

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

Supplementary Notice Paper No. 161
Issue No. 4

WEDNESDAY, 21 SEPTEMBER 2016

PILBARA PORT ASSETS (DISPOSAL) BILL 2015 [161-2]

When in committee on the *Pilbara Port Assets (Disposal) Bill 2015*:

Clause 11

Hon Robin Chapple: To move –

1/11 Page 9, after line 8 — To insert —

- (1A) Without limiting anything in (1), prior to giving effect to a section 10 disposal order, the Minister is to cause to be laid before each House of Parliament a report detailing the retention value of port assets and associated assets.
- (1B) Prior to giving effect to a section 10 disposal order, the Minister shall order the publication of all source documents upon which the retention values referred to at (1A) are based.

Clause 12

Hon Lynn MacLaren: To move –

6/12 Page 10, line 6 — To delete “99 years;” and insert —

50 years;

Hon Lynn MacLaren: To move –

7/12 Page 10, line 8 — To delete “99 years.” and insert —

50 years.

Hon Lynn MacLaren: To move –

8/12 Page 10, line 14 — To delete “99 years;” and insert —

50 years;

Hon Lynn MacLaren: To move –

9/12 Page 10, line 16 — To delete “99 years.” and insert —

50 years.

Clause 20

Hon Lynn MacLaren: To move –

10/20 Page 15, line 2 — To delete “*Gazette.*” and insert —

Gazette; and

Hon Lynn MacLaren: To move –

11/20 Page 15, after line 2 — To insert —

(c) the Minister must cause to be laid before each House of Parliament.

Clause 35

Hon Lynn MacLaren: To move –

12/35 Page 23, lines 13 to 30 — To delete the lines.

Clause 38

Hon Lynn MacLaren: To move –

13/38 Page 25, lines 27 and 28 — To delete “despite any law or rule to the contrary”.

Clause 42

Hon Lynn MacLaren: To move –

14/42 Page 30, line 1 to 24 — To delete the lines.

Clause 43

Hon Lynn MacLaren: To move –

15/43 Page 30, line 25 to page 31, line 7 — To delete the lines.

Clause 45

Hon Robin Chapple: To move –

2/45 Page 32, lines 4 to 18 — To delete the lines.

Clause 46**Hon Robin Chapple:** To move –

3/46 Page 33, after line 7 — To insert —

terms and conditions, in relation to an access arrangement, includes —

- (a) prices and charges relating to the access arrangement; and
- (b) any discounts, allowances, rebates or credits given or allowed in relation to the access arrangement; and
- (c) any commissions or similar benefits (whether monetary or otherwise) payable or given in relation to the access arrangement; and
- (d) the supply of other goods or services, where the other goods or services are supplied in connection with the first-mentioned goods or services; and
- (e) the making of payments for such other goods or services.

Hon Robin Chapple: To move –

4/46 Page 33, after line 9 — To insert —

- (2A) Prior to executing any access arrangement under this section, the service provider shall publish standard form terms and conditions of access in the *Gazette*.
- (2B) Any variation to the standard form terms and conditions of access referred to at (2A), shall be published by the service provider prior to them having any lawful force and effect.
- (2C) The terms and conditions on which any access arrangement is agreed are —
 - (a) so far as the service provider and any party to the access arrangement agree on the terms and conditions — the agreed terms and conditions; and
 - (b) if the service provider and any party to the access arrangement do not agree on terms and conditions, but terms and conditions are set out in a standard form of agreement — the relevant standard form terms and conditions shall apply.

Hon Lynn MacLaren: To move –

16/46 Page 33, lines 10 and 11 — To delete “may do any or all of the following —” and insert —

the regulations must do all of the following —

New Clause 46A**Attorney General representing the Treasurer:** To move –

5/NC46A Page 35, after line 16 — To insert —

46A. Preservation of rights to future access

- (1) In this section —

access means access to a service;*access capacity* means the capacity to provide services of the person who owns, controls or operates a port facility;*eligible request for access* means a request for access that would not, if granted, result in the proportion of the access capacity taken up by protected users exceeding 50%;*prescribed period* for a request for access means 180 days, or such other period as is specified in regulations, after the day on which the request is made;*prescribed user* means a person specified in regulations as a user or potential user of a service;*protected user* means a user or potential user of a service other than a prescribed user;*service* has the meaning given in section 46(1).

