

Western Australia

Esperance Port Authority Act 1968

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Esperance Port Authority Act 1968

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Western Australia

Esperance Port Authority Act 1968

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

[Assented to 26 September 1968.]

Be it enacted —

Part I — Preliminary

1. Citation

This Act may be cited as the *Esperance Port Authority Act 1968*.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹

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 *Repealed by No. 46 of 1993 s.46.*]

[4. *Repealed by No. 79 of 1986 s.12.*]

5. Definitions

In this Act, unless the contrary intention appears —

“**boat**” means every description of vessel used in navigation not being a ship;

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

“**chairman**” means the chairman of the Port Authority;

“**Chief Executive Officer**” means the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of the *Western Australian Marine Act 1982*;

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

“**master**” in relation to a vessel means the person, not being a pilot, having for the time being the command or charge of that vessel;

“**member**” means a member of the Port Authority;

“**owner**” includes any person who is owner jointly or in common with any other person and also includes a body corporate and when used in relation to goods includes any

consignor, consignee, shipper or agent for sale or custody of the goods, as well as the owner thereof;

“Port Authority” means the Esperance Port Authority established under this Act;

“port dues or dues” include any due, rate, fee, toll, tax, charge or payment in the nature thereof payable or leviable under this Act;

“port light” means any light erected in aid of navigation within the port or near the approaches thereof, including all fog signal apparatus, light-ships or other fixed or floating lights erected, moored or placed for that purpose;

“port works” or **“works”** includes generally any works for the improvement, protection, management, or utilization of the port and in particular, but without limiting the general import of the term, includes any basin, graving-dock, slip, dock, pier, quay, wharf, jetty, bridge, viaduct, breakwater, embankment or drain or the reclamation of land from the sea or any excavation, deepening, dredging or widening of any channel, basin or other part of the port and all buildings thereon, and plant and machinery used in connection with any port works;

“section” means a section of this Act;

“ship” includes every description of vessel, whether used in navigation, or in any way kept or used as a hulk or store-ship, or for any other purpose, and not propelled exclusively by oars;

“tackle” in relation to a ship, includes all furniture and apparel thereof;

“the Account” means the Esperance Port Authority Account referred to in section 52;

“the port” means so much of the port of Esperance as is contained within the boundaries described in the First Schedule to this Act, or as altered from time to time, by the Governor pursuant to this Act;

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“vessel” means any ship or boat or any other description of vessel used or designed to be used in navigation and howsoever navigated.

[Section 5 amended by No. 47 of 1993 s.8 (1); No. 46 of 1993 s.46.]

Part II — Establishment of Port Authority

Division 1 — Constitution

6. Esperance Port Authority

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

7. Membership of Port Authority

- (1) The Port Authority shall consist of five members.
- (2) The members shall be appointed by the Governor.
- (3) The Governor shall designate one of the members appointed by him to be the chairman.

8.² Period of office of member

Subject to this Act, a member —

- (a) holds office for such period not exceeding 3 years as is specified in the instrument of his appointment; and
- (b) is, on the expiry of his period of office, eligible for reappointment as a member.

[Section 8 inserted by No. 79 of 1986 s.13.]

[9. *Repealed by No. 79 of 1986 s.13.*]

10. Deputy members

- (1) In the case of illness, suspension or absence of a member, the Governor may appoint a person to act as deputy for that member during his illness, suspension or absence.
- (2) Until the appointment of the person to act as deputy, as referred to in subsection (1) of this section, is terminated by the Governor by notice in the *Gazette*, the person while so acting has the powers and shall perform the functions of the member for whom he is the deputy.

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

12. Suspension from office

The Governor may suspend a member from office —

- (a) for misbehaviour or incapacity;
- (b) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of any moneys payable to him under this Act for the benefit of his creditors;
- (c) if he is absent, except on leave of absence granted by the Minister, from three consecutive meetings of the Port Authority;
- (d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*.

[Section 12 amended by No. 46 of 1993 s.46.]

13. Remuneration and allowances of members

The chairman and other members shall be paid such remuneration and allowances as the Governor, from time to time, determines.

14. Leave of absence

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

15. Resignation of member

A member may resign his office by writing under his hand addressed to the Governor.

