

**PORTS LEGISLATION AMENDMENT BILL 2017**

*Second Reading*

Resumed from 28 June 2018.

**HON ROBIN CHAPPLE (Mining and Pastoral)** [3.33 pm]: The Greens will be supporting the Ports Legislation Amendment Bill 2017, but we need to make a number of comments on it. In 2010, the government commissioned a review of ports' governance, steered by the Department of Transport. As recommended by the review of the Ports Legislation Amendment Bill 2013, reform was introduced to create four regional port authorities, with the exception of Fremantle port, known as tranche 1. This was supported by the Greens in principle, and together with the then opposition the Greens opposed the bill at the third reading stage due to concerns about the impact on regional Western Australia, including job losses, stripping profits and moving assets. The review also recommended the transfer of trading ports regulated under the Shipping and Pilotage Act 1967 to the Port Authorities Act 1999, bringing all the trading ports under the same legislation.

This bill is the response to that recommendation, known as tranche 2. This bill will gradually transfer the nine trading ports currently regulated under the Shipping and Pilotage Act 1967 and overseen by the Department of Transport to the jurisdiction of the Port Authorities Act 1999 and regulation by the relevant port authority. Those ports include Barrow Island and Cape Preston. Carnarvon will be transferred as two ports—Cape Cuvier and Useless Loop. Derby is currently a common-user port. It has been a trading port before and will become one again; I will touch on that shortly.

Other ports include Onslow, Varanus Island, Port Walcott, Wyndham—a common-user port; again, I will touch on that later—and Yampi Sound, including the port facilities at Koolan and Cockatoo Islands. The Kimberley Ports Authority will have jurisdiction over the Yampi Sound—Irvine Island port facility and the James Price Point port. I am always intrigued that we will have a facility over James Price Point when the whole project collapsed; I would have thought that we would have given up on that project a long while ago.

The bill contains some special provisions for Derby port because it is currently managed by the local shire under agreement and a lease with the transport minister. The contract will transfer from the Department of Transport to the port authority, and the bill aims to iron out some of the inconsistencies between the contract and the Port Authorities Act. We have had a lot of discussion with various stakeholders and government advisers. Onslow's Airlie Island and Thevenard Island facilities will not be transferred. They will be decommissioned and will remain under the Shipping and Pilotage Act 1967 until they are closed.

The bill provides that no stamp duty tax will be payable on the transfers. The second reading speech states that as new ports are established—Anketell, Balla Balla, Browse, Cape Preston East and Oakajee—they will be similarly regulated under the Port Authorities Act. Anketell has a really interesting bit of history. It is actually called Port Robinson, and it was named by the then Mr Forrest in competition with the name Tien Tsin, which was the original name for the harbour area.

Non-trading small boat harbours and marinas will not be affected by the bill, and will continue to be regulated by the Department of Transport under the Shipping and Pilotage Act 1967, unless and until they expand so much that they, too, are placed under the management of the port authority.

Some of the transfers under the bill will not be able to take place until relevant state agreements have been amended. It is estimated that it will take around two to three years for the amendments to be concluded on the state agreement acts to enable these transfers to take place. Existing leases, contracts, easements, licences et cetera will be preserved and transferred, with the relevant port authority taking over the role of the Department of Transport. The aim is to achieve a regional approach to better identify and realise local commercial opportunities, and opportunities to reduce cost for a more systemic approach to issues such as marine safety, coordination of vessel visits and to reduce regulatory complexity for companies operating at multiple ports. I will touch on all that a bit later on. The bill also takes the opportunity to update penalties and penalty regimes.

From the second reading speech we identified the volume of port trade has gone from 319 million tonnes in 2005–06, to 940 million tonnes in 2016–17. That is mainly in the Pilbara port areas of iron ore. Exports in the same period have gone up from \$39 billion to \$94 billion. The number of calls to WA ports by vessels from overseas ports during that period has also doubled. Port trade will continue growing with iron ore exports growing, oil and gas projects coming into production, and increased agricultural production in the north.

It is important that environmental laws apply to trading ports. For example, ports sometimes handle hazardous substances. All members will be aware of the lead contamination that happened in the Esperance port. Ballast water can contain microbes, plants and animals, and pose serious biosecurity risks to our marine system. The Shipping and Pilotage Act 1967 does not refer to the environment, waste or pollution. The Port Authorities Act 1999 contains the following environmental protections. Section 30(1)(f) includes in port authority functions the protection of the environment of the port and the minimisation of the impact of port operations on that environment.

