

Ports Legislation Amendment Act 2013

Explanatory Memorandum

Overview

This Bill proposes to introduce structural reforms to Western Australia's eight statutory port authorities by amending the *Port Authorities Act 1999* (the Act). The main thrust of this reform is that with the exception of Fremantle Port Authority, port authorities will either be merged or renamed to create four new regional port authorities – Mid West, Southern, Kimberley and Pilbara (see Table 1).

Table 1 – Structural changes

- Geraldton Port Authority will be renamed *Mid West Ports Authority*.
- Bunbury Port Authority will be renamed *Southern Port Authority*. Esperance Port Authority and Albany Port Authority will merge into the Southern Ports Authority.
- Port Hedland Port Authority will be renamed *Pilbara Ports Authority*, with Dampier Port Authority being merged. The Pilbara Ports Authority will also control the Port of Ashburton, which is currently part of the Dampier Port area.
- Broome Port Authority will be renamed the *Kimberley Ports Authority*.

This Bill will establish four new port authority boards and empower board members to plan for the amalgamation. The interim planning powers for new boards are clearly defined in this Bill to avoid any potential confusion or conflict during the restructure. New boards can be appointed in advance and will be able to deal with a range of planning matters and incur costs for example to seek external expertise or advice. Existing boards will continue to have full operational powers until merger date, when the new boards take over operational control.

To support merging port authorities with the transition, this Bill will establish that the termination of Boards for Dampier, Albany and Esperance port authorities will be constituted as Reporting Boards for a period of about three months from merger date, to assist these merging port authorities to comply with State financial reporting requirements following the merger date.

Port reforms

24 Hour Operation

This Bill will introduce a standard provision which will provide statutory recognition that port authorities can operate 24 hours per day, subject to compliance with the *Environmental Protection Act 1986*, including noise and other licence requirements.

Regulatory changes

This Bill provides for the addition of new ports at Schedule 1 of the Act to occur through regulation, rather than through primary legislation. The purpose of this reform is to provide flexibility for the expedient creation of new ports, subject to the approval of the Governor in ExCo and the Parliamentary Joint Standing Committee for Delegated legislation.

Port authorities cannot be created or abolished without parliamentary approval.

Shipping and Pilotage Act 1967

This Bill also includes a limited number of amendments to the *Shipping and Pilotage Act 1967* to extend Harbour Master governance powers to Fishing Boat Harbours and Mooring Control Areas, and to extend the indemnity provided to Harbour Masters and Government for actions in good faith.

Part 1 – Preliminary

1. Short Title

When enacted this legislation will be named the *Ports Legislation Amendment Act 2013*.

2. Commencement

Provides that parts of this Bill will come into operation when the Act receives Royal Assent and the rest of the sections of the Act come into operation on a day or different days fixed by proclamation. There is nothing unusual in these commencement provisions.

Part 2 – Ports Authorities Act 1999 amended

3. Act amended

Identifies that the Ports Authorities Act 1999 (the Act) will be amended by Part 2 of this Bill.

4. Section 3 amended

The following definitions have been inserted to clearly identify the intended meaning of terms to be used in the Act.

Port operations – includes the tasks of carrying out port activities or port works, the provision of port services and the provision, management or operation of port facilities. Defining port operations will remove potential ambiguity.

Port property – includes, in relation to a port authority, port facilities, vested property or other property held by the port authority.

Port security – means all matters relating to the preservation and protection of port property, vessels, vehicles or other property within the port from damage, destruction or unlawful activity. This extends to the protection of people within the port.

Potential supplier – means a person who might become a supplier of port services, with or without providing related port facilities.

The following definitions will be amended in the Act:

Member of staff The definition is extended to include staff engaged under Section 16 and staff transferred under the merger provisions of this Bill (at section 35/Schedule 8).

Port extends the definition of port, to enable port authorities to control and manage one or more ports. Following implementation of section 31 of this bill, the definition will be further amended by subsection (4) to include any new ports placed under the Port Authority management through regulations.

Part 2 – Port authorities, establishment and administration

5. Section 4 amended

The Act currently provides for each port authority to manage one port named in Schedule 1.

This amendment will allow port authorities to each manage one or more named ports.

Following implementation of section 31 of this bill, sub-section (2A) will be amended to require port authorities to control the ports listed in Schedule 1 and any new ports placed under their management through regulations. Regulations are subject to the Governor's approval in ExCo and scrutiny by the Parliamentary Joint Standing Committee for Delegated legislation.

6. Section 5 amended

This amendment clarifies that Port Authorities are not agents of the Crown for the purposes of State laws only. The amended clause will read:

"Port authorities not to be regarded as agents of Crown for purposes of State laws.

For the purposes of any law of this State, a port authority is to be regarded as not being an agent of the Crown and does not have the status, immunities and privileges of the Crown."

7. Section 7 amended

This amendment will raise the number of prescribed port authority board directors from five per port authority to a minimum of five and maximum of seven directors at the responsible Minister's discretion. The purpose of this amendment is to ensure that the amalgamated port authorities are governed by an appropriate number of people, commensurate to the scope and complexity of the ports which they will control and manage.

The deletion of section 7(4) represents the removal of company directorship entitlements specified at Schedule 6 of the Act. The amendment to Schedule 6 is included at section 33 of this Bill. The removal of port customer directorship entitlements will avoid future conflicts of interest, particularly as between competitor companies who are also port customers but not on the board.

8. Section 13 amended

Section 13 of the Act enables port authority boards to establish committees. This amendment will require port authorities to provide resources, in the form of administrative support or facilities, for as long as reasonably required by the Committee.

9. Section 14A inserted

This section will introduce mandatory requirements for port authorities to establish a community consultation committee for each port under its control, with local government representation in so far as a local government has electors who are or may be affected by port operations.

The purpose of these committees is to facilitate communication, information sharing and consultation between the port authority and the members of public living in the vicinity of the port that are affected by port operations. The deliberations of these committees will be transparent and their minutes made public.

This new section includes provision for regulations to be developed to exempt specific ports from being required to establish a committee. Exemptions are expected to apply to remote ports which are not proximate to a community or town site. The regulations will be subject to scrutiny by the Parliamentary Joint Standing Committee for Delegated legislation.

10. Section 27 amended

This clause is a minor drafting amendment to replace the word “*subsection*” with “*section*”.

11. Section 29A inserted

This new section will reiterate that port authorities are not required to seek approval under Section 136 of the *Planning and Development Act 2005* in order to grant a lease or license in vested port land for a term exceeding 20 years. Provisions already exist in the Act (section 38) which exempt port authorities from seeking local government development approval for port works. The provisions include (portfolio) Ministerial determination of any disputes. Port authority leases and licences are issued on the basis of lots, thus negating any WA Planning Commission interest. This exemption will provide clarity and enable the port authorities to facilitate trade, with any long-term leases or licences of vested land still requiring the portfolio Minister’s approval under section 28.

12. Section 30 amended

Section 30 of the Act prescribes the functions of a port authority. This amendment 30 (1)(a) (fa) will add a broad responsibility for port security to reflect a port authority’s responsibilities in relation to new Commonwealth and International Maritime legislation which was legislated after the 9/11 terrorist attack in 2001 and which was not in existence when the *Port Authorities Act 1999* was enacted.

Port authorities have always been responsible for maintenance of port property.

