



Western Australia

# Port Authorities Act 1999

(Pt. 1, 3-5, 7 and 10 and Sch. 1, 8 and 9)

## Incorporating the amendments proposed by the *Ports Legislation Amendment Bill 2017* Pt. 6 (Bill No. 52-1)

### **Legend:**

**Red** and **Blue** amendments represent insertions/deletions made by the Bill.

**Green** amendments represent insertions/deletions further made by the Bill.



# Port Authorities Act 1999

## Contents

### Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used	2

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

24.	Port areas defined	7
25.	Port authority, property vested in	7
26.	Port property may be taken back by Crown	8
27.	Power to sell land, restrictions on	8
27A.	Land, creating interests in	9
28.	Vested land, creating and dealing with interests in	9
29A.	Operation of <i>Planning and Development Act 2005</i> section 136 modified	9
29.	Disputes between port authority and Crown	9

### Part 4 — Functions and powers

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

30.	Functions	10
31.	Port authorities can act at their discretion	10
32.	Control of port, port authority has	11
33.	Duty to act in accordance with policy instruments	11
34A.	Duty to comply with State budgetary requirements	11
34.	Duty to act on commercial principles	12
35.	Powers generally	12
36.	Port facilities and services, extended powers as to	15
37.	Fees and charges, power to levy	15
38.	Planning laws, application of to port authorities	16
39.	Subsidiaries of port authorities, acquisition of etc.	16
40.	Ministerial approval, transactions requiring	17
41.	Exemptions from s. 40	17
42.	Term used: transaction	18
43.	Major initiatives etc., Minister to be consulted on	18
44.	Delegation by port authority	18

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

45.	People dealing with port authorities may make assumptions	19
46.	Third parties may make assumptions	19

Contents

---

47.	Assumptions that may be made under s. 45 and 46	19
48.	Exception to s. 45 and 46	20
<b>Part 5 — Provisions about accountability</b>		
<b>Division 1 — Strategic development plans</b>		
49.	Draft strategic development plan to be submitted to Minister	21
50.	Period to which strategic development plan relates	21
51.	Matters to be included in strategic development plan	21
52.	Strategic development plan to be agreed if possible	22
53.	Minister's powers in relation to draft strategic development plan	22
54.	Strategic development plan pending agreement	22
55.	Agreed draft becomes strategic development plan	23
56.	Modifying strategic development plan	23
57.	Treasurer's concurrence needed by Minister for s. 55 or 56	23
<b>Division 2 — Statement of corporate intent</b>		
58.	Draft statement of corporate intent to be submitted to Minister	24
59.	Period to which statement of corporate intent relates	24
60.	Matters to be included in statement of corporate intent	25
61.	Statement of corporate intent to be agreed if possible	26
62.	Minister's powers in relation to draft statement of corporate intent	26
63.	Statement of corporate intent pending agreement	27
64.	Agreed draft becomes statement of corporate intent	27
65.	Modifying statement of corporate intent	28
66.	Treasurer's concurrence needed by Minister for s. 64 and 65	28
<b>Division 3 — Reporting requirements</b>		
67.	Half-yearly reports	28
68.	Annual reports	29
69.	Annual reports, contents of	29
70.	Commercially sensitive matters, deletion of from reports	30
<b>Division 4 — Ministerial directions, general provisions</b>		
71.	Which directions port authority obliged to obey	30
72.	Minister may give directions	31
73.	When s. 72(1) direction takes effect	31

	<b>Division 5 — Consultation and provision of information</b>	
74.	Consultation between board and Minister	31
75.	Minister to have access to information	32
76.	Minister to be kept informed	32
77.	Financial difficulty, board to notify Minister of etc.	33
	<b>Division 6 — Protection from liability</b>	
78.	No liability for things done under this Part	34
	<b>Part 7 — Navigation and port matters</b>	
	<b>Division 1 — Navigational aids</b>	
93.	Port authority may provide etc. navigational aids etc.	35
94.	Interference with navigational aids, offence	35
	<b>Division 2 — Pilotage</b>	
95.	Terms used in, and application of, this Division	36
96.	Port authority to approve pilots and ensure pilotage services are provided	36
97.	Pilotage compulsory in ports	37
98.	Pilot under authority of master	38
99.	Liability of owner or master of piloted vessel	38
100.	Immunity from liability for negligent provision of pilotage services	38
	<b>Division 3 — Harbour masters</b>	
101.	Port includes other declared areas	39
102.	Appointment of harbour master and deputy harbour master etc.	39
103.	Functions of harbour master	40
104.	Directions to masters etc.	40
105.	Directions as to dangerous things	41
106.	Limit on power to order removal of vessels or dangerous things	41
107.	Ownerless vessels and dangerous things, removal of	42
108.	Not obeying s. 104 or 106 direction, offence	42
109.	Powers if direction not obeyed	42
110.	Recovering port authority's s. 107 costs	42
111.	Immunity from liability for acts under this Division	43
112.	Hindering harbour master etc., offence	43
	<b>Division 4 — Damage in a port caused by vessels etc.</b>	
113.	Responsibility for damage to port facilities or property	43
	<b>Division 5 — Port safety</b>	
114.	Marine safety plan, port authority to have	45

Contents

---

<b>Division 6 — Powers of police officers and others</b>		
114A.	Police officers and others may enter vessels and conduct examinations and enquiries	45
<b>Division 7 — Protection from liability</b>		
114B.	Immunity from liability for damage to vessels	46
114C.	Immunity from liability for damaged goods	46
114D.	Immunity from liability for delay in delivery of goods	46
114EA.	Immunity from liability for acts or omissions of port users	47
114E.	Immunity from liability for certain events and actions	47
<b>Part 10 — Miscellaneous</b>		
131.	Hindering, offence	48
132.	Individual port authorities, provisions for (Sch. 6)	48
133.	Supplementary provision about laying documents before Parliament	48
134.	Execution of documents by port authority	49
135.	Contracts with port authority, formalities of	50
136.	Overdue amounts, interest on	50
137.	Recovery of expenses due to offence	50
138.	<i>Government Agreements Act 1979</i> not affected	51
139A.	Transitional provisions	51
<b>Schedule 1 — Port authorities and ports</b>		
<b>Schedule 8 — Transitional provisions</b>		
<b>Division 1 — Provisions for <i>Ports Legislation Amendment Act 2014</i></b>		
<b>Subdivision 1 — Preliminary</b>		
1.	Terms used	53
<b>Subdivision 2 — Provisions for the Southern Ports Authority</b>		
2.	Terms used	53
3.	Merger of Albany Port Authority and Esperance Port Authority into Southern Ports Authority	54
4.	Directors and former directors	54
5.	Powers of new board in anticipation of merger	55
6.	CEOs and members of staff	55
7.	Preservation of rights	56
8.	Devolution of assets, liabilities, proceedings, remedies and immunities	56
9.	Completion of things commenced	57
10.	Continuing effect of things done	57
11.	Agreements, instruments and documents	57

12.	Port authorities to implement or facilitate merger and share costs	58
13.	Financial reporting	59
14.	Dividends	61
15.	Transitional regulations	61
	<b>Subdivision 3 — Provisions for the Mid West Ports Authority</b>	
16.	Terms used	62
17.	Directors and former directors	62
18.	Powers of new board in anticipation of renaming	62
19.	CEO and staff	63
20.	Agreements, instruments and documents	64
21.	Port authority to implement or facilitate renaming	64
22.	Transitional regulations	65
	<b>Subdivision 4 — Provisions for the Pilbara Ports Authority</b>	
23.	Terms used	65
24.	Merger of Dampier Port Authority into Pilbara Ports Authority	66
25.	Directors and former directors	66
26.	Powers of new board in anticipation of merger	66
27.	CEOs and members of staff	67
28.	Preservation of rights	67
29.	Devolution of assets, liabilities, proceedings, remedies and immunities	68
30.	Completion of things commenced	69
31.	Continuing effect of things done	69
32.	Agreements, instruments and documents	69
33.	Port authorities to implement or facilitate merger and share costs	70
34.	Financial reporting	71
35.	Dividends	73
36.	Transitional regulations	73
	<b>Subdivision 5 — Provisions for the Kimberley Ports Authority</b>	
37.	Terms used	74
38.	Directors and former directors	74
39.	Powers of new board in anticipation of renaming	74
40.	CEO and staff	75
41.	Agreements, instruments and documents	75
42.	Port authority to implement or facilitate renaming	76
43.	Transitional regulations	76
	<b>Subdivision 6 — Provisions for certain directors</b>	
44.	Certain directors to cease to hold office	77
	<b>Subdivision 7 — General provisions</b>	
45.	Terms used	77
46.	Exemption from State taxes	78
47.	Registration of documents	78

Contents

---

48.	Matters that a new board can deal with	78
49.	Operation of transitional regulations	80
50.	Saving	80
51.	Government agreements not affected	80
	<b>Division 2 — Provisions for <i>Ports Legislation Amendment Act 2017</i></b>	
	<b>Subdivision 1 — Preliminary</b>	
52.	Terms used	81
	<b>Subdivision 2 — Transfer of control and management of some existing ports to port authorities</b>	
53.	Terms used	83
54.	Port transfer: preliminary requirements	83
55.	Port authority to implement and facilitate port transfer	84
56.	Cessation of responsibility for port	84
57.	Vesting of land, seabed and water in port authority	85
58.	Minister may make transitional orders	85
59.	Amending transitional order	87
60.	Provisions as to assets and liabilities	88
61.	Provisions as to agreements and proceedings	89
62.	Navigational aids	90
63.	Harbour masters and deputy harbour masters	90
64.	Pilotage: existing licences	90
65.	Pilotage: existing exemption certificates	91
66.	Jetty licences	92
<u>66A.</u>	<u>Port of Derby: special provisions</u>	94
	<b>Subdivision 3 — General provisions</b>	
67.	Registration of documents	98
68.	Exemption from State taxes	98
69.	Transitional regulations	98
70.	Saving	99
71.	Effect of affecting provisions	100
72.	No exclusion of operation of affecting provisions	100
73.	Effect of continued easements, leases and licences	100
74.	Government agreements not affected	100
75.	Preservation of mining, petroleum and other rights	100
76.	Transitional provision for Schedule 9	101
	<b>Schedule 9 — Placing additional ports under a port authority's control and management</b>	
1.	Terms used	102
2.	Regulations may place a port under the control and management of a port authority	102
3.	Port authority to implement or facilitate port addition	103
4.	Government agreements not affected	103



**Notes**

Compilation table

104



Western Australia

## **Port Authorities Act 1999**

**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.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Port Authorities Act 1999*<sup>1</sup>.

### **2. Commencement**

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation<sup>1</sup>.

### **3. Terms used**

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

**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);

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

**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;

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth;

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

**damage** includes alter, destroy or remove;

**dangerous thing** means —

- (a) a vessel or part of a vessel; or
- (b) a wreck and any cargo, fuel or other thing on or in it; or
- (c) any other thing,

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;

**goods** includes —

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

- (c) petroleum and hydrocarbon products; and
- (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 authorised under that section to perform the harbour master's functions;

**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, 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;

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

**maritime structure** means —

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

**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 or who becomes a member of staff by operation of this Act;

**mooring** includes anchoring and berthing;

**movement**, in relation to —

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

**s. 3**

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

- (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;
- (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;

**port** means a port named in Schedule 1 or placed under the control and management of a port authority by regulations in accordance with Schedule 9 and the **port** or **its port**, in relation to a port authority, means —

- (a) the port that the port authority controls and manages; or
- (b) if the port authority controls and manages more than one port — each of those ports;

**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 115 as affected by section 136(3);

**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; and
- (b) railways; and
- (c) machinery, equipment, vessels, vehicles and aircraft;

**port land** means vested [land, land acquired by a port authority or other land that becomes the property of a port authority under this Act](#); ~~land or land acquired by a port authority;~~

**port operations** means —

- (a) the carrying out of port activities or port works; or
- (b) the provision of port services; or
- (c) the provision, management or operation of port facilities;

**port property**, in relation to a port authority, means —

- (a) port facilities; or
- (b) vested property; or
- (c) other property held by the port authority;

**port security** means all matters relating to —

- (a) the preservation and protection of —
  - (i) port property; or
  - (ii) any other vessel, vehicle or other property within the port,  
from damage, destruction or unlawful activity; and
- (b) the protection of people within the port from injury or unlawful activity;

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

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

**potential supplier** means —

- (a) a person who might become a supplier of port services;  
or
- (b) a person who might become a supplier of port services and, for that purpose, provide related port facilities;

**subsidiary** means —

- (a) a body determined to be a subsidiary of a port authority under subsection (4); or
- (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; or
  - (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;

**Treasurer** means the Treasurer of the State;

**vessel** has the meaning given by subsections (2) and (3);

**vested** means [vested in a port authority under this Act](#);

**s. 3**

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*vested land* includes vested seabed and vested water.

~~*vested, in relation to land or other property, means vested in a port authority under this Act.*~~

- (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.
- (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.
- (4) Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of a port authority.

*[Section 3 amended by No. 10 of 2001 s. 157; No. 74 of 2003 s. 93(2); No. 8 of 2009 s. 102(2) and (3); No. 46 of 2009 s. 17; No. 39 of 2010 s. 81(2); No. 9 of 2014 s. 4; [Ports Legislation Amendment Bill 2017 cl. 43.](#)]*



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

#### 24. Port areas defined

- (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 —
  - (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. Port authority, property vested in

- (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;
  - (b) in the case of a port that was named in Schedule 1 before the coming into operation of the *Ports and Marine Legislation Amendment Act 2003* section 4, all navigational aids that, immediately before the coming into operation of that section —
    - (i) were in the port, or used in connection with navigation into or out of the port; and
    - (ii) belonged to the State;~~(b) all navigational aids that, immediately before the coming into operation of section 4 of the *Ports and Marine Legislation Amendment Act 2003*<sup>†</sup> —~~
    - ~~(i) were in the port, or used in connection with navigation into or out of the port; and~~
    - ~~(ii) belonged 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 —
  - (a) any improvements effected on vested land leased to another person that have been acquired on the termination of the lease concerned;

**s. 26**

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(b) any real or personal property (other than property referred to in subsection (1) or paragraph (a)) that —

(i) is acquired by the port authority; or

(ii) is vested in the port authority by the Governor for the purposes of this Act; or

(iii) is vested in, or becomes the property of, the port authority under this Act.

~~(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.~~

*[Section 25 amended by No. 71 of 2003 s. 4(1)<sup>2</sup>; [Ports Legislation Amendment Bill 2017 cl. 44.](#)]*

**26. Port property may be taken back by 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.
- (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.

**27. Power to sell land, restrictions on**

- (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.
- (3) In this section —  
*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.

*[Section 27 amended by No. 9 of 2014 s. 10.]*

**27A. Land, creating interests in**

The power of a port authority to grant easements, leases or licences in respect of port land extends to easements, leases or licences for any purposes the port authority thinks fit.

