

Western Australia

Fremantle Port Authority Act 1902

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Fremantle Port Authority Act 1902

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Notes

Fremantle Port Authority Act 1902

An Act to constitute the Fremantle Port Authority; to regulate the appointment of Commissioners; to define the powers and authorities of the Fremantle Port Authority; and for other purposes incidental thereto.

[Long title amended by No. 35 of 1964 s.3.]

[Assented to 11 December 1902.]

1. Short title and commencement

This Act may be cited as the *Fremantle Port Authority Act 1902* and shall come into force on 1 January 1903.

[Section 1 amended by No. 35 of 1964 s.1.]

1A. Change of name of body corporate

- (1) On and after the commencement of this section ¹ the body corporate constituted under this Act by the name “Fremantle Harbour Trust Commissioners” is preserved and continues in existence as a body corporate under and subject to the provisions of this Act by the name “Fremantle Port Authority”, but so that the corporate identity of the body corporate and its rights, powers, functions, duties and liabilities shall not be affected.
- (2) A reference to the Fremantle Harbour Trust Commissioners, whether by use of that name or a similar or abbreviated form of that name, —
 - (a) in a law of the State passed or made before the commencement of this section ¹;

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- (b) in any document or other instrument made, executed, entered into or done before the commencement of this section ¹; and
- (c) made before the commencement of this section ¹ in any other manner,

shall, unless the context is such that it would be incorrect or inappropriate, be read and construed as a reference to the Fremantle Port Authority.

- (3) For the purposes of this section the term **“law of the State”** means —
- (a) an Act;
 - (b) regulations, rules, local laws or by-laws having effect by virtue of an Act; and
 - (c) an instrument having effect by virtue of an Act or of any regulations, rules, local laws or by-laws referred to in paragraph (b).

[Section 1A inserted by No. 35 of 1964 s.4; amended by No. 14 of 1996 s.4.]

2. Interpretation

In this Act, and any regulations thereunder, the following words shall have the meaning stated, unless the contrary intention appears: —

“Buoys and beacons” include all other marks and signs placed for the purpose of navigation.

“Commissioner” means a commissioner of the Port Authority constituted under this Act.

“Goods.”— All wares and merchandise, and all chattels, live stock, and other things of whatsoever description.

“Master” includes every person having the command, charge, or management of a vessel for the time being.

“Minister” means the responsible Minister of the Crown charged with the administration of this Act.

“Owner” includes any person who is owner jointly with any other person, and any joint stock company; and when used in relation to goods, includes any consignor, consignee, shipper, or agent for the sale or custody, loading or unloading of goods.

“Port Authority” means the Fremantle Port Authority constituted under this Act.

“Ship.”— Every description of vessel used in navigation and not propelled exclusively by oars.

“The port.”— So much of the port of Fremantle as is contained within the boundaries described in the First Schedule, or as altered from time to time by the Governor.

“Vessel.”— Any ship, lighter, barge, boat, raft, or craft, of whatever description, and howsoever navigated.

[Section 2 amended by No. 75 of 1960 s.2; No. 35 of 1964 s.5; No. 46 of 1993 s.46.]

Constitution of the Port Authority

[Heading amended by No. 35 of 1964 s.6.]

3. Fremantle Port Authority

- (1) For the purposes of this Act and for carrying this Act into execution there shall be a Port Authority to be known as the “Fremantle Port Authority” consisting of 5 commissioners appointed as provided by this Act.
- (2) The Port Authority is a body corporate with perpetual succession and a common seal and in its corporate name is capable of suing and being sued, and subject to this Act has power to acquire, hold and dispose of real and personal property, and may do and suffer all such acts and things as bodies corporate may do and suffer.

[Section 3 inserted by No. 35 of 1964 s.7.]

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4. Appointment of commissioners

- (1) The commissioners shall be appointed by the Governor.
- (2) The Governor shall appoint —
 - (a) one of the commissioners as chairman; and
 - (b) another of the commissioners as deputy chairman,

of the Port Authority for such period as is specified in the instrument of appointment, but the period shall not exceed the remainder of the period of office of the commissioner being appointed.

[Section 4 amended by No. 79 of 1986 s.16; No. 46 of 1993 s.46.]

5. Seal of Port Authority and admissible evidence

Judicial notice shall be taken of the incorporation and common seal of the Port Authority, and every deed, instrument, or writing, when sealed, shall be admissible in evidence on the mere production thereof, without any other or further proof of the making of such deed, instrument, or writing.

[Section 5 amended by No. 35 of 1964 s.8.]

6. Period of office of commissioner

Subject to this Act, a commissioner —

- (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 commissioner.

[Section 6² inserted by No. 79 of 1986 s.17.]

[7. Section 7 repealed by No. 79 of 1986 s.17.]

8. Deputy commissioners

- (1) In the case of illness, suspension, or absence of any commissioner, the Governor may appoint some person to act as the deputy of such commissioner during such illness, suspension, or absence, and until such appointment is terminated by notice in the *Government Gazette*. Every person so appointed shall, while so acting, have all the powers and perform all the duties of such commissioner.
- (2) If such commissioner is the chairman, the Governor may temporarily appoint another commissioner acting chairman, who while so acting shall have all the powers and perform all the duties of the chairman.

9. Tenure of office of commissioners

- (1) The Governor may suspend a commissioner from his office —
 - (a) for misbehaviour or incompetence; or
 - (b) if he becomes bankrupt, or applies to take the benefit of any Act for the relief of bankrupt or insolvent debtors; or
 - (c) if he absents himself from 3 consecutive meetings of the Port Authority (except on leave granted by the Governor) or becomes incapable of performing his duties; or
 - (d) if he fails to comply with section 10 of the *Ports (Functions) Act 1993*.
- (2) The Minister shall cause to be laid before Parliament a full statement of the grounds of suspension within 7 days after such suspension, if Parliament is sitting, and, when Parliament is not sitting, within 7 days after the next sitting.
- (3) A commissioner suspended under this section shall not be restored to office, unless both Houses of Parliament, within 30 days from the time when such statement has been laid before them, declare by resolution that the said commissioner ought to be restored to office.

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- (4) If both Houses of Parliament within the said time so declare, the said commissioner shall be restored by the Governor accordingly and subject thereto may be removed from office.
- (5) A commissioner shall not be removed from office except as hereinbefore provided.

[Section 9 amended by No. 35 of 1964 s.8; No. 46 of 1993 s.46.]

10. Remuneration of commissioners

The chairman and the other commissioners of the Port Authority shall be paid such remuneration respectively as the Governor shall from time to time determine.

[Section 10 inserted by No. 35 of 1964 s.9.]

[11. Section 11 repealed by No. 35 of 1964 s.10.]

[12. Section 12 repealed by No. 17 of 1951 s.5.]

13. Quorum

For the conduct of business, any 3 commissioners shall be a quorum, and shall have all the powers and authorities vested in the Port Authority.

[Section 13 amended by No. 35 of 1964 s.11.]

14. Acting chairman

If neither the chairman nor the deputy chairman is able to preside at a meeting or at a part of a meeting of the Port Authority, the commissioners present may elect one of their number to be acting chairman for the meeting or the part of the meeting as the case may be.

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

15. Procedure on difference of opinion

If, at any meeting at which 4 commissioners only are present, such commissioners shall be equally divided in opinion, the

person presiding shall have a casting as well as a deliberative vote.

[Section 15 amended by No. 46 of 1993 s.46.]

16. Acts of Port Authority not invalidated by vacancy

No act or proceeding of the Port Authority shall be invalidated or prejudiced by reason only of the fact that at the time when such proceeding or act was taken, done, or commenced, there was a vacancy in the office of any commissioner.

[Section 16 amended by No. 35 of 1964 s.11.]

