

# PILBARA PORT ASSETS (DISPOSAL) BILL 2015 PILBARA PORT ASSETS (DISPOSAL) BILL 2015

## EXPLANATORY MEMORANDUM

### OVERVIEW

The *Pilbara Port Assets (Disposal) Bill 2015* (the Bill) has been drafted to provide for the disposal of the whole or part of certain businesses carried on by, or all or any of certain assets or liabilities owned or managed by, the Pilbara Ports Authority, and for related purposes.

The Bill consists of 47 clauses that broadly provide for:

1. authorising the disposal of all or part of certain assets and liabilities of the Pilbara Ports Authority and associated assets;
2. controls and limitations on the parameters of the disposal; and
3. post-sale transitional arrangements and regulatory matters.

The Bill is divided into six parts as outlined below:

- Part 1 relates to the usual preliminary matters and specifies that the Bill will come into operation on the day after it receives Royal Assent.
- Part 2 deals with the authorising powers and related limitations for the disposal (including the limitation that land can only be disposed of under the Act to a private entity if the interest is a licence or an interest in land no greater than a leasehold interest, in either case for a period not exceeding 99 years).
- Part 3 provides for the administrative mechanics of implementing the disposal, including (but not limited to) the making of transfer orders; access to records; registration of documents; disclosure of information; and the payment of proceeds.
- Part 4 relates to specific provisions for the use of corporate vehicles in a disposal, ensuring that relevant laws may, if prescribed by regulations, apply to the operation of the port assets while held in a corporate vehicle which is owned by the Pilbara Ports Authority or the State, prior to disposal.
- Part 5 contains provisions relating to leases and licenses, including the designation of port asset leases and lease holders; and provisions relating to the effect of port assets leases.
- Part 6 covers a range of miscellaneous matters, including (but not limited to) the optional exemption of the disposal from State taxes; protection of existing leases; and regulations for the purposes of disposal of the assets and regulating access to and pricing of services.

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### CLAUSE NOTES

Outlined below is a brief description of each clause of the *Pilbara Port Assets (Disposal) Bill 2015*.

#### **PART 1            PRELIMINARY MATTERS**

##### **Clause 1:        Short Title**

When enacted, the Bill will be cited as the *Pilbara Port Assets (Disposal) Act 2015*.

**Clause 2: Commencement**

Provides that the Bill comes into operation on the day after the Act receives Royal Assent.

**Clause 3: Terms Used**

Defines the terms used in the Bill.

**Clause 4: Associated Assets and Associated Agencies**

Clause 4(1) defines the term 'associated State asset'.

Clause 4(2) defines the term 'associated SC asset' (associated statutory corporation asset).

Clause 4(3) defines the term 'associated agency'.

**Clause 5: Purposes of Section 10 Disposal**

Outlines the purposes of clause 10 disposals as contemplated by the Bill. A section 10 disposal order provides the formal trigger for the Minister to order the sale of the assets.

Sub-clause (a) and (b) provide that the purposes of a section 10 disposal include to effect or facilitate the disposal, and any purpose ancillary or incidental to, or consequential on, the disposal. It is intended to capture all acts done in accordance with a disposal under the Bill without unduly limiting potential activities.

**Clause 6: Things on Land**

Provides that 'a thing that is on land' is a reference to "a thing that is on, in, over or under the land".

**Clause 7: Severance of Things on Land**

This clause allows the Minister to order in writing that specified fixtures be severed from the land for the purposes of a section 10 disposal.

Clauses 7(2)(a), (b) and (c) outline the effect of such an order, being to: sever specified things from the land, even where, under ordinary interpretation, those things would otherwise be considered a 'fixture' and render such things capable of being assigned separately from the land or removed from the land by, or with authority of, the owner of the land.

Clause 7(3) provides certainty that severance of a thing from the land does not detract from its right to be on the land.

Clause 7(4) permits the Minister to amend or withdraw the order.

**Clause 8: Act Binds Crown**

Provides that when the Bill is passed, the Act binds the State and, so far as is possible, the Crown in all its other capacities.

## **PART 2            ENABLING DISPOSAL**

### **Clause 9:            Disposal of Port Assets and Associated Assets Authorised**

This Clause provides legislative authority to the Pilbara Ports Authority, a corporate vehicle or the State to dispose of port assets in accordance with the Act and a section 10 disposal order. It also authorises an associated agency or the State to dispose of assets associated with a port asset in accordance with the Act and a section 10 disposal order.

