

Port Authorities (Consequential Provisions) Bill 1998

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Western Australia

LEGISLATIVE ASSEMBLY

**Port Authorities (Consequential
Provisions) Bill 1998**

A Bill for

An Act —

- to repeal the following Acts —
Albany Port Authority Act 1926;
Bunbury Port Authority Act 1909;
Dampier Port Authority Act 1985;
Esperance Port Authority Act 1968;
Fremantle Port Authority Act 1902;
Geraldton Port Authority Act 1968; and
Port Hedland Port Authority Act 1970;
- to amend and subsequently repeal the *Ports (Functions) Act 1993*;
- to amend certain other Acts; and
- for purposes relating to those repeals and amendments and to the enactment of the *Port Authorities Act 1998*.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Port Authorities (Consequential Provisions) Act 1998*.

5 2. Commencement

- (1) Subject to subsections (2) to (11) this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Section 4 and Schedule 1 come into operation when item 1 comes into operation.
- 10 (3) Section 5 and Schedule 3 come into operation when item 3 comes into operation.
- (4) Section 6 and Schedule 4 come into operation when item 4 comes into operation.
- 15 (5) Section 7 and Schedule 5 come into operation when item 5 comes into operation.
- (6) Section 8 and Schedule 6 come into operation when item 6 comes into operation.
- (7) Section 9 and Schedule 7 come into operation when item 7 comes into operation.
- 20 (8) Section 10 and Schedule 8 come into operation when item 8 comes into operation.
- (9) Section 16(2) and Schedule 2 come into operation when item 2 comes into operation.
- 25 (10) Section 22 comes into operation when one or more of items 1, 3 and 6 come into operation.

(11) Sections 23 and 26(1) come into operation when one or more of items 1 to 8 come into operation.

(12) Sections 11, 24 and 26(2) come into operation when all of items 1 and 3 to 8 have come into operation.

5 **3. Interpretation**

(1) In this Act —

“**continuing port authority**” means an existing port authority that continues in existence as a port authority established under the PA Act;

10 “**existing Act**” means the —

(a) *Albany Port Authority Act 1926*;

(b) *Bunbury Port Authority Act 1909*;

(c) *Dampier Port Authority Act 1985*;

(d) *Esperance Port Authority Act 1968*;

15 (e) *Fremantle Port Authority Act 1902*;

(f) *Geraldton Port Authority Act 1968*; or

(g) *Port Hedland Port Authority Act 1970*;

“**existing port authority**” means a port authority constituted or established under an existing Act;

20 “**first financial year**”, in relation to a port authority, means the first financial year of that port authority to start after the commencement of the item relating to that port authority;

“**item**” has the meaning given by subsection (2);

“**PA Act**” means the Port Authorities Act 1998.

25 (2) A reference in this Act to an item is a reference to an item in Schedule 1 to the PA Act.

Part 2 — Repeal and amendment of Port Authority Legislation

4. Repeal and amendment relating to Albany Port Authority

- (1) The *Albany Port Authority Act 1926** is repealed.

5 [**Reprinted as approved 24 March 1971.*
For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 8.]

- (2) Section 3 of the *Ports (Functions) Act 1993** is amended in the definitions of “port” and “port authority Act” by deleting
10 paragraph (a).

 [**Act No. 46 of 1993.*
For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 185.]

5. Repeal and amendment relating to Bunbury Port Authority

- 15 (1) The *Bunbury Port Authority Act 1909** is repealed.

 [**Reprinted as at 2 January 1991.*
For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 25-6.]

- (2) Section 3 of the *Ports (Functions) Act 1993* is amended in the definitions of “port” and “port authority Act” by deleting
20 paragraph (b).

6. Repeal and amendment relating to Dampier Port Authority

- (1) The *Dampier Port Authority Act 1985** is repealed.

25 [**Act No. 39 of 1985.*
For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 61.]

- (2) Section 3 of the *Ports (Functions) Act 1993* is amended in the definitions of “port” and “port authority Act” by deleting paragraph (c).

7. Repeal and amendment relating to Esperance Port Authority

- (1) The *Esperance Port Authority Act 1968** is repealed.
[*Act No. 11 of 1968.
For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 77.]

- (2) Section 3 of the *Ports (Functions) Act 1993* is amended in the definitions of “port” and “port authority Act” by deleting paragraph (d).

8. Repeal and amendment relating to Fremantle Port Authority

- (1) The *Fremantle Port Authority Act 1902** is repealed.
[*Reprinted as at 23 January 1989.
For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 91-92.]

