be raised —
 - (i) by the issue of debentures;
 - (ii) by the creation and sale of inscribed stock; or
 - (iii) partly as provided by subparagraph (i) and partly as provided by sub-paragraph (ii).
- (4) The Port Authority may exercise the power conferred on it by subsection (1) (a) (ii) before the loan that is to be redeemed, or part thereof, becomes repayable.

66. General provisions applying to debentures and inscribed stock

- (1) All debentures issued and inscribed stock created and sold, whether original or not, shall rank *pari passu* in point of charge without any preference or priority one over another.
- (2) Debentures may be issued by the Port Authority with or without interest coupons attached.
- (3) Inscribed stock created and sold by the Port Authority shall be called the “Dampier Port Authority Inscribed Stock”.
- (4) Part A of Schedule II applies to and in relation to debentures and inscribed stock.
- (5) Part B of Schedule II applies to and in relation to debentures.

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- (6) Part C of Schedule II applies to and in relation to inscribed stock.

67. Contributions towards capital cost of improved or expanded or additional facilities by users thereof.

- (1) If a user or potential user of the facilities provided within the Port requests the Port Authority to improve or expand the existing facilities so provided or to provide additional facilities within the Port, the Port Authority may, with the approval of the Governor, enter into an agreement with that user or potential user for the payment by it or on its behalf to the Port Authority of the whole or any part of the capital cost of improving or expanding those existing facilities or of providing those additional facilities, as the case requires, on such terms and conditions as are mutually agreed.
- (2) Such moneys as are paid to the Port authority under an agreement under subsection (1) shall be applied only to the purposes specified in the agreement.

[Section 67 amended by No. 46 of 1993 s.46.]

68. Moneys borrowed charged on revenues of Port authority and guaranteed by State

The due repayment of the principal moneys secured by debentures or inscribed stock and the payment of interest thereon is hereby —

- (a) charged and secured on the revenues of the Port Authority; and
- (b) guaranteed by the Treasurer on behalf of the State.

69. Payment of guarantee moneys

- (1) The due performance of a guarantee given by the Treasurer on behalf of the State under section 64 (3) or 68 is hereby authorized, and the due payment of moneys payable under such a guarantee with all interest thereon shall be charged to the

Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

- (2) Any sums received or recovered by the Treasurer from the Port Authority or otherwise in respect of payment made under subsection (1) shall be credited to the Consolidated Fund.

[Section 69 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

70. Debentures and inscribed stock are authorized investments

[(1) and (2) repealed.]

- (3) Debentures and inscribed stock are a lawful investment for moneys that a body corporate is authorized or directed to invest, in addition to any other investments expressly authorized for the investment of those moneys.
- (4) A trustee or body Corporate may under this Act convert any debentures in his or its hands into inscribed stock.

[Section 70 amended by No. 1 of 1997 s.18.]

71. Sinking funds

- (1) The Port Authority shall pay to the Treasurer such amounts as he may from time to time direct to be set aside by way of a sinking fund for the purpose of redeeming any loan raised by the Port Authority under this Part or this Part as read with Schedule II, as the case requires.
- (2) The Treasurer shall invest moneys standing to the credit of a sinking fund and shall credit to the sinking fund the interest derived from the investment.

72. Interest and sinking fund contributions

- (1) The Port Authority shall cause to be paid to the Treasurer and entered and debited in the Account in each financial year such amounts as are fixed by the Treasurer as the interest and sinking fund contributions payable for that year in respect of such

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portion of the Consolidated Fund as has been applied to the performance by the Port Authority of any of the functions imposed on it by this Act.

- (2) The Port Authority shall cause the accrued interest on the sinking fund contributions as certified by the Under Treasurer to be incorporated in the accounts of the Port Authority in relation to the exercise by it of the powers conferred on it by this Act.

- (3) In subsection (1) —

“Consolidated Fund” means the fund of that name established by section 64 of the *Constitution Act 1889*.

[Section 72 amended by No. 98 of 1985, Schedule 1; No. 6 of 1993 ss.14 and 15.]

73. Interest on daily balance of moneys provided out of Consolidated Revenue Fund

- (1) The Port Authority shall cause to be —

- (a) charged in the accounts kept by it under the provisions of the *Financial Administration and Audit Act 1985* interest on the daily balance of moneys charged to the Consolidated Fund for the purposes of this Act; and
- (b) credited to the Consolidated Fund half-yearly or at such other times as the Treasurer may direct the amount of the interest referred to in paragraph (a).

- (2) The Treasurer shall from time to time fix the rate of interest referred to in subsection (1) (a).

[Section 73 amended by No. 98 of 1985, Schedule 1; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

74. Power of Port Authority to borrow moneys to repay loans

- (1) Subject to subsection (2), for the purpose of making provision to repay the whole or any part of a loan raised by the Port Authority under this Part, the Port Authority may, with the

approval of the Governor, borrow the moneys necessary for that purpose before the loan or part thereof becomes payable.

- (2) The Governor shall not approve of the borrowing by the Port Authority of moneys under subsection (1) unless a proposal in writing showing the information referred to in section 65 (2) (a), (b), (c) and (d) is first submitted by the Port Authority to, and approved by, the Minister.