### **Clause 10:            Minister May Order Disposal of Port Assets or Associated Assets**

This clause provides for the authorisation under the Act to dispose of all or specified port assets and associated assets.

Clause 10(1) cites that the Minister responsible for administering the Bill (the Minister) may direct the disposal of a port asset or associated asset by publishing an order in the *Government Gazette* (Gazette). Sub-clause (b) permits the Minister to amend or withdraw the order at any time before it is carried out.

Clause 10(2) provides that the order may be expressed in general terms, and details are not required about how the disposal will be carried out or the specific details about the assets to be disposed.

Clause 10(3) states that the Treasurer's approval must be obtained prior to the Minister making an order (thereby catering for a situation in which the Minister responsible is not the Treasurer).

Clause 10(4) provides that the order takes effect the day following publication of the order in the Gazette, or at a later day as specified in the order.

### **Clause 11:            Effecting Disposal**

This clause provides flexibility for the potential arrangements and transactions that may be entered into, and the legal vehicles and mechanisms (trusts, companies etc.) that may be used to facilitate a disposal.

Clause 11(1) states that there are no limitations upon the nature of the transactions or arrangements that can be entered into or used to carry out a disposal with the exception of clause 12 (restrictions on disposal of land).

Clause 11(2) clarifies that express provisions relating to particular legal entities do not limit the type of legal entity that can be established to carry out a disposal.

Clause 11(3) provides that one or more corporate vehicles and one or more trusts can be used for a disposal.

Clause 11(4) cites that if a company owned on behalf of the State is to be used for a disposal, then the Under Treasurer, on behalf of the State, is to arrange for the creation of the company.

Clause 11(5) provides that the Minister or Treasurer may, on behalf of the State, own and dispose of shares in the company.

Clause 11(6) permits the Minister to enter into any agreement, on behalf of the State, to carry out a disposal.

**Clause 12: Disposal of Land**

Clause 12 imposes limitations on the nature and term of interests in respect of land that can be transferred to a private third party under the Act. In summary, ownership cannot be transferred to a private entity, only a licence or an interest in land no greater than a leasehold interest may be granted and the period of any such interest may not exceed a period of 99 years.

Clause 12(1) lists the types of land which can be disposed of under this Bill, being Crown land and freehold land owned by the Pilbara Ports Authority, an associated agency, corporate vehicle or the State.

Clause 12(2) states that land under clause 12(1) can only be disposed of under the Bill to a private third party if the interest is a licence or an interest in land no greater than a leasehold interest with a period that does not exceed 99 years.

Clause 12(3) states that shares in a corporate vehicle can only be disposed of to a private entity if, in respect of land under clause 12(1), the corporate vehicle holds a licence or an interest in land no greater than a leasehold, in each case for a period that does not exceed 99 years.

Clause 12(4) provides the basis for calculating the period for which an interest in land or licence is held, specifying that any 'further period', a phrase defined in clause 12(5) is to be included in the calculation.

Clause 12(5) defines the phrase 'further period' as including any further interest in the land or further licence in respect of the land, whether granted under options to renew the interest or licence, or to renew any further interest or licence or otherwise.

Clause 12(6) clarifies that clause 12 overrides sections 28(3) and (4) of the *Port Authorities Act 1999*. Clause 12 does not override the requirement to obtain Ministerial approval under section 28(1) of the *Port Authorities Act 1999*.

**Clause 13: Land Subject to Unregistered Leases with Terms Exceeding 5 Years**

Clause 13 provides that land disposed of under the Bill is subject to certain prior unregistered leases and agreements for lease despite section 68 of the *Transfer of Land Act 1893* and the lack of notification of such leases on the certificate of title or registered instrument for the land.

**Clause 14: Functions and Powers of Minister**

Provides that the Minister has all functions, and may exercise all powers, as are necessary or convenient for the purposes of the Bill, including the power to acquire land to facilitate a disposal.

**Clause 15: Functions and Powers of Authority**

Provides that the Pilbara Ports Authority has all functions, and has and may exercise all powers, as are necessary or convenient for the purposes of carrying out disposal of a port asset under the Bill, including the power to acquire land to facilitate a disposal.