- (2) Section 3 of the *Ports (Functions) Act 1993* is amended in the definitions of “port” and “port authority Act” by deleting paragraph (e).

9. Repeal and amendment relating to Geraldton Port Authority

- (1) The *Geraldton Port Authority Act 1968** is repealed.
[*Act No. 10 of 1968.
For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 95-96.]

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- (2) Section 3 of the *Ports (Functions) Act 1993* is amended in the definitions of “port” and “port authority Act” by deleting paragraph (f).

10. Repeal and amendment relating to Port Hedland Port Authority

5

- (1) The *Port Hedland Port Authority Act 1970** is repealed.

[*Act No. 30 of 1970.

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 185.]

10

- (2) Section 3 of the *Ports (Functions) Act 1993* is amended in the definitions of “port” and “port authority Act” by deleting paragraph (g).

11. *Ports (Functions) Act 1993* repealed

The *Ports (Functions) Act 1993* is repealed.

Part 3 — Transitional and saving provisions

12. Application of *Interpretation Act 1984*

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

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

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

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

13. Existing port authorities continue

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

- (2) If in a written law or other document or instrument there is —
(a) a reference to an existing port authority constituted or established under an existing Act; or

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- (b) a reference that is to be read and construed as a reference to an existing port authority,

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

14. Membership

- (1) The persons who were members or commissioners of a continuing port authority (including the chairman) immediately before the commencement of the item relating to that port authority continue in office, under and subject to the PA Act, as the chairperson and directors of that port authority.
- (2) Subsection (1) does not apply to a person holding office under section 8(1)(d) of the *Dampier Port Authority Act 1985*.
- (3) A person to whom subsection (1) applies is to be regarded as having been appointed under section 7 of the PA Act.

15. Staff

- (1) A person who was the general manager of a continuing port authority immediately before the commencement of the item relating to that port authority continues in office, under and subject to the PA Act, as the chief executive officer of that port authority.
- (2) Other people who were in the employment of a continuing port authority immediately before the commencement of the item relating to that port authority continue, under and subject to the PA Act, as members of staff of that port authority.
- (3) Except as otherwise agreed by a chief executive officer or member of staff, the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of

a chief executive officer or member of staff of a continuing port authority are not affected, prejudiced or interrupted by —

- (a) the operation of subsection (1) or (2); or
- (b) that port authority ceasing to be an SES organization under the *Public Sector Management Act 1994*.

(4) A person mentioned in subsection (1) or (2) is to be regarded as an employee of an organization for the purposes of Part 6 of the *Public Sector Management Act 1994*.

(5) Subsection (4) ceases to apply in relation to a continuing port authority at the expiration of 2 years after the item relating to that port authority commences.

(6) A person mentioned in subsection (2) is to be regarded as having been engaged under section 16 of the PA Act.

16. Port descriptions

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

(2) Until an order is made under section 24(1) of the PA Act in relation to the Port of Broome the description of that port for the purposes of the PA Act is as follows —

Port of Broome

- (a) all that portion of water and seabed bounded by lines starting from the high water mark of Roebuck Bay at the southern extremity of Fall Point and extending south to an east-west line situate 3 nautical miles south from the southern extremity of Entrance Point; then west to a north-south line situate 3 nautical miles west from the

s. 17

5 southern extremity of Entrance Point; then north to a point situate west of the summit of Station Hill; then east to the high water mark of the Indian Ocean and then generally southwesterly and generally southeasterly along that mark and generally northeasterly, generally northwesterly, again generally northeasterly and generally easterly along the high water mark of Roebuck Bay to the starting point and including all of the waters of Dampier Creek; and

10 (b) all that portion of land comprised within Broome Lots 616, 698, 848 and 956 as shown bordered in red on Lands and Surveys Reserve Plan 108.

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

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

17. Strategic development plans

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

18. Statement of corporate intent

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

19. Borrowing limits

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

20. Regulations

- 5 (1) Regulations made by a continuing port authority that were in force immediately before the commencement of the item relating to that port authority continue in force after that commencement as if they were regulations made by the Governor under section 139 of the PA Act in relation to the port of that port authority.
- (2) Subsection (1) does not continue the operation of any regulation that could not be made under section 139 of the PA Act.

Part 4 — Amendment of various acts

21. Consequential amendments

The Acts specified in Schedules 1 to 8 are amended as specified in those Schedules.

