

(Reprint No. 1)

SOUTH AUSTRALIA

SOUTH AUSTRALIAN PORTS CORPORATION ACT 1994

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **31 July 1997**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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SOUTH AUSTRALIAN PORTS CORPORATION ACT 1994

being

South Australian Ports Corporation Act 1994 No. 44 of 1994
[Assented to 2 June 1994]¹

as amended by

South Australian Ports (Bulk Handling Facilities) Act 1996 No. 94 of 1996 [Assented to 12 December 1996]²

¹ Came into operation 24 October 1994: *Gaz.* 20 October 1994, p. 1220.

² Sched. came into operation 31 July 1997: *Gaz.* 31 July 1997, p. 236.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix 1.*

An Act to provide for the management of public commercial ports in the State; to establish the South Australian Ports Corporation; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *South Australian Ports Corporation Act 1994*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Object

3. The object of this Act is to establish a statutory corporation with the principal responsibilities of—

- (a) managing the public commercial ports in the State vested in the corporation under this Act as a business enterprise; and
- (b) promoting and facilitating the development of commercially viable trade through the use of those ports.

Interpretation

4. In this Act, unless the contrary intention appears—

"**authorised person**" means—

- (a) a person appointed as an authorised person under this Act; or
- (b) a member of the police force;

"**the board**" means the board of directors established under this Act as the governing body of the Corporation;

"**the Corporation**" means the South Australian Ports Corporation established under this Act;

"**Corporation port**" means a port constituted and vested in the Corporation under this Act;

"**director**" means a person who is a member of the board;

"**land**" includes—

- (a) a subsurface stratum (which may terminate at a particular subsurface level or extend downwards without defined limit);
- (b) a stratum of airspace (which may terminate at a specified level or extend upwards without defined limit);

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"navigational aid" means—

- (a) a lighthouse, beacon, buoy or other mark or structure (whether equipped with a light or not) intended to be an aid to navigation; or
- (b) a radio beacon or other device intended to be an aid to navigation;

"owner" of a vessel includes a charterer of the vessel, an agent of the owner or charterer and a hirer of the vessel;

"vessel" includes—

- (a) a surf board, wind surf board, motorised jet ski, water skis or other similar device on which a person rides through water; and
- (b) a structure that is designed to float in water and is used for commercial, industrial or scientific purposes;

"wreck" includes an abandoned vessel.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

**PART 2
ADMINISTRATION**

DIVISION 1—THE CORPORATION

Establishment of the Corporation

5. (1) The *South Australian Ports Corporation* is established.
- (2) The Corporation is a body corporate and—
- (a) has perpetual succession and a common seal; and
 - (b) is capable of suing and being sued in its corporate name; and
 - (c) has the functions and powers assigned or conferred by or under this or any other Act.

Application of Public Corporations Act

6. The Corporation is a statutory corporation to which all the provisions of the *Public Corporations Act 1993* apply.

Non-application of GME Act and State Supply Act

7. (1) The *Government Management and Employment Act 1985* does not apply to or in relation to the Corporation or its subsidiaries or employees.

(2) The *State Supply Act 1985* does not apply to or in relation to the Corporation or its subsidiaries.

Ministerial control

8. Without limiting the operation of section 6 of the *Public Corporations Act 1993*, the Corporation is subject to control and direction by the Minister.

Functions of the Corporation

9. (1) The Corporation's primary function is to manage the ports and related facilities vested in the Corporation under this Act on a sound commercial basis as a business enterprise and, in carrying out that function, the Corporation will use its best endeavours—

- (a) to ensure that orderly, efficient and reliable services, including safe and secure cargo storage and handling facilities, are provided to the users of the Corporation's ports; and
- (b) to maximise the use and promote the proper exploitation of the Corporation's ports and related facilities both within and outside Australia; and
- (c) to encourage and facilitate private or public sector investment and participation, whether from within or outside the State, in the provision of services and facilities in connection with the Corporation's ports; and
- (d) to undertake such other activities as will encourage and facilitate the development of trade or commerce for the economic benefit of this State through the use of the Corporation's ports and related facilities.

(2) The Corporation will carry out any other functions assigned to the Corporation by this Act or any other Act.

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Powers of the Corporation

10. (1) The Corporation has all the powers of a natural person together with the powers specifically conferred on it by this Act or any other Act.

(2) Without limiting subsection (1), the Corporation may enter into a contract with any person, including a Minister or agency or instrumentality of the Crown, for the provision by the Corporation of consultancy or other services.

