

# Port Authorities Bill 1998

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Western Australia

LEGISLATIVE ASSEMBLY

## **Port Authorities Bill 1998**

**A Bill for**

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

The Parliament of Western Australia enacts as follows:

5

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Port Authorities Act 1998*.

### 2. Commencement

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

### 3. Definitions

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

10 “**board**” means the board of directors of a port authority provided for by section 7;

“**CEO**” means the person holding the office of chief executive officer of a port authority created under section 14(1) and includes an acting chief executive officer under section 14(6);

15 “**channel**” includes a swinging basin, turning circle, area alongside a jetty, fairway or anchorage;

“**Commissioner for Public Sector Standards**” means the person holding or acting in the office created by section 16(1) of the *Public Sector Management Act 1994*;

20 “**control**”, when used in the sense of being in control of a vessel, means to be in charge or command of, or to have the management of, the vessel;

“**Crown land**” has the same meaning as it has in the *Land Administration Act 1997*;

25 “**damage**” includes alter, destroy or remove;

“**dangerous thing**” means —

(a) a vessel or part of a vessel;



(b) a wreck and any cargo, fuel or other thing on or in it;  
or

(c) any other thing,

5 that is likely to be a danger to navigation or to port  
facilities or harmful to the environment;

“**director**” means a director appointed under section 7;

“**executive officer**” means a member of the staff of a port  
authority designated under section 20(2) as an executive  
officer;

10 “**goods**” includes —

(a) merchandise, wares, chattels and other articles,  
whether manufactured or of any other kind;

(b) minerals and mineral products;

(c) petroleum and hydrocarbon products;

15 (d) forestry and agricultural products; and

(e) livestock;

“**harbour master**” means a person appointed under section 102  
as the harbour master or acting harbour master of a port or  
authorized under that section to perform the harbour  
master’s functions;

20 “**jetty**” includes —

(a) a pier, wharf, quay, grid, slipway, landing place,  
stage, platform or similar structure, whether fixed or  
floating, erected or placed, wholly or in part, in, on,  
25 over or alongside any waters; and

(b) a ramp that is or may be used for the purpose of  
launching or landing a vessel,

but does not include a vessel;

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

5 **“maritime structure”** means —

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

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

**“member of staff”** means a person engaged under section 16;

**“mooring”** includes anchoring and berthing;

**“movement”**, in relation to —

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

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

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

**“owner”**, in relation to —

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

10 **“port”** means a port named in Schedule 1 and **“the port”** or **“its port”**, in relation to a port authority, means the port for which the port authority is established;

**“port activities”** has the meaning given by section 35;

**“port authority”** means a body established by section 4;

**“port charges”** has the meaning given by section 114;

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

- (a) maritime structures and other buildings, structures and enclosures;
- (b) railways; and
- 20 (c) machinery, equipment, vessels, vehicles and aircraft;

**“port land”** means vested land or land acquired by a port authority;

**“port services”** has the meaning given by section 35;

**“port works”** has the meaning given by section 35;

25 **“subsidiary”** means —

- (a) a body that would be a subsidiary of a port authority within the meaning of the Corporations Law if the port authority were a body corporate to which the Corporations Law applies; and

**s. 3**

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- 5 (b) an interest or other rights of a port authority in a unit trust, joint venture or partnership where the interest or other rights of the port authority in connection with the unit trust, joint venture or partnership entitle the port authority to —
- (i) control the composition of the governing body of the unit trust, joint venture or partnership;
- 10 (ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the unit trust, joint venture or partnership; or
- (iii) control the business affairs of the unit trust, joint venture or partnership;
- 15 **“Treasurer”** means the Treasurer of the State;
- “vessel”** has the meaning given by subsections (2) and (3);
- “vested”**, in relation to land or other property, means vested in a port authority under this Act.
- 20 (2) A reference in this Act to a vessel is a reference to a thing used, or capable of being used, in navigation by water, and includes a reference to —
- (a) an air-cushion vehicle, seaplane or other similar craft; or
- (b) a barge, lighter or other floating structure used for commercial purposes other than a structure of a class or kind prescribed for the purposes of this paragraph.
- 25 (3) A thing can be a vessel for the purposes of this Act —
- (a) no matter how it is moved or propelled; and
- (b) even if it is normally stationary.

## **Part 2 — Port authorities: establishment and administration**

### **Division 1 — Establishment of port authorities**

#### **4. Port authorities established**

- 5 (1) The port authorities named in Schedule 1 are established for the ports named in that Schedule.
- (2) A port authority is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against a port authority in its corporate name.
- 10 (4) A port authority may use, and operate under, one or more trading names approved by the Minister.
- (5) A trading name can be —
- (a) an abbreviation or adaptation of the port authority's corporate name; or
- 15 (b) a name other than the port authority's corporate name.

#### **5. Port authorities are not agents of the Crown**

A port authority is not an agent of the Crown and does not have the status, immunities and privileges of the Crown.

#### **6. Port authority and officers not part of public sector**

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

**Division 2 — Boards of directors**

**7. Port authority to have a board of directors**

- (1) A port authority is to have a board of directors comprising 5 persons appointed in writing by the Minister.
- 5 (2) A member of staff is not eligible to be appointed as, or be, a director.
- (3) Without limiting section 132, if a Division of Schedule 6 applies to a port authority any provisions of that Division in relation to the appointment of directors of the port authority have effect
- 10 despite anything in this section.

**8. The role of boards**

- (1) The board of a port authority is its governing body.
- (2) The board, in the name of the port authority, is to perform the functions, determine the policies and control the affairs of the
- 15 port authority.

**9. Provisions about the constitution and proceedings of boards**

Schedule 2 has effect with respect to directors and boards.

**10. Remuneration of directors**

- (1) A director is to be paid out of the funds of the port authority such remuneration and allowances as are determined in the case
- 20 of that director by the Minister.
- (2) Remuneration is not to be paid to a director who holds a full-time office or position that is remunerated out of moneys appropriated by Parliament.

**11. Conflict of duties**

- (1) If a person is both a public service officer and a director —
- (a) the person’s duties as a director are to prevail if a conflict arises between those duties and the person’s other duties as a public service officer; and
  - (b) the person does not have any immunity of the Crown in respect of the duties and liabilities imposed on directors by this Act.

- (2) In this section —

“**public service officer**” means a person who is employed in the Public Service under Part 3 of the *Public Sector Management Act 1994*.

**12. Disclosure of material personal interests**

- (1) A director of a port authority who has a notifiable interest in a matter involving the port authority must, as soon as possible after the relevant facts have come to the director’s knowledge, disclose the nature of the interest at a meeting of the board of the port authority.

Penalty: \$5 000.

- (2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting.

- (3) In subsection (1) —

“**notifiable interest**” means an interest in the matter that will, under Schedule 2, clause 8(1), disqualify the director from voting on the matter at a meeting of the board unless allowed to do so by a resolution under clause 8(3) or a declaration under clause 8(6).

**13. Committees**

- (1) A board may —
- (a) appoint committees of directors or other persons; and
  - (b) discharge, alter or reconstitute any committee.
- 5 (2) A committee is to comply with any direction or requirement of the board.
- (3) A committee may, with the approval of the board, invite any person, including a member of staff, to participate in a meeting of the committee but such a person cannot vote on any
- 10 resolution before the committee.
- (4) Subject to subsection (2), a committee may determine its own procedures.

**Division 3 — Staff**

**14. Chief executive officer**

- 15 (1) A port authority is to have a chief executive officer.
- (2) The powers —
- (a) to appoint and remove the chief executive officer; and
  - (b) subject to the *Salaries and Allowances Act 1975*, to fix and alter the terms and conditions of service of the chief
- 20 executive officer,
- are vested in the board.
- (3) The board must get the Minister's approval before it exercises any of the powers conferred by subsection (2).
- (4) The chief executive officer of a port authority may resign from
- 25 office by giving notice in writing to the board.



(5) If the chief executive officer's terms and conditions of service deal with the matter of resignation, the right to resign under subsection (4) can only be exercised in accordance with those terms and conditions.

5 (6) The board may appoint a person to act in the office of chief executive officer during any period when the chief executive officer is, or is expected to be, absent from the State or on leave or unable for any other reason to carry out the duties of the office.

10 **15. Role of CEO**

Subject to the control of the board, the CEO of a port authority is responsible for, and has all the powers needed to administer, the day to day operations of the port authority.

**16. Staff**

15 (1) The power to engage and manage the staff of a port authority is vested in its board.

(2) The power conferred by subsection (1) —

20 (a) includes powers to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate the employment of staff; and

(b) does not preclude the delegation of any matter under section 44.

25 (3) The remuneration of and other terms and conditions of employment of staff are not to be less favourable than is provided for in —

(a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or

(b) the *Minimum Conditions of Employment Act 1993*.

**Port Authorities Bill 1998**

Part 2 Port authorities: establishment and administration

Division 3 Staff

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(4) There are excluded from the operation of sections 41, 41A and 43 of the *Industrial Relations Act 1979* and of Part 3 of the *Workplace Agreements Act 1993* —

- 5 (a) any matters dealt with by an instrument issued under section 17, except —
- (i) rates of remuneration;
  - (ii) leave;
  - (iii) hours of duty; and
  - 10 (iv) matters that are similar to matters prescribed for the purposes of section 99(a)(iv) of the *Public Sector Management Act 1994*;
- and
- 15 (b) matters concerning the management of the staff that are similar to matters prescribed for the purposes of section 99(c) of the *Public Sector Management Act 1994*.

(5) Nothing in this section other than subsection (4) affects the operation of the *Workplace Agreements Act 1993*.

**17. Minimum standards for staff management**

- 20 (1) The board of a port authority must, after consultation with the Commissioner for Public Sector Standards, prepare and issue an instrument setting out minimum standards of merit, equity and probity applicable to the management of the staff of the port authority.
- 25 (2) In complying with subsection (1) a board is to have regard to the principles set out in section 8 of the *Public Sector Management Act 1994*.
- (3) Section 14(3) is not affected by the requirements of subsection (2).

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

5 (5) A board may —  
(a) amend an instrument issued under this section; or  
(b) revoke it and substitute a new instrument,  
but, except where subsection (4) applies, is to do so only after  
consultation with the Commissioner for Public Sector  
10 Standards.

**18. Reports to Commissioner for Public Sector Standards**

(1) The Commissioner for Public Sector Standards may in writing direct a board —  
(a) to report to the Commissioner on the observance of the  
15 minimum standards in force under section 17; and  
(b) to make the reports at such times, but not more often  
than half-yearly,

as the Commissioner may specify.

20 (2) A board must comply with a direction given to it made under subsection (1).

(3) The Commissioner for Public Sector Standards may at any time report to the Minister on the content or observance of the minimum standards in force under section 17.

**19. Superannuation**

25 (1) A port authority may grant, or make provision for the grant of, retirement benefits to members and former members of staff and their dependants and for that purpose may, subject to

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section 56A of the *Government Employees Superannuation Act 1987*—

- 5 (a) establish, manage and control; or
- (b) enter into an arrangement with any body for the establishment, management and control by that body either alone or jointly with the port authority of,
- any fund or scheme for the purpose of providing for such retirement benefits.
- 10 (2) A port authority may make contributions to any fund or scheme referred to in subsection (1).
- (3) In subsection (1) —
- “members of staff”** includes the CEO.
- 15 (4) Nothing in this section affects the operation of the *Superannuation and Family Benefits Act 1938* or the *Government Employees Superannuation Act 1987* in relation to a port authority or members or former members of staff or their dependants.

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**20. Duties of CEO and staff**

- 20 (1) Schedule 3 has effect in relation to the CEO, former CEOs, members of staff and former members of staff.
- (2) For the purposes of Schedule 3, the board of a port authority may designate a member of staff as an executive officer by resolution —
- 25 (a) passed by the board; and
- (b) notified in writing to the member of staff,
- and may in the same manner revoke such a designation.

**21. Codes of conduct**

- 5 (1) The board of a port authority must, after consultation with the Commissioner for Public Sector Standards, prepare and issue a code or codes of conduct setting out minimum standards of conduct and integrity to be observed by members of staff.
- (2) In complying with subsection (1) a board is to have regard to the principles set out in section 9 of the *Public Sector Management Act 1994*.
- 10 (3) A board may, after consultation with the Commissioner for Public Sector Standards, amend any code of conduct in force under subsection (1) or revoke it and substitute a new code of conduct.
- (4) In this section and in sections 22 and 23 —  
**“members of staff”** includes the CEO.

15 **22. Reports to Commissioner for Public Sector Standards**

- (1) The Commissioner for Public Sector Standards may in writing direct a board —
- 20 (a) to report to the Commissioner on the observance by members of staff of any code of conduct in force under section 21; and
- (b) to make the reports at such times, but not more often than half-yearly,
- as the Commissioner may specify.
- (2) A board must comply with a direction given to it under subsection (1).
- 25 (3) The Commissioner for Public Sector Standards may at any time report to the Minister on any matter relating to the observance by members of staff of a port authority of a code of conduct in

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force under section 21 that the Commissioner thinks should be brought to the Minister's attention.

**23. Reports to Minister**

- 5
- (1) A board, when it delivers to the Minister its annual report under section 68, is also to deliver to the Minister a separate report on the observance by members of staff of any code of conduct in force under section 21.
  - (2) A board is to give to the Commissioner for Public Sector Standards a copy of each report under subsection (1).

### Part 3 — Port areas and property of port authorities

#### 24. Port areas

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

#### 25. Property of a port authority

- 15 (1) The following property is vested in a port authority for the purposes of this Act —
- (a) all Crown land in the port, including the seabed and shores;
- 20 (b) all navigational aids in the port, or used in connection with navigation into or out of the port, that belong to the State;
- (c) all fixtures on land in the port that belong to the State.
- (2) The property of a port authority also includes the following —
- 25 (a) any improvements effected on vested land leased to another person that have been acquired on the termination of the lease concerned;

- (b) any real or personal property (other than property referred to in paragraph (a)) acquired by the port authority or vested in the port authority by the Governor for the purposes of this Act.

5   **26. Port property may be taken back by the Crown**

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

15   **27. Restrictions on power to sell land**

- (1) The power of a port authority to sell port land does not extend to Crown land.
- (2) A port authority must get the Minister's approval before it sells port land.
- 20   (3) In this subsection —  
      “**sell**” means dispose of, convey and transfer, in fee simple or for a lesser estate, for consideration or by way of exchange, and includes grant an option to purchase or a right of first refusal to purchase.

25   **28. Creating and dealing with interests in vested land**

- (1) A port authority must get the Minister's approval before it grants an easement, lease or licence in respect of vested land.



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

**29. Disputes between a port authority and Crown**

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

## **Part 4 — Functions and powers**

### **Division 1 — Functions, powers and related provisions**

#### **30. Functions**

(1) The functions of a port authority are —

- 5 (a) to facilitate trade within and through the port and plan for future growth and development of the port;
- 10 (b) to undertake or arrange for activities that will encourage and facilitate the development of trade and commerce generally for the economic benefit of the State through the use of the port and related facilities;
- (c) to control business and other activities in the port or in connection with the operation of the port;
- (d) to be responsible for the safe and efficient operation of the port; and
- 15 (e) to be responsible for the maintenance and preservation of vested property and other property held by it.

(2) It is also a function of a port authority —

- 20 (a) to do things that its board determines to be conducive or incidental to the performance of a function referred to in subsection (1); or
- (b) to do things that it is authorized to do by any other written law.

(3) A port authority may perform any of its functions in the State or elsewhere.

#### **31. Port authorities can act at their discretion**

The fact that a port authority has a function given to it by section 30 does not impose a duty on it to do any particular

thing and, subject to this Act and any direction given to the port authority by the Minister, it has a discretion as to how and when it performs the function.

**32. Control of the port**

5 Subject to any direction given by the Minister, a port authority has exclusive control of the port.

**33. Duty to act in accordance with policy instruments**

10 A port authority is to perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

**34. Duty to act on commercial principles**

A port authority in performing its functions must —

- (a) act in accordance with prudent commercial principles;  
and
- 15 (b) endeavour to make a profit.