16. Meetings of the Port Authority

- (1) Subject to this section, the Port Authority shall meet at such times and places as the chairman thinks necessary for the efficient conduct of the affairs of the Port Authority.
- (2) The chairman shall, upon the request in writing of not less than two members, convene a meeting of the Port Authority.
- (3) The Minister may at any time convene a meeting of the Port Authority.
- (4) The chairman shall preside at all meetings of the Port Authority at which he is present, and, in the absence of the chairman from any meeting or if after being present at a meeting he retires, the members present at that meeting shall elect one of their number to be acting chairman for the meeting or for the remainder thereof.
- (5) A member while acting as chairman of a meeting has the powers and shall perform the functions of the chairman.
- (6) At a meeting of the Port Authority, three members constitute a quorum.
- (7) Questions arising at a meeting of the Port Authority shall be decided by a majority of the votes of the members present and voting.

- (8) The member presiding at a meeting of the Port Authority has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (9) The exercise of a power or the performance of a function by the Port Authority is not invalidated by reason only of there being a vacancy or vacancies in the membership of the Port Authority.

17. Record of proceedings

The Port Authority shall keep a record of its proceedings in such manner and form as the Minister approves.

[Section 17 inserted by No. 98 of 1985 Schedule 1.]

Division 2 — Officers and servants

18. Appointment of officers, etc.

- (1) The Governor, on the nomination of the Port Authority may appoint a general manager and on recommendation of the Port Authority may dismiss the general manager.
- (2) The Port Authority may appoint such other officers and servants as may be necessary for the administration of this Act and may dismiss any of those officers or servants.
- (3) All persons appointed pursuant to subsection (1) or (2) of this section are subject to the control of the Port Authority.
- (4) Notwithstanding anything in this Act, to the extent that there is in the case of a person who is appointed under subsection (1) or (2) to be the general manager, or any other officer or servant, and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978* an inconsistency between this Act and that Act that Act shall prevail.

[Section 18 amended by No. 113 of 1987 Schedule 2; No. 46 of 1993 s.46.]

19. Certain officers to give security

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

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

Division 3 — Vesting of property

20. Property vested in Port Authority

There shall be vested in the Port Authority for the purposes of this Act —

- (a) all lands of the Crown within the boundaries of the port, as described in the First Schedule to this Act, or as altered from time to time by the Governor pursuant to section 21, including the bed and shores of the port;
- (b) all wharfs, docks, landing stages, piers, jetties, wharf sheds, port lights and railways belonging to the Crown and within the boundaries of the port and all other port works;
- (c) all such other property as the Port Authority may acquire or the Governor may at any time think fit to vest in the Port Authority for the purposes of this Act.

21. Power of Governor to define port

- (1) For the purposes of this Act the Governor may by proclamation —
 - (a) alter the boundaries of the port;

- (b) withdraw any land or other property of any kind from the Port Authority, and vest or revest it in the Crown.
- (2) The Governor may cancel or vary any proclamation made under subsection (1) of this section.

22. Exemption from local government rates

- (1) Subject to this section, all land vested in the Port Authority under this Act is exempt from any rate, tax or imposition that might, but for this section be lawfully levied or imposed by or under any Act.
- (2) Nothing in subsection (1) of this section precludes a local government 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, and by persons other than the Port Authority, its officers and servants.

[Section 22 amended by No. 14 of 1996 s.4.]

Division 4 — Powers and duties of the Port Authority

23. Power of Port Authority to control port, etc.

Subject to any direction given by the Minister under section 6 of the *Ports (Functions) Act 1993*, the Port Authority has the exclusive control of the port and is charged with the maintenance and preservation of all property vested in it under this Act.

[Section 23 amended by No. 98 of 1987 s.16; No. 46 of 1993 s.46.]

24. Port extensions

- (1) The completion and extension within the port of all port works and the construction therein of all new works shall be deemed Government work within the meaning of the *Public Works Act 1902*, and —

- (a) for the purpose, the Port Authority is a local authority within the meaning of that expression as defined in that Act; and
 - (b) subject to this Act, when and as often as land is required for the purposes of this Act, the land may be entered upon, surveyed and taken under the powers contained in and in accordance with the procedure prescribed by Part 9 of the *Land Administration Act 1997*.
- (2) The Port Authority may, subject to the prior approval of the Minister, undertake the construction, completion and extension within the port of any port works or other works required for the purposes of this Act.

[Section 24 amended by No. 78 of 1989 s.11; No. 31 of 1997 s.28.]

[25, 26 and 27 Repealed by No. 46 of 1993 s.46.]

