

**EXPLANATORY STATEMENT  
AND STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

**PORTS LEGISLATION AMENDMENT BILL 2019**

**SERIAL NO. 114**

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

MINISTER FOR INFRASTRUCTURE, PLANNING AND LOGISTICS

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

This Bill amends the *Ports Management Act 2015* (PM Act) which provides the regulatory framework for the control, management and operation of all designated ports in the Northern Territory.

The regulatory framework allows private port operators of designated ports to have the day to day management and control of their port operations, while Government retains a role in relation to safety, access and price monitoring. The Darwin Port is currently the only designated port in the Northern Territory.

The purpose of this Bill is to respond to two separate reviews, of the PM Act and PM Regulations:

- 1) a general review of the PM Act and PM Regulations (General Review) to assess operational efficiency of the legislation; and
- 2) 2018 Utilities Commission Ports Access and Pricing Review (UC Review), to assess the effectiveness of the access and pricing regime.

**NOTES ON CLAUSES**

**Part 1 – Preliminary Matters**

**Clause 1. Short Title**

This is a formal clause which provides for the citation of the Bill. The Bill when passed, will be cited as the *Ports Legislation Amendment Act 2019*.

**Clause 2. Commencement**

This clause sets out how the amendment Act will be commenced. In this case, the amendment Act will commence on the day fixed by the Administrator by *Gazette* notice.

**Part 2 – Amendment of Ports Management Act 2015**

**Clause 3. Act amended**

This Part amends the *Ports Management Act 2015*.

#### **Clause 4. Section 3 amended (Definitions)**

This clause amends section 3.

Subclause (1) inserts definitions for ***commercial shipping, non-commercial vessel, prescribed services, preventative action, preventative measure, registered interest*** and ***website***.

Subclause (2) inserts a cross reference to the definition of a ***private pilotage provider***.

Note that the definitions for ***preventative action*** and ***preventative measure*** are used in proposed new sections 41 to 43 in Clause 10 to assist in with clearly and concisely expressing the kinds of directions that may be given; and making it clear that a direction can include alternative actions and a direction to choose and take one. The definition also has the effect of amending what is currently provided for in sections 41 to 44 by including moving a vessel, hull or hulk to a specified place in the port.

#### **Clause 5. Section 20A inserted**

This clause inserts section 20A to enable the regional harbourmaster for a designated port to delegate any of the regional harbourmaster's powers and functions under the Act to a person.

#### **Clause 6. Section 32 amended (Guidelines)**

This clause amends section 32. Subsection (1) provides that the regional harbourmaster for a designated port may issue guidelines about specified matters in relation to port safety plans for the port. Subsection (2) requires that any guidelines issued under subsection (1) are published in the *Gazette* and made available for inspection free of charge at the regional harbourmaster's office.

This clause replaces subsection (2) with a requirement that guidelines issued under subsection (1) are to be published online (and in any other way decided by the harbourmaster) and notified in the *Gazette*.

#### **Clause 7. Section 38 amended (Directions by port operator)**

This clause amends section 38.

Subsection (1) provides that the port operator of a designated port may (by written notice published on the operator's website or giving it to the master of a vessel) give directions for the regulating of the time at which and manner in which a vessel may enter, depart or lie, moor or anchor in the port and otherwise for the regulating of operations and activities carried out in the port, as specified in subclauses (1)(a) to (c).

Subsection (2) provides that it is an offence carrying a maximum penalty of 100 penalty units for a master of a vessel within the designated port to fail to comply with a direction given under subclause (1). This is a strict liability offence, with a reasonable excuse defence.

Subclause (1) amends subsection (1) by providing that the direction may be given to an owner, master or occupier.

Subclauses (2)-(4):

- insert a new subsection (1A) providing additional methods for a port operator of a designated port to give directions regulating the positioning, mooring, unmooring, placing, anchoring or removing the vessel, including, the ability to give an oral direction to a person apparently in control of the vessel in the event of an emergency; and

- insert a new subsection (1B) specifying requirements for the giving of a direction by publication on the port operator’s website under subsection (1) or (1A) (including, without specifying the name of the owner, master or occupier when that is not known), and providing that it is taken to have been given to the person to whom it is addressed; and
- insert an amended subsection (2) providing that each person who acts contrary to a direction given to the person under subsection (1) or (1A) commits an offence.

The intention of these amendments is to strengthen the ability of a port operator to give directions regulating the operation of the port and to increase the likelihood of compliance by providing that each person who fails to comply with a direction commits an offence.

#### **Clause 8. Section 39 amended (Removal etc. of vessel by port operator)**

This clause amends section 39.

Section 39(1) and 39(3) have the effect of providing that, if the master of a vessel fails to comply with a direction from the port operator of the designated port given under section 38(1)(c), or if there is no person on board the vessel to whom the direction may be given, the port operator may cause a vessel to be positioned, moored, unmoored, placed, anchored or removed as directed or required.

Subsection (4) provides that the owner or master of the vessel is liable to pay all expenses incurred by the port operator in taking any such action.

Subsections (5) and (6) provide that an amount that an owner or master is liable to pay for expenses under subsection (4) is in addition to any penalty imposed for an offence against section 38(2) and may be recovered as a debt due and payable to the port operator.

Clause 8 replaces section 39 with provisions which are substantively the same as those already contained in section 39, except, for consistency, omitting “expenses” and inserting “costs”, and providing that the owner, master and occupier of the vessel are jointly and severally liable to pay costs under subsection (4).

The intention of these amendments is to increase the likelihood of compliance by providing that the master, owner and occupier are jointly and severally liable for costs incurred by the port operator in taking action under subsection (4). The amendments also have the effect of increasing the ability of the private port operator to recover the costs which it incurs in taking action as directed where there has been non-compliance, or where there is no person on board to whom a direction may be given under section 38(1)(c).