**35. Powers generally**

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

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- (d) provide, manage and operate port facilities or arrange for port facilities to be provided, managed and operated;
  - (e) provide port services or arrange for port services to be provided;
  - (f) enter into any contract or arrangement including a contract or arrangement with any person for the performance of the function by that person on behalf of the port authority;
  - (g) apply for the grant of any licence or other authority required by the port authority;
  - (h) acquire, establish and operate —
    - (i) any undertaking necessary or convenient for the performance of the function; and
    - (ii) any associated undertaking;
  - (i) produce and deal in any equipment, facilities or system associated with, the performance of the function;
  - (j) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the port authority;
  - (k) subject to sections 39 and 40, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement;
  - (l) carry out any investigation, survey, exploration or feasibility study;
  - (m) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research;

- 5 (n) develop and turn to account any technology, software or other intellectual property that relates to the function and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights;
- (o) issue licences and administer licensing schemes for activities and things in accordance with the regulations; and
- (p) promote and market the port authority and its activities.
- 10 (3) Subsection (2) does not limit subsection (1) or the other powers of a port authority under this Act or any other written law.
- (4) A port authority must get the Minister's approval before it issues a licence giving a person an exclusive right to provide port services of a particular kind.
- 15 (5) The Minister is not to give approval under subsection (4) unless the Minister considers that the public benefits of exclusivity exceed the public costs.
- (6) A port authority may —
- 20 (a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community;
- (b) make any *ex gratia* payment that the board considers to be in the port authority's interest;
- 25 (c) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the port authority.
- (7) For the purposes of port works and port facilities, a port authority is a local authority within the meaning of the *Public Works Act 1902*.

(8) In this section —

**“business arrangement”** means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;

5 **“participate”** includes form, promote, establish, enter, manage, dissolve, wind up, and do things incidental to participating in a business arrangement;

**“port activities”** means —

- 10 (a) the movement, mooring, hauling out, maintenance and launching of vessels;
- (b) the movement of, and provision of services to, passengers of vessels; and
- (c) the movement, handling and storage of goods;

**“port services”** means —

- 15 (a) carrying out port activities;
- (b) dredging, engineering, marine civil construction, pollution management, security, pilotage, towage, vessel movement control, emergency response, shore stabilization and waste management services;
- (c) supplying provisions or equipment to vessels;
- 20 (d) providing for the use or hire of port facilities;
- (e) providing labour for any purpose; and
- (f) any other services prescribed by regulation for the purposes of this definition;

**“port works”** means works for port purposes and includes —

- 25 (a) designing, constructing, extending, maintaining, removing or demolishing —
- (i) maritime structures and other buildings, structures and enclosures; and

(ii) railways, roads, bridges, dams and embankments;

and

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

5 **36. Extended powers relating to facilities and services**

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

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

15 **37. Power to levy fees and charges**

- (1) A port authority may levy and collect, in relation to its functions under this Act or any other written law, such fees for licences and approvals as are provided for in the regulations and such port charges as the port authority determines.
- 20 (2) Port charges are to be determined by the port authority in accordance with prudent commercial principles and may allow for —
- (a) the making of a profit; and
- (b) depreciation of assets.

**38. How planning and building requirements apply to port authorities**

(1) In this section —

5           “**Building Code**” means the latest edition of the Building Code of Australia published from time to time by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with that Code;

10           “**performance requirements**” means the provisions of the Building Code that set out the technical requirements in accordance with which buildings must be built;

          “**port authority**” includes —

- 15           (a) a lessee or tenant of a port authority; and  
          (b) a person acting on behalf of a port authority under an arrangement under section 35(2);

          “**responsible Minister**” means —

- 20           (a) in relation to a town planning matter, the Minister administering the *Town Planning and Development Act 1928*;  
          (b) in relation to a building matter, the Minister administering the *Local Government (Miscellaneous Provisions) Act 1960*.

(2) For the purposes of port works and port facilities —

- 25           (a) section 32 of the *Town Planning and Development Act 1928*; and  
          (b) section 373(3) of the *Local Government (Miscellaneous Provisions) Act 1960*,

apply to a port authority as if it were an agency of the Crown in right of the State.



(3) Subsection (2)(b) does not prevent the application of the performance requirements of the Building Code to a building or building work to which they would otherwise apply.

5 (4) A port authority is to consult with the relevant local government before and during the carrying out of building work to ensure that the performance requirements of the Building Code are applied in accordance with subsection (3).

10 (5) If there is a dispute between a port authority and a local government with respect to a town planning or building matter relating to port works or port facilities, the parties to the dispute are to refer it to the Minister.

(6) The Minister may, after consulting the responsible Minister, make a decision on the dispute and that decision is final and binding on the parties.

15 **39. Subsidiaries**

(1) A port authority must obtain the approval of the Minister before it acquires a subsidiary or enters into any transaction that will result in the acquisition of a subsidiary.

20 (2) The Minister is not to give approval under subsection (1) except with the Treasurer's concurrence.

(3) A port authority must ensure that the memorandum and articles of association of every subsidiary of the port authority that under a written law is required to have a memorandum and articles of association —

25 (a) contain provisions to the effect of those required by Schedule 4;

(b) are consistent with this Act; and

(c) are not amended in a way that is inconsistent with this Act.

(4) A port authority must, to the maximum extent practicable, ensure that every subsidiary of the port authority complies with its memorandum and articles of association and with this Act.

5 (5) The provisions of this Act prevail to the extent of any inconsistency with the articles of association of any subsidiary of a port authority.

**40. Transactions that require Ministerial approval**

10 (1) Despite sections 30 and 35, a port authority must get the Minister's approval before it enters into a transaction to which this section applies.

(2) The Minister is not to give approval under subsection (1) except with the Treasurer's concurrence.

(3) This section applies to a transaction if —

15 (a) it is to be entered into by a port authority or a subsidiary of a port authority;

(b) it is not exempt under section 41; and

(c) the port authority's liability exceeds the prescribed amount.

20 (4) For the purposes of subsection (3)(c) a port authority's liability is the amount or value of the consideration or the amount to be paid or received by the port authority or a subsidiary, ascertained as at the time when the transaction is entered into.

**41. Exemptions from section 40**

25 (1) The Minister, with the Treasurer's concurrence, may by order exempt a transaction or class of transaction from the operation of section 40 either unconditionally or on specified conditions.

(2) An order under subsection (1) may be revoked or amended by the Minister with the Treasurer's concurrence.

- (3) An order under subsection (1) or (2) is to show sufficient particulars of the transactions or class of transaction to which it relates to enable the transaction or class to be identified.
- 5 (4) The Minister must, within 14 days after an order under subsection (1) or (2) is made, cause it to be laid before each House of Parliament or dealt with in accordance with section 133.

**42. Meaning of “transaction”**

In sections 40 and 41 —

10 **“transaction”**—

- (a) includes a contract or other arrangement or any exercise of the power conferred by section 35(2)(k); and
- 15 (b) does not include any acquisition or transaction referred to in section 39(1) or any transaction under section 85 or 87.

**43. Minister to be consulted on major initiatives**

A port authority must consult the Minister before it enters upon a course of action that in its opinion —

- 20 (a) amounts to a major initiative; or  
(b) is likely to be of significant public interest,

whether or not the course of action involves a transaction to which section 40 applies.

**44. Delegation**

- 25 (1) A port authority may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.

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- (2) A delegation under subsection (1) may be made to —
- (a) a director or directors;
  - (b) the CEO;
  - (c) a member of staff;
  - 5 (d) a committee established under section 13; or
  - (e) any other person.
- (3) A delegate cannot subdelegate the performance of any function unless the delegate is expressly authorized by the instrument of delegation to do so.
- 10 (4) A function performed by a delegate of a port authority is to be taken to be performed by the port authority.
- (5) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- 15 (6) Nothing in this section is to be read as limiting the ability of a port authority to act through its officers and agents in the normal course of business.
- (7) This section does not apply to the execution of documents but  
20 authority to execute documents on behalf of a port authority can be given under section 134.

**Division 2 — Protection of people dealing with port authorities**

**45. People dealing with port authorities may make assumptions**

- (1) A person having dealings with a port authority is entitled to make the assumptions mentioned in section 47.
- 25 (2) In any proceedings in relation to the dealings, any assertion by the port authority that the matters that the person is entitled to assume were not correct must be disregarded.

**46. Third parties may make assumptions**

- 5           (1) A person (“**the third party**”) having dealings with a person (“**the new owner**”) who has acquired, or purports to have acquired, title to property from a port authority (whether directly or indirectly) is entitled to make the assumptions mentioned in section 47.
- 10           (2) In any proceedings in relation to the dealings, any assertion by the port authority or the new owner that the matters that the third party is entitled to assume were not correct must be disregarded.

**47. Assumptions that may be made**

The assumptions that a person is, because of section 45 or 46, entitled to make are —

- 15           (a) that, at all relevant times, this Act has been complied with;
- (b) that a person who is held out by a port authority to be a director, the CEO, an executive officer, a member of staff or an agent of a particular kind —
- 20                 (i) has been properly appointed; and
- (ii) has authority to perform the functions customarily performed by a director, the CEO, an executive officer, a member of staff or an agent of that kind, as the case may require;
- 25           (c) that a member of staff or agent of a port authority who has authority to issue a document on behalf of the port authority has authority to warrant that the document is genuine;

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- 5 (d) that a member of staff or agent of a port authority who has authority to issue a certified copy of a document on behalf of the port authority has authority to warrant that the copy is a true copy;
- 5 (e) that a document has been properly sealed by a port authority if —
- 10 (i) it bears what appears to be an imprint of the port authority's seal; and
- (ii) the sealing of the document appears to comply with section 134;
- and
- (f) that the directors, CEO, members of staff and agents of a port authority have properly performed their duties to the port authority.
- 15 **48. Exception to sections 45 and 46**
- (1) Despite sections 45 and 46, a person is not entitled to assume a matter mentioned in section 47 if —
- 20 (a) the person has actual knowledge that the assumption would be incorrect; or
- (b) because of the person's connection or relationship with the port authority, the person ought to know that the assumption would be incorrect.
- 25 (2) If, because of subsection (1), a person is not entitled to make a particular assumption in relation to dealings with the port authority, section 45(2) does not apply to any assertion by the port authority in relation to the assumption.

- 5 (3) If, because of subsection (1), a person is not entitled to make a particular assumption in relation to an acquisition or purported acquisition from the port authority of title to property, section 46(2) does not apply to any assertion by the port authority or another person in relation to the assumption.

## **Part 5 — Provisions about accountability**

### **Division 1 — Strategic development plans**

#### **49. Draft strategic development plan to be submitted to Minister**

- 5 (1) The board of a port authority must in each year prepare, and submit to the Minister for the Minister's agreement, a draft strategic development plan for the port authority and any subsidiary.
- 10 (2) Each draft strategic development plan is to be submitted not later than 3 months before the start of the next financial year.

#### **50. Period to which strategic development plan relates**

A strategic development plan is to cover a forecast period of 5 years or a lesser period agreed with the Minister.

#### **51. Matters to be included in strategic development plan**

- 15 (1) A strategic development plan must set out the port authority's medium to long term objectives (including economic and financial objectives) and operational targets and how those objectives and targets will be achieved.
- 20 (2) The matters that are to be considered by a board in the preparation of a strategic development plan include —
- 25 (a) competitive strategies, pricing, service efficiency and effectiveness, strategies for land use and infrastructure maintenance, financial requirements, capital expenditure, investment strategy, customer service arrangements, relevant government policy, personnel requirements, trade projections, trade facilitation; and



- (b) any other matters that the Minister and the board agree should be considered.

**52. Strategic development plan to be agreed if possible**

5 A board and the Minister must try to reach agreement on a draft strategic development plan as soon as possible, and in any event not later than one month before the start of the next financial year.

**53. Minister's powers in relation to draft strategic development plan**

- 10 (1) The Minister may return a draft strategic development plan to a board and request it to —
- (a) consider or further consider any matter and deal with the matter in the draft plan; and
  - (b) revise the draft plan in the light of its consideration or
- 15 further consideration.
- (2) A board must comply with a request under subsection (1) as soon as is practicable.
- (3) If a board and the Minister have not reached agreement on a
- 20 draft strategic development plan by one month before the start of the next financial year, the Minister may, by written notice, direct the board —
- (a) to take specified steps in relation to the draft plan; or
  - (b) to make specified modifications to the draft plan.
- (4) A board must comply with a direction under subsection (3) as
- 25 soon as is practicable.
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

**54. Strategic development plan pending agreement**

5 (1) If the board of a port authority and the Minister have not reached agreement on a draft strategic development plan before the start of a financial year, the latest draft plan is to be the strategic development plan for the port authority and any subsidiary until a draft strategic development plan is agreed to under section 55.

(2) In subsection (1) —  
10 “**latest draft plan**” means the draft strategic development plan submitted, or last submitted, by the board to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.

**55. Minister’s agreement to draft strategic development plan**

15 When a board and the Minister reach agreement on a draft strategic development plan, it becomes the strategic development plan for the relevant financial year or the remainder of the year, as the case may be.

**56. Modifications of strategic development plan**

20 (1) A strategic development plan may be modified by a board with the agreement of the Minister.

(2) The Minister may, by written notice, direct a board to modify a strategic development plan and the board must comply with any such direction.

25 (3) Before giving a direction to a board under subsection (2) the Minister must consult with the board and take its views into account.

- (4) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

**57. Concurrence of Treasurer**

- 5 The Minister is not to —
- (a) agree to a draft strategic development plan under section 55; or
  - (b) agree to or direct any modification of a strategic development plan under section 56,
- 10 except with the Treasurer's concurrence.

**Division 2 — Statement of corporate intent**

**58. Draft statement of corporate intent to be submitted to Minister**

- 15 (1) The board of a port authority must in each year prepare, and submit to the Minister for the Minister's agreement, a draft statement of corporate intent for the port authority and any subsidiary.
- (2) Each draft statement of corporate intent is to be submitted not later than 3 months before the start of the next financial year.

20 **59. Period to which statement of corporate intent relates**

A statement of corporate intent is to cover a financial year.

**60. Matters to be included in statement of corporate intent**

- 25 (1) A statement of corporate intent must be consistent with the strategic development plan under Division 1 for the port authority and any subsidiary.

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- (2) A statement of corporate intent for a port authority and any subsidiary must specify —
- (a) an outline of the port authority's objectives;
  - (b) an outline of major planned achievements;
  - 5 (c) proposed arrangements to facilitate trade;
  - (d) estimates of operating revenue and expenditure;
  - (e) an outline of capital expenditure and borrowing requirements;
  - (f) proposed pricing arrangements;
  - 10 (g) proposed provisions for dividends;
  - (h) the performance targets and other measures by which performances may be judged and related to objectives;
  - (i) accounting policies that apply to the preparation of accounts;
  - 15 (j) the type of information to be given to the Minister, including information to be given in half-yearly and annual reports;
  - (k) the nature and extent of community service obligations that are to be performed;
  - 20 (l) the costings of, funding for, or other arrangements to make adjustments relating to, community service obligations;
  - (m) the ways in which, and the extent to which, compensation will be made for performing community service obligations; and
  - 25 (n) such other matters as may be agreed on by the Minister and the board of the port authority.
- (3) The Minister may exempt a port authority from including any matter, or any aspect of a matter, mentioned in subsection (2) in the statement of corporate intent.
- 30

- (4) A community service obligation arises for the purposes of subsection (2) if —
- (a) the Minister specifically requires a port authority to do something;
  - 5 (b) for commercial reasons, the port authority would not do the thing if it did not have to; and
  - (c) the Government does not require things of that kind to be done by businesses in the public or private sector generally.

10 **61. Statement of corporate intent to be agreed if possible**

A board and the Minister must try to reach agreement on a statement of corporate intent as soon as possible and, in any event not later than the start of the next financial year.

15 **62. Minister's powers in relation to draft statement of corporate intent**

- (1) The Minister may return a draft statement of corporate intent to a board and request it to —
- (a) consider or further consider any matter and deal with the matter in the draft statement; and
  - 20 (b) revise the draft statement in the light of its consideration or further consideration.
- (2) A board must comply with a request under subsection (1) as soon as is practicable.
- (3) If a board and the Minister have not reached agreement on a draft statement of corporate intent by one month before the start of the financial year, the Minister may, by written notice, direct the board —
- 25 (a) to take specified steps in relation to the draft statement; or
  - (b) to make specified modifications to the draft statement.

(4) A board must comply with a direction under subsection (3) as soon as is practicable.

5 (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

**63. Statement of corporate intent pending agreement**

10 (1) If the board of a port authority and the Minister have not reached agreement on a draft statement of corporate intent before the start of a financial year, the latest draft statement is to be the statement of corporate intent for the port authority and any subsidiary until a draft statement of corporate intent is agreed to under section 64.

