

## Ports Legislation Amendment Bill 2017

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Western Australia

LEGISLATIVE ASSEMBLY

*(As amended in Committee)*

**Ports Legislation Amendment Bill 2017**

**A Bill for**

**An Act to amend —**

- **the *Jetties Act 1926*; and**
- **the *Lights (Navigation Protection) Act 1938*; and**
- **the *Marine and Harbours Act 1981*; and**
- **the *Marine Navigational Aids Act 1973*; and**
- **the *Port Authorities Act 1999*; and**
- **the *Shipping and Pilotage Act 1967*; and**
- **the *Western Australian Marine Act 1982*.**

The Parliament of Western Australia enacts as follows:

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**Part 1 — Preliminary**

**1. Short title**

This is the *Ports Legislation Amendment Act 2017*.

**2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Parts 2, 3, 4 (other than Division 3), 5, 6 (other than section 50), 7 (other than section 56) and 8 — on the day after assent day;
- (c) Part 4 Division 3 — when section 50(3)(b) comes into operation;
- (d) section 56 —
  - (i) if the *Shipping and Pilotage Amendment Act 2006* section 8 (*section 8*) comes into operation before the day on which section 60 comes into operation — when section 60 comes into operation; or
  - (ii) otherwise — immediately after section 8 comes into operation;
- (e) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

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**Part 2 — Jetties Act 1926 amended**

**3. Act amended**

This Part amends the *Jetties Act 1926*.

**4. Section 3 amended**

In section 3 insert in alphabetical order:

*port authority* means a port authority established under  
the *Port Authorities Act 1999*;

**5. Section 4 amended**

(1) In section 4(5) delete “and preservation” and insert:

preservation, replacement and removal

(2) In section 4(15) delete “\$500” and insert:

a fine of \$12 000

**6. Section 5 amended**

(1) In section 5(1)(d):

(a) after “(13),” insert:

(13a),

(b) delete “jetties;” and insert:

jetties.

**s. 7**

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1 (2) Delete section 5(1)(e).

2 **7. Section 6 amended**

3 (1) Delete section 6(1)(a).

4 (2) After section 6(2) insert:

5

6 (3) Subsection (1)(c) does not affect the operation of the  
7 *Marine and Harbours Act 1981*.

8

9 Note: The heading to amended section 6 is to read:

10 **Acquisition, lease, closure and removal of jetties**

11 **8. Section 7AA inserted**

12 After section 7 insert:

13

14 **7AA. Leases and licences cannot be granted in respect of**  
15 **jetties in port authority ports**

16 (1) This Act, other than sections 13 and 14, does not apply  
17 to a jetty wholly or partly within the boundaries of a  
18 port as defined in the *Port Authorities Act 1999*  
19 section 3(1), and a lease or licence cannot be granted  
20 under this Act in respect of such a jetty.

21 (2) Subsection (1) is enacted to avoid doubt and does not  
22 limit the *Port Authorities Act 1999* section 32.

23

24 **9. Section 8 amended**

25 In section 8 in the Penalty delete “\$2 000.” and insert:

26

27 a fine of \$12 000.

28



1   **10.   Section 8A amended**

2           Before section 8A(1) insert:

3

4           (1A)   In this section —

5                         *materials* includes fixtures and fittings.

6

7   **11.   Section 9 amended**

8           In section 9:

9           (a)   delete “\$500” and insert:

10

11                         a fine of \$12 000

12

13           (b)   delete “the commissioners of a harbour trust or members  
14                         of the harbour board.” and insert:

15

16                         a port authority.

17

18   **12.   Section 10 amended**

19           In section 10 in the Penalty delete “\$2 000.” and insert:

20

21                         a fine of \$12 000.

22

23   **13.   Section 11 amended**

24           In section 11 in the Penalty delete “\$2 000.” and insert:

25

26                         a fine of \$12 000.

27

**s. 14**

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1 **14. Section 12 amended**

2 In section 12(2) delete “\$500” and insert:

3

4 a fine of \$12 000

5

6 **15. Sections 13 and 14 inserted**

7 After section 12 insert:

8

9 **13. Transitional provision for *Ports Legislation***  
10 ***Amendment Act 2017***

11 (1) In this section —

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

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

19 ***licence*** means a licence listed in the Table and, if any  
20 such licence has been renewed or varied, includes the  
21 licence as renewed or varied;

22 ***relevant port authority***, in relation to a licence, means  
23 the port authority mentioned in the item of the Table  
24 that lists that licence;

25 ***renew*** a licence includes —

26 (a) grant an extension of its term; and

27 (b) grant a further licence to replace it;

28 ***specified*** means specified by the regulations made for  
29 this section;

30 ***Table*** means the Table to subsection (2).

- 1           (2) The licences in the Table are listed for the purposes of  
2           this section.

3

**Table**

<b>Item</b>	<b>Licence</b>	<b>Port authority</b>
1	LM4207 to Hamersley Iron Pty Ltd relating to the ore loading wharf at Parker Point, Dampier	Pilbara Ports Authority
2	LM4149 to Hamersley Iron Pty Ltd relating to the ore loading wharf and layby berth at East Intercourse Island, Dampier	Pilbara Ports Authority
3	LM4151 to Hamersley Iron Pty Ltd relating to the tug pens at East Intercourse Island, Dampier	Pilbara Ports Authority
4	LM0342 to Woodside Petroleum Development Pty Ltd, Woodside Oil Ltd, Mid-Eastern Oil Ltd, Shell Development (Australia) Pty Ltd, BHP Petroleum (North West Shelf) Pty Ltd, BP Developments Australia Limited,	Pilbara Ports Authority

<b>Item</b>	<b>Licence</b>	<b>Port authority</b>
	Chevron Asiatic Limited and Japan Australia LNG (MIMI) Pty Ltd relating to the jetty (loading facility-Withnell Bay) at Burrup Peninsula, Dampier	
5	LM0342 to Woodside Petroleum Development Pty Ltd, Woodside Oil Ltd, Mid-Eastern Oil Ltd, Shell Development (Australia) Pty Ltd, BHP Petroleum (North West Shelf) Pty Ltd, BP Developments Australia Limited, Chevron Asiatic Limited and Japan Australia LNG (MIMI) Pty Ltd relating to the jetty (LPG product loading facility) at Mermaid Sound, Burrup Peninsula, Dampier	Pilbara Ports Authority
6	LM0342 to Woodside Petroleum Development Pty Ltd,	Pilbara Ports Authority

<b>Item</b>	<b>Licence</b>	<b>Port authority</b>
	Woodside Oil Ltd, Mid-Eastern Oil Ltd, Shell Development (Australia) Pty Ltd, BHP Petroleum (North West Shelf) Pty Ltd, BP Developments Australia Limited, Chevron Asiatic Limited and Japan Australia LNG (MIMI) Pty Ltd relating to the product loading facility (LNG) at Burrup Peninsula, Dampier	
7	LM0342 to Woodside Petroleum Development Pty Ltd, Woodside Oil Ltd, Mid-Eastern Oil Ltd, Shell Development (Australia) Pty Ltd, BHP Petroleum (North West Shelf) Pty Ltd, BP Developments Australia Limited, Chevron Asiatic Limited and Japan Australia LNG (MIMI) Pty Ltd relating to the supply	Pilbara Ports Authority

<b>Item</b>	<b>Licence</b>	<b>Port authority</b>
	base refuelling facility at King Bay, Burrup Peninsula, Dampier	
8	LM0342 to Woodside Petroleum Development Pty Ltd, Woodside Oil Ltd, Mid-Eastern Oil Ltd, Shell Development (Australia) Pty Ltd, BHP Petroleum (North West Shelf) Pty Ltd, BP Developments Australia Limited, Chevron Asiatic Limited and Japan Australia LNG (MIMI) Pty Ltd relating to the small boat landing facility at King Bay, Burrup Peninsula, Dampier	Pilbara Ports Authority
9	LM1484 to Dampier Salt Limited relating to one loading wharf and one service wharf at Mistaken Island, Dampier	Pilbara Ports Authority
10	LM1829 to BHP Billiton Minerals Pty Ltd relating to the	Pilbara Ports Authority