The amendment also clarifies the existing environmental responsibility of port authorities arising from “port operations” (using the new definition at section 4 of this Bill).

13. Section 31 amended

This is an administrative amendment to replace “*port activities*” with the newly defined “port operations”.

14. Section 33 amended

This reform, including the insertion of a new section 34A (see below) will require port authorities to perform their functions in compliance with State budgetary requirements, in addition to their Statements of Corporate Intent (SCI) and Strategic Development Plans (SDP).

15. Section 34A inserted

This new section will introduce a provision that port authorities must comply with State budgetary requirements. Port authorities must also comply with capital works expenditure

limits, which are set from time to time by the Government, in addition to endeavouring to achieve agreed outcomes specified in approved financial statements. State budgetary requirements will override any requirements in a port's SCI and SDP.

16. Section 35 amended

This amendment will clarify that while the Act does not restrict port authorities from operating 24 hours per day, operating hours remain subject to the *Environmental Protection Act 1986*.

Under the existing regulatory framework, a port authority is required to obtain an environmental licence which permits a range of operating conditions. The approval process for environmental licences is managed by the Department of Environment Regulation (DER) and includes a period of public consultation.

This clause does not usurp the DER approvals process. If a port authority seeks an environmental licence or an amendment, DER will seek community consultation and assess the potential community impact before deciding to approve or reject the application.

Nevertheless, ports are expected these days to be open all hours to service vessels and facilitate the movement of trade. This provision puts a marker down with respect to Parliaments expectations of port authorities by specifically providing a power for port operations to take place on any day and at any time for the purpose of a port authority performing a function given to it under the Act. Likewise, this provision sends a message to the community and regulators that the State expects ports to operate up to 24 hours per day on any day.

17. Section 51 amended

Section 51 of the Act governs what matters port authorities are required to consider in the preparation of Strategic Development Plans (SDPs). SDPs are planning documents prepared by port authorities and this amendment will require that arrangements for potential suppliers are to be considered during the preparation of a SDP. This amendment and a similar amendment to section 60 are in compliance with the State's undertaking to meet the Allen Consulting Group's recommendation in the Commonwealth's Competition Policy Review of WA Port Authorities.

18. Section 57 amended

Section 57 of the Act requires the Minister to seek concurrence from the Treasurer prior to agreeing to a draft or modified version of a SDP.

This amendment will ensure that a port authority is required to comply with State budgetary approvals. This includes compliance with limits on capital works expenditure, in addition to endeavouring to achieve financial forecasts, whether or not the budgetary requirements are consistent with the SDP. This will overcome the timing issue of State Budgets and any subsequent capital expenditure application being approved after the concurrence and agreement to SDPs.

19. Section 60 amended

Division 2 requires port authorities to prepare a Statement of Corporate Intent (SCI), which outlines a raft of operational, planning and strategic matters such as the objectives of the port, proposed arrangements to facilitate trade, pricing arrangements and performance targets.

This amendment will require port authority boards to include proposed arrangements whereby potential suppliers can deliver port services. The purpose of this reform is to make transparent the intentions of port authorities and to provide competitive access arrangements for the private sector to deliver port services where appropriate.

If not included in a SCI, Boards will be required to detail and justify why access arrangements have not been developed.

20. Section 66 amended

This amendment will ensure that a port authority is required to comply with State budgetary approvals. This includes compliance with capital works expenditure limits, in addition to endeavouring to achieve financial forecasts, whether or not the budgetary requirements are consistent with the SCI. This will overcome the timing issues of State budgets being approved after the concurrence and agreement to the SCIs. It should also avoid the current delays in approval and tabling in Parliament of the approved SCIs.

21. Section 84 amended

Section 84 of the Act provides for annual dividends payable to the State by port authorities.

This amendment (iia) provides for the payment of interim dividends. Interim dividends are not currently provided for under the Act.

The new subsection (2A) will exempt payments to port authorities from inclusion within the calculation of State dividend payments, when those payments are made towards the capital cost of providing port facilities. Exemptions will need to be approved by the Minister, with concurrence from the Treasurer.

This reform will provide a port with an incentive to seek contributions to infrastructure costs, as these funds will not form part of their dividend calculation. Port users are more likely to contribute to the capital cost of local port infrastructure, knowing that their entire contribution will remain at the port rather than being absorbed into other State projects.

Subsection (2B) allows for the Ministerial exemption to be given before or after receipt of the contribution.

Subsection (3) is a minor drafting correction.

Subsections (4) to (8) establish the process for interim dividends, including notification by the Minister, recommendations by the board as to amount and the Ministerial power to approve or direct that an alternative amount be paid, subject to the Treasurer's consent.

Subclause (9) reiterates the existing provisions that the Minister must provide Parliament with a copy of any direction, within 14 days.

22. Section 87 amended

The Act currently permits port authorities to enter hedging transactions, for the purpose of managing borrowing risks from movements in interest rates and foreign currency rates.

This amendment will enable port authorities to enter hedging contracts to manage foreign exchange risks relating to capital expenditure in a foreign currency. The value of these transactions is often large, which may expose a port authority to substantial risks if there is adverse movement in the currency market. This amendment will require port authorities to seek advice from the WA Treasury Corporation before entering a hedging arrangement and to monitor ongoing foreign exchange risks.

Subclause (3) adds definitions for “hedging arrangement” and “Treasury Corporation”, to the existing definition for “interest rate”.

23. Section 96 amended

Section 96 of the Act requires port authorities to approve pilots and ensure that pilotage services are available.

This amendment will remove the requirement that pilotage charges be included in regulations and paid to the port authority. Rather, pilotage charges will be determined by a port authority, under section 37, the same as all other fees and charges (except fees for licences and approvals).

The existing subclause (8) provides that the requirement for the port authority to determine pilotage fees and for fees to be paid to the port authority will not apply if pilotage is provided under a licence issue by the port authority.

24. Section 100 amended

Section 100 of the Act is to be amended and the heading will read:

100. Immunity from liability for negligent provision of pilotage services

This new subsection 100(1) will ensure that the State and the port authority are indemnified from any liability, loss or damage in connection to the provision of pilotage services. This indemnity is being included on the advice of the State Solicitor, because pilotage is compulsory in most ports.

Existing subsections 100(2) and 100(3) provide similar indemnity for a pilot and the employer of a pilot. This is an international practice to ensure the provision of pilotage services despite the substantial financial risks, with such risks being left to insurance coverage.

25. Section 113 amended

Section 113 of the Act currently provides for the recovery of costs from vessel owners and masters for damage to port facilities or property.

This amendment will broaden the existing provisions to include damage from any product, substance (liquid, solid or gas), vehicle, plant, equipment, machinery or infrastructure.

26. Section 114EA inserted

Part 7 – Division 7 of the Act deals with the protection of port authorities from liability. This new provision will protect port authorities against any loss or damage caused by port users

or their agents. This reform reduces the exposure of port authorities to the actions of port users, for example through the contamination of woodchip stockpiles from other export products such as coal dust. However, subsection (2) specifically provides that a port authority will remain liable for any breach of contract.

27. Section 133 amended

Clause 26 is a minor drafting amendment.

28. Section 138 replaced; amended

Section 138 currently provides that the preservation of rights of parties to State Agreements listed at Schedule 6 clauses 1.3 and 2.3 does not adversely affect the provisions of the *Government Agreements Act 1979*. This clause adds that the provisions in Schedule 8, and Schedule 9 when enacted, will likewise not affect the *Government Agreements Act 1979*.

