

Queensland



*Transport Infrastructure Act 1994*

**TRANSPORT  
INFRASTRUCTURE  
(CANDIDATE GOC PORT  
AUTHORITIES)  
TRANSITIONAL  
REGULATION 1994**

**Reprinted as in force on 2 February 1996  
(includes amendments up to SL No. 214 of 1995)**

**Reprint No. 2**

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# Information about this reprint

This regulation is reprinted as at 2 February 1996. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- use conjunctives and disjunctives consistent with current drafting practice (s 28)
- use expressions consistent with current drafting practice (s 29)
- reorder provisions consistent with current drafting practice (s 30A)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 37).

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in the reprint, including table of changed citations and remade laws**
- **editorial changes made in earlier reprints.**

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# TRANSPORT INFRASTRUCTURE (CANDIDATE GOC PORT AUTHORITIES) TRANSITIONAL REGULATION 1994

[as amended by all amendments that commenced on or before 2 February 1996]

## PART 1—PRELIMINARY

### Short title

1. This regulation may be cited as the *Transport Infrastructure (Candidate GOC Port Authorities) Transitional Regulation 1994*.

### Definitions

3. In this regulation—

“**board**” of a port authority means the port authority’s board of directors.

“**government entity**” has the same meaning as in the *Government Owned Corporations Act 1993*.

“**industrial agreement**” includes a certified agreement or enterprise flexibility agreement within the meaning of the *Industrial Relations Act 1990*.

“**instrument**” has the same meaning as in the *Government Owned Corporations Act 1993*.

“**terms**” of appointment has the same meaning as in the *Government Owned Corporations Act 1993*.

## **PART 2—APPLICATION**

### **Application of regulation**

4. This regulation applies to a port authority that is a candidate GOC within the meaning of the *Government Owned Corporations Act 1993*.

## **PART 3—BOARDS OF PORT AUTHORITIES**

### *Division 1—General*

#### **The board and its role**

5.(1) Each port authority is to have a board of directors (the “**board**”).

(2) The role of the board includes the following matters—

- (a) responsibility for the authority’s commercial policy and management;
- (b) accounting to the Minister for its performance;
- (c) ensuring that the authority otherwise performs its functions in a proper, effective and efficient way.

#### **Initial directors**

6.(1) A person who, immediately before the commencement, was a member of the board of a port authority becomes, on the commencement, a director of the port authority.

(2) In this section—

“**board**” of a port authority means the board of the authority as established immediately before the commencement.

### **Delegation by board**

7. A port authority's board may, by resolution, delegate its powers to—
- (a) a director; or
  - (b) a committee of the board; or
  - (c) the authority's chief executive officer; or
  - (d) an employee of the authority.

### **Composition of board**

8. A port authority's board is to consist of the number of directors appointed by the Governor in Council.

### **Chairperson and deputy chairperson**

9.(1) The Governor in Council may appoint a director to be the board's chairperson and another director to be the board's deputy chairperson.

- (2) The deputy chairperson is to act as chairperson—
- (a) during a vacancy in the office of chairperson; and
  - (b) during all periods when the chairperson is absent from duty or can not, for another reason, perform the functions of the office.

### *Division 2—Meetings and other business of board*

### **Meaning of “required minimum number” of directors**

10. In this division—

“required minimum number” of directors means the number that is half the number of directors of which the board for the time being consists or, if the number is not a whole number, the next higher whole number.

### **Conduct of meetings and other business**

**11.** Subject to this division, the board may conduct its business (including its meetings) in the way it considers appropriate.

### **Times and places of meetings**

**12.(1)** Meetings of the board are to be held at the times and places decided by the board.

**(2)** However, the chairperson—

- (a) may at any time call a meeting; and
- (b) must call a meeting when asked by at least the required minimum number of directors.

### **Presiding at meetings**

**13.(1)** The chairperson is to preside at all meetings at which the chairperson is present.

**(2)** If the chairperson is not present at a meeting, the deputy chairperson is to preside.

**(3)** If both the chairperson and deputy chairperson are not present at a meeting, the director chosen by the directors present at the meeting is to preside.

### **Quorum and voting at meetings**

**14.(1)** At a meeting of the board—

- (a) the required minimum number of directors form a quorum; and
- (b) a question is to be decided by a majority of the votes of the directors present and voting; and
- (c) each director present has a vote on each question arising for decision and, if the votes are equal, the director presiding also has a casting vote.

