

PORTS LEGISLATION AMENDMENT BILL 2017

Second Reading

Resumed from 29 November 2017.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [11.33 am]: I rise to make a contribution to the Ports Legislation Amendment Bill 2017 on behalf of the Liberal opposition. The opposition supports this legislation. Indeed, this is the second tranche of a ports reform agenda that was set in place by Hon Troy Buswell when he was a minister in the former Barnett government. These reforms commenced as far back as 2009. In 2013, Hon Troy Buswell, the Minister for Transport at the time, introduced the Ports Legislation Amendment Bill 2013. He flagged that that legislation was the first tranche of reforms and that the reforms had come out of a number of processes, the first being a five-year review of the Port Authorities Act 1999. That review was required under section 144 of that act. The report into the review of that act was tabled in Parliament on 14 October 2009.

The Education and Health Standing Committee of the Legislative Assembly produced a report titled “Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area”. The issue of lead pollution was running very hot around the time of the change of government back in 2008. Significant lead contamination in the port of Esperance was having deleterious health effects on children and people living in the Esperance vicinity. A big clean-up job was required when the Barnett government was elected in 2008 to ensure that the lead could be cleaned up and the safety of that community could be preserved. As I recall at the time, birds were falling out of the sky and dropping dead mid-flight because of lead contamination. After those birds were subsequently examined, lead levels were tested in some of the children in Esperance and other people in the community. Elevated lead levels were found in the people living in the vicinity of Esperance port, which required a not insignificant government effort at that time to ensure that the safety of that community could be ensured.

The Council of Australian Governments also conducted a review into Western Australian ports. Those reviews are always incredibly important given the importance of port infrastructure in facilitating, and indeed strengthening, the economy of Western Australia and also Australia. Back in 2013, Hon Troy Buswell’s speech referred to the state’s exports having increased from \$25 billion per annum in 2000 to \$101 billion in 2012–13. At the time it was estimated that there would be significant increases in the throughput of our ports. Over time we have seen that that was indeed the case.

In May 2013, the Barnett government released the “Western Australian Regional Freight Transport Network Plan”. That detailed transport planning blueprint looked at providing strategic priorities and objectives for the state’s road, rail and port infrastructure. Obviously, port infrastructure featured in that plan quite prominently. At the time the underlying Department of Transport study plan found, as set out in *Hansard* —

... that by 2030, trade through the state’s ports is expected to increase to more than one billion tonnes per annum, representing growth of 140 per cent from 2012.

Significant increases in throughput need to be managed strategically and effectively.

There was also a ports governance review in 2011. The government agreed to a number of recommendations of that review. The review agreed that seven of the state’s eight port authorities should be consolidated into four regional port authorities and that 13 non-port authorities currently managed by the Department of Transport would come under the jurisdiction of these regional port authorities. That amending 2013 legislation affected the amalgamation of those seven port authorities into four regional port authorities. As part of this amending legislation of 2017, we are now considering rolling in the other 13 non-port authority ports as part of this continued reform agenda.

It was always intended that this legislation and this reform would occur in two tranches. The 2013 reform involved the removal of the legislative entitlement for commercial representation on port authority boards. That is basically taking away a commercial conflict of interest where the customers of the port were involved in the port governance arrangement, which presented a conflict of interest, obviously, having a commercial interest that can be in conflict with other commercial interests that may use the port. We need to be very careful about managing the kind of input that larger operators, for example, can have on the management and governance of a port. That 2013 legislation also enabled the establishment of port community consultation committees, including local government, to facilitate public information sharing. It also removed the uncertainty and the regulatory framework of 24-hour port operations. Obviously, environmental considerations had to be given with the ports operating 24 hours a day, but it seemed that there was some uncertainty at the time about the regulatory framework and whether the ports could in fact operate on a 24-hour basis, and that ambiguity was removed with the first tranche of legislative reform.

As I said, the 2013 legislation enabled the four new regional port authorities to include the Kimberley Ports Authority, initially comprising the port of Broome; the Pilbara Ports Authority, initially comprising the ports of Port Hedland, Dampier and Ashburton; the Mid West Ports Authority, initially comprising the port of Geraldton;

and, the Southern Port Authority, comprising the ports of Bunbury, Albany and Esperance. What we have before the house, the Ports Legislation Amendment Bill 2017, is the second tranche of the reform agenda that was commenced by Hon Troy Buswell. This amending legislation will amend a number of other acts, including the Jetties Act 1926, the Lights (Navigation Protection) Act 1938, the Marine and Harbours Act 1981, the Marine Navigational Aids Act 1973, the Port Authorities Act 1999, the Shipping and Pilotage Act 1967 and the Western Australian Marine Act 1982. The management of our ports is definitely a complex legislative area and, indeed, any kind of governance review that tries to collapse some of that regulation and make the management of our ports more efficient and, out of that efficiency, safer, is something that the opposition welcomes.

