

Ports Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the Ports Bill 2014.

Policy objectives and the reasons for them

The proposed Bill will give effect to the government's intent to reform the way ports are planned and developed in Queensland (as articulated in the Queensland Ports Strategy (QPS¹)). Specifically, the Bill will implement the Queensland Government's commitment 'to drive economic growth through the efficient use and development of Queensland's long-established major port areas, while protecting and managing Queensland's outstanding environmental assets'.

The QPS is the blueprint for managing and improving the efficiency, production and environmental management of the state's ports network over the next decade. As a key action of Governing for Growth,² the Bill, in conjunction with the QPS sets the direction for how future port development will occur in Queensland.

Through major reform to port planning, governance, environmental management and supply chain connections, Queensland will lead the way with an efficient port network that supports economic growth and effectively manages environmental objectives.

The Queensland Government is committed to supercharging and driving Queensland's economy. Queensland ports play a critical role in the growth of the economy through trade and other activities. During 2012–13 the ports facilitated over \$44 billion of exports to overseas destinations. In order to increase ports' contribution to the Queensland economy, the Bill will deliver greater certainty for industry about the future development of ports. It will also provide certainty for other stakeholders of the government's intention to properly manage the potential impacts of port development.

The Bill will provide this certainty through:

- Providing for the establishment of Priority Port Development Areas (PPDAs) at the long-established major ports of Abbot Point, Gladstone, Hay Point/Mackay and Townsville. It is expected that the Port of Brisbane will also be able to become a port with a PPDA, consistent with the policy intent of the QPS, once the various current tenure and regulatory structures are transitioned. The government will facilitate staged, incremental expansion of port and terminal capacity to meet emerging demand in line with long-term plans at each PPDA. This will drive economic growth and concentrate port development to maximise efficiencies, while minimising environmental impacts.

¹ <http://www.dsdip.qld.gov.au/infrastructure-and-planning/queensland-ports-strategy.html>

² <http://www.dsdip.qld.gov.au/resources/policy/governing-for-growth.pdf>

- Master plans that will consider factors beyond traditional port boundaries, including supply chain connections, environmental and community values and surrounding land use activities. This will allow better management of potential land use conflicts beyond traditional port boundaries. The development of master plans and environmental management frameworks for PPDA's will manage both land and marine environmental values.
- The prohibition of dredging within and adjoining the Great Barrier Reef World Heritage Area (GBRWHA), for the development of new, or the expansion of existing port facilities outside PPDA's, until the end of 2024. This includes land under the tidal waters between the Queensland coast and the low water mark (the boundary of the GBRWHA).
- The prohibition on significant development on land under tidal waters between the Queensland coast and the low water mark (the boundary of the GBRWHA) until the end of 2022.
- These prohibitions address UNESCO World Heritage Committee (WHC) recommendations regarding the conservation of the GBRWHA and will ensure that the most pristine areas of the Great Barrier Reef are protected, while still allowing for sustainable port development.

The government will facilitate staged, incremental expansion of port and terminal capacity to meet emerging demand in line with long-term plans at each PPDA. This will enable the concentration of port development to maximise efficiencies and economic outcomes, while minimising environmental impacts.

The Bill will also reform planning for ports that will not have a PPDA through changes to the port land use planning requirements, increasing the transparency and consistency of port planning across the state.

Minor amendments are proposed to part 4A of the *State Development and Public Works Organisation Act 1971* (SDPWO Act) to allow development activities within PPDA's to be assessed and approved by the Coordinator-General once an Approval Bilateral Agreement made under sections 45 and 46 of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has been finalised.

The SDPWO Act amendments will contribute to reducing duplication between Queensland and Australian Government environmental assessment and approval processes, and result in streamlining benefits, under an Approval Bilateral Agreement.

Achievement of policy objectives

The Bill seeks to achieve the overall policy objective of driving economic growth through the efficient use and development of Queensland's long-established major port areas, while protecting and managing Queensland's outstanding environmental assets by:

- establishing the PPDA's;
- prohibiting dredging within and adjoining (the tidal waters between the Queensland coast and the low water mark (boundary of the GBRWHA)) the GBRWHA, for the development of new, or the expansion of existing port facilities outside PPDA's, for the next 10 years; and
- requiring long term planning at each PPDA which includes environmental management frameworks.

The QPS signalled the government's policy intention to include the Port of Brisbane (PoB) as a port that will have a PPDA upon the making of a master plan. In order to avoid any adverse impact on past transactions, the Bill does not include PoB. The PoB is supportive of being included as a PPDA via amendment to the proposed Ports Act at the earliest opportunity following the resolution of appropriate transitional arrangements for the port.

A non-statutory Priority Port Development Area Planning Guideline (guideline) will guide planning at PPDAs and support the Bill in achieving the policy objectives. Adherence to the guideline will ensure that relevant Queensland and Australian government interests, including requirements of the EPBC Act, are front loaded into the port plan making process. Plan making in accordance with the guideline will support streamlined assessment and approval processes for the PPDA.

The guideline will provide a framework that can be tailored to the individual circumstances of each PPDA. The guideline will outline the assessment and analysis required to establish an evidence base for comprehensive and rigorous PPDA master plans and PPDA development schemes, as well as the recommended content of these plans.

The SDPWO Act amendments will contribute to reducing duplication between Queensland and Australian Government environmental assessment and approval processes, and result in streamlining benefits, under a future Approval Bilateral Agreement.

Alternative ways of achieving policy objectives

The key policy objective of the proposed Bill is to drive economic growth at Queensland's long-established major ports while protecting and managing the state's outstanding and unique environmental assets. The most appropriate and effective way to achieve this policy objective is to concentrate port development at the long-established major ports. This will require legislation to establish the PPDAs, and prohibit dredging within and adjoining the GBRWHA, for the development of new, or the expansion of existing port facilities outside PPDAs, for the next 10 years.

The majority of other port reform policy objectives outlined in the QPS are being met through a variety of non-legislative actions and projects across government.

Estimated cost for government implementation

Costs will be met from within existing departmental resources. The cost of preparing future port planning instruments will depend on the extent to which these responsibilities are delegated to port authorities or other entities.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of the principles are set out below.

Is the legislation drafted in a sufficiently clear and precise way – Legislative Standards Act 1992, s 4(3)(k)

Clause 8 proposes that the stated major ports will have a PPDA on the making of a master plan for the port. The spatial boundaries of the PPDA will be identified in the master plan as opposed to legislation.

The area to be defined as a PPDA will be determined through a master planning process that gives consideration to matters such as: trade forecasts; port user requirements; environmental values; and social and cultural heritage values (supporting documents). This process will include public consultation and notification, as provided for by this Bill.

It would not be possible to accurately determine the area of a PPDA before completing the development and analysis of the supporting documents. Also, the area required for a PPDA may vary over time based on changing circumstances in the area. Defining the PPDA in a master plan as opposed to legislation allows for the boundaries to be changed without unnecessary red tape and bureaucratic processes.

Does the legislation make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review – Legislative Standards Act 1992, s 4(3)(a)

Clause 31 provides for the Minister to direct a planning entity to take action to ensure an instrument is consistent with a master plan. To do so the Minister must give the planning entity written notice of the proposed action and give the planning entity the opportunity to make a submission about the proposed action. After considering any submissions received in accordance with the notice the Minister may decide to direct the planning entity to take action. The Minister must give the entity notice of whatever decision is made.

Clause 32 gives the Minister power to take urgent action in relation to an instrument to ensure it is consistent with a master plan. In taking such an action the Minister may give a planning entity notice of the intended action and the reasons for it. After giving the notice the Minister may take the action without giving a direction to the planning entity and without consulting anyone.

The provisions could be considered to breach the fundamental legislative principles as they do not provide for the review of, or appeal against, a Minister's direction or action. As the direction may be given, or action taken, only to ensure consistency with a master plan, it is considered justified. As the master plan sets the strategic objectives for each PPDA and ensures planning and development aligns with state interests, it is important that the Minister has power to ensure other planning instruments are consistent with it.

The direction or action would not require a planning entity to take an approach that is different from the arrangements under the Bill, and is not intended to limit or restrict the rights of a planning entity.

Clause 82 provides that an assessment manager must refer to the Minister a development application made during the prohibited period for development in, or on land under tidal water adjoining, the GBRWHA. The Minister must decide whether the proposed development is significant port development, having regard to the purposes and principles of the Bill. If the Minister decides the development is significant port development, the assessment manager must refuse the development application.