29. Section 139A inserted

This new section is a reference to port authority merger related transitional provisions established in Schedule 8, the content of which is detailed in subsequent sections of this Bill.

30. Schedule 1 replaced

Schedule 1 lists the State's port authorities and identifies the ports which they control and manage. This amendment replaces and changes the format in Schedule 1 to facilitate subsequent amendments that will enable application of the merger provisions in this Bill.

31. Schedule 1 amended

Schedule 1 provides a list naming the State's port authorities and the ports which they control and manage. This amendment reflects that seven of the eight port authorities are being amalgamated into four new port authorities, with Fremantle to remain unchanged.

Section 31 (1), (2), (3) and (4) of this Bill will respectively amend Schedule 1 of the Act to identify that:

- Southern Ports Authority will control and manage the Ports of Albany, Bunbury and Esperance;
- Mid West Ports Authority will control and manage the Port of Geraldton;
- Pilbara Ports Authority will control and manage the Port of Ashburton, Port of Dampier and Port of Port Hedland; and
- Kimberley Ports Authority will control and manage the Port of Broome.

The port of Ashburton will be gazetted as a separate port under existing regulatory powers (at section 24 of the Act). The Ashburton area is currently part of the port of Dampier because port authorities currently do not have power to manage more than one port.

32. Schedule 2 amended

Schedule 2 currently specifies a port authority board quorum as three directors. This is based on the current requirement for appointment of five directors.

Section 6 of this Bill amends section 7 of the Act so as to provide for appointment of between five to seven directors.

This amendment will therefore provide for a quorum to consist of at least half the number of directors in office.

33. Schedule 6 amended

This amendment removes specified company (port user) representation on Dampier and Port Hedland Port Authority boards and related definitions.

The provisions for appointment of these company representatives and their alternates together with special provisions for quorums are also being removed.

Existing standard procedures and provisions for appointment of directors at all port authority boards, as detailed at Part 2, Division 2 and Schedule 2 of the Act, will continue to apply.

34. Schedule 6 further amended

These are administrative amendments deleting references to the Dampier and Port Hedland port Authorities, and replacing them with a reference to the merged Pilbara Ports Authority or the individual ports of Dampier and Port Hedland as appropriate.

35. Schedule 8 inserted – Transitional provisions

The introduction of transitional provisions are necessary to facilitate the amalgamation of the existing seven regional port authorities into four new port authorities.

Clause 1 – Terms Used

This clause provides definitions for various terms used, including “Government agreements” which are also commonly referred to as State Agreements.

Subdivision 2 – Provisions for the Southern Ports Authority

Subdivision 2 provides for the establishment of the Southern Ports Authority, through the amalgamation of the Bunbury, Albany and Esperance Port Authorities.

Clause 2 – Terms Used

This clause provides definitions for terms used in subdivision 2 relating to the formation of the Southern Ports Authority, including:

- **Continuing Authority:** means the Bunbury Port Authority, because it will change its name and continue to operate as the Southern Ports Authority.
- **Merger:** means the actions specified at section 31(1) of this Bill, which is the renaming of Bunbury Port Authority to Southern Ports Authority in Schedule 1 of the Act and related listing of Albany, Bunbury and Esperance ports in Schedule 1 (as ports managed by the Southern Ports Authority), together with deletion of the old port authorities. It also includes the merger of the Albany and Esperance Port Authorities into the Southern Ports Authority, as specified in clause 3(1) of this Schedule.

- **Merger time:** means the time at which the above amendments to Schedule 1 come into effect under section 31(1) of this Bill.
- **Transitional regulations:** means regulations to enable the merger to occur. The power to raise such regulations are specified at clause 15(1) of this Schedule.
- **SPA:** means the continuing authority, i.e. the Bunbury Port Authority, renamed as the Southern Ports Authority by operation of section 31(1)(a) of this Bill, which deletes Bunbury Port Authority in Schedule 1 and replaces it with Southern Ports Authority.

Clause 3 – Merger of Albany Port Authority and Esperance Port Authority into Southern Ports Authority

At the time of merger, the Bunbury Port Authority will be renamed the Southern Ports Authority. This clause will terminate and merge the Esperance Port Authority and Albany Port Authority into the Southern Ports Authority. Thereafter the Southern Ports Authority is a continuation of the two merging authorities.

Clause 4 - Directors and former directors

Immediately before the merger, the directors of all three (merging and continuing) port authorities cease to be directors and will be treated as former directors of the Southern Ports Authority for the purposes of the *Statutory Corporations (Liability of Directors) Act 1996*, as the former port authorities cease to exist.

4 (3) The board of directors of the Southern Ports Authority may be established before the merger, so that the board can plan and facilitate the merger.

4 (4) Although appointed before the merger, for the purposes of Schedule 2, the appointment term will commence from the merger time, effectively allowing for a term exceeding the three year maximum.

4 (5) Directors of other port authorities will be able to hold office as a director of the Southern Ports Authority.

Clause 5 - Powers of new board in anticipation of merger

This clause will provide the necessary planning and administrative powers for the Southern Ports Authority board to facilitate the merger. This includes powers which allow the board to perform any function necessary to provide for, implement or facilitate the merger. It includes but is not limited to the powers at clause 48.

5(3) – The new board will have power to incur the merger costs, which the continuing authority (the Bunbury Port Authority) will be liable for until the merger.

Following the merger, the new board will have full operational power under the existing provisions of the Act and will have revenue to meet its expenses.

Clause 6 - CEOs and Members of Staff

This provision will ensure that at merger, the CEOs of all three port authorities (merging and continuing) will cease to hold that office.

Staff of the Bunbury Port Authority will continue as staff of the Southern Ports Authority. All three CEOs, despite losing their positions as CEO, along with staff of the merging authorities (Albany and Esperance), become staff of the Southern Ports Authority.

6 (3) - This clause ensures that staff transfers are not considered as retrenchments or redundancies.

6 (4) – leading up to the merger, the Southern Ports Authority board is to be consulted if the Albany, Esperance or Bunbury port authorities negotiate with staff to terminate employment contracts or accept resignations.

6 (5) and (6) – the Southern Ports Authority board will be permitted to appoint a CEO before the merger, to assist with merger implementation arrangements before taking over operational responsibility upon merger date.

Clause 7 – Preservation of rights

Except as agreed by them, this clause safeguards CEO and staff leave entitlements, remuneration, superannuation and continuity of service, to ensure that these rights are preserved when their positions are transferred to the Southern Ports Authority, without limiting normal staff management powers of the Southern Ports Authority.

7(3) will introduce provisions that if an internal person from the merging or continuing authorities is appointed as the CEO of the Southern Ports Authority, then their entitlements, rights and tenure are preserved.

Clause 8 - Devolution of assets, liabilities, proceedings, remedies and immunities

Assets and the rights held by the Esperance Port Authority and Albany Port Authority (merging authorities) will be transferred to the Southern Ports Authority. Their liabilities, indemnities and any proceedings or rights against these former authorities will also be carried over.

8 (2) Improvements on property vested in the Esperance and Albany Port Authorities under section 25(2)(a) of the Act that becomes the property of the Southern Ports Authority, will continue to be regarded as property under section 25(2)(a) so that the Southern Ports Authority would be entitled to compensation for the depreciated value of the improvements should the Government choose to withdraw the underlying vested property from the port authority in terms of section 26 of the Act.

