



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
13th Assembly
LEGISLATION SCRUTINY COMMITTEE
Public Briefing Transcript

11.10 am, Monday 9 December 2019

Litchfield Room, Level 3 Parliament House

Members:

Ms Ngaree Ah Kit MLA, Member for Karama (Chair)
Mr Tony Sievers MLA, Member for Brennan
Mrs Lia Finocchiaro MLA, Member for Spillett
Ms Sandra Nelson MLA, Member for Katherine (Deputy Chair)
Mrs Robyn Lambley MLA, Member for Araluen

Witnesses:

Department of Infrastructure, Planning and Logistics
Nick Papandonakis: Executive Director Strategy, Policy and Legislation
Guy Riley: Senior Legal Policy Officer
James Mathews: Senior Policy Officer

PORTS LEGISLATION AMENDMENT BILL 2019

Department of Infrastructure, Planning and Logistics

Madam CHAIR: Good morning everyone, thank you for joining us. I am Ngaree Ah Kit the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee I welcome everyone to this public briefing on the *Ports Legislation Amendment Bill 2019*.

I also acknowledge my fellow committee in attendance today the Member for Brennan, Tony Sievers; and on the phone we have the Member for Katherine, Sandra Nelson; and the Member for Araluen, Robyn Lambley.

I welcome to the table to give evidence to the committee from the Department of Infrastructure, Planning and Logistics, Nick Papandonakis, Executive Director Strategy, Policy and Legislation; Guy Riley, Senior Legal Policy Officer; and James Mathews, Senior Policy Officer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead committee apply. This is a public briefing, it is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the briefing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask each witness to state your name and the capacity in which you appear this morning before inviting you to make a brief opening statement, and then proceed to the committee's questions. Could you each please state your name and the capacity in which you appear this morning.

Mr PAPANONAKIS: Good morning, Nick Papandonakis, Executive Director, Strategy, Policy and Legislation, Department of Infrastructure, Planning and Logistics.

Mr RILEY: Guy Riley, Senior Legal Policy Officer. I was responsible for drafting the instructions for the Parliamentary Counsel.

Mr MATHEWS: James Mathews, Senior Policy Officer, Department of Infrastructure, Planning and Logistics, involved also in the drafting of the bill.

Mr RILEY: I went on leave and he finished it off.

Madam CHAIR: True teamwork, well done. Mr Papandonakis, would you like to make an opening statement?

Mr PAPANONAKIS: Thank you and thank you for the opportunity to address the scrutiny committee this morning on the Ports Legislation Amendment Bill.

The draft bill responds to two separate reviews of the *Ports Management Act* and Regulations. The first being a general review to assess operational efficiency of the legislation and the second relating to the 2018 Utilities Commission Ports Access and Pricing Review to assess the effectiveness of the access and pricing regime.

In terms of the general review, a working group comprising DIPL, including the regional harbourmaster, senior policy staff from the Department of Trade, Business and Innovation and the Darwin Port operator, undertook the general review which revealed a number of safety, technical and administrative issues that have been addressed in the bill.

Key port stakeholders were advised of the proposed amendments and were given an opportunity to discuss any elements of the review further. The following stakeholders were contacted and raised no concerns:

- INPEX
- ConocoPhillips
- Svitzer

- Verdant Minerals
- Maritime Union of Australia
- Association of Mining Exploration Companies

DIPPL also consulted the NT Environment Protection Authority and the Department of Environment and Natural Resources to discuss the proposed changes to approvals for dredging the Darwin Harbour and the regional harbourmaster is currently working with the NTPA and the Department of Environment and Natural Resources to align approval processes to minimise any additional regulatory burden.

A key concern was the limitation of the current powers in the act to deal with wrecks and vessels; wrecked vessels and vessels that threaten the safety of other vessels in the port, particularly in emergency situations.

In general terms, the current PMA allows a port operator or a regional harbourmaster to issue a written direction in respect of a wrecked 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 either remove it, repair it or destroy it.

In addition to these existing powers, the bill will extend the powers of the port operator and the regional harbourmaster to give a direction to take one or more preventative measures to address a threat proposed by the vessel. If the person fails to comply with the direction, the port operator or regional harbourmaster currently may authorise another person to board the vessel to carry out the work required to comply with the direction. The cost 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 operation or the Territory respectively.

