

# ***Ports and Marine Legislation Amendment Bill 2003***

## **Explanatory Notes**

### **Part 1— Preliminary**

#### **Clause 1 Short title**

This clause cites the title of the Act as the *Ports and Marine Legislation Amendment Act 2003*.

#### **Clause 2 Commencement**

The provisions of this Bill, excluding sections 5, 6 and 7, will come into operation upon receiving royal assent.

Clauses 5 and 6 which relate to the creation of interests in land and the use of fixed assets by port authorities, will be deemed to come into operation on 14 August 1999, the date on which the *Port Authorities Act 1999* was proclaimed. This occurs to remove any doubt as to the leasing powers of port authorities since the proclamation of the *Port Authorities Act 1999*.

Clause 7 will be proclaimed at a future date, to allow for the repeal of those regulations that are replicated in clause 7 of this Bill. .

### **Part 2— *Port Authorities Act 1999* amended**

#### **Clause 3 The Act amended**

This is a formal clause that identifies the statute to be amended by this Part as the *Port Authorities Act 1999*.

#### **Clause 4 Section 25 amended and saving**

Section 25 of the *Port Authorities Act 1999* vests all crown land, all navigation aids and fixtures which are located within the boundary of the port, in the port authority.

Whilst the provision of navigation aids for large shipping is met by the port authority, the erection and maintenance of navigation aids for small craft remains the responsibility of the Department for Planning and Infrastructure by virtue of orders made by the Governor pursuant to section 26.

This clause ensures that only navigational aids that were vested in a port authority prior to the commencement of this amendment Act remain vested in the port authority. Any new navigation aids installed by the State for use by

small vessels will thereafter continue to be owned and maintained by the State.

**Clause 5                      Section 27A inserted**

Prior to the coming into operation of the *Port Authorities Act 1999*, each port authority was established under its own Act and had the power to lease land for any purpose. The intention of the *Port Authorities Act 1999* was to provide port authorities with greater rather than less commercial freedom, and it was considered that section 30(2) would provide the relevant power.

Any ambiguity relating to port's leasing powers could jeopardise the port authorities capacity to use land that is being held for strategic purposes and long term development, and reduce the opportunity for business, community groups and individuals, to make interim use of areas and land under the control of port authorities.

This clause will ensure port authorities have the necessary power to grant easements, leases or licences for any purpose that it considers to be appropriate, in keeping with the amended port authority function at clause 6 of this Bill.

**Clause 6                      Section 30 amended**

This clause should be read in conjunction with clause 5 of this Bill.

Section 30 of the *Port Authorities Act* details the functions of a port authority. This amendment will expand those functions by allowing a port authority to use its fixed assets for profit provided it does not affect the proper performance of its functions.

This will include the leasing of land and will ensure that existing leases, issued for a variety of purposes, including government administrative offices, aquaculture leases, ferry terminals and yacht clubs, are valid.

**Clause 7                      Part 7 Divisions 6 and 7 inserted**

**Division 6 — Powers of police officers and others**

In keeping with a Ministerial undertaking given to the Joint Standing Committee on Delegated Legislation, the following clauses (and subsequent clauses within this Part) will transfer existing regulatory provisions to the *Port Authorities Act 1999*.

The insertion of section 114A will provide power for a police officer or person authorised by the port authority to enter a vessel, and conduct any

examination or inquiry that he considers necessary to determine if there has been compliance with the Act.

This power is required to enable port authorities to check on such matters as the unlawful discharge of ballast water whilst in the port and safety requirements such as the need for a vessel to have a person on watch duty. These requirements are now even more essential with the recent focus on airport and seaport security against terrorism activities.

## **Division 7 — Protection from liability**

### **114B. Immunity from liability for damage to vessels**

The insertion of section 114B will protect a port authority from liability for any loss or damage caused to a vessel in port. This includes damage resulting from the Master of a vessel complying with a direction given in good faith by a harbour master or a staff member of the port authority. In addition, a port authority will not be liable for damage that results from a defect in a mooring, anchorage or berth, or other infrastructure provided by the port authority.

Port authorities, which are wholly government owned, provide essential infrastructure and services for the benefit of the W.A community. The port authorities therefore need to be indemnified to protect the government and taxpayers from associated liability. Users of port facilities however, will still have recourse to insurance for any loss incurred.

