

**COMPARE COPY**

**for**

**Ports Legislation Amendment Bill 2017**

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**Bill No. 52—2**

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# 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:

## **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 sections ~~50 and 52~~), 7 (other than section ~~57~~56) and 8 — on the day after assent day;
- (c) Part 4 Division 3 — when section 50(3)(b) comes into operation;
- (d) section ~~57~~56 —
  - (i) if the *Shipping and Pilotage Amendment Act 2006* section 8 (*section 8*) comes into operation before the day on which section ~~61~~60 comes into operation — when section ~~61~~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.



**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.

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

**7. Section 6 amended**

- (1) Delete section 6(1)(a).
- (2) After section 6(2) insert:

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

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

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

**8. Section 7AA inserted**

After section 7 insert:

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

- (1) This Act, other than sections 13 and 14, does not apply to a jetty wholly or partly within the boundaries of a port as defined in the *Port Authorities Act 1999* section 3(1), and a lease or licence cannot be granted under this Act in respect of such a jetty.
- (2) Subsection (1) is enacted to avoid doubt and does not limit the *Port Authorities Act 1999* section 32.

**9. Section 8 amended**

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

a fine of \$12 000.

**10. Section 8A amended**

Before section 8A(1) insert:

- (1A) In this section —  
*materials* includes fixtures and fittings.

**11. Section 9 amended**

In section 9:

- (a) delete “\$500” and insert:

a fine of \$12 000

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

a port authority.

**12. Section 10 amended**

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

a fine of \$12 000.

**13. Section 11 amended**

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

a fine of \$12 000.

**14. Section 12 amended**

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

a fine of \$12 000

**15. Sections 13 and 14 inserted**

After section 12 insert:

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

(1) In this section —

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

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

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

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

***renew*** a licence includes —

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

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

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

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

**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

Item	Licence	Port authority
	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



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<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

- (3) On and from the day specified for this subsection in respect of a licence the following provisions apply to and in relation to that licence —
- (a) any power exercisable by, or in relation to, the grantor of the licence, whether —
    - (i) under the licence; or
    - (ii) under this Act in relation to the licence, is exercisable by, or in relation to, the relevant port authority instead of the grantor of the licence;
  - (b) the functions of the relevant port authority are to be taken to extend to the exercise of powers for the purposes of this subsection;
  - (c) it is to be taken to be a condition of the licence that the licensee must comply with any direction given by the relevant port authority to the extent that the direction is given to facilitate —
    - (i) compliance by the relevant port authority with a requirement under the *Port Authorities Act 1999*; or
    - (ii) performance by the relevant port authority of its functions;
  - (d) the rights and powers that the licensee had under the licence before the specified day are not adversely affected except to the extent (if any) requested or agreed under paragraph (e);
  - (e) the power of the relevant port authority to renew or vary the licence may only be exercised at the request or with the agreement of the licensee.
- (4) This section does not prejudice or in any way affect any right or obligation of a party to a Government agreement.

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

**14. Validation of prescribed instruments**

- (1) In this section —
- instrument* means a lease or licence granted, or purporting to have been granted, under this Act in respect of a jetty within or partly within the boundaries of a port authority as defined in the *Port Authorities Act 1999* section 3(1) and, if any such lease or licence has been renewed or varied, includes the lease or licence as renewed or varied.
- (2) On and from the day on which regulations prescribing an instrument for the purposes of this section come into operation —
- (a) the instrument is to be taken to be, and since the commencement of the instrument to have always been, as valid and effective as if the jetty to which the instrument relates is, and since the commencement of the instrument has always been, a jetty to which this Act applies; and
  - (b) the rights, obligations and liabilities of all persons under the instrument (including a right to renew the instrument) are to be taken to be, and since the commencement of the instrument to have always been, the same as if the jetty to which the instrument relates is, and since the commencement of the instrument has always been, a jetty to which this Act applies; and
  - (c) anything done, or purportedly done, before that day as a result or consequence of, or in reliance on or in relation to, the instrument (including a

renewal, or purported renewal, of the instrument) is to be taken to be, and to have always been, as valid and effective as it would have been if the jetty to which the instrument relates were a jetty to which this Act applies when the thing was done or purportedly done.

- (3) In subsection (2)(c) a reference to the doing of anything includes a reference to an omission to do anything.