The essence of the Ports Legislation Amendment Bill 2017 is to enable the transfer of nine ports that are currently regulated under the Shipping and Pilotage Act 1967 to the Port Authorities Act 1999. This includes the ports of Barrow Island, Cape Preston, Carnarvon, Derby, Onslow, Varanus Island, Walcott, Wyndham and Yampi Sound. The focus of this reform is to enable the regional port authorities to assume the responsibilities that currently sit with the Department of Transport under the Shipping and Pilotage Act and to bring all Western Australian trading ports under a single consistent regulatory regime. It is obviously very sensible legislation. The Department of Transport, as I understand, will still oversee and manage small boat harbours and marinas but the larger ports will be covered under this new regime. As I understand it, in most cases the regional port authorities will acquire only water areas and seabeds at the transferring ports because the land abutting the ports is not vested in the body corporate, being the Minister for Transport, and the assets along some of that land are privately owned. The port authorities' role will primarily relate to marine safety oversight of private ports facilities. This includes some really important transfers of responsibilities. For example, the port authorities will take over the appointment of harbour masters, approve ship pilots, be responsible for the safe movement of vessels, be responsible for the approval of new jetties that fall within the port's jurisdictions and the placement and maintenance of navigational aids and they will have responsibility ultimately for ensuring that the ports are safe and free from obstruction.

Six state agreements will need to be amended to reflect the new governance arrangements before the port facilities can transition towards the Port Authorities Act 1999. I am advised that those amendments will be minimal but they will nevertheless require agreement of the companies concerned and obviously legislative amendment of those state agreements is likely to be required and this Parliament will need to peruse those as the government progresses with the continued reform. There will no automatic transfer of a port upon proclamation of the act; rather, transitional orders will need to be made covering all the details before any port transfers occur. My understanding is that the ongoing consultation with interested parties, which has been occurring since 2009, will continue to ensure the smooth approval and general agreement and concurrence on the way forward. I anticipate that the Minister for State Development, Jobs and Trade will not have a problem agreeing to changes to these legislative instruments to enable the reform to progress.

The bill reverses a previous reform that formed part of the first tranche of the ports' agenda that was implemented in 2014, which was to do with section 60(2)(ka) and proposed arrangements to facilitate the participation of potential suppliers in the provision of port services or, if no arrangements are proposed, the reason and justification for their absence. This section of the legislation was designed around, I think, some of the Council of Australian Governments reforms of the time. The COAG reform agenda put in a requirement that the Western Australian ports look at all potential opportunities for private and external contractors to be engaged in the management of port facilities. My understanding is that that was around an efficiency drive to ensure that the ports were undergoing due diligence in ensuring that in looking at the best and most efficient operation for a port, the best way, for example, of providing a service whatever it may be—stevedoring et cetera—that the port authority had investigated all the options on the table and not just run with the status quo, whatever that may be. That was to form part of the reporting arrangements and was written into the amending legislation in 2013. But now that our ports model is quite mature with the four port authorities acting very efficiently and with good governance arrangements, the 2013 requirements for board membership and to ensure that we had appropriate people with appropriate skillsets represented on those boards to manage the strategic and business plans for our ports is now somewhat redundant because since the reform agenda started, our experience has been that those port authority boards are acting in very good faith and making good business decisions, and, certainly, structurally the system appears to be working efficiently and effectively.

We believe—and this is part of the reason that we commenced this regulatory reform in 2009—that the regional port authorities are better placed geographically to plan for and meet their marine safety obligations. There are specific requirements in specific areas. Ports are obviously big enablers of economic expansion for any state. Some of the infrastructure that sits within our ports is quite volatile, some of it can be quite dangerous and certainly any interruptions to the operations of a port can be quite significantly disadvantageous to the economies of Western Australia and, indeed, Australia. It is really important that we have the governance arrangements in place and ensure that local management of these ports is vested to the level that is operationally involved with the management of the ports.