<b>Item</b>	<b>Licence</b>	<b>Port authority</b>
	barge loading pad and slipway at Burgess Point, Port Hedland	
11	LM1912 to BHP Minerals Limited, Mitsui-Itochu Iron Pty Ltd and Itochu Minerals and Energy of Australia Pty Ltd relating to the jetty and wharf at Nelson Point, Port Hedland	Pilbara Ports Authority
12	LM3893 to BHP Billiton Minerals Pty Ltd, Mitsui-Itochu Iron Pty Ltd and Itochu Minerals and Energy of Australia Pty Ltd relating to the wharf at Lot 1408 Nelson Point, Port Hedland	Pilbara Ports Authority
13	LM1975 to Mermaid Marine Australia Pty Ltd relating to the jetty at King Bay Groyne, Dampier	Pilbara Ports Authority
14	LM0219 to the Hampton Harbour Boat and Sailing Club Inc relating to	Pilbara Ports Authority

<b>Item</b>	<b>Licence</b>	<b>Port authority</b>
	4 pontoons, 5 ramps and one berth at Hampton Harbour, Dampier	
15	LM3771 to the Hampton Harbour Boat and Sailing Club Inc relating to the fuel pipeline at Hampton Harbour, Dampier	Pilbara Ports Authority
16	LM1289 to the City of Karratha relating to 4 lane boat ramp and 2 finger jetties at Dampier	Pilbara Ports Authority
17	LM3910 to the Town of Port Hedland relating to the boat ramp at Lot 250 Oyster Point, Reserve 30909, Finucane Island, Port Hedland	Pilbara Ports Authority
18	LM3191 to the Shire of Broome relating to the boat ramp at Town Beach Reserve, Broome	Kimberley Ports Authority



<b>Item</b>	<b>Licence</b>	<b>Port authority</b>
19	LM4595 to the City of Greater Geraldton relating to the jetty and 2 boat ramps adjacent to Francis Street, Geraldton	Mid West Ports Authority
20	LM1902 to the City of Albany relating to the boat launching ramp and walkway at Little Grove, Albany	Southern Ports Authority
21	LM2864 to the City of Albany relating to the jetty at Ellen Cove, Middleton Beach, Albany	Southern Ports Authority
22	LM4602 to the City of Albany relating to the swimming enclosure at Ellen Cove, Middleton Beach, Albany	Southern Ports Authority
23	LM1270 to the Shire of Esperance relating to the Tanker Jetty at Esperance	Southern Ports Authority

**s. 15**

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- 1 (3) On and from the day specified for this subsection in  
2 respect of a licence the following provisions apply to  
3 and in relation to that licence —
- 4 (a) any power exercisable by, or in relation to, the  
5 grantor of the licence, whether —
- 6 (i) under the licence; or  
7 (ii) under this Act in relation to the licence,  
8 is exercisable by, or in relation to, the relevant  
9 port authority instead of the grantor of the  
10 licence;
- 11 (b) the functions of the relevant port authority are  
12 to be taken to extend to the exercise of powers  
13 for the purposes of this subsection;
- 14 (c) it is to be taken to be a condition of the licence  
15 that the licensee must comply with any  
16 direction given by the relevant port authority to  
17 the extent that the direction is given to  
18 facilitate —
- 19 (i) compliance by the relevant port  
20 authority with a requirement under the  
21 *Port Authorities Act 1999*; or  
22 (ii) performance by the relevant port  
23 authority of its functions;
- 24 (d) the rights and powers that the licensee had  
25 under the licence before the specified day are  
26 not adversely affected except to the extent (if  
27 any) requested or agreed under paragraph (e);
- 28 (e) the power of the relevant port authority to  
29 renew or vary the licence may only be  
30 exercised at the request or with the agreement  
31 of the licensee.
- 32 (4) This section does not prejudice or in any way affect  
33 any right or obligation of a party to a Government  
34 agreement.

- 1 (5) A day cannot be specified for subsection (3) in respect  
2 of a licence listed in any of items 1 to 12 of the Table  
3 except with the written concurrence of the Agreements  
4 Minister.

5 **14. Validation of prescribed instruments**

- 6 (1) In this section —  
7 *instrument* means a lease or licence granted, or  
8 purporting to have been granted, under this Act in  
9 respect of a jetty within or partly within the boundaries  
10 of a port authority as defined in the *Port Authorities*  
11 *Act 1999* section 3(1) and, if any such lease or licence  
12 has been renewed or varied, includes the lease or  
13 licence as renewed or varied.
- 14 (2) On and from the day on which regulations prescribing  
15 an instrument for the purposes of this section come into  
16 operation —
- 17 (a) the instrument is to be taken to be, and since the  
18 commencement of the instrument to have  
19 always been, as valid and effective as if the  
20 jetty to which the instrument relates is, and  
21 since the commencement of the instrument has  
22 always been, a jetty to which this Act applies;  
23 and
- 24 (b) the rights, obligations and liabilities of all  
25 persons under the instrument (including a right  
26 to renew the instrument) are to be taken to be,  
27 and since the commencement of the instrument  
28 to have always been, the same as if the jetty to  
29 which the instrument relates is, and since the  
30 commencement of the instrument has always  
31 been, a jetty to which this Act applies; and
- 32 (c) anything done, or purportedly done, before that  
33 day as a result or consequence of, or in reliance  
34 on or in relation to, the instrument (including a

**s. 15**

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- 1 renewal, or purported renewal, of the  
2 instrument) is to be taken to be, and to have  
3 always been, as valid and effective as it would  
4 have been if the jetty to which the instrument  
5 relates were a jetty to which this Act applies  
6 when the thing was done or purportedly done.
- 7 (3) In subsection (2)(c) a reference to the doing of  
8 anything includes a reference to an omission to do  
9 anything.  
10

1                   **Part 3 — Lights (Navigation Protection)**  
2                   **Act 1938 amended**

3   **16. Act amended**

4                   This Part amends the *Lights (Navigation Protection) Act 1938*.

5   **17. Section 2 amended**

6       (1) In section 2 delete the definitions of:

7                   ***Port Authority***

8                   ***Port or Harbour***

9       (2) In section 2 insert in alphabetical order:

10  
11                   ***chief executive officer*** means the chief executive  
12                   officer of the department;

13                   ***department*** means the department of the Public Service  
14                   principally assisting the Minister in the administration  
15                   of this Act;

16                   ***harbour*** includes a boat harbour declared under the  
17                   *Shipping and Pilotage Act 1967* section 10(2);

18                   ***port*** includes —

19                   (a) a port declared under the *Shipping and Pilotage*  
20                   *Act 1967* section 10(1); and

21                   (b) a port as defined in the *Port Authorities*  
22                   *Act 1999* section 3(1);

23                   ***port manager*** means —

24                   (a) in the case of a port under the control of a port  
25                   authority established under the *Port Authorities*  
26                   *Act 1999* — that port authority; or

27                   (b) in the case of any other port or a harbour — the  
28                   chief executive officer.  
29

**s. 18**

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1 **18. Section 3 amended**

2 In section 3(4) delete the Penalty and insert:

3

4 Penalty for this subsection: a fine of \$12 000.

5 Daily penalty for this subsection: a fine of \$600.

6

7 **19. Section 4 amended**

8 In section 4(3) delete the Penalty and insert:

9

10 Penalty for this subsection: a fine of \$5 000.

11

12 Note: The heading to amended section 4 is to read:

13 **Port manager may cause requisitions of notice to be carried out**

14 **20. Section 7 amended**

15 In section 7:

16 (a) delete paragraph (a) and insert:

17

18 (a) in the case of a port under the control and  
19 management of a port authority established  
20 under the *Port Authorities Act 1999* — by a  
21 person authorised to do so by the port authority;  
22 or

23

24 (b) in paragraph (b) delete the passage that begins with  
25 “officer” and ends with “1967.” and insert:

26

27 officer.

28

1 **21. Sections 8 and 9 inserted**

2 After section 7 insert:

3

4 **8. Delegation**

5 (1) The chief executive officer may delegate to a person  
6 any power or duty the chief executive officer has under  
7 another provision of this Act.

8 (2) The delegation must be in writing signed by the chief  
9 executive officer.

10 (3) A person to whom a power or duty is delegated under  
11 this section cannot delegate that power or duty.

12 (4) A person exercising or performing a power or duty that  
13 has been delegated to the person under this section, is  
14 to be taken to do so in accordance with the terms of the  
15 delegation unless the contrary is shown.