#### **Clause 9. Section 40 amended (Power to board vessel)**

This clause amends section 40.

Subsection (1) requires the master of a vessel within a designated port, at the request of a port management officer, to permit the officer to board the vessel, inspect the vessel, its cargo and any other things on the vessel, and do anything else for the purpose of investigating whether the vessel is being operated lawfully. Subsection (2) specifies a requirement for the port management officer to produce his or her identify card to the master to whom the request was made before boarding under subsection (1). Subsection (3) provides that a port management officer may board a vessel and do any other thing mentioned in subsection (2) if there is no person on board to whom a direction may be made under subsection (1). Subsections (4) provides that the owner of the vessel is liable to pay all expenses incurred under subsection (3). Subsection (5) provides that the amount that the owner is liable to pay may be recovered as a debt due and payable to the port operator.

Subclause (1) amends subsection (1) by obliging an owner master or occupier to permit a port management officer to board on request for the specified purposes. Subclause (1) also amends subsection (2) by requiring the production of the identify card to the owner, master or occupier to whom the request was made.

Subclause (2) has the effect of amending the provisions in subsection (4) by providing that the owner, master and occupier of the vessel are jointly liable for any costs incurred under subsection (3) (when currently only the owner is liable). Subclause (3) amends subsection (5) by omitting the reference to “an owner” and inserting a reference to “a person” to cover each of the owner, master and occupier.

The intention of these amendments is to increase the ability of a port operator to board a vessel for the stated purposes when no master is on board, and to increase the ability of the private port operator to recover its costs in relation to boarding a vessel under subsection (3) when no person is on board, by making each of the owner, master and occupier liable. The reference to “expenses” is replaced with “costs” for consistency.

#### **Clause 10. Sections 41 to 44 replaced.**

This clause repeals sections 41 to 44 and inserts sections 40A, 40B, 41, 42, 43, 44, 44A, 44B and 44C.

#### **Section 40A inserted**

The clause inserts new section 40A providing the port operator with additional powers to respond to an emergency by giving a direction requiring immediate compliance to a person apparently in control of a vessel, or taking immediate action in the event that no person is on board the vessel to whom a direction may be given, or taking action in the event of non-compliance. The provision is also intended to promote compliance with directions given, and, increase the ability of a port operator to take emergency action and recover its costs in doing so.

Sections 40A(1) and (2) provide the port operator with powers to give directions requiring the removal of a vessel from a designated port to address the same circumstances referred to in sections 41(1) and 42(1) (as proposed to be inserted by clause 10) but limits their application to circumstances involving immediate threats.

Section 40A(2) provides that the direction must be given orally to the person apparently in control of the vessel, hull or hulk. Subsection (3) provides that it is an offence for a person to fail to comply with the direction. Subsections (4) and (5) identify that the offence is one of strict liability and that there is a reasonable excuse defence. Subsections (6), (7), and (10) provide that the port operator may remove or move the vessel, hull or hulk if the person fails to comply, and recover its costs from the person that failed to comply with the direction as a debt. Subsections (8) and (10) provide that if no person was on board to whom a direction may be given, the port operator may remove or move the vessel, hull or hulk, and recover its costs as a debt from the owner, master and occupier of the vessel, hull or hulk. Subsection (9) provides that if the port operator takes action to move or remove the vessel hull or hulk under subsection (8)(a) (where no person is on board to whom a direction may be given under subsection (2)), the port operator must publish notice of that action and give notice to the owner, master and occupier if their names and addresses are known to the port operator.

#### **Section 40B inserted**

The clause inserts new section 40B providing the regional harbourmaster with additional powers to respond to an emergency by giving a direction requiring immediate compliance to a person apparently in control of a vessel, or taking immediate action in the event that no person is on board the vessel to whom a direction may be given, or taking action in the event of non-compliance. The provision is also intended to promote compliance with directions given, and, increase the ability of a regional harbourmaster to take emergency action and recover its costs in doing so.

Sections 40B(1) and (2) provide the regional harbourmaster with powers to give directions requiring the removal of a vessel from a designated port to address the same circumstances referred to in sections 43(1) (as proposed to be inserted by clause 10) but limits their application to circumstances involving immediate threats.

Section 40B(2) provides that the direction may be given orally to the person apparently in control of the vessel, hull or hulk. Subsection (3) provides that it is an offence for a person to fail to comply with the direction. Subsections (4) and (5) identify that the offence is one of strict liability and that there is a reasonable excuse defence. Subsections (6), (7), and (10) provide that the regional harbourmaster may remove or move the vessel, hull or hulk if the person fails to comply, and recover its costs from the person that failed to comply with the direction as a debt. Subsections (8) and (10) provide that if no person was on board to whom a direction may be given, the regional harbourmaster may remove or move the vessel, hull or hulk, and recover its costs as a debt from the owner, master and occupier of the vessel, hull or hulk. Subsection (9) provides that if the regional harbourmaster takes action to move or remove the vessel hull or hulk under subsection (8)(a) (where no person is on board to whom a direction may be given under subsection (2)), the regional harbourmaster must publish notice of that action and give notice to the owner, master and occupier if their names and addresses are known to the regional harbourmaster.

#### **Section 41 inserted (Port operator's directions: vessels and likely to cause damage etc. to commercial vessels)**

Subsection 41(1) currently provides that the section applies to any commercial vessel (including hulks and hulls) that is likely to cause damage to, endanger or obstruct the passage, navigation or use of the port by any vessel, and to any other vessel (including hulks and hulls) that is in such a condition that it is likely to cause damage to, endanger or obstruct the passage, navigation or use of the port by a commercial vessel.

Subsection (2) currently provides that the port operator of a designated port must, by written notice, direct the owner, master or occupier of a vessel within the port to remove, repair or destroy the vessel if it is, in the port operator's opinion, one to which this clause applies.