*[Section 27A inserted by No. 71 of 2003 s. 5.]*

**28. Vested land, creating and dealing with interests in**

- (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.
- (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.
- (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.

**29A. Operation of *Planning and Development Act 2005* section 136 modified**

A port authority does not have to obtain approval under the *Planning and Development Act 2005* section 136 in order to grant a lease or licence in respect of port land.

*[Section 29A inserted by No. 9 of 2014 s. 11.]*

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

- (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 —
- (a) to facilitate trade within and through the port and plan for future growth and development of the port; and
  - (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; and
  - (c) to control business and other activities in the port or in connection with the operation of the port; and
  - (d) to be responsible for the safe and efficient operation of the port; and
  - (e) to be responsible for maintaining port property; and
  - (fa) to be responsible for port security; and
  - (f) to protect the environment of the port and minimise the impact of port operations on that environment.
- (2) It is also a function of a port authority —
- (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
  - (aa) to use or exploit its fixed assets for profit so long as the proper performance of its functions under subsection (1) is not affected; or
  - (b) to do things that it is authorised to do by any other written law.
- (3) A port authority may perform any of its functions in the State or elsewhere.

*[Section 30 amended by No. 71 of 2003 s. 6; No. 9 of 2014 s. 12.]*

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

- (1) The fact that a port authority has a function given to it by [this Act or any other written law](#) ~~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.

- (2) Nothing in this Act limits or otherwise affects the operation of the *Environmental Protection Act 1986* in relation to a port, a port authority or port operations.

*[Section 31 amended by No. 9 of 2014 s. 13; [Ports Legislation Amendment Bill 2017 cl. 45.](#)]*

**32. Control of port, port authority has**

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**

Subject to section 34A, 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.

*[Section 33 amended by No. 9 of 2014 s. 14.]*

**34A. Duty to comply with State budgetary requirements**

- (1) In this section —

***approved*** means approved from time to time by the Government for the port authority and communicated in writing by the Treasurer to the port authority;

***Government*** includes —

- (a) Cabinet; and
- (b) a committee of Cabinet; and
- (c) a subcommittee of a committee of Cabinet; and
- (d) the Treasurer.

- (2) A port authority in performing its functions must —

- (a) comply with approved requirements as to capital works expenditure limits and associated funding; and
- (b) endeavour to achieve financial outcomes that are consistent with forecasts contained in approved income and cash flow statements and approved statements of financial position.

- (3) If there is any conflict or inconsistency between the duty imposed by subsection (2) and the duty imposed by section 33, the duty imposed by subsection (2) prevails.

*[Section 34A inserted by No. 9 of 2014 s. 15.]*

**Port Authorities Act 1999**

**Part 4** Functions and powers

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

**s. 34**

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

- (1) A port authority in performing its functions must —
  - (a) act in accordance with prudent commercial principles; and
  - (b) endeavour to make a profit.
- (2) If there is any conflict or inconsistency between the duty imposed by subsection (1) and the duty imposed by section 33, the duty imposed by section 33 prevails.

**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.
- (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; and
  - (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; and
  - (c) carry out port works or arrange for port works to be carried out; and
  - (d) provide, manage and operate port facilities or arrange for port facilities to be provided, managed and operated; and
  - (e) provide port services or arrange for port services to be provided; and
  - (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; and
  - (g) apply for the grant of any licence or other authority required by the port authority; and
  - (h) acquire, establish and operate —
    - (i) any undertaking necessary or convenient for the performance of the function; and
    - (ii) any associated undertaking;and
  - (i) produce and deal in any equipment, facilities or system associated with, the performance of the function; and

- (j) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the port authority; and
  - (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; and
  - (l) carry out any investigation, survey, exploration or feasibility study; and
  - (m) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research; and
  - (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; and
  - (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.
- (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.
- (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 and on providing such approval, the Minister must table in Parliament within 14 days, full reasons for his decision to grant an exclusive licence.
- (6) In —
- (a) entering into or negotiating a contract or arrangement for the purposes of subsection (2)(b) to (f); or
  - (b) issuing, or dealing with an application for, a licence authorising the holder to provide port services,
- a port authority must not —
- (c) impose, or purport to impose, an obligation on any person; or

**Port Authorities Act 1999**

**Part 4** Functions and powers

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

**s. 35**

---

- (d) seek an undertaking from any person,  
as to the method by which, or manner in which, the person's employees are to be employed other than an obligation or undertaking that the method or manner be lawful.
- (7) A port authority may —
- (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;
  - (c) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the port authority.
- (8) 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*.
- (9A) Subject to the *Environmental Protection Act 1986*, port operations may take place on any day and at any time.
- (9) In this section —
- business arrangement** means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;
- participate** includes form, promote, establish, enter, manage, dissolve, wind up, and do things incidental to participating in a business arrangement;
- port activities** means —
- (a) the movement, mooring, hauling out, maintenance and launching of vessels; and
  - (b) the movement of, and provision of services to, passengers of vessels; and
  - (c) the movement, handling and storage of goods;
- port services** means —
- (a) carrying out port activities; and
  - (b) dredging, engineering, marine civil construction, pollution management, security, pilotage, towage, vessel movement control, emergency response, shore stabilization and waste management services; and
  - (c) supplying provisions or equipment to vessels; and
  - (d) supplying water, fuel or electricity; and



- (e) providing for the use or hire of port facilities; and
- (f) providing labour for any purpose; and
- (g) any other services prescribed by regulation for the purposes of this definition;

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

- (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.

*[Section 35 amended by No. 9 of 2014 s. 16.]*

**36. Port facilities and services, extended powers as to**

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

- (a) providing, managing or operating port facilities outside the port; and
- (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.

**37. Fees and charges, power to levy**

- (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.
- (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.

**Port Authorities Act 1999**

**Part 4** Functions and powers

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

**s. 38**

---

**38. Planning laws, application of to port authorities**

(1) In this section —

*port authority* includes —

- (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).

(2) For the purposes of port works and port facilities, the *Planning and Development Act 2005* section 6 applies to a port authority as if it were an agency of the Crown in right of the State.

(3) Without limiting section 35(8), port works and port facilities are to be regarded as being public works for the purposes of section 6 of the *Planning and Development Act 2005* as applied by subsection (2).

*[(4), (5) deleted]*

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

(7) The Minister may, after consulting the Minister administering the *Planning and Development Act 2005*, make a decision on the dispute and that decision is final and binding on the parties.

*[Section 38 amended by No. 74 of 2003 s. 93(3); No. 38 of 2005 s. 15; No. 24 of 2011 s. 169.]*

**39. Subsidiaries of port authorities, acquisition of etc.**

(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.

(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 —

- (a) contain provisions to the effect of those required by Schedule 4; and
- (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) 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. Ministerial approval, transactions requiring**

- (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 —
  - (a) it is to be entered into by a port authority or a subsidiary of a port authority; and
  - (b) it is not exempt under section 41; and
  - (c) the port authority's liability exceeds the prescribed amount.

[\(3A\) Regulations are not to be made for the purposes of subsection \(3\)\(c\) except with the Treasurer's concurrence.](#)

- (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.

[\[Section 40 amended by the Ports Legislation Amendment Bill 2017 cl. 46.\]](#)

**41. Exemptions from s. 40**

- (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.

**Port Authorities Act 1999**

**Part 4** Functions and powers

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

**s. 42**

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- (3) An order under subsection (1) or (2) is to show sufficient particulars of the transaction or class of transaction to which it relates to enable the transaction or class to be identified.
- (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. Term used: transaction**

In sections 40 and 41 —

*transaction* —

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

**43. Major initiatives etc., Minister to be consulted on**

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

- (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 by port authority**

- (1) A port authority may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.
- (2) A delegation under subsection (1) may be made to —
  - (a) a director or directors; or
  - (b) the CEO; or
  - (c) a member of staff; or
  - (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 authorised by the instrument of delegation to do so.

- (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.
- (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 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.
- (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**

- (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.
- (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 under s. 45 and 46**

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

- (a) that, at all relevant times, this Act has been complied with; and
- (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 —
  - (i) has been properly appointed; and

**Port Authorities Act 1999**

**Part 4** Functions and powers

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

**s. 48**

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- (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;
- and
- (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; and
  - (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; and
  - (e) that a document has been properly sealed by a port authority if —
    - (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.

**48. Exception to s. 45 and 46**

- (1) Despite sections 45 and 46, a person is not entitled to assume a matter mentioned in section 47 if —
  - (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.
- (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.
- (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**

- (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.
- (2) The Minister may from time to time, with the concurrence of the Treasurer, by written notice to the board of a port authority —
  - (a) fix a day in each year by which a draft strategic development plan is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).
- (3) Each draft strategic development plan is to be submitted not later than —
  - (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed — 3 months before the start of the next financial year.

*[Section 49 amended by No. 77 of 2006 s. 11(2).]*

#### **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**

- (1) A strategic development plan must set out —
  - (a) 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; and
  - (b) an environmental management plan for the port.
- (2) The matters that are to be considered by a board in the preparation of a strategic development plan include —
  - (a) competitive strategies, pricing, service efficiency and effectiveness, participation of potential suppliers, strategies for land use and infrastructure maintenance, financial requirements, capital expenditure, investment

**Port Authorities Act 1999**

**Part 5** Provisions about accountability

**Division 1** Strategic development plans

**s. 52**

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strategy, customer service arrangements, relevant government policy, personnel requirements, trade projections, trade facilitation and the environmental management of the port; and

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

*[Section 51 amended by No. 9 of 2014 s. 17.]*

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

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**

- (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 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 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 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**

- (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) —

**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. Agreed draft becomes strategic development plan**

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. Modifying strategic development plan**

- (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.
- (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. Treasurer's concurrence needed by Minister for s. 55 or 56**

- (1) 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,

except with the Treasurer's concurrence.

**Port Authorities Act 1999**

**Part 5** Provisions about accountability

**Division 2** Statement of corporate intent

**s. 58**

---

- (2) Without limiting section 34A, any agreement or concurrence mentioned in subsection (1) has effect subject to the reservation that the port authority must —
- (a) comply with the requirements mentioned in section 34A(2)(a); and
  - (b) endeavour to achieve the financial outcomes mentioned in section 34A(2)(b),

whether or not they are consistent with the strategic development plan or modified strategic development plan, as the case may be.

*[Section 57 amended by No. 9 of 2014 s. 18.]*

**Division 2 — Statement of corporate intent**

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

- (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) The Minister may from time to time, with the concurrence of the Treasurer, by written notice to the board of a port authority —
- (a) fix a day in each year by which a draft statement of corporate intent is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).
- (3) Each draft statement of corporate intent is to be submitted not later than —
- (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed — 3 months before the start of the next financial year.

*[Section 58 amended by No. 77 of 2006 s. 11(3).]*

**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**

- (1) A statement of corporate intent must be consistent with the strategic development plan under Division 1 for the port authority and any subsidiary.
- (2) A statement of corporate intent for a port authority and any subsidiary must specify —
  - (a) an outline of the port authority’s objectives; and
  - (b) an outline of major planned achievements; and
  - (c) proposed arrangements to facilitate trade; and
  - (d) estimates of operating revenue and expenditure; and
  - (e) an outline of capital expenditure and borrowing requirements; and
  - (f) proposed pricing arrangements; and
  - (g) proposed provisions for dividends; and
  - (h) the performance targets and other measures by which performances may be judged and related to objectives; and
  - (i) accounting policies that apply to the preparation of accounts; and
  - (j) the type of information to be given to the Minister, including information to be given in half-yearly and annual reports; and
  - ~~(ka) proposed arrangements to facilitate the participation of potential suppliers in the provision of port services or, if no arrangements are proposed, the reason and justification for their absence; and~~
  - (k) the nature and extent of community service obligations that are to be performed; and
  - (l) the costings of, funding for, or other arrangements to make adjustments relating to, community service obligations; and
  - (m) the ways in which, and the extent to which, compensation will be made for performing community service obligations; and
  - (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 and any such exemptions are to

**Port Authorities Act 1999**

**Part 5** Provisions about accountability

**Division 2** Statement of corporate intent

**s. 61**

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be noted in the statement of corporate intent of the relevant port authority.

- (4) A community service obligation arises for the purposes of subsection (2) if —
- (a) the Minister specifically requires a port authority to do something; and
  - (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.

*[Section 60 amended by No. 9 of 2014 s. 19; [Ports Legislation Amendment Bill 2017 cl. 47.](#)]*

**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.

**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
  - (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 —
- (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) 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**

- (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) —  
*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. Agreed draft becomes statement of corporate intent**

- (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.
- (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.
- (4) Any copy of a statement of corporate intent to which subsection (3) applies must contain a statement detailing the reasons for the deletion at the place in the document where the information deleted would otherwise appear and be accompanied by an opinion from the Auditor General stating whether or not the information deleted is commercially sensitive.

**65. Modifying 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.
- (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.

**66. Treasurer's concurrence needed by Minister for s. 64 and 65**

- (1) The Minister is not to —
  - (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.
- (2) Without limiting section 34A, any agreement or concurrence mentioned in subsection (1) has effect subject to the reservation that the port authority must —
  - (a) comply with the requirements mentioned in section 34A(2)(a); and
  - (b) endeavour to achieve the financial outcomes mentioned in section 34A(2)(b),

whether or not they are consistent with the statement of corporate intent or modified statement of corporate intent, as the case may be.

*[Section 66 amended by No. 9 of 2014 s. 20.]*

**Division 3 — Reporting requirements**

**67. Half-yearly reports**

- (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 —
  - (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.
- (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**

- (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.
- (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. Annual reports, contents of**

- (1) The annual report in respect of a port authority or a subsidiary must —
  - (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; and
  - (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; and

**Port Authorities Act 1999**

**Part 5** Provisions about accountability

**Division 4** Ministerial directions, general provisions

**s. 70**

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- (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
  - (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; and
  - (e) include total value of payments and details of remuneration made to directors of the board of the port authority; and
  - (f) provide a summary of the performance of the port authority in relation to its function under section 30(1)(f).
- (2) The requirements of this section are in addition to Schedule 5, clauses 34 and 35.

**70. Commercially sensitive matters, deletion of from reports**

- (1) A board may request the Minister to delete a matter from the copies of a report (and accompanying documents) that are to be made public if the board believes, on reasonable grounds, that the disclosure of the matter would compromise the competitiveness or commercial operations of another person.
- (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 has been deleted from it under this section.

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

**71. Which directions port authority obliged to obey**

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.

**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.
- (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 —
  - (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.

**73. When s. 72(1) direction takes 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
  - (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 7 day period has expired.

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

**74. Consultation between board and Minister**

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 —
  - (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.
- (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 —

- (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; and

- (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 —
  - (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. Financial difficulty, board to notify Minister of etc.**

- (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 subsidiary at the time the financial obligation is due.
- (2) The notice must —
  - (a) be in writing; and
  - (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.