75. Application of profit

- (1) The Port Authority may for any of the purposes of this Act use any profit at the end of any financial year resulting from the activities carried on by the Port Authority under this Act, which profit is available after making full allowance for interest and sinking fund contributions and for depreciation, obsolescence and maintenance of plant.
- (2) Without limiting the generality of subsection (1), the Port Authority may, with the approval of the Treasurer, use profit referred to in that subsection —
- (a) by investing the surplus moneys concerned with any bank or other financial institution; and
 - (b) by creating and maintaining such reserves as are prescribed.

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

The provisions of the *Financial Administration And Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Port Authority and its operations.

[Section 76 inserted by No. 98 of 1985]

[77-81.. Repealed by No. 98 of 1985.]

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

Part XI — Offences

87. Depositing ballast, rubbish, etc.

- (1) A person who, to the actual or potential injury of navigation —
- (a) casts or causes to be cast or suffers to fall —
 - (i) whether from on board a vessel or from land, any ballast, rock, soil, rubbish or other substance or thing onto any tidal land or into the Port, any tidal water or the sea below low water-mark; or
 - (ii) any substance or thing referred to in subparagraph (i) on land in a position whence it is liable to descend or fall or to be carried or washed down by ordinary or high tides or by any stream or flow of water or by any storm or flood or otherwise into the harbour or tidal water or into the sea;
 - or
 - (b) casts, places or leaves or causes to be cast, placed or left a vessel laid by or neglected as unfit for sea service, any floating or other object or any other thing onto any tidal land or into the Port, any tidal water or the sea below low water-mark,

commits an offence.

- (2) A person who commits an offence under subsection (1) is liable, in addition to suffering any penalty imposed in respect of that offence, to pay to the Port Authority all expenses reasonably incurred by the Port Authority in removing any substance or thing referred to in paragraph (a) or (b) of that subsection to another position, and the Port Authority may recover in a court of competent jurisdiction those expenses from that person as a debt due to the Port Authority.

88. Interference with marine navigational aids

- (1) A person shall not wilfully or negligently —
- (a) alter, damage, destroy or remove; or
 - (b) ride by, make fast to or run foul of,

any marine navigational aid.

Penalty: \$5 000 or imprisonment for 12 months

- (2) A person who commits an offence under subsection (1) is liable, in addition to suffering any penalty imposed in respect of that offence, to pay to the Port Authority all expenses reasonably incurred by the Port Authority in making good any alteration, damage, destruction or removal occasioned by that offence, and the Port Authority may recover in a court of competent jurisdiction those expenses from that person as a debt due to the Port Authority.

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

90. Damaging lights

- (1) A person shall not —
- (a) wilfully or negligently break, damage, throw down or remove any lamp, lamp post or other appliance used for the purpose of lighting any wharf, road or other place within the Port; or
 - (b) wilfully extinguish any light within a lamp referred to in paragraph (a).

Penalty: \$5 000 or imprisonment for 12 months

- (2) A person who commits an offence under subsection (1) is liable, in addition to suffering any penalty imposed in respect of that offence, to pay to the Port Authority all expenses reasonably incurred by the Port Authority in making good any breakage, damage, throwing down or removal occasioned by reason of the commission of that offence, and the Port Authority may recover

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in a court of competent jurisdiction those expenses from that person as a debt due to the Port Authority.

91. Wilful destruction of or damage to works

A person who wilfully destroys or in any way damages any property, port work or other work of or vested in the Port Authority by or under this Act or any part thereof, whether constructed or in the course of construction, commits an offence.

Penalty: \$5 000 or imprisonment for 12 months

92. Offering bribes

A person shall not give or offer any money or thing by way of bribe or reward to the General Manager, the Harbour Master or any other officer, or to any employee, for the purpose of —

- (a) gaining an undue preference in the execution of his office or the performance of his duties; or
- (b) inducing him to do or omit to do anything relating to his office or duties.

Penalty: \$5 000 or imprisonment for 12 months

93. Miscellaneous offences

A person who —

- (a) obstructs, impedes or interferes with the doing of, anything required or authorized to be done by or under this Act; or
- (b) molests or makes use of any threatening language to the General Manager, the Harbour Master or any other officer, or any employee, while he is acting in the performance of his functions under this Act,

commits an offence.

94. General penalty

A person who commits an offence under this Act for which no penalty is provided elsewhere than in this section is liable to a penalty not exceeding \$2 000.

95. Averment in respect of Port

In any proceedings for an offence under this Act, the averment that that offence was committed within the Port is sufficient proof that the act or omission alleged to constitute that offence occurred within the Port boundaries, unless the contrary is proved.

96. Application of penalties

The amounts of all fines and other sums of money recovered for or in respect of offences under this Act shall be paid to the Port Authority and are hereby appropriated for the purposes of this Act.

97. Police officers to report breaches of Act

A police officer who is aware or has reason to believe that any offence has been committed under this Act shall forthwith report the matter to the General Manager or the Harbour Master.

98. Infringement notices

(1) In this section —

“alleged offender” in relation to an infringement notice means person referred to in subsection (2) on whom the infringement notice is or is to be served;

“authorized person” means —

- (a) special constable appointed by the Port Authority under section 17 (1) (b); or
- (b) officer or employee of the Port Authority authorized under sub-section (8) to serve infringement notices;

“infringement notice” means notice given under subsection (2).