This clause has the effect of repealing and reinserting section 41 but with the following amendments:

- providing that, when a port operator issues a written notice of direction under subsection (2) to take preventative action, the port operator may require the person to take a preventative action that includes moving the vessel, hull or hulk to a specified place within the port;
- in respect of the consequences of non-compliance, in addition to the existing powers to remove, repair or destroy a vessel, the port operator may move the vessel to another place within the port or sell by public auction or public tender or otherwise dispose of the vessel, and all fittings and equipment on board;
- inserting subsections (2) and (3) provide in effect:
  - a direction may be to select and take one of alternative preventative actions;
  - if a direction includes a direction to take preventative action that includes destruction of the vessel, hull or hulk, the direction must allow the person to select and take another preventative action that does not include destroying the vessel, hull or hulk;
- inserting subsection (5) providing that a direction given to destroy a vessel, hull or hulk does not authorise the person to whom it is given to destroy the vessel, hull or hulk without the consent of its owner;

- inserting subsection 10 which conditions the circumstances in which the port operator may exercise the power to destroy a vessel;
- inserting subsection 11 which conditions the circumstances in which the port operator may exercise the power to sell or otherwise dispose of a vessel and all fittings and equipment on board;
- providing further options for the giving of a notice of a direction under subsection (2) in circumstances where the port operator does not know the name or address of the owner, master or occupier, to include giving the notice to a person on board the vessel, hull or hulk, or affixing it in a prominent position on its deck;
- in consequence, amending the offence provision to provide that a failure to comply with a notice affixed to a deck does not constitute an offence. This clause does not include a direction in the manner mentioned in subsection (12)(c) (affixing a notice in a prominent position on the deck of the vessel).
- inserting subsection (13) providing that the notice requirements for persons with a registered interest in a vessel, relating to destruction, sale or disposal may be given in a newspaper or on the port operator's website, if the port operator does not know the name of the owner, master or occupier.

The intention of these amendments is to provide the port operator with additional powers to give directions and the ability to take additional actions in the event of non-compliance and recover its costs in doing so. Most importantly, the amendments are intended to promote the likelihood of compliance.

### **Section 42 inserted (Port operator's directions: vessels and wrecks that endanger commercial shipping etc.)**

This clause has the effect of repealing section 43 and inserts section 42 covering the same ground as currently provided for in section 43 but with the amendments explained below.

Section 43(1) currently provides that this section applies to a vessel within a designated port that, because of its condition, is a threat or danger to persons or vessels or other property connected with commercial shipping in the designated port.

Section 43(2) currently provides that the port operator of a designated port may, by written notice, direct the owner or master of a vessel within that port to remove, repair or destroy the vessel if it is, in the port operator's opinion, one to which this clause applies.

Sections 43(5) and (6) currently provide that, if a direction given under subsection (2) is not complied with, the port operator may authorise a person to board a vessel and carry out work to comply with the direction.

Section 42 has the effect of amending what is currently provided for in section 43 by:

- extending the application of the provision to circumstances where the threat or danger posed by a vessel, hull or hulk related to the manner or means by which the vessel, hull or hulk is secured whilst at anchor or moored, and where the threat or danger is to the environment;
- providing that in respect of a direction relating to a vessel, hull or hulk the direction may be given to the owner, master or occupier (where notices under the current section 43(2) may only be given to the owner or master). This is particularly important where there is no apparent owner or master;

- providing that, when a port operator issues a written notice of direction to take preventative action, the port operator may direct take a preventative action that includes a direction to move the vessel, hull or hulk to a specified place within the port;
- in respect of the consequences of non-compliance, in addition to the existing powers to remove, repair or destroy a vessel, the port operator may move the vessel to another place within the port or sell by public auction or public tender or otherwise dispose of the vessel, and all fittings and equipment on board;
- inserting subsections (2) and (3) provide in effect:
  - a direction may be to select and take one of alternative preventative actions;
  - if a direction includes a direction to take preventative action that includes destruction of the vessel, hull or hulk, the direction must allow the person to select and take another preventative action that does not include destroying the vessel, hull or hulk;
- inserting subsection (5) providing that a direction given to destroy a vessel, hull or hulk does not authorise the person to whom it is given to destroy the vessel, hull or hulk without the consent of its owner;
- inserting subsection (10) which conditions the circumstances in which the port operator may exercise the power to destroy a vessel, hull or hulk;
- inserting subsection (11) which conditions the circumstances in which the port operator may exercise the power to sell or otherwise dispose of a vessel, hull or hulk and all fittings and equipment on board;
- providing further options for the giving of a notice of a direction under subsection (2) in circumstances where the port operator does not know the name or address of the owner, master or occupier, to include giving the notice to a person on board the vessel, hull or hulk, or affixing it in a prominent position on its deck;
- in consequence, providing that the offence of failing to comply with a direction does not apply in respect of a direction given in the manner of affixing a notice in a prominent position on the deck of the vessel, hull or hulk;
- inserting subsection (13) providing that the notice requirements for persons with a registered interest in a vessel, hull or hulk, relating to destruction, sale or disposal may be given in a newspaper or on the port operator's website, if the port owner does not know the name of the owner, master or occupier.

The intention of these amendments is to provide the port operator with additional powers to give directions and the ability to take additional actions in the event of non-compliance and recover its costs in doing so. Most importantly, the amendments are intended to promote the likelihood of compliance.

**Section 43 inserted (Regional Harbourmasters directions: vessels and wrecks likely to endanger or obstruct non-commercial vessels)**

This clause has the effect of repealing section 42 and 44 and inserting section 43 covering the same ground as currently provided for in sections 42 and 44 but with the amendments explained below.