(3) The Corporation cannot sell, lease or otherwise dispose of any land, or any interest in land, except with the approval of the Minister.

(4) Subsection (3) does not apply to a lease for a term of 21 years or less.

Power to acquire land compulsorily

11. (1) The Corporation may acquire land—

- (a) for the purpose of improving any of its ports or establishing or improving port facilities; or
- (b) for the purposes of facilitating industrial or commercial development associated with or to be associated with any of its ports.

(2) The *Land Acquisition Act 1969* applies to the acquisition of land under this section.

Common seal and execution of documents

12. (1) The common seal of the Corporation must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

(2) The Corporation may, by instrument under its common seal, authorise a director, an employee of the Corporation (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Corporation subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Corporation.

(4) A document is duly executed by the Corporation if—

- (a) the common seal of the Corporation is affixed to the document in accordance with this section; or
- (b) the document is signed on behalf of the Corporation by a person or persons in accordance with an authority conferred under this section.

DIVISION 2—THE BOARD**Establishment of the board**

13. (1) A board of directors is established as the governing body of the Corporation.

(2) The board is to consist of not more than five members appointed by the Governor.

(3) The Minister will nominate for appointment to the board persons who have, in the Minister's opinion, knowledge, experience and skills appropriate to carrying out the Corporation's functions.

(4) One director will be appointed by the Governor to chair meetings of the board.

(5) The Governor may appoint a director to be the deputy of the director appointed to chair the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.

(6) On the office of a director becoming vacant, a person may be appointed in accordance with this section to the vacant office.

Conditions of membership

14. (1) A director will be appointed for a term, not exceeding three years, specified in the instrument of appointment and, at the expiration of a term of office, is eligible for reappointment.

(2) The Governor may remove a director from office—

- (a) for misconduct (including non-compliance with a duty imposed under the *Public Corporations Act 1993*); or
- (b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or
- (c) if irregularities have occurred in the conduct of the Corporation's affairs or the board has failed to carry out its functions satisfactorily and the board's membership should, in the opinion of the Governor, be reconstituted for that reason.

(3) The office of a director becomes vacant if the director—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- (e) is convicted of an indictable offence; or
- (f) is removed from office under subsection (2).

Vacancies or defects in appointment of directors

15. An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a person as a director.

Remuneration

16. A director is entitled to be paid from the funds of the Corporation such remuneration, allowances and expenses as may be determined by the Governor.

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Proceedings of the board

17. (1) A quorum of the board consists of one-half of the total number of its members (ignoring any fraction resulting from the division) plus one.

(2) The director appointed to chair the board will preside at meetings of the board at which he or she is present.

(3) If the director appointed to chair the board is absent from a meeting of the board—

(a) if another director has been appointed as his or her deputy and is present at the meeting—the deputy;

(b) in any other case—a director chosen by the directors present at the meeting,

will preside.

(4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.

(5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

(6) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present, if—

(a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and

(b) each participating director is capable of communicating with every other participating director during the conference.

(7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

(a) a notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and

(b) a majority of the directors expresses concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(8) The board must cause accurate minutes to be kept of its proceedings.

(9) Subject to this Act, the board may determine its own procedures.

DIVISION 3—THE STAFF**Staff of the Corporation**

18. (1) The Corporation may appoint, on terms and conditions fixed by the Corporation, such employees of the Corporation as it thinks necessary or desirable.

(2) The Minister may, with the concurrence of the Corporation, transfer specified employees of the Department, or employees of the Department of a specified class, to the employment of the Corporation.

(3) A transfer under subsection (2) does not affect—

- (a) an employee's existing or accruing rights in respect of employment (including leave rights); or
- (b) any process commenced for variation of those rights.

(4) The Corporation may, with the approval of the responsible Minister, on terms and conditions mutually arranged, make use of the services of employees of the Department or other Crown employees, or use any facilities or equipment of the Crown.

(5) In this section—

"employee of the Department" means—

- (a) a person employed in the Public Service in the Department of Transport; or
- (b) a person employed by the Minister and subject to the direction of the chief executive officer of the Department of Transport in that employment.

DIVISION 4—AUTHORISED PERSONS

Appointment of authorised persons

19. (1) The Corporation may appoint—

- (a) an employee of the Corporation; or
- (b) an authorised person under the *Harbors and Navigation Act 1993*; or
- (c) any other suitable person,

to be an authorised person for the purposes of this Act.

(2) An appointment under this section may be subject to conditions.