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(2) Section (1)(a) has effect subject to section 35(3) (Voting by interested director).

### **Taking part in meetings by telephone etc.**

**15.(1)** The board may permit directors to take part in a particular meeting, or all meetings, by telephone, closed circuit television or another way of communication.

(2) A director who takes part in a meeting of the board under a permission under subsection (1) is taken to be present at the meeting.

### **Resolutions without meetings**

**16.(1)** If at least a majority of directors sign a document containing a statement that they are in favour of a resolution specified in the document, a resolution in those terms is taken to have been passed at a meeting of the board held on the day the document is signed or, if the directors do not sign it on the same day, the day that the last of the directors forming the majority signs the document.

(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the board, each director must immediately be advised of the matter and given a copy of the terms of the resolution.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more directors, are taken to form a single document.

### **Minutes**

**17.** The board must keep minutes of its proceedings.

## ***Division 3—Provisions about directors***

### **Appointment of directors**

**18.(1)** A director of a board of a port authority is to be appointed by the

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Governor in Council for not more than 5 years.

(2) In appointing a person as a director, the Governor in Council must have regard to the person's ability to make a contribution to the port authority's commercial performance.

(3) A person is not eligible for appointment if the person is not able to manage a corporation because of the Corporations Law, section 229.

### **Terms of appointment not provided for under Act**

19.(1) For matters not provided for under this regulation, a director holds office on the terms of appointment decided by the Governor in Council.

(2) Other than as decided by the Governor in Council, a director is not entitled to receive any payment, interest in property or other valuable consideration or benefit—

- (a) by way of remuneration as a director; or
- (b) in connection with retirement from office, or other ending of office, as a director.

(3) However, until the Governor in Council otherwise decides, a director of a port authority's board holds office on the terms of appointment that applied, immediately before the commencement, to a member, or the relevant member, of the board of the port authority as established immediately before the commencement.

### **Appointment of acting director**

20. The Governor in Council may appoint a person to act as a director during any period, or all periods, when a director is absent from duty or can not, for another reason, perform the functions of the office.

### **Resignation**

21.(1) The chairperson, deputy chairperson or another director of the port authority may resign by signed notice of resignation given to the Governor.

(2) The chairperson or deputy chairperson may resign as chairperson or deputy chairperson and remain a director.

### **Ending of appointment as director**

**22.(1)** The Governor in Council may, at any time, end the appointment of all or any directors of the board for any reason or none.

**(2)** If a person who is an officer of the public service when appointed as a director ceases to be an officer of the public service, the person ceases to be a director.

## **PART 4—CHIEF EXECUTIVE OFFICER**

### **Port authority to have chief executive officer**

**23.** Each port authority is to have a chief executive officer.

### **Duties of chief executive officer**

**24.** A port authority's chief executive officer is, under its board, to manage the authority.

### **Things done by chief executive officer**

**25.** Anything done in the name of, or for, a port authority by its chief executive officer is taken to have been done by the authority.

### **Delegation by chief executive officer**

**26.(1)** The chief executive officer of a port authority may delegate the chief executive officer's powers (including a power delegated to the chief executive) to an employee of the authority.

**(2)** Subsection (1) has effect subject to any directions of the port authority's board.

### **Appointment of chief executive officer**

**27.(1)** A port authority's chief executive officer is to be appointed by the Governor in Council on the recommendation of the authority's board.

**(2)** A person who, immediately before the commencement, was the chief executive officer (however described) of a port authority becomes, on the commencement, the authority's chief executive officer.

### **Appointment of acting chief executive officer**

**28.** The board may appoint a person to act as chief executive officer—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chief executive officer is absent from duty or can not, for another reason, perform the functions of the office.

### **Terms of appointment not provided for under Act**

**29.** For matters not provided for under this regulation, the chief executive officer holds office on the terms of appointment decided by the board.

### **Resignation**

**30.** The chief executive officer may resign by signed notice given to the chairperson.

### **Ending of appointment**

**31.(1)** The board may, at any time, end the appointment of the chief executive officer for any reason or none.

**(2)** The ending of the appointment of the chief executive officer under subsection (1) does not affect any rights to compensation to which the chief executive officer is entitled under the terms of the chief executive officer's appointment.