**Port Authorities Act 1999**

**Part 5** Provisions about accountability

**Division 6** Protection from liability

**s. 78**

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**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 7 — Navigation and port matters**

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

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

- (1) A port authority may —
  - (a) provide navigational aids for the port; or
  - (b) agree to take over the control of a navigational aid for the port; or
  - (c) maintain, move, remove, discontinue or replace any navigational aid provided by or under the control of the port authority; or
  - (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 —
  - (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 —
  - (a) the State; and
  - (b) the port authority; and
  - (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.

**94. Interference with navigational aids, offence**

- (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;

**Port Authorities Act 1999**

**Part 7** Navigation and port matters

**Division 2** Pilotage

**s. 95**

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- (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.

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. Terms used in, and application of, this Division**

- (1) In this Division —
  - 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.
- (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 —
  - (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 pilotage services are provided**

- (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.
- (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 or acts under the authority of a pilotage exemption certificate under the regulations.](#) ~~the port.~~  
Penalty: \$10 000.
- (5) A port authority is responsible for ensuring that pilotage services are provided in its port —
  - (a) by the port authority; or
  - (b) if regulations under section 143 provide that a person providing pilotage services in the port needs a licence referred to in that section, by a person who holds such a licence; or
  - (c) partly under paragraph (a) and partly under paragraph (b).
- (6) A reference in subsection (5) to pilotage services provided by the port authority includes a reference to pilotage services provided under a contract or arrangement under section 35(2).
- (7) Subject to subsection (8), any charges for pilotage services provided in a port —
  - (a) are to be determined under section 37; and
  - (b) are to be paid to the port authority, irrespective of how or by whom they are provided.
- (8) If regulations under section 143 provide that a person providing pilotage services in the port needs a licence referred to in that section, subsection (7) does not apply in relation to pilotage services provided by a person who holds such a licence.

*[Section 96 amended by No. 9 of 2014 s. 23; [Ports Legislation Amendment Bill 2017 cl. 48.](#)]*

**97. Pilotage compulsory in ports**

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

**Port Authorities Act 1999**

**Part 7** Navigation and port matters

**Division 2** Pilotage

**s. 98**

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- (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.

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
  - (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**

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 piloted vessel**

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 negligent provision of pilotage services**

- (1) Neither the State nor the port authority is liable for any loss or damage resulting from —
- (a) an act or omission by a port authority, a harbour master or a member of staff of a port authority in connection with the provision of pilotage services; or
  - (b) 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.
- (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.

*[Section 100 amended by No. 9 of 2014 s. 24.]*

### **Division 3 — Harbour masters**

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

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

- (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 of harbour master and deputy harbour master etc.**

- (1) In this section —  
*eligible person* means —
  - (a) the CEO; or
  - (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 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 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 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,

**Port Authorities Act 1999**

**Part 7** Navigation and port matters

**Division 3** Harbour masters

**s. 103**

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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) 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. Functions of harbour master**

- (1) The principal functions of a harbour master are —
  - (a) to control the movement and mooring of vessels in the port; and
  - (b) to ensure the port is kept free of obstructions or possible obstructions to vessels using the port; and
  - (c) to ensure that the safety of people and property in the port is not endangered by vessels or dangerous things; and
  - (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 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.

**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;
  - (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.
- (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.

**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.
- (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 —
- (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.

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

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

**107. Ownerless vessels and dangerous things, removal of**

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. Not obeying s. 104 or 106 direction, offence**

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.
- (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.
- (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. Recovering port authority's s. 107 costs**

- (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,

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.
- (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,

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 —

- (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. Hindering harbour master etc., offence**

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.**

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

- (1A) In this section —

*prescribed thing* means —

- (a) any floating object; or
- (b) any material, product or substance (whether solid, liquid or gas); or
- (c) any vehicle, plant, machinery, equipment or infrastructure.

- (1) This section applies if any port facility or other property of a port authority is damaged by —
  - (a) a vessel or its equipment or cargo; or
  - (b) a prescribed thing; or

**Port Authorities Act 1999**

**Part 7** Navigation and port matters

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

**s. 113**

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(c) any person employed in, on or in relation to, a vessel, or its equipment or cargo, or a prescribed thing.

*[(d) deleted]*

- (2) If this section applies, the owner of the vessel or prescribed thing 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.
- (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 or control of the prescribed thing, 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.
- (5) If the owner of any vessel or prescribed thing —
- (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
  - (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.
- (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
  - (b) any economic loss suffered by the port authority as a result of the damage.

*[Section 113 amended by No. 9 of 2014 s. 25.]*

### **Division 5 — Port safety**

#### **114. Marine safety plan, port authority to have**

- (1) In this section —  
*marine safety plan* means a plan prepared by a port authority and approved by the Minister setting out the arrangements for marine safety at the port.
- (2) A port authority is to have, maintain and implement a marine safety plan for its port.
- (3) The Minister 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
  - (b) direct the port authority to review the plan from time to time and submit modifications of it to the Minister for approval.
- (4) The port authority is to give effect to any direction under subsection (3).
- (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.

### **Division 6 — Powers of police officers and others**

*[Heading inserted by No. 71 of 2003 s. 7.]*

#### **114A. Police officers and others may enter vessels and conduct examinations and enquiries**

- (1) An authorised officer may at any time enter a vessel in a port and conduct any examination or enquiry that the authorised officer considers necessary to determine whether there has been compliance with this Act.
- (2) In this section —  
*authorised officer* means —
  - (a) a police officer; or
  - (b) a member of staff of the port authority, or another person, authorised by the port authority for the purposes of this section.

*[Section 114A inserted by No. 71 of 2003 s. 7.]*

**Division 7 — Protection from liability**

*[Heading inserted by No. 71 of 2003 s. 7.]*

**114B. Immunity from liability for damage to vessels**

- (1) Without limiting any other provision of this Part, a port authority is not liable for any loss or damage caused to a vessel in its port.
- (2) Without limiting subsection (1) or any other provision of this Part, a port authority is not liable for any loss or damage caused to a vessel in its port —
  - (a) that results from —
    - (i) the master of the vessel complying with a direction given in good faith; or
    - (ii) a thing done or omitted to be done in good faith in respect of the vessel, by the harbour master or a member of the staff of the port authority; or
  - (b) that results from a defect in a mooring, anchorage or berth, or anything else, provided by the port authority.

*[Section 114B inserted by No. 71 of 2003 s. 7.]*

**114C. Immunity from liability for damaged goods**

- (1) A port authority is not liable for any loss or damage caused to any goods that a person (other than the port authority) —
  - (a) loads on to or unloads from a vessel at the port; or
  - (b) stores at the port.
- (2) The port authority does not become liable for any loss or damage caused to any goods referred to in subsection (1)(b) stored in an uncovered or unprotected manner at the port because the port authority provides, or attempts to provide, any temporary cover or protection for those goods.

*[Section 114C inserted by No. 71 of 2003 s. 7.]*

**114D. Immunity from liability for delay in delivery of goods**

A port authority is not liable for any loss caused by or relating to a delay in the delivery of any goods loaded on to or unloaded from a vessel at the port.

*[Section 114D inserted by No. 71 of 2003 s. 7.]*



**114EA. Immunity from liability for acts or omissions of port users**

- (1) A port authority is not liable for any loss or damage resulting from an act or omission of a person who is, or is acting on behalf of, a user of its port.
- (2) Subsection (1) does not affect any liability a port authority might have for breach of contract.

*[Section 114EA inserted by No. 9 of 2014 s. 26.]*

**114E. Immunity from liability for certain events and actions**

- (1) A port authority is not liable for any loss or damage resulting from an event outside the control of the port authority, including —
  - (a) an act of God; or
  - (b) an act of war; or
  - (c) an act of public enemies; or
  - (d) any insurrection, revolution or civil disorder; or
  - (e) the unlawful seizure or control of any people or any vessels, vehicles or other property; or
  - (f) any industrial disputes of any kind, including strikes, lockouts, stoppages or restraints of labour (whether partial or general) from any cause; or
  - (g) the use for the purpose of war or defence, or training or preparation for war or defence, of any port facilities or other property of the port authority.
- (2) A port authority is not liable for any loss or damage resulting from any action taken or caused to be taken by the port authority under section 27 or 28 of the *Pollution of Waters by Oil and Noxious Substances Act 1987*.

*[Section 114E inserted by No. 71 of 2003 s. 7.]*

## **Part 10 — Miscellaneous**

### **131.     Hindering, offence**

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

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 authorised to be done by or under this Act; or
  - (aa) obstructs, impedes or interferes with —
    - (i) port facilities or other property of a port authority; or
    - (ii) the operation of port facilities or other property of a port authority;
- or
- (ab) causes a nuisance in a port; or
  - (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, who is acting in the performance of functions under this Act.

*[Section 131 amended by No. 71 of 2003 s. 8.]*

### **132.     Individual port authorities, provisions for (Sch. 6)**

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.

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

- (1) If —
- (a) at the commencement of a period referred to in section 35(5), 41(4), 53(5), 56(4), 62(5), 64(2), 65(4), 68(3), 72(2), 84(9) or 114(5) or Schedule 2, clause 2(3) or 8(7) or Schedule 5, clause 33(6) or 37(1) in respect of a document a House of Parliament is not sitting; and

- (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.

- (2) A copy of a document transmitted to the Clerk of a House is taken to have been laid before that House.
- (3) The laying of a copy of a document that is taken to have occurred under subsection (2) 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.

*[Section 133 amended by No. 8 of 2009 s. 102(4) and (5); No. 9 of 2014 s. 27.]*

**134. Execution of documents by port authority**

- (1) A port authority is to have a common seal.
- (2) A document is duly executed by a port authority if —
- (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.
- (4) A port authority may, by writing under its common seal, authorise a director, the CEO, a member of staff or other agent of the port authority to execute documents on its behalf.
- (5) An authorisation under subsection (4) —
- (a) may be given —
    - (i) either generally or in respect of a specified matter or specified matters; and
    - (ii) so as to authorise 2 or more persons to execute documents jointly;and
  - (b) may be presumed by a person dealing with the port authority to continue —
    - (i) during any period for which it is conferred; or

**s. 135**

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- (ii) if subparagraph (i) does not apply, until notice of termination of the authority is given to the person so dealing.
- (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. Contracts with port authority, formalities of**

- (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.
- (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.

**136. Overdue amounts, interest on**

- (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.
- (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 specified in the agreement.

**137. Recovery of expenses due to offence**

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.

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

The operation of the *Government Agreements Act 1979* in relation to this Act is not limited or otherwise affected by —

- (a) Schedule 6 clause 1.3 or 2.3 or the mention of particular agreements in those clauses; or
- (b) the affecting provisions as defined in Schedule 8 clause ~~45 or 52; or 45; or~~
- (c) Schedule 9 or regulations referred to in Schedule 9.

*[Section 138 inserted by No. 9 of 2014 s. 28(1); amended by No. 9 of 2014 s. 28(2); [Ports Legislation Amendment Bill 2017 cl. 49.](#)]*

**139A. Transitional provisions**

Schedule 8 sets out transitional provisions.

*[Section 139A inserted by No. 9 of 2014 s. 29.]*

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**Schedule 1 — Port authorities and ports**

[s. 4]

*[Heading inserted by No. 9 of 2014 s. 30.]*

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Name of port authority</b>	<b>Port or ports</b>
1	Fremantle Port Authority	Port of Fremantle
<i>[2 deleted]</i>		
3	Southern Ports Authority	Port of Albany Port of Bunbury Port of Esperance
<i>[4 deleted]</i>		
5	Mid West Ports Authority	<a href="#">Port of Cape Cuvier</a> Port of Geraldton <a href="#">Port of Useless Loop</a>
<i>[6 deleted]</i>		
7	Pilbara Ports Authority	Port of Ashburton <a href="#">Port of Barrow Island</a> <a href="#">Port of Cape Preston</a> Port of Dampier <a href="#">Port of Onslow</a> Port of Port Hedland <a href="#">Port of Varanus Island</a> <a href="#">Port Walcott</a>
8	Kimberley Ports Authority	Port of Broome <a href="#">Port of Derby</a> <a href="#">Port of Wyndham</a> <a href="#">Port of Yampi Sound</a>

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*[Schedule 1 inserted by No. 9 of 2014 s. 30; amended by No. 9 of 2014 s. 31; [Ports Legislation Amendment Bill 2017 cl. 50.](#)]*



**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 3**

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*merging authority* means the Albany Port Authority or the Esperance Port Authority;

*new board* means the board of directors established under clause 4(3);

*SPA* means the continuing authority as renamed as the Southern Ports Authority by operation of section 31(1)(a) of the amending Act;

*transitional regulations* has the meaning given in clause 15(1).

*[Clause 2 inserted by No. 9 of 2014 s. 35.]*

**3. Merger of Albany Port Authority and Esperance Port Authority into Southern Ports Authority**

- (1) At the merger time the Albany Port Authority and the Esperance Port Authority cease to be port authorities under this Act and merge into the SPA.
- (2) From the merger time the SPA is a continuation of each of the merging authorities.

*[Clause 3 inserted by No. 9 of 2014 s. 35.]*

**4. Directors and former directors**

- (1) Immediately before the merger time a person then holding office as a director of a merging authority or the continuing authority ceases to hold that office.
- (2) From the merger time —
  - (a) a former director of a merging authority is to be taken to be a former director of the SPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*; and
  - (b) a former director of the continuing authority is a former director of the SPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.
- (3) The board of directors of the SPA may be established by the appointment of directors before the merger time.
- (4) For the purposes of Schedule 2 clause 1 the term of office of a director appointed under subclause (3) does not begin until the merger time.
- (5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

*[Clause 4 inserted by No. 9 of 2014 s. 35.]*



**5. Powers of new board in anticipation of merger**

- (1) The new board may —
  - (a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the merger; and
  - (b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48.
- (3) For the purposes of subclause (1) the new board may incur costs for which the continuing authority is liable.

*[Clause 5 inserted by No. 9 of 2014 s. 35.]*

**6. CEOs and members of staff**

- (1) Immediately before the merger time a person then holding office as the CEO of the continuing authority or a merging authority ceases to hold that office.
- (2) At the merger time, a person who was —
  - (a) the CEO of the continuing authority; or
  - (b) the CEO or a member of staff of a merging authority,immediately before the merger time becomes a member of staff of the SPA.
- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the merger time the continuing authority or a merging authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
  - (a) terminate the contract of employment of the CEO or member of staff; or
  - (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 5 include the power to appoint a person as the CEO of the SPA before the merger time.
- (6) Until the merger time a person appointed under subclause (5) may, as CEO of the SPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the merger.

