

**PORTS LEGISLATION AMENDMENT BILL 2013**

*Introduction and First Reading*

Bill introduced, on motion by **Mr T.R. Buswell (Minister for Transport)**, and read a first time.

Explanatory memorandum presented by the minister.

*Second Reading*

**MR T.R. BUSWELL (Vasse — Minister for Transport)** [1.17 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce the Ports Legislation Amendment Bill 2013. This bill provides the framework for significant reforms to the governance of port authorities. The objective of this bill is to introduce structural reforms to Western Australia's eight statutory port authorities by amending the Port Authorities Act 1999. The main thrust of this reform is that, with the exception of the Fremantle Port Authority, port authorities will be either merged or renamed to create four new regional port authorities, being Kimberley, Pilbara, Mid West and Southern. The bill contains new governance arrangements and requirements of port authority boards, including the removal of customer representation. It also recognises new operating requirements as a result of port authorities having responsibility for the management of more than one port.

Other amendments to the Port Authorities Act 1999 are the result of recommendations from previous reviews and reports, including the five-year review of the Port Authorities Act 1999 that was required under section 144 of that act, with the review report having been tabled in Parliament on 14 October 2009; the Western Australian Education and Health Standing Committee's report titled "Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area"; and the Council of Australian Governments' review of Western Australian ports.

The economic growth of this state is primarily driven by the resources sector. Our ports will continue to support this growth to enable the state to capitalise on strong overseas demand for Western Australia's mining and petroleum products. Since 2000, the state's exports have increased from \$25 billion per annum to an estimated \$101 billion in 2012–13. This growth has translated to a near doubling in Western Australia's contribution to the nation's exports, by value, from 26 per cent to 44 per cent, which is greater than that of Queensland, New South Wales, Tasmania and Victoria combined.

Growth in the resources sector has spurred substantial investment in our ports, with a number of projects being investigated to expand the capacity of Western Australia's port infrastructure. For instance, a \$50 million upgrade of mooring systems and planning for a multi-user iron ore facility at Esperance port and the development of berth 14A at Bunbury port to enable 15 million tonnes per annum of coal exports are being investigated. Construction of a \$250 million port facility by Karara Mining at Geraldton port has recently been completed. New cargo handling facilities are being investigated at Lumsden Point at the port of Port Hedland, the world's largest bulk export port. A capacity allocation of 50 million tonnes per annum has been awarded at South West Creek to facilitate exports for junior mining companies. Investigations are occurring to increase capacity at the port of Dampier, the second largest Australian port by tonnage, through innovative new projects such as an approved floating deck transshipment system and the proposed Dampier marine services facility concept.

In May 2013, the government released the "Western Australian Regional Freight Transport Network Plan", a long-term transport planning blueprint that provides strategic directions and priorities for the state's road, rail and port infrastructure. Western Australia's port infrastructure is featured prominently in this plan. The underlying Department of Transport study found that by 2030, trade through the state's ports is expected to increase to more than one billion tonnes per annum, representing growth of 140 per cent from 2012.

Consistent with the government's 2008 election commitment to facilitate the development of new port projects to meet the state's future needs of the growing economy, the government has introduced this legislative reform to ensure ports are able to meet future capacity and throughput challenges. The focus of the Ports Legislation Amendment Bill 2013 being introduced today originated from a 2011 port governance review, which involved wide customer and stakeholder consultation covering all eight port authorities, Ports WA, major port customers, state government agencies and key industry representatives and stakeholders, including local governments that host ports. In responding to this review, the government agreed that seven of the state's eight port authorities will be consolidated into four regional port authorities. Also, 13 non-port authority ports currently managed by the Department of Transport will come under the jurisdiction of these regional port authorities. The Fremantle Port Authority will remain as a stand-alone port authority.

More specifically, the four new regional port authorities will eventually include a Kimberley ports authority comprising the port of Broome, the proposed port at James Price Point, and the non-port authority ports at

Derby, Wyndham, Cockatoo Island and Koolan Island; a Pilbara ports authority comprising the ports of Port Hedland and Dampier, proposed ports at Anketell and Ashburton North, and the non-port authority port facilities at Port Walcott, Cape Preston, Varanus Island, Barrow Island, Airlie Island, Thevenard Island and Onslow; a midwest ports authority comprising the port of Geraldton, the proposed port of Oakajee, and the non-port authority port facilities at Cape Cuvier and Useless Loop; and a southern ports authority comprising the ports of Bunbury, Albany and Esperance.