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Section 31 confirms that the Environmental Protection Act 1986 applies to ports, port authorities and port operations. Section 35 gives port authorities the power to provide port services, including pollution management and waste management services. Section 51 requires strategic development plans to include an environmental plan for the port. This legislation is genuinely a move forward, as far as we are concerned, in dealing with these matters.

Regulations made under the act include regulation 17, “Waste water etc. not to be discharged on to wharf or into port waters without authority”. I would be very interested in this, when we come to consider the iron ore ports of East Intercourse Island, Port Hedland and others, because there is currently a very significant discharge of iron ore into the water, and we know that the reef systems of Port Hedland have been heavily damaged by movement of suspended iron ore particles in the water. These are areas of reasonably high tidal movement, so we find that that suspended material is carried quite some distance. Aerial photographs of the region show large plumes of iron ore suspended material travelling out into the ocean. Regulation 18 is “Ballast to be discharged in accordance with harbour master’s directions”, which may include a direction that it be inspected or tested before discharge. A protocol exists under the federal agreement with the Australian Quarantine Inspection Service providing that ships should interchange their ballast water in deep ocean so that by the time they reach any Australian port they do not have some of the invasive species. Unfortunately, I have witnessed many ballasted ships entering Pilbara ports and discharging their full ballast into the port. That is not the intention of the AQIS regulations. Regulation 71 is “Dead animals, waste etc. not to be left in ports unless authorised”. Transfer of the ports to the Port Authorities Act 1999 will mean that those environmental provisions will apply to them, and we definitely support that aspect of the movement of control.

The bill substantially increases several maximum penalties. The Greens have no objection to this. It has been a long time since most of the penalties were updated. None of these penalties are mandatory. Judicial discretion to impose a lesser penalty is retained.

The common-user ports of Derby and Wyndham give me concerns, not with the passage of the bill, but about what might be some of the problems. In that regard we have met with the Shire of Derby–West Kimberley and the stakeholder, Cambridge Gulf Ltd, which operates the Wyndham port. Of the ports impacted by this bill, Derby and Wyndham are different from other ports. They are not state agreement ports; they are common-user ports run by port operations under contract with the Department of Transport, and after implementation by the Kimberley Ports Authority. Both are tidal ports, with very big tides, and I will come to that in a minute. The existence of the Wyndham community is completely and utterly dependent upon the port. If the opportunities for the Wyndham port are not maximised, the community will not be sustainable. An added difficulty is that the Wyndham port faces competition from the Darwin port. The concerns raised by the operators of these two ports during our consultation on the bill are similar to some of the concerns raised in the southern ports post-amalgamation review. There is potential for tension between running these ports on a strictly commercial basis and the economic growth of the communities.

Derby port has the capacity to handle bulk commodity exports such as mineral sands from the Sheffield Thunderbird project. Derby port is used by Marine Produce Australia to land barramundi. The Kimberley Ports Authority 2018–19 statement of corporate intent identifies future opportunities for the Derby port in thermal and gas exports, support for aviation and/or oil or gas supply operations to Koolan Island, and support for the mining operations at Cockatoo and Irvine Islands. Derby port is currently managed by the Shire of Derby–West Kimberley under contract and lease with the Minister for Transport. The shire has expressed to me a number of concerns about Derby port being transferred. It fears that the transfer might increase its costs and therefore damage its trade and competitive nature when competing, mainly with Broome. It says that uncertainty around the proposed changes have made it difficult for the shire to develop trade. It says that the cost it has incurred in consultation on the proposed changes has been substantial for a shire authority running a very lean operation. It says that the community demands access to the port. On any night, 10 to 20 people may be found on the wharf, either enjoying the sunset from one of the coolest places in Derby at any time, or fishing. Also, one of the best cafes in Derby, the Wharf Café, is situated on that port. The community is very concerned about the closing of the gates, which are currently left open, and access to one of the main recreation areas for the walking community in the town of Derby. The port lease is not just seabed; it goes back to the town and, as I said, includes the Wharf Café. I want to talk more about the implications for future development of the port lease not being just seabed. The shire would ideally like to develop the port into a significant tourist attraction, like Darwin, while maintaining its multi-user function and catering to community expectations.