## **PART 5—GENERAL RESERVE POWERS OF MINISTER**

### **Reserve power of Minister to notify port authority of public sector policies**

**32.(1)** The Minister may give a port authority's board written notice of a public sector policy that is to apply to the authority if the Minister is satisfied it is necessary to give the notice in the public interest.

**(2)** The board must ensure that the port authority complies with the policy.

**(3)** Before giving the notice, the Minister must—

- (a)** consult with the board; and
- (b)** ask the board to advise whether, in its opinion, complying with the policy would not be in the commercial interests of the port authority.

**(4)** The Minister must gazette a copy of the notice within 21 days after it is given.

### **Reserve power of Minister to give directions in public interest**

**33.(1)** The Minister may give a port authority's board a written direction for the authority if the Minister is satisfied it is necessary to give the direction in the public interest because of exceptional circumstances.

**(2)** The board must ensure that the port authority complies with the direction.

**(3)** Before giving the direction, the Minister must—

- (a)** consult with the board; and
- (b)** ask the board to advise whether, in its opinion, complying with the direction would not be in the commercial interests of the port authority.

**(4)** The Minister must gazette a copy of the direction within 21 days after it is given.

## **PART 6—DUTIES AND LIABILITIES OF DIRECTORS AND OTHER OFFICERS**

### **Disclosure of interests by directors**

**34.(1)** If a director of a port authority has a direct or indirect interest in an issue being considered, or about to be considered, by its board, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty—20 penalty units.

(2) The disclosure must be recorded in the board's minutes.

### **Voting by interested director**

**35.(1)** A director of a port authority who has a material personal interest in an issue being considered by the board must not—

- (a) vote on the issue; or
- (b) vote on a proposed resolution (a “**related resolution**”) under subsection (2) about the issue (whether about the director or another director); or
- (c) be present while the issue, or a related resolution, is being considered by the board; or
- (d) otherwise take part in a decision of the board about the issue or a related resolution.

Maximum penalty—20 penalty units.

(2) Subsection (1) does not apply to the issue if the board has at any time passed a resolution—

- (a) specifying the director, the interest and the issue; and
- (b) stating that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the issue.

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(3) A quorum is present during a consideration of an issue by the board only if at least 2 directors are present who are entitled to vote on a motion that may be moved about the issue.

(4) The Minister may, by agreeing to a proposed resolution, deal with an issue if the board can not deal with it because of subsection (3).

### **Duty and liability of certain officers of port authority**

**36.(1)** In this section—

“**officer**” of a port authority means—

- (a) a director of the authority; or
- (b) the authority’s chief executive officer; or
- (c) anyone else concerned, or taking part, in the authority’s management.

(2) An officer of a port authority must act honestly in the exercise of powers, and discharge of functions, as an officer of the authority.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud the port authority, creditors of the authority or creditors of someone else or for another fraudulent purpose—40 penalty units; or
- (b) in any other case—20 penalty units.

(3) In the exercise of powers and the discharge of functions, an officer of a port authority must exercise the degree of care and diligence that a reasonable person in a like position in a port authority would exercise in the authority’s circumstances.

Maximum penalty—20 penalty units.

(4) An officer of a port authority, or a person who has been an officer of a port authority, must not make improper use of information acquired because of his or her position as an officer of the authority—

- (a) to gain, directly or indirectly, an advantage for himself or herself or for someone else; or

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- (b) to cause detriment to the authority.

Maximum penalty—40 penalty units.

(5) An officer of a port authority must not make improper use of his or her position as an officer of the authority—

- (a) to gain, directly or indirectly, an advantage for himself or herself or someone else; or
- (b) to cause detriment to the authority.

Maximum penalty—40 penalty units.

(6) If a person contravenes this section in relation to a port authority, the authority may recover from the person as a debt owing to the authority—

- (a) if the person or someone else made a profit because of the contravention—an amount equal to the profit; and
- (b) if the authority suffered loss or damage because of the contravention—an amount equal to the loss or damage.

(7) An amount may be recovered from the person under subsection (6) whether or not the person has been convicted of an offence for the contravention.

(8) Subsection (6) is in addition to, and does not limit, the *Crimes (Confiscation) Act 1989*.