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

**16. Act amended**

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

**17. Section 2 amended**

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

***Port Authority***

***Port or Harbour***

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

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

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

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

***port*** includes —

- (a) a port declared under the *Shipping and Pilotage Act 1967* section 10(1); and
- (b) a port as defined in the *Port Authorities Act 1999* section 3(1);

***port manager*** means —

- (a) in the case of a port under the control of a port authority established under the *Port Authorities Act 1999* — that port authority; or
- (b) in the case of any other port or a harbour — the chief executive officer.

**18. Section 3 amended**

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

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

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

**19. Section 4 amended**

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

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

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

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

**20. Section 7 amended**

In section 7:

(a) delete paragraph (a) and insert:

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

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

officer.



**21. Sections 8 and 9 inserted**

After section 7 insert:

**8. Delegation**

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

**9. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may 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.

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

In the provisions listed in the Table:

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

port manager

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

port manager,

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

port manager.

**Table**

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

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

### Division 1 — Preliminary

#### 23. Act amended

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

### Division 2 — General

#### 24. Section 3 amended

- (1) In section 3 delete the definition of *Port Authority*.
- (2) In section 3 insert in alphabetical order:

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

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

*port* includes —

- (a) a port declared under the *Shipping and Pilotage Act 1967* section 10(1); and
- (b) a port as defined in the *Port Authorities Act 1999* section 3(1);

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

#### 25. Section 5 amended

- (1) In section 5(1):
  - (a) in paragraph (h) delete “fishing boat harbours within the State and to provide” and insert:

harbours within the State and to provide, control,  
manage, operate and maintain

- (b) after paragraph (h) insert:
    - (ha) to provide for the commercial development and promotion of the harbours referred to in paragraph (h); and
  - (c) in paragraph (i) delete “to construct, provide,” and insert:

subject to subsection (1A), to construct, provide, control, manage, operate,
  - (d) in paragraph (i)(iv) delete “fishing industry” and insert:

boating
  - (e) after paragraph (i) insert:
    - (ia) to provide for the commercial development and promotion of the facilities and services referred to in paragraph (i); and
  - (f) in paragraph (j) delete “preserve and protect” and insert:

preserve, protect, control, manage, operate and maintain any
- (2) After section 5(1) insert:
- (1A) Despite subsection (1), the Department cannot construct, provide, control, manage, operate or maintain port works in relation to a port (as defined in the *Port Authorities Act 1999* section 3(1)) without the

agreement of the Port Authority that controls and manages that port.

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

and

**26. Section 5A amended**

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

port of Wyndham as a port.

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

**Provision of services at Wyndham**

**27. Section 5B amended**

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

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

**28. Section 14 amended**

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

agency special purpose accounts.

**29. Section 14A amended**

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

port of

**30. Section 18A amended**

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

*authorised person* is a reference to a person

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

an inspector or

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

subsection (2)

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

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

**31. Section 18B amended**

- (1) In section 18B(2):
- (a) in paragraph (b)(i) after “identifies to” insert:  
  
an inspector or
  - (b) in paragraph (b)(ii) after “satisfies” insert:  
  
an inspector or
- (2) In section 18B(3) delete the definition of *authorised officer*.
- (3) In section 18B(3) insert in alphabetical order:

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

**32. Section 19 amended**

- (1) In section 19(1):
- (a) delete paragraph (g) and insert:  
  
(g) prescribing the fees and charges to be paid for the following —
    - (i) any use of a departmental area, or a facility within it, including, but not limited to, the mooring, berthing or storing of vessels within the departmental area;
    - (ii) services provided by the Department;

(iii) the parking of vehicles on departmental land;

and

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

\$12 000

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

and

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

In the provisions listed in the Table:

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

authorised person

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

authorised persons

**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)

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

**34. Section 5A deleted**

Delete section 5A.

**35. Section 14A deleted**

Delete section 14A.

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

**36. Act amended**

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

**37. Section 2 amended**

- (1) In section 2 delete the definition of *port authority*.
- (2) In section 2 insert in alphabetical order:

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

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

**38. Section 3 amended**

- (1) In section 3(1):
  - (a) delete the passage that begins with “The” and ends with “thereto —” and insert:

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

- (b) delete paragraph (a) and insert:
  - (a) may, subject to subsection (1A), establish any marine navigational aid; and

(2) After section 3(1) insert:

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

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

chief executive officer

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

and

**39. Section 3A amended**

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

and management

**40. Section 5 amended**

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

causes damage to or

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

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

**41. Sections 6 and 7 inserted**

After section 5 insert:

**6. Delegation**

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

**7. Regulations**

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

- (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.