*[Clause 6 inserted by No. 9 of 2014 s. 35.]*

**7. Preservation of rights**

- (1) Except as otherwise agreed by the relevant CEO or member of staff, the operation of clause 6(1) or (2) does not —
  - (a) affect his or her remuneration; or
  - (b) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
  - (c) affect any rights under a superannuation scheme; or
  - (d) interrupt the continuity of his or her service.
- (2) For the purposes of subclause (1)(d), the service of a CEO or member of staff with a merging authority is to be taken to have been with the SPA.
- (3) If a person who is the CEO or a member of staff of the continuing authority or a merging authority is appointed under clause 6(5), the appointment does not —
  - (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
  - (b) affect any rights under a superannuation scheme; or
  - (c) interrupt the continuity of his or her service,

and, if the person was the CEO or a member of staff of a merging authority, his or her service with the merging authority is to be taken, for the purposes of paragraph (c), to have been with the SPA.

- (4) Nothing in clause 6 or this clause prevents the exercise by the SPA of its powers in relation to the management of members of staff.

*[Clause 7 inserted by No. 9 of 2014 s. 35.]*

**8. Devolution of assets, liabilities, proceedings, remedies and immunities**

- (1) At the merger time —
  - (a) the assets and rights of a merging authority that were immediately before that time vested in or the property of the merging authority vest in or become the property of the SPA by force of this clause; and
  - (b) the liabilities of a merging authority immediately before that time become, by force of this clause, the liabilities of the SPA.
- (2) For the purposes of section 26, property referred to in section 25(2)(a) that becomes the property of the SPA by force of subclause (1)(a) continues to be regarded as property referred to in section 25(2)(a).

- (3) In determining the net profits of the SPA for the purposes of section 84, assets that become the property of the SPA by force of subclause (1)(a) are not to be regarded as income.
- (4) From the merger time, any proceedings or remedy that, immediately before that time, might have been brought or continued by or available against or to a merging authority may be brought or continued by, and are or is available against or to, the SPA.
- (5) Where a merging authority had the benefit of any immunity in respect of an act, matter or thing done or omitted before the merger time, that immunity continues in that respect for the benefit of the SPA.
- (6) As soon as is practicable after the merger time, all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of a merging authority are to be delivered to the SPA.

*[Clause 8 inserted by No. 9 of 2014 s. 35.]*

**9. Completion of things commenced**

Anything commenced to be done by a merging authority before the merger time may be continued by the SPA.

*[Clause 9 inserted by No. 9 of 2014 s. 35.]*

**10. Continuing effect of things done**

- (1) In this clause —  
***relevant act*** means an act, matter or thing done or omitted to be done before the merger time by, to or in respect of a merging authority.
- (2) To the extent that a relevant act has force or significance at the merger time it is to be taken, from the merger time, to have been done or omitted by, to or in respect of the SPA so far as the act, matter or thing is relevant to the SPA.
- (3) This clause does not affect the operation of any other provision of this Schedule.

*[Clause 10 inserted by No. 9 of 2014 s. 35.]*

**11. Agreements, instruments and documents**

- (1) In this clause —  
***former name*** means “Bunbury Port Authority”;  
***new name*** means “Southern Ports Authority”;  
***subsisting***, in relation to an agreement, instrument or document, means subsisting immediately before the merger time.
- (2) A subsisting agreement, instrument or document that contains a reference to the SPA by its former name has effect from the merger

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 12**

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time as if that reference were amended to be a reference to the SPA by its new name.

- (3) Subclause (2) does not apply to an agreement or instrument to which the continuing authority was a party.
- (4) If the continuing authority was a party to a subsisting agreement or instrument then, from the merger time —
  - (a) the SPA is a party to the agreement or instrument under its new name; and
  - (b) the agreement or instrument has effect as if a reference in it to the SPA by its former name were amended to be a reference to the SPA by its new name.
- (5) A subsisting agreement, instrument or document that contains a reference to a merging authority has effect from the merger time as if that reference were amended to be or include a reference to the SPA.
- (6) Subclause (5) does not apply to an agreement or instrument to which a merging authority was a party.
- (7) A subsisting agreement or instrument to which a merging authority was a party has effect from the merger time as if —
  - (a) the SPA were substituted for the merging authority as a party to the agreement or instrument; and
  - (b) a reference to the merging authority in the agreement or instrument were amended to be a reference to the SPA.
- (8) Subclause (2), (4)(b), (5) or (7)(b) does not apply to a reference if —
  - (a) transitional regulations provide otherwise; or
  - (b) that application would be inappropriate in the context in which the reference occurs.

*[Clause 11 inserted by No. 9 of 2014 s. 35.]*

**12. Port authorities to implement or facilitate merger and share costs**

- (1) A port authority is to do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) Subclause (1) applies —
  - (a) before the merger time — to the merging authorities and the continuing authority; and
  - (b) after the merger time — to the SPA.
- (3) The function conferred by subclause (1) is in addition to any other function that a port authority has.

- (4) The following amounts payable before the merger time are to be paid out of the funds of the continuing authority —
- (a) any remuneration or allowances payable to a director appointed under clause 4(3);
  - (b) any remuneration payable to a person appointed under clause 6(5);
  - (c) the costs of the appointment process under clause 6(5);
  - (d) any other costs incurred by the new board under clause 5.
- (5) Each of the merging authorities is to make a contribution to the continuing authority of one-third (or such other proportion as is agreed) of the amounts paid by the continuing authority in respect of —
- (a) remuneration or costs mentioned in subclause (4)(a) to (c); and
  - (b) costs mentioned in subclause (4)(d) to the extent that they were reasonably incurred.
- (6) Any dispute as to —
- (a) a contribution to be made under subclause (5); or
  - (b) the relevance or amount of a cost mentioned in subclause (4)(d),

may be referred to the Minister whose determination on the matter is final and the continuing authority and merging authorities are to have regard and give effect to the determination.

*[Clause 12 inserted by No. 9 of 2014 s. 35.]*

### **13. Financial reporting**

- (1) In this clause —
- former directors** of a merging authority means the persons holding office as directors of the merging authority immediately before the merger time;
- reporting board**, in relation to a merging authority, means the reporting board constituted for the merging authority under subclause (2);
- reporting provisions** means sections 68 and 69, Schedule 5 Division 3 Subdivision 1 and Schedule 5 clauses 34 and 35.
- (2) A reporting board is constituted by force of this clause to perform the duties set out in this clause in respect of a merging authority.
- (3) The constitution of a reporting board under subclause (2) has effect for a period of 3 months commencing at the merger time but that period may be extended by the Minister if the Minister considers that the extension is needed in order to enable the reporting board to perform its duties under this clause.

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 13**

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- (4) If the merger time coincides with the end of a financial year of a merging authority, the reporting board for the merging authority is to comply with the reporting provisions in respect of the merging authority for that financial year.
- (5) If the merger time is after the end of a financial year of a merging authority (the *last financial year*), the reporting board for the merging authority is to —
- (a) comply with the reporting provisions in respect of the merging authority to the extent that those provisions have not been complied with for the last financial year; and
  - (b) comply with the reporting provisions in respect of the merging authority for the period starting from the end of the last financial year and ending at the merger time as if that period were a financial year.
- (6) A reporting board must comply with any written directions given to it by the Minister as to the performance of its duties under this clause.
- (7) In order to enable a reporting board to perform its duties under this clause the reporting provisions apply with —
- (a) any modifications prescribed by transitional regulations; or
  - (b) any other appropriate modifications.
- (8) For the purposes of this clause, a reporting board —
- (a) is entitled to be provided with reasonable assistance and facilities and to have full and free access at all reasonable times to all accounts, and any other information, documents and records, that the reporting board considers necessary for those purposes; and
  - (b) may make copies of, or take extracts from, any of those accounts, documents or records or make a record of any of that information.
- (9) A person who has possession of any accounts, information, documents or records of the kind referred to in subclause (8)(a) must at any reasonable time, on the request of the reporting board, produce any of those accounts, documents or records, or any of that information, specified in the request.
- Penalty: a fine of \$10 000.
- (10) Subject to subclauses (11) to (13), the provisions of this Act that apply to the board of directors of a port authority and those directors (other than sections 7(1) and 8 and Schedule 2 clause 1(1), (3) and (4)) apply, with any modifications that may be necessary or appropriate, to a reporting board and its members.
- (11) The former directors of a merging authority are to hold office as members of the reporting board of the merging authority for as long as the reporting board remains constituted under subclause (2).



**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 16**

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the regulations are published in the *Gazette* but not earlier than the merger time, the regulations have effect according to their terms.

*[Clause 15 inserted by No. 9 of 2014 s. 35.]*

**Subdivision 3 — Provisions for the Mid West Ports Authority**

*[Heading inserted by No. 9 of 2014 s. 35.]*

**16. Terms used**

In this Subdivision, unless the contrary intention appears —

**MWPA** means the port authority as renamed as the Mid West Ports Authority by operation of section 31(2) of the amending Act;

**new board** means the board of directors established under clause 17(3);

**port authority** means the Geraldton Port Authority;

**renaming** means the action effected by the coming into operation of section 31(2) of the amending Act;

**renaming time** means the time at which section 31(2) of the amending Act comes into operation;

**transitional regulations** has the meaning given in clause 22(1).

*[Clause 16 inserted by No. 9 of 2014 s. 35.]*

**17. Directors and former directors**

- (1) Immediately before the renaming time a person then holding office as a director of the port authority ceases to hold that office.
- (2) From the renaming time a former director of the port authority is a former director of the MWPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.
- (3) The board of directors of the MWPA may be established by the appointment of directors before the renaming time.
- (4) For the purposes of Schedule 2 clause 1, the term of office of a director appointed under subclause (3) does not begin until the renaming time.
- (5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

*[Clause 17 inserted by No. 9 of 2014 s. 35.]*

**18. Powers of new board in anticipation of renaming**

- (1) The new board may —
  - (a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the renaming; and



- (b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming.
- (2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48 to the extent that they are relevant to the renaming.
- (3) For the purposes of subclause (1) the new board may incur costs for which the port authority is liable.

*[Clause 18 inserted by No. 9 of 2014 s. 35.]*

**19. CEO and staff**

- (1) Immediately before the renaming time a person then holding office as the CEO of the port authority ceases to hold that office.
- (2) At the renaming time, a person who was the CEO of the port authority immediately before the renaming time becomes a member of staff of the MWPA.
- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the renaming time the port authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
  - (a) terminate the contract of employment of the CEO or member of staff; or
  - (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 18 include the power to appoint a person as the CEO of the MWPA before the renaming time.
- (6) Until the renaming time a person appointed under subclause (5) may, as CEO of the MWPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the renaming.
- (7) If a person who is the CEO or a member of staff of the port authority is appointed under subclause (5) the appointment does not —
  - (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
  - (b) affect any rights under a superannuation scheme; or
  - (c) interrupt the continuity of his or her service.

*[Clause 19 inserted by No. 9 of 2014 s. 35.]*

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 20**

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**20. Agreements, instruments and documents**

- (1) In this clause —  
*former name* means “Geraldton Port Authority”;  
*new name* means “Mid West Ports Authority”.
- (2) A subsisting agreement, instrument or document that contains a reference to the MWPA by its former name has effect from the renaming time as if that reference were amended to be a reference to the MWPA by its new name.
- (3) Subclause (2) does not apply to an agreement or instrument to which the port authority was a party.
- (4) If the port authority was a party to a subsisting agreement or instrument then, from the renaming time —
  - (a) the MWPA is a party to the agreement or instrument under its new name; and
  - (b) the agreement or instrument has effect as if a reference in it to the MWPA by its former name were amended to be a reference to the MWPA by its new name.
- (5) Subclause (2) or (4)(b) does not apply to a reference if —
  - (a) transitional regulations provide otherwise; or
  - (b) that application would be inappropriate in the context in which the reference occurs.

*[Clause 20 inserted by No. 9 of 2014 s. 35.]*

**21. Port authority to implement or facilitate renaming**

- (1) Anything that is prescribed by transitional regulations, and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming, is to be done —
  - (a) before the renaming time — by the port authority; and
  - (b) after the renaming time — by the MWPA.
- (2) The function conferred by subclause (1) is in addition to any other function that a port authority has.
- (3) The following amounts payable before the renaming time are to be paid out of the funds of the port authority —
  - (a) any remuneration or allowances payable to a director appointed under clause 17(3);
  - (b) any remuneration payable to a person appointed under clause 19(5);
  - (c) the costs of the appointment process under clause 19(5);
  - (d) any other costs incurred by the new board under clause 18.

*[Clause 21 inserted by No. 9 of 2014 s. 35.]*

**22. Transitional regulations**

- (1) Regulations (*transitional regulations*) may prescribe —
- (a) things to be done by the port authority, the new board or the MWPA to provide for, implement or facilitate the renaming; and
  - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the renaming.
- (2) Transitional regulations may provide that specific provisions of any written law —
- (a) do not apply to or in relation to any matter; or
  - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the renaming time, the regulations have effect according to their terms.

*[Clause 22 inserted by No. 9 of 2014 s. 35.]*

**Subdivision 4 — Provisions for the Pilbara Ports Authority**

*[Heading inserted by No. 9 of 2014 s. 35.]*

**23. Terms used**

In this Subdivision —

*continuing authority* means the Port Hedland Port Authority;

*merger* means —

- (a) the actions effected by the coming into operation of section 31(3) of the amending Act; and
- (b) the merging of the Dampier Port Authority into the PPA under clause 24(1);

*merger time* means the time at which section 31(3) of the amending Act comes into operation;

*merging authority* means the Dampier Port Authority;

*new board* means the board of directors established under clause 25(3);

*PPA* means the continuing authority as renamed as the Pilbara Ports Authority by operation of section 31(3)(b) of the amending Act;

*transitional regulations* has the meaning given in clause 36(1).

*[Clause 23 inserted by No. 9 of 2014 s. 35.]*

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 24**

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**24. Merger of Dampier Port Authority into Pilbara Ports Authority**

- (1) At the merger time the Dampier Port Authority ceases to be a port authority under this Act and merges into the PPA.
- (2) From the merger time the PPA is a continuation of the merging authority.

*[Clause 24 inserted by No. 9 of 2014 s. 35.]*

**25. Directors and former directors**

- (1) Immediately before the merger time a person then holding office as a director of the merging authority or the continuing authority ceases to hold that office.
- (2) From the merger time —
  - (a) a former director of the merging authority is to be taken to be a former director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*; and
  - (b) a former director of the continuing authority is a former director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.
- (3) The board of directors of the PPA may be established by the appointment of directors before the merger time.
- (4) For the purposes of Schedule 2 clause 1, the term of office of a director appointed under subclause (3) does not begin until the merger time.
- (5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

*[Clause 25 inserted by No. 9 of 2014 s. 35.]*

**26. Powers of new board in anticipation of merger**

- (1) The new board may —
  - (a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the merger; and
  - (b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to, matters set out in clause 48.
- (3) For the purposes of subclause (1) the new board may incur costs for which the continuing authority is liable.