The provision could be considered to breach the fundamental legislative principles as it does not provide for the review of, or appeal against, the Minister's decision. As the Minister's decision will be made to uphold the Bill's purpose and principles, and is consistent with UNESCO World Heritage Committee recommendations regarding the conservation of the GBRWHA, it is considered justified.

It is important the Minister has power to ensure development doesn't have a negative impact on environmentally sensitive areas.

Does the legislation have sufficient regard to the institution of Parliament – Legislative Standards Act 1992, s 4(4)(c)

Clause 104 establishes a power to make a regulation to deal with urgent matters to facilitate the transition of port planning to this Bill, if the Bill does not make sufficient provision. This may be taken to constitute a Henry VIII provision.

The clause allows a regulation to make provision about a matter necessary to facilitate the change from the operation of the relevant parts of the *Transport Infrastructure Act 1994* (TIA) to the proposed Act. The clause is considered essential to ensure the smooth transition of port planning to the Bill.

The inclusion of this new clause is necessary to provide a transitional regulation making power for any circumstance where a transitional provision is required to protect rights acquired under existing legislation that are not appropriately reflected in the Bill. The activities dealt with under the Bill are complex and the extent of existing rights may not be fully appreciated until the legislation commences. The clause provides that this power will expire one year after commencement and therefore the potential breach of the fundamental legislative principle is short term.

Consultation

Draft QPS

The draft QPS was released for public consultation from 17 October 2013 to 13 December 2013.

The consultation process provided stakeholders with an opportunity to comment on the draft strategy through a number of mechanisms including an online survey, written submission form and a submission via email or post.

As part of the consultation program, the Department of State Development, Infrastructure and Planning conducted engagement and communication activities to raise awareness of the draft QPS and the opportunity to provide public comment. This included media releases, web pages, fact sheets and Frequently Asked Questions, stakeholder letters, regional briefings and

community information sessions held as part of the Great Barrier Reef Strategic Assessment public consultation program.

A total of 231 submissions were received throughout the consultation period. Key statistics include:

- 4720 project web page visits (including 3481 unique visits)
- 999 draft strategy downloads (including 871 downloads from unique users)
- 115 submissions via the online survey, 110 email submissions (including campaign submissions, 6 postal submissions)
- 1 campaign conducted by the Keppel and Fitzroy Delta Alliance that generated 38 email submissions.

Submissions were received from a wide range of stakeholders including the ports industry, environmental groups, the resources industry, local government, the tourism industry and individuals.

The draft QPS summary of consultation responses³ provides further information on the consultation process and identifies major themes emerging from this process.

An expert focus group was established to facilitate the development of the guideline. The members were engaged in a capacity as independent experts to provide content knowledge to inform the development of the guideline.

The Department of State Development, Infrastructure and Planning has begun consultation with the PoB and will continue negotiations with the aim of a full transition to the proposed Ports Act at the completion of the negotiations.

Consistency with legislation of other jurisdictions

Currently, legislative arrangements for ports throughout Australia show requirements for port planning exist in only three states:

Jurisdiction	Legislation	Responsibility	Planning requirement	Timeframe
Queensland (currently)	<i>Transport Infrastructure Act 1994</i>	port authority	Land Use Plan	Every eight years
Queensland (proposed by Bill) ⁴	<i>Ports Bill 2014</i>	Minister for State Development, Infrastructure and Planning	Ports with a PPDA – Master Plan and PPDA Development Scheme	Master Plan – 30 year time horizon, reviewed every 10 years PPDA

³ <http://www.dsdip.qld.gov.au/resources/report/draft-qps-consultation-report.pdf>

⁴ Port of Brisbane port planning provisions will remain under the *Transport Infrastructure Act 1994* until the resolution of transitional arrangements to allow the port to be moved under the proposed new framework.

Jurisdiction	Legislation	Responsibility	Planning requirement	Timeframe
			Ports without a PPDA – Land Use Plan	Development Scheme – reviewed anytime master plan changes Land Use Plan – reviewed every 10 years
Victoria	<i>Port Services Act 1995</i>	port authority	Port Development Strategy	Every four years
Western Australia	<i>Port Authorities Act 1999</i>	port authority	Strategic Development Plans	Every five years

The *New South Wales Ports and Maritime Administration Act 1995*, *Tasmanian Ports Corporation Act 2005*, and *Darwin Port Corporation Act 1999* establish the objectives, functions, management and operational responsibilities of the port entities. These Acts do not specifically require a plan to be made for the port. However at an operational level, as part of the port entities' business and activities, some form of port planning is undertaken and documented for land within port boundaries and under port control.

'Australia's ports vary considerably in scale and complexity and port roles and characteristics vary due to differing ownership and governance arrangements, geographic size and scale, trade profiles and locations. Partly as a result of these factors, approaches to port and associated logistics planning are disparate ranging from highly transparent port plans produced in response to legislative obligations to more internal planning processes that are commodity based reacting to specific market interests'.⁵

This Bill establishes the framework for development at ports with a PPDA and which is informed by leading practice master planning. This is in line with the recommendations of the *National Ports Strategy*, which was endorsed by the Council of Australian Governments in 2012.

⁵ April 2010, Infrastructure Australia and the National Transport Commission, *Background Paper 2 for the NPS "Current port planning practices in Australia"*.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Clause 1 Short title

Clause 1 provides that the short title of the Bill is the *Ports Act 2014*.

Clause 2 Purpose of Act and achieving the purpose

Clause 2 sets out that the purpose of the Bill is to stimulate Queensland's economic growth while protecting and managing Queensland's outstanding environmental assets.

The clause provides that the purpose will be achieved through planning for the efficient use and development of Queensland's long established major ports in a way that increases their contribution to the State's economy, protects and manages environmental assets, including the Great Barrier Reef and that is consistent with ecologically sustainable development – this purpose seeks to advance the policy of the Queensland Ports Strategy (QPS) by mirroring the vision of the QPS.

Clause 3 Principles for achieving Act's purpose

Clause 3 provides that the purpose of the Bill is intended to be achieved in accordance with the principles set out in this clause, including maximising the community and economic benefits of port development while minimising any potential adverse impacts on social, environmental and cultural heritage values.

The focus of the Bill is to provide long term planning beyond traditional port boundaries. This is to encompass considering and planning for supply chains. It is envisaged that port development and growth will be incremental under port planning instruments.

Clause 4 Act binds all persons

Clause 4 confirms that the Bill binds all persons, including the state and to the extent permitted, the Commonwealth and other States. However, the Commonwealth or a State cannot be prosecuted for an offence under the Bill.

Division 2 Interpretation

Clause 5 Dictionary

Clause 5 provides that the dictionary in schedule 1 defines particular words used in the Bill.

Clause 6 Application of provisions

Clause 6 clarifies that for a provision of this Bill that applies to another provision of this Bill or any other law (applied law), the applied law and any definition relevant to it apply to the provision with necessary changes.

The clause clarifies that the application of the applied law and any definition relevant to it is not limited by the provision stating how the applied law is to apply.

Clause 7 References to functions

Clause 7 provides that a reference to a function includes a reference to a power and a reference to performing a function includes performing a power.

Part 2 Priority port development areas**Clause 8 Priority port development areas for particular ports**

Clause 8 provides that the stated ports have a priority port development area (PPDA) on the making of a master plan for the port. The PPDA for a port will be defined in the master plan. To define a PPDA, the master planning process will consider matters such as: trade forecasts, port user requirements, environmental values, and social and cultural heritage values.

The government intends that the PoB will become a port with a PPDA, consistent with the policy intent of the QPS, once the various current tenure and regulatory structures are transitioned.

Part 3 Port planning instruments**Division 1 Preliminary****Clause 9 What is a port planning instrument**

Clause 9 defines a master plan, a PPDA development scheme (including an interim PPDA development scheme) and a port land use plan as port planning instruments and provides they are statutory instruments.

A port identified in clause 8 as a port which will have a PPDA will operate under a master plan in conjunction with a PPDA development scheme.

A port without a PPDA (a non PPDA port) will operate under a port land use plan.

Division 2 Making, amending and repealing port planning instruments**Clause 10 Process for making, amending or repealing port planning instruments**

Clause 10 provides that the process stated in part 3, division 2 must be used to make, amend or repeal a port planning instrument.

The process to be followed for making or amending all port planning instruments is generally the same and set out in this division. Specific provisions for master plans are set out in part 4, division 2. Specific provisions for PPDA development schemes are set out in part 4, division 3. Specific provisions for port land use plans are set out in part 5.

Clause 11 Making or amending port planning instruments

Clause 11 sets out the process the Minister must follow if proposing to make or amend a port planning instrument, including consultation and notification requirements.