5 **22. Amendment of *Harbours and Jetties Act 1928***

The Schedule to the *Harbours and Jetties Act 1928** is amended by adding —

“ The *Port Authorities Act 1998* — Section 113. ”.

[*Reprinted as approved 11 August 1976.

10 For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 102.]

23. Amendment of *Public Sector Management Act 1994*

Schedule 1 to the *Public Sector Management Act 1994** is amended by inserting after item 17 the following item —

15 “

18 Any port authority established under the *Port Authorities Act 1998*

”.

[*Reprinted as at 3 September 1997.

20 For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 190-91, and Acts Nos. 45 of 1996 and 22 of 1997 and Gazette 24 March 1998.]

24. Amendment of *Shipping and Pilotage Act 1967*

- (1) This section amends the *Shipping and Pilotage Act 1967**

[*Reprinted as approved 9 November 1984.

For subsequent amendments see 1997 Index to Legislation of
Western Australia, Table 1, p. 213.]

- (2) Section 3 is amended by deleting the definition of “port
authority port”.

- (3) Section 8(1) is amended by deleting “or port authority port” in
both places.

- (4) Section 8(3) is repealed.

- (5) Section 12(3) is amended by deleting the definition of
“responsible authority” and substituting the following
definition —

“ “**responsible authority**” means the Department; ”.

25. Amendment of *Superannuation and Family Benefits Act 1938*

Section 6(1) of the *Superannuation and Family Benefits
Act 1938** is amended in the definition of “department” by
deleting “the Fremantle Port Authority Commissioners, every
harbour board” and substituting the following —

“ every port authority ”.

[*Reprinted as at 9 August 1989.

For subsequent amendments see 1997 Index to Legislation of
Western Australia, Table 1, pp. 226-7.]

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26. Amendment of *Unclaimed Money Act 1990*

- (1) Before section 9(1)(k) of the *Unclaimed Money Act 1990** the following paragraph is inserted —

“

- 5 (ja) which is not for the time being disbursable
prescribed retained money and represents the
net proceeds of a sale of goods under
regulations under Schedule 7, item 16 of the
10 *Port Authorities Act 1998*, is, or is liable to be
paid to the Treasury;

”.

- (2) Section 9(1)(j) of the *Unclaimed Money Act 1990** is deleted.

[*Act No. 31 of 1990.

15 For subsequent amendments see 1997 Index to Legislation of
Western Australia, Table 1, p. 240.]

**Schedule 1 — Amendments relating to Albany
Port Authority**

[s. 21]

- 1. *Constitution Acts Amendment Act 1899***

5 Schedule V, Part 3 is amended in the item relating to the Albany Port Authority by deleting “constituted under the *Albany Port Authority Act 1926*” and substituting the following —

“ established under the *Port Authorities Act 1998* ”.
- 2. *Financial Administration and Audit Act 1985***

10 Schedule 1 is amended by deleting the item “Albany Port Authority”.
- 3. *Harbours and Jetties Act 1928***

 The Schedule is amended by deleting the item “The Albany Harbour Board Act, 1926 — Section 33.”.
- 4. *Public Sector Management Act 1994***

15 Schedule 2, item 1 is deleted.
- 5. *Sentencing Act 1995***

 Schedule 1 is amended by deleting the item “*Albany Port Authority Act 1926* Albany Port Authority.”.
- 6. *Shipping and Pilotage Act 1967***

20 Section 3 is amended in the definition of “port authority port” by deleting paragraph (a).

Schedule 1 Amendments relating to Albany Port Authority

7. *Statutory Corporations (Liability of Directors) Act 1996*

Schedule 1 is amended by deleting the item relating to the Albany Port Authority and substituting the following item —

“

Albany Port Authority	a director of the Authority	<i>Port Authorities Act 1998</i>
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”.

5

8. *Unclaimed Money Act 1990*

Section 9(1)(j)(i) is deleted.

**Schedule 2 — Amendments relating to Broome
Port Authority**

[s. 21]

1. *Constitution Acts Amendment Act 1899*

5 Schedule V, Part 3 is amended by inserting in the appropriate
alphabetical position the following item —

“

The Broome Port Authority established under the *Port Authorities
Act 1998*.

10

”.

2. *Shipping and Pilotage Act 1967*

The Schedule is amended by deleting the item headed “*Broome*”.

3. *Statutory Corporations (Liability of Directors) Act 1996*

15 Schedule 1 is amended by inserting in the appropriate alphabetical
position the following item —

“

Broome Port Authority	a director of the Authority	<i>Port Authorities Act 1998</i>
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”.