### **114C. Immunity from liability for damaged goods**

The insertion of section 114C will protect the port authority from liability for any loss or damage caused to goods loaded or unloaded from a vessel, or stored in the port, by other than the port authority.

The port authority will not become liable for any loss or damage caused to any such goods, by virtue of attempting to provide cover or protection for the goods.

Port authorities need to limit the liability of the government and tax payers, particularly in relation to the handling of goods, which is a service provided by private enterprise stevedores, who should be the primary target of any claims for compensation and who have recourse to insurance.

### **114D. Immunity from liability for delay in delivery of goods**

The insertion of section 114D will protect a port authority from liability for any loss resulting from or relating to a delay in the delivery of goods loaded on or unloaded from a vessel at the port.

Port authorities need to limit the liability the government and tax payers, particularly in relation to delays in the handling of goods, which is a service provided by private enterprise stevedores, who should be the primary target of any claims for compensation and who have recourse to insurance.

#### **114E. Immunity from liability for certain events and actions**

The insertion of section 114E will exempt a port authority from liability for any loss or damage resulting from an event outside the control of the port authority. This immunity is necessary to limit taxpayer liability through government ownership of port authorities. The immunity relates to matters excluded by most contracts of insurance.

Clause 12 of this Bill will allow the Minister to delegate to a port authority the power to respond to a spill of oil or noxious liquid substances outside of port waters but within state waters. Where the Minister so delegates, subclause (2) will exclude a port authority from any liability for loss or damage resulting from any action taken or caused by the port authority when responding to such spills.

It is necessary to enable port authorities to act on behalf of the Minister outside of port waters. In the absence of an indemnity, the port authorities would be expected to take a commercial decision (in terms of their legislated duty to act in a commercial manner) and not incur the liability by acting for the Minister. In this instance the port authorities would be acting as the agent of the Minister, who would still retain any liability for the actions of the port authorities.

#### **Clause 8                      Section 131 amended**

This clause will insert offence provisions (currently contained in regulations made under the Act relating to hindrance of port facilities) to the *Port Authorities Act 1999*.

The clause will insert offences for obstructing, impeding or interfering with port facilities or the operation of a port, and causing a nuisance at a port. These provisions are essential to ensure the continued serviceability of essential port facilities such as lifebouys and firefighting equipment. Similarly, it will ensure that port operations including the berthing and loading of vessels can be undertaken safely.

#### **Clause 9                      Schedule 7 amended**

Schedule 7 sets out the regulation making powers of the Act. This provision removes the regulatory making power set out in item 39 of Schedule 7, which by virtue of clause 8 (above) is no longer required.

This clause inserts a revised power for regulations to be made which relate to the protection of port facilities and port authority property in the interests of protecting government owned assets and limiting government and taxpayer costs.

**Part 3 — *Pollution of Waters by Oil and Noxious Substances Act 1987* amended**

**Clause 10 The Act amended**

This is a formal clause that provides that the amendments in Part 3 are to the *Pollution of Waters by Oil and Noxious Substances Act 1987*.

**Clause 11 Section 3 amended**

This amendment deletes reference to the *Ports (Functions) Act 1993* in section 3(1) of the *Pollution of Waters by Oil and Noxious Substances Act 1987*, and replaces it with a reference to the *Port Authorities Act 1999*.

**Clause 12 Section 6 amended**

This amendment will enable the Minister to delegate power to a port authority to respond to a spill of oil or noxious liquid substances outside of port waters but within State waters.

This will enable the use port authorities to respond to spills, depending on safety equipment at the port and proximity to the spill.

**Clause 13 Section 27 amended**

This clause will amend the Act to provide power for an appropriate authority (the Minister or the Minister's delegate) to respond to recoup costs incurred by the authority in responding to a potential oil spill. These provisions will enable preventative action and add to existing response and cost-recoupment provisions for actual oil spills.

**Clause 14 Section 28 amended**

This clause amends the Act to extend existing provisions for response and cost recoupment in relation to actual spills of noxious liquid substances, to include response and cost recoupment for anticipated spills. It will enable preventative action.