



# Port Governance Reform - Tranche 2

## November 2017

### Key information

- The second tranche of the ports governance reform project will result in the transfer of 11 existing ports and port facilities that are currently regulated under the *Shipping and Pilotage Act 1967* (SP Act) to the *Port Authorities Act 1999* (PAA).
- This will entail transfer of responsibility for the oversight of these ports and facilities from the Department of Transport (DoT) to the relevant regional ports authorities. These SP Act ports, listed in the table on the following page, all contain port facilities that are involved in the handling of import and export trades carried by ships or barges.
- The reform will result in a better overall structure for the oversight and governance of WA's ports.
- Ports authorities will become the approval body for pilot's licences and will oversee marine safety and related marine safety plans.
- The reform is expected to have minimal impact on the current day-to-day operations of privately operated facilities at SP Act ports. However, each port will be required to have a documented marine safety plan raised by the relevant ports authority and approved by the Minister.
- The Kimberley Ports Authority will assume DoT's current role as landlord at the ports of Wyndham and Derby. Some changes to the existing arrangements at these two ports may be required to align them with the provisions of the PAA.
- It is the Government's intention to keep any changes to State Agreements to the minimum required to implement these reforms, and to protect existing rights of State Agreement proponents.

### Why is the reform necessary?

Many of the SP Act ports to be transferred, particularly those in the Pilbara, have seen a significant expansion in port facilities and shipping operations in the past decade.

This unprecedented expansion has provided a need for government to review port governance arrangements to ensure that developments are well planned and that the risks associated with the operations of ports and shipping are adequately managed.

Although the current governance arrangements have served the State well in the past, the Government has come to the view that the regional ports authorities are best placed to meet its marine safety obligations at specific port sites into the future. Ports authorities are better placed geographically and are more appropriately resourced to effectively oversee the marine safety aspects of these ports. Therefore, the Government has decided that port facilities that handle WA's import and export trades should be overseen by a regional ports authority.

DoT will continue to support the Minister to administer the legislation and will retain responsibility for policy and oversight of ports authority governance.

## What will happen?

The regional ports authorities will assume DoT's responsibilities at the 11 nominated SP Act ports and port facilities. It is intended that these ports will be governed under the PAA.

The PAA allows for the operation of private port terminals within the area or areas controlled by a ports authority. The reform is expected to have minimal impact on the current day-to-day operations of privately operated facilities at SP Act ports. However, there may be a more formal approach to matters such as the ports authority endorsement of a marine safety plan for each port.

The relevant ports authority will become the lessor of existing leases issued under the *Marine and Harbours Act 1982* (MHA). At the ports of Wyndham and Derby, the Kimberley Ports Authority will assume DoT's role as landlord.

Some State Agreements may need to be changed to reflect the new arrangements. It is Government's intention that changes to State Agreements will be kept to a minimum and only changes necessary to implement these reforms will be sought.

## Which ports will be affected?

Proclaimed port	Port facility	Facility operator	Ports authority
Wyndham		Cambridge Gulf Ltd	Kimberley
Yampi Sound	Cockatoo Island	Pluton Resources	
	Koolan Island	Mt Gibson Iron Ore	
Derby <sup>1</sup>		Shire of Derby-West Kimberley	Pilbara
Port Walcott	Cape Lambert	Robe River Mining (Rio Tinto)	
Port of Cape Preston		CITIC	
Varanus Island		Apache Energy	
Barrow Island		Chevron Australia	
Onslow	Airlie Island <sup>2</sup>	Apache Energy	
	Onslow	Onslow Salt	
	Thevenard Island <sup>2</sup>	Chevron Australia	
Carnarvon	Cape Cuvier	Dampier Salt (Rio Tinto)	
	Useless Loop	Shark Bay Salt	

## Which roles will be transferred to ports authorities?

Cabinet has approved the drafting of amendments to the PAA to provide for the transfer of the following roles currently provided by DoT to the relevant regional ports authorities:

- approval of pilotage areas and pilots (including exemption certificates);
- harbour master functions;
- overall marine safety oversight;
- declaration of channel depths;
- declaration of the formal closure of ports due to cyclone or other weather conditions;
- approval of jetties in port areas;
- management of the navigational aids for ships currently owned by DoT in port areas;
- management of current leases issued under the MHA and port operating agreements at common-user ports; and

<sup>1</sup> The Port of Derby is not currently a trading port. However, it has been in the past and may be in the future.

<sup>2</sup> In the process of being decommissioned.

- any other port services provided to State Agreement customers by agreement.

Amendments will be made to allow SP Act ports to continue to operate seamlessly when the reform occurs. DoT will retain the role of hazard management agency for maritime transport emergencies and marine oil pollution incidents in port and State waters, in close partnership with the ports authorities.

DoT will also retain governance over the ports of Perth, Emu Point and Jurien, which do not handle import and export trades. DoT will continue to manage boat harbours, some of which are located within transferring SP Act trading ports.

Mineral and general purpose leases and petroleum, geothermal and pipeline contracts, permits, leases and licences will be preserved.

## Implementation

The Ports Legislation Amendment Bill 2017 needs to be passed by Parliament before ports can be transferred to the *Port Authorities Act 1999* (PA Act). Once the legislation is in place, ports currently regulated under the SP Act will be progressively transitioned to the PA Act via a Ministerial Transition Orders. There are six State Agreements that may need to be amended, by agreement with the proponent, before the relevant port facility transfers.