**Clause 16: Functions and Powers of Associated Agencies**

Provides that an associated agency has all functions, and has and may exercise all powers, as are necessary or convenient for the purposes of carrying out a disposal of an associated SC asset under the Bill, including the power to acquire land to facilitate a disposal.

**Clause 17: Functions and Powers of Corporate Vehicles**

Provides that the corporate vehicle has all such functions, and has and may exercise all such powers, as are necessary or convenient for the purposes of carrying out a disposal of a port asset under the Bill, including the power to acquire land to facilitate a disposal and the power to create subsidiaries.

**Clause 18: Directions by Minister**

This clause enables the Minister to give directions to the Pilbara Ports Authority, associated agencies and corporate vehicles for the purposes of a section 10 disposal, including to facilitate a section 10 disposal. Furthermore, it provides protection to persons complying in good faith with a Ministerial direction from certain liabilities and from contravention of the *Port Authorities Act 1999*.

Clause 18(1) empowers the Minister to give directions to the Pilbara Ports Authority, an associated agency or corporate vehicle for the purpose of a disposal.

Clause 18(2) requires the Pilbara Ports Authority, associated agency or corporate vehicle to comply with a direction given to it by the Minister.

Clause 18(3) protects the Pilbara Ports Authority, associated agencies and corporate vehicles, and their directors and officers from liability for, and contravention of the *Port Authorities Act 1999* or the *Western Australian Land Authority Act 1992*, for acts done or omitted to be done in good faith in compliance with a direction.

Clause 18(4) provides that unless the Ministerial direction specifies otherwise, nothing in the direction will affect any requirement under the *Port Authorities Act 1999* or the *Western Australian Land Authority Act 1992* for the approval of a Minister to be obtained in relation to any matter.

Clause 18(5) declares clause 18 to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* (Commonwealth).

**Clause 19: Regulations about Corporate Vehicles and Trusts**

This clause provides that relevant regulations may be made to govern a corporate vehicle or trust used for a disposal.

Clause 19(1) states that if a corporate vehicle or trust is to be used for a disposal, regulations may impose requirements on the constitution, trust deed or other constituent document of the corporate vehicle or trust.

Clause 19(2) provides the potential for regulations to declare that matters dealt with under the regulations referred to in clause 19(1) are excluded matters for the purposes of section 5F of the *Corporations Act 2001* (Commonwealth).

**PART 3            IMPLEMENTING DISPOSAL**

**DIVISION 1        TRANSFER ORDERS**

**Clause 20:        Minister May Make Transfer Orders**

This clause empowers the Minister to make transfer orders which specify the assets (including rights) and liabilities (including obligations) that are to be transferred, the proceedings in which the transferee will be substituted and the agreements or instruments that will be assigned to the transferee. This clause also deals with administrative matters, including the timing of Gazettal, the flexibility to use schedules where practicable and the ability to amend transfer orders in certain circumstances.

Clause 20(1) authorises the Minister to publish transfer orders in the Gazette in order to effect a disposal. It outlines the content which may be included in a transfer order for the purposes of a section 10 disposal. The Minister is not compelled, but may include details outlining: a time after the day of Gazettal for the transfer order to take effect (sub-clause 1(a)); the assets or liabilities to be transferred (sub-clause 1(b)); substituted proceedings for the transferee (sub-clause 1(c)); and substitution of references to the transferor with references to the transferee in any agreement or instrument relating to anything transferred.

Clause 20(2) requires the Minister to, where a transfer order is issued contingent on an event, publish notice in the Gazette of that event occurring.

Clause 20(3) recognises that it may not be practical or possible to include all details of a disposal in a transfer order. It authorises the use of schedules to disclose information. It does not require that such schedules be published in the Gazette, but does necessitate these schedules be made available for public inspection for 6 months following publication of the transfer order.

Clause 20(4) specifies that the definition of a business day excludes a Saturday, Sunday and public holiday.

Clause 20(5) and (6) state that persons or things specified in a schedule to a transfer order are taken to be specified in the transfer order itself and allow for persons or things to be specified in a schedule by description as a member of a class.

Clause 20(7) requires that the Minister consult with the officials listed in clause 25(2) regarding the form and content of the schedule prior to issuing a transfer order for the purpose of facilitating the recording and registration of instruments and documents.