28. Capital expenditure to be in financial interest of Port Authority

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

[Section 28 inserted by No. 98 of 1987 s.17.]

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

- (1) Goods shall not be allowed to remain upon any wharf or on the approaches thereto, or in any store or warehouse in which goods may be placed, for a longer period than is allowed by the regulations.
- (2) If any goods so remain or if any goods within the port are deemed by the Port Authority in its absolute discretion to be injurious to, or to injuriously affect or be likely to injuriously affect, other goods, or any shed, store, or other premises or open

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Part II Establishment of Port Authority

Division 4 Powers and duties of the Port Authority

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yard or place within the port, any person appointed by the Port Authority for the purpose may remove the goods to a convenient place within or without the port, and keep the goods until payment to the Port Authority of the expenses of removal and of the keeping of the goods, including a reasonable charge for the storage thereof by the Port Authority after the expiration of the period allowed by the regulations.

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

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

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

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

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

Part IV — Lights, buoys and signals

32. Port lights, etc., not to be erected or removed without approval of Chief Executive Officer

The Port Authority shall not erect or place any port light, signal, buoy, or beacon within the boundaries of the port or alter or remove the position of any port light, signal, buoy, or beacon without the approval of the Chief Executive Officer.

[Section 32 amended by No. 47 of 1993 s.8 (2).]

33. Power of Chief Executive Officer to erect and maintain port lights, etc.

The Chief Executive Officer may, with the approval of the Minister, erect, maintain, replace, remove, or discontinue any port lights, signals, buoys, or beacons, or make any variation in the character of any of those lights or signals, or in the mode of exhibiting them, as he may from time to time consider necessary.

[Section 33 amended by No. 47 of 1993 s.8 (2).]

Part V — Damage

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

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

35. Responsibility for injury to works and property

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

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

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

36. Liability for damage to submarine cables

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

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

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

Part VI — Port dues and wharfage charges

38. Port dues

Port dues shall be made and levied and are payable in accordance with the regulations.

39. Tonnage of vessels

Where a ship is registered at a port in a country that has adopted the provisions of the *Merchant Shipping Act 1894*, of the United Kingdom Parliament in respect of the measurement of tonnage, the ship shall be deemed to be of the tonnage denoted in its certificate of registry or other national papers.

40. Measurement of tonnage in certain cases

Where any question arises as to the tonnage of any vessel not registered as mentioned in section 39, any officer of the Port Authority authorised by it in that behalf, may measure the vessel in accordance with the regulations for the measurement of shipping for the time being in force in the State; or the Port Authority may accept, as the measurement of the vessel, the measurement of the vessel appearing in the latest edition of Lloyds Register that is in the possession of the Port Authority.

41. In case of difference, power to weigh or measure goods

Where a difference arises between the officer authorised to collect any dues and the owner of goods respecting the weight or quantity of any goods liable to dues —

- (a) that officer may cause the goods to be weighed or measured;
- (b) if the weight or quantity exceeds that alleged by the owner, the expenses of the weighing or measuring shall be paid to the Port Authority and is recoverable as dues owing to the Port Authority;

- (c) if the weight or quantity does not exceed that alleged by the owner, the expenses of the weighing or measuring shall be paid by the Port Authority and are recoverable from it in a court of competent jurisdiction.

Part VII — Liability for dues

42. Liability for dues payable by ship

The following persons are liable to pay the dues payable by or in respect of a ship, namely —

- (a) the owner and master thereof; and
- (b) any consignee or agent thereof who has paid or made himself liable to pay any other charge on account of the ship in the port.

43. Liability for dues payable for goods

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

- (a) the owner of the goods;
- (b) any consignor, consignee, shipper or agent for sale or custody of the goods; and
- (c) any person entitled to the possession of the goods, either as owner or agent for the owner.

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

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

45. Recovery of dues

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

46. Power of persons authorized to collect dues, to distraint

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

47. Settlement of dispute concerning dues or charges occasioned by distress

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

48. Penalty for evasion

If any master, owner, consignor, shipper or agent evades or attempts to evade the payment of any dues, he commits an offence against this Act and is liable to a fine either not exceeding two hundred dollars or in case the amount of the dues that he has evaded or has attempted to evade exceeds two hundred dollars, then not exceeding the amount of those dues; and the fine is in addition to the dues payable by him.

s. 49

49. Power of Governor to revise port dues

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

to provide for the lawful expenditure of the Port Authority, including interest and contributions to the sinking fund, in respect of the value of the property vested in and charged against it under sections 50 and 51, or if for any other reason the Governor thinks fit so to do, the Governor may revise the port dues, wharfage charges and other dues, tolls, rates, fees and charges prescribed by the regulations.