- (2) When an authorized person has reason to believe that a person has committed an offence under this Act that is prescribed for the purposes of this section, the authorized person may serve on the person a notice in the prescribed form (in this section called an “infringement notice”) informing the person that, if he does not wish to have a complaint of the alleged offence heard and determined by a court, he may pay to a person specified in the infringement notice, not being the authorized person, within the time therein specified, the amount of the penalty prescribed for the alleged offence, if dealt with under this section.
- (3) An infringement notice may be served on an alleged offender personally or by posting it to his address as ascertained from him at the time of, or immediately following, the occurrence giving rise to the allegation of an offence.
- (4) A person who receives an infringement notice may decline to be dealt with under this section and, if he fails to pay the prescribed penalty within the time specified in the infringement notice or within such further time as may, in any particular case, be allowed by any authorized officer, he is deemed to have declined to be dealt with under this section.
- (5) An infringement notice may, whether or not the prescribed penalty has been paid, be withdrawn, at any time within 28 days after the service of the infringement notice, by the sending of a notice, in the prescribed form and signed by a prescribed officer, to the alleged offender at his last known place of residence or business, advising the alleged offender that the infringement notice has been withdrawn, and, in that event, the amount of any prescribed penalty that has been paid shall be refunded.
- (6) When a prescribed penalty has been paid under an infringement notice and the infringement notice has not been withdrawn as provided by subsection (5), proceedings shall not be brought

against the alleged offender with respect to the offence alleged in the infringement notice.

- (7) When a penalty is paid under an infringement notice the person on whom the infringement notice was served shall, for the purposes of this Act, be deemed to have committed an offence, but the payment shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the occurrence by reason of which the infringement notice was served.
- (8) The Chairman may authorize any officer or employee to serve infringement notices and the Port Authority shall issue to each person so authorized a certificate in the prescribed form which he shall produce whenever required to do so by a person on whom he has served, or is about to serve, an infringement notice.

Part XII — General

99. Port Authority may make regulations

- (1) The Port Authority may with the approval of the Governor make regulations providing for all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out, or giving effect to, the provisions of this Act and, in particular, for all or any of the purposes set out in Schedule III.
- (2) Regulations made under subsection (1) may —
 - (a) create offences and provide, in respect of an offence so created, for the imposition of a penalty not exceeding the penalty set out in section 94;
 - (b) provide that a person committing an offence referred to in paragraph (a), in addition to suffering any penalty imposed in respect of that offence, is liable to pay to the Port Authority all expenses incurred by the Port Authority by reason of the commission of that offence, and that the Port Authority may recover in a court of competent jurisdiction those expenses from that person as a debt due to the Port Authority;
 - (c) adopt, either wholly or in part or with modifications and either specifically or by reference and either as at the date of adoption or as amended from time to time, 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 any of the standards, rules, codes or specifications of the bodies known as the Standards Association of Australia, the British Standards Institution or The Association of Australian Port and Marine Authorities or of any other like body that is specified;
 - (d) provide that if by reason of unavailability of materials or for any other reason that the Port Authority considers valid any requirement of any subsidiary legislation or

standard, rule, code or specification adopted by those regulations in accordance with paragraph (c) cannot be conformed to, the Port Authority may approve such use of materials or other matters as it considers to be consistent with the achievement of the objects of those regulations;

- (e) be of general application or may be limited in their application according to time, place or circumstance;
- (f) make different provision for different classes of vessels or for the same class of vessels in different circumstances;
- (g) make the application of any provision of those regulations dependent on compliance with specified conditions to be evidenced in a specified manner;
- (h) apply according to an approval or other administrative decision of a specified person or body notwithstanding that that approval or other decision may not have been, or may not have been primarily, given or made for the purposes of this Act;
- (i) require a matter affected by them to be in accordance with a specified requirement, or as approved by, or to the satisfaction of, a specified person or body, or class of person or body, and delegate to or confer on a specified person or body, or class of person or body, a discretionary authority;
- (j) exempt, or provide for the exemption of, persons or things from the provisions of those regulations, or any of them, and impose, or provide for the imposition of, conditions on any such exemption; or
- (k) require any matter or thing to be verified by statutory declaration.

(3) In subsection (2) —

“specified” means specified in the regulations referred to in that subsection.

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100. Governor may ratify irregularities

If by misadventure or accident anything is at any time done after the time required by this Act or is otherwise irregularly done in matter of form, the Governor may from time to time by order —

- (a) make provision for any such case;
- (b) extend the time within which anything is required to be done; or
- (c) validate anything so done after the time required by this Act or irregularly so done in matter of form,

so that the true intent and purpose of this Act may have effect.

101. Section 10 of *Shipping and Pilotage Act 1967* amended

Section 10 of the *Shipping and Pilotage Act 1967* is amended in subsection (3) by —

- (a) deleting paragraph (a) and substituting the following paragraph —

“

- (a) the provisions of —

- (i) sections 4, 5, 6, 7, 9, 9A and 11 do not apply in respect of the port of Fremantle but do apply in respect of a fishing boat harbour or mooring control area of which the controlling authority is the Fremantle Port Authority;
- (ii) sections 4, 5, 6, 7, 9, 9A and 11 do not apply in respect of the port of Dampier;

”;

and

- (b) inserting after “port of Fremantle” in sub-paragraph (i) of paragraph (c) the following —

“

or the port of Dampier

”.

Part XIII — Savings and transitional

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

103. Existing regulations saved

Any regulations made under the *Shipping and Pilotage Act 1967* —

- (a) in respect of the port of Dampier as declared by or under that Act; and
- (b) in force immediately before the commencement of section 99,

shall continue in force in respect of the Port with any necessary modifications after that commencement as if made and in force under section 99, and may be amended or repealed by regulations made under that section.