Section 42(1) currently provides that the section applies to a non-commercial vessel (including hulks and hulls) that is likely to cause damage to, endanger or obstruct the passage, navigation or use of the port by any vessel. The section also applies to any other vessel (including hulks and hulls) that is in such a condition that it is likely to cause damage to, endanger or obstruct the passage, navigation or use of the port by a non-commercial vessel. Section 44(1) currently provides that the section

applies to a vessel within a designated port that, because of its condition, is a threat or danger to persons or vessels or other property not connected with commercial shipping in the designated port.

Sections 42(2) and 44(2) each currently provide that the regional harbourmaster of a designated port may, by written notice, direct the owner, master or occupier of a vessel, hull or hulk within the port to remove, repair or destroy the vessel, hull or hulk if it is, in the regional harbourmaster's opinion, one to which the section applies.

This clause has the effect of amending the provisions currently applying by sections 42 and 44 (by repealing sections 42 and 44 and inserting section 43):

- extending the application of the provisions to circumstances where the threat or danger posed by a vessel, hull or hulk related to the manner or means by which the vessel, hull or hulk is secured whilst at anchor or moored, and where the threat or danger is to the environment;
- providing that in respect of a direction relating to a vessel, hull or hulk the direction may be given to the owner, master or occupier (where section 42 notices are currently only required to be given to the owner or master). This is particularly important where there is no apparent owner or master;
- providing that, when a regional harbourmaster issues a written notice of direction to take preventative action, the regional harbourmaster may give a direction to take a preventative action that includes a direction to move the vessel, hull or hulk to a specified place within the port;
- in respect of the consequences of non-compliance, in addition to the existing powers to remove, repair or destroy a vessel, the port operator may move the vessel to another place within the port or sell by public auction or public tender or otherwise dispose of the vessel, and all fittings and equipment on board;
- inserting subsections (2) and (3) provide in effect:
  - a direction may be to select and take one of alternative preventative actions;
  - if a direction includes a direction to take preventative action that includes destruction of the vessel, hull or hulk, the direction must allow the person to select and take another preventative action that does not include destroying the vessel, hull or hulk;
- inserting subsection (5) providing that a direction given to destroy a vessel, hull or hulk does not authorise the person to whom it is given to destroy the vessel, hull or hulk without the consent of its owner;
- providing conditions that must be satisfied before the regional harbourmaster may exercise the power to destroy a vessel;
- providing conditions that must be satisfied before the regional harbourmaster may exercise the power to sell or otherwise dispose of a vessel and all fittings and equipment on board;
- providing further options under subsection (2) in circumstances where the regional harbourmaster does not know the name or address of the owner, master or occupier, to include giving the notice to a person on board the vessel, hull or hulk, or affixing it in a prominent position on its deck;
- in consequence, providing that the offence of failing to comply with a direction does not apply in respect of a direction given in the manner of affixing a notice in a prominent position on the deck of the vessel, hull or hulk;

- inserting subsection (13) providing that the notice requirements for persons with a registered interest in a vessel, relating to destruction, sale or disposal may be given in a newspaper or on the regional harbourmaster's website, if the regional harbourmaster does not know the name of the owner, master or occupier.

The intention of these amendments is to provide the regional harbourmaster with additional powers to give directions and the ability to take additional actions in the event of non-compliance and recover its costs in doing so. Most importantly, the amendments are intended to promote the likelihood of compliance.

### **Sections 44 to 44C inserted**

- **Section 44 inserted – Sale of wreck or vessel by port operator**

Clause 10 inserts section 44. Subsection (1) specifies that the section applies to any sale of the whole or part of a vessel, hull or hulk or fittings or equipment from on board a vessel, hull or hulk by a port operator under sections 41 or 42. Subsection (2) provides that the purchaser holds title to the property free of any interest existing in it before the sale. Subsections (4), (5) and (6) specify requirements in regard to the application of the proceeds of sale and for preparing records of sale which are equivalent to those contained in the *Uncollected Goods Act 2004*. Subsection (7) provides that the port operator commits an offence if the port operator fails to comply with a requirement. Subsection (9) provides that the offence is one of strict liability. Subsections (9) to (13) contain provisions in respect of claims against proceeds of sale, claims against persons to whom proceeds of sale have been made, and provisions in respect of unclaimed monies which are equivalent to those contained in the *Uncollected Goods Act 2004*.

- **Section 44A inserted – Sale of wreck or vessel by regional harbourmaster**

Clause 10 inserts section 44A. Subsection (1) specifies that the section applies to any sale of the whole or part of a vessel, hull or hulk or fittings or equipment from on board a vessel, hull or hulk by a regional harbourmaster under section 43. Subsection (2) provides that the purchaser holds title to the property free of any interest existing in it before the sale. Subsection (3) specifies requirements in regards to the application of the proceeds of sale which are substantially the same to those contained in the *Uncollected Goods Act 2004*. Subsection (4) contains provisions in respect of the proceeds of sale where the regional harbourmaster is unable to locate the owner after making reasonable attempts to do so.

- **Section 44B inserted - Other disposal of wreck of vessel**

Clause 10 inserts section 44B. Subsection (1) specifies that the section applies to any disposal to a person other than by sale of the whole or part of a vessel, hull or hulk or fittings or equipment from on board a vessel, hull or hulk by a port operator under the Division. The clause provides that the person to whom the property is disposed to holds title in the property free of any interest existing in it before the disposal.

- **Section 44C inserted - Acquisition on just terms**

Clause 10 inserts section 44C. Subsection (1) provides that, if the operation of the Division would, apart from the section, result in an acquisition of property otherwise than on just terms, the person is entitled to receive compensation to ensure that the acquisition is on just terms. If the acquisition would otherwise be on just terms, compensation is payable by the port operator where the acquisition arises from the exercise of a power or function by a port operator; or the Territory where the acquisition arises from the exercise of a power or function by a regional harbourmaster. A court may decide the amount of compensation it considers necessary to ensure the acquisition is on just terms. Subsections (3) and (4) provide that, if a court decides an amount of compensation payable by the port operator, and the port operator

fails to pay within a reasonable time, the Territory must pay the compensation. The Territory may then recover the compensation and its costs as a debt from the port operator that failed to pay. This provision therefore ensures that any acquisition of property, pursuant to the provisions contained in the Division, will be on just terms.