*[Clause 26 inserted by No. 9 of 2014 s. 35.]*

**27. CEOs and members of staff**

- (1) Immediately before the merger time a person then holding office as the CEO of the continuing authority or the merging authority ceases to hold that office.
- (2) At the merger time, a person who was —
  - (a) the CEO of the continuing authority; or
  - (b) the CEO or a member of staff of the merging authority,immediately before the merger time becomes a member of staff of the PPA.
- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the merger time the continuing authority or the merging authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
  - (a) terminate the contract of employment of the CEO or member of staff; or
  - (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 26 include the power to appoint a person as the CEO of the PPA before the merger time.
- (6) Until the merger time a person appointed under subclause (5) may, as CEO of the PPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the merger.

*[Clause 27 inserted by No. 9 of 2014 s. 35.]*

**28. Preservation of rights**

- (1) Except as otherwise agreed by the relevant CEO or member of staff, the operation of clause 27(1) or (2) does not —
  - (a) affect his or her remuneration; or
  - (b) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
  - (c) affect any rights under a superannuation scheme; or
  - (d) interrupt the continuity of his or her service.
- (2) For the purposes of subclause (1)(d), the service of a CEO or member of staff with the merging authority is to be taken to have been with the PPA.

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 29**

---

- (3) If a person who is the CEO or a member of staff of the continuing authority or the merging authority is appointed under clause 27(5), the appointment does not —
- (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
  - (b) affect any rights under a superannuation scheme; or
  - (c) interrupt the continuity of his or her service,

and, if the person was the CEO or a member of staff of the merging authority, his or her service with the merging authority is to be taken, for the purposes of paragraph (c), to have been with the PPA.

- (4) Nothing in clause 27 or this clause prevents the exercise by the PPA of its powers in relation to the management of members of staff.

*[Clause 28 inserted by No. 9 of 2014 s. 35.]*

**29. Devolution of assets, liabilities, proceedings, remedies and immunities**

- (1) At the merger time —
- (a) the assets and rights of the merging authority that were immediately before that time vested in or the property of the merging authority vest in or become the property of the PPA by force of this clause; and
  - (b) the liabilities of the merging authority immediately before that time become, by force of this clause, the liabilities of the PPA.
- (2) For the purposes of section 26, property referred to in section 25(2)(a) that becomes the property of the PPA by force of subclause (1)(a) continues to be regarded as property referred to in section 25(2)(a).
- (3) In determining the net profits of the PPA for the purposes of section 84, assets that become the property of the PPA by force of subclause (1)(a) are not to be regarded as income.
- (4) From the merger time, any proceedings or remedy that, immediately before that time, might have been brought or continued by or available against or to the merging authority may be brought or continued by, and are or is available against or to, the PPA.
- (5) Where the merging authority had the benefit of any immunity in respect of an act, matter or thing done or omitted before the merger time, that immunity continues in that respect for the benefit of the PPA.
- (6) As soon as is practicable after the merger time, all papers, documents, minutes, books of account and other records (however compiled,

recorded or stored) relating to the operations of the merging authority are to be delivered to the PPA.

*[Clause 29 inserted by No. 9 of 2014 s. 35.]*

**30. Completion of things commenced**

Anything commenced to be done by the merging authority before the merger time may be continued by the PPA.

*[Clause 30 inserted by No. 9 of 2014 s. 35.]*

**31. Continuing effect of things done**

(1) In this clause —

**relevant act** means an act, matter or thing done or omitted to be done before the merger time by, to or in respect of the merging authority.

(2) To the extent that a relevant act has force or significance at the merger time it is to be taken, from the merger time, to have been done or omitted by, to or in respect of the PPA so far as the act, matter or thing is relevant to the PPA.

(3) This clause does not affect the operation of any other provision of this Schedule.

*[Clause 31 inserted by No. 9 of 2014 s. 35.]*

**32. Agreements, instruments and documents**

(1) In this clause —

**former name** means “Port Hedland Port Authority”;

**new name** means “Pilbara Ports Authority”;

**subsisting**, in relation to an agreement, instrument or document, means subsisting immediately before the merger time.

(2) A subsisting agreement, instrument or document that contains a reference to the PPA by its former name has effect from the merger time as if that reference were amended to be a reference to the PPA by its new name.

(3) Subclause (2) does not apply to an agreement or instrument to which the continuing authority was a party.

(4) If the continuing authority was a party to a subsisting agreement or instrument then, from the merger time —

(a) the PPA is a party to the agreement or instrument under its new name; and

(b) the agreement or instrument has effect as if a reference in it to the PPA by its former name were amended to be a reference to the PPA by its new name.

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 33**

---

- (5) A subsisting agreement, instrument or document that contains a reference to the merging authority has effect from the merger time as if that reference were amended to be or include a reference to the PPA.
- (6) Subclause (5) does not apply to an agreement or instrument to which the merging authority was a party.
- (7) A subsisting agreement or instrument to which the merging authority was a party has effect from the merger time as if —
  - (a) the PPA were substituted for the merging authority as a party to the agreement or instrument; and
  - (b) a reference to the merging authority in the agreement or instrument were amended to be a reference to the PPA.
- (8) Subclause (2), (4)(b), (5) or (7)(b) does not apply to a reference if —
  - (a) transitional regulations provide otherwise; or
  - (b) that application would be inappropriate in the context in which the reference occurs.

*[Clause 32 inserted by No. 9 of 2014 s. 35.]*

**33. Port authorities to implement or facilitate merger and share costs**

- (1) A port authority is to do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the merger.
- (2) Subclause (1) applies —
  - (a) before the merger time — to the merging authority and the continuing authority; and
  - (b) after the merger time — to the PPA.
- (3) The function conferred by subclause (1) is in addition to any other function that a port authority has.
- (4) The following amounts payable before the merger time are to be paid out of the funds of the continuing authority —
  - (a) any remuneration or allowances payable to a director appointed under clause 25(3);
  - (b) any remuneration payable to a person appointed under clause 27(5);
  - (c) the costs of the appointment process under clause 27(5);
  - (d) any other costs incurred by the new board under clause 26.



- (5) The merging authority is to make a contribution to the continuing authority of one-half (or such other proportion as is agreed) of the amounts paid by the continuing authority in respect of —
- (a) remuneration or costs mentioned in subclause (4)(a) to (c); and
  - (b) costs mentioned in subclause (4)(d) to the extent that they were reasonably incurred.
- (6) Any dispute as to —
- (a) a contribution to be made under subclause (5); or
  - (b) the relevance or amount of a cost mentioned in subclause (4)(d),

may be referred to the Minister whose determination on the matter is final and the continuing authority and merging authority are to have regard and give effect to the determination.

*[Clause 33 inserted by No. 9 of 2014 s. 35.]*

**34. Financial reporting**

- (1) In this clause —
- former directors** of the merging authority means the persons holding office as directors of the merging authority immediately before the merger time;
- reporting board** means the reporting board constituted for the merging authority under subclause (2);
- reporting provisions** means sections 68 and 69, Schedule 5 Division 3 Subdivision 1 and Schedule 5 clauses 34 and 35.
- (2) A reporting board is constituted by force of this clause to perform the duties set out in this clause in respect of the merging authority.
- (3) The constitution of the reporting board under subclause (2) has effect for a period of 3 months commencing at the merger time but that period may be extended by the Minister if the Minister considers that the extension is needed in order to enable the reporting board to perform its duties under this clause.
- (4) If the merger time coincides with the end of a financial year of the merging authority, the reporting board is to comply with the reporting provisions in respect of the merging authority for that financial year.
- (5) If the merger time is after the end of a financial year of the merging authority (the **last financial year**), the reporting board is to —
- (a) comply with the reporting provisions in respect of the merging authority to the extent that those provisions have not been complied with for the last financial year; and

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 34**

---

- (b) comply with the reporting provisions in respect of the merging authority for the period starting from the end of the last financial year and ending at the merger time as if that period were a financial year.
- (6) The reporting board must comply with any written directions given to it by the Minister as to the performance of its duties under this clause.
- (7) In order to enable the reporting board to perform its duties under this clause the reporting provisions apply with —
- (a) any modifications prescribed by transitional regulations; or
- (b) any other appropriate modifications.
- (8) For the purposes of this clause, the reporting board —
- (a) is entitled to be provided with reasonable assistance and facilities and to have full and free access at all reasonable times to all accounts, and any other information, documents and records, that the reporting board considers necessary for those purposes; and
- (b) may make copies of, or take extracts from, any of those accounts, documents or records or make a record of any of that information.
- (9) A person who has possession of any accounts, information, documents or records of the kind referred to in subclause (8)(a) must at any reasonable time, on the request of the reporting board, produce any of those accounts, documents or records, or any of that information, specified in the request.
- Penalty: a fine of \$10 000.
- (10) Subject to subclauses (11) to (13), the provisions of this Act that apply to the board of directors of a port authority and those directors (other than sections 7(1) and 8 and Schedule 2 clause 1(1), (3) and (4)) apply, with any modifications that may be necessary or appropriate, to the reporting board and its members.
- (11) The former directors of the merging authority are to hold office as members of the reporting board for as long as the reporting board remains constituted under subclause (2).
- (12) If the office of a member of the reporting board becomes vacant the Minister may appoint a replacement member to hold office for as long as the reporting board remains constituted under subclause (2).
- (13) Any remuneration or allowances payable to a member of the reporting board are to be paid from the funds of the PPA.
- (14) A member of the reporting board is to be taken to be a director of the PPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.

*[Clause 34 inserted by No. 9 of 2014 s. 35.]*

**35. Dividends**

- (1) In this clause —  
*dividend function* means a function of a port authority or its board under section 84.
- (2) If immediately before the merger time a dividend function has yet to be performed by the merging authority or its board, the PPA or its board is to perform the function after the merger time as if the PPA were the merging authority.
- (3) If the merger time coincides with the end of a financial year of the merging authority, the PPA or its board is to perform the dividend functions in relation to that financial year as if the PPA were the merging authority.
- (4) Any amount that has to be paid to the Treasurer in accordance with subclause (2) or (3) is to be paid from the funds of the PPA.

*[Clause 35 inserted by No. 9 of 2014 s. 35.]*

**36. Transitional regulations**

- (1) Regulations (*transitional regulations*) may prescribe —
  - (a) things to be done by a port authority, or the new board, to provide for, implement or facilitate the merger; and
  - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the merger.
- (2) Transitional regulations may provide that specific provisions of any written law —
  - (a) do not apply to or in relation to any matter; or
  - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the merger time, the regulations have effect according to their terms.

*[Clause 36 inserted by No. 9 of 2014 s. 35.]*

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 37**

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**Subdivision 5 — Provisions for the Kimberley Ports Authority**

*[Heading inserted by No. 9 of 2014 s. 35.]*

**37. Terms used**

In this Subdivision —

**KPA** means the port authority as renamed as the Kimberley Ports Authority by operation of section 31(4) of the amending Act;

**new board** means the board of directors established under clause 38(3);

**port authority** means the Broome Port Authority;

**renaming** means the action effected by the coming into operation of section 31(4) of the amending Act;

**renaming time** means the time at which section 31(4) of the amending Act comes into operation;

**transitional regulations** has the meaning given in clause 43(1).

*[Clause 37 inserted by No. 9 of 2014 s. 35.]*

**38. Directors and former directors**

- (1) Immediately before the renaming time a person then holding office as a director of the port authority ceases to hold that office.
- (2) From the renaming time a former director of the port authority is a former director of the KPA for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*.
- (3) The board of directors of the KPA may be established by the appointment of directors before the renaming time.
- (4) For the purposes of Schedule 2 clause 1 the term of office of a director appointed under subclause (3) does not begin until the renaming time.
- (5) Nothing in this Schedule prevents a person who is a director of an existing port authority from being appointed under subclause (3).

*[Clause 38 inserted by No. 9 of 2014 s. 35.]*

**39. Powers of new board in anticipation of renaming**

- (1) The new board may —
  - (a) perform the functions of the board of directors of a port authority for the purpose of providing for, implementing or facilitating the renaming; and
  - (b) do anything that is prescribed by transitional regulations and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming.
- (2) The matters that the new board can deal with in performing its functions under subclause (1)(a) include, but are not limited to,

matters set out in clause 48 to the extent that they are relevant to the renaming.

- (3) For the purposes of subclause (1) the new board may incur costs for which the port authority is liable.

*[Clause 39 inserted by No. 9 of 2014 s. 35.]*

**40. CEO and staff**

- (1) Immediately before the renaming time a person then holding office as the CEO of the port authority ceases to hold that office.
- (2) At the renaming time, a person who was the CEO of the port authority immediately before the renaming time becomes a member of staff of the KPA.
- (3) The operation of subclause (1) or (2) does not constitute a retrenchment or redundancy.
- (4) Before the renaming time the port authority may, by negotiation with its CEO or a member of its staff and in consultation with the new board —
- (a) terminate the contract of employment of the CEO or member of staff; or
  - (b) arrange for and accept the resignation of the CEO or member of staff.
- (5) The powers of the new board under clause 39 include the power to appoint a person as the CEO of the KPA before the renaming time.
- (6) Until the renaming time a person appointed under subclause (5) may, as CEO of the KPA, perform any function of a CEO of a port authority for the purpose of providing for, implementing or facilitating the renaming.
- (7) If a person who is the CEO or a member of staff of the port authority is appointed under subclause (5) the appointment does not —
- (a) affect his or her existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
  - (b) affect any rights under a superannuation scheme; or
  - (c) interrupt the continuity of his or her service.

*[Clause 40 inserted by No. 9 of 2014 s. 35.]*

**41. Agreements, instruments and documents**

- (1) In this clause —
- former name* means “Broome Port Authority”;
- new name* means “Kimberley Ports Authority”.

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 42**

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- (2) A subsisting agreement, instrument or document that contains a reference to the KPA by its former name has effect from the renaming time as if that reference were amended to be a reference to the KPA by its new name.
- (3) Subclause (2) does not apply to an agreement or instrument to which the port authority was a party.
- (4) If the port authority was a party to a subsisting agreement or instrument then, from the renaming time —
  - (a) the KPA is a party to the agreement or instrument under its new name; and
  - (b) the agreement or instrument has effect as if a reference in it to the KPA by its former name were amended to be a reference to the KPA by its new name.
- (5) Subclause (2) or (4)(b) does not apply to a reference if —
  - (a) transitional regulations provide otherwise; or
  - (b) that application would be inappropriate in the context in which the reference occurs.

*[Clause 41 inserted by No. 9 of 2014 s. 35.]*

**42. Port authority to implement or facilitate renaming**

- (1) Anything that is prescribed by transitional regulations, and anything else that may be necessary or expedient to provide for, implement or facilitate the renaming, is to be done —
  - (a) before the renaming time — by the port authority; and
  - (b) after the renaming time — by the KPA.
- (2) The function conferred by subclause (1) is in addition to any other function that a port authority has.
- (3) The following amounts payable before the renaming time are to be paid out of the funds of the port authority —
  - (a) any remuneration or allowances payable to a director appointed under clause 38(3);
  - (b) any remuneration payable to a person appointed under clause 40(5);
  - (c) the costs of the appointment process under clause 40(5);
  - (d) any other costs incurred by the new board under clause 39.