**Schedule 3 — Amendments relating to Bunbury
Port Authority**

[s. 21]

1. ***Constitution Acts Amendment Act 1899***

5 Schedule V, Part 3 is amended in the item relating to the Bunbury Port Authority by deleting “constituted under the *Bunbury Port Authority Act 1909*” and substituting the following —

“ established under the *Port Authorities Act 1998* ”.
2. ***Financial Administration and Audit Act 1985***

10 Schedule 1 is amended by deleting the item “Bunbury Port Authority”.
3. ***Harbours and Jetties Act 1928***

The Schedule is amended by deleting the item “The Bunbury Harbour Board Act, 1909 — Section 33.”.
- 15 4. ***Sentencing Act 1995***

Schedule 1 is amended by deleting the item “*Bunbury Port Authority Act 1909* Bunbury Port Authority.”.
5. ***Shipping and Pilotage Act 1967***

20 Section 3 is amended in the definition of “port authority port” by deleting paragraph (b).

“

5

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**Schedule 4 — Amendments relating to Dampier
Port Authority**

[s. 21]

1. *Constitution Acts Amendment Act 1899*

5 Schedule V, Part 3 is amended by inserting in the appropriate
alphabetical position the following item —

“

The Dampier Port Authority established under the *Port Authorities
Act 1998*.

10

”.

2. *Financial Administration and Audit Act 1985*

Schedule 1 is amended by deleting the item “Dampier Port
Authority”.

3. *Public Sector Management Act 1994*

15 Schedule 2, item 7 is deleted.

4. *Sentencing Act 1995*

Schedule 1 is amended by deleting the item “*Dampier Port Authority
Act 1985* Dampier Port Authority.”.

5. *Shipping and Pilotage Act 1967*

20 Section 3 is amended in the definition of “port authority port” by
deleting paragraph (c).

Schedule 1 is amended by deleting the item relating to the Dampier Port Authority and substituting the following item —

Dampier Port Authority a director of the Authority *Port Authorities Act 1998*

”

Section 9(1)(j)(iii) is deleted.

**Schedule 5 — Amendments relating to Esperance
Port Authority**

[s. 21]

- 1. *Constitution Acts Amendment Act 1899***

5 Schedule V, Part 3 is amended in the item relating to the Esperance Port Authority by deleting “established by the *Esperance Port Authority Act 1968*” and substituting the following —

“ established under the *Port Authorities Act 1998* ”.
- 2. *Financial Administration and Audit Act 1985***

10 Schedule 1 is amended by deleting the item “Esperance Port Authority”.
- 3. *Public Sector Management Act 1994***

Schedule 2, item 10 is deleted.
- 4. *Sentencing Act 1995***

15 Schedule 1 is amended by deleting the item “*Esperance Port Authority Act 1968* Esperance Port Authority.”.
- 5. *Shipping and Pilotage Act 1967***

Section 3 is amended in the definition of “port authority port” by deleting paragraph (d).

6. *Statutory Corporations (Liability of Directors) Act 1996*

Schedule 1 is amended by deleting the item relating to the Esperance Port Authority and substituting the following item —

“

Esperance Port Authority	a director of the Authority	<i>Port Authorities Act 1998</i>
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”.

5

7. *Unclaimed Money Act 1990*

Section 9(1)(j)(iv) is deleted.

[s. 21]

5 (1) Section 3 is amended by deleting “Harbour Trust Commissioners”
(3 times) and substituting (in each case) the following —
“ Port Authority ”.

10 (2) Section 3 is amended by deleting “boundaries described in the first
paragraph of the Schedule to the Fremantle Harbour Trust Act, 1902”
and substituting the following —
“
inner harbour in the description of the Port of Fremantle
under the *Port Authorities Act 1998*.
”

15 (3) Section 4 is amended by deleting “Fremantle Harbour Trust
Act, 1902” and substituting the following —
“ *Port Authorities Act 1998* ”.

(1) Section 2 is amended in the definition of “Local authority” by deleting “Harbour Trust Commissioners” and substituting the following —

“ Port Authority ”.

(2) Section 3(b) and (c) are amended by deleting “Harbour Trust Commissioners” and substituting the following —

“ Port Authority ”.

- (3) Section 3 is amended by deleting “boundaries described in the first paragraph of the Schedule to the Fremantle Harbour Trust Act, 1902” and substituting the following —

“

5 inner harbour in the description of the Port of Fremantle
 under the *Port Authorities Act 1998*.