I turn to other aspects of this legislation. I understand that there are different arrangements for the Kimberley ports with the transfer of Derby and Wyndham ports into the Kimberley Ports Authority. I think there are different arrangements with the seabed and the landholdings. The Kimberley Ports Authority will become the landlord at Derby and Wyndham, which is somewhat different from the 11 ports that will be transferred as part of this reform. I understand that the Kimberley Ports Authority will inherit land, jetties and other related port infrastructure, as well as water and seabed, which is a little different from the arrangements with the other ports transferring over as part of this reform and this enabling legislation.

I think some other aspects of the legislation are really sensible. Some of these legislative instruments have been around for a long, long time, such as the Jetties Act 1926. Obviously, it has been amended at some point in the interim. I notice that there is reform, revamp and some contemporisation of fines and penalties for some of the offences that people can commit against the Jetties Act, the Marine and Harbours Act and the marine safety legislation. Various clauses in the legislation contain amendments that increase the penalties from as little as \$200 or \$500 for different offences up to a fairly consistent \$12 000 for offences against those different legislative instruments. It is quite important that there are significant penalties for people who fail to comply with their regulatory requirements and who, indeed, through their actions can cause considerable safety concerns for users of the port. They can cause all sorts of issues with hazards that can remain in port areas and not be removed. Indeed, these days a \$200 penalty is probably not a significant deterrent for people, whereas a \$12 000 penalty in some of those circumstances is probably more consistent with what people would expect to pay as a consequence of noncompliance with these various legislative instruments and regulations.

I do not have a lot more to add to the debate. The opposition is very supportive of this reform agenda, which was started substantially by Hon Troy Buswell in 2009. Amending legislation in 2013 came into effect in 2014, and the new port structures are working very well. In fact, a recent review of the southern ports amalgamation came out with a big tick. It has a few recommendations for improvement, but generally it gave a big tick for the governance arrangements, the strategic plan and the business plan, which have certainly strengthened the operation and the capacity of the Southern Ports Authority in Esperance, Albany and Bunbury. Indeed, it proves that the reform agenda set in place by Hon Troy Buswell was a good reform agenda that was generally in the interests of the future development of the state and to facilitate the economic prosperity of the state.

I know my colleagues have contributions to make to the debate on this legislation. I commend the government for bringing this legislation forward. As I said, the opposition agrees with this legislative reform and we welcome any further reforms to the regulatory environment in which our ports operate.

MR W.R. MARMION (Nedlands) [11.53 am]: I rise to support this very good Ports Legislation Amendment Bill 2017, which was initiated by Hon Troy Buswell when he was Minister for Transport.

Today, we are basically implementing tranche 2. The previous government, with Troy Buswell as minister, implemented tranche 1. Tranche 1, which the shadow Minister for Transport just talked about, amalgamated the regional ports. This was important because when we came into government we found that ports were competing against each other for borrowings to develop their infrastructure and that they might be competing for the same project. A project proponent would go to each of the regional ports and ask, “What deal can I get to use your port to export my product?” We found that the Esperance or Albany ports might be putting requests into Treasury for millions of dollars’ worth of infrastructure for the same project, so it made sense to combine the ports of Bunbury, Albany and Esperance into the Southern Ports Authority to cover that sector of the state, for the Mid West Port Authority—Geraldton was really the only port there at the time—to cover the midwest region, for the Pilbara Ports Authority to cover Port Hedland, Dampier and Ashburton and for the Kimberley Port Authority to take in all the ports north of Port Hedland.

That was tranche 1. Today, we are here to support tranche 2. The problem we have with all the ports we have in Western Australia is that they come under a number of different acts. Predominantly, the Port Authorities Act covers what we would call the major ports—that is, Broome, Port Hedland, Dampier, Ashburton, Geraldton, Fremantle, Bunbury, Albany and Esperance. Those ports have a board to govern their operations and report to the minister, whereas the other ports, which some people might call lesser ports in terms of their size, are managed by the Department of Transport under the Shipping and Pilotage Act. These ports are Carnarvon, Port Walcott, Onslow, Barrow Island, Varanus Island, Cape Preston, Derby, Wyndham and Yampi Sound. Some of those ports have more than one facility. Onslow port covers Airlie Island and Thevenard Island; Carnarvon port covers Cape Cuvier and Useless Loop; and Yampi Sound port covers Koolan Island and Cockatoo Island. It made sense many years ago, and here we are today finally bringing in legislation to make ports more efficient and their governance structure a lot better. Indeed, it is a good reform for Western Australia.

Ports are very important to the state’s economy and it is important that they are managed well. If we are to have trade outside Western Australia—so, basically exporting our valuable products—we need ports. We have to be

sure that the state government, which is running the ports, has some leverage and control over their operations. I am a strong supporter of the current system. Indeed, we know from the experience in other states that we have to be very careful if we are going to change the management structure of ports so that the state has some control when a proponent that may want to export out of our state finds that it cannot.