(9) In deciding under subsection (3) the degree of care and diligence a reasonable person in a like position in a port authority would exercise in the circumstances of the authority concerned, regard must be had to—

- (a) the fact that the person is an officer of a port authority; and
- (b) the application of chapter 7 of the Act and any regulation under the Act to the port authority; and
- (c) relevant matters required or permitted to be done under chapter 7 of the Act and any regulation under the Act in relation to the authority;

including, for example, any relevant directions, notifications or approvals given to the authority or its board by the Minister.

(10) Subsection (9) does not limit the matters to which regard may be

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had for the purposes of subsection (3).

(11) This section is in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person's office in relation to a corporation.

(12) Also, this section does not prevent civil proceedings being started for a breach of the duty or the liability.

### **Prohibition on loans to directors**

**37.(1)** A port authority must not, whether directly or indirectly—

- (a) make a loan to a director, spouse of a director or relative of a director or spouse; or
- (b) give a guarantee or provide security in connection with a loan made to a director, spouse of a director or relative of a director or spouse.

(2) Subsection (1) does not apply to the entering into by the port authority of an instrument with a person mentioned in subsection (1) if the instrument is entered into on the same terms as similar instruments (if any) are entered into by the authority with members of the public.

(3) A director of a port authority who is knowingly concerned in a contravention of subsection (1) by the authority (whether or not in relation to the director) commits an offence.

Maximum penalty—20 penalty units.

(4) In this section—

**“relative”** means—

- (a) a parent or more remote lineal ancestor; or
- (b) a son, daughter or more remote issue; or
- (c) a brother or sister.

### **Port authority not to indemnify officers**

**38.(1)** A port authority must not—

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- (a) indemnify a person who is or has been an officer of the authority against a liability incurred as an officer; or
- (b) exempt a person who is or has been an officer of the authority from a liability incurred as an officer.

(2) An instrument is void as far as it provides for the port authority to do something prohibited by subsection (1).

(3) Subsection (1) does not prevent the port authority indemnifying a person against a civil liability (other than a liability to the authority) unless the liability arises out of conduct involving a lack of good faith.

(4) Subsection (1) does not prevent the authority indemnifying a person against a liability for costs and expenses incurred by the person—

- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or the person is acquitted; or
- (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

(5) The port authority may give an indemnity mentioned in subsection (3) or (4) only with the Minister's approval.

(6) This section is in addition to, and does not limit, a provision of a regulation made under section 175(2) (Protection from liability) of the Act.

(7) In this section—

**“indemnify”** includes indemnify indirectly through 1 or more interposed entities;

**“officer”** of a port authority means—

- (a) a director of the authority; or
- (b) the authority's chief executive officer; or
- (c) anyone else concerned, or taking part, in the authority's management.

### **Port authority not to pay premiums for certain liabilities of officers**

**39.(1)** A port authority must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer of the authority against a liability—

- (a) incurred by the person as an officer; and
- (b) arising out of conduct involving—
  - (i) a wilful breach of duty in relation to the authority; or
  - (ii) without limiting subparagraph (i), a contravention of section 36(4) or (5).

**(2)** Subsection (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.

**(3)** An instrument is void as far as it insures a person against a liability in contravention of subsection (1).

**(4)** In this section—

“**officer**” of a port authority means—

- (a) a director of the authority; or
- (b) the authority’s chief executive officer; or
- (c) anyone else concerned, or taking part, in the authority’s management;

“**pay**” includes pay indirectly through 1 or more interposed entities.

### **Director’s duty to prevent insolvent trading**

**40.(1)** A person who is a director of the authority, or takes part in the authority’s management, when the debt is incurred commits an offence if—

- (a) immediately before a port authority incurs a debt—
  - (i) there are reasonable grounds to suspect that the authority will not be able to pay all its debts as and when they become due; or
  - (ii) there are reasonable grounds to suspect that, if the authority

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incurs the debt, it will not be able to pay all its debts as and when they become due; and

- (b) the authority is, or later becomes, unable to pay all its debts as and when they become due.

Maximum penalty—20 penalty units.