(3) An authorised person appointed under this section must be issued with an identity card—

- (a) containing a photograph of the person; and
- (b) stating any conditions of the appointment limiting the authorised person's authority.

Production of identity card

20. If it is practicable to do so, an authorised person must, at the request of a person against whom the authorised person proposes to exercise statutory powers, produce his or her identity card or, if the authorised person is a member of the police force, his or her warrant card, for inspection by that person.

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Powers of an authorised person

21. (1) An authorised person may, for any purpose connected with the administration or enforcement of this Act, exercise any of the following powers:

- (a) for the purpose of investigating—
 - (i) a suspected offence against this Act; or
 - (ii) an accident involving a vessel and resulting in loss of life or injury or in damage to property; or
 - (iii) any other matter having a proper connection with the administration of this Act,the authorised person may—
 - (iv) board a vessel that is within a Corporation port; or
 - (v) require a person to answer questions relevant to the investigation; or
 - (vi) require a person to produce records or equipment that the authorised person reasonably suspects are relevant to the investigation; or
 - (vii) inspect the records or equipment, make copies of the records or their contents or test the equipment and, where reasonably necessary for those purposes, seize and retain the records or equipment;
- (b) the authorised person may require a person whom the authorised person reasonably suspects has committed an offence against this Act or who is, in the authorised person's opinion, in a position to give evidence of the commission of such an offence, to state his or her name and address.

(2) A person who—

- (a) without reasonable excuse, fails to obey a direction or requirement of an authorised person under this Act; or
- (b) hinders or obstructs an authorised person in the exercise of powers under this Act,

is guilty of an offence.

Penalty: Division 8 fine.

(3) A person is not obliged to answer a question or produce a record under this section if the answer or the contents of the record would tend to incriminate him or her of an offence.

**PART 3
THE PORTS AND PORT FACILITIES**

DIVISION 1—VESTING

Vesting of land in the Corporation

22. (1) The Governor may, by proclamation, vest in the Corporation—

- (a) any harbor that is under the Minister's care, control and management under the *Harbors and Navigation Act 1993*, or any part of such a harbor; or
- (b) any land that belongs to the Minister under that Act; or
- (c) any wharves, docks, jetties or other structures that belong to the Minister under that Act; or
- (d) any navigational aid vested in the Minister under that Act,

and may constitute any of those things as a port under a name assigned by the proclamation.

(2) For the purpose of facilitating the operation of a port, or the conduct of activities at a port, the Governor may, by proclamation—

- (a) resume land held by a council or other public authority as a reserve, street, road or for other public purposes; and
- (b) vest the land in the Corporation.

(3) The Governor may, in a proclamation under this section vesting any land in the Corporation or by a subsequent proclamation, make provision for any related or incidental matters, including matters of a transitional nature relating to the vesting in the Corporation of assets, rights and liabilities associated with the ports and port facilities and services to be managed by the Corporation.

(4) The Governor may, by proclamation, vary or revoke a proclamation under this section.

(5) Land that is vested in the Corporation under this section is vested for an estate in fee simple, subject to any pre-existing registered interests in the land.

(6) The vesting of real or personal property in the Corporation under this section and any instrument evidencing or giving effect to that vesting are, despite section 29(1) of the *Public Corporations Act 1993*, exempt from stamp duty.

(7) The Registrar-General must, on application by the Corporation—

- (a) if land vested in the Corporation under this Act has been brought under the *Real Property Act 1886*—register the Corporation as the proprietor of the land; or
- (b) if land vested in the Corporation under this Act has not been brought under the *Real Property Act 1886*—bring the land under the provisions of that Act and register the Corporation as the proprietor.

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(8) The Corporation must provide the Registrar-General with surveys and plans of land that is to be brought under the *Real Property Act 1886* that the Registrar-General may reasonably require.

DIVISION 2—RATEABILITY OF LAND**Liability for council rates**

23. (1) Subject to subsection (2), land owned by the Corporation is not rateable under the *Local Government Act 1934*.

(2) If any land owned by the Corporation is occupied under a lease or licence by some person other than the Crown or an agency or instrumentality of the Crown, that person is liable as occupier of the land to rates levied under the *Local Government Act 1934*.

(3) Despite section 29(2)(b) of the *Public Corporations Act 1993*, the Corporation is not liable to pay to the Treasurer amounts equivalent to council rates that would, if the Corporation were not an instrumentality of the Crown, be payable by the Corporation in respect of land—

- (a) that is not being used by the Corporation; or
- (b) that is being used by the Corporation predominantly for administrative purposes.