(2) In subsection (1) —  
15 **“latest draft statement”** means the draft statement of corporate intent submitted, or last submitted, by the board to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.

**64. Minister’s agreement to draft statement of corporate intent**

20 (1) When a board and the Minister reach agreement on a draft statement of corporate intent, it becomes the statement of corporate intent for the relevant financial year or the remainder of the year as the case may be.

25 (2) The Minister must within 14 days after agreeing to a draft statement of corporate intent under subsection (1) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

- (3) A board may request the Minister to delete from the copy of a statement of corporate intent that is to be laid before Parliament a matter that is of a commercially sensitive nature, and the Minister may, despite subsection (2), comply with the request.

5 **65. Modifications of statement of corporate intent**

- (1) A statement of corporate intent may be modified by a board with the agreement of the Minister.
- (2) The Minister may, by written notice, direct a board to modify the statement of corporate intent, and the board must comply with any such direction.
- 10 (3) Before giving a direction to a board under subsection (2), the Minister must consult with the board and take its views into account.
- (4) The Minister must within 14 days after a direction is given  
15 cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

**66. Concurrence of Treasurer**

The Minister is not to —

- 20 (a) agree to a draft statement of corporate intent under section 64; or
- (b) agree to or direct any modification of a statement of corporate intent under section 65,

except with the Treasurer's concurrence.

### **Division 3 — Reporting requirements**

#### **67. Half-yearly reports**

- 5
- (1) A port authority must, for the first half of a financial year, give to the Minister a report on the operations of the port authority and of each subsidiary.
- (2) A half-yearly report is to be prepared on a consolidated basis.
- (3) A half-yearly report must be given to the Minister —
- 10
- (a) within 2 months after the end of the reporting period; or
- (b) if another period after the end of the reporting period is agreed between the board and the Minister, within the agreed period.
- (4) The port authority must give a copy of each half-yearly report to the Treasurer.
- 15
- (5) A half-yearly report must include the information required to be given in the report by a relevant statement of corporate intent under Division 2.

#### **68. Annual reports**

- 20
- (1) A port authority must prepare and deliver to the Minister in each year separate annual reports on the operations of the port authority and of each subsidiary in accordance with Schedule 5, clauses 34 and 35.
- (2) All of the reports under subsection (1) are to be sent to the Minister at the same time.
- 25
- (3) The Minister must within 21 days after the day on which a copy of an annual report of a port authority is delivered to the Minister cause a copy of the report to be laid before each House of Parliament or dealt with in accordance with section 133.



- (4) An annual report on the operations of a subsidiary is not required to be laid before Parliament or dealt with under section 133.

**69. Contents of annual reports**

- 5 (1) The annual report in respect of a port authority or a subsidiary must —
- 10 (a) contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of the operations of the port authority or the subsidiary;
- 15 (b) include a commentary on any significant issues relating to the performance of the port authority or the subsidiary that were raised in any relevant statement of corporate intent;
- 20 (c) include particulars of any directions given by the Minister under section 53(3), 56(2), 62(3), 65(2), 72(1) or 84(3) that —
- (i) apply to the port authority or the subsidiary; and
- (ii) were given during the relevant financial year, or at any other time to the extent that they continued to be material during that year; and
- 25 (d) include particulars of the impact on the financial position, profits and losses and prospects of the port authority or the subsidiary of any directions that were given by the Minister under section 72(1) during the relevant financial year.
- (2) The requirements of this section are in addition to Schedule 5, clauses 34 and 35.

**70. Deletion of commercially sensitive matters from reports**

- (1) A board may request the Minister to delete from the copies of a report (and accompanying documents) that are to be made public, a matter that is of a commercially sensitive nature.
- 5 (2) The Minister may comply with a request under subsection (1) unless the matter is one that is required under Schedule 5, clause 35 to be included in the report.
- (3) If the Minister complies with a request under subsection (1) the copies of the report are to include a statement that a matter of a commercially sensitive nature has been deleted from it.
- 10

**Division 4 — Ministerial directions, general provisions**

**71. Directions to port authority**

Except as provided by this Act or any other written law, a port authority is not required to comply with any direction or administrative request given or made by or on behalf of the Government.

15

**72. Minister may give directions**

- (1) The Minister may give directions in writing to a port authority with respect to the performance of its functions, either generally or in relation to a particular matter, and, subject to section 73, the port authority is to give effect to any such direction.
- 20
- (2) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament or dealt with under section 133 —
- 25 (a) within 14 days after the direction is given; or

- (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.

5    **73.    When directions take effect**

- (1) A direction under section 72(1) becomes effective —
  - (a) on the expiry of 7 days after its receipt by a board or of such longer period as the Minister may, at the request of the board, determine; or
  - 10    (b) if it is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, on its being confirmed under that section.
- (2) If a board asks the Minister to extend the 7 day period under subsection (1), the Minister must decide whether or not to agree to the request and notify the board of that decision before the  
15    7 day period has expired.

**Division 5 — Consultation and provision of information**

**74.    Consultation**

20    The board of a port authority and the Minister, at the request of either, are to consult together, either personally or through appropriate representatives, in relation to any aspect of the operations of the port authority.

**75.    Minister to have access to information**

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

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- (2) For the purposes of subsection (1) the Minister may —
- (a) request the CEO or the board of the port authority to furnish information to the Minister;
  - (b) request the CEO or the board of the port authority to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the staff of the port authority and any subsidiary to obtain the information and furnish it to the Minister.
- (3) The CEO or the board of a port authority is to —
- (a) comply with a request under subsection (2); and
  - (b) make staff and facilities available to the Minister for the purposes of subsection (2)(c).
- (4) Where the CEO or the board of a port authority furnishes or gives access to information to the Minister, the Minister is to be advised whether or not in the opinion of the CEO or the board the public disclosure of the information would adversely affect the commercial interests of the port authority or any subsidiary or of any other person.
- (5) In this section —
- “document”** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
- “information”** means information specified, or of a description specified, by the Minister that relates to the functions of the port authority.

**76. Minister to be kept informed**

A port authority must —

- 5
- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the port authority and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the port authority and its subsidiaries;
- 10
- (b) give the Minister reports and information that the Minister requires for the making of informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the opinion of the board of the port authority may prevent, or significantly affect, achievement of the port authority's —
- 15
- (i) objectives outlined in its statement of corporate intent; or
- (ii) targets under its strategic development plan, promptly inform the Minister of the matters and its opinion in relation to them.

**77. Notice of financial difficulty**

- 20
- (1) The board of a port authority must notify the Minister if the board forms the opinion that the port authority or a subsidiary is unable to, or will be unlikely to be able to, satisfy any financial obligation, of the port authority or the subsidiary from the financial resources available or likely to be available to the port authority or the
- 25
- subsidiary at the time the financial obligation is due.
- (2) The notice must —
- (a) be in writing;
- (b) provide the reasons for the board's opinion; and

- (c) provide such other information as the board considers relevant.
- (3) Within 7 days of receipt of the notice, the Minister must —
  - (a) confer with the Treasurer and the board for the purpose of determining what action is required to ensure that the port authority or subsidiary is able to satisfy the relevant financial obligation when it is due; and
  - (b) initiate such action as is required to ensure that the port authority or subsidiary is able to satisfy the relevant financial obligation when it is due.
- (4) For the purposes of subsection (3) the Minister may give a port authority a direction under section 72 requiring the port authority or any subsidiary to cease or limit the performance of any function.
- (5) In giving effect to a direction under subsection (4) a board must ensure that it is complied with in relation to any relevant subsidiary.

### **Division 6 — Protection from liability**

#### **78. No liability for things done under this Part**

- (1) A port authority, a subsidiary of a port authority or a person performing functions under this Act is not liable —
  - (a) in respect of any claim arising as a consequence of the disclosure of information or documents under section 67, 68, 74, 75, 76 or 77; or
  - (b) for the fact of having done or omitted a thing that is required to be done or omitted by a direction given under section 53(3), 56(2), 62(3), 65(2), 72(1) or 84(3).

- (2) Subsection (1) does not extend to the manner in which a thing is done or omitted if it is done or omitted contrary to section 9 or 10 of the *Statutory Corporations (Liability of Directors) Act 1996* or Schedule 3, clause 3 or 4.

## **Part 6 — Financial provisions**

### **Division 1 — General**

**79. Bank account**

(1) In this section —

5 “**account**” means an account —

(a) at the Treasury; or

(b) at a bank as defined in section 3(1) of the *Financial Administration and Audit Act 1985*.

(2) A port authority is to maintain one or more accounts.

10 (3) An account at the Treasury is to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.

(4) Money received by and expenditure of a port authority is to be credited to or paid from an account.

15 **80. Investment**

Funds of a port authority that are not in an account at the Treasury and are not being used for the performance of the port authority’s functions may be invested in such investments as the board of the port authority determines.

20 **81. Exemption from rates**

(1) Subject to subsection (2), port land, or land under the management and control of a port authority, is not rateable land for the purposes of the *Local Government Act 1995*.



- (2) If a port authority leases or lets port land, or land under its management and control, the land is by reason of the lease or tenancy rateable land for the purposes of the *Local Government Act 1995* in the hands of the lessee or tenant.

5

## **Division 2 — Payments to State**

### **82. Payment of amount in lieu of rates**

- (1) A port authority is to pay to the Treasurer in respect of a financial year an amount equal to the sum of all local government rates and charges that, but for —
- 10      (a) section 81(1); and  
        (b) section 6.26(2)(a)(i) of the *Local Government Act 1995*,
- the port authority would have been liable to pay in respect of that financial year.
- (2) Subsection (1) does not apply in relation to —
- 15      (a) land that is rateable under section 81(2);  
        (b) land used or reserved for a purpose prescribed for the purposes of this section; or  
        (c) an area of land prescribed for the purposes of this section.

### 20      **83. Determination of amounts under section 82**

- Amounts payable under section 82 —
- (a) are to be determined in accordance with such principles;  
            and  
        (b) are to be paid at such time or times,
- 25      as the Treasurer may direct.

**84. Dividends**

- (1) A dividend under this section is to be —
- 5 (a) calculated with respect to the net profits of a port authority for a financial year after first taking into account —
- (i) any amounts payable to the Treasurer under section 82 and the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*; and
- 10 (ii) any formula for calculation agreed between the Minister and the Treasurer;
- and
- (b) paid to the Treasurer, in accordance with subsection (4).
- (2) The board of a port authority, as soon as practicable after the end of each financial year, is to make a recommendation to the
- 15 Minister as to the amount of the dividend (if any) that the board recommends as appropriate for that financial year.
- (3) The Minister, with the Treasurer's concurrence —
- (a) may accept a recommendation under subsection (2); or
- 20 (b) after consultation with the board, is to direct that the amount of the dividend is to be some other amount.
- (4) A port authority is to pay the dividend —
- (a) as soon as practicable after the amount is fixed under subsection (3); and
- 25 (b) in any case not later than —
- (i) 6 months after the end of the financial year to which the dividend relates; or
- (ii) such other time as may be agreed between the Treasurer and the board.

- (5) The Minister must within 14 days after a direction is given under subsection (3) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

5

### **Division 3 — Borrowing**

#### **85. Borrowing**

- (1) A port authority may, subject to section 86 —
- (a) borrow or re-borrow moneys;
  - (b) obtain credit;
  - 10 (c) issue, acquire, hold or dispose of debt paper;
  - (d) create and issue capital instruments; or
  - (e) otherwise arrange for financial accommodation to be extended to the port authority.
- (2) Capital instruments under subsection (1)(d) are to be created and issued on such terms as a port authority determines and the Minister approves.
- (3) A port authority is to keep such registers for the purposes of this section as may be prescribed.
- (4) In subsection (1) —
- 20 **“debt paper”** means inscribed stock, bonds, debentures with coupons annexed, bills of exchange, promissory notes or bearer securities, or other similar instruments evidencing indebtedness.

**86. Borrowing limits**

- 5
- (1) The Minister, with the Treasurer's concurrence and in accordance with subsections (2), (3) and (4), may, by notice to a port authority, impose monetary limits on the exercise of the powers conferred by section 85.
- (2) The monetary limit is to be determined for the exercise of those powers in a financial year specified by the Minister and may relate to —
- 10
- (a) the total amount that can be outstanding at any one time during that year as a result of the exercise of those powers; or
- (b) the total liabilities that can be incurred during that year as a result of the exercise of those powers.
- (3) A limit for the time being in force may be varied for a
- 15
- subsequent financial year.
- (4) A limit for the time being in force continues to apply until it is so varied.
- (5) A port authority must comply with any limit for the time being in force in relation to it.
- 20
- (6) A liability of a port authority is not unenforceable or in any way affected by a failure of the port authority to comply with this section.
- (7) No person dealing with a port authority is bound or concerned
- 25
- to enquire whether the port authority has complied or is complying with this section.

**87. Hedging transactions**

- (1) A port authority may, for the purpose of managing, limiting or reducing perceived risks or anticipated costs in connection with the exercise of any power conferred by section 85 —
- 5            (a) enter into an agreement or arrangement to effect any of the following transactions —
- (i) a foreign exchange transaction;
  - (ii) a forward foreign exchange transaction;
  - (iii) a currency swap;
  - 10          (iv) a forward currency swap;
  - (v) a foreign currency cap, a foreign currency collar or a foreign currency floor;
  - (vi) a forward interest rate agreement;
  - (vii) an interest rate swap;
  - 15          (viii) a forward interest rate swap;
  - (ix) an interest rate cap, an interest rate collar or an interest rate floor;
  - (x) an option for interest rate or currency management purposes;
  - 20          (xi) a futures contract or a futures option within the meaning of the Corporations Law; or
  - (xii) a transaction of such other class as is approved in writing by the Minister, with the Treasurer's concurrence, as a class of transactions to which
  - 25          this paragraph applies;
- or

- (b) enter into an agreement or arrangement to effect any transaction which is a combination of —
- (i) 2 or more transactions permitted under paragraph (a); or
  - (ii) one or more transactions permitted under paragraph (a) and one or more transactions permitted under section 85.
- (2) In subsection (1)(a) —  
“**interest rate**” includes coupon rate, discount rate and yield.

10

#### **Division 4 — Guarantees**

#### **88. Guarantees**

- (1) The Treasurer, with the Minister’s concurrence, may, in the name and on behalf of the State, guarantee the performance by a port authority, in the State or elsewhere, of any financial obligation of the port authority arising under section 85.
- (2) A guarantee is to be in such form and subject to such terms and conditions as the Treasurer determines.
- (3) The due payment of moneys payable by the Treasurer under a guarantee —
- (a) is by this subsection guaranteed by the State; and
  - (b) is to be made by the Treasurer and charged to the Consolidated Fund, and this subsection appropriates that Fund accordingly.
- (4) The Treasurer is to cause any amounts received or recovered from a port authority or otherwise in respect of any payment made by the Treasurer under a guarantee to be credited to the Consolidated Fund.

15

20

25

**89.        Charges for guarantee**

- 5            (1)    The Treasurer may, after consultation with the board of a port authority, fix charges to be paid by the port authority to the Treasurer for the benefit of the Consolidated Fund in respect of a guarantee given under section 88.
- (2)    Payments by a port authority to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines.

**Division 5 — Financial administration and audit**

10    **90.        Limited application of *Financial Administration and Audit Act 1985***

15            Despite anything in the *Financial Administration and Audit Act 1985* that Act, other than the provisions referred to in Schedule 5, clauses 37(2) and 44(4), does not apply to a port authority or any person performing functions under this Act.

**91.        Financial administration and audit**

- (1)    Schedule 5 has effect in relation to the financial administration and audit of a port authority.
- 20            (2)    That Schedule may be amended by regulations made by the Governor in accordance with subsections (3) and (4).
- (3)    Where —
- (a)    a provision of the Corporations Law the substance of which is contained in Schedule 5 is amended or repealed; or

- (b) the Corporations Law is amended by the insertion of a new provision relating to a matter provided for by Schedule 5,

5 the Minister may recommend to the Governor, as soon as is practicable after the amendment or repeal comes into force, that regulations making equivalent provisions be made under subsection (2).

- 10 (4) The reference to equivalent provisions in subsection (3) is to regulations in such form that Schedule 5 as amended will in the opinion of the Minister be substantially the same as the corresponding provisions of the Corporations Law but with such modifications as are consistent with the policy of this Act.