16 (5) Nothing in this section limits the ability of the chief  
17 executive officer to perform a function through an  
18 officer of the department or an agent.

19 **9. Regulations**

20 (1) The Governor may make regulations prescribing all  
21 matters that are required or permitted by this Act to be  
22 prescribed, or are necessary or convenient to be  
23 prescribed for giving effect to the purposes of this Act.

24 (2) Without limiting subsection (1), the regulations may  
25 provide that contravention of a regulation is an offence  
26 and, for an offence against the regulations, provide for  
27 a penalty not exceeding a fine of \$12 000.  
28

**s. 22**

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1 **22. Various references to “port authority” replaced**

2 In the provisions listed in the Table:

3 (a) delete “port authority” (each occurrence) and insert:

4

5 port manager

6

7 (b) delete “port authority,” (each occurrence) and insert:

8

9 port manager,

10

11 (c) delete “port authority.” and insert:

12

13 port manager.

14

15

**Table**

s. 3(1)	s. 4(1)
s. 4(2)	s. 4(3)
s. 6	



1 **Part 4 — *Marine and Harbours Act 1981* amended**

2 **Division 1 — Preliminary**

3 **23. Act amended**

4 This Part amends the *Marine and Harbours Act 1981*.

5 **Division 2 — General**

6 **24. Section 3 amended**

7 (1) In section 3 delete the definition of ***Port Authority***.

8 (2) In section 3 insert in alphabetical order:

9  
10 ***harbour*** includes a boat harbour declared under the  
11 *Shipping and Pilotage Act 1967* section 10(2);

12 ***inspector*** means an inspector designated under the  
13 *Western Australian Marine Act 1982* section 117;

14 ***port*** includes —

15 (a) a port declared under the *Shipping and Pilotage*  
16 *Act 1967* section 10(1); and

17 (b) a port as defined in the *Port Authorities*  
18 *Act 1999* section 3(1);

19 ***Port Authority*** means a port authority established  
20 under the *Port Authorities Act 1999*.

21  
22 **25. Section 5 amended**

23 (1) In section 5(1):

24 (a) in paragraph (h) delete “fishing boat harbours within the  
25 State and to provide” and insert:

26  
27 harbours within the State and to provide, control,  
28 manage, operate and maintain  
29

**Ports Legislation Amendment Bill 2017**

**Part 4** Marine and Harbours Act 1981 amended

**Division 2** General

**s. 25**

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- 1 (b) after paragraph (h) insert:  
2
- 3 (ha) to provide for the commercial development and  
4 promotion of the harbours referred to in  
5 paragraph (h); and  
6
- 7 (c) in paragraph (i) delete “to construct, provide,” and  
8 insert:  
9  
10 subject to subsection (1A), to construct, provide,  
11 control, manage, operate,  
12
- 13 (d) in paragraph (i)(iv) delete “fishing industry” and insert:  
14  
15 boating  
16
- 17 (e) after paragraph (i) insert:  
18  
19 (ia) to provide for the commercial development and  
20 promotion of the facilities and services referred  
21 to in paragraph (i); and  
22
- 23 (f) in paragraph (j) delete “preserve and protect” and insert:  
24  
25 preserve, protect, control, manage, operate and maintain  
26 any  
27
- 28 (2) After section 5(1) insert:  
29
- 30 (1A) Despite subsection (1), the Department cannot  
31 construct, provide, control, manage, operate or  
32 maintain port works in relation to a port (as defined in  
33 the *Port Authorities Act 1999* section 3(1)) without the

1 agreement of the Port Authority that controls and  
2 manages that port.  
3

4 (3) In section 5(1) after each of paragraphs (a) to (i) insert:  
5

6 and  
7

8 **26. Section 5A amended**

9 In section 5A(2) delete “ports of Broome and Wyndham as  
10 ports.” and insert:  
11

12 port of Wyndham as a port.  
13

14 Note: The heading to amended section 5A is to read:

15 **Provision of services at Wyndham**

16 **27. Section 5B amended**

17 In section 5B(3) delete the Penalty and insert:  
18

19 Penalty for this subsection: a fine of \$5 000.  
20

21 **28. Section 14 amended**

22 In section 14(2) delete “trust accounts.” and insert:  
23

24 agency special purpose accounts.  
25

1 **29. Section 14A amended**

2 In section 14A(1) delete “ports of Broome and” and insert:

3

4 port of

5

6 **30. Section 18A amended**

7 (1) In section 18A(1) delete “*authorised officer* is a reference to an  
8 officer of the Department” and insert:

9

10 *authorised person* is a reference to a person

11

12 (2) In section 18A(2) after “18B,” insert:

13

14 an inspector or

15

16 (3) In section 18A(11) and (12) delete “subsection (1)” and insert:

17

18 subsection (2)

19

20 (4) After section 18A(12) insert:

21

22 (13) An inspector is to produce the certificate issued to that  
23 inspector under the *Western Australian Marine*  
24 *Act 1982* section 118 whenever required to do so by a  
25 person to whom an infringement notice has been or is  
26 about to be given.

27

1 **31. Section 18B amended**

2 (1) In section 18B(2):

3 (a) in paragraph (b)(i) after “identifies to” insert:

4

5 an inspector or

6

7 (b) in paragraph (b)(ii) after “satisfies” insert:

8

9 an inspector or

10

11 (2) In section 18B(3) delete the definition of *authorised officer*.

12 (3) In section 18B(3) insert in alphabetical order:

13

14 *authorised person* means an authorised person  
15 appointed for the purposes of section 18A(2);

16

17 **32. Section 19 amended**

18 (1) In section 19(1):

19 (a) delete paragraph (g) and insert:

20

21 (g) prescribing the fees and charges to be paid for  
22 the following —

23 (i) any use of a departmental area, or a  
24 facility within it, including, but not  
25 limited to, the mooring, berthing or  
26 storing of vessels within the  
27 departmental area;

28 (ii) services provided by the Department;

1 (iii) the parking of vehicles on departmental  
2 land;

3 and  
4

5 (b) in paragraph (h) delete “\$500” and insert:  
6

7 \$12 000  
8

9 (2) In section 19(1) after each of paragraphs (a) to (f) insert:  
10

11 and  
12

13 **33. Various references to “authorised officer” replaced**

14 In the provisions listed in the Table:

15 (a) delete “authorised officer” (each occurrence) and insert:  
16

17 authorised person  
18

19 (b) delete “authorised officers” (each occurrence) and  
20 insert:  
21

22 authorised persons  
23

24 **Table**

s. 18A(1)	s. 18A(2)
s. 18A(3)(b)(ii)	s. 18A(3)(b)(iii)
s. 18A(5)	s. 18A(7)

s. 18A(11)	s. 18A(12)
s. 18B(2)(b)(i)	s. 18B(2)(b)(ii)

1                    **Division 3 — Amendments related to Part 6**

2    **34.    Section 5A deleted**

3                    Delete section 5A.

4    **35.    Section 14A deleted**

5                    Delete section 14A.

1 **Part 5 — *Marine Navigational Aids Act 1973* amended**

2 **36. Act amended**

3 This Part amends the *Marine Navigational Aids Act 1973*.

4 **37. Section 2 amended**

5 (1) In section 2 delete the definition of *port authority*.

6 (2) In section 2 insert in alphabetical order:

7

8 *chief executive officer* means the chief executive  
9 officer of the department;

10 *port authority* means a port authority established under  
11 the *Port Authorities Act 1999*.

12

13 **38. Section 3 amended**

14 (1) In section 3(1):

15 (a) delete the passage that begins with “The” and ends with  
16 “thereto —” and insert:

17

18 The chief executive officer, and a port authority in  
19 relation to the approaches to a port under its control and  
20 management —

21

22 (b) delete paragraph (a) and insert:

23

24 (a) may, subject to subsection (1A), establish any  
25 marine navigational aid; and

26



1       (2) After section 3(1) insert:

2

3           (1A) The chief executive officer cannot establish a  
4                navigational aid within the boundaries of a port under  
5                the control and management of a port authority without  
6                the agreement of that port authority.