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

Part VIII — Finance

50. Determination of value of property vested in Port Authority

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

51. Value of subsequent works

After the Minister determines the value under section 50, the Minister shall, at the end of each financial year, cause a schedule to be made of the cost of all additional works and improvements constructed, and the proportionate cost of works in course of construction, and of all property acquired by the Port Authority during the preceding financial year to be charged against the Port Authority.

51A. Annual financial targets

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

s. 51A

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

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

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

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

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

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

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

- (a) a report; and
- (b) supplementary financial statements, based on the procedure approved by the Minister under subsection (3), which for the purposes of that Act shall be deemed to be part of the financial statements

prepared in accordance with section 66 (1) (a) of that Act for that annual report,

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

[Section 51A inserted by No. 98 of 1987 s.19.]

51B. Payment of dividend to the State

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

s. 51C

- (6) In this section “**State’s equity in the Port Authority**” in relation to a financial year means the amount calculated in accordance with the formula (A — L) where —
- A means the written down current cost of the assets considered assets of the Port Authority under section 51A (3), as calculated under that section in respect of the financial year, which were acquired by the Port Authority for consideration or vested in the Port Authority by the State; and
- L means the liabilities of the Port Authority that are identified, using the method approved by the Minister, as relating to the assets referred to in this subsection.

[Section 51B inserted by No. 98 of 1987 s.19; amended by No. 6 of 1993 s.11.]

51C. Information to be provided to Minister

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

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

under sections 51A or 51B.

[Section 51C inserted by No. 98 of 1987 s.19.]

52. Funds of the Port Authority

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

- (c) moneys borrowed by the Port Authority under this Act; and
 - (d) other moneys lawfully received by, or made available, given or payable to the Port Authority.
- (2) The funds referred to in subsection (1) are to be credited to one account called the “Esperance 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 52 inserted by No. 46 of 1993 s.37; amended by No. 57 of 1997 s.56.]

53. Power of Port Authority to borrow

- (1) If at any time the funds of the Port Authority are not sufficient to defray expenditure incurred by it under this Act, the Port Authority in addition to any power conferred on it by sections 54 and 55 may borrow from the Treasurer, or from a bank approved by the Treasurer, that is carrying on business

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within the State, money for the purpose of enabling the Port Authority to defray that expenditure.

- (2) The Port Authority shall pay to the Treasurer in respect of money borrowed from him under subsection (1) of this section, interest at such rate and at such times, as the Treasurer determines.
- (3) Any money borrowed by the Port Authority under this section including interest payable thereon is a charge upon the money from time to time standing to the credit of the Account or in any bank account of the Port Authority, and upon any works, undertakings and other assets vested in the Port Authority and the due repayment of the moneys so borrowed including the interest payable thereon, is hereby guaranteed by the Treasurer, for and on behalf of the State.

[Section 53 amended by No. 98 of 1985 Schedule 1.]

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

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

debentures and inscribed stock and otherwise carrying out the provisions of this Act;

- (d) effect any conversion authorised by this section either by arrangement with the holders of the existing debentures or registered owners of inscribed stock, or by the purchase of the debentures or inscribed stock out of moneys raised by the sale of debentures and inscribed stock, or partly in the one way and partly in the other.

- (2) The Governor shall not approve of the borrowing by the Port Authority of moneys under the provisions of this section, unless a proposal in writing showing —

- (a) the term and particulars of the proposed loan;
- (b) the rate of interest to be paid on the loan;
- (c) the purposes to which the money proposed to be borrowed is to be applied; and
- (d) the manner in which the loan is to be repaid,

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

- (3) Any moneys borrowed by the Port Authority under the provisions of this section —

- (a) may be raised as one loan or as several loans; and
- (b) may be raised —
 - (i) by the issue of debentures with or without interest coupons attached;
 - (ii) by the creation and issue of inscribed stock to be called “The Esperance Port Authority Inscribed Stock”;
 - (iii) partly as provided by subparagraph (i), and partly as provided by subparagraph (ii) of this paragraph; or
 - (iv) in such other manner as the Governor may approve.