8 (3) Property transferred to the Southern Ports Authority will not be treated as income and therefore will be exempt from inclusion in the calculation of dividends payable by the port authority to the State.

8 (4) Any legal actions, remedies or proceedings for or against a merging Authority leading up to the amalgamation, will be available to or against the Southern Ports Authority post-merger.

8 (5) Any immunity available to a merging authority prior to amalgamation will be preserved and afforded to the Southern Ports Authority.

8 (6) All minutes, accounts and records of the merging authorities are to be delivered to the Southern Ports Authority as soon as practicable post-merger.

Clause 9 – Completion of things commenced

This clause will enable any work program commenced by the Esperance Port Authority and Albany Port Authority to potentially be continued by the Southern Ports Authority. This clause aims to minimise any potential service disruption at the Port of Esperance and Port of Albany. As the continuing authority, the work program of the Bunbury Port Authority will automatically carry over to the Southern Ports Authority.

Clause 10 – Continuing effect of things done

This clause ensures that any matters, act or thing done or not done by the Esperance and Albany port authorities before the merger is to have force or significance as if done or omitted by the Southern Ports Authority. This clause does not override any other provisions in this Schedule.

Clause 11 – Agreements, instruments and documents

This clause provides that references to the merging or continuing authorities in existing (subsisting) agreements, instruments and documents are to have affect as references to the Southern Ports Authority from merger time. Similarly, if the merging or continuing authorities were parties to existing agreements or instruments this clause separately provides that from merger the Southern Ports Authority will be the party.

11 (1) inserts defined terms.

11 (2) references in subsisting agreements, instruments or documents to the Bunbury Port Authority have affect post-merger as references to the Southern Ports Authority.

11 (3) subclause (2) does not apply to subsisting agreements or instruments the Bunbury Port Authority is a party to.

11 (4) from the merger time, the Southern Ports Authority becomes a party to any subsisting agreements or instruments that the Bunbury Port Authority was a party to and any references in those subsisting agreements or instruments become references to the Southern Ports Authority.

11 (5) references to merging authorities in subsisting agreements, instruments or documents are to have affect as if they are references to the Southern Ports Authority post-merger.

11 (6) subclause (5) does not apply to subsisting agreements or instruments that the Esperance Port Authority or Albany Port Authority are parties to.

11 (7) subsisting agreements or instruments entered by either the Esperance Port Authority or Albany Port Authority are to have affect post-merger as if entered by the Southern Ports Authority and references to those merging port authorities are to have affect as if amended to references to the Southern Ports Authority.

11 (8) changes to references to the merging or former (Bunbury) port authorities in documents provided for under subclauses (2), 4(b), (5) or (7)(b) do not apply if it would be inappropriate in the context of the reference or if transitional regulations provide otherwise.

Clause 12 – Port authorities to implement or facilitate merger and share costs

Prior to the merger, the Esperance Port Authority, Bunbury Port Authority and Albany Port Authority; and after the merger the Southern Ports Authority; are required to undertake all necessary measures to facilitate the merger.

12 (3) The merger facilitation function at subclause (1) is in addition to all other existing port authority functions.

12 (4) The continuing authority is to pay for pre-merger costs for the directors and CEO appointed to the Southern Ports Authority, for costs of the CEO appointment process and for any other costs of the new board related to performing merger functions under clause 5.

12 (5) Esperance, Albany and Bunbury port authorities are to share the pre-merger expenses equally or as agreed.

12 (6) The Minister will make a final and binding determination on any disputes arising from the cost sharing arrangement.

Clause 13 – Financial Reporting

Financial reporting for the continuing (Bunbury) port authority, for the period up to the merger time, will be coordinated by the Southern Ports Authority following the change of name. This clause makes provisions for financial reporting by “reporting boards” for the merging authorities (Albany and Esperance).

13 (2) – This subclause establishes the reporting boards.

13 (3) – The reporting boards will commence at merger time for three months, but the Minister will have the power to extend this term if considered necessary to enable the reporting boards to perform their duties.

13 (4) The reporting board will be required to comply with end of financial year reporting provisions within the Act if the merger coincides with this period.

13 (5) Should the merger occur after the end of financial year, this clause will ensure that the reporting board fulfils the necessary end of year financial reporting requirements if not completed and comply with the reporting provisions for the period to the merger time.

13 (6) The Minister can provide written directions to the reporting board, which the board must comply with.

13 (7) The reporting provisions apply to the duties of the reporting board with any appropriate modifications or modifications prescribed in transitional regulations.

13 (8) The reporting board is to be provided with all reasonable assistance and facilities, including access to and the ability to copy account information, documents and records.

13 (9) A person in possession of any information, records or accounts, must provide that information upon request. If not, a fine of up to \$10,000 will apply.

13 (10) Subject to exclusions (term of office, roles of board and appointment of five persons by the Minister in writing), the provisions of the Act applying to the directors of a port authority will apply to the reporting boards.

13 (11) The former directors of a merging authority are appointed to the reporting board.

13 (12) The Minister may appoint members to the reporting board, if positions become vacant. The term of these appointments will be until the reporting board's functions have been fulfilled.

13 (13) The Southern Ports Authority will be responsible for paying any remuneration or entitlements for the reporting board.

13 (14) This provision will ensure that directors liability will exist under the *Statutory Corporations (Liability of Directors) Act 1996* for the directors appointed to the reporting boards.

Clause 14 – Dividends

This clause will ensure that the State continues to be paid a dividend during the amalgamation process. Having merely changed its name, the Southern Ports Authority will be responsible for payment of the Bunbury Port Authority's dividends.

If the merging authorities (Esperance Port Authority and Albany Port Authority) have not performed their dividend functions leading up to amalgamation, then the board of the Southern Ports Authority will be responsible for this function.

14 (4) Any dividend due is to be paid to the Treasurer from the Southern Ports Authority funds.

Clause 15 – Transitional Regulations

This clause will enable transitional regulations to be established prescribing anything necessary for a port authority or new board to provide for, implement or facilitate the merger.

Transitional regulations may provide that specific provisions in other legislation do not apply to the merger.

Transitional regulations can be applied earlier than the gazettal of regulations, but not earlier than the merger time.

Subdivision 3 - Provisions for the Mid West Ports Authority

Subdivision 3 will provide transitional provisions for the establishment of the Mid West Ports Authority and associated renaming of the Geraldton Port Authority (the port authority).

Clause 16 - Terms used

This clause provides definitions for terms used in this subdivision, including:

- **MWPA:** means the (Geraldton) port authority renamed as the Mid West Ports Authority by amendment of Schedule 1 under section 31 (2).

- **New board:** means the Mid West Ports Authority board established under clause 17(3).
- **Port Authority:** means the Geraldton Port Authority.
- **Renaming:** means the renaming of Geraldton Port Authority as the Mid West Ports Authority through amendment of Schedule 1, under section 31 (2).
- **Renaming time:** is the time at which renaming occurs.
- **Transitional regulations:** means regulations raised under clause 22(1) to facilitate the renaming.

Clause 17 – Directors and Former directors

At renaming, any director that holds office in the authority ceases to hold that office. Former directors of the Geraldton Port Authority will be defined as former directors of the Mid West Ports Authority for accountability under the *Statutory Corporations (Liability of Directors) Act 1996*.