I ask the minister whether, in her reply, she could address two points. I have already raised these with the department, so they will not come as any particular surprise. Firstly, what have been the consultation costs thus far for the Derby port, for the government, the Kimberley Ports Authority, the shire—it says that it has been hundreds of thousands of dollars—and the stakeholders? Secondly, what does the government estimate the further cost of each of the above will be to complete the transition of Derby port; and who will pay these costs and who will receive them?

I want to digress slightly while talking about Derby port. Derby port has the largest tidal range of any port in Australia. The predicted tidal range can be as high as 11.78 metres at high tide. This is different from what occurs at the mouth of King Sound, where the tide is about 11.42 metres. This is what is called a tidal amplitude. There

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are really only four places in the world that have a tidal amplitude, including the Bay of Fundy in Nova Scotia, the La Rance system in France and, obviously, the River Severn, which has a tidal bore of 9.6 metres. Derby probably has the second highest tide anywhere in the world, with the highest being quoted at 11.7 metres in Nova Scotia, but I note that Derby has had 11.78 metres. Derby gets this amplitude because of the embayment. As water travels towards the port, it enters King Sound and it has a charge behind it. By the time it reaches Derby port, it is higher than the high tide at the mouth, so it gets pushed up. This has a good effect on one level, because it has a scouring effect on that area. There is not a lot of sediment in the area; there is about a 2.7 per cent sediment load in the water. The tidal range of 11 metres can leave the wharf standing completely high and dry at low tide and up to the gunwales, so to speak, at high tide. Oceanographers call these tidal amplitudes macro tides rather than king tides because they are a step above a king tide due to the way they have developed. That gives members some idea of one of the problems that the port has to cope with in dealing with the high tides in that area, especially around Derby. I will touch on that more with some secondary comments about Derby port shortly.

I will now move on to Wyndham port. This port is a common-user port managed by Cambridge Gulf Ltd, or CGL. The tides there range up to 8.2 metres and its tidal streams run up to seven knots, or just under 13 kilometres an hour. The port has one of the longest pilotages in Australia for larger vessels, starting at Lacrosse Island, which is 45 nautical miles from the jetty. Trade throughput was around 2.2 million tonnes per annum at its height in 2013–14. It was similar to Darwin port in 2015–16, but it has since decreased. The Kimberley Ports Authority's 2018–19 statement of corporate intent identifies growth opportunities in exports from the Ord River irrigation area, including chia, sugar, sorghum, timber, corn and cotton, and imports of fertiliser, fuel and other items associated with those industries; exports of black tiger prawns and imports of feed associated with that industry; and exports and imports relating to the Hastings project near Halls Creek, with rare metals and heavy earth elements. A number of other developments in that area are coming on stream with what are called unique or interesting base metal projects—the Matsu iron ore project, the McIntosh graphite project, the Browns Range project, the Savannah and Lanfranchi nickel sulphide mines, and the Panton platinum and palladium projects. CGL employs five staff and about 20 casuals at the port, of whom about five are permanent and others are used as needed. It is a significant employer for a small community.

CGL's main concern is that Broome and Wyndham ports are competitors and they worry that, lest the Kimberley Ports Authority is Broome port by another name, it will still be competing with Wyndham port. If the combined port authority is managed to a large degree by Broome and uniform fees are set between all those ports, that will disadvantage both Derby and Wyndham, which have managed to carve a niche for themselves as low-cost ports. The concern of both CGL and Derby port is that they still want to operate as low-cost ports, which gives them a competitive edge over the Broome facility. We need to make sure that the structure does not operate in an anti-competitive manner. Page 9 of the KPA's statement of corporate intent refers to the possibility of charging commercial rates. It wants the Wyndham port management agreement tendered out to ensure fairness and cost efficiency. CGL also fears that the complexity associated with its being a common-user port and a tidal port may be an incentive for the Kimberley Ports Authority to close it down. We have to remember that both Derby and Wyndham ports were basically given away in a previous life because they were considered to be anti-competitive. Other people took them over and have turned them into profitable ports. We quite clearly do not want that to happen again.