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

**42. Act amended**

This Part amends the *Port Authorities Act 1999*.

**43. Section 3 amended**

- (1) In section 3(1) delete the definition of *vested*.
- (2) In section 3(1) insert in alphabetical order:

*vested* means vested in a port authority under this Act;  
*vested land* includes vested seabed and vested water.

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

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

**44. Section 25 amended**

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

- (b) in the case of a port that was named in Schedule 1 before the coming into operation of the *Ports and Marine Legislation Amendment Act 2003* section 4, all navigational aids that, immediately before the coming into operation of that section —
  - (i) were in the port, or used in connection with navigation into or out of the port; and
  - (ii) belonged to the State;

(2) Delete section 25(2)(b) and insert:

- (b) any real or personal property (other than property referred to in subsection (1) or paragraph (a)) that —
  - (i) is acquired by the port authority; or
  - (ii) is vested in the port authority by the Governor for the purposes of this Act; or
  - (iii) is vested in, or becomes the property of, the port authority under this Act.

**45. Section 31 amended**

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

this Act or any other written law

**46. Section 40 amended**

After section 40(3) insert:

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

**47. Section 60 amended**

Delete section 60(2)(ka).

**48. Section 96 amended**

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

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

**49. Section 138 amended**

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

45 or 52; or

**50. Schedule 1 amended**

(1) In Schedule 1 item 5 column 3:

(a) insert in alphabetical order:

Port of Cape Cuvier

(b) insert in alphabetical order:

Port of Useless Loop

(2) In Schedule 1 item 7 column 3:

(a) insert in alphabetical order:

Port of Barrow Island

(b) insert in alphabetical order:

Port of Cape Preston



(c) insert in alphabetical order:

Port of Onslow

(d) insert in alphabetical order:

Port of Varanus Island

(e) insert in alphabetical order:

Port Walcott

(3) In Schedule 1 item 8 column 3:

(a) insert in alphabetical order:

Port of Derby

(b) insert in alphabetical order:

Port of Wyndham

(c) insert in alphabetical order:

Port of Yampi Sound

**51. Schedule 8 Division 2 inserted**

At the end of Schedule 8 insert:

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

**Subdivision 1 — Preliminary**

**52. Terms used**

(1) In this Division, unless the contrary intention appears —  
***affecting provisions*** means —

- (a) the transfer provisions; and
- (b) this Division and transitional regulations; and
- (c) transitional orders and schedules referred to in transitional orders;

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

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

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

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

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

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

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

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

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

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

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

**relevant official** means —

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

**renew** an easement, lease or licence includes —

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

**requirement under this Act** means —

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

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

**transfer provision** means section 50(1)(a) or (b), (2)(a), (b), (c), (d) or (e) or (3)(a), (b) or (c) of the amending Act;

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

**transitional order** means an order under clause 58;

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

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

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

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

- (a) that Minister as a body corporate under the *Marine and Harbours Act 1981* section 8; and
  - (b) a delegate of that Minister under a Marine Act.
- (2) A reference in this Division to an agreement, instrument or document does not include a reference to a Government agreement.

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

**53. Terms used**

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

**54. Port transfer: preliminary requirements**

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

regulations mentioned in the *Shipping and Pilotage Act 1967* section 10(1a).

- (4) The order referred to in subclause (1) comes into operation at the transfer time.
- (5) A proclamation cannot be made under section 2(e) of the amending Act in relation to section 50(1)(a) or (b) or (2)(a), (b), (c) or (e) of the amending Act unless the Agreements Minister has given the Minister written notice that the Agreements Minister agrees to the making of that proclamation.

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

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

**56. Cessation of responsibility for port**

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

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

- (1) At the transfer time of a port transfer the following are vested in the port authority for the purposes of this Act —
  - (a) all land, seabed and water in the area or areas described in the order made and published for the port as required by clause 54(1);
  - (b) all fixtures on land or seabed referred to in paragraph (a) that belong to the State.
- (2) The operation of subclause (1) is subject to clauses 60(4) and 62(1).
- (3) Subclause (1) displaces the operation that section 25(1) would otherwise have had in relation to the port transfer.