17 (3) The board of directors of the Mid West Ports Authority may be established before the renaming time, so that the board can plan and facilitate the associated renaming activities.

17 (4) Schedule 2, Clause 1 restricts a director's term of appointment to a maximum of three years. This clause effectively provides for a longer term through commencement of the term upon renaming despite earlier appointment.

17 (5) Directors of other port authorities may be appointed as directors of the Mid West Ports Authority.

Clause 18 – Powers of new board in anticipation of renaming

This clause will provide the necessary planning and administrative powers for the new board to facilitate the renaming activities. It includes power to provide for, implement or facilitate the renaming. It includes but is not limited to the powers at clause 48.

It excludes operational powers, which the new board will only gain at renaming time. The new board will have power to incur costs in relation to the renaming, which the (Geraldton) port authority will be responsible for until renaming time, following which the new board will have its own cash flow.

Clause 19 – CEO and Staff

19 (1) The tenure of the CEO of the Geraldton Port Authority will end when the renaming occurs.

19 (2) The CEO of the Geraldton Port Authority becomes a member of staff at the Mid West Ports Authority.

19 (3) The transition of the CEO to staff is not to be considered a retrenchment or redundancy.

19 (4) – leading up to the renaming, the Mid West Ports Authority board is to be consulted if Geraldton Port Authority negotiates with the CEO or any staff to terminate employment contracts or accept resignations.

19 (5) The powers of the Mid West Ports Authority board under clause 18 is to include the appointment of a CEO before the renaming time.

19 (6) Until the renaming time, a CEO of the Mid West Ports Authority can only facilitate, implement and provide for the renaming. Operational powers remain with the Geraldton Port Authority until the renaming.

19 (7) If the CEO or a staff member of the Geraldton Port Authority is appointed as the CEO of the Mid West Ports Authority, they will have their continuity, leave and superannuation entitlements protected.

Clause 20 – Agreements, instruments and documents

Agreements and instruments of the Geraldton Port Authority will carry over to the Mid West Ports Authority and references in documents to Geraldton Port Authority will be read as Mid West Ports Authority.

20 (1) This clause inserts new defined terms.

20 (2) References in subsisting (existing) agreements, instruments and documents to the Geraldton Port Authority will have effect after the renaming, as if amended to the Mid West Ports Authority.

20 (3) Subclause (2) does not apply to agreements or instruments to which Geraldton Port Authority was a party.

20 (4) Subsisting agreements and instruments entered by the Geraldton Port Authority will continue after the renaming time as if the Mid West Ports Authority were a party to the agreement/instrument and as if references were amended to the new name.

20 (5) Subclause (2) and (4)(b) relating to references to the Geraldton Port Authority do not apply if transitional regulations provide otherwise or if the change of name would be inappropriate in the context.

Clause 21 – Port authority to implement or facilitate renaming

21 (1) This clause will require the Geraldton Port Authority and the Mid West Ports Authority to perform anything necessary to implement and facilitate the renaming, before and after the renaming time respectively.

21 (2) The function at subclause (1) is in addition to the normal functions of a port authority.

21 (3) Before the renaming, the Geraldton Port Authority is required to pay costs incurred by the new board, including fees for the new directors appointed under clause 17(3), CEO salary and recruitment costs under clause 19(5) and any other costs incurred under clause 18. After the renaming, the new board will have operational responsibility and its own cash flow.

Clause 22 – Transitional regulations

22 (1) This clause will enable regulations to be established which can prescribe anything necessary for the Geraldton Port Authority, Mid West Ports Authority or the new board to provide for, implement or facilitate the renaming, or to provide for any matter or issue of a transitional nature that relates to the renaming.

22 (2) Transitional regulations may provide that specific provisions in other legislation do not apply to the renaming or apply with specific modification.

22 (3) Transitional regulations can provide for matters to take effect prior to gazettal of the regulations, but not before the renaming time.

Subdivision 4 – Provisions for the Pilbara Ports Authority

Subdivision 4 provides for the establishment of the Pilbara Ports Authority through a change of name by the Port Hedland Port Authority and the merger of the Dampier Port Authority.

Clause 23 – Terms used

This clause defines a number of terms necessary for this section of the Bill, including:

- **Continuing authority:** means Port Hedland Port Authority.
- **Merger:** means the change of name from Port Hedland Port Authority to Pilbara Ports Authority on Schedule 1, in terms of section 31 (3) of this Bill, and the merging in of the Dampier Port Authority under clause 24(1) of this Schedule.
- **Merger time:** means the time at which the Port Hedland Port Authority name change and the addition of the Port of Ashburton and Port of Dampier under the Pilbara Ports Authority occurs on Schedule 1, in terms of section 31 (3) of this Bill.
- **Merging authority:** means the Dampier Port Authority.
- **New board:** means the new board of directors established for the Pilbara Ports Authority under clause 25(3).
- **PPA:** means the Pilbara Ports Authority, being the Port Hedland Port Authority (continuing port authority) as renamed.
- **Transitional regulations:** means the regulations raised under clause 36(1), to facilitate the merger.

Clause 24 – Merger of Dampier Port Authority into Pilbara Ports Authority

This clause provides that at merger time Dampier Port Authority will cease to be a port authority and will merge into the Pilbara Ports Authority. From the merger time, the Pilbara Ports Authority will be a continuation of the merging authority (Dampier Port Authority).

Clause 25 – Directors and former directors

At merger time, any person that holds office as a director in either the merging or continuing authority (Dampier or Port Hedland port authorities) will have their appointment terminated. Former directors of the continuing and merging authorities will be defined as former directors

of the Pilbara Ports Authority for accountability under the *Statutory Corporations (Liability of Directors) Act 1996*.

25 (3) The board of directors of the Pilbara Ports Authority may be established before the merger, so that the board can plan and facilitate the merger.

25 (4) Schedule 2, Clause 1 restricts a director's term of appointment to three years. This clause effectively provides for a longer term through commencement of the term upon merger despite earlier appointment.

25 (5) Directors of other port authorities may be appointed to office in the Pilbara Ports Authority.

Clause 26 – Powers of new board in anticipation of merger

This clause will provide the necessary planning and administrative powers for the new board to facilitate the merger activities. It includes power to provide for, implement or facilitate the merger. It includes but is not limited to the powers at clause 48.

It excludes operational powers, which the new board will only gain at merger time. The new board will have power to incur costs in relation to the merger, which the (Port Hedland) port authority will be responsible for until merger time, following which the new board will have its own cash flow.

Clause 27 – CEOs and members of staff

This provision will terminate the CEO appointments at the Port Hedland Port Authority and Dampier Port Authority. This clause also requires staff from the (merging) Dampier Port Authority to be transferred to the Pilbara Ports Authority, together with the CEOs of the Dampier and Port Hedland Port Authorities (as members of staff).

27 (3) This provision reiterates that staff transfers to the Pilbara Ports Authority are not a retrenchment or redundancy.

27 (4) Prior to the merger, the Pilbara Ports Authority board is to be consulted if Dampier Port Authority or Port Hedland Port Authority negotiate with their CEOs or staff to terminate employment contracts or accept resignations.

27 (5) The Pilbara Ports Authority board is empowered to appoint a CEO prior to the merger.