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55. Power to borrow to repay loan

For the purpose of making provision to repay either the whole or any part of any loan raised by the Port Authority under the provisions of this Act, the Port Authority may with the consent of the Governor, and subject to subsection (2) of section 54, borrow the moneys necessary for that purpose before the loan or part of it becomes payable.

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

- (1) Due payment of debentures and inscribed stock respectively created or issued under the provisions of section 54 and sold by the Port Authority, with all interest thereon, shall be charged on and secured upon the revenues of the Port Authority.
- (2) For the purposes of subsection (1) of this section “**revenues**” of the Port Authority means all dues, rents and other levies authorised to be collected and received by the Port Authority.
- (3) The due repayment of the principal moneys and the payment of all interest secured by debentures or inscribed stock created or issued by the Port Authority under the provisions of section 54 is hereby guaranteed by the Treasurer, for and on behalf of the State.
- (4) Any sums required by the Treasurer for fulfilling any guarantee given by this Act shall be charged to the Consolidated Fund which is hereby to the necessary extent appropriated accordingly, and any sums received or recovered by the Treasurer from the Port Authority or otherwise in respect of a sum so charged by the Treasurer shall be credited to the Consolidated Fund.

[Section 56 amended by No. 98 of 1985 Schedule 1; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

57. Provisions of Second Schedule to apply to debentures and inscribed stock

- (1) The provisions of Part I of the Second Schedule to this Act apply with respect to debentures and inscribed stock issued by the Port Authority under the provisions of section 54.
- (2) The provisions of Part II of that Schedule apply with respect to debentures issued under the provisions of section 54.
- (3) The provisions of Part III of that Schedule shall apply with respect to inscribed stock issued in Esperance in the State under the provisions of section 54.

58. Debentures and inscribed stock authorized trustee investments

- (1) Debentures and inscribed stock issued and created by the Port Authority under section 54 shall have the status of Government securities of the State of Western Australia.
- [(2) Repealed.]*
- (3) The debentures and inscribed stock are a lawful investment for moneys that a body corporate is authorised or directed to invest, in addition to any other investments expressly authorised for the investment of the moneys.
- (4) A trustee or body corporate may pursuant to this Act convert the debentures in his or its hands into inscribed stock.

[Section 58 amended by No. 1 of 1997 s.18; No. 26 of 1999 s.77.]

58A. Validation

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

- (a) borrowed moneys; or

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

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

[Section 58A inserted by No. 78 of 1979 s.13.]

59. Contribution of interest and sinking fund

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

[Section 59 amended by No. 98 of 1985 Schedule 1; No. 6 of 1993 s.15.]

60. Interest on daily balance

- (1) Interest on the daily balance of money charged to the Consolidated Fund for the purposes of this Act shall be charged in the books of account of the Port Authority in relation to the exercise of its powers and the discharge of its duties under this Act, and the amount of that interest shall be credited to the

Consolidated Fund half-yearly or at such other times as the Treasurer may direct.

- (2) The rate of interest shall be fixed from time to time by the Treasurer.
- (3) Money standing to the credit of the Port Authority in the Account or in any bank account of the Port Authority may, until required by the Port Authority for the purposes of this Act, be temporarily invested as the Treasurer may direct and all interest derived from any money so invested shall be credited to the Account.

[Section 60 amended by No. 98 of 1985 Schedule 1; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

61. Financial self sufficiency

- (1) In managing its financial resources and performing its functions under this Act the Port Authority shall act in accordance with prudent commercial principles and shall aim —
 - (a) to make loan principal payments;
 - (b) to make any deferred interest payments;
 - (c) to meet all other liabilities; and
 - (d) to pay any dividend determined by the Minister under section 51B,

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

[(2) Repealed]

[Section 61 inserted by No. 98 of 1987 s.20; amended by No. 46 of 1993 s.46.]

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

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

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

[Section 62 inserted by No. 98 of 1985 Schedule 1.]

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

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

65. Reserve accounts

The Port Authority may in respect of its works and undertakings establish in its books such reserve accounts as the Port Authority thinks fit and of which the Treasurer approves, and may in each year credit to each reserve account so established such sums as the Port Authority thinks fit.

[66, 67, 68 and 69. Repealed by No. 98 of 1985 Schedule 1.]