### **Division 6 — Financial targets**

#### **92. Annual financial targets**

- 15 (1) The Minister, with the Treasurer's concurrence, may, by written notice given to a port authority on or before 31 December preceding the start of a financial year, determine a financial target for the port authority for that financial year.
- 20 (2) If a port authority has a financial target for a financial year under subsection (1), the port authority must pursue a policy aimed at attaining the target, or the target as varied under subsection (4), during that financial year.
- 25 (3) A notice under subsection (1) has to describe the procedure to be used to ascertain whether or not the financial target will be, or has been attained.



(4) If a port authority has a financial target for a financial year under subsection (1), and during that financial year, economic conditions beyond the control of the port authority are such that it is —

- 5           (a) unlikely that the port authority will attain the target; or  
             (b) likely that the port authority will exceed the target,
- the Minister may, with the Treasurer's concurrence, vary the target by written notice given to the port authority.

## **Part 7 — Navigation and port matters**

### **Division 1 — Navigational aids**

#### **93. Port authority may provide navigational aids**

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

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

5 **94. Interference with navigational aids**

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

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

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

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

- (3) Subsection (2) does not affect the operation of section 113 in relation to damage to which that section applies.

## **Division 2 — Pilotage**

### **95. Interpretation and application of this Division**

(1) In this Division —

5                    **“approved”**, in relation to a pilot, means approved under  
                          section 96;

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

10           (2) A reference in this Division to a port includes a reference to any  
                  area that is outside the port and is declared by the regulations to  
                  be associated with the port and to be an area in which pilotage  
                  services are to be used.

(3) This Division applies to vessels —

15                   (a) moving in a port in the course of entering or leaving the  
                          port; or

                          (b) moving between places in a port.

### **96. Port authority to approve pilots and ensure that pilotage services are available**

20           (1) A port authority may approve a competent and suitably  
                  qualified person as a pilot for the port and is to ensure that there  
                  is at all times at least one approved pilot for the port.

(2) An approval under subsection (1) has effect for the period set  
                  out in the approval unless it is revoked by the port authority  
                  before that period ends.

25           (3) An approval under subsection (1), or any revocation of such an  
                  approval, is to be in writing.

- (4) No person is to act as a pilot in a port unless the person is approved as a pilot for the port.

Penalty: \$10 000.

- 5 (5) A port authority is responsible for ensuring that pilotage services, provided by it or other persons, are available to the extent required in the port.

**97. Pilotage compulsory in ports**

- (1) Except as otherwise provided by the regulations, a vessel moving in a port must use pilotage services.

- 10 (2) A person who moves a vessel in a port without it being under the control of a person approved as a pilot for the port commits an offence unless under the regulations —

(a) the vessel does not have to have an approved pilot; or

(b) the person is permitted to do so.

15 Penalty: \$10 000.

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

(a) any loss or damage caused by the vessel; or

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

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

**98. Pilot under authority of master**

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

**99. Liability of owner or master of a vessel**

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

**100. Immunity from liability for pilot's negligence**

10 (1) Neither the State nor the port authority is liable for any loss or damage resulting from an act or omission by a person approved as a pilot by a port authority in the conduct or navigation of a vessel of which the person is the pilot.

(2) An approved pilot is not personally liable for any loss or damage resulting from an act or omission by him or her in the conduct or navigation of a vessel of which he or she is the pilot.

15 (3) The employer of a person who is an approved pilot is not liable for any loss or damage resulting from an act or omission by the person in the conduct or navigation of a vessel of which the person is the pilot.

**Division 3 — Harbour masters**

20 **101. Port includes other declared areas**

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

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

**102. Appointment**

(1) In this section —

**“eligible person”** means —

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

**103. Principal and other functions**

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

20 **104. Directions to masters etc.**

- (1) For the purpose of performing his or her principal functions a harbour master may direct the owner, master, or person in charge of a vessel to do any or all of the following —
- (a) to ensure that the vessel does not enter the port;
  - 25 (b) to navigate the vessel in a specified manner while it is in the port;
  - (c) to moor the vessel in the port at a specified place and in a specified manner;



- (d) to move the vessel out of the port or to another place in it;
- (e) to take any action specified by the harbour master in relation to the means by which the vessel is moored in the port.

5

- (2) When the safety of people or valuable property is in danger from a vessel in a port and no other direction is reasonable in the circumstances, the harbour master may direct the owner, master, or person in charge of the vessel to scuttle it immediately.

10

**105. Directions as to dangerous things**

- (1) In this section —

“owner”, in relation to —

- (a) a vessel or part of a vessel, means the owner immediately prior to the time of the loss or abandonment of the vessel or part of the vessel;
- (b) a thing in the water that was in or on a vessel, means the owner of the vessel.

15

- (2) For the purpose of performing his or her principal functions a harbour master may direct the owner of a dangerous thing in the port to do any or all of the following —

20

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

25

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

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

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

**107. Removal of ownerless vessels or dangerous things**

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

**108. Offence of not obeying direction**

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

Penalty: \$20 000.

**109. Powers if direction not obeyed**

- (1) If a person does not comply with a direction under section 104(1)(c), (d) or (e) or (2) or section 105 within a reasonable time after being given it, the harbour master may cause the direction to be complied with using such means as the harbour master thinks fit.
- 25

(2) When causing a vessel to be moved under subsection (1) the harbour master may cause the vessel to be made fast to another vessel that is moored in the port.

5 (3) Subsection (2) does not prevent the owner or master of a vessel to which another vessel is made fast under that subsection from recovering from the owner or master of that other vessel damages for loss or damage occasioned by that making fast.

**110. Recovery of costs**

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

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

(2) A port authority may recover the costs of exercising the powers in section 107 by selling the vessel or dangerous thing.

20 (3) The proceeds of a sale are to be applied —  
(a) first to the expenses of the sale; and  
(b) second to the costs of exercising the powers in section 107,

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

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

**111. Immunity from liability for acts under this Division**

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

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

**112. Offence of hindering**

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

Penalty: \$10 000.

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

15 **113. Responsibility for damage to port facilities or property**

(1) This section applies if any port facility or other property of a port authority is damaged by —

- 20 (a) a vessel or its equipment or cargo;
- (b) any floating object;
- (c) any material; or
- (d) any person employed in, on or in relation to, a thing referred to in paragraph (a), (b) or (c).

25 (2) If this section applies, the owner of the vessel, floating object or material is answerable in damages to the port authority for the whole of the damage whether or not the damage is caused through a person's wilful or negligent act or omission.

- 5 (3) If the damage is caused through the wilful or negligent act or omission of the master of the vessel or of the person having charge of the floating object or the material, that master or person (as well as the owner) is answerable in damages to the port authority for the whole of the damage.
- (4) Neither the port authority nor any other person is entitled under this section to recover more than once for the same cause of action.
- 10 (5) If the owner of any vessel, floating object or material —
- (a) pays any money in respect of any damage to which this section applies caused through the wilful or negligent act or omission of a master or other person referred to in subsection (3); or
- 15 (b) pays any fine by reason of any act or omission of a master or other person referred to in subsection (3),
- the owner may recover the money or fine so paid, with costs, from that master or other person in a court of competent jurisdiction as a debt due to the owner.
- 20 (6) In an action under this section the damages recoverable are to be determined on the basis of —
- (a) the actual cost incurred in repairing or replacing the damaged port facility or property without taking into account any betterment or depreciation; and
- 25 (b) any economic loss suffered by the port authority as a result of the damage.

**Division 5 — Port safety**

**114. Marine safety plans**

(1) In this section —

5        **“Director General”** has the same meaning as it has in the  
          *Transport Co-ordination Act 1966*;

**“marine safety plan”** means a plan prepared by a port authority  
          and approved by the Director General setting out the  
          arrangements for marine safety at the port.

10       (2) A port authority is to have, maintain and implement a marine  
          safety plan for its port.

          (3) The Director General is to monitor the maintenance of a port  
          authority’s marine safety plan and may —

          (a) give directions to the port authority as to the  
          maintenance of the plan; and

15       (b) direct the port authority to review the plan from time to  
          time and submit modifications of it to the Director  
          General for approval.

          (4) The port authority is to give effect to any direction under  
          subsection (3).

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## **Part 8 — Port charges**

### **115. Interpretation and application**

(1) In this Part —

“port charges” means —

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

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

### **116. Liability to pay port charges in respect of vessels**

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

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

### **117. Liability to pay port charges in respect of goods**

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

- 25           (a) the owner of the goods;

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- (b) the owner of the vessel;
- (c) each consignor, consignee or shipper of the goods;
- (d) each agent for the sale of or custody of the goods;
- 5 (e) each person entitled, either as the owner of the goods or on behalf of that owner, to the possession of the goods.

**118. Recovery of port charges by a port authority**

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

10 **119. Collectors of port charges**

A port authority may, in writing —

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



## **Part 9 — Proceedings for offences**

### **Division 1 — General**

#### **120. Who can take proceedings for offences**

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

#### **121. Time limit on taking proceedings**

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

#### **20 122. Averment in respect of port**

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

**Division 2 — Infringement notices**

**123. Meaning of “authorized person”**

In this Division —

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

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

10 **124. Giving of notice**

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

15 **125. Content of notice**

(1) An infringement notice is to be in the prescribed form and is to —

- 20 (a) contain a description of the alleged offence;
- (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorized person within a period of 28 days after the giving of the notice; and
- 25 (c) inform the alleged offender as to who are authorized persons for the purposes of receiving payment of modified penalties.

(2) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

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

**126. Extension of time**

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

**127. Withdrawal of notice**

15 (1) Within 28 days after the giving of an infringement notice, an authorized person may, whether or not the modified penalty has been paid, withdraw the infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

20 (2) Where an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

**128. Benefit of paying modified penalty**

(1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.

25 (2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

- (3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

**129. Application of penalties collected**

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

**130. Appointment of authorized persons**

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

## **Part 10 — Miscellaneous**

### **131. Miscellaneous offences**

- (1) A person who hinders the operation of this Act commits an offence.

5 Penalty: \$5 000.

- (2) A person hinders the operation of this Act if the person —

(a) obstructs, impedes or interferes with the doing of, a thing required or authorized to be done by or under this Act; or

- 10 (b) uses any threatening language to —

(i) the CEO or a member of staff of a port authority; or

(ii) the harbour master of a port,

15 who is acting in the performance of functions under this Act.

### **132. Provisions for particular port authorities**

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

20

### **133. Supplementary provision about laying documents before Parliament**

- (1) If —

(a) at the commencement of a period referred to in section 41(4), 53(5), 56(4), 62(5), 64(2), 65(4), 72(2) or 84(5) or Schedule 2, clause 2(3) or 8(7) in respect of a document a House of Parliament is not sitting; and

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- (b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the document to the Clerk of that House.

- 5      (2) A copy of a document transmitted to the Clerk of a House is to be —
  - (a) taken to have been laid before that House; and
  - (b) taken to be a document published by order or under the authority of that House.
- 10     (3) The laying of a copy of a document that is taken to have occurred under subsection (2)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

15     **134. Execution of documents**

- (1) A port authority is to have a common seal.
- (2) A document is duly executed by a port authority if —
  - 20            (a) the common seal of the port authority is affixed to it in the presence of 2 directors or of a director and the CEO; or
  - (b) it is signed on behalf of the port authority by a person or persons referred to in subsection (4).
- (3) The common seal of a port authority is not to be affixed to a document except in accordance with this section.
- 25     (4) A port authority may, by writing under its common seal, authorize a director, the CEO, a member of staff or other agent of the port authority to execute documents on its behalf.

- (5) An authorization under subsection (4) —
- (a) may be given —
    - (i) either generally or in respect of a specified matter or specified matters; and
    - 5 (ii) so as to authorize 2 or more persons to execute documents jointly;
  - and
  - (b) may be presumed by a person dealing with the port authority to continue —
    - 10 (i) during any period for which it is conferred; or
    - (ii) if subparagraph (i) does not apply, until notice of termination of the authority is given to the person so dealing.
- 15 (6) A document purporting to be executed in accordance with this section is to be taken to be duly executed until the contrary is shown.

**135. Contract formalities**

- 20 (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of a port authority may make, vary or discharge a contract in the name of or on behalf of the port authority in the same manner as if that contract were made, varied or discharged by a natural person.
- 25 (2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the port authority and other parties to the contract.
- (3) Subsection (1) does not prevent a port authority from making, varying or discharging a contract under its common seal.

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**136. Interest on overdue amounts**

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

**137. Recovery of expenses**

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

25     **138. *Government Agreements Act 1979* not affected**

The mention of particular agreements in Schedule 6, clauses 1.3 and 2.3 does not limit or otherwise affect the operation of the *Government Agreements Act 1979* in relation to this Act.



## **Part 11 — Regulations**

### **139. General power to make regulations**

- 5 (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1) regulations may be made for all or any of the purposes, or about all or any of the matters, set out in Schedule 7.

### **10 140. Offences against regulations**

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

### **15 141. Adoption of other laws, codes etc.**

- (1) Regulations may adopt, either wholly or in part or with modifications —
- 20 (a) any rules, regulations, codes, instructions or other subsidiary legislation made, determined or issued under any other Act or under any Imperial Act or Commonwealth Act; or
- 25 (b) any of the standards, rules, codes or specifications of the bodies known as the Standards Association of Australia, the British Standards Institution or The Association of Australian Port and Marine Authorities or of any other like body that is specified in those regulations.

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- (2) If regulations adopt any subsidiary legislation, standard, rule, code or specification under subsection (1), it is adopted as in force from time to time unless those regulations specify that a particular text is adopted.
- 5 (3) Regulations may provide that if by reason of unavailability of materials or for any other reason that a port authority considers valid any requirement of any subsidiary legislation or standard, rule, code or specification adopted by those regulations in accordance with subsection (1) cannot be conformed to, a port authority may approve such use of materials or other matters as it considers to be consistent with the achievement of the objects of those regulations.
- 10

**142. References to other approvals or decisions**

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

**143. Licensing**

- 20 (1) Regulations may control an activity or thing by prohibiting it from being carried out or done in a port except under a licence issued by the port authority.
- (2) Regulations may provide for the following —
- 25 (a) the calling of applications or tenders for licences;
- (b) the method of applying or tendering for licences;
- (c) the issue, duration, renewal, suspension or cancellation of licences;
- (d) the imposition of conditions or restrictions on licences.

- (3) Neither the port authority, nor a person acting on its behalf, needs a licence referred to in this section.
- (4) This section does not limit the methods by which the regulations may control an activity or thing.

## **Part 12 — Review of Act**

### **144. Minister to review and report on Act**

- 5
- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from the commencement of section 4.
  - (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

**Schedule 1 — Ports and port authorities**

[s. 4]

Item	Name of Port	Name of Port Authority
1	Port of Albany	Albany Port Authority
2	Port of Broome	Broome Port Authority
3	Port of Bunbury	Bunbury Port Authority
4	Port of Dampier	Dampier Port Authority
5	Port of Esperance	Esperance Port Authority
6	Port of Fremantle	Fremantle Port Authority
7	Port of Geraldton	Geraldton Port Authority
8	Port of Port Hedland	Port Hedland Port Authority

**Schedule 2 — Provisions about the constitution and proceedings of boards**

[s. 9]

**1. Term of office**

- 5 (1) Subject to clause 2, a director holds office for such period, not exceeding 3 years, as is specified in the instrument appointing the director, and is eligible for reappointment.
- (2) A director's duties are not required to be performed on a full-time basis.
- 10 (3) Periods of appointment are to be fixed in a way that results in approximately one third of the directors retiring each year.
- (4) Despite subclause (1), if the period of office of a director expires by effluxion of time without a person having been appointed to fill the vacancy, the director continues in office until —
- 15 (a) a person is appointed to fill the vacancy; or  
(b) a period of 3 months elapses after the expiry of the period of office,
- whichever occurs first.

**2. Resignation and removal**

- 20 (1) A director may resign from office by notice in writing delivered to the Minister.
- (2) The Minister may at any time remove a director from office and is not required to give any reason for doing so.
- 25 (3) The Minister must within 14 days after a director is removed from office under subclause (2) cause a statement of the reason for the removal to be laid before each House of Parliament or to be dealt with under section 133.

- (4) This clause extends to a director whose period of office is prolonged under clause 1(4).

**3. Chairperson and deputy chairperson**

- 5 (1) The Minister is to appoint a director to be chairperson of a board and another to be deputy chairperson.
- (2) Where the chairperson is unable to act because of sickness, absence or other cause, the deputy chairperson is to act in the chairperson's place.
- 10 (3) Where the deputy chairperson is acting in place of the chairperson at a meeting, clause 4(1) applies as if the deputy chairperson were absent from the meeting.