Clause 12 Minister asks supporting entity for assistance

Clause 12 provides that the Minister may ask the chief executive, the co-ordinator-general, a port entity or a local government (a supporting entity) to help the Minister make or amend a

port planning instrument, including part of the instrument. The Minister will always have the final approval of a port planning instrument no matter who makes, or helps make all or part of a plan (see clause 14(6)).

Clause 13 Supporting entity prepares part of port planning instrument or amendment

Clause 13 provides that if the Minister asks a supporting entity under clause 12 to prepare a part of a port planning instrument or a part of an amendment of a port planning instrument, the supporting entity must prepare the part and give it to the Minister.

The Minister is responsible for following the process under clause 11 including notification and taking submissions if the supporting entity prepares only part of the instrument or amendment.

Clause 14 Process if supporting entity prepares whole of port planning instrument or amendment

Clause 14 provides that if the Minister asks a supporting entity under clause 12 to prepare a whole port planning instrument or whole amendment of a port planning instrument, the supporting entity must prepare the whole instrument or the whole amendment.

Clause 14(2) sets out the process a supporting entity must follow in preparing a whole port planning instrument or whole amendment of a port planning instrument including notification requirements and submission periods. The supporting entity must also give the Minister particular information to enable the Minister to make a final decision on whether to approve a port planning instrument or amendment.

This process is to be used instead of the process set out in clause 11.

Clause 15 Minor or permissible amendments of port planning instruments

Clause 15 sets out particular amendments to a port planning instrument that are considered minor or permissible amendments. In making such an amendment the Minister need not comply with the process under clauses 11 or 14 but must publish a public notice with a brief description of the amendment, the day the amendment was made and where a copy of the amended port planning instrument can be inspected or purchased. The amendment takes effect on the day after the notice is published or a later day stated in the amendment. See clauses 16 and 17 for definitions of minor and permissible amendments.

This section reduces unnecessary red tape while maintaining transparency and public awareness about the amendment through public notice requirements.

Clause 16 Minor amendments

Clause 16 sets out what constitutes a minor amendment for the purposes of clause 15. Minor amendments are mainly of a formatting, grammatical, redundant or out-dated reference nature.

Clause 17 Permissible amendments

Clause 17 sets out what constitutes a permissible amendment for the purposes of clause 15. Permissible amendments are mainly to ensure consistency between planning instruments, to reflect other planning and development approvals and to accurately record property descriptions or boundaries.

Clause 18 Repealing port planning instruments

Clause 18 sets out the process for repealing a port planning instrument. A port planning instrument is repealed by the Minister when another planning instrument, of the same kind is made. However, if a master plan is repealed, the associated PPDA development scheme is automatically repealed. Given the relationship between the PPDA development scheme and the master plan, it is intended that a PPDA development scheme cannot be in place without a master plan.

Division 3 Guidelines for port planning instruments**Clause 19 Ministerial guidelines**

Clause 19 allows the Minister to make guidelines about matters that may be included in a port planning instrument. If guidelines are made under this clause the Minister must publicly notify them.

Division 4 Relationship of particular port planning instruments with other instruments**Clause 20 Master plans prevail over particular instruments**

Clause 20 sets up the relationship between a master plan and other planning instruments that may be in effect over a PPDA. It is intended that a master plan prevails over a local government planning scheme, a state development area development scheme, a priority development area development scheme and all other port planning instruments (the PPDA development scheme (including an interim scheme) and the port land use plan) to the extent of an inconsistency.

Clause 21 PPDA development schemes prevail over particular instruments

Clause 21 sets up the relationship between a PPDA development scheme and other planning instruments that may be in effect. It is intended that a PPDA development scheme prevails over a local government planning scheme, a state development area development scheme, a priority development area development scheme and a port land use plan.

The distinction between the prevalence of the master plan and the PPDA development scheme is that a PPDA development scheme deals with specific development in the area so ‘over-rides’ the other planning regimes whereas the master plan deals with strategic high level matters so prevails to the extent of any inconsistency.

Clause 22 Port land use plans prevail over local planning instruments

Clause 22 sets up the relationship between a port land use plan and local planning instrument on strategic port land. A port land use plan prevails to the extent of any inconsistency. It is important to note that a port land use plan regulates development on strategic port land but will not regulate development on future strategic port land.

Clause 23 Port planning instruments prevail over local laws

Clause 23 sets up the relationship between all port planning instruments and local laws – a port planning instrument prevails over a local law to the extent of any inconsistency.

This means local governments with a port planning instrument in their local government area need to be aware of the instrument and factor it into their existing and future local laws. Also,

when a port planning instrument is amended or changed, the relevant local government will be required to reflect any updates in their local laws.

Division 5 Miscellaneous provisions

Clause 24 Exchange of documents and information with responsible entities

Clause 24 provides for the Minister to ask a port entity, local government or a government entity that has planning or registration functions (a responsible entity) for land or development in the relevant area to give to the Minister documents or information the Minister reasonably needs to make or amend a port planning instrument.

If the Minister has asked a supporting entity to assist the Minister to make or amend a port planning instrument, the supporting entity may ask the responsible entity for documents or information the supporting entity needs to make or amend the plan.

A responsible entity must give the requested documents or information free of charge and within a reasonable time.

This will allow port planning instruments or amendments to be made based on all relevant information.

Clause 25 Non-disclosure of commercially sensitive information

Clause 25 provides for when a responsible entity gives information under clause 24 and the responsible entity advises the receiver the information is commercially sensitive. If the receiver believes disclosing the information would be likely to damage the entity's commercial interests and would not be in the public interest, the receiver must take all reasonable steps to ensure the information is not disclosed, without the entity's consent.

However, the clause provides that the information can be disclosed in the administration of the Bill.

The clause aims to strike a balance between the need to have information and documents to inform rigorous and effective port planning with protecting commercial interests.

Clause 26 Recording matters about land to which port planning instrument applies

Clause 26 provides that a local government that has a port in its area must keep a record of any port planning instrument relating to that port on a map in its planning scheme and state in that planning scheme where a copy of the instrument can be inspected and purchased.

Part 4 Port planning instruments for ports with a PPDA

Division 1 Preliminary

Clause 27 Application of pt 4

Clause 27 provides that part 4 applies to a port mentioned in clause 8 that will have a PPDA upon the making of its master plan.

Division 2 Master plans

Subdivision 1 Requirement for master plans

Clause 28 Master plan required

Clause 28 provides that, for each port that will have a PPDA, the Minister must make a master plan within 3 years of commencement. The intent is that the development of the master plan will inform and establish the PPDA boundary, the core port area and any future investigation area.

The intent of this section is to ensure each port to have a PPDA is transitioned to the new planning regime while allowing enough time for robust and effective master plans.

Clause 29 Content of master plan

Clause 29 sets out the content required in a master plan and provides that a regulation may prescribe another matter for inclusion in a master plan. The master plan is to be a high level, strategic planning instrument that is to set the vision, objectives and desired outcomes (master plan goals) for the PPDA for at least the next 30 years. It is also to include a plan for achieving these goals.

In order to identify the future infrastructure, land, marine and supply chain requirements for the port and its surrounding area, it is necessary to determine the proposed activities and land uses that may be undertaken within the PPDA over the master plan's planning period, and the potential activities and land uses in any future investigation areas over the PPDA master plan's planning period.

The proposed activities and land uses within a PPDA and the potential activities and land uses in any future investigation area should be strategic in nature in the master plan. Detailed site-based planning will be undertaken in other planning instruments, including the PPDA development scheme. These other instruments will need to reflect the high-level activities and land uses identified in the PPDA master plan (see clause 20).

Subdivision 2 State powers for master plans

Clause 30 Definitions for sdiv 2

Clause 30 defines particular words used in the subdivision.

Clause 31 Power of Minister to direct action be taken

Clause 31 provides that if the Minister considers a planning entity (i.e. a local government, the coordinator-general or the Minister for Economic Development (Queensland)) should take action to ensure an instrument under their control is consistent with a master plan, the Minister must give the entity notice stating the action to be taken, the reasons for the action and the reasonable time within which the entity may make a submission to the Minister about the action.

After considering any submissions received in accordance with the notice the Minister may decide to direct the planning entity to take the action or to take another action, or may decide not to direct the planning entity to take the action. The Minister must give the entity notice of whatever decision is made.

The planning entity must follow any processes under relevant Queensland legislation that apply to the taking of the action. For example, if a local government planning scheme is to be amended, the amendment process under the Planning Act is to be followed.