27 (6) Prior to the merger, the Pilbara Ports Authority CEO appointed under subclause (5) will only be permitted to perform functions necessary to facilitate the merger. The incumbent CEOs of the Dampier Port Authority and Port Hedland Port Authority will remain responsible for port operations until merger time.

Clause 28 – Preservation of rights

This provision ensures that unless agreed otherwise staff and CEO entitlements to leave, remuneration, superannuation and continuity of service are not affected when positions are transferred to the Pilbara Ports Authority. Likewise, such entitlements are preserved for any CEO or staff member if appointed as the CEO of the Pilbara Ports Authority.

This clause reiterates that the Pilbara Ports Authority power's to manage staff is not affected by the provisions in clause 27 and 28.

Clause 29 – Devolution of assets, liabilities, proceedings, remedies and immunities

The assets, rights and indemnities held by the Dampier Port Authority will be transferred to the Pilbara Ports Authority. The liabilities and any proceedings or rights of or against these former authorities will also be carried over.

29 (2) Improvements on property vested in the Dampier Port Authority under section 25(2)(a) of the Act that becomes the property of the Pilbara Ports Authority, will continue to be regarded as property under section 25(2)(a) so that the Pilbara Ports Authority would be entitled to compensation for the depreciated value of the property should the Government choose to withdraw the underlying vested property from the port authority in terms of section 26 of the Act.

29 (3) Property transferred to the Pilbara Ports Authority will not be treated as income and therefore will be exempt from inclusion in the calculation of dividends payable by the port authority to the State.

29 (4) Any legal actions, proceedings or remedies likely to be brought against or available to the Port Authority leading up to the amalgamation will be available to or against the Pilbara Ports Authority.

29 (5) Any immunity available to the Dampier Port Authority prior to amalgamation will be preserved and afforded to the Pilbara Ports Authority.

29 (6) All minutes, accounts and records of the merging authority are to be delivered to the Pilbara Ports Authority.

Clause 30 – Completion of things commenced

This clause will enable any work program commenced by the Dampier Port Authority to potentially be continued by the Pilbara Ports Authority. This clause aims to minimise any potential service disruption at the Port of Dampier. As the continuing authority, the work program of the Port Hedland Port Authority will automatically carry over to the Pilbara Ports Authority.

Clause 31 – Continuing effect of things done

This clause ensures that any matters, act or thing done or not done by the Dampier Port Authority before the merger is to have force or significance as if done or omitted by the Pilbara Ports Authority. This clause does not override any other provisions in this Schedule.

Clause 32 – Agreements and instruments and documents

This clause provides that references to the merging or continuing authorities in existing (subsisting) agreements, instruments and documents are to have affect as references to the Pilbara Ports Authority from merger time. Similarly, if the merging or continuing authorities

were parties to existing agreements or instruments, this clause separately provides that from merger the Pilbara Ports Authority will be the party to those arrangements.

32 (1) inserts defined terms.

32 (2) references in subsisting agreements, instruments or documents to the Port Hedland Port Authority have affect post-merger as references to the Pilbara Ports Authority.

32 (3) subclause (2) does not apply to subsisting agreements or instruments the Port Hedland Port Authority is a party to.

32 (4) from the merger time, the Pilbara Ports Authority becomes a party to any subsisting agreements or instruments that the Port Hedland Port Authority was a party to and any references in those subsisting agreements or instruments become references to the Pilbara Ports Authority.

32 (5) references to the Dampier Port Authority in subsisting agreements, instruments or documents are to have affect as if they are references to the Pilbara Ports Authority post-merger.

32 (6) clause (5) does not apply to subsisting agreements or instruments that the Dampier Port is party to.

32 (7) subsisting agreements or instruments entered by the Dampier Port Authority are to have affect post-merger as if entered by the Pilbara Ports Authority and references to the Dampier Port Authority in those agreements or instruments are to have affect as if amended to references to the Pilbara Ports Authority.

32 (8) changes to references to the merging or former (Port Hedland) port authorities in documents provided for under subclauses (2), 4(b), (5) or (7)(b) do not apply if it would be inappropriate in the context or if transitional regulations provide otherwise.

Clause 33 - Port authorities to implement or facilitate merger and share costs

Prior to the merger, the Dampier Port Authority and Port Hedland Port Authority; and after the merger the Pilbara Ports Authority; are required to undertake all necessary measures to facilitate the merger.

33 (3) The merger facilitation function at subclause (1) is in addition to all other existing port authority functions.

33 (4) The continuing authority is to pay for pre-merger costs for the directors and CEO appointed to the Pilbara Ports Authority, for costs of the CEO appointment process and for any other costs of the new board related to performing merger functions under clause 26.

33 (5) Dampier and Port Hedland port authorities are to share the pre-merger expenses equally or as agreed.

33 (6) The Minister will make a final and binding determination on any disputes arising from the cost sharing arrangement. **Clause 34 – Financial Reporting**

Financial reporting for the continuing (Port Hedland) port authority, for the period up to the merger time, will be coordinated by the Pilbara Ports Authority following the change of name. This clause makes provisions for financial reporting by a “reporting board” for the merging authority (Dampier).

34 (2) – This subclause establishes the reporting board.

34 (3) – The reporting board will commence at merger time for three months, but the Minister will have the power to extend this term if considered necessary to enable the reporting board to perform its duties.

34 (4) The reporting board will be required to comply with end of financial year reporting provisions within the Act if the merger coincides with this period.

34 (5) Should the merger occur after the end of financial year, this clause will ensure that the reporting board fulfils the necessary end of year financial reporting requirements if not completed and complies with the reporting provisions for the period to the merger time.

34 (6) The Minister can provide written directions to the reporting board, which the board must comply with.

34 (7) The reporting provisions apply to the duties of the reporting board with any appropriate modifications or modifications prescribed in transitional regulations.

34 (8) The reporting board is to be provided with all reasonable assistance and facilities, including access to and the ability to copy account information, documents and records.

34 (9) A person in possession of any information, records or accounts, must provide that information upon request. If not, a fine of up to \$10,000 will apply.

34 (10) Subject to exclusions (term of office, roles of board and appointment of five persons by the Minister in writing), the provisions of the Act applying to the directors of a port authority will apply to the reporting board.

34 (11) The former directors of the merging authority are appointed to the reporting board.

34 (12) The Minister may appoint members to the reporting board, if positions become vacant. The term of these appointments will be until the reporting board’s functions have been fulfilled.

34 (13) The Pilbara Ports Authority will be responsible for paying any remuneration or entitlements for the reporting board.

34 (14) This provision will ensure that accountability will exist under the *Statutory Corporations (Liability of Directors) Act 1996* for the directors appointed to the reporting board.

Clause 35 – Dividends

This clause will ensure that the State continues to be paid a dividend during the amalgamation process. Having merely changed its name, the Pilbara Ports Authority will be responsible for payment of the Port Hedland Port Authority's dividends.

If the merging authority (Dampier Port Authority) has not performed its dividend functions leading up to amalgamation, then the board of the Pilbara Ports Authority will be responsible for this function.

35 (4) Any dividend due is to be paid to the Treasurer from the Pilbara Ports Authority funds.

Clause 36 – Transitional regulations

This clause will enable transitional regulations to be established prescribing anything necessary for a port authority or new board to provide for, implement or facilitate the merger.

Transitional regulations may provide that specific provisions in other legislation do not apply to the merger.