**4. Alternate directors**

- 15 (1) If a director is unable to act because of sickness, absence or other cause, the Minister may appoint another person as an alternate director to act temporarily in the director's place, and while so acting according to the tenor of the appointment that alternate director is to be taken to be a director and is entitled to remuneration under section 10.
- 20 (2) No act or omission of an alternate director acting in place of a director under this clause may be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

**5. Meetings**

- 25 (1) The first meeting of a board is to be convened by the chairperson and, subject to subclause (2), subsequent meetings are to be held at such times and places as the board determines.
- (2) A special meeting of a board may at any time be convened by the chairperson or any 2 directors.

Schedule 2 Provisions about the constitution and proceedings of boards

- (3) The chairperson, or the deputy chairperson acting under clause 3(2), is to preside at all meetings of the board at or in which he or she is present, or participating under clause 6.
- 5 (4) If both the chairperson and the deputy chairperson are not present or participating, the directors present or participating are to appoint a director to preside.
- (5) At any meeting of the board —
- (a) 3 directors constitute a quorum; and
- 10 (b) in the case of an equality of votes the person presiding has a casting vote in addition to a deliberative vote.

**6. Telephone and video meetings**

15 Despite anything in this Schedule, a communication between directors constituting a quorum under clause 5(5)(a) by telephone or audio-visual means is a valid meeting of directors, but only if each participating director is able to communicate with every other participating director instantaneously at all times while participating in the proceedings.

**7. Resolution may be passed without meeting**

- 20 (1) If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed is sent or given to all directors of a port authority and is assented to by not less than 3 directors that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the board of the port authority.
- (2) For the purposes of subclause (1) —
- 25 (a) the meeting is to be taken as having been held —
- (i) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or



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- (ii) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
  - (b) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken to constitute one document; and
  - (c) a director may signify assent to a document by signing the document or by notifying the port authority of the director's assent in person or by post, facsimile, telephone or other method of written, audio or audio-visual communication.
- (3) Where a director of a port authority signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the board of the port authority attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the board.

**8. Voting by interested directors**

- 20
- 25
- (1) A director of a port authority who has a material personal interest in a matter that is being considered by the board of the port authority —
- (a) must not vote whether at a meeting or otherwise —
    - (i) on the matter; or
    - (ii) in relation to a proposed resolution under subclause (3) in relation to the matter, whether in relation to that or a different director;
- and
- (b) must not be present while —
    - (i) the matter; or

Schedule 2 Provisions about the constitution and proceedings of boards

- (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),  
is being considered at a meeting.
- 5 (2) For the purpose of subclause (1), a director does not have an interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure, the director against a liability incurred by the director in his or her capacity as a director. This subclause does not apply if the port authority is the insurer.
- 10 (3) Subclause (1) does not apply if the board has at any time passed a resolution that —
- (a) specifies the director, the interest and the matter; and
- (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from  
15 considering or voting on the matter.
- (4) Despite clause 5(5), if a director of a port authority is disqualified under subclause (1) in relation to a matter, a quorum is present during the consideration of that matter if at least 2 directors are present who are entitled to vote on any motion that may be moved at the meeting  
20 in relation to that matter.
- (5) The Minister may deal with a matter in so far as a board cannot deal with it because of subclause (4).
- (6) The Minister may by writing declare that subclauses (1) and (4) do  
25 not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (7) The Minister must within 14 days after a declaration under subclause (6) is made cause a copy of the declaration to be laid before each House of Parliament or to be dealt with under section 133.

**9. Minutes of meetings etc.**

A board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the board and of each resolution passed under clause 7.

5 **10. Leave of absence**

A board may, on such terms and conditions as it thinks fit, grant to a director leave of absence from a meeting, including the meeting at which it is intended to grant the leave.

**11. Board to determine own procedures**

10 Subject to this Act, a board may determine its own procedures.

## **Schedule 3 — Provisions about duties of CEO and staff**

[s. 20]

### **Division 1 — General duties of CEO**

#### **1. Duties of CEO**

- 5 (1) It is declared that the CEO of a port authority has —
- (a) the same fiduciary relationship with the port authority; and
  - (b) the same duties to the port authority to act with loyalty and in good faith,
- 10 as a director of a company incorporated under the Corporations Law has with and to the company.
- (2) The duties referred to in subclause (1) are enforceable by the board of the port authority and not otherwise.

### **Division 2 — Particular duties stated**

#### **2. Interpretation**

- 15 (1) In this Division —
- “officer”** means —
- (a) the CEO of a port authority; or
  - (b) an executive officer or other member of staff of a port authority;
- 20 **“summary conviction penalty”**, in relation to a crime, has the same meaning as in section 5 of *The Criminal Code*.
- (2) A person who attempts (within the meaning in section 4 of *The Criminal Code*) to commit an offence against a provision of this Division is guilty of that offence.
- 25 (3) For the CEO of a port authority, the duties provided for by this Division are in addition to those in clause 1.

**3. Duty to act honestly**

(1) The CEO or an executive officer of a port authority must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.

- 5 (2) A person who contravenes subclause (1) —
- (a) with intent to deceive or defraud —
    - (i) the port authority; or
    - (ii) creditors of the port authority or of any other person;
  - or
  - 10 (b) for any other fraudulent purpose,

is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

- 15 (3) If subclause (2) does not apply a person who contravenes subclause (1) is liable to a fine of \$5 000.

**4. Duty to exercise reasonable care and diligence**

The CEO or an executive officer of a port authority must at all times exercise the degree of care and diligence in the performance of the functions of his or her office, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the port authority's circumstances.

Penalty: \$5 000.

**5. Duty not to make improper use of information**

- 25 (1) An officer or a former officer of a port authority must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the port authority.

- (2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.  
Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

5 **6. Duty not to make improper use of position**

- (1) An officer of a port authority must not, whether within or outside the State, make improper use of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the port authority.

- 10 (2) A person who contravenes subclause (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.  
Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

**Division 3 — Compensation**

15 **7. Payment of compensation may be ordered**

- (1) Where —
- (a) a person is convicted of an offence for a contravention of clause 3, 4, 5 or 6; and
  - (b) the court is satisfied that the port authority has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the port authority of such amount as the court specifies.

- 20 (2) Any such order may be enforced as if it were a judgment of the court.

**8. Civil proceedings for recovery**

Where a person contravenes clause 3, 4, 5 or 6, the port authority may, whether or not the person has been convicted of an offence in

respect of that contravention, recover from the person as a debt due to the port authority by action in any court of competent jurisdiction —

- (a) if that person or any other person made a profit as a result of the contravention, an amount equal to that profit; and
- 5 (b) if the port authority has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

#### **Division 4 — Relief from liability**

##### **9. Relief from liability**

10 For the purposes of clause 1, 7 or 8, if it appears to the court that a person —

- (a) is, or may be, liable under that section;
- (b) has acted honestly; and
- 15 (c) ought fairly to be excused having regard to all the circumstances of the case, including those connected with the person's appointment,

the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

##### **10. Application for relief**

- 20 (1) Where a person has reason to believe that any claim will or might be made against him or her under clause 1, 7 or 8, the person may apply to the Supreme Court for relief.
- (2) On an application under subclause (1) the Supreme Court has the same power to relieve the person as it would have had under clause 9 if it had been a court exercising jurisdiction under clause 1, 7 or 8.

##### **11. Case may be withdrawn from jury**

25 Where a case to which clause 9 applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the person ought under that section to be relieved either

wholly or partly from liability sought to be enforced against the person —

- (a) withdraw the case in whole or in part from the jury; and
- (b) direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.

**12. Compliance with directions**

- (1) A person does not contravene clause 1, 3 or 4 by doing or omitting to do anything in compliance with a direction received in the course of the person's employment.
- (2) Subclause (1) does not extend to the manner in which a thing is done or omitted if it is done or omitted in a manner that is contrary to clause 3 or 4 and the direction did not require that it be done in that manner.

**Division 5 — Restrictions on indemnities and exemptions**

**13. Indemnification and exemption of CEO and executive officers**

- (1) A port authority or a subsidiary must not exempt a person (whether directly or through an interposed entity) from a liability to the port authority incurred as the CEO or an executive officer of the port authority.
- (2) A port authority or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as the CEO or an executive officer of the port authority —
  - (a) a liability owed to the port authority or a subsidiary; or
  - (b) a liability that is owed to someone other than the port authority or a subsidiary and did not arise out of conduct in good faith.
- (3) Subclause (2) does not apply to a liability for legal costs.



- 5 (4) A port authority or a subsidiary must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as the CEO or an executive officer of the port authority if the costs are incurred —
- 10 (a) in defending or resisting a proceeding in which the person is found to have a liability for which the person could not be indemnified under subclause (2);
- (b) in defending or resisting criminal proceedings in which the person is found guilty; or
- (c) in connection with proceedings for relief under clause 9 or 10 in which the Supreme Court denies the relief.
- 15 (5) In determining the outcome of proceedings for the purposes of subclause (4), the result of any appeal in relation to the proceedings is to be taken into account.

**14. Insurance premiums for certain liabilities of CEO and executive officers**

- 20 (1) A port authority or a subsidiary must not pay, or agree to pay, a premium for a contract insuring the CEO or an executive officer of the port authority against a liability (other than one for legal costs) arising out of —
- (a) conduct involving a wilful breach of duty in relation to the port authority; or
- (b) a contravention of clause 5 or 6;
- 25 (2) Subclause (1) applies to a premium whether it is paid directly or through an interposed entity.

**15. Certain indemnities, exemptions, payments and agreements not authorized and certain documents void**

- 30 (1) Clauses 13 and 14 do not authorize anything that would otherwise be unlawful.

Schedule 3 Provisions about duties of CEO and staff

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- (2) Anything that purports to indemnify or insure a person against a liability or exempt a person from a liability is void to the extent that it contravenes clause 13 or 14.

**Schedule 4 — Provisions to be included in articles of association of subsidiaries**

[s. 39]

**1. Disposal of shares**

- 5 (1) The port authority is not to sell or otherwise dispose of shares in the subsidiary other than as approved by the Minister.
- (2) The Minister is empowered to execute a transfer of any shares in the subsidiary held by the port authority.

**2. Directors**

- 10 (1) The directors of the subsidiary are to be appointed by the port authority, but no such director may be appointed except with the prior written approval of the Minister.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the port authority and the subsidiary.
- 15 (3) The board of the subsidiary is accountable to the Minister in the manner set out in Part 5 and in the memorandum and articles of association of the subsidiary.

20 **3. Further shares**

Shares may not be issued or transferred except with the prior written approval of the Minister.

**4. Subsidiaries of subsidiary**

- 25 (1) The subsidiary may not form, participate in the formation of, or acquire any subsidiary without the prior written approval of the Minister given with the Treasurer's concurrence.

Schedule 4 Provisions to be included in articles of association of subsidiaries

- 5
- (2) The subsidiary must ensure that the memorandum and articles of association of each of its subsidiaries at all times comply with this Act.
  - (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its memorandum and articles of association and with the requirements of this Act.

**Schedule 5 — Financial administration and audit**

[s. 91(1)]

**Division 1 — Preliminary****1. Interpretation**

- 5 (1) In this Schedule, unless the contrary intention appears —
- “**accounts**” means profit and loss accounts and balance sheets and includes statements, reports and notes, other than auditors’ reports and directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance sheets;
- 10 “**Board**” means the Australian Accounting Standards Board established under Part 12 of the *Australian Securities Commission Act 1989* of the Commonwealth;
- “**chief entity**” has the meaning given by clause 14(2);
- 15 “**Commission**” means the Australian Securities Commission established under Part 2 of the *Australian Securities Commission Act 1989* of the Commonwealth;
- “**consolidated accounts**”, in relation to a port authority, means all of the following —
- 20 (a) a consolidated profit and loss account that clause 15 requires to be made out in relation to a financial year of the port authority;
- (b) a consolidated balance sheet that clause 16 requires to be made out in relation to that financial year;
- 25 (c) statements, reports and notes, other than a director’s report or an auditor’s report, attached to, or intended to be read with, that consolidated profit and loss account or consolidated balance sheet;
- “**control**”, in relation to an entity, has the meaning given by clause 13;
- 30 “**economic entity**” has the meaning given by clause 12;

**“entity”** has the meaning given by clause 12;

**“financial statements”**, in relation to a financial year of a port authority, means the accounts and consolidated accounts (if any) of the port authority required by this Schedule to be made out in relation to that financial year;

5

**“financial year”** means the 12 month period ending on 30 June but where this Act applies to a port authority on and from a day other than the commencement of a financial year the period of the first financial year for that port authority is the period commencing on that day and ending on 30 June;

10

**“parent entity”** has the meaning given by clause 12;

**“profit and loss”** means —

- (a) in relation to a port authority, the profit and loss resulting from operations of the port authority;
- (b) in relation to an entity, the profit and loss resulting from operations of the entity; and
- (c) in relation to 2 or more entities, or in relation to an economic entity, constituted by 2 or more such entities, the profit or loss resulting from the operations of those entities;

15

20

**“regulations”** means regulations made under the Corporations Law;

**“reporting entity”** has the meaning given by clause 12.

- (2) In this Schedule, unless the contrary intention appears, expressions (including the expressions **“accounting records”**, **“accounting standard”**, **“applicable accounting standards”**, **“company”**, and **“corporation”**) have the respective meanings given to them by Part 1.2 of the Corporations Law.

25

**Division 2 — Accounting standards****2. Application of accounting standards — general**  
*(cf. s. 284 Corporations Law)*

5 The accounting standards as applied from time to time to listed companies pursuant to the Corporations Law apply to a port authority.

**3. Application of accounting standards — financial years**  
*(cf. s. 285 Corporations Law)*

- 10 (1) Except so far as the contrary intention appears in an accounting standard, an accounting standard applies to —
- (a) the first financial year of a port authority that ends after the commencement of the last-mentioned accounting standard; and
  - (b) later financial years of the port authority.
- 15 (2) Despite anything in an accounting standard, but subject to subclause (4), an accounting standard does not apply to a financial year of a port authority ending before the commencement of the last-mentioned accounting standard.
- (3) A port authority may elect in writing that an accounting standard that, apart from subclause (4), does not apply to a particular financial year of the port authority will apply to that financial year.
- 20 (4) An election under subclause (3) has effect accordingly.

**4. Interpreting accounting standards**  
*(cf. s. 286 Corporations Law)*

- 25 (1) An expression has in an accounting standard the same meaning as it has in this Schedule.
- (2) Part 1.2 of the Corporations Law applies in relation to an accounting standard as if the accounting standard's provisions were provisions of this Schedule.

- (3) This clause has effect except so far as the contrary intention appears in an accounting standard.

**5. Severing invalid provisions**  
*(cf. s. 286A Corporations Law)*

- 5 (1) An accounting standard is to be interpreted subject to the Corporations Law.
- (2) It is intended that where, but for this clause, an accounting standard would have been interpreted as being inconsistent with the Corporations Law, the accounting standard is nevertheless to be valid  
10 insofar as it is not so inconsistent.

**6. Evidence of text of accounting standard**  
*(cf. s. 286B Corporations Law)*

A document that purports —

- 15 (a) to be issued or published by or on behalf of the Board or the Commission; and
- (b) to set out the text of —
- (i) a specified instrument as in force at a specified time under section 32 of the *Corporations Act 1989* of the Commonwealth; or  
20 (ii) a specified provision of such an instrument,
- or a copy of such a document, is, in proceedings under this Act, *prima facie* evidence that —
- (c) the specified instrument was in force at that time under that section; and  
25 (d) the text set out in the document is the text referred to in paragraph (b).



**Division 3 — Accounting records**

**7. Accounting records**

*(cf. s. 289 Corporations Law)*

- (1) A port authority must —
- 5 (a) keep such accounting records as correctly record and explain its transactions (including any transactions as trustee) and financial position; and
- (b) so keep its accounting records that —
- 10 (i) true and fair accounts of the port authority can be prepared from time to time; and
- (ii) its accounts can be conveniently and properly audited or reviewed.
- (2) A port authority must retain the accounting records kept by it under this clause for 7 years after the completion of the transactions to
- 15 which they relate.
- (3) A port authority must keep its accounting records at such place or places as the board thinks fit.
- (4) The Minister may by writing require a port authority to produce —
- 20 (a) at a specified place within Australia that is reasonable in the circumstances; and
- (b) within a specified period of at least 14 days,
- specified accounting records of the port authority that are kept outside Australia.
- (5) Where accounting records of a port authority are kept outside
- 25 Australia, the port authority must keep at a place within Australia determined by the board such statements and records with respect to the matters dealt with in the records kept outside Australia as would enable true and fair accounts, and any documents required by this Schedule to be attached to the accounts, to be prepared.