*[Clause 42 inserted by No. 9 of 2014 s. 35.]*

**43. Transitional regulations**

- (1) Regulations (*transitional regulations*) may prescribe —
  - (a) things to be done by the port authority, the new board or the KPA to provide for, implement or facilitate the renaming; and

- (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to the renaming.
- (2) Transitional regulations may provide that specific provisions of any written law —
  - (a) do not apply to or in relation to any matter; or
  - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the renaming time, the regulations have effect according to their terms.

*[Clause 43 inserted by No. 9 of 2014 s. 35.]*

**Subdivision 6 — Provisions for certain directors**

*[Heading inserted by No. 9 of 2014 s. 35.]*

**44. Certain directors to cease to hold office**

- (1) In this clause —  
**commencement** means the coming into operation of section 33 of the amending Act.
- (2) On commencement —
  - (a) the Company appointee and the Joint Venturers appointee, as defined in Schedule 6 clause 1.2 as enacted before commencement, cease to be directors of the Dampier Port Authority; and
  - (b) the first lessee appointee and the second lessee appointee, as defined in Schedule 6 clause 2.2 as enacted before commencement, cease to be directors of the Port Hedland Port Authority.

*[Clause 44 inserted by No. 9 of 2014 s. 35.]*

**Subdivision 7 — General provisions**

*[Heading inserted by No. 9 of 2014 s. 35.]*

**45. Terms used**

In this Subdivision —

**affecting provisions** means —

- (a) section 31 of the amending Act; and
- (b) this Division and transitional regulations;

**new board** has the meaning given in clause 2, 16, 23 or 37;

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 46**

---

*relevant officials* means —

- (a) the Registrar of Titles under the *Transfer of Land Act 1893*;  
or
- (b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; or
- (c) the Minister administering the *Land Administration Act 1997*;  
or
- (d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property;

*State tax* includes duty under the *Duties Act 2008* and any other tax under a written law;

*transitional regulations* has the meaning given in clause 15(1), 22(1), 36(1) or 43(1).

[Clause 45 inserted by No. 9 of 2014 s. 35.]

**46. Exemption from State taxes**

State tax is not payable in relation to —

- (a) anything that occurs by the operation of the affecting provisions; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Division, or to give effect to the affecting provisions, or for a purpose connected with or arising out of giving effect to the affecting provisions.

[Clause 46 inserted by No. 9 of 2014 s. 35.]

**47. Registration of documents**

The relevant officials are to take notice of the affecting provisions and are to record and register in the appropriate manner the documents necessary to show the effect of the affecting provisions.

[Clause 47 inserted by No. 9 of 2014 s. 35.]

**48. Matters that a new board can deal with**

The matters referred to in clauses 5(2), 18(2), 26(2) and 39(2) are —

- (a) staff issues including organisational structure, reporting accountabilities and employee roles and responsibilities;
- (b) preparation for staff transfer including confirmation of employee details and entitlements;
- (c) recruitment of staff if necessary;



- (d) identification and assessment of issues relating to —
  - (i) port boundaries;
  - (ii) agreements affecting the port;
  - (iii) mining tenements over port areas;
  - (iv) contaminated sites;
  - (v) waters in the port reserved under the *Conservation and Land Management Act 1984* Part II Division 3;
  - (vi) native title issues;
  - (vii) operating and maintenance costs;
  - (viii) community service obligations;
  - (ix) leases, licences and permits;
  - (x) port fees and charges;
  - (xi) existing legal and commercial disputes and contingent liabilities;
  - (xii) long term commitments,and resolution of those issues so far as that is within the new board's powers;
- (e) review, and if necessary modification, of the existing port operating model;
- (f) harmonisation of internal policies, standards, procedures, processes and reporting requirements on services and systems including —
  - (i) operating activities;
  - (ii) administrative functions;
  - (iii) pricing and marketing principles and practices;
  - (iv) financial and accounting systems, including the chart of accounts;
  - (v) human resource services;
  - (vi) information and communication activities;
- (g) development of a draft strategic development plan, a draft statement of corporate intent, a draft income and cash flow statement and a draft statement of financial position;
- (h) development of any other plans that a port authority is required to have under any written law;
- (i) budgetary matters;
- (j) matters relating to the transfer of assets and liabilities including —
  - (i) asset and liability inventories;
  - (ii) valuation of assets and liabilities;
  - (iii) processes for transfer;

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 1** Provisions for Ports Legislation Amendment Act 2014

**cl. 49**

---

- (k) employment or engagement of persons to provide management, financial, legal or other services or advice.

*[Clause 48 inserted by No. 9 of 2014 s. 35.]*

**49. Operation of transitional regulations**

If transitional regulations contain a provision referred to in clause 15(3), 22(3), 36(3) or 43(3), the provision does not operate so as —

- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

*[Clause 49 inserted by No. 9 of 2014 s. 35.]*

**50. Saving**

- (1) The operation of any of the affecting provisions is not to be regarded —
  - (a) as a breach of contract or confidence or otherwise as a civil wrong; or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
  - (c) as giving rise to any right to damages or compensation; or
  - (d) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
  - (e) as causing any contract or instrument to be void or otherwise unenforceable; or
  - (f) as releasing or allowing the release of any surety.
- (2) This Division and transitional regulations are additional to any relevant provisions of the *Interpretation Act 1984*.

*[Clause 50 inserted by No. 9 of 2014 s. 35.]*

**51. Government agreements not affected**

- (1) The affecting provisions do not prejudice or in any way affect any right or obligation of a party to a Government agreement.
- (2) This clause does not limit or otherwise affect the operation of Schedule 6 clauses 1.3 and 2.3.

*[Clause 51 inserted by No. 9 of 2014 s. 35.]*

**Division 2 — Provisions for Ports Legislation Amendment Act 2017**

[Heading inserted by the Ports Legislation Amendment Bill 2017  
cl. 51.]

**Subdivision 1 — Preliminary**

[Heading inserted by the Ports Legislation Amendment Bill 2017  
cl. 51.]

**52. Terms used**

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

***affecting provisions*** means —

- (a) the transfer provisions; and
- (b) this Division and transitional regulations; and
- (c) transitional orders and schedules referred to in transitional  
~~orders; and orders;~~
- (d) orders under clause 66A(2);

***amending Act*** means the *Ports Legislation Amendment Act 2017*;

***asset*** means any legal or equitable estate or interest (whether present  
or future, whether vested or contingent and whether personal or  
assignable) in real or personal property of any description and  
includes any money, security, chose in action or document;

***asset of the State*** includes, but is not limited to, property vested in or  
acquired by the Transport Minister for the purposes of a Marine Act;

***existing S&P Act port***, in relation to a port named in a transfer  
provision, means —

- (a) in the case of a port named in section 49(1)(a) or (b) of the  
amending Act — the Port of Carnarvon as declared before the  
transfer time under the *Shipping and Pilotage Act 1967*  
section 10(1); or
- (b) in the case of a port named in any other transfer provision —  
the port with that name as declared before the transfer time  
under the *Shipping and Pilotage Act 1967* section 10(1);

***Government agreement*** means an agreement referred to in  
paragraph (a) of the definition of ***Government agreement*** in the  
*Government Agreements Act 1979* section 2 and, if the agreement has  
been varied, means the agreement as varied;

***liability*** means any liability, duty or obligation whether actual,  
contingent or prospective, liquidated or unliquidated, or whether owed  
alone or jointly or jointly and severally with any other person;

***liability of the State*** includes, but is not limited to, a liability incurred  
by the Transport Minister for the purposes of a Marine Act;

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 2** Provisions for Ports Legislation Amendment Act 2017

**cl. 52**

---

*Marine Act* means the *Jetties Act 1926*, the *Lights (Navigation Protection) Act 1938*, the *Marine and Harbours Act 1981*, the *Marine Navigational Aids Act 1973* or the *Shipping and Pilotage Act 1967*;

*port transfer* or *transfer*, in relation to a port, means —

- (a) the placement of the port under the control and management of a port authority by the insertion of the port in column 3 of an item in Schedule 1 by a transfer provision; and
- (b) the cessation of the existing S&P Act port as a port for the administration and operation of which the Transport Department is responsible by force of clause 56;

*relevant official* means —

- (a) the Registrar of Titles under the *Transfer of Land Act 1893*;  
or
- (b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; or
- (c) the Minister administering the *Land Administration Act 1997*;  
or
- (d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property;

*renew* an easement, lease or licence includes —

- (a) grant of an extension of its term; and
- (b) grant a further easement, lease or licence to replace it;

*requirement under this Act* means —

- (a) a direction given by the Minister under section 72; or
- (b) any other obligation under this Act;

*right* means any right, power, privilege or immunity whether actual, prospective or contingent;

*transfer provision* means section 49(1)(a) or (b), (2)(a), (b), (c), (d) or (e) or (3)(a), (b) or (c) of the amending Act;

*transfer time*, in relation to a port transfer, means the time at which the relevant transfer provision comes into operation;

*transitional order* means an order under clause 58;

*transitional regulations* has the meaning given in clause 69(1);

*Transport CEO* means the chief executive officer of the Transport Department and includes a delegate of that chief executive officer under a Marine Act;

*Transport Department* means the department of the Public Service principally assisting the Transport Minister in the administration of the Marine Acts;

**Transport Minister** means the Minister administering the Marine Acts and includes —

- (a) that Minister as a body corporate under the *Marine and Harbours Act 1981* section 8; and
- (b) a delegate of that Minister under a Marine Act.

- (2) A reference in this Division to an agreement, instrument or document does not include a reference to a Government agreement.

*[Clause 52 inserted by the Ports Legislation Amendment Bill 2017 cl. 51; amended by the Ports Legislation Amendment Bill 2017 cl. 52(1).]*

**Subdivision 2 — Transfer of control and management of some existing ports to port authorities**

*[Heading inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

**53. Terms used**

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

*Agreements Minister* means the Minister administering the *Government Agreements Act 1979*;

*port* means the port named in a transfer provision;

*port authority* means the port authority under the control and management of which a port is placed by a port transfer.

- (2) A reference in another clause of this Subdivision to *this Subdivision* includes a reference to —

- (a) transitional regulations relating to a port transfer; and
- (b) transitional orders and schedules referred to in transitional orders.

*[Clause 53 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

**54. Port transfer: preliminary requirements**

- (1) Before the transfer time of a port transfer, an order is to be made and published under section 24(1) describing the area or areas of which the port is to consist.

- (2) An area described in the order referred to in subclause (1) may be —

- (a) land; or
- (b) land and water; or
- (c) land and seabed; or
- (d) land, water and seabed; or
- (e) water; or

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 2** Provisions for Ports Legislation Amendment Act 2017

**cl. 55**

---

(f) water and seabed; or

(g) seabed.

(3) The area or areas described in the order referred to in subclause (1) may be bounded by limits that differ from the limits specified in relation to the existing S&P Act port by regulations mentioned in the *Shipping and Pilotage Act 1967* section 10(1a).

(4) The order referred to in subclause (1) comes into operation at the transfer time.

(5) A proclamation cannot be made under section 2(e) of the amending Act in relation to section 49(1)(a) or (b) or (2)(a), (b), (c) or (e) of the amending Act unless the Agreements Minister has given the Minister written notice that the Agreements Minister agrees to the making of that proclamation.

*[Clause 54 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

**55. Port authority to implement and facilitate port transfer**

(1) Before or after the transfer time of a port transfer, the port authority may do anything that is prescribed by transitional regulations, and anything else that may be necessary or expedient to provide for, implement or facilitate the port transfer.

(2) Until the transfer time of a port transfer the port authority may do anything that it is authorised or required to do in relation to the existing S&P Act port under a contract or arrangement entered into with the Transport Minister under the *Marine and Harbours Act 1981* section 6 or 7.

(3) The functions conferred by this clause are in addition to any other function that the port authority has.

*[Clause 55 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

**56. Cessation of responsibility for port**

At the transfer time of a port transfer the existing S&P Act port ceases to be a port for the administration and operation of which the Transport Minister and Transport Department are responsible under the *Marine and Harbours Act 1981*.

*[Clause 56 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

**57. Vesting of land, seabed and water in port authority**

(1) At the transfer time of a port transfer the following are vested in the port authority for the purposes of this Act —

- (a) all land, seabed and water in the area or areas described in the order made and published for the port as required by clause 54(1);
- (b) all fixtures on land or seabed referred to in paragraph (a) that belong to the State.

(2) The operation of subclause (1) is subject to clauses 60(4) and 62(1).

(3) Subclause (1) displaces the operation that section 25(1) would otherwise have had in relation to the port transfer.

[Clause 57 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]

**58. Minister may make transitional orders**

(1) To provide for, implement or facilitate a port transfer, the Minister may make and publish in the *Gazette* before the transfer time of the port transfer one or more orders that —

- (a) specify assets of the State that are to vest in, or become the property of, the port authority in addition to anything mentioned in clause 57(1); and
- (b) specify liabilities of the State that are to become liabilities of the port authority; and
- (c) specify anything that is not to vest in the port authority under clause 57(1); and
- (d) specify any agreement or instrument in which the port authority, or the CEO, is to be substituted, in accordance with the order, for the State, the Transport Minister or the Transport CEO as a party; and
- (e) specify any agreement, instrument or document that is to have effect as if references to the port authority, or the CEO or a member of staff, were substituted, in accordance with the order, for references in it to the State, the Transport Minister, the Transport Department or the Transport CEO (however expressed); and
- (f) specify any agreement, instrument or document that is to have effect as if references to this Act or a provision of this Act were substituted, in accordance with the order, for references in it to another enactment; and
- (g) in the case of a port named in section 49(1)(a) or (b) of the amending Act, specify any agreement, instrument or document that is to have effect as if references to the port were substituted, in accordance with the order, for references in it to the existing S&P Act port; and

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 2** Provisions for Ports Legislation Amendment Act 2017

**cl. 58**

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(h) specify proceedings in which the port authority is to be substituted, in accordance with the order, for the State or the Transport Minister as a party.

(2) In a transitional order an asset of the State may be specified under subclause (1)(a) if the Minister considers that the asset —

(a) relates to, or was used in connection with, the administration or operation of the existing S&P Act port; and

(b) should vest in, or become the property of, the port authority; and

(c) will not or might not otherwise be vested in the port authority under clause 57(1).

(3) In a transitional order a liability of the State may be specified under subclause (1)(b) if the Minister considers that the liability —

(a) relates to, or arose in connection with, the administration or operation of the existing S&P Act port; and

(b) should become a liability of the port authority.

(4) A transitional order may —

(a) deal with incidental or supplementary matters; and

(b) clarify, or remove doubt as to, the operation of this Subdivision in relation to any specified matter or thing,

and has effect accordingly.

(5) A transitional order may specify things by reference to schedules which —

(a) need not be published in the *Gazette*; but

(b) must be available for public inspection,

and anything specified in a schedule is to be taken to be specified in the order.