17. Minutes of proceedings

The Port Authority shall keep minutes of its proceedings in such manner and form as the Minister shall direct.

[Section 17 inserted by No. 98 of 1985 s.3.]

[18. Section 18 repealed by No. 78 of 1984 s.18.]

Officers

19. Appointment of officers and servants

- (1) The Port Authority may —
 - (a) with the approval of the Governor, appoint a general manager, an assistant general manager and a secretary, and with such approval dismiss any of those officers; and
 - (b) from time to time appoint such other officers and such servants as may be necessary for the administration of this Act, and at any time dismiss any of those officers and servants.
- (2) All persons so appointed shall be subject to the control of the Port Authority.
- (2a) Notwithstanding anything in subsections (1) and (2), to the extent that there is in the case of a person who is appointed

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under subsection (1) to be a general manager, assistant general manager or secretary or 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.

- (3) The appointment and dismissal of servants and labourers, at daily or weekly wages, shall be in the sole power of the Port Authority.
- (4) The Port Authority may, from time to time, appoint and dismiss special constables, who, within the limits of the port, shall have, exercise, and enjoy such powers, authorities, and immunities, and be subject to such duties and responsibilities as any police officer duly appointed now has or is subject to by law.

Provided that such special constables shall not be members of the Police Force, but shall be servants of the Port Authority, and under its direction and control.

[Section 19 amended by No. 25 of 1911 s.2; No. 35 of 1964 s.14; No. 22 of 1976 s.3; No. 113 of 1987 s.32; No. 46 of 1993 s.46.]

20. 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.

[Section 20 inserted by No. 22 of 1976 s.4.]

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

Vesting of Property

22. Property vested in Port Authority

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

- (1) all lands of the Crown within the boundaries of the port, as described in the First Schedule, including the bed and shores of the port;
- (2) all harbour lights and beacons within the boundaries of the port, except the lighthouses on Rottnest Island;
- (3) all wharves, wharf loading areas, docks, landing stages, piers, jetties, wharf sheds, and railways belonging to the Government and within the boundaries of the port;
- (4) 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.

Provided that the Governor may from time to time, by notification in the *Government Gazette*, —

- (a) alter the boundaries of the port;
- (b) withdraw any land or other property of any kind from the Port Authority, and re-vest the same in Her Majesty.

[Section 22 amended by No. 35 of 1964 s.16.]

23. Lands vested in Port Authority free from local government rates

All lands vested in the Port Authority under this Act shall be exempt from any rate, tax, or imposition which any local government might, but for this section, lawfully levy or impose; but nothing herein contained shall preclude a local government from levying and collecting rates and other lawful charges in respect of land, houses, and buildings of the Port Authority leased and occupied for private purposes, and by persons other

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than the commissioners, and officers and servants of the Port Authority.

[Section 23 amended by No. 35 of 1964 s.17; No. 14 of 1996 s.4.]

Powers and Duties of the Port Authority

[Heading amended by No. 35 of 1964 s.18.]

24. Port Authority to control, maintain and preserve all property vested in it

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

[Section 24 amended by No. 35 of 1964 s.19; No. 98 of 1987 s.22; No. 46 of 1993 s.46.]

25. Construction of port works

- (1) The construction, completion and extension within the port of port works or other works required for the purposes of this Act may, with the approval of the Minister, be undertaken by the Port Authority, which shall be deemed a local authority within the meaning of the *Public Works Act 1902*.
- (2) In this section the term “port works” includes any pier, quay, wharf, jetty, bridge, viaduct, embankment or dam, or any reclamation of land from the sea or river, or excavation, deepening, dredging or widening of any channel, basin or other part of the port.

[Section 25 inserted by No. 35 of 1964 s.20; amended by No. 78 of 1979 s.15.]

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

27A. Power to acquire land compulsorily

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

[Section 27A inserted by No. 75 of 1960 s.3; amended by No. 31 of 1997 s.142.]

[27B, 27C. and 28. Repealed by No. 46 of 1993 s.46.]

28A. 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 28A inserted by No. 98 of 1987 s.23.]

29. Goods left on wharf, etc., may be advertised and sold

- (1) If any goods remain upon any wharf or the approaches thereto, or in any store or warehouse, for a longer time than allowed by the regulations, or if any goods within the Port shall be deemed by the Port Authority in its absolute discretion to be injurious to, or to injuriously affect, or to be liable to injuriously affect, other goods, or any shed, store, or other premises or open yard or place within the port, any person authorized by the Port Authority may remove the goods to a convenient place, within or outside the limits of the port, and keep the same until payment of the expenses of such removal and keeping.
- (2) If such expenses are not paid within 7 days after demand thereof 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 2 consecutive weeks, in a newspaper circulating at the port, the Port Authority may sell such goods by public auction;

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provided that goods, if perishable, may be sold without demand after 24 hours.

- (3) The proceeds of sale shall be applied in payment of all dues and charges payable in respect of such goods, and the expenses of removal, keeping, and sale thereof, and the surplus shall be rendered to the owner on demand, and in the meantime shall be paid into the Treasury.

[Section 29 amended by No. 25 of 1911 s.3; No. 35 of 1964 s.24.]

30. Disputes between departments to be settled by Minister

Any dispute between the Port Authority and the Commissioner of the Western Australian Government Railways³, or any other department of the government, with respect to any land or other property vested in the Port Authority, shall be referred to the Minister, whose decision shall be final and binding upon the parties.

[Section 30 amended by No. 35 of 1964 s.25.]

[30A., 31. and 31A. Repealed by No. 46 of 1993 s.46.]

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

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

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

[33-34. Sections 33 and 34 repealed by No. 35 of 1964 s.28.]

Damage

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

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

36. Responsibility for injury to works of the Port Authority

Where any injury is done by a vessel, floating timber, or material, or by any person employed about the same, to any part of the works or property of the Port Authority —

- (1) the owner of such vessel, floating timber, and material; and
- (2) in case the injury is caused through the act or negligence of the master of such vessel, or of the person having charge of such timber or material, the owner and also such master or person,

shall be answerable in damages to the Port Authority for the injury, but the Port Authority shall not recover twice for the same cause of action.

[Section 36⁴ amended by No. 35 of 1964 s.30; No. 22 of 1976 s.8.]

37. Recovery by owner from master of ship

Where the owner of any vessel, floating timber, or material pays any money in respect of any injury done to any part of the works or property of the Port Authority by any master or other person, or pays any pecuniary penalty by reason of any act or omission of any master or other person, he shall be entitled to recover the money so paid with costs from such master or other person.

[Section 37⁴ amended by No. 35 of 1964 s.30.]

38. Damage to cables

If 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 of any ship, such damage shall forthwith be made good by and at the expense of the master, owner, or agent of such ship; and in default, the Port Authority may cause such repairs to be effected, and may

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recover the expense thereof from the master or owner or agent in any court of competent jurisdiction.

[Section 38⁴ inserted by No. 35 of 1906 ss.6 and 21; amended by No. 35 of 1964 s. 31.]

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

[39. 39A and 39B Repealed by No. 46 of 1993 s.46.]

[40. Section 40 repealed by No. 35 of 1935 s.48A.]

Port Dues and Wharfage Charges

[Heading amended by No. 35 of 1964 s.33.]

41. Port dues, etc., to be made by regulation

Port dues and wharfage charges shall be made and levied, and shall be payable in accordance with regulations under this Act.

[Section 41⁴ amended by No. 42 of 1957 s.4; No. 35 of 1964 s.33; No. 46 of 1993 s.46.]

[42. Section 42 repealed by No. 35 of 1964 s.34.]

43. Power to levy port improvement rates

(1) The Port Authority may, from time to time, make regulations providing that port improvement rates, not exceeding in any case 10 cents per ton by weight or by measurement as shall be expressed in such regulations, shall be levied upon all goods discharged at or shipped from the port.