- (6) A port authority must lodge written notice with the Treasurer of the place in Australia where statements and records kept under subclause (3) are kept, unless the statements and records are kept at the principal place of business of the port authority.
- 5 (7) The Supreme Court may, on application by a director of a port authority, make an order authorizing a registered company auditor acting for the director to inspect the accounting records of the port authority.
- 10 (8) Where a registered company auditor inspects the accounting records pursuant to an order of the Supreme Court under subclause (7), he or she must not disclose to a person other than the director on whose application the order was made any information acquired by him or her in the course of his or her inspection.

**Division 4 — Financial years of a port authority and  
the entities it controls**

15

**8. Synchronization**  
*(cf. s. 290 Corporations Law)*

- (1) Subject to this clause, the board must do whatever is necessary to ensure that the financial year of each entity that a port authority controls coincides with the financial year of the port authority.
- 20 (2) Subclause (1) must be complied with in relation to a particular entity within 12 months after the port authority began to control the entity.
- (3) Subject to any order of the Minister under this clause, where the financial year of a port authority coincides with the financial year of an entity that the port authority controls, the board must do whatever is necessary to prevent either financial year from being changed in such a way that those financial years no longer coincide.
- 25 (4) Where the board of a port authority is of the opinion that there is good reason why the financial year of an entity that the port authority controls should not coincide with the financial year of the port authority they may apply in writing to the Minister for an order
- 30

authorizing the entity to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the port authority.

- 5 (5) The application must be supported by a statement in writing made in accordance with a resolution of the board signed by not less than 2 directors and stating the reasons for seeking the order.
- 10 (6) The Minister may require the directors making the application to supply such information relating to the operations of the port authority, and of any entity that the port authority controls or has controlled during a financial year, as the Minister thinks necessary for the purpose of determining the application.
- (7) The Minister may engage a registered company auditor to investigate and report to him or her on the application.
- 15 (8) The Minister may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as he or she thinks fit, and is to serve a copy of the order on the port authority.
- (9) Where an application is made under subclause (4) in relation to an entity —
- 20 (a) subclause (1) does not apply in relation to the entity until the day on which the Minister's order on the application is served on the port authority; and
- (b) subject to subclause (10), the period within which the board is required to comply with subclause (1) in relation to the entity
- 25 is the period of 12 months beginning on that day.
- (10) Where an order is made under this clause authorizing an entity controlled by a port authority to have, or to adopt, a financial year that does not coincide with that of the port authority, compliance with the order (including any limitations, terms or conditions set out in it) are
- 30 to be taken to be compliance with subclause (1) in relation to the entity.

(11) Where an application is made under subclause (4) in relation to an entity, another application cannot be made under that subclause in relation to the entity within 3 years after the date of the first-mentioned application unless —

- 5
- (a) the first-mentioned application resulted in the making of an order granting the application or granting it subject to limitations, terms or conditions; or
  - (b) the Minister is satisfied that there has been a substantial change in the relevant facts or circumstances since that day.

10 **Division 5 — Accounts of a port authority**

**9. Profit and loss account**  
(*cf. s. 292 Corporations Law*)

15 The board of a port authority must, before 30 September in each year, cause to be made out a profit and loss account for the immediately preceding financial year that gives a true and fair view of the port authority's profit or loss for that financial year.

**10. Balance sheet**  
(*cf. s. 293 Corporations Law*)

20 The board of a port authority must, before 30 September in each year, cause to be made out a balance sheet as at the end of the immediately preceding financial year that gives a true and fair view of the port authority's state of affairs as at the end of that financial year.

**11. Steps to be taken before accounts made out**  
(*cf. s. 294 Corporations Law*)

- 25
- (1) This clause has to be complied with before a port authority's accounts are made out under clauses 9 and 10 in relation to a financial year.
  - (2) The board must take reasonable steps —
    - (a) to find out what has been done about writing off bad debts and making provision for doubtful debts; and

- (b) to cause all known bad debts to be written off and adequate provision to be made for doubtful debts.
- (3) The board must take reasonable steps to find out whether any current assets, other than bad or doubtful debts, are unlikely to realize (whether directly or indirectly) in the ordinary course of business their value as shown in the port authority's accounting records and, if so, to cause —
  - (a) the value of those assets to be written down to an amount that they might be expected so to realize; or
  - (b) adequate provision to be made for the difference between their value as so shown and the amount that they might be expected to realize.
- (4) The board must take reasonable steps —
  - (a) to find out whether the value of any non-current asset is shown in the port authority's accounting records at an amount that, having regard to the asset's value to the port authority as a going concern, exceeds the amount that it would have been reasonable for the port authority to spend to acquire the asset as at the end of the financial year; and
  - (b) unless adequate provision for writing down the value of that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading because of the overstatement of the value of that asset.

**Division 6 — Consolidated accounts of a port authority and the entities it controls**

**12. Entities, parent entities, economic entities and reporting entities (cf. s. 294A Corporations Law)**

- (1) Where regulations define the expression “entity”, “parent entity”, “economic entity”, or “reporting entity”, those definitions apply for the purposes of this Schedule in relation to a port authority in relation to prescribed financial years.

- (2) Regulations in force because of subclause (1) have effect in relation to this Schedule accordingly.
- (3) Subject to subclause (2), where an accounting standard —
- 5 (a) deals with the making out of consolidated accounts by companies;
- (b) applies to a financial year of a company; and
- (c) defines the expression “entity”, “parent entity”, “economic entity” or “reporting entity”,
- 10 the definition in the accounting standard also has effect for the purposes of this Schedule as it applies in relation to a port authority in relation to that financial year.
- (4) Despite subclauses (2) and (3), each of the following is an entity for the purposes of this Schedule —
- 15 (a) a company;
- (b) a recognized company;
- (c) any other corporation;
- (d) a partnership;
- (e) an unincorporated body;
- 20 (f) a person in a capacity as trustee of a trust that has only one trustee.
- (5) Despite subclauses (2) and (3), where a trust has 2 or more trustees, those trustees, in their capacity as such, together constitute an entity.

**13. When one entity controls another**  
*(cf. s. 294B Corporations Law)*

- 25 (1) Where regulations make provision for or in relation to determining, as they apply in relation to a company in relation to prescribed financial years, whether or not an entity controls another entity, those regulations apply for the purposes of this Schedule.

(2) Regulations in force because of subclause (1) have effect in relation to this Schedule accordingly.

(3) Subject to subclause (2), where, because of a provision of an accounting standard that —

- 5           (a) deals with the making out of consolidated accounts by companies; and  
              (b) applies to a financial year of a company,

10           an entity is taken for the purposes of that accounting standard to control another entity, the first-mentioned entity is also taken to control the other entity for the purposes of this Schedule as it applies in relation to a port authority in relation to that financial year.

**14. Application of Division**  
*(cf. s. 295 Corporations Law)*

(1) The later provisions of this Division apply where a port authority —

- 15           (a) controlled another entity during all or part of a financial year of the port authority; or  
              (b) controls another entity at the end of a financial year of the port authority,

20           and, for the purposes of this Schedule as it applies in relation to the port authority in relation to that financial year, the port authority is the parent entity in an economic entity that is a reporting entity.

(2) A port authority is a chief entity in relation to that financial year for the purposes of this Schedule.

**15. Consolidated profit and loss account**  
*(cf. s. 295A Corporations Law)*

25           (1) The board of a port authority must cause to be made out, before 30  
              3 September in each year immediately following the relevant financial year, a consolidated profit and loss account that gives a true and fair view of the profit or loss, for that financial year, of the economic entity constituted by the port authority and the entities it controlled

from time to time during that financial year (even if the port authority did not control the same entities throughout that financial year).

- 5 (2) To avoid doubt, if the port authority did not control a particular entity throughout that financial year, the consolidated profit and loss account must relate to the entity's profit or loss for each part of that financial year throughout which the port authority controlled the entity, but not to the entity's profit or loss for any other part.

**16. Consolidated balance sheet**  
*(cf. s. 295B Corporations Law)*

10 The board of a port authority must cause to be made out, before 30 September in each year immediately following the relevant financial year, a consolidated balance sheet, as at the year's end, that gives a true and fair view of the state of affairs, as at the year's end, of the economic entity constituted by the port authority and the entities  
15 that it controls at the year's end.

**Division 7 — Requirements for financial statements**

**17. Audit of financial statements**  
*(cf. s. 296 Corporations Law)*

- 20 (1) The board of a port authority must take reasonable steps to ensure that the port authority's financial statements for a financial year are audited by the Auditor General as required by this Schedule before 30 September in each year immediately following the relevant financial year.
- 25 (2) The board must cause to be attached to or endorsed on the port authority's financial statements for a financial year the Auditor General's report on those financial statements.



**18. Financial statements to comply with Corporations Law Regulations**

*(cf. s. 297 Corporations Law)*

5 The board of a port authority must ensure that the port authority's financial statements for a financial year comply with such of the requirements as are prescribed from time to time for a company under the Corporations Law and as are relevant to the financial statements.

**19. Financial statements to comply with applicable accounting standards**

10 *(cf. s. 298 Corporations Law)*

Subject to clause 18 the board of a port authority must ensure that the port authority's financial statements for a financial year are made out in accordance with applicable accounting standards.

**20. Additional information to give a true and fair view**

15 *(cf. s. 299 Corporations Law)*

- 20 (1) If a port authority's financial statements for a financial year, as prepared in accordance with clauses 18 and 19, would not otherwise give a true and fair view of the matters with which this Schedule requires them to deal, the board must add such information and explanations as will give a true and fair view of those matters.
- (2) Nothing in subclause (1), or in clause 18 or 19, limits the generality of a provision of this Division or of Division 5 or 6, other than this clause or clause 18 or 19.

**21. Inclusion of comparative amounts for items required by accounting standards**

25 *(cf. s. 300 Corporations Law)*

- (1) Where —
- 30 (a) clause 19 requires a port authority's financial statements for a financial year to specify a particular amount (in this subclause called the “**current year amount**”); and

- 5 (b) that clause required the port authority's financial statements for the previous financial year to specify an amount that, within the meaning of an applicable accounting standard, is a corresponding amount in relation to the current year amount, the board must ensure that the first-mentioned financial statements —
- (c) set out the corresponding amount in such a way as to allow easy comparison between the current year amount and the corresponding amount; and
- 10 (d) if the current year amount has been determined on a different basis from the corresponding amount —
- (i) include a note to that effect; and
- (ii) set out the corresponding amount in such a way as to draw attention to the note.
- 15 (2) For the purposes of this clause, clause 19 requires a port authority's financial statements for a financial year to specify an amount if, and only if, the board —
- (a) is required to ensure that the financial statements included an amount relating to the matter to which the first-mentioned amount relates; and
- 20 (b) would not have been so required if that clause had not applied in relation to the financial year.

**Division 8 — Directors' statements**

**22. Statement to be attached to accounts**  
*(cf. s. 301 Corporations Law)*

- 25 (1) The board of a port authority must cause to be attached to the port authority's accounts that are or are included in the port authority's financial statements for a financial year a statement complying with this clause and clause 24(2).

- 5
- (2) The statement has to state whether or not, in the board's opinion —
- (a) the profit and loss account gives a true and fair view of the port authority's profit or loss for the financial year; and
  - (b) the balance sheet gives a true and fair view of the port authority's state of affairs as at the end of the financial year.
- 10
- (3) In forming its opinion for the purposes of subclause (2), the board must have regard to circumstances that have arisen, and information that has become available, since the end of the financial year and that would, if the accounts had been made out when the statement is made, have affected the determination of an amount or particular in them.
- 15
- (4) If adjustments have not been made in the accounts to reflect circumstances or information of a kind referred to in subclause (3) that are or is relevant to understanding the accounts or an amount or particular in them, the statement has to include such information and explanations as will prevent the accounts, or that amount or particular, from being misleading because adjustments have not been so made.
- 20
- (5) The statement has to state whether or not, in the board's opinion, there are, when the statement is made, reasonable grounds to believe that the port authority will be able to pay its debts as and when they fall due.
- 25
- 23. Statement to be attached to consolidated accounts**  
*(cf. s. 302 Corporations Law)*
- 30
- (1) Where Division 6 requires consolidated accounts to be made out in relation to a financial year of a port authority, the board must cause to be attached to them a statement that complies with this clause and clause 24(2).

- (2) The statement has to state whether or not, in the board's opinion, the consolidated accounts —
- (a) have been made out in accordance with Divisions 6 and 7;  
and
- 5 (b) in particular, give a true and fair view of the matters with which they deal.
- (3) In forming their opinion for the purposes of subclause (2), the board must have regard to circumstances that have arisen, and information that has become available, since the end of that financial year and that
- 10 would, if the consolidated accounts had been made out when the statement is made, have affected the determination of an amount or a particular in them.
- (4) If adjustments have not been made in the consolidated accounts to reflect circumstances or information of a kind referred to in
- 15 subclause (3) that are or is relevant to understanding the consolidated accounts or an amount or particular in them, the statement has to include such information and explanations as will prevent the consolidated accounts, or that amount or particular, from being misleading because adjustments have not been so made.
- 20 (5) If the applicable accounting standards include in relation to the consolidated accounts accounting standards that apply to the financial year because of an election made under clause 3, the statement has to specify those accounting standards and state they so apply.

**24. Statements under this Division**  
*(cf. s. 303 Corporations Law)*

- 25 (1) The board of a port authority must comply with clause 22, or clauses 22 and 23, as the case requires, in relation to a financial year before 30 September in each year immediately following the relevant financial year.
- 30 (2) A statement required by clause 22 or 23 in relation to a financial year of a port authority has to —
- (a) be made in accordance with a resolution of the board;

- (b) be made out not later than 30 September in each year in respect of the immediately preceding financial year;
- (c) specify the day on which it was made; and
- (d) be signed by at least 2 directors.

5

**Division 9 — Directors' reports**

**25. Report on a port authority where it is not a chief entity**  
*(cf. s. 304 Corporations Law)*

- (1) If a port authority is not a chief entity in relation to a particular financial year the board must cause to be made out a report complying with this Division other than clause 26.
- (2) The report has to state the names of the directors in office on the day the report is made out.
- (3) The report has to state the port authority's principal activities in the course of the financial year and any significant change in the nature of those activities that occurred during the financial year.
- (4) The report has to state the net amount of the port authority's profit or loss for the financial year after provision for amounts paid or payable in lieu of Commonwealth income tax under the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*.
- (5) The report has to state the amount (if any) that the board recommends should be paid by way of dividend under section 84.
- (6) The report has to contain a review of the port authority's operations during the financial year and of the results of those operations.
- (7) The report has to give particulars of any significant change in the port authority's state of affairs that occurred during the financial year.
- (8) The report has to give particulars of any matter or circumstance that has arisen since the end of the financial year and has significantly affected, or may significantly affect —
  - (a) the port authority's operations;

- (b) the results of those operations; or
- (c) the port authority's state of affairs,

in financial years after the financial year.

(9) The report has to refer to —

- 5 (a) likely developments in the port authority's operations; and
  - (b) the expected results of those operations,
- in financial years after the financial year.

**26. Report on port authority where it is a chief entity**  
*(cf. s. 305 Corporations Law)*

10 (1) If a port authority is a chief entity in relation to a particular financial year the board must cause to be made out a report complying with this Division, other than clause 25.

(2) The report has to state the names of the directors in office on the day the report is made out.

15 (3) The report has to state —

- 20 (a) the principal activities, during the financial year, of the economic entity constituted by the port authority and the entities it controlled from time to time during the financial year (even if the port authority did not control the same entities throughout the financial year); and
- (b) any significant change in the nature of those activities that occurred during the financial year.