Part IX — Miscellaneous

70. Power of Governor to rectify irregularities

- (1) Where by misadventure or accident, anything is at any time done after the time or is not done within the time required by this Act, or is otherwise irregularly done in matter of form, the Governor may from time to time, by Order in Council published in the *Gazette*, make provision for any such case, or may extend the time within which anything is required to be done or may validate anything so done after the time required, or so irregularly done in the matter of form, so that the true intent and purpose of this Act may have effect.
- (2) Nothing in this section confers on the Governor any authority to extend any period of limitation prescribed by this or any other Act for the bringing of any proceeding in a court of law by or against the Port Authority.

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

72. Offences of depositing

- (1) A person commits an offence against this Act who does, or causes or suffers to be done, any of the following things so as to be or tend to the injury of navigation, that is to say —
 - (a) casts, or causes to be cast, or suffers to fall, either from on board ship or from land, any ballast, rock, stone, slate, shingle, gravel, sand, earth, cinders, rubbish or other substance or thing, on any tidal land, or into the port, or tidal water, or into the sea below low water-mark; or
 - (b) casts, or causes to be cast, or suffers to fall, any such substance or thing on land, in a position where the same may be liable to fall or descend, or be carried or washed down by ordinary or high tides, or by any stream or flow of water, or by any storm or flood, or otherwise, into the port or tidal water, or into the sea; or

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- (c) casts, or places or leaves, or causes to be cast, placed, or left, any ship or boat laid by or neglected as unfit for sea service, any floating or other timber, or any other thing on any tidal land, or in the port or tidal water, or in the sea.

Penalty: One hundred dollars

- (2) In addition to any penalty for which the offender is liable for an offence under subsection (1) of this section, he is also liable to pay to the Port Authority the expenses of the removal to a proper position, or in appropriate cases of the recovery and removal to a proper position, of the substance or thing concerned.
- (3) A person shall not be proceeded against for an offence under this section except on the prosecution of the Port Authority.

73. Offence of wilfully damaging port works

A person who wilfully destroys or in any way damages any port work or any part thereof that is constructed or in course of construction is guilty of an offence against this Act.

Penalty: Three hundred dollars or imprisonment for twelve months.

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

- (1) Subject to Part IV of this Act, a person who wilfully or negligently —
 - (a) injures any port light, or the lights exhibited therein, or any buoy or beacon;
 - (b) removes, alters, or destroys any port light, light-ship, buoy, or beacon;
 - (c) rides by, makes fast to, or runs foul of any port light, light-ship, buoy, or beacon;
 - (d) removes, alters, injures, or destroys any signal or signal staff used for purposes in aid of vessels navigating; or

- (e) removes, destroys, injures or interferes with any life buoy or life saving apparatus,

commits an offence against this Act.

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

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

76. Penalty for wilful damage to lights

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

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

77. Offence of offering bribes to officers

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

Penalty: Two hundred dollars or twelve months imprisonment.

78. Other offences

A person commits an offence against this Act who —

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- (a) fails, refuses, or neglects to do, or in any manner obstructs, impedes or interferes with the doing of anything enjoined or authorised to be done under this Act;
- (b) wilfully does anything prohibited by this Act;
- (c) molests or makes use of any threatening language to any harbour master, pilot, engineer, surveyor, other officer or person while in the execution of his duty under this Act and whether acting under the authority of the Governor, the Minister or the Port Authority; or
- (d) in any other respect offends against the provisions of this Act.

79. General penalty

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

80. Averment as to port

In any proceedings for an offence against this Act the averment that the offence was committed with the limits of the port is sufficient without proof of those limits, unless the contrary is proved.

81. Application of penalties

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

82. Police officer to report breaches of the Act

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

[Section 82 amended by No. 46 of 1993 s.46.]

83. Power of Port Authority to give security

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

Part X — Regulations

84. Regulations

- (1) The Port Authority may with the approval of the Governor make regulations not inconsistent with this Act prescribing all or any matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and for all purposes relating to the convenience of shipping or of the public within the port.
- (2) In particular, but without limiting the generality of subsection (1) of this section, the regulations may make provision for any of the following matters —
 - (a) the general conduct of its business and proceedings;
 - (b) the control supervision, and guidance of its officers and servants;
 - (c) regulating all matters relating to the protection of life and property within the port;
 - (d) regulating the landing, shipping, transshipping, deposit, removal, and keeping of gunpowder and other explosive substances and compounds, or other dangerous goods;
 - (e) regulating the times, places, order and mode of the shipping, unshipping, landing, warehousing, stowing, and depositing of goods (with special regulations and restrictions in the case of dangerous goods), and the landing and embarking of passengers, and the taking in and discharge of ballast;
 - (f) imposing, levying, and receiving all port dues, and other tolls, rates or charges;
 - (g) the exemption of ships of or in the naval military or air forces of Her Majesty or any Commonwealth country or foreign power;
 - (h) regulating the use of wharfs or docks, quays, landing stages, and other landing places, and generally

regulating the traffic thereon; and fixing scales of dues, tolls and charges to be paid for the use thereof;