(2) In and by such regulations the Port Authority may provide for the manner of levying and collecting such rates, and by whom the same shall be paid, and in what manner the same shall be paid to any authorized officer of the Port Authority or other person authorized by it in that behalf.

[Section 43⁴ inserted by No. 35 of 1906 ss.8 and 21; amended by No. 35 of 1964 s.35; No. 113 of 1965 s.4(1).]

44. Tonnage of ships

- (1) For the purposes of this Act the tonnage of any vessel shall be ascertained in accordance with the regulations.
- (2) Regulations made for the purposes of this section —
 - (a) may be of general application or may be limited in their application to a specified class or specified classes of vessels or to all vessels other than vessels of a specified class or specified classes;
 - (b) may make different provision for different classes of vessels or for the same class of vessels in different circumstances;
 - (c) may make the operation of any provision of the regulations dependent on compliance with such conditions, to be evidenced in such manner, as may be prescribed;
 - (d) may authorize the determination or calculation of tonnage —
 - (i) by measurement;
 - (ii) by estimation; or
 - (iii) by reference to information appearing in the certificate of registry or certificate of tonnage of a vessel or in any specified record or publication, or partly by one of those methods and partly by either or each of the other 2 methods;
 - (e) may make 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 may prescribe the method by which any space to be included or excluded is to be calculated;
 - (f) may confer power on an authorized person to —
 - (i) board, inspect, survey or measure the whole or any part of a vessel, or any goods therein or thereon;

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- (ii) detain a vessel;
- (iii) require the unshipment of any goods in or on a vessel at the risk and expense of the owner of those goods,

for the purpose of ascertaining the tonnage of the vessel or enabling that tonnage to be ascertained;

- (g) may exempt the Port Authority and any authorized person from liability for any loss or damage occasioned by any act done in good faith pursuant to powers conferred by regulations made for the purposes of this section;
- (h) may require the owner or master of a vessel to produce the certificate of registry of the vessel and any certificate of tonnage of the vessel if and when requested to do so by an authorized person;
- (i) may require the owner, agent or master of a vessel, upon 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 such goods, to be inspected, surveyed or measured for the purpose of ascertaining the tonnage of the vessel.

(3) In subsection (2) —

“authorized person” means an officer or person appointed by the Port Authority to ascertain the tonnage of vessels generally or to ascertain the tonnage of a particular vessel;

“specified” means specified in the regulations made for the purposes of this section.

[Section 44 inserted by No. 22 of 1976 s.12.]

[45. Section 45 repealed by No. 22 of 1976 s.13.]

[46. Section 46 repealed by No. 35 of 1964 s.37.]

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

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

- (1) The officer authorized to collect such dues or charges may cause the goods to be weighed or measured.
- (2) 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 shall be recoverable as dues are recoverable.
- (3) If the weight or quantity does not exceed that alleged as aforesaid, the expenses of the weighing or measuring shall be paid by and shall be recoverable from the Port Authority in any court of competent jurisdiction.

[Section 47⁴ amended by No. 35 of 1964 s.38.]

48.⁴ Liability for dues payable by ship

The owner and master of any ship, and such consignee or agent thereof as may have paid or made himself liable to pay any charge on account of the ship, shall be liable to pay the dues payable in respect of such ship.

49. Liability for dues payable for goods

The following persons shall be liable to pay the dues payable in respect of any goods carried in any ship, that is to say, the owner of such goods, and also the owner of such ship, and also any consignor, consignee, shipper, or agent for the sale of or custody of such goods, and also any person entitled, either as owner or agent for the owner, to the possession of such goods.

[Section 49⁴ amended by No. 22 of 1976 s.14.]

50. Recoupment of dues and expenses

Where —

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- (a) a person other than the owner or master of any ship is, by this Act, made liable for the payment of any dues in respect of that ship; or
- (b) a person other than the owner of goods is, by this Act, made liable for the payment of any dues in respect of those goods,

that person may, out of any moneys in his hands received on account of that ship or those goods, as the case may be, 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.

[Section 50⁴ inserted by No. 22 of 1976 s.15.]

51. Recovery of dues

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

[Section 51⁴ amended by No. 35 of 1964 s.38.]

52.⁴ Persons authorized to collect dues may distrain

Any officer authorized to collect dues may distrain any ship and the tackle thereof, or any goods in respect of which dues are payable, and may keep such ship and tackle or goods respectively until such dues are paid; and if the same are not paid within 7 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 such dues and the expenses of the distress, keeping, and sale.

53.⁴ Settlement of dispute concerning dues, charges or charges occasioned by distress

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 Fremantle, 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. 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.

54. Penalty on evasion

If any master, owner, consignor, consignee, shipper, or agent evades or attempts to evade the payment of any dues, he shall incur a penalty either not exceeding \$200, or in case the amount of the dues which he has evaded or has attempted to evade exceeds \$200, then not exceeding such amount, and such penalty shall be in addition to the dues payable by him.

[Section 54⁴ amended by No. 35 of 1964 s.39; No. 113 of 1965 s.4(1).]

55. Power to Governor to revise Port Authority dues

If in the opinion of the Governor the Port Authority shall not, in any year, have collected and received from dues, charges, rents, and other sources of revenue sufficient, or shall in any year have collected and received as aforesaid more than sufficient, to provide for the lawful expenditure of the Port Authority, including interest and contribution to the sinking fund, in respect of the value of the property vested in and charged against it under sections 56 and 57, or if for any other reason the Governor thinks fit so to do, the Governor may revise the port dues, port improvement rates, wharfage charges, and other dues, tolls, rates, fees, and charges prescribed by the regulations under this Act, and it shall be the duty of the Port Authority to impose and collect such dues and charges in accordance with such revision until the Governor shall otherwise order.

[Section 55⁴ inserted by No. 35 of 1906 ss.10 and 21; amended by No. 35 of 1964 s.40.]

Finance

56. Minister to declare value of property vested in Port Authority

The Minister shall, on the commencement of this Act¹, 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.

[Section 56⁴ amended by No. 35 of 1964 s.41.]

57. Subsequent works

After the determination of such value, 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 as aforesaid.

[Section 57⁴ amended by No. 35 of 1964 s.41.]

57A. 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
- (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

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- (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 57A inserted by No. 98 of 1987 s.25.]

57B. 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.

- (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 57A (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 57B inserted by No. 98 of 1987 s.25; amended by; No. 6 of 1993 s.11.]

57C. 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 57A or 57B.

[Section 57C inserted by No. 98 of 1987 s.25.]

58. 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;

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- (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 “Fremantle Port Authority Account” either —
- (a) the Treasury and forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) with the approval of the Treasurer, at a bank (as defined in section 3 of that Act).
- (3) The Account is to be charged with —
- (a) the remuneration and allowances payable to Commissioners;
 - (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 58 inserted by No. 46 of 1993 s.37; amended by No. 57 of 1997 s.63.]

[58A. Repealed by No. 46 of 1993 s.46.]

58B. Power of Port Authority to borrow

- (1) When at any time the funds of the Port Authority are not sufficient to defray expenditure incurred by it under this Act, the

Port Authority may borrow from the Treasurer, or from a bank carrying on business within the State approved by the Treasurer, moneys for the purpose of enabling the Port Authority to defray such expenditure.

- (2) In respect of moneys borrowed from the Treasurer pursuant to this section, the Port Authority shall pay to the Treasurer interest at such rate and at such times as the Treasurer shall determine.
- (3) Any moneys borrowed by the Port Authority under this section and the interest payable in respect thereof shall be a charge upon the moneys from time to time standing to the credit of the Port Authority at the Treasury or in any account of the Port Authority at any bank, and upon any works, undertakings, and other assets vested in the Port Authority, and the due repayment of the principal moneys so borrowed and the payment of all interest payable in respect thereof is hereby guaranteed by the Government of the State.