(4) The report has to state the net amount of the consolidated profit or loss, for the financial year, of the economic entity referred to in subclause (3), after —

- 25 (a) provision for income tax and amounts paid or payable in lieu of Commonwealth income tax under the *State Enterprises (Commonwealth Tax Equivalent) Act 1996*; and

- (b) deducting any amounts that should properly be attributed to an entity that is neither the port authority nor an entity that the port authority controlled at the relevant time.
- 5 (5) The report has to state the amount (if any) that the board recommends should be paid by way of dividend under section 84.
- (6) The report has to contain a review of —
  - 10 (a) the operations, during the financial year, of the economic entity constituted by the port authority and the entities it controlled from time to time during the financial year (even if the port authority did not control the same entities throughout the year); and
  - (b) the results of those operations.
- 15 (7) The report has to give particulars of any significant change in the state of affairs of the economic entity referred to in subclause (3)(a) that occurred during the financial year.
- 20 (8) To avoid doubt, if the port authority controlled a particular entity throughout some, but not all, of the financial year, the report need not relate to the entity's activities, operations or state of affairs during a period throughout which the port authority did not control the entity, or to the results of such operations.
- 25 (9) The report has to give particulars of any matters or circumstance that have arisen since the end of the financial year and have significantly affected, or may significantly affect —
  - (a) the operations, in financial years after the financial year, of the economic entity constituted by the port authority and the entities it controls from time to time; or
  - (b) the results of those operations; or
  - (c) the state of affairs, in financial years after the financial year, of that economic entity.

- (10) The report has to refer to —
- (a) likely developments in the operations referred to in subclause (9)(a); and
  - (b) the expected results of those operations.

5 **27. Report may omit prejudicial information**  
*(cf. s. 306 Corporations Law)*

If the board of a port authority believes on reasonable grounds that to include in the report particular information clause 25(9) or 26(10) requires would be likely to result in unreasonable prejudice to the port authority —

10

- (a) the first-mentioned information need not be so included; and
- (b) if it is not so included, the report has to state that some or all, as the case requires, of the information required by that subclause has not been so included.

15 **28. Additional information required in report**  
*(cf. s. 307 Corporations Law)*

- (1) The report has to contain, or have attached to it, a statement that, in relation to each of the directors, sets out, as at the day the report is made out —

20

- (a) particulars of the director's qualifications, experience and special responsibilities (if any); and
- (b) particulars of any interest which the director has disclosed —
  - (i) in accordance with section 12; and
  - (ii) since the date of the last report made out in relation to the port authority under this Division.

25

- (2) The report has to also contain, or have attached to it, a statement that sets out —

30

- (a) how many meetings of the board (including meetings of committees of directors) were held during a financial year, or would have been held if a quorum had been present; and



- 5
- (b) in relation to each person who was a director of the port authority throughout the financial year, how many of the meetings referred to in paragraph (a) the person attended; and
- (c) in relation to each person who was such a director during some but not all of the financial year —
- (i) how many of the meetings referred to in paragraph (a) were held while the person was such a director; and
- 10 (ii) how many of the meetings referred to in paragraph (a) the person attended while he or she was such a director.

**29. Benefits under contracts with directors**  
*(cf. s. 309 Corporations Law)*

- 15 (1) The report has to set out whether or not, during or since the financial year, a director has received, or has become entitled to receive, a benefit because of a contract that —
- (a) the director; or
- (b) a firm of which the director is a member; or
- 20 (c) an entity in which the director has a substantial financial interest,
- has made (during that or any other financial year) with —
- (d) the port authority; or
- 25 (e) an entity that the port authority controlled, or a body corporate that was related to the port authority, when the contract was made or when the director received, or became entitled to receive, the benefit (if any).
- (2) If so, the report has to set out the general nature of each such benefit that a director has so received or to which a director has so become entitled.

(3) Subclauses (1) and (2) do not apply to —

(a) a benefit included in the aggregate amount of emoluments received, or due and receivable, by directors shown, in accordance with the regulations in force for the purposes of clause 18, in the port authority's financial statements for the financial year; or

(b) the fixed salary of a full-time employee of —

(i) the port authority; or

(ii) an entity that controlled, or a body corporate that was related to the port authority, at a relevant time.

**30. Reports generally**

*(cf. s. 310 Corporations Law)*

(1) The board of a port authority must comply with this Division in relation to a financial year before 30 September in each year immediately following the relevant financial year.

(2) A report that this Division requires in relation to a financial year has to —

(a) be made out in accordance with a resolution of the board;

(b) be made out not later than 30 September in each year immediately following the relevant financial year;

(c) specify the day on which it was made out; and

(d) be signed by at least 2 directors.

**Division 10 — Financial statements and directors' reports**

**31. Rounding off amounts**

*(cf. s. 311 Corporations Law)*

Regulations made under section 139 may permit a port authority subject to such conditions, exceptions or qualifications (if any) as are specified in the regulations, to insert in any accounts or report under this Schedule in substitution for an amount that the port authority would, but for this clause, be required or permitted to set out in the

accounts or report an amount that is ascertained in accordance with the regulations and is not more than \$500 greater or less than the first-mentioned amount.

5 **32. Where port authority is a chief entity, board to obtain all necessary information**  
*(cf. s. 312 Corporations Law)*

- 10 (1) Subject to subclause (3), where a port authority is a chief entity in relation to a particular financial year, the board must not cause to be made out the consolidated accounts referred to in Division 6, the statement referred to in clause 23 or the report referred to in clause 26 unless it has available to it sufficient information, about each entity that the port authority controlled during all or part of, or at the end of the financial year, to enable it to ensure —
- 15 (a) that the consolidated accounts —
- (i) will be made out in accordance with Divisions 6 and 7; and
- (ii) in particular, will give a true and fair view of the matters with which they must deal;
- and
- 20 (b) that neither the statement nor the report will be false or misleading in a material particular.
- (2) Reporting officers of an entity that a port authority controlled during all or part of, or at the end of, a particular financial year of the port authority must, at the request of the board, supply to the port authority
- 25 all the information that is required by the board for the preparation of the consolidated accounts, the statement and the report referred to in subclause (1).
- (3) Where the board, having taken all such steps as are reasonably
- 30 available to it, is unable to obtain from the reporting officers of an entity the information required by the board for the preparation of the consolidated accounts, the statement and the report referred to in subclause (1) within the period by which those consolidated accounts,

that statement and that report are respectively required, by the provisions referred to in that subclause, to be prepared —

- 5 (a) the board must cause to be made out those consolidated accounts, that statement and that report without incorporating in, or including with, those consolidated accounts, or incorporating in that statement or report, as the case requires, the information relating to the entity but —
- 10 (i) it must include in those consolidated accounts, that statement or that report, as the case requires, a description of the nature of the information that has not been obtained, and must include in those consolidated accounts, that statement and that report such qualifications and explanations as are necessary to prevent those consolidated accounts, that statement and that report from being misleading; and
- 15 (ii) it may qualify accordingly that part of that statement that is made under clause 23(2);

and

- 20 (b) where the board has caused to be made out those consolidated accounts, that statement and that report in accordance with paragraph (a), it must, within one month after receiving any of that information from the reporting officers of the entity lodge with the Minister a statement setting out or summarizing the information and containing such
- 25 qualifications and explanations, by the board, of those consolidated accounts, that statement or that report as are necessary having regard to the information received from those reporting officers of the entity.

- (4) In this clause —
- 30 **“reporting officers”**, in relation to an entity, means —

- (a) in the case of a port authority, the port authority’s directors; or
- (b) otherwise, the entity’s officers.

**33. Relief from requirements as to accounts and reports**  
*(cf. s. 313 Corporations Law)*

- 5 (1) The board of a port authority may apply to the Treasurer for an order relieving it or relieving the port authority from compliance with specified requirements of this Schedule relating to accounts or consolidated accounts or to the report required by Division 9.
- 10 (2) On an application under subclause (1), the Treasurer may make an order relieving the board or the port authority from compliance with all or any of the specified requirements either unconditionally or on condition that the board or the port authority complies with such other requirements relating to the accounts or consolidated accounts or to the report as the Treasurer imposes.
- 15 (3) An application under subclause (1) has to be in writing supported by a statement in writing made in accordance with a resolution of the board, signed by not less than 2 directors and stating the reasons for seeking an order.
- 20 (4) If the board of a port authority makes an application under subclause (1), the Treasurer may require it to supply such information relating to the operations of the port authority and of any entity which the port authority controls or has controlled during a financial year, as the Treasurer thinks necessary for the purpose of determining the application.
- 25 (5) A reference in subclause (2) to requirements of this Schedule relating to accounts or consolidated accounts does not include a reference to the requirements of clause 7.
- (6) Where the Treasurer makes an order under subclause (2) —
- (a) the Treasurer is to cause the text of the order to be laid before each House of Parliament within 14 days after the order is made;

- 5 (b) if at the commencement of the period referred to in paragraph (a) a House of Parliament is not sitting and the Treasurer is of the opinion that that House will not sit during that period, the Treasurer is to transmit a copy of the order to the Clerk of that House and the copy of the order so transmitted is to be —
- (i) taken to have been laid before that House; and
- (ii) taken to be a document published by order or under the authority of that House;
- 10 and
- (c) the laying of a copy of a document that is taken to have occurred under paragraph (b) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.
- 15 (7) The Treasurer is not to make an order in relation to a port authority unless in relation to each requirement of this Schedule that is specified in the order, the Treasurer is of the opinion that compliance with the requirement —
- 20 (a) would render accounts or consolidated accounts, or a report required by Division 9 misleading;
- (b) would be inappropriate to the circumstances of the port authority; or
- (c) would impose unreasonable burdens on the port authority or an officer of the port authority.
- 25 (8) The reference in subclause (7) to an order in relation to the port authority is a reference to an order under subclause (2) relieving the board or the port authority from compliance with specified requirements of this Schedule.
- 30 (9) The Treasurer may make an order under subclause (2) that is limited to a specified period and may from time to time either on application by the board, or without any such application, revoke or suspend the operation of the order.

- (10) The revocation or suspension under subclause (8) of an order does not take effect until notice of the revocation or suspension is served on the port authority.

**34. Minister to receive a copy of the annual report**  
*(cf. s. 315 Corporations Law)*

5

- (1) A port authority must as soon as practicable but not later than the close of business on the prescribed day in each year send to the Minister a copy of the annual report required by section 68.

- (2) In subclause (1) —

10

“the prescribed day” is the 10th working day after receipt by the port authority under clause 38(2) of the Auditor General’s report.

**35. Minister entitled to financial statements and reports**  
*(cf. s. 316 Corporations Law)*

15

The annual report of a port authority required by section 68 has to contain the following documents relevant to the financial year to which the report relates —

- (a) a copy of the port authority’s financial statements for that financial year;
- (b) a copy of each statement that Division 8 requires in relation to that financial year;
- (c) a copy of each statement that Division 9 requires in relation to that financial year;
- (d) a copy of the Auditor General’s report on the financial statements; and
- (e) a copy of any order of the Treasurer under clause 33.

20

25

**36. Contravention**  
*(cf. s. 318 Corporations Law)*

- (1) Subject to this clause, if a director fails to take all reasonable steps to comply with, or to secure compliance with, or has knowingly been the

cause of any default under, any of the provisions of this Schedule other than Divisions 2 and 3, the director contravenes this subclause.

- (2) The penalty applicable to a contravention of subclause (1) is —
- (a) in a case to which paragraph (b) does not apply, \$5 000; or
  - (b) if the offence was committed with intent to deceive or defraud the Minister or the Treasurer or creditors of the port authority, \$20 000 or imprisonment for 5 years or both.
- (3) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the provisions of this Schedule relating to the form and content of the accounts or consolidated accounts of a port authority by reason of an omission from the accounts or consolidated accounts, it is a defence if it is proved that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by Divisions 5 and 6 to be dealt with in the accounts or consolidated accounts, as the case may be.
- (4) After the end of the period within which Division 5, 6, 7 or 8 requires the board of a port authority to cause a document to be made out, the Minister may require the board to produce the document on a specified day, at a specified place, to a specified person.
- (5) A request under subclause (4) must be made by written notice given to each of the directors.
- (6) In a proceeding for a contravention of Division 5, 6, 8 or 9, proof of contravention of a requirement made under subclause (4) is *prima facie* evidence that the document was not made out within the period referred to in that subclause.

**37. Audit**

- (1) If the Auditor General cannot complete the audit of a port authority by 30 September in any year he or she is to submit an interim report to the Minister setting out the reasons for the inability to complete the audit by that date, and the Minister is to cause copies of the report to



be laid before both Houses of Parliament, within 7 sitting days of receiving that report.

- (2) Section 92 of the *Financial Administration and Audit Act 1985* applies to the audit of a port authority.

5 **38. Auditor General must report**  
(*cf. s. 331A Corporations Law*)

- (1) The Auditor General is to send a report to the Minister on —

- (a) a port authority's financial statements required for the purposes of clause 36; and  
10 (b) a port authority's accounting records and other records relating to those financial statements.

- (2) The Auditor General is to give the report to the directors as soon as is practicable after it has been given to the Minister under subclause (1).

15 **39. Report to state whether financial statements properly drawn up**  
(*cf. s. 331B Corporations Law*)

- (1) The report has to state whether or not, in the Auditor General's opinion, the financial statements are properly drawn up —

- (a) so as to give a true and fair view of the matters with which Divisions 5, 6 and 7 require them to deal;  
20 (b) in accordance with this Schedule; and  
(c) in accordance with applicable accounting standards.

- (2) If, in the Auditor General's opinion, the financial statements are not drawn up in accordance with a particular applicable accounting standard, the report has to give particulars of the quantified financial effect on the financial statements of failing to draw them up in accordance with that accounting standard.  
25

- (3) If the Auditor General is not satisfied about a matter referred to in subclause (1) or (2), the report has to state why not.

**40. Matters affecting consolidated accounts**  
*(cf. s. 331C Corporations Law)*

5 (1) If the financial statements include consolidated accounts, the report must specify each entity that the port authority controlled during all or a part of, or at the end of, the financial year, but of which the Auditor General has not acted as auditor.

(2) If —  
10 (a) the financial statements include consolidated accounts prepared on the basis of information derived from accounts of an entity of the kind referred to in subclause (1); and  
(b) the Auditor General has not examined those accounts and the auditor's report (if any) on those accounts,  
the report on the financial statements must specify that entity.

15 (3) If —  
(a) the financial statements include consolidated accounts prepared on the basis of information derived from accounts of an entity that the port authority controlled during all or part of, or at the end of, the financial year; and  
20 (b) the Auditor General's report on those accounts was made subject to any qualification, or included any comment made under clause 42,  
the report on the financial statements has to —  
(c) specify the entity; and  
(d) give particulars of the qualification or comment.

25 **41. Defects, irregularities and omissions**  
*(cf. s. 331D Corporations Law)*

The report must describe —

(a) any defect or irregularity in the financial statements; and

- (b) any matter that the financial statements do not set out and to which one must have regard in order to obtain a true and fair view of the matters with which the financial statements deal.

5 **42. Auditor General's report to cover adequacy of information**  
*(cf. s. 331E Corporations Law)*

(1) It is the Auditor General's duty to form an opinion about each of the matters set out in subclause (2), and the report must set out particulars of any deficiency, failure or shortcoming in respect of any of those matters.

10 (2) These are the matters —

- (a) whether the Auditor General has obtained all the information and explanations he or she needed;

- (b) whether a port authority has kept proper accounting records, and other records (including registers), as required by this Schedule;

- (c) if a port authority is a chief entity in relation to the financial year concerned —

- (i) whether the accounts of entities that were used in preparing the consolidated accounts of the port authority in relation to the financial year are in form and content appropriate and proper for such use;

- (ii) whether the Auditor General has received satisfactory information and explanations as required by the Auditor General for the purposes of forming an opinion about the matter referred to in subparagraph (i);

- (iii) whether the procedures and methods used in arriving at the amounts taken into the consolidated accounts were appropriate to the circumstances of preparing the consolidated accounts.

**43. Minister entitled to inspect auditor's report**  
*(cf. s. 331F Corporations Law)*

The Minister is entitled to inspect the report at any reasonable time.

**44. Powers and duties of Auditor General as to reports on accounts**  
*(cf. s. 332 Corporations Law)*

5

(1) Where Division 6 requires consolidated accounts to be made out in relation to a financial year of a port authority —

10

(a) the Auditor General has a right of access at all reasonable times to the accounting records and other records, including registers, of each entity that the port authority controlled during all or part of, or at the end of, that financial year, even if the port authority no longer controls the entity; and

15

(b) the Auditor General is entitled to require from any officer or auditor of such an entity (at the port authority's expense), such information and explanations about the entity's affairs as the Auditor General needs in order to report on the consolidated accounts.