Clause 32 Power of Minister to take urgent action

Clause 32 gives the Minister power to take urgent action in relation to an instrument to ensure it is consistent with a master plan. In taking such an action the Minister may give a planning entity notice of the intended action and the reasons for it. After giving the notice the Minister may take the action without giving a direction to the planning entity and without consulting anyone. A reasonable expense incurred by the Minister in taking the action may be recovered as a debt owing to the State.

Subdivision 3 Reviewing master plans

Clause 33 Requirement to review master plans

Clause 33 provides that the Minister may carry out a review of a master plan at any time but must undertake a review at least every 10 years after a plan is made. The review must include an assessment of whether the PPDA boundary, core port area or future investigation area are still relevant and appropriate having regard to the master plan goals.

Clause 34 Public notice of review

Clause 34 provides that in conducting a review of a master plan under clause 33 the Minister must undertake public consultation and take submissions on any aspect of the master plan.

Clause 35 Action Minister must take after review

Clause 35 provides that after reviewing a master plan the Minister must prepare a new plan, amend the existing plan or, if satisfied the plan is satisfactory as is, decide to take no further action.

To ensure transparency, if no further action is to be taken, the Minister must table that fact and the reasons in the Legislative Assembly. If the decision after a review is to make a new master plan or amend the existing master plan, the process under clause 11 is followed (which includes consultation and notification).

Division 3 PPDA development schemes

Subdivision 1 Requirement for PPDA development schemes

Clause 36 PPDA development scheme required

Clause 36 provides that at the same time as, or as soon as practicable after, making a master plan, the Minister must make a PPDA development scheme for the PPDA or part of a PPDA (the development scheme area). This development scheme area must include the PPDA's core port area.

The intent is that the PPDA development scheme is a planning instrument that implements the master plan goals by providing for specific development that is appropriate. This will provide certainty for industry about the planned future development.

Clause 37 Content of PPDA development scheme

Clause 37 provides that a PPDA development scheme for a development scheme area may provide for any matter the Minister considers will promote the proper and orderly planning, development and management of the area. The clause also sets out the matters that must be included in a PPDA development scheme including plans for regulating development, for infrastructure and an environmental management framework as well as a table of assessment for proposed development in the development scheme area. Other matters to be included in the scheme may be prescribed by regulation.

An environmental management framework sets out land and marine-based environmental values, including identified values of Outstanding Universal Value, Matters of National Environmental Significance, Matters of State Environmental Significance and Matters of Local Environmental Significance. The framework will show how these matters are incorporated into the PPDA development scheme.

When making the PPDA development scheme, the Minister may consider, but is not bound by, any other planning instrument, scheme, plan, policy or code relevant in the development scheme area.

Subdivision 2 Interim PPDA development scheme**Clause 38 Power to make interim PPDA development scheme**

Clause 38 gives the Minister power to make an interim PPDA development scheme, by publishing public notice, if the Minister considers a scheme is urgently required to give effect to a goal in a master plan or to protect or give effect to a State interest. The public notice must set out the port to which the interim scheme relates and where a copy of the scheme may be inspected.

The clause makes it clear that the normal process for making a PPDA development scheme does not apply for making an interim PPDA development scheme. The intent is that an interim PPDA development scheme is available as a planning tool in urgent circumstances.

Clause 39 Duration of interim PPDA development scheme

Clause 39 sets out when an interim PPDA development scheme has effect. The longest an interim development scheme can be in effect is 2 years.

Subdivision 3 Reviewing PPDA development schemes**Clause 40 Requirement to review PPDA development schemes**

Clause 40 provides that the Minister must carry out a review of a PPDA development scheme as soon as practicable after the amendment of a master plan for a port. The requirement does not limit the Minister's power to undertake a review of a PPDA development scheme at any time.

The review must include an assessment of whether the PPDA development scheme is still consistent with the master plan.

Clause 41 Public notice of review

Clause 41 provides that in conducting a review of a PPDA development scheme under clause 40 the Minister must undertake public consultation and take submissions about any aspect of the scheme.

Clause 42 Action Minister must take after review

Clause 42 provides that after reviewing a PPDA development scheme the Minister must prepare a new scheme, amend the existing scheme or, if satisfied the scheme is satisfactory as is, decide to take no further action.

To ensure transparency, if no further action is to be taken, the Minister must table that fact and the reasons in the Legislative Assembly. If the decision after a review is to make a new scheme or amend an existing scheme, the process under clause 11 is followed (which includes consultation and notification).

Part 5 Port planning instruments for non PPDA ports**Division 1 Preliminary****Clause 43 Application of pt 5**

Clause 43 provides that the part applies to a non-PPDA port. A non-PPDA port is any other port except the Port of Abbot Point, Port of Gladstone, Ports of Hay Point and Mackay, Port of Townsville and the PoB.

The planning requirements for these ports (except Port of Brisbane) are provided in part 4 of the Bill.

As outlined above, the PoB planning requirements are continuing under the TIA until the various current tenure and regulatory structures are transitioned and moved under this proposed Act.

Division 2 Port land use plans**Subdivision 1 Requirement for port land use plans****Clause 44 Port land use plan required**

Clause 44 provides that the Minister must make a port land use plan for the strategic port land and any future strategic port land of these ports within 3 years after the commencement of the Bill.

The boundaries of the strategic and any future port land must be identified in the plan.

Clause 45 Content of port land use plan

Clause 45 sets out the mandatory content for a port land use plan in relation to a non-PPDA port's strategic port land and future strategic port land. The plan must plan for core port infrastructure, development and land uses for at least 20 years. The port land use plan must also include a table of assessment for the strategic port land.

The intent is that the port land use plan shows the relationship and integrates with, adjoining land uses under a local government planning scheme.

Subdivision 2 Reviewing port land use plans

Clause 46 Requirement to review port land use plans

Clause 46 provides that the Minister may carry out a review of a port land use plan at any time but must undertake a review of a port land use plan at least every 10 years after a plan has effect. The review must assess whether the boundaries of the strategic port land and any future strategic port land are still appropriate.

Clause 47 Public notice of review

Clause 47 provides that in conducting a review of a port land use plan under clause 46 the Minister must undertake public consultation and take submissions.

Clause 48 Action Minister must take after review

Clause 48 provides that after reviewing a port land use plan the Minister must prepare a new plan, amend the existing plan or, if satisfied the plan is satisfactory as is, decide to take no further action.

To ensure transparency, if no further action is to be taken, the Minister must table that fact and the reasons in the Legislative Assembly. If the decision after a review is to make a new port land use plan or amend an existing port land use plan, the process under clause 11 is followed (which includes consultation and notification).

Part 6 Planning and development

Division 1 Development assessment

Subdivision 1 Relationship with Planning Act

Clause 49 Application of Planning Act

Clause 49 provides that the Planning Act applies in relation to development approvals for a development scheme area or strategic port land under the Bill. However, part 6 of this Bill prevails to the extent of any inconsistency.

At the time of commencement of this Bill, the ‘Planning Act’ is the *Sustainable Planning Act 2009*.

Subdivision 2 Provisions about assessment manager and referral agencies

Clause 50 Assessment manager and referral agency for port development applications

Clause 50 applies to a development application that is assessable development for the Planning Act that is in a PPDA development area or that is strategic port land.

The assessment manager for development applications over land under a PPDA development scheme, or port LUP will be the chief executive of the Ports Bill. However, in some situations, a proposed development under a PPDA development scheme or port land use plan may traverse multiple jurisdictions (for example, land within a state development area, priority development area or a local government area).

To ensure there are not multiple assessment managers and processes requiring several development applications, where any part of a development application is covered by a PPDA development scheme or port land use plan, the development assessment process under the Ports Bill will prevail for assessing and determining the application.

However in these circumstances, the Minister responsible for administering the Ports Bill can decide who will be the assessment manager and nominate other entities to be referral agencies.

Clause 51 Effect of referral agency's response

Clause 51 provides that the assessment manager for a port development application must consider a referral agency's response in relation to a development application but is not bound to accept any conditions the referral agency may have proposed.

However, if the assessment manager does accept a condition proposed by the referral agency, the referral agency becomes the administrator and enforcer of that condition.

Clause 52 Delegation

Clause 52 provides for the chief executive to delegate the function of assessment manager to a port entity, local government or the co-ordinator general.

Subdivision 3 Particular provisions about development applications and development approvals

53 Development application may include application for allocation of quarry material

Clause 53 provides for a person to apply for an allocation of quarry material in a PPDA development scheme area at the same time as making a development application for assessable development for the Planning Act under a PPDA development scheme, whether or not the land is wholly or partly in the development scheme area.