[Section 58B inserted by No. 35 of 1964 s.44; amended by No. 98 of 1985 s.3.]

58C. Power of Port Authority to borrow money on issue of debentures or inscribed stock

- (1) Subject to subsection (2), the Port Authority, in addition to the powers conferred on it by section 58B, may at any time, and from time to time, with the approval of the Governor —
 - (a) borrow and reborrow moneys by the issue and creation and sale of debentures and of inscribed stock for the purpose of raising the funds of the Port Authority for the effectual exercise by it of the powers conferred by this Act;
 - (b) create and issue debentures and inscribed stock in exchange for any debentures and inscribed stock respectively issued in respect of moneys previously borrowed by the Port Authority, and not repaid;

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

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

[Section 58C inserted by No. 75 of 1960 s.5; amended by No. 35 of 1964 s.45.]

58D. 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 section 58C (2), borrow the moneys necessary for that purpose before the loan or part of it becomes payable.

[Section 58D inserted by No. 75 of 1960 s.5; amended by No. 35 of 1964 s.46.]

58E. Moneys borrowed charged on revenues of Port Authority and guaranteed by the State

- (1) Due payment of debentures and inscribed stock respectively issued or created under the provisions of section 58C 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) “**revenues**” of the Port Authority means all dues, charges, rents and other levies authorized to be collected and received by the Port Authority.
- (3) The due repayment of the principal moneys and the payment of all interest secured by debentures or inscribed stock issued or created by the Port Authority under the provisions of section 58C is hereby guaranteed by the Government of the State.
- (4) Any sums required by the Treasurer for fulfilling any guarantee given by this Act shall be charged to the Consolidated Fund

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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 58E inserted by No. 75 of 1960 s.5; amended by No. 35 of 1964 s.46; No. 98 of 1985 s.3; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

58F. Provisions of Second schedule to apply to debentures and inscribed stock

- (1) The provisions of Part I of the Second Schedule shall apply with respect to debentures and inscribed stock issued by the Port Authority under the provisions of section 58C.
- (2) The provisions of Part II of that Schedule shall apply with respect to debentures issued under the provisions of section 58C.
- (3) The provisions of Part III of that Schedule shall apply with respect to inscribed stock issued in Perth in the State under the provisions of section 58C.

[Section 58F inserted by No. 75 of 1960 s.5; amended by No. 35 of 1964 s.46.]

58G. Debentures and inscribed stock authorized trustee investments

- (1) Debentures and inscribed stock issued and created by the Port Authority under section 58C shall have the status of Government securities of the State of Western Australia.
- [(2) repealed.]*
- (3) The debentures and inscribed stock shall be a lawful investment for moneys which a body corporate is authorized or directed to invest, in addition to any other investments expressly authorized for the investment of the moneys.

- (4) A trustee or body corporate may pursuant to this Act convert the debentures in his or its hands into inscribed stock.

[Section 58G inserted by No. 75 of 1960 s.5; amended by No. 35 of 1964 s.46; No. 1 of 1997 s.18; No. 26 of 1999 s.82.]

58GA. Validation

Notwithstanding that prior to the coming into operation of the *Acts Amendment (Port Authorities) Act 1979*¹, the Port Authority has —

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

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

[Section 58GA inserted by No. 78 of 1979 s.16.]

58H. Contribution of interest and sinking fund

- (1) There shall be entered and debited each year in the accounts of the Port Authority such amounts as shall be 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 shall 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) Such contributions shall be paid to the Treasurer.
- (3) The accrued interest in the sinking fund contributions as certified by the Under Treasurer shall be incorporated in the

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accounts of the Port Authority in relation to the exercise by it of the powers conferred upon it by this Act.

[Section 58H inserted by No. 75 of 1960 s.5; amended by No. 35 of 1964 s.47; No. 98 of 1985 s.3; No. 6 of 1993 s.15.]

58I. Interest on daily balance

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

[Section 58I inserted by No. 75 of 1960 s.5; amended by No. 35 of 1964 s.48; No. 98 of 1985 s.3; No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

58J. Moneys may be temporarily invested

All moneys standing to the credit of the Port Authority, whether at the Treasury or in any account of the Port Authority at any bank, may, until required by the Port Authority in connection with the exercise of its powers or the discharge of its duties under this Act, be temporarily invested as the Treasurer may direct, and all interest derived from the investment shall be credited to that account.

[Section 58J inserted by No. 75 of 1960 s.5; amended by No. 35 of 1964 s.49; No. 49 of 1996 s.64.]

58K. 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 57B,

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 58K inserted by No. 98 of 1987 s.26; amended by No. 46 of 1993 s.46.]

58L. 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 58L inserted by No. 98 of 1985 s.3.]

[59. Section 59 repealed by No. 17 of 1951 s.5.]

[60. Section 60 repealed by No. 98 of 1985 s.3.]

60A. Reserve accounts

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

[Section 60A inserted by No. 75 of 1960 s.6; amended by No. 35 of 1964 s.53.]

[61-64 Sections 61, 62, 63 and 64 repealed by No. 98 of 1985 s.3.]

Regulations

65. Power to make regulations

The Port Authority may make regulations under this Act for all or any of the following purposes: —

- (1) The general conduct of its business and proceedings.
- (2) Prescribing the days upon which the ordinary meetings of the Port Authority shall be held.

[(2a) repealed]

- (3) The control, supervision, and guidance of its officers and servants.

(3a) Regulating, controlling, and prohibiting —

- (a) the entering, or remaining, within the boundaries of the port or any specified part or parts of the port by any person or class of persons, or any thing or class of thing;
- (b) the doing or omission of anything or class of thing within the boundaries of the port or any specified part or parts of the port,

either at all times and on all occasions or at any time or times, or on any occasion or occasions, the intention being that the generality of the authority delegated by this paragraph is not affected by authority delegated by any other paragraph of this section.

- (4) Regulating all matters relating to the protection of life and property, and the safe navigation of the port.
- (5) The prevention of overloading or overcrowding of vessels.
- (6) Regulating the land, shipping, trans-shipping, deposit, removal, and keeping of gunpowder and other explosive substances and compounds, or other dangerous goods.

[(7) and (8) deleted]

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

[(14 and (15) deleted]

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

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

- (35) 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 such bill of lading, manifest, or other proper account.
- (36) Requiring the master of every ship to give notice of the intended time of unshipment.
- (37) Requiring the shippers of goods to furnish accounts of the goods intended to be shipped.
- (38) Regulating the time when dues on goods shipped or unshipped are to be payable.
- [(39), (40), (41), (42), (43), (44), (45), (46), (47), (48), and (48a) deleted]*
- (49) Regulating the charges to be made by licensed boatmen, porters, and other carriers.
- (50) Prohibiting persons from acting as boatmen, plying for hire, porters, cab-drivers, carters, carmen, or otherwise in the carriage of goods or passengers without previously obtaining and continuing to hold the licence of the Port Authority, and prescribing the duration of and the fees for such licences, and providing that the issue of any such licence and the cancellation thereof shall be at the absolute discretion of the Port Authority.
- (51) Authorizing and empowering the Port Authority, in its discretion, to adopt the weight or measurement of goods set forth in the bill of lading or manifest of the goods, for the purpose of levying, imposing, charging, and collecting port dues, wharfage, and handling and storage charges.
- (52) Regulating and limiting the speed of vessels within the port.

- (52a) Authorizing and empowering the Port Authority to cause the removal from the port to some other place or places within or outside the limits of the port of goods which the Port Authority or its wharf manager shall, in its or his absolute discretion, consider to be injurious to or which may injuriously affect other goods or any shed, store, or other premises or open yard or place within the port.