Clause 20(8) permits the Minister to amend a transfer order or schedule only if it is done before the transfer time and with the consent of the transferee.

**Clause 21:        Consequences of Transfer Orders**

This clause states that at the transfer time, the assets, liabilities and proceedings specified in the transfer order will be transferred to the transferee.

Clause 21(1) defines the term 'specified' for the purposes of this clause.

Clause 21(2) outlines the consequences that arise as a result of a transfer order. The effect of a transfer order is to bring into effect all the necessary transfers of assets, liabilities and proceedings specified in the transfer order from the transferor to the transferee.

The consequences of a transfer order come into effect only from the time that is specified in the transfer order itself.

Sub-clause (2)(a) provides that transfer orders operate to transfer assets specified in the transfer order to the transferee. Similarly, sub-clause (2)(b) provides that transfer orders operate to transfer liabilities specified in the transfer order to the transferee. Sub-clause (2)(c) states that the transferee will be substituted for the transferor in specified proceedings. Sub-clause (2)(d) adds that the transferee will become a party to any agreements or instruments specified in the transfer order in place of the transferor. Sub-clauses (2)(e) and (2)(f) relate to proceedings and remedies and acts or omissions relating to a transferred asset or liability.

**Clause 22: Completion of Transactions for this Division**

To the extent that a transfer order cannot have the required effect, the Minister and the transferor are to take all practicable steps to achieve the required effect.

**Clause 23: Effect of Arrangements Internal to Transferors**

This clause allows the transferee to derive the benefits the transferor was receiving from, and be bound by the requirements of, internal commercial arrangements of the transferor, provided that these arrangements are specified in the transfer order.

Clause 23(1) states that an instrument providing for arrangements between different parts of the transferor's business may be specified in a transfer order as if it created contractual rights and liabilities.

Clause 23(2) cites that the provisions of an instrument providing for arrangements between different parts of the transferor's business be recognised as contractual provisions between different legal entities.

Clause 23(3) allows for the transfer of the contractual right or liability arising because of clause 23(2).

**Clause 24: Delivery and Access to Records**

This clause provides for the effective delivery of and access to the transferor's records where the Minister considers it appropriate that the records are made available to a transferee.

Clause 24(1) defines the term 'record' and phrase 'relevant record'.

Clause 24(2) provides that the Minister may issue a direction to the transferor, outlining the relevant records that must be made available or shared with the transferee in accordance with the transfer order.

Clause 24(3) requires the transferor to comply with the requirement to deliver, share or give access to records outlined in the direction.

Clause 24(4) states that the transferor and transferee must make the necessary arrangements to enable access to the records specified in the direction.

Clause 24(5) declares clause 24 to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* (Commonwealth).

**Clause 25: Registration of Documents**

This clause requires officials responsible for the registration of documents to take notice of the disposal and amend the relevant registers accordingly.

Clause 25(1) defines the term 'relevant official' for the purposes of this clause.

Clause 25(2) outlines the instruments that the Minister must provide to relevant officials.

Clause 25(3) requires that relevant officials take notice of the disposal and record and register the instruments accordingly.

**Clause 26: Correction of Errors in Transfer Orders**

This clause provides a mechanism to correct errors in a transfer order or schedule to a transfer order.

Clause 26(1) provides the Minister with the power to issue an order, published in the Gazette, to correct errors in the transfer order or schedule.

Clause 26(2) cites that an order published in the Gazette correcting errors in the transfer order or schedule may be expressed to come into operation on or after the transfer time.

Clause 26(3) applies to the extent a correction order takes effect before its publication in the Gazette, in order to protect the rights of, and ensure liabilities are not imposed on, any person (other than the State, the transferor or transferee, the Minister or an officer or agency of the State) for the rights of, and the acts done or omitted to be done in relation to the correction of errors that occur before the order is published.

**DIVISION 2 DISCLOSURE OF INFORMATION**

**Clause 27: Authorised Disclosure of Information**

This clause provides that the disclosure of information authorised under clause 27 is not to be regarded as a breach of contract or confidence or a contravention of the specified written laws.

Clause 27(1) states that a disclosure of information authorised under clause 27 is not to be regarded as a breach of contract or confidence or a contravention of duties under Schedule 3 to the *Port Authorities Act 1999*, Schedule 1A to the *Western Australian Land Authority Act 1992* and section 5 of the *Statutory Corporations (Liability of Directors) Act 1996* or a breach or offence under a written law that prohibits or restricts disclosure of information.