[(i) and (j) deleted]

- (k) regulating the cleansing, repair, and effectual preservation of docks and wharves and providing for the keeping and maintenance thereof in a fit state for the convenience of persons walking upon or landing on or embarking from any dock or wharf;
- (l) regulating the duties and conduct of all person, as well the servants of the Port Authority as others not being officers of customs, who are employed or engaged in the port;
- (m) regulating and controlling the conduct and providing for the guidance of drivers, porters, cabdrivers, carters, carmen, and others carrying goods or driving motor vehicles, horses, wagons, carts, drays, trucks or other vehicles for conveying passengers or goods on any wharf;
- (n) empowering a collector of port dues, either alone or with other persons to enter a ship in order to ascertain the port dues payable in respect of the ship or of the goods therein;
- (o) requiring the master of every ship to report his arrival within a specified time after his arrival;
- (p) requiring the master of every ship to produce his certificate of registry to any officer on demand;
- (q) requiring the master of every ship to give as many copies as may be required by the Port Authority of the bill of lading or manifest of the cargo, or other proper account of goods intended to be unshipped, and the name of the consignee, or other person to whom they are intended to be delivered, and as many copies as may be required by the Port Authority of all alterations in or additions to the bill of lading, manifest, or other proper account;

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- (r) requiring the master of every ship to obtain permission to discharge cargo before doing so;
 - (s) requiring the shippers of goods to furnish accounts of the goods intended to be shipped;
 - (t) regulating the time when port dues on goods shipped or unshipped are to be payable;
 - [(u) deleted]*
 - (v) prohibiting persons from acting as porters, cab-drivers, carters, carmen or otherwise in the carriage of goods or passengers without previously obtaining and continuing to hold the appropriate licence of the Port Authority and prescribing the duration of and the fees for such a licence, and providing that the issue of a licence and the cancellation thereof shall be at the absolute discretion of the Port Authority;
 - (w) authorising and empowering the Port Authority in its discretion, to adopt the weight or measurement of goods set forth in the bill of lading or manifest of the goods, for the purpose of levying, imposing, charging, and collecting port dues and other charges under this Act;
 - (x) regulating and limiting the speed of vessels within the port;
 - (y) 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 created and issued by the Port Authority under this Act.
- (3) A regulation may impose a penalty not exceeding two hundred dollars for any breach thereof and may also provide that, in addition to the penalty, any expense incurred by the Port Authority in consequence of the breach shall be paid to the Port Authority by the person committing it.
- (4) Any regulations made under this Act may —

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

[Section 84 amended by No. 12 of 1976 s.7; No. 46 of 1993 s.46.]

First Schedule

First Schedule

All that piece of water within a radius of 10 miles from Western
Entrance Point of Brandy Creek

Second Schedule

Part I — Debentures and inscribed stock

The following provisions apply to debentures and inscribed stock issued by the Port Authority under the provisions of section 54: —

1. Interest

All debentures and inscribed stock —

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

2. When interest payable

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

3. Debentures and stock interchangeable

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

4. Brokerage

The Port Authority may pay moneys by way of brokerage for the making, procuring, negotiating, or obtaining the loan of any money borrowed under the authority conferred by section 54.

5. Sinking Fund

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

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to section 54 an amount calculated at a rate approved by the Treasurer and sanctioned by the Governor.