Port Hedland port is a good example of the state having some control of the port, because it is a very difficult port to manage. It has problems with high tide. It has only one channel, which I think is about three miles long. Indeed, if the channel is blocked, it stops the whole operation of Port Hedland port. When I first became the member for Nedlands, a retired pilot for Port Hedland used to come and have a coffee with me. He was very concerned and said that there should be two channels into Port Hedland port to minimise the risk of perhaps an iron ore ship slewing sideways or sinking in the channel and blocking the whole channel. Running a port is a very difficult operation, with lots of risks involved, and requires a lot of good on-ground management.

I want to mention some of the issues around ports, because we support this bill entirely. The benefit of this legislation is that when it is phased in, the ports that currently come under the Shipping and Pilotage Act will come under this legislation. I understand that we cannot bring the ports under this legislation straightaway because some of them are under state agreement acts that need to be adjusted, but from what I have read and been briefed on, there is no problem with that because all the state agreement proponents are happy with this legislation, so it is just a case of phasing in those changes. That will mean higher levels of safety, because instead of coming in under the Shipping and Pilotage Act 1967 with the Department of Transport managing the safety aspects, under the Ports Authorities Act 1999 the operators of ports, a lot of them private, will be required to do a marine safety plan. They will be checked out by the various ports authorities and will have greater safeguards for the management of the ports.

As the shadow Minister for Transport mentioned, there is one slight anomaly in the way the transition will work in that two of the ports, Derby and Wyndham, have assets controlled by the Marine and Harbours Act 1981. My understanding, from reading the second reading speech, is that these assets will be transferred to the Kimberley Ports Authority. That will happen in two different ways; the minister might like to explain how they will be transferred because I understand that the Derby port is managed by the council, Wyndham port is managed by a private operator and the facilities are owned by the Department of Transport, managed by the Marine and Harbours Act. The ownership will transfer to the Kimberley Ports Authority.

There are a couple of issues around some of the ports. One of the issues of the management of ports is its interaction with the local community. On the one hand, all Western Australia's ports are basically major regional centres; I will use Esperance as an example. They are in either the town itself, or very close to the town, which is historically required for the trade linkages with the town. As ports have grown and standards such as environmental, air quality et cetera, have changed, there becomes a bit of a conflict with the location of ports being central to a regional centre. Esperance is probably one that stands out, with a major rail line and road routes right through the town. Indeed, one of the problems was the shipping of lead through the town and the contamination caused because of the proximity of the rail line being close to residents. Under a special health plan run by one of the Chief Health Officers, Michael Jackson, it cost around \$25 million to go through a lot of the water tanks in Esperance. That is important to realise. When we are siting a port, particularly now when we have a greenfields opportunity, it is important that we are careful with the location and its proximity to residents, particularly if it will be transporting hazardous materials, or materials that need to have some distance from people. Of course, these days, a lot of bulk materials are being transported in safer ways. Lead is a good example; previously, it was transferred in bulk, but now it is transported in double lined bags in locked containers. Times have changed, but obviously that adds to the cost of the efficient operation of the ports.

There is nothing else I really need to add and other people want to speak to this. We certainly support this legislation. I point out that I have visited most of the ports in Western Australia in my time either working in the regions or as a minister. Derby and Wyndham are interesting ports because historically they were ports that exported livestock, cattle and sheep. They were quite large ports that have become smaller, but as the cycle is changing with opportunities for mining exports out of Derby and Wyndham, the need for their operation is coming back into fruition. The challenge for Derby is that it is about 100 kilometres up a sound with terrible, massive tides. When the tides go out, the ships sit on the ground. It is well located, but with its proximity to Broome, Broome has probably become the preferred port. That is why it is a designated port whereas Derby has diminished, and that is the reason it has been run by the council. Because of the mining industry around there I know there are moves for Derby to be updated so that it can operate similarly to Broome.