(2) In a proceeding against a person for an offence against this section, it is a defence if it is proved—

- (a) that the debt was incurred without the person's express or implied authority or consent; or
- (b) that, when the debt was incurred, the person did not have reasonable cause to suspect—
  - (i) that the authority would not be able to pay all its debts as and when they became due; or
  - (ii) that, if the authority incurred the debt, it would not be able to pay all its debts as and when they became due; or
- (c) that the person took all reasonable steps to prevent the authority from incurring the debt; or
- (d) for a director—that the person did not take part at the time in the authority's management because of illness or for some other good reason.

### **Court may order compensation**

**41.(1)** If a person is found guilty of an offence against section 40 (Director's duty to prevent insolvent trading) in relation to the incurring of a debt by a port authority, the Supreme Court or a District Court may declare the person to be personally responsible without limitation of liability for the payment to the authority of the amount required to satisfy the part of the authority's debts the court considers proper.

(2) This section does not affect any rights of a person to indemnity, subrogation or contribution.

(3) This section is in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person's office in relation to a

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corporation.

(4) Also, this section does not prevent proceedings being started for a breach of the duty or the liability.

### **Examination of persons concerned with port authorities**

**42.(1)** The Attorney-General may apply to the Supreme Court or a District Court for an order under this section in relation to a person if it appears to the Attorney-General that—

- (a) the person has been concerned, or taken part, in a port authority's management, administration or affairs and has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to the authority; or
- (b) the person may be capable of giving information in relation to a port authority's management, administration or affairs.

(2) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on any matters about the authority's management, administration or affairs.

(3) The examination of the person is to be held in public except as far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.

(4) The court may give directions about—

- (a) the matters to be inquired into at the examination; and
- (b) the procedures to be followed at the examination (including, if the examination is to be held in private, the persons who may be present).

(5) The person must not fail, without reasonable excuse—

- (a) to attend as required by the order; or
- (b) to continue to attend as required by the court until the end of the examination.

Maximum penalty—40 penalty units.

(6) The person must not fail to take an oath or make an affirmation at the

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examination.

Maximum penalty—40 penalty units.

(7) The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty—40 penalty units.

(8) The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

(9) The person must not, without reasonable excuse, contravene a direction under subsection (8).

Maximum penalty—40 penalty units.

(10) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.

(11) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(12) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

(13) An answer is not admissible in evidence against the person in a criminal proceeding, or a proceeding for the imposition of a penalty, other than a proceeding for an offence against this section or another proceeding about the falsity of the answer if—

- (a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty; and
- (b) the answer might in fact tend to incriminate the person or make the person liable to a penalty.

(14) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may

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require the person to sign the record.

(15) Subject to subsection (13), any written record of the examination signed by the person, or any transcript of the examination authenticated by the signature of the examiner, may be used in evidence in a legal proceeding against the person.

(16) The person may, at his or her own expense, employ counsel or a solicitor, and the counsel or solicitor may ask the person questions the court considers just to enable the person to explain or qualify any answers given by the person.

(17) The court may adjourn the examination at any time.

(18) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order the whole or a part of the costs incurred by the person be paid by the State.

### **Power to grant relief**

**43.(1)** This section applies to a director, the chief executive officer or an employee of a port authority.

(2) In a proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty as a person to whom this section applies, the court may relieve the person from liability if it appears to the court that—

- (a) the person is or may be liable for the negligence, default or breach; but
- (b) the person has acted honestly and, having regard to all the circumstances of the case (including circumstances connected with the person's appointment) the person ought fairly to be excused for the negligence, default or breach.

(3) The court may relieve the person from liability in whole or part and on any terms the court considers appropriate.

(4) If a person to whom this section applies believes a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this section applies, the person may apply to the Supreme Court or a District Court for relief.

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(5) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.

(6) A judge may withdraw the case (in whole or part) from the jury and direct that judgment be entered for the defendant on the terms (about costs or otherwise) the judge considers appropriate if—

- (a) a proceeding mentioned in subsection (2) is being tried by the judge with a jury; and
- (b) the judge, after hearing the evidence, is satisfied that the defendant ought under the subsection be relieved (in whole or part) from the liability sought to be enforced against the person.

**False or misleading information or documents**

**44.(1)** In this section—

“**officer**” of a port authority means—

- (a) a director of the authority; or
- (b) the authority’s chief executive officer; or
- (c) an employee of the authority.

(2) An officer of a port authority must not—

- (a) make a statement about the affairs of the authority to another officer or the Minister that the first officer knows is false or misleading in a material particular; or
- (b) omit from a statement about the authority’s affairs, made to another officer or the Minister, anything without which the statement is, to the first officer’s knowledge, misleading in a material particular.