7

8       (3) In section 3(2) and (3) delete “department” and insert:

9

10           chief executive officer

11

12       (4) In section 3(1) after each of paragraphs (aa) and (b) insert:

13

14           and

15

16       **39. Section 3A amended**

17           In section 3A(1) after “control” insert:

18

19           and management

20

21       **40. Section 5 amended**

22       (1) In section 5(1) after “which” insert:

23

24           causes damage to or

25

26       (2) In section 5(1) delete the Penalty and insert:

27

28                   Penalty for this subsection: a fine of \$12 000.

29

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1   **41.     Sections 6 and 7 inserted**

2           After section 5 insert:

3

4           **6.       Delegation**

- 5           (1) The chief executive officer may delegate to an officer  
6           of the department any power or duty the chief  
7           executive officer has under another provision of  
8           this Act.
- 9           (2) The delegation must be in writing signed by the chief  
10          executive officer.
- 11          (3) A person to whom a power or duty is delegated under  
12          this section cannot delegate that power or duty.
- 13          (4) A person exercising or performing a power or duty that  
14          has been delegated to the person under this section, is  
15          to be taken to do so in accordance with the terms of the  
16          delegation unless the contrary is shown.
- 17          (5) Nothing in this section limits the ability of the chief  
18          executive officer to perform a function through an  
19          officer of the department or an agent.

20          **7.       Regulations**

- 21          (1) The Governor may make regulations prescribing all  
22          matters that are required or permitted by this Act to be  
23          prescribed, or are necessary or convenient to be  
24          prescribed for giving effect to the purposes of this Act.
- 25          (2) Without limiting subsection (1), the regulations may  
26          provide for the following —
- 27                  (a) require a person to report the details of an  
28                  incident that results in damage to a marine  
29                  navigational aid;

1  
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21

- (b) prohibit a person from attaching or fastening a vessel or any other thing to a marine navigational aid;
- (c) require a person, when directed to do so by an inspector or an authorised person, to detach or unfasten a vessel or any other thing attached or fastened to a marine navigational aid;
- (d) prohibit a person from using a vessel or any other thing in a way that might damage a marine navigational aid;
- (e) provide that contravention of a regulation is an offence and, for an offence against the regulations, provide for a penalty not exceeding a fine of \$12 000;
- (f) provide that a person convicted of an offence against the regulations may be ordered to pay the amount of the damage to a marine navigational aid caused by the commission of the offence, or the cost of repairing, replacing or reinstating the aid.

1 **Part 6 — *Port Authorities Act 1999* amended**

2 **42. Act amended**

3 This Part amends the *Port Authorities Act 1999*.

4 **43. Section 3 amended**

5 (1) In section 3(1) delete the definition of *vested*.

6 (2) In section 3(1) insert in alphabetical order:

7

8 *vested* means vested in a port authority under this Act;

9 *vested land* includes vested seabed and vested water.

10

11 (3) In section 3(1) in the definition of *port land* delete “land or land  
12 acquired by a port authority;” and insert:

13

14 land, land acquired by a port authority or other land that  
15 becomes the property of a port authority under this Act;

16

17 **44. Section 25 amended**

18 (1) Delete section 25(1)(b) and insert:

19

20 (b) in the case of a port that was named in  
21 Schedule 1 before the coming into operation of  
22 the *Ports and Marine Legislation Amendment*  
23 *Act 2003* section 4, all navigational aids that,  
24 immediately before the coming into operation  
25 of that section —

26 (i) were in the port, or used in connection  
27 with navigation into or out of the port;  
28 and

29 (ii) belonged to the State;

30

- 1       (2) Delete section 25(2)(b) and insert:  
2  
3               (b) any real or personal property (other than  
4               property referred to in subsection (1) or  
5               paragraph (a)) that —  
6                     (i) is acquired by the port authority; or  
7                     (ii) is vested in the port authority by the  
8                     Governor for the purposes of this Act;  
9                     or  
10                    (iii) is vested in, or becomes the property of,  
11                    the port authority under this Act.  
12

13   **45. Section 31 amended**

14       In section 31(1) delete “section 30” and insert:

15

16       this Act or any other written law  
17

18   **46. Section 40 amended**

19       After section 40(3) insert:

20

21       (3A) Regulations are not to be made for the purposes of  
22       subsection (3)(c) except with the Treasurer’s  
23       concurrence.  
24

25   **47. Section 60 amended**

26       Delete section 60(2)(ka).

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1 **48. Section 96 amended**

2 In section 96(4) delete “the port.” and insert:

3

4 the port or acts under the authority of a pilotage exemption  
5 certificate under the regulations.

6

7 **49. Section 138 amended**

8 In section 138(b) delete “45; or” and insert:

9

10 45 or 52; or

11

12 **50. Schedule 1 amended**

13 (1) In Schedule 1 item 5 column 3:

14 (a) insert in alphabetical order:

15

16 Port of Cape Cuvier

17

18 (b) insert in alphabetical order:

19

20 Port of Useless Loop

21

22 (2) In Schedule 1 item 7 column 3:

23 (a) insert in alphabetical order:

24

25 Port of Barrow Island

26

27 (b) insert in alphabetical order:

28

29 Port of Cape Preston

30

- 1           (c) insert in alphabetical order:
- 2
- 3           Port of Onslow
- 4
- 5           (d) insert in alphabetical order:
- 6
- 7           Port of Varanus Island
- 8
- 9           (e) insert in alphabetical order:
- 10
- 11          Port Walcott
- 12
- 13       (3) In Schedule 1 item 8 column 3:
- 14           (a) insert in alphabetical order:
- 15
- 16           Port of Derby
- 17
- 18           (b) insert in alphabetical order:
- 19
- 20           Port of Wyndham
- 21
- 22           (c) insert in alphabetical order:
- 23
- 24           Port of Yampi Sound
- 25

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1 **51. Schedule 8 Division 2 inserted**

2 At the end of Schedule 8 insert:

3

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

6

**Subdivision 1 — Preliminary**

7

**52. Terms used**

8

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

9

***affecting provisions*** means —

10

(a) the transfer provisions; and

11

(b) this Division and transitional regulations; and

12

(c) transitional orders and schedules referred to in

13

transitional orders;

14

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

15

16

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

17

18

19

20

21

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

22

23

24

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

25

26

(a) in the case of a port named in section 50(1)(a) or (b) of the amending Act — the Port of Carnarvon as declared before the transfer time under the *Shipping and Pilotage Act 1967* section 10(1); or

27

28

29

30

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

31

32

33



- 1            **Government agreement** means an agreement referred to in  
 2 paragraph (a) of the definition of **Government agreement** in  
 3 the *Government Agreements Act 1979* section 2 and, if the  
 4 agreement has been varied, means the agreement as varied;
- 5            **liability** means any liability, duty or obligation whether  
 6 actual, contingent or prospective, liquidated or unliquidated,  
 7 or whether owed alone or jointly or jointly and severally  
 8 with any other person;
- 9            **liability of the State** includes, but is not limited to, a liability  
 10 incurred by the Transport Minister for the purposes of a  
 11 Marine Act;
- 12            **Marine Act** means the *Jetties Act 1926*, the *Lights*  
 13 *(Navigation Protection) Act 1938*, the *Marine and Harbours*  
 14 *Act 1981*, the *Marine Navigational Aids Act 1973* or the  
 15 *Shipping and Pilotage Act 1967*;
- 16            **port transfer** or **transfer**, in relation to a port, means —
- 17            (a) the placement of the port under the control and  
 18 management of a port authority by the insertion of  
 19 the port in column 3 of an item in Schedule 1 by a  
 20 transfer provision; and
- 21            (b) the cessation of the existing S&P Act port as a port  
 22 for the administration and operation of which the  
 23 Transport Department is responsible by force of  
 24 clause 56;
- 25            **relevant official** means —
- 26            (a) the Registrar of Titles under the *Transfer of Land*  
 27 *Act 1893*; or
- 28            (b) the Registrar of Deeds and Transfers under the  
 29 *Registration of Deeds Act 1856*; or
- 30            (c) the Minister administering the *Land Administration*  
 31 *Act 1997*; or
- 32            (d) any other person authorised by a written law to  
 33 record and give effect to the registration of  
 34 documents relating to transactions affecting any  
 35 estate or interest in land or any other property;