In deciding whether to grant an allocation, the assessment manager must consider relevant matters set out in the State Development Assessment Provisions (SDAP) and may impose conditions on the development approval relating to the allocation of the quarry material as if the assessment manager were the chief executive imposing conditions on an allocation notice under the *Coastal Protection and Management Act 1995*, section 79.

If a development approval lapses under the Planning Act, section 341, the allocation of the quarry material also lapses.

Quarry materials means material on State coastal land and *allocation of quarry material* is defined as an allocation in tidal water.

This provision supports the government's commitment in the QPS to implement legislative changes to provide streamlining benefits for port development by allowing two approvals to be gained by one application process.

Clause 54 Requirement to give port entity notice of development approval

Clause 54 states that notice of development approval for development in a PPDA development scheme area or on strategic port land must be given to a port entity in circumstances where the entity is not the applicant for the approval.

This provision gives certainty to ports that they will remain informed and aware of any development that is happening in their relevant areas.

Division 2 Protection of particular uses and rights

Clause 55 Lawful uses of premises protected

Clause 55 protects the lawful use of premises in an area to which a port planning instrument applies if, immediately before the instrument, or an amendment to the instrument takes effect, such use of the premises was lawful.

Clause 56 Lawfully constructed buildings and work protected

Clause 56 protects a lawfully constructed building or work lawfully carried out from a requirement that the building or work be altered or removed as a result of a port planning instrument.

Clause 57 Existing development approvals

Clause 57 provides that a port planning instrument or an amendment to it cannot stop or further regulate development for which approval already exists for premises.

Clause 58 Existing development applications

Clause 58 provides that, despite a master plan or a PPDA development scheme having effect, an existing development application must be decided under the applicable Act, and that Act continues to apply, as if the land were not land in a PPDA.

Division 3 Exemptions and exceptions

The purpose of this division is to provide several exceptions from obtaining certain approvals for works, actions and development that is contemplated and planned for in a PPDA development scheme or port land use plan.

There are a number of duplicative processes within the state's legislative framework that reduce the ability of ports to carry out routine activities in the most efficient way. This division simplifies regulatory requirements by removing duplicative processes associated with port land use planning and development approvals.

The intent is that port planning processes are rigorous and systematic so that some regulatory requirements can be satisfied at the planning stage. This would mean the approval of the PPDA development scheme or port land use plan may be taken to be the approval for certain works, actions or development as outlined below.

This streamlining reinforces the government's commitment to provide certainty for industry about the future development of ports and it will improve efficiency in a transparent and common sense manner.

Clause 59 Particular operational work that is tidal works

Clause 59 provides that tidal works to maintain, repair, construct or install equipment on an existing approved structure or to remove or destroy a marine plant that has grown through the structure is exempt development under the Planning Act.

This clause removes unnecessary red tape in that an approval does not have to be sought for the above works if it is merely for up-keep of a structure that already has an approval.

Clause 60 Owner's consent not required in particular circumstances

Clause 60 provides that a development application for development on State owned land for which a PPDA development scheme or port land use plan applies can be made without first obtaining the owner's (the owner being the State) consent. However, the proposed development must be consistent with the scheme or plan.

This clause removes unnecessary red tape in that if the Minister has already approved the PPDA development scheme or port land use plan, the State is taken to have given permission for any development that is consistent with the approved scheme or plan to occur on this land.

Clause 61 Reconfiguring a lot

Clause 61 provides that reconfiguring a lot by a lease is exempt development under the Planning Act only if the reconfiguration is consistent with the PPDA development scheme or port land use plan that applies to the area.

This clause removes unnecessary red tape by not requiring an approval to be obtained for the action above. The position for PPDA development scheme areas and strategic port land is that reconfiguring a lot is exempt development. The provision will provide flexibility for example, for relocating subtenants of wharves and other core port infrastructure where the stated permitted purpose in the sublease is any type of core port infrastructure, other transport infrastructure or a combination of both.

Clause 62 Exemption for emergency development or use

Clause 62 provides that, despite particular sections of the Planning Act, the Minister may carry out development or a use for premises in a PPDA development scheme area or on strategic port land because of an emergency that endangers the life or health of a person, the structural safety of a building or the operation or safety of community infrastructure that is not a building.

This clause removes unnecessary red tape by not requiring an approval in emergency situations to allow for an expedient remedy.

Clause 63 Subleases and licences under Land Act

Clause 63 provides that once a port holds a lease it is able to sublease, concurrently sublease or licence part of the area for which it holds the original lease without the approval of the Minister under the *Land Act 1994*.

The sublease, concurrent sublease or licence must adhere to the terms of the original lease and cannot be given for anything inconsistent with the original lease.

This clause removes unnecessary red tape by giving ports an amount of autonomy when dealing with land over which they hold a lease.

Division 4 Miscellaneous provisions

Clause 64 Roads and road closures

Clause 64 provides the Minister with powers for a road in a PPDA that the Minister considers necessary or desirable to perform the Minister's functions in relation to the PPDA. This includes, but does not limit, the Minister's ability to permanently or temporarily close all or part of a road and doing everything necessary to stop traffic using a road or part of a road closed under this clause.

The clause provides for the notification requirements the Minister must carry out before closing a road.

The clause applies whether or not the road is a State-controlled road under the TIA or whether or not the *Land Act 1994* applies to a road.

The Minister must not delegate this function (see clause 90).

Clause 65 Vesting land in permanently closed road

Clause 65 provides for the Minister to vest land that comprised a road under the *Land Act 1994* and permanently closed under clause 64 to be vested in an entity in fee simple.

The process to vest the land requires the Minister, by gazette notice, to declare the land vested in fee simple. The chief executive of the department administering the *Land Act 1994* must then register the vesting if the entity lodges in the land registry under that Act specific documentation for the vesting. The Governor in Council may then issue a deed of grant for the land the subject of the vesting.

No fee is payable by the entity in relation to the registration of the vesting or to give effect to it, despite the *Land Act 1994* and the *Land Title Act 1994*.

Clause 66 By-laws

Clause 66 provides that the Minister may make by-laws under this Bill for PPDAs or strategic port land about any matter for which a local government's local law may be made, including the creation of offences. It provides the maximum penalty units that can be fixed by a by-law. This provision allows the maximum penalty under a by-law that replaces a local law to be the same penalty as that applying to a contravention of the local law it replaces.

The clause provides for the circumstances when a by-law replaces the local law (i.e. the by-law provides that the local law does not apply, or applies with stated changes, and the by-law applies to a matter within a PPDA or strategic port land).

The clause also clarifies that a by-law may provide that all or part of a stated local law does not apply, or applies with stated changes. This provision recognises that part of a local law may continue to deal with matters that are not required to be covered by the by-law.

Finally, the clause provides that a by-law must be approved by the Governor in Council. The note under this provision clarifies that a by-law made under this Bill is subordinate legislation, as described in the *Statutory Instruments Act 1992*.

Clause 67 Interim local laws

Clause 67 provides for the orderly transition of matters under a by-law made under clause 66 for a PPDA or strategic port land to the relevant local government, should the land cease to be in a PPDA or strategic port land.

It enables a regulation to make a local law (the interim local law) for the land, about any matter previously provided for under the by-law made for the PPDA or strategic port land. The purpose of the provision is to provide a mechanism for the by-laws to be converted into interim local laws that can be administered by the local government.

However, a regulation making an interim local law can only be made only if the relevant local government gives agreement.

The clause also provides that the interim local law is taken to have been made under the *Local Government Act 2009* by the relevant local government and provides that the interim local law expires 12 months after it commences.

This is intended to give the relevant local government sufficient time to formally adopt a local law addressing the matters covered by the interim local law.

Clause 68 Royalty or price for quarry material

Clause 68 provides that royalty at a rate prescribed by regulation or at a price set for the sale is payable to the State for quarry material removed from tidal water in a PPDA development scheme area under a development approval to which section 52B applies. An amount not paid is a debt recoverable by the State.

The section is subject to TIA, section 278(3) which sets out certain circumstances where port authorities are not liable to pay a royalty or similar charge.

Part 7 Compensation for particular port planning instrument changes

Division 1 Preliminary

Clause 69 Definitions for div 1

Clause 69 defines particular words used in the division.

Division 2 Compensatory circumstances

Clause 70 Effect of particular port planning instruments

Clause 70 provides that the owner of an interest in land is entitled to compensation from the State if the owner no longer has the right to use the land for a particular alternative use as a result of a port planning instrument (other than an interim PPDA development scheme) and this results in a loss in the value of the owner's interest in the land.

The owner must first ask the Minister to approve the use. The Minister may choose to approve the alternative use, approve the use with conditions, or not approve the use. If the Minister chooses not to approve the alternative use, or approve the use with conditions, and there is a reduction in the value of the interest in land, then the owner of the land is entitled to compensation for the reduced value of the land.