Schedule I

[Section 6]

PORT OF DAMPIER*Part I — Land area of Port.*

All that portion of land shown bordered red on Lands and Surveys Miscellaneous Diagram No. 99.

Part II — Water area of Port.

All that portion of water bounded by a line commencing at the high water mark on the coast of the mainland in longitude $116^{\circ} 36'E$ and extending eastwards along the high water mark of the coast of the mainland to the northernmost north-western extremity of Burrup Peninsula; thence north-easterly crossing the western entrance of Boat Passage to the high water mark of the western most southwestern extremity of Dolphin Island and then along the west coast of that Island to a position in longitude $116^{\circ} 50'E$; thence north along meridian $116^{\circ} 50'E$ and along the high water marks of the coasts of Gidley, Keast and Legendre Islands west of that meridian to latitude $20^{\circ} 18.2'S$; thence in a south-westerly direction to latitude $20^{\circ} 23.7'S$, longitude $116^{\circ} 36'E$; thence south along meridian $116^{\circ} 36'E$ and the high water marks of the coasts of Rosemary Island, West Lewis Island and West Intercourse Island east of that meridian to the high water mark on the coast of the mainland in longitude $116^{\circ} 36'E$.

Part III — Seabed area of Port.

All that portion of seabed bounded by lines starting at the intersection of the High Water Mark of the Indian Ocean on the north-western coast of the mainland of the State of Western Australia at east Longitude 116 degrees 36 minutes and extending north along that meridian to south Latitude 20 degrees 23.7 minutes; thence north-easterly to the intersection of south Latitude 20 degrees 18.2 minutes with east Longitude 116 degrees 50 minutes; thence south along that meridian to the High Water Mark of Flying Foam Passage on the north-western coast of Dolphin Island; thence generally south-westerly along that mark to the western most south-western extremity of Dolphin Island; thence south-westerly crossing the western entrance of Sea ripple Passage to the High Water Mark of Mermaid Sound at the north western most north-western extremity of Burrup Peninsula; thence generally

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south-westerly along that mark to the north-eastern boundary of DeWitt Location 197; thence north-westerly, generally south-westerly and generally north-westerly along boundaries of that Location to the north-eastern corner of Location 199; thence generally north-westerly and generally south-westerly along boundaries of that location to the western most north-western corner of Location 197; thence generally south-westerly and easterly along boundaries of that location to the High Water Mark of Mermaid Sound; thence generally south-westerly along that mark to the northern corner of Location 151; thence generally south-westerly, south-easterly, and north-easterly along boundaries of that location to the western corner of Location 204; thence south-easterly, north-easterly and north-westerly along boundaries of that Location to a south-western boundary of Location 151; thence north-easterly and south-easterly along boundaries of that Location to the western most northern corner of Location 200; thence south-westerly, south-easterly generally southerly and east along boundaries of that location to the High Water Mark of King Bay; thence generally easterly and generally south-westerly along that mark and generally south-westerly along the High Water Mark of the Indian Ocean to the starting point.

Excluding DeWitt Location 26 (Special Lease 3116/3471), Location 42 (Special Lease 3116/3806), Location 43 (Special Lease 3116/3807), Location 79 (Special Lease 3116/4976), Location 90 (Special Lease 3116/5503) and all those portions of seabed as shown delineated and coloured red on Lands and Surveys Miscellaneous Plans 1521 and 1522.

Plans: Dampier and Barrow Island 1:250000, Dampier S.E. 1:25000 and Nichol Bay S.W. 1:25000.

Schedule II

[Section 66]

PART A — PROVISIONS APPLYING TO AND IN RELATION TO DEBENTURES AND INSCRIBED STOCK

1. Interest and early payment off

All debentures and inscribed stock —

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

2. When interest payable

Interest secured by debentures or inscribed stock is payable half-yearly on such dates and at such places as the Port Authority determines.

3. Debentures and inscribed stock inter-changeable

The Port Authority may, at the request of —

- (a) the holder of debentures issue to him in lieu thereof inscribed stock; or
- (b) the registered owner of inscribed stock issue to him in lieu thereof debentures,

in respect of the same loan, of the same amount, of the same currency and bearing the same interest.

4. Brokerage

The Port Authority may pay moneys by way of brokerage for making, procuring, negotiating or obtaining the loan of any moneys borrowed under section 65.

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5. Notice of trust not receivable

Neither the Port Authority nor any officer —

- (a) shall receive notice of any trust, whether express, implied or constructive, in relation to debentures or inscribed stock; and
- (b) is bound to see to the execution of any trust to which the debentures or inscribed stock referred to in paragraph (a) may be subject.

6. Owners of securities not responsible for application of moneys advanced.

A person advancing moneys to the Port Authority and receiving in consideration of that advance debentures or inscribed stock is not —

- (a) bound to inquire into the application; or
- (b) in any way responsible for the non-application or misapplication,

of those moneys.

**PART B — PROVISIONS APPLYING TO AND IN
RELATION TO DEBENTURES**

1. Form of debentures

Debentures shall be in the prescribed form.

2. Sealing and numbering

Debentures shall be —

- (a) sealed with the common seal of the Port Authority in the prescribed manner; and
- (b) numbered consecutively, beginning with the number 1 and proceeding in an arithmetical progression whereof the common difference is 1.