**58. Minister may make transitional orders**

- (1) To provide for, implement or facilitate a port transfer, the Minister may make and publish in the *Gazette* before the transfer time of the port transfer one or more orders that —
  - (a) specify assets of the State that are to vest in, or become the property of, the port authority in addition to anything mentioned in clause 57(1); and
  - (b) specify liabilities of the State that are to become liabilities of the port authority; and
  - (c) specify anything that is not to vest in the port authority under clause 57(1); and
  - (d) specify any agreement or instrument in which the port authority, or the CEO, is to be substituted, in accordance with the order, for the State, the Transport Minister or the Transport CEO as a party; and
  - (e) specify any agreement, instrument or document that is to have effect as if references to the port authority, or the CEO or a member of staff, were substituted, in accordance with the order, for references in it to the State, the Transport Minister, the Transport Department or the Transport CEO (however expressed); and

- (f) specify any agreement, instrument or document that is to have effect as if references to this Act or a provision of this Act were substituted, in accordance with the order, for references in it to another enactment; and
  - (g) in the case of a port named in section 50(1)(a) or (b) of the amending Act, specify any agreement, instrument or document that is to have effect as if references to the port were substituted, in accordance with the order, for references in it to the existing S&P Act port; and
  - (h) specify proceedings in which the port authority is to be substituted, in accordance with the order, for the State or the Transport Minister as a party.
- (2) In a transitional order an asset of the State may be specified under subclause (1)(a) if the Minister considers that the asset —
- (a) relates to, or was used in connection with, the administration or operation of the existing S&P Act port; and
  - (b) should vest in, or become the property of, the port authority; and
  - (c) will not or might not otherwise be vested in the port authority under clause 57(1).
- (3) In a transitional order a liability of the State may be specified under subclause (1)(b) if the Minister considers that the liability —
- (a) relates to, or arose in connection with, the administration or operation of the existing S&P Act port; and
  - (b) should become a liability of the port authority.
- (4) A transitional order may —
- (a) deal with incidental or supplementary matters; and



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

and has effect accordingly.

- (5) A transitional order may specify things by reference to schedules which —
  - (a) need not be published in the *Gazette*; but
  - (b) must be available for public inspection,and anything specified in a schedule is to be taken to be specified in the order.
- (6) A thing may be specified in a transitional order by describing the class to which it belongs.
- (7) Before a transitional order is made, the Transport CEO is to consult with the port authority as to the form and content of the order and any schedule to which it refers.
- (8) Before a transitional order is made specifying anything by reference to a schedule, the Transport CEO is to consult with the relevant officials as to the form and content of the schedule.
- (9) The Minister must obtain the written concurrence of the Agreements Minister before making a transitional order relating to a port named in section 50(1)(a) or (b) or (2)(a), (b), (c) or (e) of the amending Act.
- (10) The Minister is to cause a copy of each transitional order and any schedule to which it refers to be delivered to the port authority and each relevant official.

**59. Amending transitional order**

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

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

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

- (1) In this clause —
- transferred assets*, in relation to a port transfer, means —
- (a) assets that vest in, or become the property of, the port authority under subclause (3)(a); and
  - (b) anything vested in the port authority under clause 57(1);
- transferred liabilities*, in relation to a port transfer, means liabilities that become liabilities of the port authority under subclause (3)(b).
- (2) This clause applies if a transitional order is made in relation to a port transfer.
- (3) At the transfer time of the port transfer by force of this clause —
- (a) assets specified in the transitional order under clause 58(1)(a) vest in, or become the property of, the port authority in accordance with the order; and
  - (b) liabilities specified in the transitional order under clause 58(1)(b) become liabilities of the port authority.
- (4) By force of this clause, anything specified in the transitional order under clause 58(1)(c) does not vest in the port authority under clause 57(1).
- (5) At the transfer time of the port transfer any right of the State in relation to transferred assets or transferred liabilities becomes by force of this clause a right of the port authority.
- (6) From the transfer time of the port transfer by force of this clause —
- (a) any proceedings or remedy that might have been commenced by, or available against or to, the State or the Transport Minister in relation to transferred assets or transferred liabilities may be commenced by, or are available against or to, the port authority; and