DIVISION 3—DAMAGE TO PROPERTY**Liability for damage**

24. (1) If property of the Corporation is damaged by a vessel, the owner of the vessel is liable to the Corporation for the amount of the damage.

(2) The liability may be enforced by action against the owner or by action against the vessel (or both).

(3) This section creates a strict liability that exists irrespective of fault and irrespective of whether the vessel is under compulsory pilotage at the time the damage is caused.

DIVISION 4—NAVIGATIONAL AIDS**Establishment and maintenance of navigational aids**

25. (1) The Corporation may establish such navigational aids as the Corporation considers necessary or desirable for the safe navigation of vessels within the Corporation's ports.

(2) The Corporation must maintain all its navigational aids in good working order.

(3) The Corporation may direct any person who carries on a business involving the mooring, loading or unloading of vessels in a Corporation port to establish, maintain and operate navigational aids of a specified kind at specified places.

(4) A person who fails, without reasonable excuse, to comply with a direction under subsection (3) is guilty of an offence.

Penalty: Division 6 fine.

Interference with navigational aids

26. (1) A person must not, without the Corporation's permission, interfere with a navigational aid vested in the Corporation.

Penalty: Division 9 fine.

(2) For the purposes of subsection (1), the mooring of a vessel to a navigational aid constitutes interference with the navigational aid.

(3) If the Corporation is of the opinion that a particular light or signal might be confused with the light or signal produced by a navigational aid vested in the Corporation, the Corporation may, by notice in writing to the person in charge of the device that produces the light or signal, require the person to take action specified in the notice to prevent the possibility of confusion.

(4) If a person fails to comply with a requirement under subsection (3) within the time allowed in the notice, the Corporation may take the action specified in the notice and recover the cost of doing so from the person.

(5) A person who fails, without reasonable excuse, to comply with a notice under subsection (3) is guilty of an offence.

Penalty: Division 9 fine.

DIVISION 5—CLEARANCE OF WRECKS, ETC.

Clearance of wrecks, etc.

27. (1) The Corporation may, by notice in writing, require the owner of any wreck within a Corporation port to remove the wreck.

(2) If a person deposits any substance or thing within a Corporation port so as to obstruct navigation, or to pollute waters, the Corporation may, by notice in writing, require that person to take action specified in the notice to remove the substance or thing or to mitigate the consequences of the pollution.

(3) If a person fails to comply with a requirement under this section within the time allowed in the notice, the Corporation may remove the wreck or take the action specified in the notice and recover the cost of doing so from the person.

(4) A person who fails without reasonable excuse to comply with a notice under this section is guilty of an offence.

Penalty: Division 6 fine.

DIVISION 6—RESTRICTIONS ON USE OF PORT WATERS

Licences for aquatic activities

28. (1) The Corporation may grant to any organisation or person a licence entitling that organisation or person to use, in accordance with the terms and conditions of the licence, any waters within a Corporation port for the purposes of an aquatic sport or activity or for any other purposes stated in the licence.

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(2) The Corporation may require the licensee to take specified action for the purposes of informing the public of the area of waters to which the licence relates and of the times the licensee is entitled to the use of those waters in accordance with the licence.

(3) If the licensee fails to comply with a requirement under subsection (2) the licence is ineffective to confer rights on the licensee.

(4) A person who, without the consent of the licensee or the authority of the Corporation, intrudes into waters at a time when the licensee has, under the licence, an exclusive right to use those waters is guilty of an offence.

Penalty: Division 9 fine.

(5) The Corporation may revoke a licence under this section for breach of a term or condition of the licence.

Restricted areas

29. (1) The Governor may, by regulation, regulate, restrict or prohibit—

- (a) the entry of vessels or vessels of a specified class into specified waters within a Corporation port; or
- (b) the operation or use of vessels in specified waters within a Corporation port; or
- (c) aquatic activity or aquatic activity of a specified class in specified waters within a Corporation port.

(2) The Corporation must take reasonable steps to inform the public of the nature of requirements of any regulation under this section and of the waters to which it applies by marking out the waters and erecting notices in the vicinity or by other appropriate means.

DIVISION 7—PORT CHARGES**Port charges**

30. (1) The charges (including default charges) for the use of the Corporation's ports, facilities and services—

- (a) will be as negotiated between the Corporation and any particular user of those ports, facilities or services; or
- (b) for any other user, will be determined in accordance with a scale of charges fixed from time to time by the Minister, on the recommendation of the Corporation, and published in the *Gazette*.