The bill will expand the options available to the port operator and regional harbourmaster when a direction to take a preventative measure is ignored to include the removal of the vessel from a designated port, moving the vessel to another place within the port, repairing the vessel to make it safe, destroying the vessel and selling or otherwise disposing of the vessel and all its fittings and equipment.

Other key provisions in the bill allow for oral directions to be given in an emergency, rather than a written direction. Currently, you have to go through the process of a written direction in an emergency. You want to be able to act swiftly, in circumstances where there is no one on board, to allow for the vessel to be moved by the port operator or regional harbourmaster and directions to be given by fixing a notice of the direction to the vessel in a prominent position, rather than having to try and find someone.

It makes it clear that a direction to destroy a vessel given to someone, other than the owner of the vessel, does not authorise that person to destroy the vessel without the consent of the owner. It provides conditions that must be satisfied before the port operator or a regional harbourmaster may exercise the power to destroy a vessel or otherwise dispose of the vessel. It provides for compensation should acquisition of a vessel by the port operator or regional harbourmaster be other than just terms, compensation being payable by the port operator if an acquisition arises from the exercise of them exercising their powers or the Northern Territory if the acquisition arises from the exercise of a power or function by the regional harbourmaster.

The new bill makes 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. So, if it is moored inappropriately then the powers kick in. It makes it clear that the environment is something that can be threatened so as to trigger the powers available to the port operator or the regional Harbourmaster and aligns the ability for the port operator and regional Harbourmaster to give directions relating to vessels that threatens shipping, with their ability to deal with wrecked vessels by including an occupier of a vessel to the persons who can receive a direction.

It also expands the provision for the erection of any structures to include any act that causes a significant alteration to the bathymetry, which is the depth of a port. Currently, there is a requirement that if they erect any structure then they need to seek approval under the *Ports Management Act*. This expands that power to where there is any significant alteration to the depth of the port—then they need to seek approval.

It provides a power to regulate moorings within a designated port, noting that it is merely giving the head of power to allow for regulations to create a regulatory regime for moorings in designated ports, which government may consider to do in the future.

That is a very quick summary of the general review and those issues that were raised by stakeholders in our consultation in that review.

The bill also deals with the Utilities Commission's review of the access and pricing regime. Section 123 of the *Ports Management Act* required the Utilities Commission to complete a review of the access and pricing regime by 15 November 2018, being three years after the commencement of the act. The Utilities Commission consulted extensively, which resulted in six written submissions received on their issues paper and four submissions received on their draft report.

The final report was delivered to government on 15 November 2018. Given that there were a number of differences between the recommendations in the commission's draft report and final report, government directed that the department again consult with those port stakeholders who had provided comments in the draft report, including the Darwin Port Operator, INPEX, ConocoPhillips, Svitzer, Verdant Minerals, Maritime Union of Australia and the Association for Mining and Exploration Companies.

The minister advised the Utilities Commission and the above port stakeholders of government's decision in regard to the Utilities Commission's recommendations, and the bill gives effect to government's decisions in respect of their review.

The Utilities Commission review found that:

1. whilst it considered the port operator to have substantial market power, there was no evidence to suggest that this market power had been exercised
2. there are no recent or expected future changes that will materially impact market power of the port operator or the potential for it to be exercised in the foreseeable future
3. fundamentally, there was no need to change the form of regulatory oversight for access and pricing.

In general, whilst the port operator had market power to change, they had not exercised it in any way inappropriately.

Notwithstanding these findings, the commission recommended a number of amendments to provide it with additional powers of oversight, which appear to be for the purpose of making the access and pricing more robust to future proof it in the event that the port operator behaved inappropriately.

Based on the commission's findings, government determined that there was insufficient justification to extensively amend the regime or to future proof it. However, it was decided to accept a number of the commission's recommendations in full or in part, which will enhanced the day-to-day operation of the access and pricing regime.

Key provisions in the draft bill will:

- extend the application of the access and pricing provisions in part 11 to any private pilotage provider which is not related to the port operator
- require the chief executive officer of the port operator or other officer approved by the commission to certify that the information it provides to the commission is accurate
- require the port operator after preparing a draft access policy to consult with port users on the draft access policy and provide the commission with a summary of users' comments together with the draft access policy for approval
- allow a greater flexibility for the time period within in which the commission must decide whether to accept or reject the draft access policy
- require the port operator to submit a revised draft access policy for approval within five years from the date the commission last approved the access policy, and
- clarify 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 port operator and approved by the regulator.