#### **Clause 11. Section 50 amended (Power of port operator to close waters)**

This clause amends section 50.

Subsection (1) provides that the port operator of a designated port may, by *Gazette* notice or notice published in a newspaper circulating generally in the vicinity of the port, close all or part of the waters in the designated port to all or specified classes of persons and vessels for a specified period (subject to the regulations). Subsections (3) and (4) respectively provide an offence for a person or a master to be in closed waters contrary to a notice published under subsection (1). Subsection (7) provides that a port operator, or a port management officer may direct a person apparently in control of a vessel in closed waters to remove the vessel from closed waters.

Subclauses (1) and (2) amend subsection (1) and insert a new subsection (1A) with the effect of replacing the requirement to publish closure notices in the *Gazette* with a requirement to publish the notice on the port operator's website or in a manner that, in the opinion of the port operator, is most likely to bring it to the attention of persons likely to be affected by the closure.

Subclause (3) inserts a new subsection (6A) providing in effect that subsections (3) and (4) do not apply to a police officer acting in the course of the officer's duties, taking reasonable care, and if it is reasonable for the officer to enter the closed waters.

Subclause (4) amends subsection (7) by also conferring a power on the part of a police officer to give a direction to a person apparently in control of a vessel in closed waters to remove the vessel from closed waters.

Subclause (5) inserts new subsections (8), (9) and (10) providing a strict liability offence if a person fails to comply with a direction given under subsection (7) to remove a vessel from closed waters, and a reasonable excuse defence. This addresses the issue that there is currently no consequence if a person does not comply with a direction of this nature.

#### **Clause 12. Section 51 amended (Power of regional harbourmaster to close waters)**

This clause amends section 51.

Subsection (1) provides that, if a regional harbourmaster for a designated port satisfies the conditions in subsection (2), the regional harbourmaster may, by *Gazette* notice or notice published in a newspaper circulating generally in the vicinity of the port, close all or part of the waters in the port to all or specified classes of persons and vessels for a period specified in the notice.

Subsection (2) specifies that the regional harbourmaster may only close the port under subsection (1) if satisfied that the closure would not have an impact on commercial shipping within the port and if the regional harbourmaster gave prior written notice of the publication to the port operator. Subsections (4) and (5) respectively provide an offence for a person or a master to be in closed waters contrary to a notice published under subsection (1). Subsection (8) provides that the regional harbourmaster, or a person authorised by the regional harbourmaster, may direct a person apparently in control of a vessel in closed waters to remove the vessel from closed waters.

- Subclauses (1) and (2) amend subsections (1) and (2) and insert a new subsection (1A) with the effect of amending the provisions in subsections (1) and (2) in the following ways:

- replacing the requirement to publish closure notices in the *Gazette* with a requirement to publish the notice on the regional harbourmaster's website or in a manner that, in the opinion of the regional harbourmaster, is most likely to bring it to the attention of persons likely to be affected by the closure.
  - permitting the regional harbourmaster to close waters for 30 days or less with the consent of the port operator.
- Subclause (3) inserts a new subsection (7A) providing that subsection (4) and (5) do not apply to a police officer acting in the course of the officer's duties, taking reasonable care, and if it is reasonable for the officer to enter the closed waters.
  - Subclause (4) has the effect of amending subsection (8) by also conferring a power on the part of a police officer to give a direction to a person apparently in control of a vessel to remove the vessel from closed waters.
  - Subclause (5) inserts new subsections (9), (10) and (11) providing a strict liability offence if a person fails to comply with a direction given under subsection (8) to remove a vessel from closed waters, and a reasonable excuse defence. This addresses the issue that there is currently no consequence if a person does not comply with a direction of this nature.

**Clause 13. Section 52 amended (Removal etc. of vessel for failure to comply with direction)**

This clause amends section 52.

Subsection (1) provides that the section applies if a person apparently in control of a vessel fails to comply with a direction closing waters, irrespective of whether the person has been charged with or found guilty of an offence against section 50(3) or 51(4), being the current offence provisions in the Act for a person being in closed waters. Subsection (4) provides that the liability of a person to pay expenses is additional to any penalty imposed for an offence against section 50(3) or 51(4). Subsection (2) provides that "the port operator or regional harbourmaster who gave the direction" may cause the vessel to be removed to a place outside closed waters.

Consequential to the amendments creating additional offences for failing to comply with a direction to remove a vessel from closed waters, subclause (1) amends subsection (1) and (4) to refer to the new offence provisions in section 50(8), 51(4) and 51(9) of failing to comply with a direction to remove a vessel from closed waters.

Consequential to the amendments expanding persons who may issue directions for removal of vessels, subclause (2) amends subsection (2) by identifying the port operator of the designated port and the regional harbourmaster for the port as the person who may cause a vessel to be removed, rather than identifying the port operator or regional harbourmaster by reference to the person who gave the direction.

For consistency, subclause (3) amends sections 52(3) and (5) by omitting "expenses" and inserting "costs".

**Clause 14. Part 5, Division 6, heading amended**

Consequential to the amendments at Clause 20, this clause amends the Part 5 Division 6 heading to include "and dredging" in the title.

**Clause 15. Section 53 amended (Erection of structures)**

This clause amends section 53.

Subclause (1) inserts "and dredging" in the section heading. Subclause (2) and (3) have the effect of inserting subsection 53(1)(c), thereby adding that it is also an offence to "undertake dredging or any other activity that would cause a significant alteration of the bathymetry of the port" without approval.