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- 1 **renew** an easement, lease or licence includes —
- 2 (a) grant of an extension of its term; and
- 3 (b) grant a further easement, lease or licence to replace
- 4 it;
- 5 **requirement under this Act** means —
- 6 (a) a direction given by the Minister under section 72;
- 7 or
- 8 (b) any other obligation under this Act;
- 9 **right** means any right, power, privilege or immunity
- 10 whether actual, prospective or contingent;
- 11 **transfer provision** means section 50(1)(a) or (b), (2)(a), (b),
- 12 (c), (d) or (e) or (3)(a), (b) or (c) of the amending Act;
- 13 **transfer time**, in relation to a port transfer, means the time at
- 14 which the relevant transfer provision comes into operation;
- 15 **transitional order** means an order under clause 58;
- 16 **transitional regulations** has the meaning given in
- 17 clause 69(1);
- 18 **Transport CEO** means the chief executive officer of the
- 19 Transport Department and includes a delegate of that chief
- 20 executive officer under a Marine Act;
- 21 **Transport Department** means the department of the Public
- 22 Service principally assisting the Transport Minister in the
- 23 administration of the Marine Acts;
- 24 **Transport Minister** means the Minister administering the
- 25 Marine Acts and includes —
- 26 (a) that Minister as a body corporate under the *Marine*
- 27 *and Harbours Act 1981* section 8; and
- 28 (b) a delegate of that Minister under a Marine Act.
- 29 (2) A reference in this Division to an agreement, instrument or
- 30 document does not include a reference to a Government
- 31 agreement.

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

3                    **53.        Terms used**

- 4                    (1) In this Subdivision, unless the contrary intention appears —  
5                    *Agreements Minister* means the Minister administering the  
6                    *Government Agreements Act 1979*;  
7                    *port* means the port named in a transfer provision;  
8                    *port authority* means the port authority under the control  
9                    and management of which a port is placed by a port transfer.  
10                   (2) A reference in another clause of this Subdivision to *this*  
11                   *Subdivision* includes a reference to —  
12                   (a) transitional regulations relating to a port transfer;  
13                   and  
14                   (b) transitional orders and schedules referred to in  
15                   transitional orders.

16                   **54.        Port transfer: preliminary requirements**

- 17                   (1) Before the transfer time of a port transfer, an order is to be  
18                   made and published under section 24(1) describing the area  
19                   or areas of which the port is to consist.  
20                   (2) An area described in the order referred to in subclause (1)  
21                   may be —  
22                   (a) land; or  
23                   (b) land and water; or  
24                   (c) land and seabed; or  
25                   (d) land, water and seabed; or  
26                   (e) water; or  
27                   (f) water and seabed; or  
28                   (g) seabed.  
29                   (3) The area or areas described in the order referred to in  
30                   subclause (1) may be bounded by limits that differ from the  
31                   limits specified in relation to the existing S&P Act port by

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- 1 regulations mentioned in the *Shipping and Pilotage*  
2 *Act 1967* section 10(1a).
- 3 (4) The order referred to in subclause (1) comes into operation  
4 at the transfer time.
- 5 (5) A proclamation cannot be made under section 2(e) of the  
6 amending Act in relation to section 50(1)(a) or (b) or (2)(a),  
7 (b), (c) or (e) of the amending Act unless the Agreements  
8 Minister has given the Minister written notice that the  
9 Agreements Minister agrees to the making of that  
10 proclamation.

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

- 12 (1) Before or after the transfer time of a port transfer, the port  
13 authority may do anything that is prescribed by transitional  
14 regulations, and anything else that may be necessary or  
15 expedient to provide for, implement or facilitate the port  
16 transfer.
- 17 (2) Until the transfer time of a port transfer the port authority  
18 may do anything that it is authorised or required to do in  
19 relation to the existing S&P Act port under a contract or  
20 arrangement entered into with the Transport Minister under  
21 the *Marine and Harbours Act 1981* section 6 or 7.
- 22 (3) The functions conferred by this clause are in addition to any  
23 other function that the port authority has.

24 **56. Cessation of responsibility for port**

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

- 1           **57.       Vesting of land, seabed and water in port authority**
- 2           (1)       At the transfer time of a port transfer the following are
- 3               vested in the port authority for the purposes of this Act —
- 4               (a)       all land, seabed and water in the area or areas
- 5               described in the order made and published for the
- 6               port as required by clause 54(1);
- 7               (b)       all fixtures on land or seabed referred to in
- 8               paragraph (a) that belong to the State.
- 9           (2)       The operation of subclause (1) is subject to clauses 60(4)
- 10           and 62(1).
- 11           (3)       Subclause (1) displaces the operation that section 25(1)
- 12               would otherwise have had in relation to the port transfer.
- 13           **58.       Minister may make transitional orders**
- 14           (1)       To provide for, implement or facilitate a port transfer, the
- 15               Minister may make and publish in the *Gazette* before the
- 16               transfer time of the port transfer one or more orders that —
- 17               (a)       specify assets of the State that are to vest in, or
- 18               become the property of, the port authority in
- 19               addition to anything mentioned in clause 57(1); and
- 20               (b)       specify liabilities of the State that are to become
- 21               liabilities of the port authority; and
- 22               (c)       specify anything that is not to vest in the port
- 23               authority under clause 57(1); and
- 24               (d)       specify any agreement or instrument in which the
- 25               port authority, or the CEO, is to be substituted, in
- 26               accordance with the order, for the State, the
- 27               Transport Minister or the Transport CEO as a party;
- 28               and
- 29               (e)       specify any agreement, instrument or document that
- 30               is to have effect as if references to the port
- 31               authority, or the CEO or a member of staff, were
- 32               substituted, in accordance with the order, for
- 33               references in it to the State, the Transport Minister,
- 34               the Transport Department or the Transport CEO
- 35               (however expressed); and

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- 1 (f) specify any agreement, instrument or document that  
2 is to have effect as if references to this Act or a  
3 provision of this Act were substituted, in  
4 accordance with the order, for references in it to  
5 another enactment; and
- 6 (g) in the case of a port named in section 50(1)(a) or (b)  
7 of the amending Act, specify any agreement,  
8 instrument or document that is to have effect as if  
9 references to the port were substituted, in  
10 accordance with the order, for references in it to the  
11 existing S&P Act port; and
- 12 (h) specify proceedings in which the port authority is to  
13 be substituted, in accordance with the order, for the  
14 State or the Transport Minister as a party.
- 15 (2) In a transitional order an asset of the State may be specified  
16 under subclause (1)(a) if the Minister considers that the  
17 asset —
- 18 (a) relates to, or was used in connection with, the  
19 administration or operation of the existing S&P Act  
20 port; and
- 21 (b) should vest in, or become the property of, the port  
22 authority; and
- 23 (c) will not or might not otherwise be vested in the port  
24 authority under clause 57(1).
- 25 (3) In a transitional order a liability of the State may be  
26 specified under subclause (1)(b) if the Minister considers  
27 that the liability —
- 28 (a) relates to, or arose in connection with, the  
29 administration or operation of the existing S&P Act  
30 port; and
- 31 (b) should become a liability of the port authority.
- 32 (4) A transitional order may —
- 33 (a) deal with incidental or supplementary matters; and

- 1                   (b) clarify, or remove doubt as to, the operation of this  
2                   Subdivision in relation to any specified matter or  
3                   thing,  
4                   and has effect accordingly.
- 5           (5) A transitional order may specify things by reference to  
6           schedules which —  
7               (a) need not be published in the *Gazette*; but  
8               (b) must be available for public inspection,  
9           and anything specified in a schedule is to be taken to be  
10           specified in the order.
- 11          (6) A thing may be specified in a transitional order by  
12          describing the class to which it belongs.
- 13          (7) Before a transitional order is made, the Transport CEO is to  
14          consult with the port authority as to the form and content of  
15          the order and any schedule to which it refers.
- 16          (8) Before a transitional order is made specifying anything by  
17          reference to a schedule, the Transport CEO is to consult  
18          with the relevant officials as to the form and content of the  
19          schedule.
- 20          (9) The Minister must obtain the written concurrence of the  
21          Agreements Minister before making a transitional order  
22          relating to a port named in section 50(1)(a) or (b) or (2)(a),  
23          (b), (c) or (e) of the amending Act.
- 24          (10) The Minister is to cause a copy of each transitional order  
25          and any schedule to which it refers to be delivered to the  
26          port authority and each relevant official.