I will just touch on some of the future ports that now come under the Port Authorities Act and not under the Shipping and Pilotage Act. One will be the Balla Balla port. I would be interested to know how that is going and hear the minister's comment on that. Obviously, the land around James Price Point is earmarked, and I would be interested in the minister's comment on the likelihood of any future port at that site. I would also be interested to

know how the Anketell port is going. Of course, I will finish with the Geraldton port. The Geraldton port was upgraded in the early 2000s for dredging. It is a shallow port. In fact, the dredging of that port was very difficult because of the waves and the weather conditions. It is a difficult port to run, but it was too shallow and so a lot of money was spent by the Geraldton Port Authority in the mid-2000s to deepen the port. That is the reason the nearby Oakajee site has been flagged for some decades now, as being a nearby deepwater port. When the minister wraps up, I would be interested in her view on the future of Oakajee given that the Geraldton port is a shallow port; it is difficult for bulk exports and even for tourist ships that come into Geraldton. Depending on the currents, wind, tides and, I guess more so, the waves, the actual docking of boats at the Geraldton port is a bit tricky. I could go on and talk about all the ports, but the importance is we get this bill through. Certainly, this is a bill initiated by Hon Troy Buswell, a very good Minister for Transport; he really got his hands dirty in transport, he knew what he was doing. This was one of his reforms initiated by him. He probably deserves all the credit and certainly, I very much support this bill.

MS R. SAFFIOTI (West Swan — Minister for Transport) [12.08 pm] — in reply: I thank the member for Nedlands for those comments and for the continuing praise of Hon Troy Buswell.

Mr W.R. Marmion: He is a good Bunbury boy.

Ms R. SAFFIOTI: You missed the one who came after him, member for Nedlands. It was not very nice.

Mr W.R. Marmion: He initiated this, we are talking about this bill.

Ms R. SAFFIOTI: Well, it was not very nice. I could feel the tension from over here. It is a bit awkward really. It was all a bit awkward that he forgot about the other Minister for Transport who preceded the member for Nedlands. Anyway, we will get over that awkwardness.

I thank the opposition for its support and I thank the members for Scarborough and Nedlands for their contribution. This is a part of the continued reform process for ports in WA. I acknowledge the first tranche of reform that was undertaken under the previous government. Of course, people have differing views of how successful the reforms have been so far. We have just gone to the review process for the Southern Ports Authority. Continually, we see a tension between a strict commercial view of what we should be doing and some other views about further economic growth in the community. Cruise ships are an example. Boards wanting to operate from a 100 per cent commercial viewpoint might say that cruise ships do not bring much value to the bottom line of the port itself, but the wider economic impacts for the facilitation of growth in the community and local economy are great. We will continue to see that tension in most government-owned or privately owned monopoly economic infrastructure between strict commercial imperatives and measures or projects that can be undertaken to facilitate wider economic growth. Issues have been raised directly in this chamber about the Southern Ports Authority. The concept of how connected the ports are to the local community is often raised. They have a role in not only facilitating trade, but also growing the local economy.

I am still seeking some advice on a couple of questions the member for Nedlands asked. The transfer of assets from Derby and Wyndham will be done by ministerial order and then the vesting of the land and the seabed. I will go through some information on the prospective ports. The Mid West Ports Authority, which operates the Geraldton port, is going through a master plan process, which has gone out for community consultation. A number of submissions have been made about the future role and growth of Geraldton port in the community. As we go forward I will continue to place importance on strong local communication in how the boards operate, because working with the community and explaining what they do in the community is very important. The member raised the issue of cruise ships at Geraldton port. The shoreside tensioning units have facilitated more consistent and reliable visitation of cruise ships. Generally, the cruise ship industry will be expanded through the master plan process. A state agreement is currently being negotiated for Balla Balla port, for which the Premier; Minister for State Development, Jobs and Trade is responsible. We are awaiting further commitments and discussion with proponents for a port at Anketell Point, but that has not progressed significantly over the last number of months given where the iron ore industry has been at, but, hopefully, that project will continue to move forward. Planning for a port at Oakajee is continuing. I deal with this with my Minister for Planning hat on. In particular, we are continuing to facilitate the requirements for the land-based industrial estates and the infrastructure corridors that will facilitate the port. That is an update on all those ports.

Mr W.R. Marmion: James Price Point?

Ms R. SAFFIOTI: The James Price Point process is, as the member knows, on hold after what happened under the last government. My advice is that it has all been put on hold.

I thank members for their support. I think it makes a lot of sense for local port authorities in management and control of these facilities, rather than the Department of Transport, to bring more consistency in how we work across the regions. Ports are a major and key part of our economic infrastructure to drive economic outcomes. Regional towns with ports are big drivers of jobs and economic activity. In many instances they are the foundation

of the local economy. I am very much aware of our role to continue to increase trade, but also to improve communication with local communities and, where possible, diversify, in particular with cruise ships.

I thank members for their support and look forward to the further stages of debate.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Ms R. Saffioti (Minister for Transport)**, and transmitted to the Council.