These changes address the present absence of a requirement to obtain approval to significantly alter a port through dredging or the dumping of spoil from dredging. The dumping of spoil can pose a safety risk for port users and requires approval of the regional harbourmaster who maintains depth charts for the Port of Darwin.

Subclause (5) inserts a new subsection (6), consequential to the new subsection 53(1)(c), providing that subsection (1) does not apply in relation to dredging in a designated port undertaken by the port operator of the designated port in accordance with an agreement under section 9(1).

For consistency in drafting style, subclause (4) amends subsection (4) by omitting the references to the paragraphs of subsection (1).

#### **Clause 16. Section 59 amended (Enforcement of port notice)**

This clause amends section 59. Section 59 specifies the ways in which a port operator of a designated port may enforce compliance with a port notice.

This clause inserts a new section 59(1A) providing police officers with the ability to perform the function of enforcing compliance with port notices issued to control activities or conduct on the water within a designated port.

Police currently have powers under the *Marine Act 1981* exercisable within the boundaries of the Port, in relation to recreational vessels but are unable to enforce compliance with Port Notices which control activities or conduct within the port for the purpose of maintaining or improving its safe, secure and efficient operation.

#### **Clause 17. Section 62 amended (Monitoring of port notices)**

This clause amends section 62.

Subsection (1) requires the port operator to provide reports at specified frequencies regarding contravention of port notices, the exercise of rights of entry under section 61 to investigate compliance with port notices and enforcing compliance with port notices, or any other action taken by the port operator to enforce compliance with a port notice.

Subclause (1) inserts a new subsection (1AA) requiring a police officer who enforces compliance with a port notice under subsection 59(1A), to give notice to the port operator of the contravention of the port notice and the action taken by the police officer to enforce compliance.

Consequential to the amendment in Clause 16 (providing the police with the power to enforce compliance with a port notice), subclause (2) has the effect of amending subsection (2) to omit the words “by the port operator” so that the reports by the port operator will also include action taken by police as reported to the port operator under the new subsection (1AA).

#### **Clause 18. Section 63 amended (Definitions)**

This clause amends section 63 by omitting the provision that excluded from the definition of “vessel” a vessel that was declared under section 64.

#### **Clause 19. Section 64 amended (Pilotage authority may declare exempt vessels)**

This clause amends section 64 by making it clear that a declaration may relate to part of a pilotage area and be on any conditions that the pilotage authority thinks fit.

#### **Clause 20. Section 67 amended (Technical and safety standards)**

This clause amends section 67. Subsection (1) requires the pilotage authority for a pilotage area to make technical and safety standards for pilotage, and the provision of pilotage services in that area.

Subsections (3) and (4) require the pilotage authority to, by *Gazette* notice (specifying the date on which the standards take effect), notify the making of the standards and to otherwise disseminate the

standards as specified by subsections (3)(b) and (c), as soon as practicable after the standards are made.

Subclauses (1) and (2) amend those provisions by replacing subsection (3)(a) and omitting subsection (4), with the effect the requirement to disseminate the standards is replaced with a requirement to notify, by *Gazette*, the place where copies of the standards can be obtained.

This amendment is consistent with the amendment in Clause 6 in respect of the amended section 32, which provides for the publishing of advice in regard to updated Guidelines.

#### **Clause 21. Section 73 amended (Pilotage not required in certain cases)**

This clause amends section 73. Section 73 defines the term **relevant entity** for the purposes of the section and provides that the pilotage requirements and procedures under sections 70 and 71 do not apply to a vessel if, having regard to the safety of the vessel or a person on board, the relevant entity is of the opinion that it is necessary for the vessel to be immediately brought into, moved within or taken out of a compulsory pilotage area.

Subclauses (1) and (2) insert subsection (1AA) providing that the procedures under section 70 and 71 also do not apply to a vessel if: (a) the vessel is a vessel, or a class of vessel, declared to be exempt under section 64 and the conditions of the exemption, if any, are satisfied; or (b), the master of the vessel holds a pilotage exemption certificate and the conditions of the certificate, if any, are satisfied.

Subclause (3) inserts subsection (1A), requiring that, if a relevant entity determines under subsection (1) that the pilotage requirements are not required, and proceeds to bring a vessel into, or move or take a vessel out of a compulsory pilotage area, the relevant entity is required to give notice (to the person identified in subsection (1A)) as soon practicable after bringing a vessel into, or moving or taking a vessel out of a compulsory pilotage area.

#### **Clause 22. Section 118 replaced**

This clause replaces section 118. Section 118 currently defines **private port operator** and confirms that this Part applies to prescribed services provided by a private port operator.

This clause has the effect of amending section 118 by including a definition of **private pilotage provider**. The purpose of this amendment is to extend the application of the access and pricing regime to a private pilotage services provider which is not related to the port operator. It is noted that currently the port operator is the only pilotage services provider.

#### **Clause 23. Section 119 amended (Application of Utilities Commission Act 2000)**

Section 119 declares the provision of prescribed services by a private port operator to be a regulated industry for the purposes of the *Utilities Commission Act 2000*, with the Utilities Commission of the Northern Territory specified as the Regulator for the purposes of this Part.

As a consequence, and for the purposes referred to in the explanation to Clause 22 above, this clause has the effect of amending subsections 119(1), (2) and (4) to include a private pilotage provider after any references to a private port operator.

#### **Clause 24. Section 121 amended (Annual report to Minister on material non-compliance)**

This clause amends section 121 which provides for the Regulator making an annual report to the Minister. Subsection (1)(b) provides that the report is to include any instance of material non-compliance by a private port operator with a determination made by the Regulator under section 132 of the Act.

As a consequence, and for the purposes referred to in the explanation to Clause 22 above, this clause amends subsections 121(1)(b) to include a private pilotage provider after the references to a private port operator.