Clause 71 Effect of interim PPDA development schemes

Clause 71 provides that the owner of an interest in land is entitled to compensation from the State if the owner can no longer use the land for a particular alternative use as a result of an interim PPDA development scheme, which is replaced by a PPDA development scheme that also prevents that use. This means compensation is not available unless, and until, the PPDA development scheme which replaces the interim PPDA development scheme also prevents the alternative use.

Further, compensation is only payable if the application of the PPDA development scheme has resulted in a loss in the value of the owner's interest in the land and the owner has asked the Minister to approve the alternative use, and the Minister has denied the request.

Because of the urgent and temporary nature of an interim development scheme, compensation is not payable if that scheme prevents a previously lawful alternative use of the land. However, this clause preserves the owner's right to claim compensation if and when a PPDA development scheme comes into effect which replaces the interim scheme and if it prevents the same alternative use.

Division 3 Limits on compensatory circumstances

Clause 72 Time limit on claiming

Clause 72 provides that compensation under division 2 is only payable if a claim is made to the Minister within three years of the port planning instrument (excluding an interim PPDA development scheme) that gave rise to the claim for compensation coming into effect.

If the claim arises as a result of an interim PPDA development scheme, which is replaced by a PPDA development scheme that also prevents a particular alternative lawful use – the claim must be made within three years after the PPDA development scheme replacing the interim PPDA development scheme comes into effect.

Clause 73 General exclusions

Clause 73 sets out the circumstances when compensation is not payable for a claim, despite clauses 70 and 71 – when it has already been paid to a previous owner, for anything in contravention of this Bill or when it is payable under another Act.

For clarity, this provision means if a claim can be made under another Act, that Act must be used.

Division 4 Processing claims

Clause 74 Deciding and notifying compensation claims

Clause 74 provides that the Minister must decide a compensation claim within 60 business days after the claim is made.

Clause 75 Notifying decision

Clause 75 provides that the Minister must within 10 business days after deciding the claim give the claimant a notice setting out the Minister's decision, the reasons for it, the amount of compensation to be paid (if the decision is to pay compensation), that the decision may be appealed and how to appeal.

Clause 76 Calculating amount of compensation

Clause 76 sets out the process for working out the amount of compensation payable to an owner of an interest in land affected by a port planning instrument, or an amendment of the instrument, or an interim PPDA development scheme (a planning change).

The amount is the difference between the interest's market value immediately before the planning change and its value immediately after the planning change, adjusted as appropriate to particular criteria set out in the provision.

Clause 77 When compensation is payable

Clause 77 provides that compensation is payable within 30 business days after the appeal period ends if no appeal is made or, if an appeal is made, 30 business days after the appeal is decided.

Clause 78 Payment of compensation to be recorded on title

Clause 78 provides that the Minister must give the registrar of titles written notice of the payment of compensation in a form approved by the registrar.

Division 5 Appeals**Clause 79 Appeals against decisions on compensation claims**

Clause 79 provides for a person to appeal to the Planning and Environment Court if they are not satisfied with the Minister's decision about a compensation claim.

Clause 80 Procedure for an appeal

Clause 80 provides that to appeal under clause 79 a person must file notice of appeal stating the grounds of appeal with the registrar of the court within 20 business days of receiving notice of the Minister's decision.

Clause 81 Powers of court on appeal

Clause 81 provides that an appeal is by way of rehearing. The deciding court has the same powers as the Minister in making the original decision, is not bound by the rules of evidence and must comply with natural justice. In deciding the appeal the court must either confirm the decision appealed against, change it (in which case the decision is taken to be the Minister's) or set it aside and make a decision replacing it.

Part 8 Prohibitions relating to Great Barrier Reef World Heritage Area

Division 1 Significant port development prohibition

Clause 82 No approvals for significant port development

Clause 82 provides for the prohibition of certain development in, or on land under, tidal water that is in or adjoins the GBRWHA and that is outside port limits.

The process for implementing the prohibition is outlined in the clause –

- the assessment manager must refer any development application made during the prohibited period (from commencement to the end of 31 December 2022) for development in the above area to the Minister;
- the Minister must decide whether the proposed development is significant development having regard to the purpose and principles of the Bill;
- if the decision is that the development is significant – the assessment manager must refuse the application on those grounds;
- if the decision is that the development is not significant – the assessment manager must assess the application using the process in the Act under which the application was made.

This provision supports UNESCO World Heritage Committee (WHC) recommendations regarding the conservation of the GBRWHA and is consistent with the Bill's purpose to stimulate Queensland's economic growth while protecting and managing Queensland's outstanding environmental assets.

Division 2 Dredging prohibition

Clause 83 What is *prohibited dredging*

Clause 83 provides that the prohibition on dredging applies to establishing or constructing new port facilities or improving existing port facilities in, or on land under tidal water that is in or adjoins the GBRWHA and is outside a PPDA.

The prohibition does not prohibit dredging where it is to ensure the safety of persons, ships and other things at a port, to maintain navigation channels, or remove impediments to navigation, to maintain the effective operation of existing port facilities, to increase a port's resilience to extreme weather and to improve the operation of a PPDA.

Clause 84 No approvals for prohibited dredging

Clause 84 provides that an approving authority must not grant an approval for development that includes the type of dredging set in clause 83(1).

Clause 85 Relationship with particular Acts

Clause 85 provides that the prohibition on particular dredging as explained above applies despite anything to the contrary in the *Coastal Protection and Management Act 1995*, *Environmental Protection Act 1994*, *Planning Act*, or the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

Part 9 General

Division 1 Offences

Clause 86 Privacy

Clause 86 applies to a person who is or has been performing functions or exercising powers under this Bill and who obtains personal or confidential information, or information that is commercially sensitive, in the course of, or because of, the performance of a function or exercise of a power under this Bill.

The clause provides that a person must not make a record of the information, divulge or communicate that information to anyone else, whether directly or indirectly, or use the information to benefit any person. A maximum penalty of 100 penalty units applies for contravening the requirement.

The clause includes exceptions to the requirement for information divulged, communicated or used for the purposes of the operation of this Bill, with the consent of the person to whom the information relates, or as required by the law.

Clause 87 Refusal of disclosure of commercially sensitive information

Clause 87 provides that a person engaged in administering or enforcing the Act cannot be compelled to disclose commercially sensitive information or matters relating to that information in the course of legal proceedings, unless those proceedings are for the administration or enforcement of this Bill.

Clause 88 Giving false or misleading document

Clause 88 provides it is an offence for a person to give the Minister or a supporting entity a document in relation to the making or amendment of a port planning instrument that contains information the person knows is false or misleading in a material particular.

A maximum penalty of 1665 penalty units applies.

Division 2 Evidentiary and legal proceedings

Clause 89 Evidentiary aids

Clause 89 provides that a document (certificate) purporting to be signed by the chief executive is evidence of the matter. A range of matters is set out in the clause.

Division 3 Provisions about performance of functions etc. under this Act

Clause 90 Ministerial delegations

Clause 90 gives the Minister power to delegate functions under the Bill to the chief executive, the coordinator-general, a port entity or a local government. The Minister cannot delegate a function under the following clauses:

- clause 11 (Making or amending port planning instruments)
- clause 12 (Minister asks supporting entity for assistance)
- clause 13 (Supporting entity prepares part of port planning instrument or amendment)

- clause 14 (Process if supporting entity prepares whole of port planning instrument or amendment)
- clause 50 (Assessment manager and referral agency for port development applications)
- clause 64 (Roads and road closures)
- clause 65 (Vesting land in permanently closed road)
- clause 66 (By-laws).

For operational and administrative convenience the chief executive may subdelegate a function to an appropriately qualified employee of the department unless the Minister has directed otherwise.

A local government may also subdelegate a function to an appropriately qualified officer of the local government unless the Minister has delegated otherwise.

Clause 91 Ministerial directions

Clause 91 provides that an entity performing a function delegated under clause 90 is subject to the general direction and control of the Minister and any specific directions given to it by the Minister, including providing stated information. An entity must comply with any direction within a reasonable time.

Clause 92 Protection from civil liability

Clause 92 protects a person who has been delegated a function and who is performing that function under the Bill from civil liability for any act that is done or omission that is made, honestly and without negligence under the Bill or a direction or a requirement under the Bill. Civil liability attaches instead to the State.

Protection from civil liability in relation to State employees is provided for under the *Public Service Act 2008*.