DoT, the Department of Jobs, Tourism, Science and Innovation (formerly the Department of State Development) [DJTSI] and the ports authorities are working with SP Act port operators to ensure a smooth transition to the new arrangements.

## Role of the Department of Transport

As lead agency for major and significant transport projects, DoT has overall responsibility for the delivery of the reform. DoT has been working closely with the Steering Committee, ports authorities, DJTSI and Parliamentary Counsel to develop the required legislative amendments. DoT is also working with DJTSI, the ports authorities and affected ports operators to ensure the smooth transition to the new arrangements. DoT will have responsibility for overseeing the preparation and gazettal of the Ministerial Transition Orders that will give effect to the transfers.

## Role of the Department of State Development

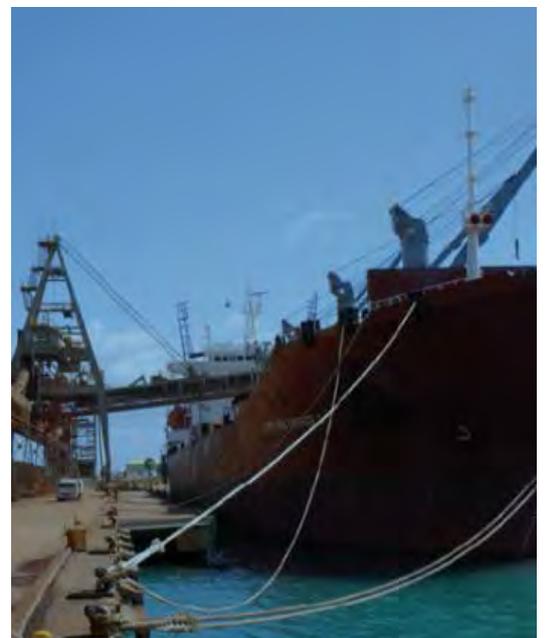
Several of the SP Act ports affected by this reform are covered by State Agreements. DJTSI administers State Agreements on behalf of the Government. DJTSI is working with DoT, ports authorities and affected State Agreement proponents throughout the reform process and, in conjunction with the State Solicitor's Office, is responsible for negotiating changes to State Agreements

## What will change?

Most private SP Act port facility operators are likely to notice very little change in the day-to-day operation of their ports. There is no intention for ports authorities to take over the running of private port facilities.

The major changes will be:

- The regional ports authorities will take over roles that are currently the responsibility of DoT.
- The regional ports authorities will take a more formal approach to reviewing each SP Act port's marine safety system. This is because the PAA requires that all ports have an approved marine safety plan. This means that each SP Act port's marine safety plan will need to be documented by its operator and endorsed by the relevant ports authority.
- Harbour master functions will transfer from the DoT harbour master to the relevant regional ports authority's harbour master. In most cases, day-to-day control of shipping and the movement of vessels within each port will be managed by a suitably qualified, locally based deputy. This may be a person employed by the ports authority, a private operator or a third party engaged by the private operator.



## What are the benefits of the reform?

The reform will take advantage of each ports authority's extensive port management expertise in dealing with port matters and strategic port planning issues.

The reform will also bring a more regional focus to port planning. Regional ports authorities are better resourced and have the critical mass to respond to, and cater for, trade opportunities.

Being regionally based, ports authorities have strong connections with customers and industry and will be better able to realise commercial opportunities.

Under the PAA, ports authorities are able to work with private port facility operators to ensure a systematic and comprehensive approach to marine safety. This will lead to better management of marine safety risks. The sharing of learning between private port facility operators and ports authorities will further improve the management, productivity and efficiency of WA ports.

The recent growth in ship movements and port trade has required the development of new port facilities. This has made it more complex and costly for government to manage its oversight responsibilities with the geographic distance between the ports and harbour master.

From the Government's perspective, the reform will simplify reporting arrangements and enhance the oversight and governance of WA's ports.

## Benefits of ports authority oversight for private operators of SP Act port facilities

<b>Government approvals</b>	<p>Ports authorities are used to working closely with government. They can assist port users with government approval processes.</p> <p>At the same time, ports authorities are trade-focussed and are used to operating in a commercial environment.</p>
<b>Risk management</b>	<p>The PAA enables ports authorities to make decisions and deal with emergencies and marine incidents with greater confidence and authority.</p> <p>Private sector port operators can gain the benefit of these protections by referring matters to the ports authority for decision or assistance.</p>
<b>Emergency response</b>	<p>Ports authorities are well-placed to support emergency response. Ports authorities have communication links with other government emergency response agencies to achieve enhanced co-ordination of emergency response.</p>
<b>Cyclone response</b>	<p>Many SP Act port operators have their own procedures for cyclone response.</p> <p>However, ports authorities have power over other commercial vessels and moorings and have overall responsibility for the safety of vessels during cyclones. The involvement of ports authority in cyclone response may help to speed up the processing of insurance claims.</p>
<b>Improved processes and costs</b>	<p>By working collaboratively with the port facility operators at SP Act ports, ports authorities can help to develop efficiencies and identify opportunities to reduce costs.</p> <p>This approach has assisted Rio Tinto at Dampier.</p>
<b>Provision of port services</b>	<p>Ports authorities can provide a wide range of port services when required. These services are listed in the PAA.</p> <p>Ports authorities can also provide high level marine expertise, security card issuing services, safety advice, pilotage exemptions and they can review development plans which can directly benefit port operators.</p>

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