Clause 27(2) authorises the Government, the Pilbara Ports Authority, an associated agency, a corporate vehicle or persons acting with the authority of any of those bodies to disclose information for the purposes of a section 10 disposal.

Clause 27(3) recognises that it is likely that information will be disclosed prior to the Bill coming into operation. This clause clarifies that the disclosure of information for the purposes of a section 10 disposal includes a disclosure made for the purposes of a potential section 10 disposal, even if the disclosure is made before the Bill comes into operation.

**Clause 28: Auditor General May Disclose Information**

Despite the *Auditor General Act 2006* section 46(2), the Auditor General may, for the purposes of a section 10 disposal, disclose to any person, or provide any person with access to, information in the possession of or under the control of the Auditor General.

**Clause 29: Offence of Disclosing Information**

This clause states that a recipient of information in connection with a disposal



commits an offence if they disclose the information in breach of an agreement or duty not to disclose the information. This provision is intended to prevent potential purchasers and their advisers from improperly disclosing the information they receive as part of the disposal due diligence process.

Clause 29(1) limits the application of clause 29(2) to 'bound recipients', as defined in the clause.

Clause 29(2) states that a bound recipient commits an offence if they obtain information connected with a section 10 disposal and breach an agreement or duty not to disclose the information to others and may be liable for a \$200,000 fine as specified in clause 29(2).

Clause 29(3) extends the offence to persons who obtained the information from a bound recipient in certain circumstances, with a fine of \$200,000 specified as the penalty under clause 29(3).

Clause 29(4) ensures that the offences apply to information received by a person before the Bill comes into effect, resulting in an offence if such information is disclosed as contemplated by clause 29 after the Bill is in operation.

### **DIVISION 3      OTHER MATTERS**

#### **Clause 30:      Application of Proceeds of Disposal**

Requires all proceeds from the disposal of assets are to be paid to the Treasurer or as otherwise directed by the Treasurer.

#### **Clause 31:      Provision by State of Indemnities and Guarantees**

This clause empowers the Treasurer to grant indemnities in respect of matters related to the disposal. This provision is necessary to enable directors and officers of the Pilbara Ports Authority, associated agency and corporate vehicle to co-operate and comply with the sales process.

Clause 31(1) empowers the Treasurer, on behalf of the State, to give an indemnity or guarantee in respect of a matter related to a section 10 disposal, or the action by which anything is disposed of in relation to a section 10 disposal.

Clause 31(2) specifically empowers the Treasurer, on behalf of the State, to give indemnities to existing and past directors and officers of the Pilbara Ports Authority, an associated agency or corporate vehicle.

Clause 31(3) provides that the Treasurer must pay amounts due under any indemnities or guarantees granted on behalf of the State under the clause.

Clause 31(4) states that payments for indemnities or guarantees made by the Treasurer are charged to the Consolidated Account and provides automatic appropriation of these funds.

#### **Clause 32:      Takeover by State of Certain Obligations**

This clause allows the Treasurer, on behalf of the State, to take over obligations in connection with the disposal.

Clause 32(1) applies clause 32 to obligations of the Pilbara Ports Authority, an associated agency or a corporate vehicle.

Clause 32(2) empowers the Treasurer, on behalf of the State, to take over obligations

in connection with a section 10 disposal under this Bill.

Clause 32(3) applies where performance of an obligation was guaranteed by the State, allowing the State to release any security it holds, and release persons from undertakings in relation to such guarantees.

Clause 32(4) enables the Treasurer to authorise the payment of money to discharge obligations that are taken over by the State under clause 32(2).

Clause 32(5) states that payments to discharge obligations are charged to the Consolidated Account and provides automatic appropriation of these funds.

#### **PART 4 PROVISIONS RELATING TO CORPORATE VEHICLES**

##### **Clause 33: Application of this Part**

Provides that the scope of this Part is limited to scenarios where a corporate vehicle is used to facilitate the disposal of the assets, where the assets have been disposed to that corporate vehicle from the Pilbara Ports Authority, an associated agency or another corporate vehicle.