This bill provides power for the responsible minister to appoint port authority boards with membership of between five and seven members to ensure that the newly amalgamated port authorities are governed by an appropriate number of people with suitable skills, commensurate to the scope and complexity of the ports that they will control and manage. The bill removes company directorship entitlements that are currently at Dampier and Port Hedland. The removal of port customer directorships will avoid future conflicts of interest and eliminate the perception of unfair advantage, particularly from competing companies that are also port customers but not on these boards. All port customers will continue to have opportunities for dialogue with port authority executives, including through port user groups. For port CEOs and port staff the bill provides assurances that, unless agreed otherwise, staff and CEO entitlements to leave, remuneration, superannuation and continuity of service are not affected when positions are transferred to the new ports authorities. This bill provides that references to the port authorities in existing agreements, instruments and documents are to have effect as references to the new ports authority from merger time. Similarly, if the authorities were parties to existing agreements or instruments, this bill separately provides that, from merger, the new ports authority will be the party to those arrangements. Provisions have also been included to ensure that the rights and obligations of parties to state agreements are not affected by the Ports Legislation Amendment Bill 2013. This bill will exempt the four new port authorities from state taxes being applied as a result of the merger. The Australian Taxation Office has already ruled that there will be no tax implication on the ports amalgamation for the national tax equivalent regime and for goods and services tax purposes.

Transitional provisions have been included to enable the four new port authority boards to be appointed in advance of the merger date and to plan for the amalgamation. The interim planning powers of the new boards are clearly defined in the bill to avoid any potential conflict during the restructure. Existing port authority boards will continue to have full operational powers until the merger date, when the new boards take over operational control. Additionally, the terminated boards of the Dampier, Albany and Esperance Port Authorities will have three months after the merger date to comply with state financial and operating reporting requirements.

This bill also provides for the addition of new ports at schedule 1 of the Port Authorities Act 1999, other than existing Shipping and Pilotage Act ports, through regulations. The purpose of this reform is to provide flexibility for the timely creation of future new ports, subject to the approval of the Governor in Executive Council and monitoring by the parliamentary Joint Standing Committee on Delegated Legislation. Port authorities will not be created or abolished without parliamentary approval.

As I have previously indicated, this bill includes amendments that will address recommendations from previous reviews and reports. The bill amends the Port Authorities Act 1999 to require port authorities to perform their functions in compliance with state budgetary requirements in addition to their statements of corporate intent and strategic development plans. Port authorities must also comply with capital works expenditure limits, which are set from time to time by government, in addition to endeavouring to achieve agreed outcomes specified in approved financial statements.

This bill introduces mandatory requirements for port authorities to establish a community consultation committee for each port under its control, with local government representation insofar as a local government has electors who are or may be affected by port operations. The purpose of these committees is to facilitate communication, information sharing and consultation between the port authority and members of the public living in the vicinity of the port who are affected by port operations. The deliberations of these committees will be transparent and their minutes made public.

A provision has been added to the Port Authorities Act 1999 to provide statutory recognition that port authorities can operate 24 hours per day, subject to compliance with the Environmental Protection Act 1986, including noise and other licence requirements. Ports are expected these days to be open all hours to service vessels and facilitate the safe movement of vessels and trade. This legislation clarifies government expectations of port authorities by specifically providing a power for port operations to take place on any day and at any time for the purpose of a port authority performing a function given to it under the act.

This bill also provides for compliance with the commonwealth competition policy review recommendation that port authorities include in their strategic plans the details of arrangements in place to facilitate entry of potential port service providers or justification for their omission.

Some amendments are also made to the Shipping and Pilotage Act 1967 to extend harbour master governance powers to fishing boat harbours and mooring control areas, and to extend the indemnity provided to harbour masters and government for actions in good faith. The legislation necessary to introduce this reform has been thoroughly considered and it is intended that, once it is passed, the Kimberley, Pilbara, midwest and southern port authorities will be established on 1 July 2014. This reform will strengthen the involvement of Western Australia's port authorities in the planning of future regional transport corridors and port facilities. Port authorities will be encouraged to consult extensively with relevant government agencies and expand their planning perspective beyond their port facilities to include a focus on regional access to ports.

The amendments contained in this bill also aim to improve port efficiency and the use of port infrastructure, and enhance corporate governance. Other outcomes, besides achieving the successful consolidation of regional port authorities that will provide benefits for port customers include optimised use of port infrastructure; improved investment decisions for new or expanded infrastructure; extended economy of scale benefits for service provision; encouragement of and a focus on private sector investment; enhanced corporate governance; reduced expenditure through efficiency gains and reduced duplication of effort; improved commercial practices and skills, acumen and capability; consistent port views on regional issues; and a reduction in the number of port authority boards.

This consolidation of port authorities and the implementation of the bill will be undertaken with minimal or no disruption to current port operations and existing rights to operate will be preserved. It should be noted that the Australian Competition and Consumer Commission has given favourable consideration to the proposed ports amalgamation under section 50 of the commonwealth Competition and Consumer Act 2010, and that the proposed consolidation is not in breach of the anti-competitive provision of that act.

In conclusion, the Ports Legislation Amendment Bill 2013 fulfils the recommendations of earlier reviews and reports on Western Australian port operations in addition to including input from the extensive consultation which has occurred with stakeholders and industry. This bill directly meets the challenges currently facing Western Australia's ports through securing economies of scale for WA ports; improving their governance structure; consolidating their operations; encouraging private sector investment and service provision; ensuring port authority compliance with state budgetary requirements; establishing community consultation committees with local government representation; and removing uncertainty and confusion in the existing regulatory framework regarding 24-hour port operations. This bill provides for the future of our ports and their critical logistics role for the benefit of the Western Australian economy. I commend this bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.