Any such regulation may provide for and authorize the storage of such goods in any shed or store, or in or on any exposed or open place, and in any and every case at the risk and expense of the owner of the goods; and such shed, store or place may be within or outside the limits of the port as the Port Authority or its wharf manager may think fit.

The cost of such removal and the keeping and storage of the goods, whether within or outside the said limits shall be chargeable against the owner of the goods, and may be recovered from him by the Port Authority in an action in the Local Court of Western Australia held at Fremantle.

Any such regulation shall be additional to the provisions contained in section 29, and shall not be deemed ultra vires of the Port Authority in consequence of the same being in excess of the powers therein contained.

- (52b) Limiting or exempting the Port Authority from liability for damage or loss suffered by any person in consequence of —
- (i) act of God;
 - (ii) act of war;
 - (iii) act of public enemies;
 - (iv) strikes, lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;

- (v) riots and civil commotions;
 - (va) acts of sabotage or terrorism;
 - (vb) unlawful seizure of or control of persons, vessels, vehicles or property;
 - (vi) the use for purposes of war or defence or training or preparation for war or defence of any of the property vested in the Port Authority.
- (53) And for other purposes relating to the convenience of shipping, or of the public, within the port, and generally for duly administering and carrying out the powers vested in the Port Authority by this Act.

[Section 65⁴ amended by No. 35 of 1906 s.15; No. 2 of 1911 s.4; No. 54 of 1950 s.3; No. 17 of 1951 s.6; No. 39 of 1952 s.2; No. 42 of 1957 s.6; No. 35 of 1964 s.56; No. 22 of 1976 s.16; No. 41 of 1986 s.4; No. 46 of 1993 s.46.]

66. Penalties for breach of regulations

Regulations made under this Act —

- (1) may impose a penalty not exceeding \$2 000 for the breach thereof;
- (2) may provide that, in addition to the penalty, any expense incurred by the Port Authority in consequence of the breach of such regulation shall be paid by the person committing such breach; and
- (3) may prescribe a modified penalty not exceeding \$500 for any offence, or class of offence, if dealt with under a section of this Act authorizing the service of an infringement notice and the payment of a modified penalty in relation to such an offence.

[Section 66⁴ amended by No. 35 of 1964 s.57; No. 113 of 1965 s.4(1); No. 41 of 1986 ss.5 and 7.]

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66A. Adoption of rules, codes, etc.

Any regulations made under this Act may —

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

[Section 66A inserted by No. 12 of 1976 s.9.]

66B. Infringement notices

- (1) An authorized person who has reason to believe that a person has committed an offence against this Act in respect of which a modified penalty is prescribed, may serve, by personal delivery to the person or by posting to him at his address ascertained from him at or about, the time that the offence is believed to have been committed, a notice in the prescribed form informing the person that if he does not wish to have a complaint of that offence heard and determined by a court he may pay to a designated officer, not being a designated officer who is the authorized person serving that notice, within a period of 21 days after the date of service of that notice, the amount of the modified penalty.

- (2) An authorized person may —
- (a) if the identity of the alleged offender is not known and cannot immediately be ascertained, address the infringement notice concerned to, and serve it on, the owner of the vessel concerned within a period of 30 days after the date on which the alleged offence is believed to have been committed; or
 - (b) if the identity of the alleged offender is not known and cannot immediately be ascertained and the identity of the owner of the vessel is not known and cannot be ascertained after reasonable inquiry, address the infringement notice concerned to the owner of that vessel, without naming him or stating his address, and serve that infringement notice by attaching it to that vessel or by leaving it in or on the vessel within the period referred to in paragraph (a).
- (3) When, under subsection (2) an infringement notice is addressed to and served on the owner of a vessel within the period referred to in paragraph (a) of that subsection or addressed to the owner of a vessel and served by attaching it to the vessel or leaving it in or on the vessel within that period, then, unless within a period of 21 days after the date of service of the infringement notice —
- (a) the modified penalty concerned is paid; or
 - (b) the owner of the vessel —
 - (i) informs an authorized person of the identity and address of the person who was in charge of the vessel; or
 - (ii) satisfies an authorized person that the vessel had been stolen or unlawfully taken, or was being unlawfully used,at the time when the alleged offence is believed to have been committed,

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the owner of the vessel is, in the absence of proof to the contrary, deemed to be the person who was in charge of the vessel at the time when the alleged offence is believed to have been committed.

- (4) A person on whom an infringement notice is served —
- (a) may decline; or
 - (b) if he fails to pay the modified penalty concerned within a period of 21 days after the date of that service, is deemed to have declined,

to be dealt with under the provisions of this section.

- (5) An authorized person may, whether or not the modified penalty concerned has been paid, withdraw an infringement notice at any time within a period of 28 days after it is served by sending to the alleged offender a notice in the prescribed form signed by the authorized person and advising the alleged offender that the infringement notice has been withdrawn.
- (6) The amount of any modified penalty paid pursuant to an infringement notice which has been withdrawn under subsection (5) shall be refunded.
- (7) When a modified penalty has been paid pursuant to an infringement notice and the infringement notice has not been withdrawn under subsection (5), proceedings shall not be brought against any person in respect of the alleged offence specified in the infringement notice.
- (8) A person, other than the owner or person in charge of a vessel in respect of which an alleged offence is believed to have been committed, shall not remove an infringement notice relating to the alleged offence attached to or left in or on that vessel by an authorized person.

Penalty: \$500.

- (9) An infringement notice served under subsection (2) shall contain, *inter alia*, a short statement of the effect of subsection (3).
- (10) The general manager may by notice published in the *Gazette* designate an officer or class of officer (not being an authorized person) of the Port Authority, to receive payment of the amounts of modified penalties.
- (11) in this section, unless the context otherwise requires —
- “**alleged offence**” means offence referred to in subsection (1);
- “**alleged offender**” means person who is believed by the authorized person concerned to have committed an alleged offence;
- “**authorized person**” means person authorized in writing for the purposes of this section by the general manager;
- “**designated officer**” means person designated under subsection (10);
- “**general manager**” means the person holding or acting in the office of general manager under section 19(1) (a); and
- “**infringement notice**” means the notice referred to in subsection (1).
- (12) In subsection (3) —
- “**the person who was in charge of the vessel**” includes the person who was the driver, master, possessor, skipper, owner or user of the vessel or the person causing, permitting or suffering the vessel to be navigated, as the case requires.
- (13) Where an offence prescribed under subsection (1) is an offence connected with, related to, associated with, or committed by reference to, a vehicle the provisions of this section with such modifications as are necessary for that purpose apply to and in relation to the offence as though the term “vessel” includes a reference to a vehicle which in this context includes any object capable of being drawn or propelled on wheels or tracks.

[Section 66B inserted by No. 41 of 1986 s.5.]

67.⁴ Regulations to be approved by the Governor and published in the *Government Gazette*

Every regulation shall, upon approval by the Governor and publication in the *Government Gazette*, have the force of law; and shall be laid before Parliament within 14 days after such publication, if Parliament is then in session, and if not, then within 14 days after the commencement of the next ensuing session.

68. Local government may make local laws

The local government of a district having a boundary contiguous to the port may, with the approval of the Port Authority, make local laws under the *Local Government Act 1995* which have effect within the port.

[Section 68 inserted by No. 14 of 1996 s.4.]

Miscellaneous

69. Provision for Sundays and holidays

When the day on which anything is by this Act or the regulations required to be done falls on a Sunday, Good Friday, Christmas Day, New Year's Day, or any public holiday, such thing shall be done on the day next following.

[Section 69⁴ inserted by No. 35 of 1906 ss.18 and 21.]

70. Governor may rectify irregularities

Whenever by any misadventure or accident anything is at any time done after the time required by this Act or the regulations, or is otherwise irregularly done in matter of form, the Governor may, from time to time, 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 irregularly done in the matter of form, so that the true intent and purpose of this Act and the regulations may have effect.