I understand from the briefing that Wyndham port, which, unlike Derby port, does not have a special provision in the bill, will continue with its current port operation agreement, and I will seek confirmation of that. Following the expiry of that port operator agreement on 30 June 2019, the Kimberley Ports Authority will do the same as the Department of Transport would have done—that is, reappoint CGL, tender out or manage the port itself. Again, clarification of that point would be useful. The Kimberley Ports Authority will be required to facilitate trade for all ports in the region and will be made accountable if it does not. We are told that its directors will be appointed based on expertise and will be able to, and will when necessary, employ necessary expertise to enable it to fulfil its duties in relation to each port in its jurisdiction.

I will deal with something else in a moment, but obviously a major development is being proposed for Derby port by the Warburton Group and Australian Capital Equity to develop a lock-based system. There would be significant advantages to Derby from that. It is on the parcel of land between the port and the town of Derby that is gazetted as part of the port authority. This would be a major facility catering for many different types of vessels, including naval vessels if the federal government supports the development. I understand that everything is progressing well with the development, but I can find nothing in the legislation before us that addresses the peppercorn lease rental to Warburton for that land that is currently under the control of Derby via its control of the port authority. It is really important for me to know how that development, which is a significant development estimated to cost around \$250 million, will be allowed to progress. How will it be managed? Will there be any constraints? Will there be any problems with the current lease arrangements in terms of its development? If that development goes ahead, it will be a major infrastructure development for the Kimberley. It will also provide a major lift to the Derby community because of its wharfage, handling and a whole range of lay-down areas. In my view, the development

will be an employer of many hundreds of people and will demand what I would call employment from the region rather than an imported employment of expertise from other places.

The other point I just want to touch on is the relevant learnings contained in the report “Southern Ports Post-Amalgamation Review”. The concerns raised by both common-user ports are reminiscent of some of the concerns raised during the Southern Ports post-amalgamation review. It will be important during implementation to avoid a perception of weakened links with the community and to allay concerns of a Broome takeover for the other two ports. That is a genuine, deep-seated concern in both Wyndham and Derby. It is important to ensure that the change is managed so that port users, including the Derby public who enjoy and demand access to the wharf, can gauge the benefits to themselves over time. It needs to ensure that there is clarity and good stakeholder communication regarding the Kimberley Ports Authority’s strategic vision and long-term plans for each port, especially given that Derby is reporting that its trade is already suffering from uncertainty surrounding the reform.

Quite clearly, I have already indicated that the Greens will be supporting this legislation. Living in Derby, I will keep a very watchful eye on and be mindful of the processes going forward, but I really want to have some genuine, deep-felt assurance that those two ports will not suffer into the future.

**HON COLIN de GRUSSA (Agricultural)** [4.02 pm]: I rise to make a few brief remarks on the Ports Legislation Amendment Bill 2017. The second tranche of reforms, which commenced under the previous government, has obviously taken a little while to come to fruition. As we all know, the changes are rather complex and large when one starts to amalgamate ports. I want to discuss a couple of things in particular in my contribution to the second reading debate, but probably more so during the committee stage of the bill, when there will be a few questions on some of the amendments to various acts. Hopefully the minister will be able to allay some of my concerns. For the information of the minister, I would like to ask some questions particularly around the amendments to the Jetties Act. I am sure that the minister would be expecting some questions on those acts. This is enabling legislation. It is our job to scrutinise this legislation properly to ensure that there are no possible unintended consequences. I hope we have learnt a lot from the amalgamation of the Southern Ports, and that any necessary changes are made to make sure that some of the issues that perhaps occurred during that amalgamation do not occur again. In debates in the previous Parliament, a number of contributions were made by members, including my colleague Hon Jacqui Boydell, who is away on urgent parliamentary business, about concerns raised by junior miners, who want to ensure that their access to port infrastructure is maintained. Perhaps the minister could also allay any concerns around the amendments to state agreements—I understand that a number have to be amended—and the possible impacts that may have on access by junior miners and others to any of the ports in this proposal.