##### **Clause 34: Acquirer's Powers and Duties**

To the extent prescribed by regulations, provides a corporate vehicle with the same powers, duties, rights and obligations in respect of the port assets or associated SC assets it acquires as were held by the Authority, associated agency or corporate vehicle from which it acquired the assets. This ensures the corporate vehicle, being a non-private entity, has appropriate powers in any interim period prior to a disposal to a private entity.

##### **Clause 35: Application of Written Laws to Acquirer**

Clause 35(1) defines the phrase 'applicable written law'.

Clause 35(2) expresses that, to the extent prescribed in regulations, any applicable written laws apply to or in relation to the corporate vehicle, with any changes prescribed by the regulations.

Clause 35(3) allows the regulations to provide that certain references to the Pilbara Ports Authority, an associated agency or a corporate vehicle before the disposal occurred are to be taken to include the acquirer.

#### **PART 5 PROVISIONS RELATING TO LEASES AND LICENCES**

##### **Clause 36 Terms Used**

This clause defines the phrase 'port facilities instrument'.

##### **Clause 37 Minister May Designate Certain Matters**

This clause provides for the designation of port facilities instruments and port facilities instrument holders for the purposes of the Act.

Clause 37(1) defines the phrases 'associate' and 'related body corporate'.

Clause 37(2) provides that the Minister may, by order published in the Gazette, designate a lease or licence as a port facilities instrument for the purposes of clause 38 or 39, designate the lessee or licensee under a port facilities instrument or an associate of such lessee or licensee as a port facilities instrument holder for the

purposes of clause 39, or designate an agreement or arrangement as an agreement or arrangement entered into in connection with a port facilities instrument for the purposes of clause 38.

Clause 37(3) enables the Minister to vary or revoke an order made under sub-clause 37(2), which must be published under clause 37(4) in the Gazette.

**Clause 38**      **Effect of Provisions of Port Facilities Instrument**

This clause is designed to ensure that certain provisions under specific transaction documents (port facilities instrument or an agreement or arrangement entered into in connection with the port facilities instrument) have effect on their terms despite any law or rule to the contrary.

Clause 38(1) defines 'lessee or licensee', 'lessor or licensor' and 'related arrangement' for the purpose of this clause.

Clause 38(2) provides that provisions of a port facilities instrument (or of any related arrangement) that relate to the matters specified in clause 38(2)(a) to 38(2)(f) have effect according to their terms despite any law or rule to the contrary. The specified provisions include those dealing with: payments of any amount and retention of such amounts by the lessor or licensor or the State (sub-clause (2)(a)); the non-refundability of certain payments (sub-clause (2)(b)); amounts payable by the lessee or licensee on breach or early termination (sub-clause (2)(c)); continuance of the agreement or related arrangement, and the obligations of the lessee or licensee under the agreement despite the occurrence of unintended or unforeseen circumstances (sub-clause (2)(d)); the circumstances or conditions relating to termination by a party; and the lessor's, licensor's or State's right of re-entry or forfeiture.

**Clause 39**      **References to Port Authority May Include Other Entities**

Clause 39(1) defines the phrases 'affected written law', 'port facilities instrument holder' and 'specified'.

Clause 39(2) allows regulations that provide that a reference to a port authority in a provision of an affected written law which is specified in the regulations is to be taken as a reference to a specified port facilities instrument holder or to be taken to include a reference to a specified port facilities instrument holder.

**Clause 40**      **Making and Registration of Certain Lease Variations**

This clause operates in relation to agreements to lease land which exist between the Authority, the State or an associated agency and another entity before a section 10 disposal takes place.

Clause 40(1) defines the phrase 'relevant official' by reference to the meaning given in clause 25.

Clause 40(2) provides that, if the matters specified in clause 40(2)(a) to 40(2)(c) occur, the acquirer's lease may be varied to add certain land, creating a concurrent lease over the additional land.

Clause 40(3) provides that, if the Minister certifies in writing that the matters set out in clause 40(2)(a) to 40(2)(c) have occurred and the acquirer's lease has been varied to include the additional land in accordance with clause 40(2), creating a concurrent lease over that land, a relevant official may record and register the variation to the acquirer's lease.

**PART 6 MISCELLANEOUS MATTERS**

**Clause 41 Exemption from State Tax**

This clause operates to exempt disposals effected under the Bill from the imposition of duties and other State taxes. It also provides flexibility for the Minister to render an exemption inapplicable including where imposition of a State tax is considered desirable to an acquirer.