(3) A complaint against a person for an offence against section (2)(a) or (b) is sufficient if it states that the information given was false or misleading to the person’s knowledge.

(4) An officer of a port authority must not give to another officer or the Minister a document containing information the first officer knows is false, misleading or incomplete in a material particular without—

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- (a) telling the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud the authority, creditors of the authority or creditors of someone else or for another fraudulent purpose—40 penalty units; or
- (b) in any other case—20 penalty units.

**Notice of suspected insolvency other than because of direction or notification**

**45.(1)** The board must immediately give written notice to the Minister and the auditor-general of the suspicion and its reasons for the opinion if—

- (a) a port authority's board suspects that the authority is, may be, will or may become insolvent; and
- (b) in the board's opinion, compliance with a direction or notification given by the Minister is not, or would not be, the cause or a substantial cause of the suspected insolvency.

**(2)** The notice must state that it is given under this section.

**(3)** If the Minister is satisfied that the board's suspicion is well-founded, the Minister must immediately give the board written directions the Minister considers necessary or desirable, including, for example, any directions necessary or desirable to ensure—

- (a) that the authority does not incur further debts; or
- (b) that the authority will be able to pay all its debts as and when they become due.

**(4)** Without limiting subsection (3), a direction under this section may require the authority to stop or limit particular activities.

**(5)** The board must ensure that a direction under this section is complied with.

(6) The Minister must gazette a copy of the direction within 21 days after it is given.

(7) This section is in addition to, and does not limit, another provision of this regulation or another law.

## **PART 7—LEGAL CAPACITY AND POWERS**

### **Objects of part**

**46.** The objects of this part include ensuring that port authorities give effect to any restrictions on their objects or powers, but without affecting the validity of their dealings with outsiders.

### **General powers of port authorities**

**47.(1)** A port authority has all the powers of an individual, including, for example, the power to—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of and deal with property; and
- (c) appoint agents and attorneys; and
- (d) charge, and fix terms, for goods, services and information supplied by it; and
- (e) engage consultants.

(2) Without limiting subsection (1), a port authority has the powers conferred on it by this regulation or another law.

(3) The port authority may exercise its powers inside and outside Queensland.

(4) Without limiting subsection (3), the port authority may exercise its powers in a foreign country.

(5) The fact that the doing of an act by the port authority would not be, or is not, in its best interests does not affect its power to do the act.

(6) In this section—  
“power” includes legal capacity.

### **Restrictions on powers of port authorities**

**48.(1)** Section 47 (General powers of port authorities) has effect in relation to a port authority subject to any restrictions on the authority’s powers expressly imposed under this regulation or another law.

(2) Section 47 also has effect in relation to the authority subject to any restrictions expressly imposed by any relevant directions, notifications or approvals given to the authority by the Minister.

(3) The authority contravenes this subsection if—

- (a) the authority exercises a power contrary to a restriction mentioned in subsection (1) or (2); or
- (b) the authority does an act other than under its objects or functions.

(4) The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.

(5) An officer of the authority who is involved in the contravention contravenes this subsection.

(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

(7) The authority or officer of the port authority is not guilty of an offence merely because of the relevant contravention.

(8) The following matters may be asserted or relied on only in proceedings between the Minister or State and officers of the authority—

- (a) the fact that by exercising the powers mentioned in subsection (3)(a), or doing the act as mentioned in subsection (3)(b), the authority contravened, or would contravene, subsection (3);
- (b) the fact that by doing a particular act, an officer of the authority contravened, or would contravene, subsection (5).

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(9) In this section—

“**officer**” of a port authority means—

- (a) a director of the authority; or
- (b) the authority’s chief executive officer; or
- (c) an employee of the authority;

“**restriction**” includes prohibition.

**Persons having dealings with port authorities etc.**

**49.(1)** A person having dealings with a port authority may make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the authority that the matters the person is entitled to assume were not correct must be disregarded.

(2) A person having dealings with a person who has acquired, or purports to have acquired, title to property from a port authority (whether directly or indirectly) may make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the port authority or the second person that the matters that the first person may assume were not correct must be disregarded.