[Section 70⁴ inserted by No. 35 of 1906 ss.19 and 21.]

[70A., 71, 72, 73 and 74 Repealed by No. 46 of 1993 s.46.]

75. Restriction on deposit of ballast or rubbish

If any person commits any of the following offences, so as to be or tend to the injury of navigation, that is to say —

- (1) 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 harbour, or tidal water, or into the sea below low water-mark; or
- (2) 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 harbour or tidal water, or into the sea; or
- (3) 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 lands, or in the harbour or tidal water, or in the sea,

he shall be guilty of an offence, and for each offence shall be liable to a penalty not exceeding \$2 000, and to pay the expenses of the removal to a proper position of any such substance or thing.

[Section 75⁴ amended by No. 113 of 1965 s.4(1); No. 41 of 1986 s.7.]

76.⁴ Series of acts tending to the injury of navigation

Any act shall be deemed to tend to the injury of navigation, within the meaning of this Act, in any case where a series of like acts has produced or would produce injury to navigation.

77. Penalties for damaging lights, buoys or beacons

If any person wilfully or negligently commits any of the following offences, that is to say —

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

he shall, in addition to the expenses of making good any damage so occasioned, be liable, on conviction, to a penalty not exceeding \$5 000, or imprisonment not exceeding 12 calendar months.

[Section 77⁴ amended by No. 113 of 1965 s.4(1); No. 41 of 1986 s.7; No. 51 of 1992 s.16(1).]

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

79. Penalty for wilful damage to works

Any person who wilfully destroys or in any way damages or injures any wharf, shed, roadway, building, or other port work whatsoever, or any part thereof, constructed or in course of construction, shall be liable for every such offence to a fine not exceeding \$5 000, or to imprisonment not exceeding 12 calendar months.

[Section 79⁴ amended by No. 35 of 1964 s.59; No. 113 of 1965 s.4(1); No. 41 of 1986 s.7; No. 51 of 1992 s.16(1).]

80. Penalty for wilful damage to lights

If any person wilfully or negligently breaks or damages or takes away any lamp or other appliance used for the purpose of lighting any wharf, quay, pier, or any road or dock, or other place, or wilfully extinguishes any light, every person so offending shall be liable to a penalty not exceeding \$5 000.

[Section 80⁴ amended by No. 113 of 1965 s.4(1); No. 41 of 1986 s.7.]

81. Offence incurring penalty

If any person —

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

every such person in any such case so offending shall, where no other penalty is in that behalf specifically provided, be liable to a penalty not exceeding \$2 000.

[Section 81⁴ amended by No. 35 of 1964 s.60; No. 113 of 1965 s.4(1); No. 41 of 1986 s.7.]

82. Penalty for offering bribes to officers

Any person who gives or offers any reward or bribe to any officer or servant of the Port Authority 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, shall, for every such offence, be liable to a penalty not exceeding \$5 000, or to imprisonment not exceeding 12 calendar months.

[Section 82⁴ amended by No. 35 of 1964 s.60; No. 113 of 1965 s.4(1); No. 41 of 1986 s.7; No. 51 of 1992 s.16(1).]

83.⁴ Summary procedure for breach of by-laws

Any offence against this Act, and any breach of any of the provisions thereof or of any regulation thereunder, may be heard and determined summarily by any 2 or more Justices of the Peace in the manner provided by the *Justices Act 1902*.

84.¹ Sufficient averment

In any proceedings for any offence, the averment that such offence was committed within the limits of the port shall be sufficient, without proof of such limits, unless the contrary is proved.

[Section 84⁴ amended by No. 35 of 1964 s.61.]

85. Application of penalties

All penalties recovered for offences against this Act, or against any regulation thereunder, shall be paid to the Port Authority, and the proceeds of such penalties are hereby appropriated for the purposes of this Act.

[Section 85⁴ amended by No. 35 of 1964 s.62.]

86. Police officers to report breaches of Act

It shall be the duty of every police officer and constable who is aware or has reason to believe that any of the provisions of the

Act or the regulations thereunder are being contravened, to forthwith report the matter to the secretary to the Port Authority.

[Section 86⁴ inserted by No. 35 of 19065 ss.20 and 21; amended by No. 35 of 1964 s.62.]

87.⁴ Offenders may be prosecuted under other Acts

When an offender is punishable under the provisions of this Act, and also under the provisions of some other Act, he may be prosecuted and convicted under the provisions of either Act, so that he is not punished twice for the same offence.

88. Security to customs

The Port Authority may give, by bond or otherwise, such security as the Customs may require under the provisions of the *Customs Act 1901*.

[Section 88: Section 88 was formerly section 2 of Act No. 4 of 1913: Renumbered as section 88 pursuant to section 3 of Act No. 4 of 1913; amended by No. 35 of 1964 s.62.]

First Schedule

First Schedule

Description of inner harbour and outer harbour

That portion of the said port, which shall be known as the Inner Harbour, shall be bounded as follows: —

By a line starting from the intersection of the North side of Lukin Road and the prolongation Northwards of the fence on the West side of the Railway Reserve, North Fremantle, and extending Southerly along the fence on the Western Boundary of the Railway Reserve and along the Railway Bridge; thence along the Railway fence to the Western abutment of the Overhead Bridge; thence following the North-Western foot of the embankment of the approach to the Overhead Bridge to a point opposite 92 feet North-Easterly from the South-East corner of “H” Shed; thence South-Easterly to the angle in the Railway fence; thence South-Westerly along the said fence to the Eastern side of Cliff Street; thence Southerly along the said side of Cliff Street for a distance of about 2 chains; thence Westerly crossing Cliff Street and following along the South-Eastern boundary fences of the Fremantle Port Authority offices and Harbour Works Depot to the South-Western corner of the said depot; thence South about 4 chains; thence on a bearing of 106 deg. 30 min. for about 11 chains; thence South to the sea-coast and generally Westerly along same and the Southern side of the South Mole to its Western extremity; thence West-North-Westerly to the Western extremity of the North Mole; thence Easterly and North-Easterly along the North side of the said North Mole and the sea-coast to a point due West of a point on the Western boundary of the Vacuum Oil Company’s lease, 7 chains from the South-West corner of the said lease; thence due East to the point aforesaid on the Western boundary of the Vacuum Oil Company’s lease; thence South-Westerly along the said boundary to the South-West corner; thence South-Easterly along the Southern boundary of the Vacuum Oil Company’s lease to the South-East corner; thence North-Easterly along the Eastern Boundary of the Vacuum Oil Company’s lease to its intersection with a line parallel to and 50 links distant from the fence on the prolongation Easterly of the Southern boundary of the

Vacuum Oil Company's lease; thence along the said line to its intersection with the North Fremantle Store site fence; thence North-Easterly along the said fence on the South-Easterly side to its intersection with the prolongation of the North side of Lukin Road; thence North-Easterly along the said prolongation and the North side of Lukin Road to the starting point; but there shall be excluded from the said Inner Harbour all that piece of land at Arthur's Head contained in a lease to the Fremantle and the North Fremantle Councils for the purpose of a Tramway Electric Power House, and known as Fremantle Town Lot Number 1524, and as described in the *Government Gazette* of 16 September 1904.

That portion of the said Port, which shall be called the Outer Harbour, shall be: —

The area delineated in black and bordered in red on Department of Land Administration Miscellaneous Plan No. 1808, together with that portion of land comprising Kwinana Lot 120 (Reserve 29233) as shown bordered red on Department of Land Administration Miscellaneous Diagram No. 719.

And the said Port shall comprise the areas included in the said Inner and Outer Harbours.