Clause 41(1) defines the phrase 'State tax' for the purposes of the Bill.

Clause 41(2) exempts anything occurring by operation of Parts 2 and 3 of the Bill, or to give effect to those Parts, from the payment of duty under the *Duties Act 2008* and other State taxes, duties, fees, levies, or charges.

Clause 41(3) provides that the Minister may certify in writing that a specified thing occurred by operation of, or was done to give effect to, Parts 2 and 3.

Clause 41(4) provides that a certificate under sub-clause (3) is adequate for all purposes and in all proceedings.

Clause 41(5) recognises that the State tax exemption may not be desirable in some circumstances. This clause provides the Minister with the flexibility to direct (whether in a transfer order or in writing) that the exemption will not apply to a particular asset or part of a transaction.

**Clause 42: Effect of this Act on Existing Rights and Obligations**

Provides that the operation of the Bill, and acts done, or omitted to be done, under or for the purposes of the Bill are not to be regarded as a breach of confidence or civil wrong, a breach of contract or instrument, requiring an act to be done under a contract or instrument, giving rise to a right or remedy or causing or permitting termination or exercise of rights under a contract or instrument, an event of default, voiding or rendering a contract or instrument unenforceable or, subject to clauses 32(3) and (4) releasing a surety or other obligation.

Clause 42(2) provides that clause 42 does not limit the Government agreements protection clause, clause 44.

**Clause 43: No Compensation Payable**

Clause 43(1) absolves the State from the payment of compensation as a result of the enactment or operation of the provisions under this Bill, statements and conduct relating to the enactment or in connection with the disposal of a port asset or associated asset under the Bill.

Clause 43(2) states that the exemption does not apply to amounts payable as a result of agreements entered into in order to carry out a disposal.

Clause 43(3) provides that clause 43 does not limit the Government agreements protection clause, clause 44.

**Clause 44 Government Agreements Not Affected**

Clause 44(1) defines the phrase 'Government agreement', which includes such agreements as varied over time.

Clauses 44(2) and (3) provide that the Bill does not prejudice or in any way affect any right or obligation of a party to a Government agreement, nor limit the operation of the

*Government Agreements Act 1979* in relation to the Bill.

Clause 44(4) provides that clause 44 does not limit clause 27, with an authorised disclosure of information under that clause applying notwithstanding clause 44.

**Clause 45: Regulations for Purposes of, or Consequential on, Section 10 Disposals**

This clause allows for regulations to be made for the purposes of section 10 disposals.

Clause 45(1) defines the phrases 'publication day' and 'the State'.

Clause 45(2) provides that regulations can be made for matters that are necessary or convenient for giving effect to a section 10 disposal or to deal with anything contained in or done under Parts 2, 3, 4 or 5 of the Bill.

Clause 45(3) states that while regulations can be expressed to take effect anytime preceding their day of publication, they only take effect on the day following the publication of the section 10 disposal order in the Gazette.

To the extent that regulations take effect before their day of publication, clause 45(4) protects the rights of, and ensures liabilities are not imposed on, any person (other than the State, the disposer or acquirer, the Minister or officer or agency of the State) in relation to acts done or omitted to be done before the publication day of those regulations.

**Clause 46: Regulations for Purposes of Providing Access to Services**

Clause 46(1) defines the phrases 'access arrangement', 'price regulation', 'regulator', 'service' and 'service provider'.

Clause 46(2) states that regulations may be for the purposes of providing access to a service and/or price regulation of a service.

Without limiting clause 46(2), clause 46(3) specifies the matters that the regulations may provide for, including: lodgement of service access terms and conditions and/or price regulation arrangements with the regulator; appropriate approval processes for approval of terms and conditions and subsequent amendments by the regulator; provisions for the production of information; duties and requirements for service providers; segregation of functions and business, services between related bodies corporate; arbitration of disputes; provisions in relation to civil penalty provisions and fines; and review of decisions made under the regulations and conferral of functions on the Minister, the Economic Regulation Authority or any other person.

Clause 46(4) clarifies that access arrangements are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

**Clause 47 Regulations**

The Governor may make regulations prescribing matters required or permitted to be prescribed by the Bill, or necessary and convenient to be prescribed for giving effect to the Bill.