**Clause 25. Section 123 amended (Review of Part)**

This clause amends section 123 which requires the Regulator to review the operation of this Part and regulations made for this Part, and specifies the timing and purpose of such reviews and provides that the purpose of the review includes determining whether there is an ongoing need for regulatory oversight in respect of access to and pricing of prescribed services provided by private port operators.

As a consequence, and for the purposes referred to in the explanation to Clause 22 above, this clause amends subsections 123(2)(a) and (3) to include a private pilotage provider after the references to a private port operator.

**Clause 26. Section 124 amended (Preventing or hindering access)**

This clause amends section 124 which defines the term *port user* and *competitor* and provides that a private port operator must not engage in conduct for the purpose of preventing or hindering access of a port user to any prescribed service by providing itself (or a related body corporate) access to the prescribed service on more favourable terms than those on which it provides such access to a competitor.

As a consequence, and for the purposes referred to in the explanation to Clause 22 above, this clause has the effect of amending subsections 124(1) to (4) and (6) to include a private pilotage provider after the references to a private port operator.

**Clause 27. Section 125 amended (Unfairly differentiating)**

This clause amends section 125 which provides that, in negotiating arrangements for access to any prescribed service (or changes to such arrangements), a private port operator must not unfairly differentiate between port users in a way that has a material adverse effect on the ability of any one or more port users to compete with any other port users.

As a consequence, and for the purposes referred to in the explanation to Clause 22 above, this clause amends subsections 125(1), (2), and (3)(a) and (b) to include a private pilotage provider after the references to a private port operator.

Subclause (3) inserts a new subsection (2A) that clarifies that subsection (1) does not prevent a private pilotage provider treating port users differently to the extent that the different treatment is reasonably justified because of the different circumstances, relating to access to the prescribed service, applicable to the provider or any of the port users. This new subsection aligns with the existing section (2) which is applicable to the private port operator.

**Clause 28. Section 126 amended (Enforcement of obligations)**

This clause amends section 126 which provides that if a court of competent jurisdiction is satisfied that a private port operator has engaged, is engaging, or proposes to engage in conduct that contravenes sections 124(1) (Preventing or hindering access) or 125(1) (Unfairly differentiating), the court may, on application, make such orders as it considers appropriate.

As a consequence, and for the purposes referred to in the explanation to Clause 22 above, this clause amends subsections 126(1), (2)(a)(i) and (ii) and (b) and (3), to include a private pilotage provider after the references to a private port operator.

### **Clause 29. Section 127 amended (Access policy)**

This clause amends section 127 which provides that it is an offence carrying a maximum penalty of 500 penalty units for a private port operator to contravene the requirement to prepare a draft access policy and give the draft to the Regulator by the date provided for by regulations. The Regulator is required to decide an application for approval of a draft access policy within 60 days (subsection (3)). If the Regulator fails to decide an application within the period provided for in subsection (3), the Regulator is taken to have approved the draft access policy on the expiry of that period.

This clause:

- substitutes subsection (1)(b) with new subsections (1)(b) and (c) to provide for a requirement to give an initial draft access policy to the Regulator, and, also, the giving of a new draft access policy to the Regulator prior to nominal expiry of an approved access policy;
- inserts a new subsection (2A) requiring the private port operator to consult with port users on the draft access policy and prepare a summary of comments for providing to the Regulator when giving the draft access policy;
- amends the provisions in subsection (3) requiring the Regulator to decide the application for approval of the draft access policy within 60 days, and replaces them with subsections (3A) with the effect of permitting the Regulator to extend the time for deciding an application by a further 60 days by giving written notice to the port operator;
- requires the private port operator to submit a revised draft access policy for approval prior to the nominal expiry date of the policy;
- provides a nominal expiry date of 5 years unless the policy states that it nominally expires on an earlier date;
- provides that a draft access policy takes effect when approved and remains in place until it is replaced with a newly approved one;
- omits the requirements in subsections (10) and (11) for an amended access policy because an access policy can be revised at any time prior to its nominal expiry; and
- clarifies that the port operator must continue to comply with its access policy, even if it has nominally expired, until it is replaced with a new access policy prepared by the operator and approved by the Regulator.

The purpose of these changes is to enhance the day-to-day operation of the access and pricing regime. These changes respond to recommendations made in the Utilities Commission 2018 Access and Pricing Review Report.

### **Clause 30. Section 131 amended (Information required by Regulator)**

This clause amends section 131 which provides that the Regulator may, by written notice, require a private port operator to give information on any matter arising out of a report under sections 130(1) or (2) or the private port operator's compliance with sections 124(1) or 125(1).

As a consequence, and for the purposes referred to in the explanation to Clause 22 above, this clause inserts a new section 131(1A), which aligns with subsection (1), to include the requirements for a written notice requesting information regarding a private pilotage provider compliance with sections 124(1) or 125(1).

**Clause 31. Section 132 amended (Determinations by Regulator)**

This clause amends section 132 which defines *price determination* relating to the charges fixed by a private port operator in relation to the provision of prescribed services and provide that the Regulator may make a price determination under section 20(1)(a) of the *Utilities Commission Act 2000*, provided the determination is consistent with the regulations and the access and pricing principles specified in section 133.

As a consequence, and for the purposes referred to in the explanation to Clause 22 above, this clause amends subsections 132(1) and (3) and (5), to include a private pilotage provider after the references to a private port operator/operator.

**Clause 32. Section 134 amended (Regulations)**

This clause amends section 134 which enables the making of regulations specifying a form of price regulation for prescribed services.

As a consequence, and for the purposes referred to in the explanation to Clause 22 above, this clause amends subsections 134(2)(b) and (3)(a) to include a private pilotage provider after the references to a private port operator.

**Clause 33. Section 136 amended (Power of Regulator to require information)**

This clause amends section 136 which provides for the Regulator to require a private port operator to give the Regulator information or documents relating to a particular charge fixed by the private port operator.