3. Passing by delivery

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

4. Rights of bearer

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

5. Payment of interest

Interest shall not be payable in respect of a debenture except to the holder of the interest coupon representing the interest claimed and on delivery of that interest coupon.

6. Register of debentures

(1) The Port Authority shall cause to be kept in one or more books a register of debentures (in this Part called “the Register”), and within a reasonable time after the date of issue of a debenture shall cause to be made an entry in the Register specifying the number, date of issue, principal amount and rate of interest of the debenture.

(2) The Register —

- (a) may be inspected at all reasonable times by a person on payment of the prescribed fee, if any, for each inspection; and
- (b) is evidence of any matters required or authorized by or under this Act to be entered therein.

(3) A person is entitled to obtain from the Port Authority copies or extracts certified by the officer in whose custody the Register is kept to be true copies of or extracts from the Register on payment for each copy or extract of the prescribed fee, and any copy or extract so certified is admissible in evidence.

7. Replacement of lost debentures

(1) On proof being made before a Judge or Master in chambers by affidavit of any credible person that a debenture held by that person, the number and principal amount whereof is specified by him, has been lost or accidentally burnt or otherwise destroyed before it has been paid off, and after the publication of such advertisements as the Judge or Master directs and on the Judge or Master certifying that he is satisfied with the proof so made, the Port Authority may after the expiry of 6 months cause a new debenture with interest coupons, if any, attached thereto —

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- (a) to be made having the like currency and bearing the same number, date of issue, principal amount and rate of interest as the debenture so lost or destroyed; and
 - (b) to be delivered to that person on his giving sufficient security to the Port Authority to indemnify the Port Authority against any double payment.
- (2) In this clause —
“Master” has the meaning given by the Supreme Court Act 1935.

8. Replacement of defaced debentures

If a debenture is defaced by accident —

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

9. Cancellation and destruction of discharged debentures

- (1) A debenture paid off, discharged or exchanged for or converted into inscribed stock —
- (a) shall be cancelled by the General Manager or, if there is no General Manager, the Harbour Master; and
 - (b) shall be burnt in the presence of the General Manager or, if there is no General Manager, the Harbour Master and of a person authorized by the Auditor General in writing.
- (2) An authorized person referred to in subclause (1) (b) shall, before the debenture concerned is burnt, audit it, allow its accounts and furnish the Port Authority with a certificate particularising it, and the General Manager or, if there is no General Manager, the Harbour Master shall file that certificate in the office of the Port Authority.

**PART C — PROVISIONS APPLYING TO AND IN
RELATION TO INSCRIBED STOCK**

1. Establishment of registry and appointment of Registrar

The Port Authority may —

- (a) establish at the office of the Port Authority a registry for the inscription of inscribed stock;
and
- (b) appoint an officer to be Registrar of Inscribed Stock (in this Part called “the Registrar”).

2. Parcels of stock

The Port Authority may create and sell inscribed stock for ready money in parcels or amounts of \$20 or a multiple of \$20.

3. Inscription in stock ledgers

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

4. Transfer of inscribed stock

- (1) Inscribed stock or any share therein is transferable in the prescribed manner from one person to another by instrument in the prescribed form and not otherwise.
- (2) A person is not entitled or allowed to transfer any fraction of a dollar or any sum smaller than \$20 unless that fraction or smaller sum is the full amount of the balance standing to his credit in the stock ledgers.

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- (3) An instrument of transfer of the inscribed stock to be transferred or any share therein shall be executed by all parties to that transfer and the signatures to that instrument shall be attested in the prescribed manner.
- (4) An instrument of transfer when executed under subclause (3) shall be delivered to the Registrar, who shall, subject to clause 7, register it by entering a memorial of it in the stock ledgers and shall inscribe the name of the transferee in the stock ledgers as the owner of the inscribed stock concerned.

5. Transmission, otherwise than by transfer, of inscribed stock

- (1) A person to whom inscribed stock is transmitted in consequence of the death, insolvency or unsoundness of mind of the registered owner of the inscribed stock or by any other lawful means, not being a transfer in accordance with clause 4, may apply in the prescribed form to the Registrar at the registry to be inscribed as the registered owner of the inscribed stock.
- (2) An application under subclause (1) for transmission of any inscribed stock shall —
 - (a) be verified by statutory declaration or in such other manner as is prescribed; and
 - (b) in the case of a transmission consequent on —
 - (i) death, be accompanied by the probate of the will or letters of administration, which shall be produced to the Registrar, or, if that transmission is to a survivor or the survivors of a joint registered owner of the inscribed stock, by a certificate of the death of that owner, together with a statutory declaration identifying the person named in the certificate of that death with the person who is shown in the stock ledgers as the joint registered owner of the inscribed stock, which certificate and statutory declaration may, subject to the approval of the Registrar, be produced to the Registrar in lieu of the probate of the will or letters of administration; or
 - (ii) insolvency, be accompanied by an office copy of the relevant prescribed document evidencing the

insolvency of the registered owner of inscribed stock concerned.

- (3) The Registrar shall, if he is satisfied that the provisions of this Act have been complied with, register any transmission referred to in this clause by entering a memorial of it in the stock ledgers and inscribe the name of the person to whom the inscribed stock concerned has been transmitted in the stock ledgers as the registered owner, or joint registered owner, of that inscribed stock.
- (4) A reference in this clause or clause 6 to the insolvency of a registered owner of inscribed stock or of a principal, as the case requires, is a reference to the fact that that owner or principal is or was at the relevant time an insolvent under administration within the meaning of the *Companies (Western Australia) Code*.

