

Statement of compatibility with human rights

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

Ports Legislation Amendment Bill 2019

This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cwth).

Overview of the bill

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 (Utilities Commission Review), to assess the effectiveness of the access and pricing regime.

Note amendments proposed for the PM Regulations 2015 will be progressed under a separate Executive Council process.

General Review - Summary of amendments

Key elements of the Bill:

- expand the port operator and the regional harbourmaster's powers in regard to the clearance of wrecks and removal of threatening vessels in the port to include an additional option to sell or otherwise dispose of a vessel, and all fittings and equipment on board;
- allow the proceeds of the sale of a vessel to be applied to any costs incurred by the port operator or regional harbourmaster for repairs or relocating and storing a vessel;
- extend the power to direct the removal of a vessel from the port to include move to another place within the port;
- make it clear that the manner in which a vessel is moored, is a condition of the vessel, that can make it a potential threat to other vessels;
- make it clear that the environment is something that can be threatened, so as to trigger the powers available to the port operator or regional harbourmaster to deal with the threat;
- allows for oral directions to be given in an emergency rather than a written direction;

- allow for vessels to be moved by the port operator or regional harbourmaster where there is no one on board the vessel to give a notice to, and for directions notices to be fixed to a vessel in a prominent position where there is no one on board to whom a direction can be given, and the name and address of the master or owner is not known;
- expand the provision for the erection of any structures to include any act that causes a significant alteration of the bathymetry (depth) of a port;
- provide police with the power to enforce port notices issued by the port operator to control activities on the water within a designated port;
- provide police with a power to direct a person to remove their vessel from closed waters with an offence for a failure to comply,;
- provide exceptions for the requirement for a vessel to take a pilot on board when entering or exiting a designated area; and
- provide a power to regulate moorings within a designated port, noting that a separate Executive Council process may be undertaken at a later time to regulate the placement of moorings and the quality of materials used for moorings to improve safety of port users.

Utilities Commission Review - Summary of amendments

Key elements of the Bill:

- extend the application of the PM Act to a pilotage services provider which is not related to the port operator;
- require the port operator to consult with port users about its draft access policy and provide the Commission with a summary of users' comments together with the draft access policy for approval;
- allow greater flexibility for the time period within which the Commission must decide whether to accept or reject the draft Access Policy by extending by a further 60 days;
- provide that an approved access policy nominally expires 5 years after its approval, unless the access policy provides for a nominal expiry date that is less than 5 years after the date of its approval; and
- require the private port operator to submit a new draft access policy for approval prior to the nominal expiry date. If the new draft access policy is approved, it will become the new access policy from the date of approval until it is replaced by a new access policy.

Human rights implications

This bill engages the following rights or freedoms.

International Covenant on Economic, Social and Cultural Rights

Right to own property – Article 17 of the Universal Declaration of Human Rights

The Preamble to the International Covenant on Economic, Social and Cultural Rights recognises that, in accordance with the Universal Declaration of Human Rights ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy their economic, social and cultural rights, as well as their civil and political rights.

Article 17 of the Universal Declaration of Human Rights, recognises that 'everyone has the right to own property alone as well as in association with others [and] no one shall be arbitrarily deprived of his property'.

Although the Universal Declaration is not one of the international instruments listed in s3 of the Cth Act, it has been included here anyway as the Bill potentially engages with this right.

In its current form, Part 5 Division 3 of the PM Act provides for the clearance of wrecks and vessels likely to cause damage to other vessels or threaten shipping.

In general terms the Ports Management Act 2015 allows a port operator or regional harbourmaster to issue a written direction in respect of a wreck or vessel, hull or hulk that poses a threat to persons, vessels or property connected with shipping, to require the owner, master, and in some instances, occupier, of the vessel to remove, repair or destroy the vessel.

If the person fails to comply with the direction, the port operator or regional harbourmaster may authorise another person to board the vessel to carry out the work required to comply with the direction. The costs incurred by the port operator or regional harbourmaster may be recovered from the owner, master or occupier as a debt due and payable to the port operator or the Territory respectively.

In addition to these existing powers, the Bill will allow a port operator or regional harbourmaster to 'sell or otherwise dispose of' a vessel, upon the failure of the owner, master or occupier to comply with the original direction – to take a preventative action.

In so far as these provisions may restrict a person's right to own property, the provisions are considered necessary and proportionate to ensure the safe and efficient operation of the port, by reducing the risk for all port users resulting from wrecks or vessels that are likely to cause damage to, endanger or obstruct the passage of, or navigation or use of the Port. The provisions aim to increase the likelihood of compliance by an owner, master or occupier of a vessel with the direction (a preventative action) given by the port operator or regional harbourmaster.

The provisions ensure that any potential restriction is not arbitrary, as the port operator or regional harbourmaster will only step in circumstances where there is a failure on the part of the owner, master or occupier to comply with the original direction.

Where there has been a failure to comply and the port operator or regional harbourmaster is required to step in, the Bill will also require 28 days' notice to be given to each person who has a registered interest in the vessel, before the vessel can be sold.

Additional notification provisions are provided for circumstances where the port operator and regional harbourmaster do not know the name or address of the owner or master of the vessel to allow for notification to be publicised or published in a manner that is likely to draw the attention of the relevant people.

In addition to the notice requirements, the Bill will also provide that the vessel cannot be destroyed or otherwise disposed of unless the vessel is unseaworthy and the costs of repairing it exceeds its value. Furthermore if a direction is given to destroy a vessel this does not authorise the person to whom the direction is given to destroy the vessel, hull or hulk without the consent of the owner.

The Bill provides machinery which is equivalent to that which applies to the sale of uncollected goods in accordance with the *Uncollected Goods Act 2004* in regard to the 'proceeds of sale' and 'records held by receiver' and 'good title'.

Conclusion

The provisions in this Bill have been drafted to ensure that they are reasonable, proportionate and necessary to achieve the policy objectives of the Bill. The provisions discussed above ensure that a person cannot be arbitrarily deprived of their property as mentioned in Article 17 of the Universal Declaration of Human Rights.

The Bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cwth).