As a consequence, and for the purposes referred to in the explanation to Clause 22 above, this clause amends subsections 136(1), (2), (4) and (5) to include a private pilotage provider after the references to a private port operator.

Subclause (4) inserts subsection 136(3)(ab) providing that the information or documents required by the Regulator must be certified as being accurate by the Chief Executive Officer or another specified officer (i.e. officer specified by the Regulator in its notice) of the private port operator or private pilotage provider.

**Clause 34. Section 137 amended (Confidentiality of information)**

This clause amends section 137 which provides that a private port operator, when giving information in response to a notice under section 131(1) of 136(1), may claim that the information is confidential if it appears to the private port operator that disclosure of the information could adversely affect the competitive position of the operator or any other person, or would result in the operator being in breach of a duty of confidentiality owed to another person.

As a consequence, and for the purposes referred to in the explanation to Clause 22 above, this clause amends subsections 137(1) and (7) to include a private pilotage provider after the references to a private port operator.

**Clause 35. Section 146 amended (Protection from liability)**

This clause amends section 146 which provides that specified persons are not personally liable for anything done or omitted to be done in good faith in the exercise of a function under the Act.

Subclause (1) and (2) insert a new subsection (1)(h) and (i) in effect providing that a port operator or person acting on behalf of such an operator are not personally liable in respect of acts or omissions in good faith for the purposes of Part 5, Division 2 or 3; and also extending protection to police officers.

Subclause (3) inserts a new subsection (3A) providing that the section has effect subject to Part VIA of the *Police Administration Act 1978*.

**Clause 36. Section 148 amended (Effect of things done under Act)**

Sections 148(1) and (2) prevents the enactment, commencement or operation of the Act (or of any statutory instruments made under it) and the various arrangements and actions they authorise from constituting a breach of civil obligations or obligations under any law in relation to any rules applicable to the management or operation of a designated port (including any notices, directions, or orders issued or given, or policies adopted, by the *Darwin Port Corporation under the Darwin Port Corporation Act 1983*).

Clause 41 amends subsection 148(1)(c), consequential to the amendment affected by Clause 43—the repeal of the *Darwin Port Corporation Act 1983* – by inserting the words “before its repeal” after the reference to that Act.

**Clause 37. Section 149 amended (Exemption from local government rates etc.)**

This clause amends section 149(5) in respect of the definition of **local government rates** by omitting “Darwin” and inserting “Northern Territory”.

**Clause 38. Part 13, Division 5A inserted**

This clause inserts a new section 153A which enables the Minister to delegate any of the Minister’s powers and functions under the Act to a person.

**Clause 39. Section 155 amended (Regulations)**

This clause amends section 155 which provides that the Administrator may make regulations under the Act.

Subclause (1) inserts a new subsection (2)(c) providing that regulations may provide for moorings within a designated port, including the materials permitted to create moorings and the location and use of moorings.

It is noted any future regulation of moorings will not occur before extensive consultation is undertaken and will be subject to an Executive Council process.

**Clause 40. Part 14, Division 3 inserted**

This clause inserts a new Division 3 “Transitional matters for *Ports Legislation Amendment Act 2019*”, including section 164 to 166.

- **Section 164 inserted – Definitions**

Section 164 provides definitions for **commencement** (the commencement of Part 2 of the *Ports Legislation Amendment Act 2019*) and **former Act** (the Act as in force immediately before commencement) for the purpose of the Division.

- **Section 165 inserted – Directions**

Section 165 contains transitional provisions relating to directions given under sections 38, 41, 42, 43 and 44 before commencement.

- **Section 166 inserted – Access policies**

Section 166 is drafted in circumstances where, as at commencement, only one access policy has been approved under section 127.

The effect of this provision is to deem that the approved access policy (approved under the former Act) complies with the requirements prescribed by regulation; and, that it nominally expires on 30 June 2022.

#### **Clause 41. Schedule 1 amended (Reviewable decisions)**

Schedule 1 contains a table listing the decisions that are reviewable by the Northern Territory Civil and Administrative Tribunal, along with the persons eligible to apply for review of decisions, for the purposes of section 145 of the Act.

This clause amends Schedule 1 by adding an entry into the table relating to section 53(1), with effect that a person seeking to undertake dredging or any other activity that would cause a significant alteration of the bathymetry of the port is an affected person in respect of a decision by the regional harbourmaster for a designated port to withhold an approval under section 53(1) or impose conditions on such approval.

#### **Clause 42. Act further amended**

This clause provides that Schedule 1 of the Bill has effect. The amendments in Schedule 1 of the Bill are included for consistency, omitting “expenses” and inserting “costs” in sections 101(8), (10), 143(1) and (2); and omitting “or expenses” in section 104(1) and (2).

### **Part 3 Repeal of Acts**

#### **Clause 43. Darwin Port Corporation Act 1983 repealed**

This clause repeals the *Darwin Port Corporation Act 1983* (Act No. 71 of 1983).

#### **Clause 44. Ports Management (Repeals and Related and Consequential Amendments) Act 2015 repealed**

This clause repeals *Ports Management (Repeals and Related and Consequential Amendments) Act 2015* (Act No. 23 of 2015).

### **Part 4 Amendment of Ports of Darwin Act 2015**

#### **Clause 45. Port of Darwin Act 2015 amended**

This clause provides that Schedule 2 of the Bill has effect. Schedule 2 amends the *Port of Darwin Act 2015* consequential to the amendment affected by Clause 43– the repeal of the *Darwin Port Corporation Act 1983* (“repealed Act”):

- amending the definition of Darwin Port Corporation in section (3)(1),– by inserting the words “before its repeal” after the repealed Act;
- omitting section 30(1)(a) (being a provision that refers to the repealed Act).

### **Part 5 Repeal of Act**

#### **Clause 46. Repeal of Act**

This is a standard provision that ensures that this Bill will not remain on the current statute book once it has completed its task of amending other legislation.