6. Power of attorney

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

7. When transfer books to be closed and stock ledgers balanced

- (1) An instrument of transfer of inscribed stock or of any part thereof shall not be registered —
 - (a) on any Saturday, Sunday or public holiday; or
 - (b) within the period of 14 days, or within such period (not exceeding 21 days) as is prescribed, immediately preceding any of the days on which the interest thereon is payable.
- (2) During the period referred to in subclause (1) (b), the Port Authority shall cause the amount of the inscribed stock respectively standing to the credit of the several registered owners thereof to be ascertained and the balances to be struck and carried forward in the stock ledgers.

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- (3) An instrument of transfer of any inscribed stock or of any part thereof shall not be registered during the period of 21 days immediately preceding the date of maturity of the inscribed stock.

8. Receipts for interest payable in respect of inscribed stock

- (1) The receipt of the person in whose name any inscribed stock stands in the stock ledgers or, if any inscribed stock so stands in the names of 2 or more persons, the receipt of 1 of the persons in whose names the inscribed stock stands in the stock ledgers is a sufficient discharge to the Port Authority for any interest payable in respect of the inscribed stock, notwithstanding any trusts to which the inscribed stock may then be subject and whether or not the Port Authority has had notice of those trusts, and the Port Authority is not bound to see to the application of the moneys paid on that receipt.
- (2) If any inscribed stock is held in joint names and one or more of the joint registered owners of the inscribed stock dies or becomes an insolvent under administration within the meaning of the Companies (Western Australia) Code or of unsound mind, the receipt of any one of the remaining or other joint registered owners is a sufficient discharge to the Port Authority for any interest payable in respect of the inscribed stock, notwithstanding that a transmission thereof has not been registered in accordance with clause 5.

Schedule III

[Section 99 (1)]

PURPOSES FOR WHICH PORT AUTHORITY MAY MAKE REGULATIONS

1. The general conduct of the business and proceedings of the Port Authority.
2. Prescribing the days on which the ordinary meetings of the Port Authority shall be held.
3. Prescribing the notice, being not less than 7 days, to be given to members of the holding of meetings of the Port Authority.
4. The control, supervision and guidance of officers and employees.
5. The uniforms, if any, to be worn on duty by special constables appointed under section 17 (1) (b), the identification to be carried by those special constables and the occasions on which that identification shall be produced.
6. Regulating, controlling or prohibiting —
 - (a) entry into or presence within the Port or any specified part or parts of the Port by or of any person or class of person or by or of any thing or class of thing; or
 - (b) doing or omitting to do any thing or class of thing within the Port or any specified part or parts of the Port,either at all times or on all occasions or at any time or times or on any occasion or occasions, the intention being that the generality of the authority delegated by this item is not affected by the authority delegated by any other item.
7. Regulating all matters relating to the protection of life and property and safe navigation within the Port.
8. Requiring the use of tide signals and other signals in the Port.
9. The prevention of overloading or overcrowding of vessels.
- [10. *Deleted*]

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11. Prescribing the powers, duties and obligations of the Harbour Master and persons acting on his behalf in respect of the matters referred to in item 9 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.
12. Regulating —
 - (a) the landing, shipping, trans-shipping, unshipping, warehousing, stowing, depositing, removal or keeping of explosives and dangerous goods as respectively defined by the Explosives and Dangerous Goods Act 1961 and of such other substances as the Minister may specify as being dangerous goods for the purposes of the regulations;
 - (b) in particular the special precautions and measures to be taken in relation to the movement, berthing, loading and unloading of vessels carrying explosives, dangerous goods or other substances referred to in paragraph (a);
 - (c) the landing, shipping, trans-shipping, unshipping, warehousing, stowing, depositing, removal or keeping of goods other than explosives, dangerous goods or other substances referred to in paragraph (a);
 - (d) landing and taking on passengers; and
 - (e) taking in and delivering ballast.
13. The conditions under which rebates may be allowed on port charges and the maximum extent of any such rebates.
- [14. *Deleted*]
15. Exemption from port charges in respect of vessels in the service of Her Majesty or of any country that is a member of the British Commonwealth of Nations or in the naval service of any foreign power and of other vessels in specified circumstances.
16. Providing for the uses to which interest earned on moneys credited to an account referred to in section 62 or invested under section 63 and profit referred to in section 75 may be put, for the manner in which that interest and the surplus moneys concerned are to be invested and for the manner in which and the purposes for which reserves referred to in section 75 (2) are to be created, maintained and wound up.

17. Regulating the use, cleaning, repair, maintenance and effective preservation of wharves and wharf loading areas or other landing places on Port land, generally regulating traffic thereon and fixing charges to be paid for the use thereof.
- [18. *Deleted*]
19. Prescribing the powers of the Port Authority to deal with or dispose of goods that —
 - (a) have remained within the Port for longer than a prescribed period; or
 - (b) are affecting or likely or liable to affect any property of the Port Authority or any other goods within the Port,and, without limiting the generality of the foregoing, prescribing —
 - (c) the person or persons who shall be liable for any charges imposed or expenses incurred by the Port Authority in the exercise of powers conferred by regulations made under this item;
and
 - (d) the circumstances and manner in which those goods may be sold by the Port Authority and the manner in which the proceeds of any such sale may be applied.
20. Regulating the duties and conduct of all persons, including officers and employees who are employed in the Port.
21. Providing for the control and management of ferry boats plying for hire at wharves or public thoroughfares.
22. The licensing of tugs to conduct vessels into or out of the Port.
23. Providing for the registration and licensing of all ballast boats, tank boats, cargo boats, lighters and other vessels plying for hire either for goods or passengers within the Port.
24. Providing for the inspection of vessels referred to in item 23 and preventing the use of such of those vessels as are unseaworthy or insufficient.
25. Providing for the name of each vessel referred to in item 23 and the name of its owner being shown on that vessel.