- (b) anything commenced to be done before the transfer time in relation to transferred assets or transferred liabilities by the State, the Transport Minister or the Transport Department may be continued by the port authority; and
  - (c) anything done or omitted to be done in relation to transferred assets or transferred liabilities before the transfer time by, to or in respect of the State, the Transport Minister or the Transport Department (to the extent that that thing has any effect) is to be taken to have been done or omitted by, to or in respect of the port authority.
- (7) In determining the net profits of the port authority for the purposes of section 84, transferred assets are not to be regarded as income.
- (8) If at the transfer time of the port transfer a transferred asset or transferred liability is not properly assigned to the port authority by the operation of this Subdivision (whether because the matter is governed otherwise than by the law of the State or for any other reason) —
  - (a) the State is to be taken to continue to hold that transferred asset or be liable for that transferred liability until it is effectively assigned to the port authority; and
  - (b) the Transport Department is to take all practicable steps for the purpose of ensuring that the transferred asset or transferred liability is effectively assigned to the port authority.
- (9) The fact that subclause (8)(a) applies to a transferred asset or transferred liability does not affect a duty imposed by section 90(2).
- (10) By force of this clause, any previous vesting of a transferred asset under another written law ceases to have effect at the transfer time of the port transfer.

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

- (1) If a transitional order is made in relation to a port transfer then, by force of this clause —
- (a) at the transfer time of the port transfer the port authority is substituted in accordance with the order for the State or the Transport Minister as a party to an agreement or instrument specified in the order under clause 58(1)(d); and
  - (b) from the transfer time of the port transfer an agreement, instrument or document specified in the order under clause 58(1)(e) has effect as if references to the port authority or the CEO or a member of staff were, at the transfer time, substituted in accordance with the order for references in it to the State, the Transport Minister, the Transport Department or the Transport CEO (however expressed); and
  - (c) from the transfer time of the port transfer an agreement, instrument or document specified in the order under clause 58(1)(f) has effect as if references to this Act or a provision of this Act were, at the transfer time, substituted in accordance with the order for references in it to another enactment; and
  - (d) from the transfer time of the port transfer an agreement, instrument or document specified in the order under clause 58(1)(g) has effect as if references to the port were, at the transfer time, substituted in accordance with the order for references in it to the existing S&P Act port; and
  - (e) at the transfer time of the port transfer the port authority is substituted in accordance with the order for the State or the Transport Minister as a party to proceedings specified in the order under clause 58(1)(h).

- (2) If subclause (1)(a) applies to an easement, lease or licence in respect of land that becomes vested land at the transfer time of the port transfer, from the transfer time the easement, lease or licence is to be taken to have been granted under this Act with any approval needed under this Act.
- (3) Subclause (2) has effect even if a lease or licence was granted for a period exceeding 50 years.

**62. Navigational aids**

- (1) Clause 57(1) does not apply to navigational aids.
- (2) Without limiting clause 58(2), a navigational aid in, or used in connection with, the existing S&P Act port may be vested in the port authority by a transitional order.

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

- (1) In this clause —  
*deputy harbour master* of the port means a person appointed under the *Shipping and Pilotage Act 1967* section 7A to be a deputy harbour master;  
*harbour master* has the meaning given in paragraph (a) or (b) of the definition of *harbour master* in the *Shipping and Pilotage Act 1967* section 3.
- (2) At the transfer time the appointment of any person who was the harbour master or a deputy harbour master of the existing S&P Act port immediately before the transfer time is revoked by force of this clause.
- (3) This clause does not apply to the harbour master or a deputy harbour master of the Port of Derby.

**64. Pilotage: existing licences**

- (1) In this clause —  
*condition* includes restriction;  
*controlled area* has the meaning given in the *Shipping and Pilotage Act 1967* section 3.