Division 4 Other administrative matters

Clause 93 Registers

Clause 93 provides that the chief executive must keep a register of all port planning instruments, including proposed port planning instruments or proposed amendments to a port planning instrument, any interim PPDA development schemes and by-laws.

The chief executive may also keep a register of any other documents or information relating to the Bill the chief executive considers appropriate.

The chief executive may keep the register in any way the chief executive considers appropriate but a document included in a register must also be published on the website of the department in which the Bill is administered and on the website of the relevant port entity.

Clause 94 Access to registers

Clause 94 provides that the chief executive must make available at the head office of the department in which the Bill is administered each register for inspection by the public during office hours on business days. A person may search and take extracts from a register and ask for a copy of all or part of a document or information in a register. The chief executive must

give the person the requested copy and may charge a fee of not more than the actual cost of giving it.

Clause 95 Approval of forms

Clause 95 provides for the chief executive to approve forms for use under the Bill.

Clause 96 Regulation-making power

Clause 96 provides that the Governor in Council may make regulations under the Bill, including to set fees, prescribe matters for inclusion in a port planning instrument and to impose a penalty of not more than 20 penalty units for the contravention of a regulation.

Part 10 Transitional provisions

Division 1 Preliminary

Clause 97 Definitions for pt 10

Clause 97 defines particular words used in the part.

Clause 98 References to former provisions

Clause 98 provides for the continued application of a stated provision as if the Bill had not been enacted and for the continuation of any other former provision necessary to give effect to the stated provision, unless specified otherwise.

Division 2 Provisions for Transport Infrastructure Act

Clause 99 Existing land use plans

Clause 99 provides that a non-PPDA port authority's existing land use plan under the TIA is taken to be its port land use plan under this Bill and the land included in the existing land use plan is taken to be corresponding land.

Clause 100 Continued application of repealed provisions to PPDA ports

Clause 100 provides for the time period from commencement of the new planning regime under this Bill to the making of the new PPDA development schemes. It provides that the existing land use planning provisions under the TIA (the provisions proposed to be deleted by this Bill) continue in effect until a new PPDA development scheme is made to replace the existing land use plan.

Clause 101 Making or amending land use plans for non-PPDA ports

Clause 101 provides specifically for existing land use plans that are still being prepared and have yet to be approved. It provides that the existing relevant provisions under the TIA (the provisions proposed to be deleted by this Bill) continue in effect for land use plan approvals currently underway upon commencement until a new PPDA development scheme is made to replace the land use plan.

This means the approval of the unapproved land use plans will happen under the TIA provisions as if they had never been repealed. Once the plans are approved, they will be taken to be port land use plans under this Bill.

Clause 102 Special arrangements for ports of Gladstone and Rockhampton

Clause 102 provides that upon the making of a PPDA development scheme for the Port of Gladstone, the Minister must make a new port land use plan for Port of Rockhampton and both instruments take effect at the same time.

This is because Gladstone and Rockhampton have a combined land use plan and provision needs to be made so Rockhampton is not left without, or with an unworkable, land use plan upon Gladstone operating under a new PPDA development scheme.

Division 3 Prohibitions relating to Great Barrier Reef World Heritage Area**Clause 103 Particular development exempted**

Clause 103 provides that clause 83 (What is *prohibited dredging*) does not apply to dredging if the dredging is the subject of an EIS process that started before the commencement of the Bill.

Clause 104 Existing approvals not affected

Clause 104 provides that clause 81 (What is *prohibited dredging*) does not affect an existing approval or the operation of another Act in relation to an existing approval. Approvals are set out in clause 84(2).

Division 4 Transitional regulation-making power**Clause 105 Transitional regulation-making power**

Clause 105 establishes a power to make a regulation to deal with any matters to facilitate the transition of port planning to this Bill, if the Bill does not make sufficient provision.

The inclusion of this new clause is necessary to provide a transitional regulation-making power for any circumstance where a transitional provision is required to protect rights acquired under existing legislation that are not appropriately reflected in the Bill. The activities dealt with under the Bill are complex and the extent of existing rights may not be fully appreciated until the legislation commences. The clause provides that this power will expire one year after commencement.

Part 11 Amendment of Acts**Division 1 Amendment of this Act****Clause 106 Act amended**

Clause 106 provides that part 11 amends this Bill.

Clause 107 Amendment of long title

Clause 107 makes a consequential amendment to the long title of the Bill to reflect the removal of amendments in the first reprint of the legislation. This is current drafting practice.

Division 2 Amendment of State Development and Public Works Organisation Act 1971

Clause 108 Act amended

Clause 108 provides that this division amends the *State Development and Public Works Organisation Act 1971*.

Clause 109 Amendment of pt 4A, hdg (Assessment and approval of particular coordinated projects under bilateral agreement)

Clause 109 amends the heading of part 4A to replace the term ‘coordinated’ project with the new term ‘bilateral’ project to enable part 4A to apply to bilateral projects, including both coordinated projects and port development activities.

Clause 110 Amendment of s 54H (Application and purpose of pt 4A)

Clause 110 makes an amendment to the terminology used in the section, replacing the term ‘coordinated’ project with ‘bilateral’ project so that part 4A can apply to any project designated as a bilateral project.

Clause 111 Insertion of new ss 54HA (What is a bilateral project) and 54HB (Declaration of port development activity)

Clause 111 provides for the insertion of two new clauses. New section 54HA defines the new term bilateral project as including both coordinated projects and port development activities.

New section 54HB provides for the declaration of a port development activity. The inclusion of this clause provides a process for the Minister administering the *Ports Act 2014* to declare by gazette notice a particular development in stated part of a priority port development area to be a port development activity.

Clause 112 Amendment of s 54I (Definitions for pt 4A)

Clause 112 provides for the inclusion of new definitions for the following terms, consistent with providing a process for port development activities to be assessed and approved under part 4A: *amendment application, bilateral project, port development and port development activity*.

This clause also amends the terminology used in the following definitions to refer to ‘bilateral’ rather than ‘coordinated’ projects: *accepted submissions, environmental approval, environmental record, protected matters report and within the scope of the bilateral agreement*.

Clause 113 Amendment of pt 4A, div 2, hdg (Coordinated projects to be assessed under this part)

Clause 113 amends the heading of part 4A, div 2 to replace the term ‘coordinated’ project with the new term ‘bilateral’ project to enable this division to apply to bilateral projects, including both coordinated projects and port development activities.

Clause 114 Amendment of s 54J (Declaration for coordinated project for this part)

Clause 114 amends the heading of section 54J to replace the term ‘coordinated’ project with the new term ‘bilateral’ project. It also makes amendments to the terminology used throughout section 54J to enable the section to apply to bilateral projects.

This clause also makes an amendment to allow the Coordinator-General to make a bilateral project declaration for a project which is likely to have a significant impact on a matter that is not a specified provision, as defined under section 54I. The previous drafting prevented such a declaration from being made, and only allowed declarations to be made in respect of projects which had impacts on specified provisions only.

The inclusion of this amendment means that eligible projects that have impacts on both matters that are specified provisions covered by the Approval Bilateral Agreement, and those that are not, are not excluded from assessment and approval under part 4A of the SDPWO Act for those specified provisions covered by the Approval Bilateral Agreement.

Clause 115 Amendment of s 54K (Application for declaration)

Clause 115 amends section 54K to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 116 Amendment of s 54M (Cancellation of declaration)

Clause 116 amends section 54K to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

This clause also makes a consequential amendment to section 54M in accordance with the amendment to section 54J to allow the Coordinator-General to make a bilateral project declaration for a project, including where it may be likely to have a significant impact on a matter that is not a specified provision.

Clause 117 Amendment of s 54N (Lapsing of declaration)

Clause 117 amends section 54N to ensure that a bilateral project declaration for a bilateral project that is a coordinated project will lapse if the coordinated project declaration for the project lapses. This clause also clarifies that section 54N only applies in relation to bilateral projects that are coordinated project.

Clause 118 Amendment of s 54O (Application of div 3)

Clause 118 amends section 54O to replace the term ‘coordinated’ project with the new term ‘bilateral’ project to enable this division to apply to bilateral projects, including both coordinated projects and port development activities.

Clause 119 Amendment of s 54P (Preparation of draft protected matters report)

Clause 119 amends section 54P to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 120 Amendment of s 54Q (Public notification of draft protected matters report)

Clause 120 amends section 54Q(1) and (4)(d) to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

This clause also clarifies that sub-section 54Q(3) only applies in relation to bilateral projects that are coordinated projects, and outlines circumstances under which a proponent of a coordinated project must publicly notify the draft protected matters report when complying with section 33 (public notification of draft EIS).