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26. Fixing the fares and charges for the carriage of persons and goods in vessels referred to in item 23, or any of them, according to either time or distance.
27. Providing for the regulation, registration and licensing of master and other boatmen, and to prevent unlicensed boatmen plying for hire.
28. Regulating the conduct, and the punishment of misconduct, of licensed boatmen referred to in item 27 when practising their calling.
29. The regulation, registration and licensing of porters, carriers, truck drivers and other persons carrying goods, or driving vehicles for the conveyance of passengers or goods, within the Port.

[30, 31, 32, 33, 34, 35. Deleted]

36. Empowering a collector of port charges, either alone or with other persons, to enter a vessel in order to ascertain the port charges payable in respect of the vessel or of the goods therein.
37. Requiring the master of every vessel to report his arrival within the Port within a specified time thereafter.
38. Requiring 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 officer on demand.
39. Requiring the master of every vessel to give as many copies as may be required by the Port Authority of —
 - (a) the bill of lading, manifest or other proper account of the cargo of, or of goods intended to be unshipped from, that vessel, and the name of the consignee or other person to whom that cargo or those goods are intended to be delivered; and
 - (b) all alterations in or additions to the bill of lading, manifest or other proper account referred to in paragraph (a).
40. Requiring the master of every vessel —
 - (a) to obtain permission to unship; and
 - (b) to give notice of the intended time of unshipment of, cargo or goods therefrom.

41. Requiring the master of every vessel to obtain permission to discharge or load cargo or goods before doing so.
42. Requiring the shippers of goods to furnish accounts of the goods intended to be shipped.
43. Regulating the time when port charges on goods shipped or unshipped are to be payable.
- [44, 45, 46, 47, 48, 49, 50, 51, 52. *Deleted*]
53. Providing, in relation to licences required by the regulations —
 - (a) the method of application for those licences;
 - (b) the fees to be paid for those licences;
 - (c) the granting, duration, suspension and cancellation of those licences; and
 - (d) the conditions, if any, to which those licences may be subjected.
- [54 *Deleted*]
55. Regulating the charges to be made by licensed boatmen referred to in item 27 and by porters, carriers, truck drivers and other persons carrying goods or driving vehicles referred to in item 29.
56. Prohibiting persons from plying for hire or acting as boatmen, porters, carriers, truck drivers or otherwise in the carriage of goods or passengers without previously obtaining and continuing to hold licences granted by the Port Authority.
57. Authorizing and empowering the Port Authority to adopt the mass or measurement of goods set forth in the receipt, bill of lading, manifest or other proper account of the cargo of a vessel, for the purpose of levying, imposing, charging or collecting port charges.
58. Regulating and limiting the speed of vessels within the Port.
59. Authorizing and empowering the Port Authority to cause the removal from a place within the Port to another place, whether within or outside the Port, of goods that the Port Authority or the wharf manager or other officer in charge of the wharf concerned considers to be actually or potentially injurious to other goods or to any shed,

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store or other premises or any open yard or place within the Port, and the storage of the goods so considered to be actually or potentially injurious in any shed, store or other premises or in any open yard or exposed or open place, whether within or outside the Port, as the Port Authority or the wharf manager or that other officer thinks fit at the risk and expense of the owner of those goods.

60. Providing that regulations made under item 59 —
- (a) may provide that the cost of any removal and storage referred to in that item shall be chargeable against the owner of the goods concerned and may be recovered from him by the Port Authority in the Local Court held in or nearest to the Port; and
 - (b) shall be construed as being in addition to and not in derogation of or substitution for any of the powers conferred on the Port Authority by regulations made under item 19.
61. Limiting the liability of the Port Authority, or exempting it from liability, for damage or loss suffered by any person in consequence of —
- (a) an act of God;
 - (b) an act of war;
 - (c) an act of public enemies;
 - (d) strikes, lockouts or stoppages or restraints of labour (whether partial or general) from whatever cause;
 - (e) riots and civil commotions; or
 - (f) the use for purposes of war or defence, or training or preparation for war or defence, of any of the property of the Port Authority.
62. Prescribing the conditions to be inserted in any lease granted under this Act.
63. Subject to section 18, prescribing the powers exercisable by special constables appointed by the Port Authority under section 17 (1) (b), and by other officers and employees, and by 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.

64. Prescribing all matters and things that are required to be prescribed or which it may be necessary or convenient to prescribe with respect to debentures and inscribed stock.
65. Prohibiting the deposit of litter, rubbish or waste substances of any kind and the abandonment or neglect of vessels or other material —
 - (a) within the Port; or
 - (b) outside the Port so as to affect or potentially affect, the Port.
66. The protection of the environment of the Port and, without limiting the generality of the foregoing, the implementation of the environmental management plan referred to in section 32.
67. For purposes, other than purposes referred to in items 1 to 66, relating to the convenience of shipping, or of the public, within the Port, and generally for duly performing the functions imposed on the Port Authority by this Act.