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

**65. Pilotage: existing exemption certificates**

- (1) In this clause —  
*condition* includes restriction;  
*controlled area* has the meaning given in the *Shipping and Pilotage Act 1967* section 3;  
*S&P Act certificate* means a pilotage exemption certificate issued under the *Shipping and Pilotage Act 1967*.
- (2) From the transfer time of a port transfer, an S&P Act certificate for the existing S&P Act port in force immediately before the transfer time (the *existing certificate*) is to be taken to be a pilotage exemption certificate in respect of the port issued under the regulations (the *transitional certificate*).
- (3) The effect that the transitional certificate has by force of subclause (2) extends to any place within the boundaries of the port or within an area referred to in section 95(2) outside the port as long as that place was, immediately before the transfer time, within the boundaries of the existing S&P Act port or within a controlled area outside the existing S&P Act port.
- (4) The effect that the transitional certificate has by force of subclause (2) is subject to any condition to which the existing certificate was subject immediately before the transfer time and to any other condition imposed under the regulations.
- (5) The transitional certificate continues to have effect until —
  - (a) the transitional certificate expires under the regulations; or
  - (b) the transitional certificate is revoked under the regulations; or
  - (c) a pilotage exemption certificate in respect of the port is issued to the holder of the transitional certificate under the regulations; or



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

whichever occurs first.

- (6) Without limiting clause 70(1), its provisions apply if a transitional certificate is revoked under the regulations.
- (7) This clause does not apply to an S&P Act certificate if, before the transfer time, a pilotage exemption certificate in respect of the port is issued to the holder of the S&P Act certificate under the regulations in accordance with clause 55(1) or the *Interpretation Act 1984* section 25.

**66. Jetty licences**

- (1) In this clause —

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

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

***existing jetty*** means a jetty that, immediately before the transfer time of a port transfer, was wholly or partly within the boundaries of the existing S&P Act port or was used in connection with the operation of the existing S&P Act port;

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

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

***licensee*** includes sub-licensee.

- (2) Subject to subclause (3) if —

- (a) immediately before the transfer time of a port transfer, an existing jetty was the subject of a jetty licence; and
- (b) from the transfer time the existing jetty is wholly on port land,

subclause (5) applies to the jetty licence.

- (3) If the port is a port named in section 50(1)(a) or (b) or (2)(a), (b), (c) or (e) of the amending Act, subclause (5)

does not apply to the jetty licence unless transitional regulations provide that it does.

- (4) Regulations cannot be made for subclause (3) except with the written concurrence of the Agreements Minister.
- (5) If this subclause applies to a jetty licence —
  - (a) at the transfer time the licence ceases to be a licence under the *Jetties Act 1926*; and
  - (b) at the transfer time the port authority is substituted for the Transport Minister or the Transport CEO (as the case may be) as the grantor of the licence; and
  - (c) from the transfer time the licence is to be taken to have been granted under this Act with any approval needed under this Act even if the licence was granted for a period exceeding 50 years.
- (6) Subject to subclause (7) if, immediately before the transfer time of a port transfer, an existing jetty was the subject of a jetty licence, transitional regulations may prescribe that subclause (9) applies to the jetty licence.
- (7) If the port is a port named in section 50(1)(a) or (b) or (2)(a), (b), (c) or (e) of the amending Act, transitional regulations cannot be made for subclause (6) except with the written concurrence of the Agreements Minister.
- (8) Subclause (9) does not apply to a jetty licence if subclause (5) applies to it.
- (9) If this subclause applies to a jetty licence —
  - (a) the licence continues in force from the transfer time as a licence under the *Jetties Act 1926*; and
  - (b) from the transfer time any power exercisable by, or in relation to, the grantor of the licence, whether —
    - (i) under the licence; or
    - (ii) under the *Jetties Act 1926* in relation to the licence,is exercisable by, or in relation to, the port authority instead of the grantor of the licence; and

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

### **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

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

**69. Transitional regulations**

- (1) Regulations (*transitional regulations*) may prescribe —
  - (a) things to be done by a Minister, the Transport Department, the Transport CEO or a port authority, to provide for, implement or facilitate a port transfer; and
  - (b) anything necessary or expedient to be prescribed for providing for a matter or issue of a transitional nature that arises in relation to a port transfer.
- (2) Transitional regulations may provide that specific provisions of any written law —
  - (a) do not apply to or in relation to any matter; or
  - (b) apply with specific modifications to or in relation to any matter.
- (3) If transitional regulations relating to a port transfer provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a time that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the transfer time, the regulations have effect according to their terms.
- (4) If transitional regulations contain a provision referred to in subclause (3), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

**70. Saving**

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

**71. Effect of affecting provisions**

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

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

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

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

- (1) This clause applies if under clause 61(2) or 66(5) an easement, lease or licence is to be taken, from the transfer time of a port transfer, to have been granted under this Act.
- (2) The rights and powers that the grantee, lessee or licensee had under the easement, lease or licence before the transfer time are not adversely affected except to the extent (if any) requested or agreed under subclause (3).
- (3) The port authority may, at the request or with the agreement of the grantee, lessee or licensee, renew or vary the easement, lease or licence under this Act.
- (4) Subclause (2) does not affect the operation of clause 66(9) or (10).