”.

- (4) Section 3(b) is amended by deleting “said Commissioners” (3 times) and substituting (in each case) the following —

10 “ port authority ”.

- (5) Section 4 is amended by deleting “Fremantle Harbour Trust Act, 1902” and substituting the following —

“ *Port Authorities Act 1998* ”.

3. *Constitution Acts Amendment Act 1899*

15 Schedule V, Part 3 is amended in the item relating to the Fremantle Port Authority by deleting “constituted under the *Fremantle Port Authority Act 1902*” and substituting the following —

“ established under the *Port Authorities Act 1998* ”.

4. *Disposal of Uncollected Goods Act 1970*

20 The Schedule is amended by deleting the item “2 Edw. VII, No. 17 Fremantle Port Authority Act, 1902.”.

5. *Financial Administration and Audit Act 1985*

Schedule 1 is amended by deleting the item “Fremantle Port Authority”.

25 **6. *Harbours and Jetties Act 1928***

The Schedule is amended by deleting the item “The Fremantle Harbour Trust Act, 1902 — Section 36.”.

7. Public Sector Management Act 1994

Schedule 2, item 12 is deleted.

8. Sentencing Act 1995

5 Schedule 1 is amended by deleting the item “*Fremantle Port Authority Act 1902* Fremantle Port Authority.”.

9. Shipping and Pilotage Act 1967

Section 3 is amended in the definition of “port authority port” by deleting paragraph (e).

10. South Fremantle Oil Installations Pipe Line Act 1948

10 (1) Section 2 is amended in the definition of “Local authority” by deleting “Harbour Trust Commissioners” and substituting the following —

“ Port Authority ”.

15 (2) Section 3 is amended by deleting “Fremantle Harbour Trust Act, 1902” and substituting the following —

“ *Port Authorities Act 1998* ”.

11. Statutory Corporations (Liability of Directors) Act 1996

Schedule 1 is amended by deleting the item relating to the Fremantle Port Authority and substituting the following item —

20 “
Fremantle Port Authority a director of the Authority *Port Authorities Act 1998*”.

”

”

**Schedule 7 — Amendments relating to Geraldton
Port Authority**

[s. 21]

1. *Constitution Acts Amendment Act 1899*

5 Schedule V, Part 3 is amended in the item relating to the Geraldton Port Authority by deleting “established by the *Geraldton Port Authority Act 1968*” and substituting the following —

“ established under the *Port Authorities Act 1998* ”.

2. *Financial Administration and Audit Act 1985*

10 Schedule 1 is amended by deleting the item “Geraldton Port Authority”.

3. *Public Sector Management Act 1994*

Schedule 2, item 14 is deleted.

4. *Sentencing Act 1995*

15 Schedule 1 is amended by deleting the item “*Geraldton Port Authority Act 1968* Geraldton Port Authority”.

5. *Shipping and Pilotage Act 1967*

Section 3 is amended in the definition of “port authority port” by deleting paragraph (f).

6. *Statutory Corporations (Liability of Directors) Act 1996*

Schedule 1 is amended by deleting the item relating to the Geraldton Port Authority and substituting the following item —

“

Geraldton Port Authority	a director of the Authority	<i>Port Authorities Act 1998</i>
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”.

5

7. *Unclaimed Money Act 1990*

Section 9(1)(j)(vi) is deleted.

**Schedule 8 — Amendments relating to Port Hedland
Port Authority**

[s. 21]

1. *Constitution Acts Amendment Act 1899*

5 Schedule V, Part 3 is amended in the item relating to the Port Hedland Port Authority by deleting “established by the *Port Hedland Port Authority Act 1970*” and substituting the following —

“ established under the *Port Authorities Act 1998* ”.

2. *Financial Administration and Audit Act 1985*

10 Schedule 1 is amended by deleting the item “Port Hedland Port Authority”.

3. *Public Sector Management Act 1994*

Schedule 2, item 37A is deleted.

4. *Sentencing Act 1995*

15 Schedule 1 is amended by deleting the item “*Port Hedland Port Authority Act 1970* Port Hedland Port Authority.”.

5. *Shipping and Pilotage Act 1967*

Section 3 is amended in the definition of “port authority port” by deleting paragraph (g).

Schedule 1 is amended by deleting the item relating to the Port Hedland Port Authority and substituting the following item —

Port Hedland Port Authority	a director of the Authority	<i>Port Authorities Act 1998</i>
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” .

Section 9(1)(j)(vii) is deleted.