First Schedule

[First Schedule amended by No. 75 of 1960 s.7; No. 35 of 1964 s.63; also amended in Gazettes 6 May 1904 p.1174; 3 March 1916 p.383; 25 February 1921 p.297; 8 April 1921 pp.497-98; 5 December 1924 pp. 2231-32; 19 December 1924 pp.2302-03; 30 January 1925 p.151; 23 March 1928 p.794; 26 August 1932 p.1206; 26 August 1938 p.1350; 24 January 1941 pp.113-14; 2 October 1942 pp.922-23; 7 January 1943 p.7; 23 February 1945 p.228; 8 March 1946 p.231; 17 June 1949 pp.1324-25; 20 March 1953 pp.513-14; 27 August 1954 p.1501; 25 November 1960 p.3790; 12 May 1961 p.1159; 29 June 1962 pp.1673-74; 7 May 1965 p.1435; 23 January 1970 pp.165-66; 8 April 1971 p.1133; 17 October 1975 p.3892; 9 December 1977 p.4556; 23 December 1977 p.4709; 2 November 1979 p.3466; 20 February 1981 p.770; 4 March 1983 p.779; 21 September 1984 p.3096-97; 20 September 1985 p.3755; 20 December 1985 p.4835; 13 June 1986 p.1979; 27 July 1990 p.3612; 14 December 1990 p.6177; 14 December 1990 p.6178; 31 May 1991 p.2745; 18 November 1994 p.5873; 3 September 1996 p.4398; 20 March 1998 p.1551.]

Second Schedule

Part I — Debentures and Inscribed Stock

The following provisions shall apply to debentures and inscribed stock issued by the Port Authority under the provisions of section 58C: —

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 issued or created pursuant to this Act shall be payable half-yearly on such days at such places as the Port Authority determines.

3. Debentures and stock interchangeable

The Port Authority may, at the request of the holder of a debenture or of the registered owner of inscribed stock issued or created pursuant to this Act, in lieu thereof 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 58C.

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 it pursuant to

Second Schedule

section 58C 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) 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 shall not be 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 shall not be bound to inquire into the application of the money advanced or be in any way responsible for the non-application or misapplication thereof.

Part II — Debentures

The following provisions shall 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 10 cents for each inspection; and
 - (b) shall be evidence of any matters required or authorized by or under this Act to be inserted therein.
- (3) A person shall be 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 such register upon payment for each copy or extract of a fee of 25 cents and 2 cents for every folio of 72 words; and any copy or extract so certified shall be admissible in evidence.

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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 the same 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 6 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 the same 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 shall —
 - (a) be cancelled by the secretary; and
 - (b) be burnt in the presence of the secretary and the Auditor General or one of his officers thereto authorized by him in writing.
- (2) The Auditor General or such officer (as the case may be) before the debenture is burnt shall audit the same and allow the accounts thereof and furnish the Port Authority with a certificate particularizing the debenture so burnt; and the secretary shall file that certificate in the office of the Port Authority.

Part III — Stock

The following provisions shall apply to The Fremantle Port Authority Inscribed Stock issued in Perth, Western Australia (in this part called “stock”): —

1. Establishment of registry and appointment of registrar

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

2. Parcels of stock

Stock may be sold by the Port Authority for ready money in parcels or amounts of \$20 or some multiple of \$20.

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 4 of them shall be inscribed as the joint purchasers.
- (4) The stock ledgers shall be evidence of any matters appearing therein and required or authorized by or under this Act to be inserted therein.

4. How Stock transferable

- (1) Stock or any share therein shall be transferable in the manner prescribed by the relations from one person to another by instrument in the form so prescribed and not otherwise.
- (2) A person shall not be entitled or allowed to transfer any fraction of \$1 or any smaller sum than \$20 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 the same 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 2 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 shall be 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 14 days or within such period (not exceeding 21 days) as is prescribed next before any of person which the interest
- (2) During the periods referred to in the last preceding subclause the Port Authority shall cause the amount of the stock respectively standing to the credit of the several registered owners thereof to be ascertained and the balances to be struck and carried forward in the proper stock ledger.
- (3) An instrument of transfer of stock or of any part thereof shall not be registered during the period of 21 days immediately preceding the date of maturity of stock.

8. Receipt of registered stock holders 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 trust to which the stock may then be subject to and whether or not the Port Authority has had notice of the trusts, and the Port Authority shall not be bound to see to the application of the money paid upon such receipt.
- (2) If stock is held in joint names and one or more of the registered owners of the stock dies becomes bankrupt insolvent or otherwise legally incapable, the receipt of any one of the other joint owners or survivors shall be a sufficient discharge to the Port Authority for any interest payable in respect of the stock, notwithstanding that a transmission has not been registered as required by this Act.

Second Schedule

[Second Schedule inserted by No. 75 of 1960 s.8; amended by No. 35 of 1964 s.64; No. 113 of 1965 s.4(1).]

Notes

- ^{1.} This is a compilation of the *Fremantle Port Authority Act 1902* and includes all amendments effected by the other Acts referred to in Part I of the following Table and notices referred to in Part II of the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Fremantle Harbour Trust Act 1902</i>	17 of 1902	11 Dec 1902	11 December 1902
<i>Fremantle Harbour Trust Amendment Act 1906</i>	35 of 1906	14 Dec 1906	14 December 1906
<i>Fremantle Harbour Trust Amendment Act 1911</i>	25 of 1911	16 Feb 1911	16 February 1911
<i>Fremantle Harbour Trust Amendment Act 1913</i>	4 of 1913	4 Oct 1913	4 October 1913
<i>Limitation Act 1935</i> , section 48A	35 of 1935	7 Jan 1936	The relevant amendment as set out in the Second Schedule took effect on 1 March 1955 (see <i>Gazette</i> 18 February 1955 p.343)
<i>Fremantle Harbour Trust Act Amendment Act 1950</i>	54 of 1950	18 Dec 1950	18 December 1950
<i>Fremantle Harbour Trust Act Amendment Act 1951</i>	17 of 1951	26 Nov 1951	26 November 1951
<i>Fremantle Harbour Trust Act Amendment Act 1952</i>	39 of 1952	18 Dec 1952	18 December 1952
<i>Fremantle Harbour Trust Act Amendment Act 1957</i>	42 of 1957	22 Nov 1957	5 September 1958 (see <i>Gazette</i> 5 September 1958 p.2319)
<i>Fremantle Harbour Trust Act Amendment Act 1960</i>	75 of 1960	12 Dec 1960	12 December 1960
<i>Fremantle Harbour Trust Act Amendment Act 1964</i>	35 of 1964	12 Nov 1964	27 November 1964 (see <i>Gazette</i> 27 November 1964 p.3821)
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Sections 4 to 9: 14 February 1966 (see section 2(2)); balance on assent
<i>Fremantle Port Authority Act Amendment Act 1969</i>	80 of 1969	7 Nov 1969	7 November 1969
<i>Acts Amendment (Port and Marine Regulations)</i>	12 of 1976	27 May 1976	27 May 1976

Fremantle Port Authority Act 1902

Short title	Number and year	Assent	Commencement
<i>Act 1976, Part IV</i>			
<i>Fremantle Port Authority Act Amendment Act 1976</i>	22 of 1976	9 Jun 1976	1 September 1977 (see <i>Gazette</i> 29 July 1977 p.2423)
<i>Acts Amendment (Port Authorities) Act 1979, Part IV</i>	78 of 1979	6 Dec 1979	6 December 1979
<i>Acts Amendment and Repeal (Disqualification for Parliament) Act 1984, Part VIII</i>	78 of 1984	14 Nov 1984	1 July 1985 (see <i>Gazette</i> 17 May 1985 p.1617)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 (as amended by Act No. 4 of 1986), Schedule 1</i>	98 of 1985	4 Dec 1985	1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p.2255)
<i>Fremantle Port Authority Amendment Act 1986</i>	41 of 1986	1 Aug 1986	1 August 1986
<i>Acts Amendment (Port Authorities) Act 1986, Part V</i>	79 of 1986	4 Dec 1986	4 December 1986
<i>Acts Amendment (Port Authorities) Act 1987, Part V</i>	98 of 1987	16 Dec 1987	Sections 8, 14, 20, 26, 32 and 38: 1 July 1988 (see section 2(2)); balance on assent
<i>Acts Amendment (Public Service) Act 1987, Schedule 2</i>	113 of 1987	31 Dec 1987	16 March 1988 (see <i>Gazette</i> 16 March 1988 p.813)
<i>Criminal Law Amendment Act (No. 2) 1992, section 16(1)</i>	51 of 1992	9 Dec 1992	6 January 1993
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 Aug 1993	Deemed operative 1 July 1993
<i>Ports (Functions) Act 1993, sections 37 and 46</i>	46 of 1993	20 Dec 1993	15 June 1994 (see <i>Gazette</i> 10 June 1994 p.2373)