**74. Government agreements not affected**

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

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

- (1) In this clause —  
*authorisation* means —
  - (a) a mining tenement as defined in the *Mining Act 1978* section 8(1); or
  - (b) an authority to occupy or right of occupancy of any land to which the *Mining Act 1978* Second Schedule clause 1(1) applies; or
  - (c) an exploration licence, retention licence, mining licence, works licence, special purpose consent or other right under the *Offshore Minerals Act 2003*; or
  - (d) a drilling reservation, lease, licence, permit, pipeline licence, special prospecting authority, access authority or other right under the *Petroleum and Geothermal Energy Resources Act 1967*, the

*Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982*; or

- (e) any other authorisation of a kind provided for under a written law and prescribed for this paragraph by transitional regulations.
- (2) Without limiting clause 74, the affecting provisions as they apply to a port transfer do not —
- (a) prejudice or in any way affect an authorisation in effect before the transfer time; or
  - (b) prejudice or in any way affect any right or obligation of a person under an authorisation in effect before the transfer time; or
  - (c) prevent an application for an authorisation made but not disposed of before the transfer time from being dealt with after the transfer time; or
  - (d) prejudice or in any way affect the manner in which an application mentioned in paragraph (c) is dealt with after the transfer time.

**76. Transitional provision for Schedule 9**

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

**52. Schedule 89 amended**

~~In Schedule 8 clause 52(1) as inserted by section 51 in the definition of *affecting provisions*:~~

~~in paragraph (c) delete “orders;” and insert:~~

~~orders; and~~

~~after paragraph (c) insert:~~

~~(d) orders under clause 66A(2);~~

~~In Schedule 8 after clause 66 as inserted by section 51 insert:~~

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

~~(1) In this clause —~~

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

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

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

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

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

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

~~*port* means the Port of Derby;~~

~~*port authority* means the Kimberley Ports Authority;~~

~~*transfer time* means the time at which section 50(3)(a) of the amending Act comes into operation.~~

~~(2) The Minister may make and serve on the port authority and the operator before the transfer time one or more orders amending an existing arrangement —~~

~~(a) to eliminate inconsistencies between the existing arrangement and requirements under this Act; or~~

~~(b) to incorporate provisions that the Minister considers to be consistent with the port authority's risk, contract and port management practices; or~~



- ~~—(c) in any other way that the Minister considers necessary or expedient to provide for, implement or facilitate the transfer of the port.~~
- ~~—(3) Subclause (2) does not limit the operation of clause 58 in relation to the existing arrangements.~~
- ~~—(4) At the transfer time, by force of this subclause, an existing arrangement to which an amending order relates is amended as set out in the amending order.~~
- ~~—(5) Before an amending order is made, the Transport CEO is to consult with the port authority and the operator as to the form and content of the amending order.~~
- ~~—(6) Clause 59 applies in relation to an amending order as if —~~
  - ~~—(a) it were a transitional order; and~~
  - ~~—(b) the references in clause 59 to publication in the *Gazette* were references to service on the port authority and the operator.~~
- ~~—(7) At the transfer time, by force of this subclause, the port authority is substituted for the Transport Minister as a party to the management agreement.~~
- ~~—(8) The port authority is to be taken to have sufficient powers to be a party to the management agreement.~~
- ~~—(9) At the transfer time, by force of this subclause —~~
  - ~~—(a) the port authority is substituted for the Transport Minister as a party to the head lease; and~~
  - ~~—(b) to the extent, if any, to which the head lease is a lease under the *Jetties Act 1926*, it ceases to be a lease under that Act,~~
- ~~— and from the transfer time the head lease is to be taken to have been granted under this Act with any approval needed under this Act.~~