27          **59. Amending transitional order**

- 28               (1) The Minister may, by order published in the *Gazette* before  
29               or after the transfer time, make any provision that the  
30               Minister considers to be needed in order to —  
31                   (a) correct any error or omission in a transitional order  
32                   or a schedule to which a transitional order refers; or

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---

- 1 (b) clarify, or remove doubt as to, the operation of a  
2 transitional order; or
- 3 (c) give proper effect to the purpose for which a  
4 transitional order was made.
- 5 (2) The Minister may, by order published in the *Gazette* after  
6 the transfer time, make provision for a matter that could  
7 have been dealt with by a transitional order but was not.
- 8 (3) If an order under subclause (1) or (2) published in the  
9 *Gazette* after the transfer time provides that a provision of  
10 the order has effect from immediately before the transfer  
11 time, the provision has effect accordingly.
- 12 (4) If an order under subclause (1) or (2) published in the  
13 *Gazette* after the transfer time provides that a state of affairs  
14 specified or described in the order is to be taken to have  
15 existed, or not to have existed, at and from a time that is  
16 earlier than the day on which the order is published in the  
17 *Gazette* but not earlier than the transfer time, the provision  
18 has effect according to its terms.
- 19 (5) To the extent that, under subclause (3) or (4), a provision of  
20 an order has effect before the day of its publication in the  
21 *Gazette*, this Subdivision does not, as a result of that  
22 provision, operate so as —
- 23 (a) to affect, in a manner prejudicial to any person  
24 (other than the State or a Minister, officer or agency  
25 of the State), the rights of that person existing  
26 before the day of publication; or
- 27 (b) to impose liabilities on any person (other than the  
28 State or a Minister, officer or agency of the State) in  
29 respect of anything done or omitted to be done  
30 before the day of publication.
- 31 (6) Clause 58(5) to (10) apply, with any necessary  
32 modifications, to an order under subclause (1) or (2).



- 1           **60.       Provisions as to assets and liabilities**
- 2           (1)    In this clause —
- 3                *transferred assets*, in relation to a port transfer, means —
- 4                   (a)   assets that vest in, or become the property of, the
- 5                        port authority under subclause (3)(a); and
- 6                   (b)   anything vested in the port authority under
- 7                        clause 57(1);
- 8                *transferred liabilities*, in relation to a port transfer, means
- 9                liabilities that become liabilities of the port authority under
- 10               subclause (3)(b).
- 11          (2)   This clause applies if a transitional order is made in relation
- 12               to a port transfer.
- 13          (3)   At the transfer time of the port transfer by force of this
- 14               clause —
- 15                   (a)   assets specified in the transitional order under
- 16                        clause 58(1)(a) vest in, or become the property of,
- 17                        the port authority in accordance with the order; and
- 18                   (b)   liabilities specified in the transitional order under
- 19                        clause 58(1)(b) become liabilities of the port
- 20                        authority.
- 21          (4)   By force of this clause, anything specified in the transitional
- 22               order under clause 58(1)(c) does not vest in the port
- 23               authority under clause 57(1).
- 24          (5)   At the transfer time of the port transfer any right of the State
- 25               in relation to transferred assets or transferred liabilities
- 26               becomes by force of this clause a right of the port authority.
- 27          (6)   From the transfer time of the port transfer by force of this
- 28               clause —
- 29                   (a)   any proceedings or remedy that might have been
- 30                        commenced by, or available against or to, the State
- 31                        or the Transport Minister in relation to transferred
- 32                        assets or transferred liabilities may be commenced
- 33                        by, or are available against or to, the port authority;
- 34                        and

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- 1 (b) anything commenced to be done before the transfer  
2 time in relation to transferred assets or transferred  
3 liabilities by the State, the Transport Minister or the  
4 Transport Department may be continued by the port  
5 authority; and
- 6 (c) anything done or omitted to be done in relation to  
7 transferred assets or transferred liabilities before the  
8 transfer time by, to or in respect of the State, the  
9 Transport Minister or the Transport Department (to  
10 the extent that that thing has any effect) is to be  
11 taken to have been done or omitted by, to or in  
12 respect of the port authority.
- 13 (7) In determining the net profits of the port authority for the  
14 purposes of section 84, transferred assets are not to be  
15 regarded as income.
- 16 (8) If at the transfer time of the port transfer a transferred asset  
17 or transferred liability is not properly assigned to the port  
18 authority by the operation of this Subdivision (whether  
19 because the matter is governed otherwise than by the law of  
20 the State or for any other reason) —
- 21 (a) the State is to be taken to continue to hold that  
22 transferred asset or be liable for that transferred  
23 liability until it is effectively assigned to the port  
24 authority; and
- 25 (b) the Transport Department is to take all practicable  
26 steps for the purpose of ensuring that the transferred  
27 asset or transferred liability is effectively assigned  
28 to the port authority.
- 29 (9) The fact that subclause (8)(a) applies to a transferred asset  
30 or transferred liability does not affect a duty imposed by  
31 section 90(2).
- 32 (10) By force of this clause, any previous vesting of a transferred  
33 asset under another written law ceases to have effect at the  
34 transfer time of the port transfer.

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

- 2           (1) If a transitional order is made in relation to a port transfer  
3 then, by force of this clause —
- 4           (a) at the transfer time of the port transfer the port  
5 authority is substituted in accordance with the order  
6 for the State or the Transport Minister as a party to  
7 an agreement or instrument specified in the order  
8 under clause 58(1)(d); and
  - 9           (b) from the transfer time of the port transfer an  
10 agreement, instrument or document specified in the  
11 order under clause 58(1)(e) has effect as if  
12 references to the port authority or the CEO or a  
13 member of staff were, at the transfer time,  
14 substituted in accordance with the order for  
15 references in it to the State, the Transport Minister,  
16 the Transport Department or the Transport CEO  
17 (however expressed); and
  - 18           (c) from the transfer time of the port transfer an  
19 agreement, instrument or document specified in the  
20 order under clause 58(1)(f) has effect as if  
21 references to this Act or a provision of this Act  
22 were, at the transfer time, substituted in accordance  
23 with the order for references in it to another  
24 enactment; and
  - 25           (d) from the transfer time of the port transfer an  
26 agreement, instrument or document specified in the  
27 order under clause 58(1)(g) has effect as if  
28 references to the port were, at the transfer time,  
29 substituted in accordance with the order for  
30 references in it to the existing S&P Act port; and
  - 31           (e) at the transfer time of the port transfer the port  
32 authority is substituted in accordance with the order  
33 for the State or the Transport Minister as a party to  
34 proceedings specified in the order under  
35 clause 58(1)(h).

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

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

8 **62. Navigational aids**

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

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

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

14 (1) In this clause —

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

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

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

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

27 **64. Pilotage: existing licences**

28 (1) In this clause —

29 *condition* includes restriction;

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

- 
- 1 (2) From the transfer time of a port transfer, a person who,  
2 immediately before the transfer time, held a licence under  
3 the *Shipping and Pilotage Act 1967* to act as a pilot for the  
4 existing S&P Act port (the *licence*) is to be taken to have the  
5 approval of the port authority under section 96(1) as a pilot  
6 for the port (the *transitional approval*).
- 7 (3) The effect that the transitional approval has by force of  
8 subclause (2) extends to any place within the boundaries of  
9 the port or within an area referred to in section 95(2) outside  
10 the port as long as that place was, immediately before the  
11 transfer time, within the boundaries of the existing S&P Act  
12 port or within a controlled area outside the existing S&P Act  
13 port.
- 14 (4) The effect that the transitional approval has by force of  
15 subclause (2) is subject to any condition to which the licence  
16 was subject immediately before the transfer time and to any  
17 other condition imposed under the regulations.
- 18 (5) The transitional approval continues to have effect until —  
19 (a) the period for which the licence would have had  
20 effect ends; or  
21 (b) the transitional approval is revoked under  
22 section 96(2); or  
23 (c) the person concerned is approved as a pilot for the  
24 port under section 96(1); or  
25 (d) the period of 2 years beginning at the transfer time  
26 ends,  
27 whichever occurs first.
- 28 (6) Without limiting clause 70(1), its provisions apply if a  
29 transitional approval is revoked under section 96(2).
- 30 (7) This clause does not apply to a person if, before the transfer  
31 time, the person is approved as a pilot for the port under  
32 section 96(1) in accordance with clause 55(1) or the  
33 *Interpretation Act 1984* section 25.