(2) If charges are in any case determined in accordance with a scale published under subsection (1)(b), the following provisions apply:

- (a) the Corporation may waive or reduce the charges or default charges, or extend the time for payment of the charges or default charges, as it thinks fit;
- (b) a charge (or default charge) payable under this section in respect of goods is recoverable as a debt from the consignor or the consignee of goods;

- (c) the Corporation may retain possession of goods until the appropriate charge has been paid, and, if it is not paid within 60 days after the goods are unloaded, the Corporation may, after giving notice in writing to the consignee of the goods, sell the goods and retain the charge (and default charges and the costs of conducting the sale) from the proceeds of sale;
- (d) if a charge payable in respect of a vessel is not paid on or before the date when payment falls due, an authorised person may, at the Corporation's direction, arrest the vessel and take it into the Corporation's custody and, if the charge remains unpaid 60 days after the vessel is taken into the Corporation's custody, the Corporation may, after giving notice to the owner of the vessel, sell the vessel and retain the charge (and default charges and the costs of conducting the sale) from the proceeds of sale;
- (e) if a person is in default in the payment of a charge or default charge imposed under this section, the Corporation may, by notice to that person, prevent the person from using any of the Corporation's ports or facilities until the charge or default charge (or both) have been paid.

DIVISION 8—CONTROL OF VESSELS IN PORTS

Conduct of vessels in ports

31. (1) A person in charge of a vessel in a Corporation port must comply with any directions given by an authorised person.

Penalty: Division 6 fine.

(2) A direction may, for example, require that vessels proceed to load or unload in a particular order, that a vessel be stopped or be moored or anchored in a particular position, that a vessel be manoeuvred or secured in a particular way, or that a vessel be moved from a particular area or position.

(3) An authorised person may, if there is no-one on board a vessel to whom a direction may be given, board the vessel and cause the vessel to be moved as the authorised person thinks fit.

(4) Any costs incurred by the authorised person in acting under subsection (3) are recoverable as a debt from the owner of the vessel.

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**PART 4
MISCELLANEOUS**

Offences by authorised persons

32. An authorised person who—

- (a) addresses offensive language to any other person; or
- (b) without lawful authority, hinders or obstructs or uses or threatens to use force against any other person,

is guilty of an offence.

Penalty: Division 6 fine.

Evidentiary provision

33. In any legal proceedings—

- (a) a certificate apparently signed by the Minister that a specified area or place is a Corporation port, or is within the boundaries of a Corporation port, is, in the absence of proof to the contrary, proof of the matter certified;
- (b) a certificate apparently signed by the Minister that a specified navigational aid is vested in the Corporation is, in the absence of proof to the contrary, proof of the matter certified;
- (c) a certificate apparently signed by the chief executive officer of the Corporation that a specified person was, on a specified date, an authorised person is, in the absence of proof to the contrary, proof of the matter certified;
- (d) a certificate apparently signed by the chief executive officer of the Corporation that a specified person held or did not hold, as at a specified date, a licence or authority of a specified kind is, in the absence of proof to the contrary, proof of the matter certified.

Time limit for prosecutions

34. A prosecution for an offence against this Act must be commenced within 12 months after the date on which the offence is alleged to have been committed.

Immunity from liability

35. (1) The Crown, the Corporation or an employee or director of the Corporation incurs no civil liability in consequence of—

- (a) the issue of a licence or authority under this Act; or
- (b) any act or omission with regard to the establishment, positioning or operation of a navigational aid.

(2) An authorised person incurs no civil liability for an honest act or omission in the exercise, or purported exercise, of powers under this Act.

(3) A liability that would, but for subsection (2), attach to an authorised person attaches instead to the Corporation.

Regulations

36. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) A regulation may be of general or limited application according to the area to which it applies, the class of persons or vessels to which it applies, the circumstances of its application or any other specified factor.

(3) A regulation may confer discretionary powers on the Minister, the Corporation, the chief executive officer of the Corporation or an authorised person.

(4) A regulation may impose a penalty, not exceeding a division 6 fine, for contravention of or non-compliance with the regulation.

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APPENDIX 1

LEGISLATIVE HISTORY

Section 4:	definition of "land" inserted by 94, 1996, Sched.
Section 22(2):	substituted by 94, 1996, Sched.
Section 22(7):	substituted by 94, 1996, Sched.
Section 22(8):	inserted by 94, 1996, Sched.

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.