(6) A thing may be specified in a transitional order by describing the class to which it belongs.

(7) Before a transitional order is made, the Transport CEO is to consult with the port authority as to the form and content of the order and any schedule to which it refers.

(8) Before a transitional order is made specifying anything by reference to a schedule, the Transport CEO is to consult with the relevant officials as to the form and content of the schedule.

(9) The Minister must obtain the written concurrence of the Agreements Minister before making a transitional order relating to port named in section 49(1)(a) or (b) or (2)(a), (b), (c) or (e) of the amending Act.



(10) The Minister is to cause a copy of each transitional order and any schedule to which it refers to be delivered to the port authority and each relevant official.

[Clause 58 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]

**59. Amending transitional order**

(1) The Minister may, by order published in the *Gazette* before or after the transfer time, make any provision that the Minister considers to be needed in order to —

(a) correct any error or omission in a transitional order or a schedule to which a transitional order refers; or

(b) clarify, or remove doubt as to, the operation of a transitional order; or

(c) give proper effect to the purpose for which a transitional order was made.

(2) The Minister may, by order published in the *Gazette* after the transfer time, make provision for a matter that could have been dealt with by a transitional order but was not.

(3) If an order under subclause (1) or (2) published in the *Gazette* after the transfer time provides that a provision of the order has effect from immediately before the transfer time, the provision has effect accordingly.

(4) If an order under subclause (1) or (2) published in the *Gazette* after the transfer time provides that a state of affairs specified or described in the order is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the order is published in the *Gazette* but not earlier than the transfer time, the provision has effect according to its terms.

(5) To the extent that, under subclause (3) or (4), a provision of an order has effect before the day of its publication in the *Gazette*, this Subdivision does not, as a result of that provision, operate so as —

(a) to affect, in a manner prejudicial to any person (other than the State or a Minister, officer or agency of the State), the rights of that person existing before the day of publication; or

(b) to impose liabilities on any person (other than the State or a Minister, officer or agency of the State) in respect of anything done or omitted to be done before the day of publication.

(6) Clause 58(5) to (10) apply, with any necessary modifications, to an order under subclause (1) or (2).

[Clause 59 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]

**60. Provisions as to assets and liabilities**

(1) In this clause —

*transferred assets*, in relation to a port transfer, means —

(a) assets that vest in, or become the property of, the port authority under subclause (3)(a); and

(b) anything vested in the port authority under clause 57(1);

*transferred liabilities*, in relation to a port transfer, means liabilities that become liabilities of the port authority under subclause (3)(b).

(2) This clause applies if a transitional order is made in relation to a port transfer.

(3) At the transfer time of the port transfer by force of this clause —

(a) assets specified in the transitional order under clause 58(1)(a) vest in, or become the property of, the port authority in accordance with the order; and

(b) liabilities specified in the transitional order under clause 58(1)(b) become liabilities of the port authority.

(4) By force of this clause, anything specified in the transitional order under clause 58(1)(c) does not vest in the port authority under clause 57(1).

(5) At the transfer time of the port transfer any right of the State in relation to transferred assets or transferred liabilities becomes by force of this clause a right of the port authority.

(6) From the transfer time of the port transfer by force of this clause —

(a) any proceedings or remedy that might have been commenced by, or available against or to, the State or the Transport Minister in relation to transferred assets or transferred liabilities may be commenced by, or are available against or to, the port authority; and

(b) anything commenced to be done before the transfer time in relation to transferred assets or transferred liabilities by the State, the Transport Minister or the Transport Department may be continued by the port authority; and

(c) anything done or omitted to be done in relation to transferred assets or transferred liabilities before the transfer time by, to or in respect of the State, the Transport Minister or the Transport Department (to the extent that that thing has any effect) is to be taken to have been done or omitted by, to or in respect of the port authority.

(7) In determining the net profits of the port authority for the purposes of section 84, transferred assets are not to be regarded as income.

(8) If at the transfer time of the port transfer a transferred asset or transferred liability is not properly assigned to the port authority by the operation of this Subdivision (whether because the matter is governed otherwise than by the law of the State or for any other reason) —

(a) the State is to be taken to continue to hold that transferred asset or be liable for that transferred liability until it is effectively assigned to the port authority; and

(b) the Transport Department is to take all practicable steps for the purpose of ensuring that the transferred asset or transferred liability is effectively assigned to the port authority.

(9) The fact that subclause (8)(a) applies to a transferred asset or transferred liability does not affect a duty imposed by section 90(2).

(10) By force of this clause, any previous vesting of a transferred asset under another written law ceases to have effect at the transfer time of the port transfer.

*[Clause 60 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

#### **61. Provisions as to agreements and proceedings**

(1) If a transitional order is made in relation to a port transfer then, by force of this clause —

(a) at the transfer time of the port transfer the port authority is substituted in accordance with the order for the State or the Transport Minister as a party to an agreement or instrument specified in the order under clause 58(1)(d); and

(b) from the transfer time of the port transfer an agreement, instrument or document specified in the order under clause 58(1)(e) has effect as if references to the port authority or the CEO or a member of staff were, at the transfer time, substituted in accordance with the order for references in it to the State, the Transport Minister, the Transport Department or the Transport CEO (however expressed); and

(c) from the transfer time of the port transfer an agreement, instrument or document specified in the order under clause 58(1)(f) has effect as if references to this Act or a provision of this Act were, at the transfer time, substituted in accordance with the order for references in it to another enactment; and

(d) from the transfer time of the port transfer an agreement, instrument or document specified in the order under clause 58(1)(g) has effect as if references to the port were, at the transfer time, substituted in accordance with the order for references in it to the existing S&P Act port; and

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 2** Provisions for Ports Legislation Amendment Act 2017

**cl. 62**

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(e) at the transfer time of the port transfer the port authority is substituted in accordance with the order for the State or the Transport Minister as a party to proceedings specified in the order under clause 58(1)(h).

(2) If subclause (1)(a) applies to an easement, lease or licence in respect of land that becomes vested land at the transfer time of the port transfer, from the transfer time the easement, lease or licence is to be taken to have been granted under this Act with any approval needed under this Act.

(3) Subclause (2) has effect even if a lease or licence was granted for a period exceeding 50 years.

[Clause 61 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]

**62. Navigational aids**

(1) Clause 57(1) does not apply to navigational aids.

(2) Without limiting clause 58(2), a navigational aid in, or used in connection with, the existing S&P Act port may be vested in the port authority by a transitional order.

[Clause 62 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]

**63. Harbour masters and deputy harbour masters**

(1) In this clause —

*deputy harbour master* of the port means a person appointed under the *Shipping and Pilotage Act 1967* section 7A to be a deputy harbour master;

*harbour master* has the meaning given in paragraph (a) or (b) of the definition of *harbour master* in the *Shipping and Pilotage Act 1967* section 3.

(2) At the transfer time the appointment of any person who was the harbour master or a deputy harbour master of the existing S&P Act port immediately before the transfer time is revoked by force of this clause.

(3) This clause does not apply to the harbour master or a deputy harbour master of the Port of Derby.

[Clause 63 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]

**64. Pilotage: existing licences**

(1) In this clause —

*condition* includes restriction;

*controlled area* has the meaning given in the *Shipping and Pilotage Act 1967* section 3.

(2) From the transfer time of a port transfer, a person who, immediately before the transfer time, held a licence under the *Shipping and Pilotage Act 1967* to act as a pilot for the existing S&P Act port (the *licence*) is to be taken to have the approval of the port authority under section 96(1) as a pilot for the port (the *transitional approval*).

(3) The effect that the transitional approval has by force of subclause (2) extends to any place within the boundaries of the port or within an area referred to in section 95(2) outside the port as long as that place was, immediately before the transfer time, within the boundaries of the existing S&P Act port or within a controlled area outside the existing S&P Act port.

(4) The effect that the transitional approval has by force of subclause (2) is subject to any condition to which the licence was subject immediately before the transfer time and to any other condition imposed under the regulations.

(5) The transitional approval continues to have effect until —

(a) the period for which the licence would have had effect ends;  
or

(b) the transitional approval is revoked under section 96(2); or

(c) the person concerned is approved as a pilot for the port under section 96(1); or

(d) the period of 2 years beginning at the transfer time ends,

whichever occurs first.

(6) Without limiting clause 70(1), its provisions apply if a transitional approval is revoked under section 96(2).

(7) This clause does not apply to a person if, before the transfer time, the person is approved as a pilot for the port under section 96(1) in accordance with clause 55(1) or the *Interpretation Act 1984* section 25.

[Clause 64 inserted by the *Ports Legislation Amendment Bill 2017* cl. 51.]

#### **65. Pilotage: existing exemption certificates**

(1) In this clause —

*condition* includes restriction;

*controlled area* has the meaning given in the *Shipping and Pilotage Act 1967* section 3;

*S&P Act certificate* means a pilotage exemption certificate issued under the *Shipping and Pilotage Act 1967*.

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 2** Provisions for Ports Legislation Amendment Act 2017

**cl. 66**

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(2) From the transfer time of a port transfer, an S&P Act certificate for the existing S&P Act port in force immediately before the transfer time (the *existing certificate*) is to be taken to be a pilotage exemption certificate in respect of the port issued under the regulations (the *transitional certificate*).

(3) The effect that the transitional certificate has by force of subclause (2) extends to any place within the boundaries of the port or within an area referred to in section 95(2) outside the port as long as that place was, immediately before the transfer time, within the boundaries of the existing S&P Act port or within a controlled area outside the existing S&P Act port.

(4) The effect that the transitional certificate has by force of subclause (2) is subject to any condition to which the existing certificate was subject immediately before the transfer time and to any other condition imposed under the regulations.

(5) The transitional certificate continues to have effect until —

(a) the transitional certificate expires under the regulations; or

(b) the transitional certificate is revoked under the regulations; or

(c) a pilotage exemption certificate in respect of the port is issued to the holder of the transitional certificate under the regulations; or

(d) the period of 2 years beginning at the transfer time ends,

whichever occurs first.

(6) Without limiting clause 70(1), its provisions apply if a transitional certificate is revoked under the regulations.

(7) This clause does not apply to an S&P Act certificate if, before the transfer time, a pilotage exemption certificate in respect of the port is issued to the holder of the S&P Act certificate under the regulations in accordance with clause 55(1) or the *Interpretation Act 1984* section 25.

[Clause 65 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]

**66. Jetty licences**

(1) In this clause —

*continued licence* means a jetty licence to which subclause (9) applies;

*converted licence* means a jetty licence to which subclause (5) applies;

*existing jetty* means a jetty that, immediately before the transfer time of a port transfer, was wholly or partly within the boundaries of the

existing S&P Act port or was used in connection with the operation of the existing S&P Act port;

jetty has the meaning given in the *Jetties Act 1926* section 3;

jetty licence means a licence granted under the *Jetties Act 1926*;

licensee includes sub-licensee.

(2) Subject to subclause (3) if —

(a) immediately before the transfer time of a port transfer, an existing jetty was the subject of a jetty licence; and

(b) from the transfer time the existing jetty is wholly on port land.

subclause (5) applies to the jetty licence.

(3) If the port is a port named in section 49(1)(a) or (b) or (2)(a), (b), (c) or (e) of the amending Act, subclause (5) does not apply to the jetty licence unless transitional regulations provide that it does.

(4) Regulations cannot be made for subclause (3) except with the written concurrence of the Agreements Minister.

(5) If this subclause applies to a jetty licence —

(a) at the transfer time the licence ceases to be a licence under the *Jetties Act 1926*; and

(b) at the transfer time the port authority is substituted for the Transport Minister or the Transport CEO (as the case may be) as the grantor of the licence; and

(c) from the transfer time the licence is to be taken to have been granted under this Act with any approval needed under this Act even if the licence was granted for a period exceeding 50 years.

(6) Subject to subclause (7) if, immediately before the transfer time of a port transfer, an existing jetty was the subject of a jetty licence, transitional regulations may prescribe that subclause (9) applies to the jetty licence.

(7) If the port is a port named in section 49(1)(a) or (b) or (2)(a), (b), (c) or (e) of the amending Act, transitional regulations cannot be made for subclause (6) except with the written concurrence of the Agreements Minister.

(8) Subclause (9) does not apply to a jetty licence if subclause (5) applies to it.

(9) If this subclause applies to a jetty licence —

(a) the licence continues in force from the transfer time as a licence under the *Jetties Act 1926*; and

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 2** Provisions for Ports Legislation Amendment Act 2017

**cl. 66A**

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(b) from the transfer time any power exercisable by, or in relation to, the grantor of the licence, whether —

(i) under the licence; or

(ii) under the *Jetties Act 1926* in relation to the licence,

is exercisable by, or in relation to, the port authority instead of the grantor of the licence; and

(c) after the transfer time the port authority may, at the request or with the agreement of the holder of the licence, renew or vary the licence under that Act; and

(d) from the transfer time the functions of the port authority are to be taken to extend to the exercise of powers for the purposes of this subclause.

(10) From the transfer time it is to be taken to be a condition of a converted licence or a continued licence that the licensee must comply with any direction given by the port authority to the extent that the direction is given to facilitate —

(a) compliance by the port authority with a requirement under this Act; or

(b) performance by the port authority of its functions.

(11) Without limiting clause 58, an order may be made under clause 58(1)(e), (f) or (g) or (4) in relation to a converted licence or a continued licence.

[Clause 66 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]

**66A. Port of Derby: special provisions**

(1) In this clause —

*amending order* means an order under subclause (2);

*board* means the board of the Kimberley Ports Authority;

*existing arrangement* means the management agreement or the head lease;

*head lease* means the Port of Derby head lease granted by the Transport Minister to the operator on 16 December 1997 as later affected by the partial surrender made by the operator and accepted by the Transport Minister;

*management agreement* means the Port of Derby management agreement entered into between the Transport Minister and the operator on 16 December 1997;

*operator* means the Shire of Derby/West Kimberley;

*port* means the Port of Derby;

*port authority* means the Kimberley Ports Authority;





**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 2** Provisions for Ports Legislation Amendment Act 2017

**cl. 66A**

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(10) At the transfer time, clause 9.1 of the management agreement ceases to have effect by force of this subclause, however —

(a) from the transfer time the person holding the office of harbour master of the port (the *office*) in accordance with the management agreement immediately before the transfer time continues to hold the office under and subject to this Act as if appointed under section 102; and

(b) if another person is to be appointed to the office under section 102 while the management agreement continues in force the office may be filled by the appointment of a person in accordance with procedures agreed between the port authority and the operator, but if no procedures have been so agreed —

(i) the board must request the operator in writing to provide the port authority, within 28 days after the service of the request, with the nomination of one or more persons competent and suitably qualified to hold the office; and

(ii) subject to subparagraph (iii), if a person or persons are nominated under subparagraph (i), the board must appoint a person so nominated to the office; and

(iii) if no person is nominated under subparagraph (i) or the board considers, in its sole discretion, that no person so nominated is competent and suitably qualified to hold the office, the board may appoint to the office any person it considers to be competent and suitably qualified;

and

(c) despite anything in this Act, a person holding the office under paragraph (a) or by appointment in accordance with paragraph (b) is, by force of this clause, an employee of the operator and the operator is responsible for all costs, liabilities and obligations relating to that employment; and

(d) if the management agreement expires or is terminated the appointment of a person then holding the office under paragraph (a) or by appointment in accordance with paragraph (b) is revoked by force of this clause.