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- 1           **65. Pilotage: existing exemption certificates**
- 2           (1) In this clause —
- 3                 *condition* includes restriction;
- 4                 *controlled area* has the meaning given in the *Shipping and*
- 5                 *Pilotage Act 1967* section 3;
- 6                 *S&P Act certificate* means a pilotage exemption certificate
- 7                 issued under the *Shipping and Pilotage Act 1967*.
- 8           (2) From the transfer time of a port transfer, an S&P Act
- 9                 certificate for the existing S&P Act port in force
- 10                 immediately before the transfer time (the *existing*
- 11                 *certificate*) is to be taken to be a pilotage exemption
- 12                 certificate in respect of the port issued under the regulations
- 13                 (the *transitional certificate*).
- 14           (3) The effect that the transitional certificate has by force of
- 15                 subclause (2) extends to any place within the boundaries of
- 16                 the port or within an area referred to in section 95(2) outside
- 17                 the port as long as that place was, immediately before the
- 18                 transfer time, within the boundaries of the existing S&P Act
- 19                 port or within a controlled area outside the existing S&P Act
- 20                 port.
- 21           (4) The effect that the transitional certificate has by force of
- 22                 subclause (2) is subject to any condition to which the
- 23                 existing certificate was subject immediately before the
- 24                 transfer time and to any other condition imposed under the
- 25                 regulations.
- 26           (5) The transitional certificate continues to have effect until —
- 27                 (a) the transitional certificate expires under the
- 28                 regulations; or
- 29                 (b) the transitional certificate is revoked under the
- 30                 regulations; or
- 31                 (c) a pilotage exemption certificate in respect of the
- 32                 port is issued to the holder of the transitional
- 33                 certificate under the regulations; or

- 1                   (d) the period of 2 years beginning at the transfer time  
2                   ends,  
3                   whichever occurs first.
- 4                   (6) Without limiting clause 70(1), its provisions apply if a  
5                   transitional certificate is revoked under the regulations.
- 6                   (7) This clause does not apply to an S&P Act certificate if,  
7                   before the transfer time, a pilotage exemption certificate in  
8                   respect of the port is issued to the holder of the S&P Act  
9                   certificate under the regulations in accordance with  
10                  clause 55(1) or the *Interpretation Act 1984* section 25.
- 11                 **66. Jetty licences**
- 12                 (1) In this clause —
- 13                   *continued licence* means a jetty licence to which  
14                   subclause (9) applies;
- 15                   *converted licence* means a jetty licence to which  
16                   subclause (5) applies;
- 17                   *existing jetty* means a jetty that, immediately before the  
18                   transfer time of a port transfer, was wholly or partly within  
19                   the boundaries of the existing S&P Act port or was used in  
20                   connection with the operation of the existing S&P Act port;
- 21                   *jetty* has the meaning given in the *Jetties Act 1926* section 3;
- 22                   *jetty licence* means a licence granted under the *Jetties*  
23                   *Act 1926*;
- 24                   *licensee* includes sub-licensee.
- 25                 (2) Subject to subclause (3) if —
- 26                   (a) immediately before the transfer time of a port  
27                   transfer, an existing jetty was the subject of a jetty  
28                   licence; and
- 29                   (b) from the transfer time the existing jetty is wholly on  
30                   port land,
- 31                   subclause (5) applies to the jetty licence.
- 32                 (3) If the port is a port named in section 50(1)(a) or (b)  
33                   or (2)(a), (b), (c) or (e) of the amending Act, subclause (5)

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- 1 does not apply to the jetty licence unless transitional  
2 regulations provide that it does.
- 3 (4) Regulations cannot be made for subclause (3) except with  
4 the written concurrence of the Agreements Minister.
- 5 (5) If this subclause applies to a jetty licence —
- 6 (a) at the transfer time the licence ceases to be a licence  
7 under the *Jetties Act 1926*; and
- 8 (b) at the transfer time the port authority is substituted  
9 for the Transport Minister or the Transport CEO (as  
10 the case may be) as the grantor of the licence; and
- 11 (c) from the transfer time the licence is to be taken to  
12 have been granted under this Act with any approval  
13 needed under this Act even if the licence was  
14 granted for a period exceeding 50 years.
- 15 (6) Subject to subclause (7) if, immediately before the transfer  
16 time of a port transfer, an existing jetty was the subject of a  
17 jetty licence, transitional regulations may prescribe that  
18 subclause (9) applies to the jetty licence.
- 19 (7) If the port is a port named in section 50(1)(a) or (b)  
20 or (2)(a), (b), (c) or (e) of the amending Act, transitional  
21 regulations cannot be made for subclause (6) except with the  
22 written concurrence of the Agreements Minister.
- 23 (8) Subclause (9) does not apply to a jetty licence if  
24 subclause (5) applies to it.
- 25 (9) If this subclause applies to a jetty licence —
- 26 (a) the licence continues in force from the transfer time  
27 as a licence under the *Jetties Act 1926*; and
- 28 (b) from the transfer time any power exercisable by, or  
29 in relation to, the grantor of the licence, whether —
- 30 (i) under the licence; or
- 31 (ii) under the *Jetties Act 1926* in relation to the  
32 licence,
- 33 is exercisable by, or in relation to, the port authority  
34 instead of the grantor of the licence; and



- 1                   (c) after the transfer time the port authority may, at the  
2                   request or with the agreement of the holder of the  
3                   licence, renew or vary the licence under that Act;  
4                   and  
5                   (d) from the transfer time the functions of the port  
6                   authority are to be taken to extend to the exercise of  
7                   powers for the purposes of this subclause.
- 8           (10) From the transfer time it is to be taken to be a condition of a  
9           converted licence or a continued licence that the licensee  
10           must comply with any direction given by the port authority  
11           to the extent that the direction is given to facilitate —  
12                   (a) compliance by the port authority with a requirement  
13                   under this Act; or  
14                   (b) performance by the port authority of its functions.
- 15           (11) Without limiting clause 58, an order may be made under  
16           clause 58(1)(e), (f) or (g) or (4) in relation to a converted  
17           licence or a continued licence.

**Subdivision 3 — General provisions**

**67. Registration of documents**

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

**68. Exemption from State taxes**

- (1) In this clause —  
*State tax* includes duty under the *Duties Act 2008* and any other tax under a written law.
- (2) State tax is not payable in relation to —  
    (a) anything that occurs by force or because of the affecting provisions; or  
    (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Division, or to

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1 give effect to the affecting provisions, or for a  
2 purpose connected with or arising out of giving  
3 effect to the affecting provisions.

4 **69. Transitional regulations**

- 5 (1) Regulations (*transitional regulations*) may prescribe —
- 6 (a) things to be done by a Minister, the Transport  
7 Department, the Transport CEO or a port authority,  
8 to provide for, implement or facilitate a port  
9 transfer; and
- 10 (b) anything necessary or expedient to be prescribed for  
11 providing for a matter or issue of a transitional  
12 nature that arises in relation to a port transfer.
- 13 (2) Transitional regulations may provide that specific provisions  
14 of any written law —
- 15 (a) do not apply to or in relation to any matter; or  
16 (b) apply with specific modifications to or in relation to  
17 any matter.
- 18 (3) If transitional regulations relating to a port transfer provide  
19 that a state of affairs specified or described in the  
20 regulations is to be taken to have existed, or not to have  
21 existed, at and from a time that is earlier than the day on  
22 which the regulations are published in the *Gazette* but not  
23 earlier than the transfer time, the regulations have effect  
24 according to their terms.
- 25 (4) If transitional regulations contain a provision referred to in  
26 subclause (3), the provision does not operate so as —
- 27 (a) to affect in a manner prejudicial to any person  
28 (other than the State or an authority of the State) the  
29 rights of that person existing before the day of  
30 publication of those regulations; or
- 31 (b) to impose liabilities on any person (other than the  
32 State or an authority of the State) in respect of  
33 anything done or omitted to be done before the day  
34 of publication of those regulations.