Clause 121 Amendment of s 54R (Proponent must finalise protected matters report after public notification)

Clause 121 amends section 54R to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 122 Amendment of s 54S (Coordinator-General may seek further information or comments)

Clause 122 amends section 54S to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 123 Amendment of s 54T (Decision about approving undertaking of coordinated project)

Clause 123 amends section 54T to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 124 Amendment of s 54U (Conditions)

Clause 124 amends section 54U to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 125 Amendment of s 54V (Jurisdiction for conditions)

Clause 125 amends section 54V to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 126 Amendment of s 54W (Criteria for decision)

Clause 126 amends section 54W to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 127 Amendment of s 54Y (Issuing environmental approval)

Clause 127 amends section 54Y to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 128 Amendment of s 54Z (Application for amendment)

Clause 128 amends section 54Z to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 129 Amendment of s 54ZA (Coordinator-General may seek further information or comments)

Clause 129 amends section 54ZA to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 130 Amendment of s 54ZB (Public notification of amendment application)

Clause 130 amends section 54ZB to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 131 Amendment of s 54ZC (Deciding amendment application)

Clause 131 makes a consequential amendment to section 54ZC(3)(a)(v) in accordance with the amendment to section 54J to allow the Coordinator-General to make a bilateral project declaration for a project that is within the scope of the bilateral agreement, including where it may be likely to have a significant impact on a matter that is not a specified provision.

This clause also includes a new sub-section which defines what is meant by ‘within the scope of the bilateral agreement’ for the purposes of an amendment application, and makes changes to the numbering of sub-sections within section 54ZC to accommodate this.

Clause 132 Amendment of s 54ZF (Cancellation or suspension at proponent’s request)

Clause 132 amends section 54ZF to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 133 Amendment of s 54ZG (Cancellation or suspension for grounds including contravention or unforeseen significant impact)

Clause 133 amends section 54ZG to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 134 Amendment of s 54ZH (Notice of proposed cancellation or suspension)

Clause 134 amends section 54ZH to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 135 Amendment of s 54ZI (Notice of cancellation or suspension decision)

Clause 135 amends section 54ZI to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 136 Amendment of s 54ZJA (Request to reinstate cancelled or suspended environmental approval)

Clause 136 amends section 54ZJA to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 137 Amendment of s 54ZL (Compliance under Environmental Protection Act)

Clause 137 amends section 54ZL to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 138 Amendment of s 54ZM (Declarations)

Clause 138 amends section 54ZM to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 139 Insertion of new s 54ZMA (Conditions of environmental approvals prevail over conditions of other approvals)

Clause 139 inserts a new section 54ZMA to clarify that if there is a conflict between a condition of an environmental approval for a bilateral project set under this part and the condition of another authority, the condition of the environmental approval for the bilateral project under this part prevails to the extent of the inconsistency. This is intended to establish a clear order of precedence in the event that inconsistent conditions are set in relation to a project.

Clause 140 Amendment of s 54ZN (Fees for pt 4A)

Clause 140 amends section 54ZN to replace the term ‘coordinated’ project with the new term ‘bilateral’ project. Subsections 54ZN(3) and (4) are omitted, and the content of these is addressed in new section 54ZNA. As a result, the sub-sections within section 54ZN are re-numbered.

Clause 141 Insertion of new s 54ZNA (Coordinator-General may waive or reduce fee)

Clause 141 inserts new section 54ZNA, which allows the Coordinator-General to waive or reduce a fee prescribed for an application or a bilateral project. It also sets out matters that the Coordinator-General may have regard to in considering whether to waive or reduce a fee for an application for a proposed change to a bilateral project under section 54Z.

Previously, section 54ZN provided that the Coordinator-General could only waive or reduce fees for amendment applications. This amendment is consistent with recent amendments to part 4 of the SDPWO Act which allow the Coordinator-General to waive or reduce a fee prescribed for an application or a coordinated project.

Clause 142 Amendment of s 54ZO (Recovering the cost of advice or services for assessment)

Clause 142 amends section 54ZO to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Clause 143 Insertion of new s 54ZP (Notice of change of proponent, contact details or registered office)

Clause 143 inserts a new section 54ZP to provide that section 27AE (notice of change of proponent, contact details or registered office) applies to the proponent of a port development activity as if that section referenced a port development activity.

This section will ensure that proponents of port development activities are required to notify the Coordinator-General of a change of proponent or contact details for a port development activity in the same way as proponents of coordinated projects.

Clause 144 Amendment of sch 2 (Dictionary)

Clause 144 expands the definition of ‘proponent’ in schedule 2 (Dictionary) in accordance with the amendments made to part 4A. The amended definition provides that a reference to ‘proponent’ also includes, for a port development activity, the person who proposes the activity or a person who later proposes the activity under an arrangement with the existing proponent.

The new definitions for *amendment application*, *bilateral project*, *port development* and *port development activity* included in section 54I are also included in schedule 2.

The clause also makes other minor amendments to existing definitions in schedule 2 to replace the term ‘coordinated’ project with the new term ‘bilateral’ project and to clarify that the term ‘development’ also applies to part 4A.

Division 3 Amendment of Transport Infrastructure Act 1994**Clause 145 Act amended**

Clause 145 provides that this division amends the TIA.

Clause 146 Amendment of s 267 (Definitions for chapter)

Clause 146 amends section 267 of the TIA to replace the definition of *strategic port land* with the definition set out in the Bill. This is as consequence of repealing the land use planning provisions in TIA and having the new land use planning provisions set in this Bill.

Clause 147 Amendment of s 267AA (Meaning of port area)

Clause 147 is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Clause 148 Amendment of s 278 (Powers of port authorities)

Clause 148 is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Clause 149 Amendment of s 282 (Port authority or port lessor may control activities by port notice)

Clause 149 is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Clause 150 Amendment of s 282E (Port notice—parking or stopping of vehicles)

Clause 150 is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Clause 151 Omission of ch 8, pt 4, div 1 and div 2 hdg

Clause 151 omits chapter 8, part 4, division 1 of TIA. Port land use planning is now dealt with in the Bill and the TIA provisions are redundant.

Clause 152 Amendment of s 287A (Impact of particular development and port operations)

Clause 152 is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Clause 153 Amendment of s 288 (Restrictions on dealing in property)

Clause 153 is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Clause 154 Amendment of s 295 (Notices at entrances)

Clause 154 is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Clause 155 Amendment of sch 6 (Dictionary)

Clause 155 is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Division 4 Minor and consequential amendments of other legislation

Clause 156 Legislation amended

Clause 156 provides that schedule 2 makes amendments of a minor and consequential nature to certain legislation.

Schedule 1 Dictionary

Schedule 1 defines particular words used in the Bill.

Schedule 2 Consequential or minor amendments

Coastal Protection and Management Regulation 2003

Paragraph 1

The schedule amends the *Coastal Protection and Management Regulation 2003* to replace references to terms used in TIA with terms used in the Bill. It is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Land Act 1994

Paragraphs 1 – 5

The schedule amends the *Land Act 1994* to include terms used in the Bill, including its title.

Land Tax Act 2010

Paragraph 1

The schedule amends the *Land Tax Act 2010* to replace references to terms used in TIA with terms used in the Bill. It is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Local Government Act 2009

Paragraph 1

The schedule amends section 93(3)(e) of the *Local Government Act 2009* to recognise particular land under the TIA and the Bill. It is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Local Government Regulation 2012

Paragraph 1

The schedule amends the *Local Government Regulation 2012* to state that section 59 is subject to the Bill, regarding the relationship of particular port planning instruments with other instruments. It is a consequential amendment to reflect the new approach to ports

planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

State Development and Public Works Organisation Regulation 2010

Paragraphs 1 to 6

Paragraphs 1 to 6 make consequential amendments to various sections of the *State Development and Public Works Organisation Regulation 2010* to replace the term ‘coordinated’ project with the new term ‘bilateral’ project.

Survey and Mapping Infrastructure Act 2003

Paragraphs 1 – 3

The schedule amends the *Survey and Mapping Infrastructure Act 2003* to include terms used in the Bill. It is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Sustainable Planning Act 2009

Paragraphs 1 – 5

The schedule amends the *Sustainable Planning Act 2009* to replace references to terms used in TIA with terms used in the Bill, and recognise a *development scheme area*. It is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).

Sustainable Planning Regulation 2009

Paragraphs 1 – 15

The schedule amends the *Sustainable Planning Regulation 2009* to include terms used in the Bill, including for the purpose of development assessment under SPA. It is a consequential amendment to reflect the new approach to ports planning under the Bill. The Bill defines development scheme areas and strategic port land (previously defined in the TIA).