I now turn to the “Southern Ports Post-Amalgamation Review” and some of its findings. I want to flag a couple of areas on which the minister can perhaps elaborate to ensure we are clear on what processes have been undertaken to allay any fears that we may have, particularly in the area of organisational culture. Recommendation 7 of the post-amalgamation review is about the continued implementation of a cultural change action plan and assessment, which we all know about. I have spoken in this place about bullying and harassment claims in the Southern Ports, as have a number of other members in this place and the other place. We obviously want to make sure that those things do not occur in any other ports. Perhaps the minister can inform us on the progress of the adoption of these recommendations and how they might be applied to the other ports. The other recommendation that is of particular interest to me—Hon Robin Chapple alluded to this somewhat—is about having locally based general managers for each port. Perhaps the perception by some is that one of the ports is taking over all the others, which raises some concerns. I refer to recommendation 4 of the post-amalgamation review and how those issues might be managed in the northern ports to ensure that the people who are working at those ports are part of the local community and have on-the-ground knowledge. It is important to ensure that locals manage each of these ports so that the connection with the community remains. These ports are a very important part of local communities. Very often a community has been built around a port, so the community is the linchpin. That is the case even in my hometown of Esperance, which is predominantly an agricultural area—it has a very strong link to its port. It was originally a major exporter of agricultural produce but has grown to export a lot of mining and other materials, and it imports products as well. We need to ensure that that connection with the community remains and that local people feel like they are not being managed from afar, which has been an issue in Esperance.

That leads me to one other recommendation in the “Southern Ports Post-Amalgamation Review”. It does not really have anything to do with this bill, but perhaps the minister might want to comment on recommendation 5, which states that Southern Ports should continue in its amalgamated form, managing the ports of Albany, Bunbury and Esperance. Perhaps the minister can enlighten us on whether the government still intends to stick with that recommendation or whether there are any other plans in place.

I am pretty comfortable with the legislation. The Nationals will be supporting this bill. It is necessary. It is an important part of the second tranche of reforms started under the previous government. I alluded to some changes to the Jetties Act. I will briefly talk about a few of those now so that the minister can be aware of the questions likely to be asked during the committee stage on this bill. There are some changes around licensing and transitional

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provisions for the Ports Legislation Amendment Act. I am interested in the effect on not only the northern ports, but also some of the southern ports, because they are included in this. I refer in particular to the Esperance tanker jetty, and the Carnarvon One Mile Jetty, if that indeed is affected—I am not sure whether that is in here. I am also interested in some of the changes to the penalties for breaches of various sections of the act and how the new figures were arrived at and where they have come from. Some clarity on those would be useful.

I do not have much else to contribute to this debate, other than to say that the Nationals welcome this legislation. We would like to understand how the state agreement negotiations are going, and whether there are any potential issues with some of the state agreement holders who are being negotiated with, the amendments to the Jetties Act, and the review.

**HON SIMON O'BRIEN (South Metropolitan)** [4.09 pm]: The Ports Legislation Amendment Bill 2017 has been on the notice paper for quite some time. Indeed, I managed to acquire a second briefing on the bill, because I had forgotten just about everything I had been told.

**Hon Alannah MacTiernan:** Member, are you the lead speaker for your party?

**Hon SIMON O'BRIEN:** I am indeed, but you will be glad to hear, Mr Acting President, that I will not be using all of my limited time.

I thank the officers from the office of the new Minister for Ports and of the Department of Transport for providing that further briefing on this bill. This is a very important bill, because it is about the administration of our ports in Western Australia. Whenever I am talking about the Western Australian economy, I find it advisable to have recourse to a map of Western Australia to show, as a starting point, where Western Australia sits in the world, because that enables people to gain an understanding of how our economy works. This state fundamentally relies on exports for its prosperity. In order to do that, we need to get our produce and products from their places of origin, which are many and dispersed, and in many cases remote, to our customers overseas. That is a massive transport task. It is complicated by the relatively small size of our population, the remoteness of our places of production, and the capacity of the places from which the goods are exported. The operation of our ports is critical to the success of the overall transport task. Ports are the key point at which produce and products are concentrated to be loaded onto ships and despatched to their final destination, which could be anywhere in the world. I am not discounting or ignoring the vital contribution made by air transport or, indeed, by what is left of Australia Post. However, how our ports operate is crucial to our understanding of how the Western Australian economy works. That is why I will be spending a brief, but important, period of time examining this bill today.

Debate interrupted, pursuant to standing orders.

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*Sitting suspended from 4.14 to 4.30 pm*