Transitional regulations can be applied earlier than the gazettal of regulations, but not earlier than the merger time.

Subdivision 5 – Provisions for the Kimberley Ports Authority

Subdivision 5 provides transitional provisions for the establishment of the Kimberley Ports Authority and associated renaming of the Broome Port Authority.

Clause 37 – Terms used

This clause introduces definitions necessary to deal with the renaming of the Broome Port Authority to the Kimberley Ports Authority, including:

- **KPA:** means Kimberley Ports Authority, renamed from Broome Port Authority by a change to Schedule 1 as provided for at section 31 (4) of this Bill.
- **New board:** means the new Kimberley Ports Authority board established under clause 38(3) of this Schedule 8.
- **Port authority:** means Broome Port Authority
- **Renaming:** means the name change from Broome to Kimberley Ports Authority, provided for at section 31(4) of this Bill.
- **Renaming time:** means the name change time, provided for at section 31 (4) of this Bill.
- **Transitional regulations:** means regulations raised, under powers at clause 43(1), to enable anything necessary to facilitate the namechange.

Clause 38 – Directors and former directors

At the renaming time, any director that holds office in the authority ceases to hold that office. Former directors of the Broome Port Authority will be defined as former directors of the

Kimberley Ports Authority for accountability under the *Statutory Corporations (Liability of Directors) Act 1996*.

38 (3) The board of directors of the Kimberley Ports Authority may be established before the “renaming time”, so that the board can plan and facilitate the renaming activities.

38 (4) Schedule 2, Clause 1 restricts a director’s term of appointment to three years. This clause effectively provides for a longer term through commencement of the term at the “renaming time” despite earlier appointment.

38 (5) Directors of other port authorities may be appointed as directors of the Kimberley Ports Authority.

Clause 39 – Powers of new board in anticipation of renaming

This clause will provide the necessary planning and administrative powers for the new board to facilitate the renaming activities. It includes power to provide for, implement or facilitate the renaming. It includes but is not limited to the powers at clause 48.

It excludes operational powers, which the new board will only gain at renaming time. The new board will have power to incur costs in relation to the renaming, which the (Broome) port authority will be responsible for until the renaming time, following which the new board will have its own cash flow.

Clause 40 – CEO and staff

40 (1) The tenure of the CEO of the Broome Port Authority will end when the renaming occurs.

40 (2) The CEO of the Broome Port Authority becomes a member of staff at the Kimberley Ports Authority.

40 (3) The transition of the CEO to staff is not to be considered a retrenchment or redundancy.

40 (4) – Leading up to the renaming, the Kimberley Ports Authority board is to be consulted if Broome Port Authority negotiates with the CEO or any staff to terminate employment contracts or accept resignations.

40 (5) The powers of the Kimberley Ports Authority board under clause 39 is to include the appointment of a CEO before the renaming time.

40 (6) Until the renaming time, a CEO of the Kimberley Ports Authority can only facilitate, implement and provide for the renaming. Operational powers remain with the Broome Port Authority until the renaming.

40 (7) If the CEO or a staff member of the Broome Port Authority is appointed as the CEO of the Kimberley Ports Authority, they will have their continuity, leave and superannuation entitlements protected.

Clause 41 – Agreements and instruments

Agreements and instruments of the Broome Port Authority will carry over to the Kimberley Ports Authority and references in documents to Broome Port Authority will be read as Kimberley Ports Authority.

41 (1) This clause inserts new defined terms.

41 (2) References in subsisting (existing) agreements, instruments and documents to the Broome Port Authority will have effect after the renaming, as if amended to the Kimberley Ports Authority.

41 (3) Subclause (2) does not apply to agreements or instruments to which Broome Port Authority was a party.

41 (4) Subsisting agreements and instruments entered by the Broome Port Authority will continue after the renaming time as if the Kimberley Ports Authority were a party to the agreement/instrument and as if references were amended to the new name.

41 (5) Provisions in subclause (2) and (4)(b) relating to references to the Broome Port Authority do not apply if transitional regulations provide otherwise or if the change of name would be inappropriate in the context.

Clause 42 – Port authority to implement or facilitate renaming

42 (1) This clause will require the Broome Port Authority and the Kimberley Ports Authority to perform anything necessary to implement and facilitate the name change before and after the renaming time respectively.

42 (2) The function at subclause (1) is in addition to the normal functions of a port authority.

42 (3) Before the renaming, the Broome Port Authority is required to pay costs incurred by the new board, including fees for the new directors appointed under clause 38(3), CEO salary and recruitment costs under clause 40(5) and any other costs incurred under clause 39. After the renaming, the new board will have operational responsibility and its own cash flow.

Clause 43 – Transitional regulations

43 (1) This clause will enable regulations to be established which can prescribe anything necessary for the Broome Port Authority, Kimberley Ports Authority or the new board to provide for, implement or facilitate the name change, or to provide for any related matter or issue of a transitional nature.

43 (2) Transitional regulations may provide that specific provisions in other legislation do not apply to the name change or apply with specific modification.

43 (3) Transitional regulations can provide for matters to take effect prior to gazettal of the regulations, but not before the “renaming time”.

Subdivision 6 – Provisions for certain directors

Clause 44 - Certain directors to cease to hold office

This provision removes the company directors (port user representatives) appointed to the Dampier and Port Hedland Port Authority boards under Schedule 6 of the Act, in terms of the amendments to Schedule 6 provided for at section 32 of this Bill.

Subdivision 7 – General provisions

Clause 45 – Terms used

This clause inserts various definitions, including:

- **Affecting provisions:** means –
 - (a) provisions at section 31 of this Bill, requiring amendments to the listing of ports and responsible port authorities at Schedule 1 of the Act; and
 - (b) the provisions within this Division 1 of Schedule 8 and transitional regulations under clauses 15(1), 22(1), 36(1) or 43(1) of this Schedule.
- **New board:** means the new boards established for the four new port authorities – Southern, Mid West, Pilbara and Kimberley – under relevant clauses 2, 16, 23 or 37 of this Schedule.
- **Relevant officials:** means the persons legally authorised to affect registration of documents for transactions affecting interests in land or other property, including the Registrars and Minister under the three acts listed in this definition.
- **State tax:** includes duty under the *Duties Act 2008* and any other tax under a written law.
- **Transitional regulations:** means regulations raised under clauses 15(1), 22(1), 36(1) or 43(1) of this Schedule, to prescribe for anything necessary or to be done in order to achieve the port authority mergers, renaming or port changes provided for within this Bill.

Clause 46 – Exemption from State taxes

This clause will exempt the four new port authorities from State taxes being applied as a result of the merger, re-naming and port changes provided for within the “affecting provisions” in this Bill, including ,for example, *Duties Act 2008* tax on the transfer of assets as a result of the mergers. Post-merger, normal taxes will continue to apply to the port authorities.

Clause 47 – Registration of documents

This clause requires that all relevant officials (such as the Registrar of Titles, Registrar of Deeds, Minister administering the *Land Administration Act 1997*) take note of and give effect to the “affecting provisions” in this Bill, by for example, registering relevant land and lease transfers for merging port authorities.

Clause 48 – Matters that a new board can deal with

This clause provides a list of matters which a new port authority board has power to deal with. Their powers are not limited to these matters, but they are limited to implementing the relevant mergers and renaming and are not port operational powers. Existing port authority boards are responsible for port operations until the merger/renaming dates.