The Utilities Commission was provided the opportunity to review the draft bill as it relates to part 11 of the act. They raised one concern regarding the proposed amendment to ensure any future third party pilotage service provider is subject to the access regime and the draft bill was amended to address this concern.

The Office of Parliamentary Counsel has also included the repeal of two acts in the draft bill that were not included in the recent statute law revision repeal bill, those being the repeal of the *Darwin Port Corporation Act* and the *Ports Management (Repeal and Related and Consequential Amendments) Act*.

Madam CHAIR: Thank you very much. I will now open up to the committee for any questions.

Mr SIEVERS: Nick, when we talk about Darwin port, where is the boundary?

Mr PAPANDONAKIS: There are a couple of boundaries. In terms of the leased area to the port operator there is a small boundary but in terms of the boundary of the port it is the old boundary of the port that includes the entire Darwin Harbour area.

Mr SIEVERS: Right.

Mr RILEY: It goes over to Mandorah and right across—Fannie Bay, Mindil Beach and Cullen Bay. They are all within Darwin Harbour within the port.

Mr SIEVERS: I am pleased to hear the consultation with all the stakeholders is really good and then further changes after that consultation.

In the sense of operation, for instance, if someone does not have a light on their boat at night which they are supposed to have a pilot light when they are anchored—we see lots of yachts come in the dry season and anchor in different spots, some have lights and some do not—is there a verbal warning instead of a written warning?

Mr PAPANDONAKIS: Yes. Where a vessel threatens either the environment or the safety and you cannot find somebody then this will give either the regional harbourmaster or the port operator the ability to deal with it relatively quickly.

Mr SIEVERS: In the case of no one is there they can actually pull the anchor and move it?

Mr PAPANDONAKIS: Yes. These amendments came as a result—and these are in the general review—of the port operator saying, 'If we are obliged to continue to manage both commercial vessels and recreational vessels then we have to have some powers to be able to get in there and deal with stuff quickly'. Because when the act was drafted, they needed some time to see how it operated and this is basically giving them additional powers to deal with things quite effectively and quickly.

Madam CHAIR: When was that initial act created?

Mr PAPANDONAKIS: In 2015.

Madam CHAIR: Thank you.

Mr SIEVERS: Darwin Harbour has become such a busy place these days.

Mr PAPANDONAKIS: It certainly has.

Mr SIEVERS: It is good to hear the legislation is being updated...

Mr RILEY: I think that is the major thing that has come out of this utilities commission thing, is it making them review their policies every five years. Whereas before they could if they wanted to but they were not compelled to in any way and so we could have been left with the same access regime for 99 years.

Madam CHAIR: Could you please explain the difference between 'dispose of' and 'destroy'? Disposing of a vehicle as opposed to destroying a vessel.

Mr RILEY: I mean disposing could be destroying but it could also be selling or just giving it away.

Mr PAPANONAKIS: The difficulty that the port operator raised early in the discussions were that there are a number of vessels out there that are just very old, not worth a great deal, it is very difficult to find out who the operator is. They cut a line and you have to deal with it really quickly and be able to—it is difficult to hunt down, sometimes, the vessel owners.

Mr RILEY: Commercial, the big ships, we know who owns it and they are not the problem. It is the recreational vessels, the yachts and things like that that have just been left moored in places and are rotting at their moorings.

Madam CHAIR: Would we have any numbers in regards to how many different instances might be encountered each year?

Mr RILEY: Not each year, but they have had several since they took over control, What they end up doing is towing the thing away and storing it at Bhagwan Marine and it is costing them significant money and then they cannot find ...

Madam CHAIR: Hoping that the owner will come and look for their ...

Mr RILEY: Yes, exactly. They cannot find the owner and they are left wearing the cost.

Mr PAPANONAKIS: It is sort of akin to vehicles that are left on the side of the road, they are not worth anything. Even if you find the owner they are not going to be willing to pay, and then somebody gets lumbered with the costs. So this is giving the port operator the abilities to effectively manage that to minimise their costs.

Madam CHAIR: Fair enough. There are no further questions. Thank you very much for appearing before us.