(11) With any appropriate modifications —

(a) subclause (10)(a) applies to a person holding the office of deputy harbour master or acting harbour master of the port immediately before the transfer time; and

(b) subclause (10)(b) applies to the appointment of a person to the office of deputy harbour master or acting harbour master of the port under section 102 while the management agreement continues in force; and

(c) subclause (10)(c) and (d) apply to a person to whose office or appointment as deputy harbour master or acting harbour master of the port paragraph (a) or (b) applies.

(12) At the transfer time clause 9.2 of the management agreement ceases to have effect by force of this subclause, however —

(a) if a person is to be approved as a pilot for the port under section 96 while the management agreement continues in force —

(i) the board must request the operator in writing to provide the port authority, within 28 days after the service of the request, with the nomination of one or more persons competent and suitably qualified for approval as a pilot for the port; and

(ii) subject to subparagraph (iii), if a person or persons are nominated under subparagraph (i), the board must approve a person so nominated as a pilot for the port; and

(iii) if no person is nominated under subparagraph (i) or the board considers, in its sole discretion, that no person so nominated is competent and suitably qualified for approval as a pilot for the port, the board may approve as a pilot for the port any person it considers to be competent and suitably qualified;

and

(b) despite anything in this Act, while the management agreement continues in force a person holding a transitional approval as a pilot for the port under clause 64 or approved as a pilot for the port in accordance with paragraph (a) is, by force of this clause, an employee of the operator and the operator is responsible for all costs, liabilities and obligations relating to that employment.

(13) It is to be taken to be a condition of an existing arrangement that the operator must comply with any direction given by the port authority to the extent that the direction is given to facilitate —

(a) compliance by the port authority with a requirement under this Act; or

(b) performance by the port authority of its functions.

(14) If, despite any direction under subclause (13), there is an inconsistency between an obligation of the port authority under an existing arrangement and a requirement or function under this Act, the obligation prevails to the extent of the inconsistency.

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 2** Provisions for Ports Legislation Amendment Act 2017

**cl. 67**

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(15) Without limiting clause 70(1), its provisions apply to anything done by or under this clause.

[Clause 66A inserted by the Ports Legislation Amendment Bill 2017 cl. 52(2).]

**Subdivision 3 — General provisions**

[Heading inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]

**67. Registration of documents**

The relevant officials are to take notice of the affecting provisions and are to record and register in the appropriate manner the documents necessary to show the effect of the affecting provisions.

[Clause 67 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]

**68. Exemption from State taxes**

(1) In this clause —

State tax includes duty under the *Duties Act 2008* and any other tax under a written law.

(2) State tax is not payable in relation to —

(a) anything that occurs by force or because of the affecting provisions; or

(b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Division, or to give effect to the affecting provisions, or for a purpose connected with or arising out of giving effect to the affecting provisions.

[Clause 68 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]

**69. Transitional regulations**

(1) Regulations (*transitional regulations*) may prescribe —

(a) things to be done by a Minister, the Transport Department, the Transport CEO or a port authority, to provide for, implement or facilitate a port transfer; and

(b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to a port transfer.

(2) Transitional regulations may provide that specific provisions of any written law —

(a) do not apply to or in relation to any matter; or

(b) apply with specific modifications to or in relation to any matter.

(3) If transitional regulations relating to a port transfer provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the transfer time, the regulations have effect according to their terms.

(4) If transitional regulations contain a provision referred to in subclause (3), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

*[Clause 69 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

#### **70. Saving**

(1) The operation of any of the affecting provisions is not to be regarded —

(a) as a breach of contract or confidence or otherwise as a civil wrong; or

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or

(c) as giving rise to any right to damages or compensation; or

(d) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or

(e) as causing any contract or instrument to be void or otherwise unenforceable; or

(f) as releasing or allowing the release of any surety.

(2) This Division and transitional regulations are additional to any relevant provisions of the *Interpretation Act 1984*.

*[Clause 70 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

**Port Authorities Act 1999**

**Schedule 8** Transitional provisions

**Division 2** Provisions for Ports Legislation Amendment Act 2017

**cl. 71**

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**71. Effect of affecting provisions**

Subject to clauses 74 and 75, the affecting provisions have effect despite any provision of this Act or another written law.

*[Clause 71 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

**72. No exclusion of operation of affecting provisions**

A provision of an agreement or instrument that purports to in any way exclude the agreement or instrument from the operation of future legislation has no effect in relation to the affecting provisions.

*[Clause 72 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

**73. Effect of continued easements, leases and licences**

(1) This clause applies if under clause ~~61(2), 66(5) or 66A(9)~~, ~~61(2) or 66(5)~~ an easement, lease or licence is to be taken, from the transfer time of a port transfer, to have been granted under this Act.

(2) The rights and powers that the grantee, lessee or licensee had under the easement, lease or licence before the transfer time are not adversely affected except to the extent (if any) requested or agreed under subclause (3).

(3) The port authority may, at the request or with the agreement of the grantee, lessee or licensee, renew or vary the easement, lease or licence under this Act.

(4) Subclause (2) does not affect the operation of clause ~~66(9) or (10) or 66A(13)~~ ~~-(10)~~.

*[Clause 73 inserted by the Ports Legislation Amendment Bill 2017 cl. 51; amended by the Ports Legislation Amendment Bill 2017 cl. 52(3) and (4).]*

**74. Government agreements not affected**

The affecting provisions do not prejudice or in any way affect any right or obligation of a party to a Government agreement.

*[Clause 74 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

**75. Preservation of mining, petroleum and other rights**

(1) In this clause —  
*authorisation* means —

(a) a mining tenement as defined in the *Mining Act 1978* section 8(1); or

- (b) an authority to occupy or right of occupancy of any land to which the *Mining Act 1978* Second Schedule clause 1(1) applies; or
- (c) an exploration licence, retention licence, mining licence, works licence, special purpose consent or other right under the *Offshore Minerals Act 2003*; or
- (d) a drilling reservation, lease, licence, permit, pipeline licence, special prospecting authority, access authority or other right under the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982*; or
- (e) any other authorisation of a kind provided for under a written law and prescribed for this paragraph by transitional regulations.

(2) Without limiting clause 74, the affecting provisions as they apply to a port transfer do not —

- (a) prejudice or in any way affect an authorisation in effect before the transfer time; or
- (b) prejudice or in any way affect any right or obligation of a person under an authorisation in effect before the transfer time; or
- (c) prevent an application for an authorisation made but not disposed of before the transfer time from being dealt with after the transfer time; or
- (d) prejudice or in any way affect the manner in which an application mentioned in paragraph (c) is dealt with after the transfer time.

*[Clause 75 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

#### **76. Transitional provision for Schedule 9**

If a transfer provision has not come into operation, the reference in the definition of *unassigned port* in Schedule 9 clause 1 to a port named in Schedule 1 includes a reference to the existing S&P Act port for the port named in that transfer provision.

*[Clause 76 inserted by the Ports Legislation Amendment Bill 2017 cl. 51.]*

**Schedule 9 — Placing additional ports under a port authority's control and management**

[s. 4(2A)(b)]

*[Heading inserted by No. 9 of 2014 s. 36.]*

**1. Terms used**

In this Schedule —

**Government agreement** has the meaning given in Schedule 8 clause 1;

~~**port** means a port other than a port named in regulations referred to in the *Shipping and Pilotage Act 1967* section 10(1a);~~

**port addition** means the placing of a port under the control and management of a port authority by regulations referred to in clause 2(1), whether or not those regulations have come into ~~operation;~~  
~~operation.~~

~~**unassigned port** means a port that —~~

~~(a) is not named in Schedule 1; and~~

~~(b) has not been placed under the control and management of a port authority by regulations in accordance with this Schedule.~~

*[Clause 1 inserted by No. 9 of 2014 s. 36; amended by the Ports Legislation Amendment Bill 2017 cl. 53(1)-(3).]*

**2. Regulations may place a port under the control and management of a port authority**

(1) Regulations may ~~place a~~ ~~place a~~ place an unassigned port specified in the regulations under the control and management of a port authority specified in the regulations.

(2) Regulations may prescribe any matter that may be necessary or expedient to provide for, implement or facilitate a port addition.

~~(3) Without limiting subclause (2) regulations may —~~

~~(a) vest land, seabed, water or other property in a port authority or otherwise provide for the vesting of, land, seabed, water or other property in a port authority; and~~

~~(b) specify liabilities of the State that are to become liabilities of a port authority or otherwise provide for liabilities of the State to become liabilities of a port authority; and~~

~~(c) displace the operation of section 25(1) in relation to a port addition.~~

*[Clause 2 inserted by No. 9 of 2014 s. 36; amended by the Ports Legislation Amendment Bill 2017 cl. 53(4) and (5).]*



**3. Port authority to implement or facilitate port addition**

- (1) If a port addition places, or will place, a port under the control and management of a port authority, the port authority is to do anything that is prescribed by regulations referred to in clause 2 and anything else that may be necessary or expedient to provide for, implement or facilitate the port addition.
- (2) The function conferred on a port authority by subclause (1) is in addition to any other function that it has.

*[Clause 3 inserted by No. 9 of 2014 s. 36.]*

**4. Government agreements not affected**

- (1) The provisions of this Schedule or regulations referred to in this Schedule do not prejudice or in any way affect any right or obligation of a party to a Government agreement.
- (2) This clause does not limit or otherwise affect the operation of Schedule 6 clauses 1.3 and 2.3.

*[Clause 4 inserted by No. 9 of 2014 s. 36.]*

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**Notes**

<sup>1</sup> This is a compilation of the *Port Authorities Act 1999* and includes the amendments made by the other written laws referred to in the following table <sup>4, 6</sup>. The table also contains information about any reprint.

**Compilation table**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Port Authorities Act 1999</i>	22 of 1999	29 Jun 1999	s. 1 and 2: 29 Jun 1999; Act other than s. 1 and 2 and Sch. 1 it. 2: 14 Aug 1999 (see s. 2 and <i>Gazette</i> 13 Aug 1999 p. 3823); Sch. 1 it. 2: 1 Jan 2000 (see s. 2 and <i>Gazette</i> 24 Dec 1999 p. 6871)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 58</i>	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(1) and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>Corporations (Consequential Amendments) Act 2001 Pt. 45</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth. <i>Gazette</i> 13 Jul 2001 No. S285)
<i>Labour Relations Reform Act 2002 s. 23</i>	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Port Authorities (Act Amendment) Regulations 2003 published in Gazette 4 Mar 2003 p. 711-22</i>			4 Mar 2003
<i>Corporations (Consequential Amendments) Act (No. 3) 2003 Pt. 11 <sup>7</sup></i>	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and Cwlth. <i>Gazette</i> 24 Oct 2001 No. GN42)
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 12 published in Gazette 15 Aug 2003 p. 3685-92</i>			15 Sep 2003 (see r. 2)
<i>Ports and Marine Legislation Amendment Act 2003 Pt. 2 <sup>2</sup></i>	71 of 2003	15 Dec 2003	s. 5 and 6: 14 Aug 1999 (see s. 2(2)); s. 4, 8 and 9: 15 Dec 2003 (see s. 2(1)); s. 7: 14 Feb 2004 (see s. 2(3) and <i>Gazette</i> 13 Feb 2004 p. 537)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 93</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Criminal Code Amendment Act 2004 s. 58</i>	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Dangerous Goods Safety Act 2004 s. 70</i>	7 of 2004	10 Jun 2004	1 Mar 2008 (see s. 2 and <i>Gazette</i> 29 Feb 2008 p. 669)

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Short title	Number and year	Assent	Commencement
<b>Reprint 1: The Port Authorities Act 1999 as at 1 Oct 2004</b> (includes amendments listed above except those in the <i>Dangerous Goods Safety Act 2004</i> )			
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 5(1), 11 and Sch. 1 cl. 131	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 2: The Port Authorities Act 1999 as at 4 Jul 2008</b> (includes amendments listed above)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 102	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Statutes (Repeals and Minor Amendments) Act 2009</i> s. 17	46 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(b))
<i>Public Sector Reform Act 2010</i> s. 81 and 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Building Act 2011</i> s. 169	24 of 2011	11 Jul 2011	2 Apr 2012 (see s. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033)
<b>Reprint 3: The Port Authorities Act 1999 as at 7 Sep 2012</b> (includes amendments listed above)			
<i>Ports Legislation Amendment Act 2014</i>	9 of 2014	20 May 2014	Heading to Pt. 2, s. 3, 4(3), 5(1), 7(1), 10, 28(1), 29, 30, 32 and 35: 21 May 2014 (see s. 2(1)(b)); s. 4(1) and (2), 6, 7(2), 8, 9, 11-27 and 33: 31 May 2014 (see s. 2(1)(c) and <i>Gazette</i> 30 May 2014 p. 1680); s. 4(4), 5(2), 28(2), 31(2)-(4), 34 and 36: 1 July 2014 (see s. 2(1)(c) and (2) and <i>Gazette</i> 20 Jun 2014 p. 2023); s. 31(1): 1 Oct 2014 (see s. 2(1)(c) and <i>Gazette</i> 19 Sep 2014 p. 3329)
<i>Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2016</i> Pt. 3 Div. 4	46 of 2016	7 Dec 2016	8 Dec 2016 (see s. 2(b))

## Port Authorities Act 1999

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Short title	Number and year	Assent	Commencement
<a href="#">Ports Legislation Amendment Bill 2017 Pt. 6</a>	<a href="#">Current Bill No. 52-1</a>		

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<sup>2</sup> The *Ports and Marine Legislation Amendment Act 2003* s. 4(2) reads as follows:

- (2) The amendment made by subsection (1) does not affect the operation of the *Port Authorities (Withdrawal and Revesting of Property) Order 2000* published in the *Gazette* on 2 June 2000.

<sup>3</sup> The *Land Act 1933* was repealed by the *Land Administration Act 1997* s. 281.

<sup>4</sup> The *Port Authorities (Consequential Provisions) Act 1999* s. 3 and Pt. 3 have interpretation and transitional provisions.

<sup>5</sup> Lands and Surveys plans are now held by the Western Australian Land Information Authority (see the *Land Information Authority Act 2006* s. 100).

<sup>6</sup> The amendment in the *State Superannuation Amendment Act 2007* s. 84 is not included because it was repealed by the *State Superannuation Amendment Act 2011* s. 4 before the amendment purported to come into operation.

<sup>7</sup> The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 contain validation provisions.