[Schedule III amended by No. 46 of 1993 s.46.]

Notes

- ^{1.} This is a compilation of the *Dampier Port Authority Act 1985* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Dampier Port Authority Act 1985</i>	39 of 1985	20 May 1985	23 Oct 1987 (see <i>Gazette</i> 23 Oct 1987 p.3937)
<i>Acts Amendment (Financial Administration and Audit Act 1985, schedule 1</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see section 2)
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993 (see section 2)
<i>Ports (Functions) Act 1993, sections 37 and 46^{2,3}</i>	46 of 1993	20 Dec 1993	15 Jun 1994 (see section 2 and <i>Gazette</i> 10 Jun 1994 p.2373)
<i>Acts Amendment (Public Sector Management) Act 1994, section 19</i>	32 of 1994	29 June 1994	1 Oct 1994 (see section 2 and <i>Gazette</i> 30 Sep 1994 p.4948)
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see section 2)
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see section 2 (1))
<i>Trustees Amendment Act 1997, section 18</i>	1 of 1997	6 May 1997	16 Jun 1997 (see section 2 and <i>Gazette</i> 10 Jun 1997 p.2661)
<i>Acts Amendment (Land Administration) Act 1997, section 142</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see section 2 and <i>Gazette</i> 27 Mar 1998 p.1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 46</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see section 2 (1))

Short title	Number and year	Assent	Commencement
<i>Port Authorities (Consequential Provisions) Act 1999</i> , Part 2 and Part 3 (other than section 16(2)) ⁵	5 of 1999	13 Apr 1999	14 Aug 1999 (see section 2 and <i>Gazette</i> 13 Aug 1999 p.3823)

² Section 48 of the *Ports (Functions) Act 1993* (Act No. 46 of 1993) reads as follows —

“

48. Harbour masters (transitional)

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

”.

³ Section 49 of the *Ports (Functions) Act 1993* (Act No. 46 of 1993) reads as follows —

“

49. Dampier pilotage services agreements (transitional)

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

”.

⁴ Section 50 of the *Ports (Functions) Act 1993* (Act No. 46 of 1993) reads as follows —

“

50. Existing port authority regulations (saving)

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

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

“

Part 3 — Transitional and saving provisions

12. Application of *Interpretation Act 1984*

- (1) The provisions of the *Interpretation Act 1984* about the repeal of written laws and the substitution of other written laws for those so repealed (for example, sections 16(1), 36 and 38) apply to the repeal of an existing Act relating to a port authority and the amendment of the *Ports (Functions) Act 1993* in relation to that existing Act and that port authority as if the PA Act —

- (a) repealed that existing Act; and
- (b) repealed the *Ports (Functions) Act 1993* insofar as it applied to that port authority,

when the item relating to that port authority comes into operation.

- (2) The other provisions of this Part are additional to the provisions applied by subsection (1).

13. Existing port authorities continue

- (1) If, immediately before the commencement of an item, there was an existing port authority with the name set out in that item, the port authority named in that item is a continuation of, and the same legal entity as, the existing port authority and the rights and obligations of the existing port authority are not affected.

- (2) If in a written law or other document or instrument there is —
 - (a) a reference to an existing port authority constituted or established under an existing Act; or
 - (b) a reference that is to be read and construed as a reference to an existing port authority,

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

14. Membership

- (1) The persons who were members or commissioners of a continuing port authority (including the chairman) immediately before the commencement of the item relating to that port authority continue in office, under and subject to the PA Act, as the chairperson and directors of that port authority.

- (2) Subsection (1) does not apply to a person holding office under section 8(1)(d) of the *Dampier Port Authority Act 1985*.
- (3) A person to whom subsection (1) applies is to be regarded as having been appointed under section 7 of the PA Act.

15. Staff

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

16. Port descriptions

- (1) Until an order is made under section 24(1) of the PA Act in relation to a port referred to in item 1, 3, 4, 5, 6, 7 or 8 the description of that port for the purposes of the PA Act is the description that had effect under the relevant existing Act immediately before the commencement of that item.
- (2) Until an order is made under section 24(1) of the PA Act in relation to the Port of Broome the description of that port for the purposes of the PA Act is as follows —

Port of Broome

- (a) all that portion of water and seabed bounded by lines starting from the high water mark of Roebuck Bay at the southern extremity of Fall Point and extending south to an east-west line situate 3 nautical miles south from the southern extremity of Entrance Point; then west to a north-south line situate 3 nautical miles west from the southern extremity of Entrance Point; then north to a point situate west of the summit of Station Hill; then east to the high water mark of the Indian Ocean and then generally southwesterly and generally southeasterly along that mark and generally northeasterly, generally northwesterly, again generally northeasterly and generally easterly along the high water mark of Roebuck Bay to the starting point and including all of the waters of Dampier Creek; and
- (b) all that portion of land comprised within Broome Lots 616, 698, 848 and 956 as shown bordered in red on Lands and Surveys Reserve Plan 108.

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

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

17. Strategic development plans

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

18. Statement of corporate intent

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

19. Borrowing limits

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

20. Regulations

- (1) Regulations made by a continuing port authority that were in force immediately before the commencement of the item relating to that port authority continue in force after that commencement as if they were regulations made by the Governor under section 139 of the PA Act in relation to the port of that port authority.

- (2) Subsection (1) does not continue the operation of any regulation that could not be made under section 139 of the PA Act.

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