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

6. Notice of trust not receivable

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

7. Owners of securities not responsible for application of moneys

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

Part II — Debentures

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

1. Form of debenture

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

2. Seal

A debenture shall —

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

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

3. Pass by delivery

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

4. Rights of bearer

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

5. Payment of interest

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

6. Register of debentures

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

Second Schedule

7. Provision for lost debentures

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

8. Provision for defaced debentures

If a debenture is defaced by accident —

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

9. Discharged debentures to be destroyed

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

Part III — Stock

The following provisions apply to the Esperance Port Authority Inscribed Stock issued in Esperance, Western Australia (in this Part called “stock”): —

1. Establishment of registry and appointment of registrar

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

2. Parcels of stock

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

3. Stock ledgers

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

4. Stock how transferable

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

Second Schedule

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

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

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

6. Power of attorney

- (1) A person may by power of attorney under his hand and seal and attested by two or more credible witnesses appoint some person to be

his attorney for any purpose in relation to stock (including an application for conversion or to receive interest or redemption money).

- (2) A power of attorney is valid and effectual for all purposes therein mentioned until notice of its revocation or of the bankruptcy insolvency lunacy unsoundness of mind or death of the principal has been received by the registrar at the registry.

7. When transfer books to be closed and ledgers balanced

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

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

- (1) The receipt of the person in whose name stock stands in the stock ledger, or if it stands in the names of more persons than one, the receipt of one of the persons named in the stock ledger shall be a sufficient discharge to the Port Authority for any interest payable in respect of the stock, notwithstanding any trusts to which the stock may then be subject and whether or not the Port Authority has had notice of the trusts, and the Port Authority is not bound to see to the application of the money paid upon the receipt.
- (2) If stock is held in joint names and one or more of the registered owners of the stock dies becomes bankrupt insolvent or otherwise legally incapable, the receipt of any one of the other joint owners or survivors shall be a sufficient discharge to the Port Authority for any

Second Schedule

interest payable in respect of the stock, notwithstanding that a transmission has not been registered as required by this Act.

[Second Schedule amended by No. 113 of 1987 Schedule 2.]

Notes

- ^{1.} This is a compilation of the *Esperance Port Authority Act 1968* 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>Esperance Port Authority Act 1968</i>	11 of 1968	26 Sep 1968	14 Mar 1969 (see <i>Gazette</i> 14 Mar 1969 p.901)
	12 of 1976	27 May 1976	27 May 1976
	78 of 1979	6 Dec 1979	6 Dec 1979
	98 of 1985	4 Dec 1985	1 Jul 1986 (see <i>Gazette</i> 30 Jun 1986 p.2255)
	79 of 1986	4 Dec 1986	4 Dec 1986
	98 of 1987	16 Dec 1987	Sections 8, 14, 20, 26, 32 and 38 operative 1 Jul 1988 (see section 2); balance on assent 16 Dec 1987
	113 of 1987	31 Dec 1987	16 Mar 1988 (see <i>Gazette</i> 16 Mar 1988 p.813)
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993
<i>Ports (Functions) Act 1993, sections 37 and 46</i>	46 of 1993	20 Dec 1993	15 Jun 1994 (see <i>Gazette</i> 10 Jun 1994 p.2373)
<i>Acts Amendment (Department of Transport) Act 1993, Part 4</i>	47 of 1993	20 Dec 1993	1 Jan 1994 (see <i>Gazette</i> 31 Dec 1993 p.6861)
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see section 2)
<i>Financial Administration Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see section 2 (1))
<i>Trustees Amendment</i>	1 of 1997	6 May 1997	16 Jun 1997 (see section 2)

Esperance Port Authority Act 1968

Short title	Number and year	Assent	Commencement
<i>Act 1997,</i> section 18			and <i>Gazette</i> 10 Jun 1997 p.2661
<i>Acts Amendment (Land Administration) Act 1997,</i> Part 26	31 of 1997	3 Oct 1997	30 Mar 1998 (see section 2 and <i>Gazette</i> 27 Mar 1998 p.1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997,</i> section 56	57 of 1997	15 Dec 1997	15 Dec 1997 (see section 2)
<i>Port Authorities (Consequential Provisions) Act 1999,</i> Part 2 and Part 3 (other than section 16(2))	5 of 1999	13 Apr 1999	14 Aug 1999 (see section 2 and <i>Gazette</i> 13 Aug 1999 p.3823)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999,</i> section 77	26 of 1999	29 Jun 1999	1 Jul 1999 (see section 2(1) and <i>Gazette</i> 30 Jun 1999 p.2905)

² Section 14 of No. 79 of 1986 reads as follows —

“

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

”.

³ Section 48 of 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.

”.

⁴ Section 50 of Act No. 46 of 1993 reads as follows —

“

50. Existing port authority regulations (saving)

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

”

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.

”.