Clause 49 – Operation of transitional regulations

This clause provides that transitional regulations raised under the provisions of clauses 15(3), 22(3), 36(3), or 43(3) of this Schedule cannot impose liabilities or adversely affect persons (other than the State) prior to publication of the regulations.

Clause 50 – Saving

In addition to the provisions of the *Interpretation Act 1984*, this clause provides safeguards by deeming that the affecting provisions in this Bill do not create any breach of contractual provisions, give rise to any damages, compensation or remedy, void any contract or instrument, or release or allow for the release of any surety.

Clause 51 – Government agreements not affected

This clause provides that the rights and obligations of parties to State Agreements are not affected by the provisions of this Bill. It also provides that the rights and obligations of parties to State Agreements listed at Schedule 6, clauses 1.3 and 2.3, are likewise not affected.

36. Schedule 9 inserted

Schedule 9 – Placing additional ports under a port authority's control and management

Clause 1 – Terms Used

This clause inserts definitions for use in this Schedule:

- **Government agreement:** has the same meaning as at Schedule 8 clause 1 and effectively means State Agreements.
- **Port:** In this schedule, “port” means a port other than a port established under the Shipping and Pilotage Act regulations.
- **Port addition:** means placing a new port other than an existing Shipping and Pilotage Act port under management of a port authority through regulations, in terms of clause 2(1) of this Schedule, irrespective of whether the regulations have been activated.

Clause 2 – Regulations may place a port under the control and management of a port authority

This clause provides for the placement of new ports under the control of port authorities (other than existing ports under the *Shipping and Pilotage Act 1967*).

The regulations will be subject to the Governor's approval in ExCo, and scrutiny and endorsement/rejection by the Parliamentary Joint Standing Committee for Delegated Legislation.

Clause 3 – Port authority to implement or facilitate port addition

This clause requires a port authority, in addition to its existing functions, to perform anything necessary or prescribed in regulations, to facilitate a new port being placed under its control through regulations.

Following placement of the new port under port authority control, the relevant port authority will be able to apply all of its powers under the Act to govern the port in terms of its functions under the Act.

Clause 4 – Government agreements not affected

This clause ensures that any regulations raised under the powers in this Schedule will not prejudice or affect the rights and obligations of any party to a State Agreement or the rights and obligations of a party to the State Agreements listed in Schedule 6 of the Act.

Part 3 – Shipping and Pilotage Act 1967 amended

37. Act amended

Identifies that parts of the *Shipping and Pilotage Act 1967* (the SPA Act) will be amended.

38. Section 6 amended

Section 6 of the SPA Act provides a Harbour Master of a port authority the power to remove unserviceable vessels. Stranded vessels can severely interrupt the operations of a port by blocking access to shipping channels or berths. The Harbour Master is provided with immunity from civil action, under section 6(4), if for example the vessel is damaged during the move.

Section 6(4) is being replaced with a new section 8A (see below at section 41 of this Bill), providing similar Harbour Master immunity that will extend to CEOs and controlling authorities.

39. Section 6A inserted

Extended application of sections 5 and 6

This clause extends the application of powers and duties of a Harbour Master (section 5 of the SPA Act) and the power to remove unserviceable vessels (section 6) to body corporates

and controlling authorities, including the Department of Transport, where they control a fishing boat harbour or mooring control area (a declared area).

Section 5 of the SPA Act sets out the duties and powers of a Harbour Master to control and direct the movement and berthing of vessels within the port and prescribed control area outside the port, including the removal of wreckage likely to obstruct safe vessel movements and to recoup the cost of removal. This includes provisions for sale of the wreckage if the owner cannot be found and for the buyer to receive good title where the sale and purchase is conducted in good faith.

Section 6 provides the Harbour Master with power to issue a notice requiring removal of a vessel that is not regularly used and is considered an obstruction to safe vessel movements or is considered by the Harbour Master to be unfit for sea service. If the notice is not complied with the Harbour Master has power to remove the vessel and recoup costs, with the costs being a debt to the Crown. The Minister, the Crown, the Harbour Master and anyone acting for the Harbour Master are indemnified for actions undertaken in good faith.

Section 6A (1) inserts a definition of “declared area”, which means a fishing boat harbour or mooring control area.

Section 6A (2) applies section 5 and 6 Harbour Master duties and powers to the CEO, where the Department is the controlling authority for a declared area.

Section 6A (3) applies section 5 and 6 Harbour Master duties and powers to body corporates controlling declared areas.

Section 6A (3) (c) and (e) applies the requirements for satisfaction or opinion of Harbour Masters to delegates of body corporates that are controlling declared areas.

Section 6A (3) (d) ensures that body corporate costs (for removal of vessels) are treated as body corporate debts and not debts to the Crown.

40. Section 7 amended

Section 7 provides special powers for Harbour Masters in emergencies. Section 7 (2) protects the Crown, State and Harbour Masters from civil liability when damage or loss occurs from exercising their emergency powers. This provision will be removed and replaced by broader indemnity in proposed section 8A (clause 40), which will include the protection of controlling authorities exercising Harbour Master powers in relation to declared areas.

41. Section 8A inserted

Protection from liability for wrongdoing

This amendment will provide a list of where and under what circumstances immunity is afforded to the State, Crown or Harbour Master.

8A (1) affords civil immunity to any person performing functions under the SPA Act, if they perform those actions in good faith.

8A (2) The Minister and Crown are not liable for damage or losses caused by a person performing the functions of the SPA Act, if that person performs the actions in good faith.

8A (3) The immunity and protections described in the SPA Act will apply, even if the actions could have been performed in the absence of this Act.

8A (4) The protections under this section apply to actions in good faith under the authority of a Harbour Master, or by the delegates of a Harbour Master, or in compliance with directions of a Harbour Master.

8A (5) The immunity and protection described in Section 8A (4) will apply to actions for or by delegates of a controlling authority and its CEO.

8A (6) In this section a reference to an action under the Act includes a reference to an omission to do anything under the Act (in good faith).

42. Section 11 amended

Section 11 currently prescribes various offences and a penalty of up to \$12,000 including for failure to comply with Harbour Master orders or directions under sections 5 and 7.

This amendment adds a further offence of failing to comply with orders or directions of a Harbour Master under section 6; or of a CEO or controlling authority under sections 5 or 6, as applied by new section 6A in relation to declared areas.

43. Section 11A amended

11A (3A) This provision will enable the CEO of the Department of Transport to delegate any other power or duty of the CEO under the SPA Act, to another person or to a Department of Transport staff member. This includes any powers or duties relating to a fishing boat harbour or a mooring control area if Department of Transport is the controlling authority.

11A (3B) The CEO delegation is required in writing.

11A (3C) A body corporate which is the controlling authority for a fishing boat harbour or mooring control area can delegate other duties and powers under the Act to its staff.

11A (3D) The delegated authority by a body corporate must be in writing.

11(A) (5) Provides that a Minister's power to perform a function through delegation is not constrained by this section. This amendment extends this concept to a CEO or controlling authority's ability to perform its functions through delegation, in addition to the Minister.

Part 4 – Consequential amendments

44. Constitution Acts Amendment Act 1899 amended

This amendment replaces the seven old port authority names with the four new merged port authorities.

45. Statutory Corporations (Liability of Directors) Act 1996 amended

This amendment replaces the seven old port authority names with the four new merged port authorities.