- 1           **70.     Saving**
- 2           (1)    The operation of any of the affecting provisions is not to be
- 3                regarded —
- 4                (a)    as a breach of contract or confidence or otherwise
- 5                as a civil wrong; or
- 6                (b)    as a breach of any contractual provision prohibiting,
- 7                restricting or regulating the assignment or transfer
- 8                of assets, rights or liabilities or the disclosure of
- 9                information; or
- 10              (c)    as giving rise to any right to damages or
- 11              compensation; or
- 12              (d)    as giving rise to any remedy by a party to an
- 13              instrument or as causing or permitting the
- 14              termination of any instrument, because of a change
- 15              in the beneficial or legal ownership of any asset,
- 16              right or liability; or
- 17              (e)    as causing any contract or instrument to be void or
- 18              otherwise unenforceable; or
- 19              (f)    as releasing or allowing the release of any surety.
- 20           (2)    This Division and transitional regulations are additional to
- 21                any relevant provisions of the *Interpretation Act 1984*.
- 22           **71.     Effect of affecting provisions**
- 23                Subject to clauses 74 and 75, the affecting provisions have
- 24                effect despite any provision of this Act or another written
- 25                law.
- 26           **72.     No exclusion of operation of affecting provisions**
- 27                A provision of an agreement or instrument that purports to
- 28                in any way exclude the agreement or instrument from the
- 29                operation of future legislation has no effect in relation to the
- 30                affecting provisions.

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- 1           **73.       Effect of continued easements, leases and licences**
- 2           (1) This clause applies if under clause 61(2) or 66(5) an
- 3           easement, lease or licence is to be taken, from the transfer
- 4           time of a port transfer, to have been granted under this Act.
- 5           (2) The rights and powers that the grantee, lessee or licensee
- 6           had under the easement, lease or licence before the transfer
- 7           time are not adversely affected except to the extent (if any)
- 8           requested or agreed under subclause (3).
- 9           (3) The port authority may, at the request or with the agreement
- 10          of the grantee, lessee or licensee, renew or vary the
- 11          easement, lease or licence under this Act.
- 12          (4) Subclause (2) does not affect the operation of clause 66(9)
- 13          or (10).
- 14          **74.       Government agreements not affected**
- 15                The affecting provisions do not prejudice or in any way
- 16                affect any right or obligation of a party to a Government
- 17                agreement.
- 18          **75.       Preservation of mining, petroleum and other rights**
- 19          (1) In this clause —
- 20                **authorisation** means —
- 21                (a) a mining tenement as defined in the *Mining*
- 22                *Act 1978* section 8(1); or
- 23                (b) an authority to occupy or right of occupancy of any
- 24                land to which the *Mining Act 1978* Second Schedule
- 25                clause 1(1) applies; or
- 26                (c) an exploration licence, retention licence, mining
- 27                licence, works licence, special purpose consent or
- 28                other right under the *Offshore Minerals Act 2003*; or
- 29                (d) a drilling reservation, lease, licence, permit, pipeline
- 30                licence, special prospecting authority, access
- 31                authority or other right under the *Petroleum and*
- 32                *Geothermal Energy Resources Act 1967*, the

- 1 *Petroleum Pipelines Act 1969* or the *Petroleum*
- 2 *(Submerged Lands) Act 1982*; or
- 3 (e) any other authorisation of a kind provided for under
- 4 a written law and prescribed for this paragraph by
- 5 transitional regulations.
- 6 (2) Without limiting clause 74, the affecting provisions as they
- 7 apply to a port transfer do not —
- 8 (a) prejudice or in any way affect an authorisation in
- 9 effect before the transfer time; or
- 10 (b) prejudice or in any way affect any right or
- 11 obligation of a person under an authorisation in
- 12 effect before the transfer time; or
- 13 (c) prevent an application for an authorisation made but
- 14 not disposed of before the transfer time from being
- 15 dealt with after the transfer time; or
- 16 (d) prejudice or in any way affect the manner in which
- 17 an application mentioned in paragraph (c) is dealt
- 18 with after the transfer time.

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

20 If a transfer provision has not come into operation, the  
21 reference in the definition of *unassigned port* in Schedule 9  
22 clause 1 to a port named in Schedule 1 includes a reference  
23 to the existing S&P Act port for the port named in that  
24 transfer provision.  
25

26 **52. Schedule 9 amended**

- 27 (1) In Schedule 9 clause 1 delete the definition of *port*.
- 28 (2) In Schedule 9 clause 1 insert in alphabetical order:
- 29

30 *unassigned port* means a port that —  
31 (a) is not named in Schedule 1; and

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- 1 (b) has not been placed under the control and  
2 management of a port authority by regulations in  
3 accordance with this Schedule.  
4
- 5 (3) In Schedule 9 clause 1 in the definition of *port addition* delete  
6 “operation.” and insert:  
7  
8 operation;  
9
- 10 (4) In Schedule 9 clause 2(1) delete “place a” and insert:  
11  
12 place an unassigned  
13
- 14 (5) After Schedule 9 clause 2(2) insert:  
15
- 16 (3) Without limiting subclause (2) regulations may —  
17 (a) vest land, seabed, water or other property in a port  
18 authority or otherwise provide for the vesting of,  
19 land, seabed, water or other property in a port  
20 authority; and  
21 (b) specify liabilities of the State that are to become  
22 liabilities of a port authority or otherwise provide  
23 for liabilities of the State to become liabilities of a  
24 port authority; and  
25 (c) displace the operation of section 25(1) in relation to  
26 a port addition.  
27

1        **Part 7 — *Shipping and Pilotage Act 1967* amended**

2        **53.        Act amended**

3                This Part amends the *Shipping and Pilotage Act 1967*.

4        **54.        Long title amended**

5                In the long title delete “**fishing**”.

6        **55.        Section 3 amended**

7                (1) In section 3 delete the definition of *fishing boat harbour*.

8                (2) In section 3 insert in alphabetical order:

9

10                        *boat harbour* means any place declared for the time  
11                        being to be a boat harbour under section 10(2);

12

13        **56.        Section 7B amended**

14                In section 7B(3)(c) delete “fishing”.

15        **57.        Section 9A amended**

16                In section 9A(1)(a) delete “each fishing” and insert:

17

18                each

19

20                Note: The heading to amended section 9A is to read:

21                        **Boat harbour dues and mooring charges**

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1 **58. Section 10 amended**

2 In section 10(1b):

3 (a) delete “named in the *Port Authorities Act 1999*  
4 Schedule 1” and insert:

5

6 as defined in the *Port Authorities Act 1999* section 3(1)

7

8 (b) delete “a port so named.” and insert:

9

10 such a port.

11

12 **59. Section 12 amended**

13 (1) In section 12(1)(b) delete “fishing”.

14 (2) In section 12(2)(d) delete “responsible authority” (each  
15 occurrence) and insert:

16

17 CEO

18

19 (3) In section 12(3) delete the definition of *responsible authority*.

20 **60. Various references to “fishing boat harbour” replaced**

21 In the provisions listed in the Table delete “fishing boat  
22 harbour” (each occurrence) and insert:

23

24 boat harbour

25



1

**Table**

s. 3 def. of <i>controlling authority</i>	s. 6A def. of <i>declared area</i>
s. 9A(1)(a)	s. 10(2)(a)
s. 10(2)(b)	s. 10(2)(ba)
s. 11(b)	s. 11(c)
s. 11A(3A)(b)	s. 11A(3C)

2

**61. Various references to “Department” replaced**

3

In the provisions listed in the Table delete “Department” and insert:

4

5

6

CEO

7

8

**Table**

s. 3 def. of <i>controlling authority</i>	s. 6A(2)
s. 10(2)(ba)	s. 11A(3A)(b)
s. 12(1)(bb)	

1 **Part 8 — *Western Australian Marine Act 1982* amended**

2 **62. Act amended**

3 This Part amends the *Western Australian Marine Act 1982*.

4 **63. Section 118 amended**

5 (1) In section 118 delete “The chief” and insert:

6

7 (1) The chief

8

9 (2) At the end of section 118 insert:

10

11 (2) In the case of an inspector, the certificate issued under  
12 subsection (1) is also to specify any functions that the  
13 inspector has under other enactments by virtue of being  
14 an inspector.

15

16 **64. Section 132 amended**

17 After section 132(5) insert:

18

19 (5A) An authorised person may not withdraw an  
20 infringement notice under subsection (5) if the  
21 authorised person served the infringement notice.

22

23

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