- (2) It is a condition of the operation of a port facility that, subject to subsection (3), 50% of the access capacity must be reserved for protected users.
- (3) Despite subsection (2) if a request for access made by a prescribed user would, if granted, result in the proportion of the access capacity taken up by prescribed users exceeding 50%, the request may be granted as long as it is granted on terms that would not prevent a protected user who subsequently makes an eligible request for access from being provided with access within the prescribed period or at a later time agreed to by the protected user.

New Clause 46A**Hon Lynn MacLaren:** To move –

17/NC46 Page 35, after line 16 — To insert —

46A. Preservation of rights to future access

- (1) In this section —

access means access to a service;*access capacity* means the capacity to provide services of the person who owns, controls or operates a port facility;*available capacity* means access capacity that is not contracted to a protected user or is not the subject of a request by a protected user to be so contracted;

eligible request for access means a request for access capacity when a prescribed user has access capacity at a port facility;

prescribed period for a request for access or an eligible request for access means 180 days after the day on which the request is made;

prescribed user means a person specified in regulations as a user or potential user of a service;

protected user means a user or potential user of a service other than a prescribed user;

service has the meaning given in section 46(1).

- (2) It is a condition of the operation of a port facility that, subject to subsection (3), 100% of the access capacity must be reserved for protected users.
- (3) Despite subsection (2), if a request for access is made by a prescribed user and there is available capacity at that time, the request may be granted to the extent of the available capacity as long as it is granted on terms that enable a protected user who subsequently makes an eligible request for access being provided with such access within the prescribed period or at a later time agreed to by the protected user.

New Clause 46B

Hon Lynn MacLaren: To move –

18/NC46B Page 35, after line 16 — To insert —

46B. Compliance with Port Authorities Act 1999

- (1) Notwithstanding any other clause, it is a condition of the operation of a port facility that the acquirer must comply with sections 30(1)(a) and 30(2) of the *Port Authorities Act 1999* as if references to “port authority” in those sections are references to the acquirer.
- (2) In complying with section 30(1)(b) of the *Port Authorities Act 1999*, the acquirer must prioritise the encouragement and facilitation of the development of trade and commerce by protected users.
- (3) Irrespective of the price paid by the acquirer to acquire the port facility, the acquirer must in calculating the charges to be levied for the provision of services to both prescribed users and protected users —
 - (a) only recover the actual direct costs of operating and maintaining the port facility in order to provide the services; and
 - (b) only recover that proportion of the corporate overhead cost of the acquirer that is actually required to manage the provision of the services at the port facility; and
 - (c) only include a capital recovery component of the charges that —
 - (i) amortises the capital cost of construction of a port facility actually invested and funded by Government prior to divestment of the port facility to the acquirer; and

- (ii) amortises the actual capital costs invested by the acquirer in the port facility to the extent such investment was necessary to ensure the port facility remains fit for the purpose of providing the service in the manner it was capable of doing at the time of divestment to the acquirer, over a 20 year period on a straight line basis; and
- (d) generate a maximum rate of return of 12% on the aggregate of the capital costs described in subsection (3)(c); and
- (e) the charges levied for the provision of services to both prescribed users and protected users must only be adjusted annually to reflect the actual increases and decreases in the cost of providing the services at the port facility; and
- (f) the acquirer must not seek to impose terms of use that require protected users to pay for services regardless of whether the services are provided or not (take or pay obligations) that are any more onerous on the protected users than those in effect as at 30 June 2016 and, in any event, expressly provide that the protected users shall be relieved from the take or pay obligations during periods of time where the costs of producing and exporting their commodities are (or will likely be) greater than the sales value realised for such commodities.