20

(2) The Auditor General has a right of access at all reasonable times to the accounting records and other records, including registers of a port authority, and is entitled to require from any officer of a port authority such information and explanations as the Auditor General desires for the purposes of audit.

25

(3) If the Auditor General in the course of the performance of duties as auditor of a port authority and its subsidiaries, is satisfied that —

(a) there has been a contravention of any provision of this Schedule; and

5 (b) the circumstances are such that in the Auditor General's opinion the matter has not been or will not be adequately dealt with by comment in the Auditor General's report on the financial statements or by bringing the matter to the notice of the board of the port authority,

the Auditor General is to report the matter to the Minister, in writing, as soon as is practicable.

10 (4) The provisions of sections 78 to 91 (inclusive) and section 95 of the *Financial Administration and Audit Act 1985* apply to a port authority as if it were a statutory authority named in Schedule 1 to that Act.

**45. Extension of time**

15 (1) Where any provision of this Schedule requires any act or thing to be observed or performed by a certain date or within a specified time by a person, other than the Auditor General, the Minister may on application by that person extend the date of, or the time for observance or performance of such act or thing to such date or time as the Minister thinks appropriate.

20 (2) Where the Minister grants an extension of time under subclause (1), the provisions of clause 33(6) apply (with all necessary changes) to the memorandum evidencing the extension as if it were an order under clause 33(2).

## **Schedule 6 — Provisions for particular port authorities**

[s. 132]

### **Division 1 — Dampier Port Authority**

#### **1.1. Application**

5 This Division applies to the Dampier Port Authority and the Port of Dampier.

#### **1.2. Definitions**

In this Division —

“**Company appointee**” means the director —

- 10 (a) appointed under clause 1.4(1)(a); or  
(b) appointed under clause 1.4(3) in default of a nomination for appointment as the Company appointee by the Company;

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

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

“**Joint Venturers appointee**” means the director —

- 25 (a) appointed under clause 1.4(1)(b); or  
(b) appointed under clause 1.4(4) in default of a nomination for appointment as the Joint Venturers appointee by the Joint Venturers;

“**Ministerial appointee**” means a director appointed under clause 1.4(1)(c);

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

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

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

10 “**the Salt Company**” means the Company within the meaning of the Dampier Solar Salt Industry Agreement.

**1.3. Act does not affect State agreements**

This Act does not prejudice or in any way affect —

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

**1.4. Membership of port authority**

20 (1) The board of the port authority is to comprise —

- (a) one director appointed by the Minister on the nomination in writing of the Company;
- (b) one director appointed by the Minister on the nomination in writing of the Joint Venturers; and
- 25 (c) 3 other directors appointed by the Minister.

(2) The Minister is to appoint one of the Ministerial appointees to be chairperson of the board.

30 (3) If the Company does not nominate a person for appointment as the Company appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such nomination

by the Company appoint a person who is otherwise eligible for appointment as a director to be the Company appointee.

- 5 (4) If the Joint Venturers do not nominate a person for appointment as the Joint Venturers appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such nomination by the Joint Venturers appoint a person who is otherwise eligible for appointment as a director to be the Joint Venturers appointee.
- 10 (5) A person appointed by the Minister under subclause (3) or (4) is to be regarded as having been duly nominated and appointed as the Company appointee or the Joint Venturers appointee, as the case requires.
- (6) The Company appointee ceases to hold office as a director if the Company by instrument in writing served on the Minister so requests.
- 15 (7) The Joint Venturers appointee ceases to hold office as a director if the Joint Venturers by instrument in writing served on the Minister so request.

**1.5. Alternate members**

- (1) Schedule 2, clause 4 does not apply to the port authority.
- 20 (2) The Minister may appoint a person as an alternate director for a director.
- (3) A person cannot be appointed as an alternate director for more than one director.
- 25 (4) Clauses 1.4(1)(a) and (b), and (3) to (7) and 1.6 apply (with any necessary changes) in relation to alternate directors for the Company appointee and the Joint Venturers appointee.
- (5) If a person is nominated by the Company or the Joint Venturers (whether at the Minister's request or not) for appointment as an alternate director for the Company appointee or the Joint Venturers



appointee, as the case may be, the Minister is to appoint the person as an alternate director.

5 (6) When a director is unable to act because of sickness, absence or other cause, the alternate director for that director may act in the director's place, and while so acting that alternate director is to be taken to be a director and is entitled to remuneration under section 10.

(7) No act or omission of an alternate director acting in place of a director under this clause may be questioned on the ground that the occasion for acting had not arisen or had ceased.

10 **1.6. Disclosure by directors**

Section 12 and Schedule 2, clause 8 do not apply —

- 15 (a) to the Company appointee in respect of a material personal interest that consists only of being an employee of the Company; or
- (b) to the Joint Venturers appointee in respect of a material personal interest that consists only of being an employee of one of the Joint Venturers.

**1.7. Quorum**

At a meeting of the port authority, 3 directors —

- 20 (a) one of whom is the company appointee or the Joint Venturers appointee; and
- (b) one of whom is a Ministerial appointee,
- constitute a quorum.

**1.8. Property**

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

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

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

15   **1.9. Cost recovery**

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

**1.10. Duties of companies and joint venturers**

- 20       (1) Despite anything in section 30 —
- (a) the Company, for its own requirements under the Iron Ore (Hamersley Range) Agreement;
- (b) the Salt Company, for its own requirements under the Dampier Solar Salt Industry Agreement; and
- 25           (c) the Joint Venturers, for their own requirements under the North West Gas Development (Woodside) Agreement,

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

30       Venturers, as the case requires.

- (2) Despite anything in section 30, the port authority may from time to time direct the Salt Company, the Company or the Joint Venturers or any 2 or all 3 of them —
- 5 (a) to provide, maintain and keep in repair and proper working order all dredged channels, berthing basins and navigational aids required and used by it or them in its or their operations under the Dampier Solar Salt Industry Agreement, the Iron Ore (Hamersley Range) Agreement or the North West Gas Development (Woodside) Agreement, as the case requires;
- 10 and
- (b) for the purpose of determining whether or not any dredged channels, berthing basins and navigational aids referred to in paragraph (a) are being maintained and kept in repair and proper working order, to provide the port authority at its or their cost with such information, reports and hydrographic surveys as are specified in that direction.
- 15
- (3) The Salt Company, the Company or the Joint Venturers must, without delay, comply with any direction given to it or them, as the case requires, by the port authority under subclause (2).
- 20
- (4) If the Salt Company, the Company or the Joint Venturers does not or do not comply with —
- (a) subclause (1), the port authority is to cause the requisite works to be undertaken and the cost of those works is to be borne by the person which has not complied with that
- 25 subclause; or
- (b) a direction given under subclause (2), the port authority is to cause —
- (i) the requisite work to be undertaken; or
- (ii) the requisite information, reports or hydrographic surveys to be provided,
- 30 and the cost of those works or the cost of that provision be borne by the person which has not complied with that direction.

**1.11. Pilotage services agreements**

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

- 5
- (a) the Company may for its own requirements under the Iron Ore (Hamersley Range) Agreement;
  - (b) the Salt Company may for its own requirements under the Dampier Solar Salt Industry Agreement; or
  - (c) the Joint Venturers may for their own requirements under the North West Gas Development (Woodside) Agreement,
- 10 provide its own or their own pilotage services in the port in accordance with that agreement.

**Division 2 — Port Hedland Port Authority**

**2.1. Application**

15 This Division applies to the Port Hedland Port Authority and the Port of Port Hedland.

**2.2. Definitions**

In this Division —

20 “**first lessee**” means the registered lessee or registered lessees, for the time being, of the land the subject of lease number 3116/3445 or any lease in substitution for it issued under the *Land Act 1933*, and the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*;

“**first lessee appointee**” means the director —

- (a) appointed under clause 2.4(1)(a); or
  - (b) appointed under clause 2.4(3) in default of a nomination for appointment as the first lessee appointee by the first lessee;
- 25

“**Ministerial appointee**” means a director appointed under clause 2.4(1)(c);

5 “second lessee” means the registered lessee or the registered lessees,  
for the time being, of the land the subject of lease number  
3116/3692 or any lease in substitution for it issued under the  
*Land Act 1933*, and the *Iron Ore (Mount Newman) Agreement*  
*Act 1964*;

“second lessee appointee” means the director —  
(a) appointed under clause 2.4(1)(b); or  
(b) appointed under clause 2.4(4) in default of a nomination  
for appointment as the second lessee appointee by the  
10 second lessee.

**2.3. Act does not affect State agreements**

This Act does not prejudice or in any way affect —  
(a) any right of the persons entitled to them to receive the  
15 payments referred to in clause 20(1) of the agreement a copy  
of which is set forth in the Schedule to the *Leslie Solar Salt*  
*Industry Agreement Act 1966*, as that agreement is amended  
from time to time;  
(b) any right or obligation of a party to the agreement a copy of  
20 which is set forth in the First Schedule to the *Iron Ore*  
*(Mount Goldsworthy) Agreement Act 1964*, as that agreement  
is amended from time to time;  
(c) any right or obligation of a party to the agreement a copy of  
25 which is set forth in the First Schedule to the *Iron Ore*  
*(Mount Newman) Agreement Act 1964*, as that agreement is  
amended from time to time.

**2.4. Membership of port authority**

(1) The board of the port authority is to comprise —  
(a) one director appointed by the Minister on the nomination in  
writing of the first lessee;

Schedule 6 Provisions for particular port authorities

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- (b) one director appointed by the Minister on the nomination in writing of the second lessee; and
  - (c) not more than 5 other directors appointed by the Minister.
- 5 (2) The Minister is to appoint one of the Ministerial appointees to be chairperson of the board.
- (3) If the first lessee does not nominate a person for appointment as the first lessee appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such nomination by the first lessee appoint a person who is otherwise  
10 eligible for appointment as a director to be the first lessee appointee.
- (4) If the second lessee does not nominate a person for appointment as the second lessee appointee within 30 days after being requested in writing by the Minister to do so, the Minister may without any such nomination by the second lessee appoint a person who is otherwise  
15 eligible for appointment as a director to be the second lessee appointee.
- (5) A person appointed by the Minister under subclause (3) or (4) is to be regarded as having been duly nominated and appointed as the first lessee appointee or the second lessee appointee, as the case requires.
- 20 (6) The first lessee appointee ceases to hold office as a director if —
  - (a) the person or persons who nominated him or her ceases or cease to be the registered lessee or registered lessees of the land referred to in the definition of “first lessee” in clause 2.2; or
  - 25 (b) the first lessee by instrument in writing served on the Minister so requests.
- (7) The second lessee appointee ceases to hold office as a director if —
  - (a) the person or persons who nominated him or her ceases or cease to be the registered lessee or registered lessees of the land referred to in the definition of “second lessee” in  
30 clause 2.2; or

- (b) the second lessee by instrument in writing served on the Minister so requests.

**2.5. Alternate members**

- (1) Schedule 2, clause 4 does not apply to the port authority.
- 5 (2) The Minister may appoint a person as an alternate director for a director.
- (3) A person cannot be appointed as an alternate director for more than one director.
- 10 (4) Clauses 2.4(1)(a) and (b), and (3) to (7) and 2.6 apply (with any necessary changes) in relation to alternate directors for the first lessee appointee and the second lessee appointee.
- 15 (5) If a person is nominated by the first lessee or the second lessee (whether at the Minister's request or not) for appointment as an alternate director for the first lessee appointee or the second lessee appointee, as the case may be, the Minister is to appoint the person as an alternate director.
- 20 (6) When a director is unable to act because of sickness, absence or other cause, the alternate director for that director may act in the director's place, and while so acting that alternate director is to be taken to be a director and is entitled to remuneration under section 10.
- (7) No act or omission of an alternate director acting in place of a director under this clause may be questioned on the ground that the occasion for acting had not arisen or had ceased.

**2.6. Disclosure by directors**

- 25 Section 12 and Schedule 2, clause 8 do not apply —
  - (a) to the first lessee appointee in respect of a material personal interest that consists only of being an employee of the first lessee; or

- (b) to the second lessee appointee in respect of a material personal interest that consists only of being an employee of one of the second lessees.

**2.7. Quorum**

5 At a meeting of the port authority, a number of directors equal to at least half the number of directors in office constitutes a quorum.

**2.8. Port includes pilotage area for some purposes**

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

**The Pilotage Area**

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



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

[s. 139(2)]

- 5 1. The control, duties, supervision and guidance of the CEO and members of staff of a port authority.
2. The control or prohibition of —
  - 10 (a) entry into or presence in a port or any specified part or parts of a port by or of a person or class of persons or by or of a thing or class of things; or
  - (b) doing or omitting to do a thing or class of things in a port or any specified part or parts of a port.
3. All matters relating to the protection of life and property and safe navigation in a port.
4. The use of tide signals and other signals in a port.
- 15 5. Prevention of overloading or overcrowding of vessels.
6. The powers, duties and obligations of the harbour master of a port in respect of the matters referred to in item 5 and the rights and liabilities of persons affected by the exercise of such a power or connected with a vessel in respect of which such a power is exercised.
- 20 7. (1) The landing, shipping, trans-shipping, unshipping, warehousing, stowing, depositing, removal or keeping of explosives and dangerous goods as respectively defined by the *Explosives and Dangerous Goods Act 1961* and of such other substances as the Minister may specify as being dangerous goods for the purposes of the regulations.
- 25 (2) The landing, shipping, trans-shipping, unshipping, warehousing, stowing, depositing, removal or keeping of goods other than those substances referred to in subitem (1).
8. The movement, mooring, loading and unloading of vessels.

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

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

18. The control and management of ferries operating for hire at jetties or public thoroughfares.
19. The control of the operation of vessels operating for hire either for goods or passengers in a port.
- 5 20. The control of the operation of machinery on jetties and wharf loading areas.
21. The conduct of persons operating vessels or machinery referred to in item 19 or 20.
22. The control of the installation and use of moorings.
- 10 23. The calculation or ascertainment of port charges and the powers of a collector of port charges, either alone or with other persons, to enter a vessel in order to calculate or ascertain the port charges payable in respect of the vessel or of goods on the vessel.
- 15 24. To require the master of every vessel to give notice of arrival at a port within a specified time before arrival.
25. To require the master of every vessel to produce the certificate of registry or other national papers of that vessel to a collector of port charges or to any other member of staff on demand.
- 20 26. To require the master of a vessel to give documentation or information in such form as may be required by a port authority of all goods to be loaded or unloaded on to or from the vessel at the port.
27. To require the master of a vessel to obtain permission to load or unload goods at a port before doing so.
- 25 28. To require the shippers of goods to furnish information as to the goods intended to be shipped.
29. To give binding effect to —
- (a) descriptions of and statements about goods (including as to value) in bills of lading, manifests or receipts; and

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

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- (b) the terms and conditions of bills of lading, manifests or receipts.
- 5 **30.** Pilotage matters generally and, in particular —
  - (a) procedures for and matters relating to the approval of persons as pilots for a port;
  - (b) vessels that do not have to have an approved pilot; and
  - (c) procedures for and matters relating to pilotage exemption certificates.
- 31.** The speed of vessels in a port.
- 10 **32.** The recovery of expenses incurred by a port authority in exercising powers under the regulations.
- 33.** Limitation of the liability of a port authority for damage or loss either generally or in circumstances specified in the regulations.
- 15 **34.** Exemption of a port authority from liability for damage or loss in circumstances specified in the regulations.
- 35.** Limitation of the time for making a claim against a port authority for loss or damage.
- 36.** Conditions to be inserted in a lease granted under this Act.
- 20 **37.** The powers of members of staff and police officers in relation to persons who are committing or have committed or are believed to be committing, or to have committed, offences under this Act.
- 38.** The deposit of litter, rubbish or waste substances of any kind and the abandonment or neglect of vessels or other material —
  - (a) in a port; or
  - 25 (b) outside a port so as to affect or potentially affect, a port.
- 39.** The —
  - (a) protection of;
  - (b) prevention of obstruction of or interference with; or

(c) prevention of obstruction of or interference with the operation of,

port facilities or other property of a port authority.

5       **40.**    Liability for loss or damage occurring because of obstruction of or interference with the operation of a navigational aid.

**41.**    The protection of the environment of a port.

**42.**    Any other matters relating to —

10       (a)    the convenience of shipping, or of operations to do with the storage, loading or unloading of cargo, or of the public, in a port; or

      (b)    the performance of the functions imposed on a port authority by this Act.

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