(3) The assumptions that a person, because of subsection (1) or (2), may make are—

- (a) that, at all relevant times, the Act and any regulation under the Act have been complied with; and
- (b) that a person who is held out by the port authority to be its officer or agent has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the type concerned; and
- (c) that an officer or agent of the port authority who has authority to issue a document for the port authority has authority to warrant that the document is genuine and that an officer or agent of the port authority who has authority to issue a certified copy of a document for the port authority has authority to warrant that the copy is a true copy; and

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- (d) that a document has been properly sealed by the port authority if—
  - (i) it bears what appears to be an imprint of the authority’s seal; and
  - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be a director of the authority or the authority’s chief executive officer; and
- (e) that the authority’s directors, chief executive officer, employees and agents have properly performed their duties to the authority.

(4) However, a person may not assume a matter mentioned in subsection (3) 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 authority, the person ought to know that the assumption would be incorrect.

(5) If, because of subsection (4), a person may not make a particular assumption—

- (a) if the assumption is about dealings with the authority—subsection (1) does not apply to any assertion by the authority about the assumption; or
- (b) if the assumption is about an acquisition or purported acquisition from the authority of title to property—subsection (2) does not apply to any assertion by the authority or someone else about the assumption.

(6) In this section—

“**officer**” of a port authority means—

- (a) a director of the authority; or
- (b) the authority’s chief executive officer; or
- (c) an employee of the authority.

## **PART 8—EMPLOYEES**

### **Employees of port authority**

**50.** A port authority may engage the employees it considers necessary to perform its functions.

### **Terms of employment**

**51.(1)** The terms of employment of the employees of a port authority are as decided by the authority.

**(2)** Subsection (1) has effect subject to—

- (a) chapter 7 of the Act or a law inconsistent with the subsection; or
- (b) any relevant award or industrial agreement.

### **Appointment of senior executives**

**52.(1)** The senior executives of a port authority are to be appointed by the Governor in Council on the recommendation of the authority's board.

**(2)** A person who, immediately before the commencement, was a senior executive (however described) of a port authority becomes, on the commencement, a senior executive of the authority.

### **Arrangements about staff**

**53.(1)** A port authority may arrange with the chief executive of a department of government, or with an authority of the State, for the services of officers or employees of the department or authority to be made available to it.

**(2)** A port authority may arrange with the appropriate authority of the Commonwealth or another State, or with an authority of the Commonwealth or another State, for the services of officers or employees of the public service of the Commonwealth or State, or of the authority, to be made available to it.

**(3)** A port authority may arrange for the service of an employee of the

authority to be made available to the Commonwealth or another State or an authority of the Commonwealth or another State.

### **Application of Equal Opportunity in Public Employment Act and Public Sector Management Commission Act**

**54.** A port authority is a unit of the public sector for the purposes of the *Equal Opportunity in Public Employment Act 1992* and the *Public Sector Management Commission Act 1990*.

### **Superannuation schemes**

**55.** A port authority may—

- (a) establish and amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

### **Superannuation for officers and employees who were previously officers of the public service**

**56.(1)** In this section—

**“person to whom this section applies”** means a person employed by a port authority in a permanent or full-time capacity who, immediately before becoming employed, was a contributor to the State Service Superannuation Fund or a member of the State Public Sector Superannuation Scheme.

**(2)** If, when a person to whom this section applies becomes employed by a port authority, the authority does not maintain or take part in a superannuation scheme for the benefit of its employees, the person is to continue to be a contributor to the State Service Superannuation Fund or a member of the State Public Sector Superannuation Scheme and, for the purpose, is taken to be an officer within the meaning of the *State Service Superannuation Act 1972* or eligible for membership of the scheme under the *Superannuation (State Public Sector) Act 1990*.

**(3)** A person may, under arrangements approved by the Treasurer by

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gazette notice, stop being a contributor or member and become a member of the scheme maintained by the authority or in which it takes part if—

- (a) the port authority later maintains or takes part in a superannuation scheme for the benefit of its employees (other than the State Service Superannuation Fund or the State Public Sector Superannuation Scheme); and
- (b) the person continued to be a contributor to the fund, or a member of the scheme, under subsection (2).