Short title	Number and year	Assent	Commencement
<i>Local Government (Consequential Amendments) Act 1996</i> , section 4	14 of 1996	28 Jun 1996	1 July 1996 (see section 2)
<i>Financial Legislation Amendment Act 1996</i> , section 64	49 of 1996	25 Oct 1996	25 October 1996 (see section 2 (1))
<i>Trustees Amendment Act 1997</i> , section 18	1 of 1997	6 May 1997	16 June 1997 (see section 2 and <i>Gazette</i> 10 June 1997 p.2661)
<i>Acts Amendment (Land Administration) Act 1997</i> , section 142	31 of 1997	3 Oct 1997	30 March 1998 (see section 2 and <i>Gazette</i> 27 March 1998 p.1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> , section 63	57 of 1997	15 Dec 1997	15 December 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 August 1999 (see section 2 and <i>Gazette</i> 13 August 1999 p.3823)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> , section 82	26 of 1999	29 Jun 1999	1 Jul 1999 (see section 2(1) and <i>Gazette</i> 30 Jun 1999 p.2905)

Part II — Notices

Notice	Gazettal	Commencement	Miscellaneous
Amendment notice	6 May 1904 p.1174	6 May 1904	
Amendment notice	3 March 1916 p.383	3 March 1916	
Amendment notice	25 February 1921 p.297	25 February 1921	
Amendment notice	8 April 1921 pp.497-8	8 April 1921	
Amendment notice	5 December 1924 pp.2231-2	5 December 1924	
Amendment notice	19 December 1924	19 December 1924	

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Notice	Gazettal	Commencement	Miscellaneous
	pp.2302-3		
Amendment notice	30 January 1925	30 January 1925	
	p.151		
Amendment notice	23 March 1928	23 March 1928	
	p.794		
Amendment notice	26 August 1932	26 August 1932	
	p.1206		
Amendment notice	26 August 1938	26 August 1938	
	p.1350		
Amendment notice	24 January 1941	24 January 1941	
	pp.113-4		
Amendment notice	2 October 1942	2 October 1942	
	pp.922-3		
Amendment notice	7 January 1943	7 January 1943	
	p.7		
Amendment notice	23 February 1945	23 February 1945	
	p.228		
Amendment notice	8 March 1946	8 March 1946	
	p.231		
Amendment notice	17 June 1949	17 June 1949	
	pp.1324-5		
Amendment notice	20 March 1953	20 March 1953	
	pp.513-4		
Amendment notice	27 August 1954	27 August 1954	
	p.1501		
Amendment notice	25 November 1960	25 November 1960	
	p.3790		
Amendment notice	12 May 1961	12 May 1961	
	p.1159		
Amendment notice	29 June 1962	29 June 1962	
	pp.1673-4		
Amendment notice	7 May 1965	7 May 1965	
	p.1435		
Amendment notice	23 January 1970	23 January 1970	
	pp.165-6		
Amendment notice	8 April 1971	8 April 1971	
	p.1133		
Amendment notice	17 October 1975	17 October 1975	
	p.3892		
Amendment notice	9 December 1977	9 December 1977	
	p.4556		
Amendment notice	23 December 1977	23 December 1977	
	p.4709		
Amendment notice	2 November 1979	2 November 1979	

Notice	Gazettal	Commencement	Miscellaneous
	p.3466		
Amendment notice	20 February 1981	20 February 1981	
	p.770		
Amendment notice	4 March 1983	4 March 1983	
	p.779		
Amendment notice	21 September 1984	21 September 1984	
	pp.3096-7		
<i>Fremantle Port Authority (Alteration of Boundaries) Notice 1985</i>	20 September 1985	20 September 1985	
	p.3755		
<i>Fremantle Port Authority Notice 1985</i>	20 December 1985	20 December 1985	
	p.4835		
<i>Fremantle Port Authority Notice 1986</i>	13 June 1986	13 June 1986	
	p.1979		
<i>Fremantle Port Authority (Alteration of Boundaries) Notice 1990</i>	27 July 1990	27 July 1990	
	p.3612		
<i>Fremantle Port Authority (Alteration of Boundaries) Notice (No. 2) 1990</i>	14 December 1990	14 December 1990	
	p.6177		
<i>Fremantle Port Authority (Alteration of Boundaries) Notice (No. 3) 1990</i>	14 December 1990	14 December 1990	
	p.6178		
<i>Fremantle Port Authority (Alteration of Boundaries) Notice 1991</i>	31 May 1991	31 May 1991	
	p.2745		
<i>Fremantle Port Authority (Alteration of Boundaries) Notice 1994</i>	18 November 1994	18 November 1994	
	p.5873		

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Notice	Gazettal	Commencement	Miscellaneous
<i>Fremantle Port Authority (Alteration of Boundaries) Notice 1996</i>	3 September 1996 p.4398	3 September 1996	
<i>Fremantle Port Authority (Alteration of Boundaries) Notice 1998</i>	20 March 1998 p.1551	20 March 1998	

N.B. The *Fremantle Port Authority Act 1902* is affected by the *Harbours and Jetties Act 1928* (section 2); *Oil Refinery (Kwinana) Agreement Act 1952*; *Broken Hill Proprietary Steel Industry Agreement Act 1952*; *Alumina Refinery Agreement Act 1961*; *Public Authorities (Contributions) Act 1974*.

² Section 18 of Act No.79 of 1986 reads as follows —

“

18. Saving

- (1) A person who was immediately before the coming into operation of this Act a commissioner of the Port Authority within the meaning of the principal Act shall, subject to the principal Act, continue to hold office as such a commissioner for the remainder of his period of office as if the principal Act had not been amended by this Act.
- (2) A commissioner of the Port Authority within the meaning of the principal Act who was immediately before the coming into operation of this Act the chairman of that Port Authority shall, subject to the principal Act, continue to hold office as that chairman for the remainder of his period of office as —
 - (a) that chairman; or
 - (b) a commissioner of that Port Authority,whichever is the short period, as if the principal Act had not been amended by this Act..

”.

³ Under the *Reprints Act 1984* section 7 (3) (h) this title was substituted for “Commissioner of Railways” see Act No. 23 of 1904.

⁴ In this reprint the renumbering of sections effected in the 1906 reprint (in the appendix to the sessional volume of 1906) and in subsequent reprints has been retained.

⁵ Now see the *Industrial Relations Act 1979*

⁶ Repealed by *Municipal Corporations Act 1906*, and corresponding provisions enacted by section 179 (30) of that Act. Section 179 (30), except (e) and (x) repealed by *Traffic Act 1919*. *Municipal Corporations Act 1906*, repealed by *Local Government Act 1960*.

⁷ Marginal notes in the *Fremantle Port Authority Act 1902* referring to legislation of other jurisdiction have been omitted from this reprint.

⁸ 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..

”.

⁹ 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..

”.

¹⁰ 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.

”.