- ~~—(10) At the transfer time, clause 9.1 of the management agreement ceases to have effect by force of this subclause, however—~~
  - ~~—(a) from the transfer time the person holding the office of harbour master of the port (the *office*) in accordance with the management agreement immediately before the transfer time continues to hold the office under and subject to this Act as if appointed under section 102; and~~
  - ~~—(b) if another person is to be appointed to the office under section 102 while the management agreement continues in force the office may be filled by the appointment of a person in accordance with procedures agreed between the port authority and the operator, but if no procedures have been so agreed—~~
    - ~~—(i) the board must request the operator in writing to provide the port authority, within 28 days after the service of the request, with the nomination of one or more persons competent and suitably qualified to hold the office; and~~
    - ~~—(ii) subject to subparagraph (iii), if a person or persons are nominated under subparagraph (i), the board must appoint a person so nominated to the office; and~~
    - ~~—(iii) if no person is nominated under subparagraph (i) or the board considers, in its sole discretion, that no person so nominated is competent and suitably qualified to hold the office, the board may appoint to the office any person it considers to be competent and suitably qualified;~~
  - ~~— and~~
  - ~~—(c) despite anything in this Act, a person holding the office under paragraph (a) or by appointment in accordance with paragraph (b) is, by force of this clause, an employee of the operator and the operator~~

~~is responsible for all costs, liabilities and obligations relating to that employment; and~~

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

~~(11) With any appropriate modifications—~~

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

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

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

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

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

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

~~(ii) subject to subparagraph (iii), if a person or persons are nominated under subparagraph (i), the board must approve a~~

~~person so nominated as a pilot for the port;  
and~~

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

~~— and~~

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

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

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

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

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

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

~~In Schedule 8 clause 73(1) as inserted by section 51 delete “61(2) or 66(5)” and insert:~~

~~61(2), 66(5) or 66A(9);~~

~~In Schedule 8 clause 73(4) as inserted by section 51 delete “(10).” and insert:~~

~~(10) or 66A(13).~~

~~**Schedule 9 amended**~~

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

*unassigned port* means a port that —

- (a) is not named in Schedule 1; and
- (b) has not been placed under the control and management of a port authority by regulations in accordance with this Schedule.

- (3) In Schedule 9 clause 1 in the definition of *port addition* delete “operation.” and insert:

operation;

- (4) In Schedule 9 clause 2(1) delete “place a” and insert:

place an unassigned

(5) After Schedule 9 clause 2(2) insert:

- (3) Without limiting subclause (2) regulations may —
- (a) vest land, seabed, water or other property in a port authority or otherwise provide for the vesting of, land, seabed, water or other property in a port authority; and
  - (b) specify liabilities of the State that are to become liabilities of a port authority or otherwise provide for liabilities of the State to become liabilities of a port authority; and
  - (c) displace the operation of section 25(1) in relation to a port addition.

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

**53. Act amended**

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

**54. Long title amended**

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

**55. Section 3 amended**

- (1) In section 3 delete the definition of *fishing boat harbour*.
- (2) In section 3 insert in alphabetical order:

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

**56. Section 7B amended**

In section 7B(3)(c) delete “fishing”.

**57. Section 9A amended**

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

each

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

**Boat harbour dues and mooring charges**

**58. Section 10 amended**

In section 10(1b):

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

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

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

such a port.

**59. Section 12 amended**

- (1) In section 12(1)(b) delete “fishing”.
- (2) In section 12(2)(d) delete “responsible authority” (each occurrence) and insert:

CEO

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

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

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

boat harbour



Table

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

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

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

CEO

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

~~Various references to “fishing boat harbour” replaced~~

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

~~boat harbour~~

**Table**

s. 3 def. of <i>controlling authority</i>	s. 6A <del>def. of <i>declared area</i></del> <u>(2)</u>
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<del>s. 9A(1)(a)</del>	<del>s. 10(2)(a)</del>
s. 10(2)( <del>b</del> ba)	s. <del>10(2)(ba)</del> 11A(3A)(b)
s. <del>11(b)</del> 12(1)(bb)	s. <del>11(e)</del>
<del>s. 11A(3A)(b)</del>	s. <del>11A(3C)</del>

**Various references to “Department” replaced**

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

CEO

**Table**

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

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

**62. Act amended**

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

**63. Section 118 amended**

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

(1) The chief

(2) At the end of section 118 insert:

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

**64. Section 132 amended**

After section 132(5) insert:

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

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