**Preservation of leave entitlements of certain former officers and employees of government entities**

**57.(1)** A person must be treated as having accrued the entitlements as an employee of the authority if—

- (a) the person becomes employed by a port authority in a permanent or full-time capacity within 1 year after the authority becomes a candidate GOC; and
- (b) the person was an officer or employee of a government entity, who was employed in a permanent or full-time capacity, immediately before becoming employed by the authority; and
- (c) the person had leave entitlement at that time that had been accrued as an officer or employee of a government entity.

**(2)** For accruing leave entitlements that have not accrued when a person mentioned in subsection (1)(a) and (b) becomes employed by a port authority, the person's employment mentioned in subsection (3) is taken to be employment by the authority.

**(3)** For subsection (2), the person's employment is—

- (a) employment by the government entity; and
- (b) employment by another entity that under a law is taken to be employment of the person by the government entity.

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### **Right of return to public service**

**58.(1)** A person is entitled to re-become an officer of the public service if—

- (a) the person becomes employed by a port authority in a permanent or full-time capacity within 1 year after the authority becomes a candidate GOC; and
- (b) the person was an officer of the public service, who was employed in a permanent or full-time capacity, immediately before becoming employed by the authority; and
- (c) the person elects to re-become an officer of the public service within 1 year or a further time the Minister allows.

**(2)** If the person re-becomes an officer of the public service under subsection (1)—

- (a) the person's initial terms of employment must not be less favourable than the terms of employment that applied to the person before the person became employed by the authority; and
- (b) for calculating and providing the person's superannuation and leave entitlements, the person is to be treated as—
  - (i) not having left the public service when the person became employed by the authority; and
  - (ii) having been an officer of the public service while the person was employed by the authority.

## ***PART 9—DIVIDENDS***

### ***Payment of dividends***

**59.(1)** *In this section—*

**“financial year”** means the financial year ending on 30 June 1994.

**(2)** *Within 5 months of the financial year, a port authority's board must advise the Minister of the recommendation that, after considering the*

*information available to the board at the time, it is likely to make under subsection (3).*

*(3) Within 6 months of the financial year, the board must recommend to the Minister the port authority pay a dividend or not pay a dividend.*

*(4) The board must consult with the Minister before making the recommendation.*

*(5) Within 1 month after receiving the recommendation, the Minister must either—*

*(a) approve the recommendation; or*

*(b) direct the payment of a specified dividend or a different specified dividend, as the case requires.*

*(6) However, the dividend payable for the financial year must not exceed the port authority's profits for the financial year after—*

*(a) provision has been made for income tax or its equivalent; and*

*(b) any unrealised capital gains from upwards revaluation of noncurrent assets have been excluded.*

*(7) The dividend must be paid to consolidated fund within 8 months of the financial year or any further period that the Minister allows.*

*(8) The Minister must arrange for a copy of a direction given under subsection (5)(b) to be published in the Gazette within 21 days after it is given.*

*(9) This Part expires on 1 July 1995.\**

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\* This part has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 February 1996. Future amendments of the Transport Infrastructure (Candidate GOC Port Authorities) Transitional Regulation 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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### 3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

### 4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Reprint date
1	none	21 July 1994

### 5 List of legislation

**Transport Infrastructure (Candidate GOC Port Authorities) Transitional  
Regulation 1994 SL No. 255**

notfd Gaz 1 July 1994 pp 1170–7

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 1994 (see s 2)

as amended by—

**Transport Infrastructure (Candidate GOC Port Authorities) Transitional  
Amendment Regulation (No. 1) 1994 SL No. 388**

notfd gaz 4 November 1994 pp 1027–8

commenced on date of notification

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**Transport Infrastructure (Candidate GOC Port Authorities) Transitional  
Amendment Regulation (No. 1) 1995 SL No. 214**

notfd gaz 20 June 1995 pp 1273–6  
commenced on date of notification

## **6 List of annotations**

### **Commencement**

s 2 om R2 (see RA s 37)

### **Superannuation schemes**

s 55 sub 1995 SL No. 214 s 3

### **PART 9—DIVIDENDS**

pt 9 (s 59) ins 1994 SL No. 388 s 3  
exp 1 July 1995 (see s 59(9))

## **7 Table of changed citations and remade laws**

TABLE OF CHANGED CITATIONS AND REMADE LAWS  
under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Crimes (Confiscation of Profits) Act 1989	Crimes (Confiscation) Act 1989	Crimes (Confiscation) Act 1989 s 111