

Transport Legislation (Port Pilotage) Amendment Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the Transport Legislation (Port Pilotage) Amendment Bill 2013.

Policy objectives and the reasons for them

Maritime Safety Queensland (MSQ) was created under the *Maritime Safety Queensland Act 2002* (the MSQ Act) as the safety regulator of the maritime industry in Queensland. MSQ is a unit within the Department of Transport and Main Roads' Transport Safety Branch under the division of Customer Services, Safety and Regulation Division. The MSQ Act requires MSQ to provide, or arrange for the provision and delivery of, pilotage services. Currently, MSQ provides these services in all pilotage areas in Queensland except Brisbane, where the service is provided under contract by Brisbane Marine Pilots Pty Ltd.

Pilotage is a compulsory service applied to most ships 50 metres and longer that visit Queensland ports. A person who does not hold an approved exemption must not navigate a ship in a designated compulsory pilotage area without the services of a pilot.

A pilot is a qualified ship's master who has high level skills in ship handling and a detailed knowledge of the port area in which they work. Pilots help the master of a ship operate safely within pilotage areas, particularly in regard to manoeuvring in potentially congested port channels, and with berthing and departures. The aim of the service is to reduce the risks to the marine environment and port infrastructure associated with ship movements.

The Department of Transport and Main Roads' aim is to deliver an integrated, safe, efficient and reliable transport system for Queensland, while contributing to the broader government objectives for the community, such as delivering better infrastructure, planning and growing a four pillar economy. As such the responsibility for port pilotage services is no longer consistent with the department's operations. However the safety oversight of port pilotage services is an important regulatory function and will remain a core departmental responsibility.

To achieve its strategic priorities the Department of Transport and Main Roads is devolving the responsibility for the provision and delivery of pilotage services for ports north of Brisbane except Abbot Point, to port authorities through a managed transition process. This is being achieved by designating port authorities as the responsible pilotage entity and giving them legal responsibility for the provision and delivery of pilotage services in designated compulsory pilotage areas. Once the port authorities have this responsibility, they will be better placed to determine the best mechanism to provide and deliver the required pilotage

services in their responsible compulsory pilotage areas. As managers of ports and port infrastructure, port authorities have the local knowledge and interest to better implement port pilotage services. The match of pilotage services with other port services and responsibilities will also bring efficiencies to port users and have an overall positive economic benefit for Queensland.

MSQ will retain responsibility for provision of, or for arranging provision of pilotage services in the Brisbane, Southport and Abbot Point compulsory pilotage areas.

Port pilotage services in the Port of Brisbane will continue to be supplied under the terms of the existing contract between MSQ and Brisbane Marine Pilots Pty Ltd until it expires in December 2017. Consideration has been given during the current mid-contract review negotiations, to establishing a path for the future devolvement of the Brisbane pilotage service which will incorporate a more expansive market assessment of service delivery options in 2016, nearer the end of the current contract cycle. Any future contract for port pilotage services in Port of Brisbane will not conflict with the longer term pricing and/or supply arrangements to be pursued state wide.

Initially, the Department of Transport and Main Roads will retain the responsibility for Abbot Point and proposes to enter into an agreement with Port of Townsville to provide port pilotage service delivery for a maximum period of two years. During this time, operators of Port of Townsville, with the assistance of the Department of Transport and Main Roads, will determine the best pilotage service delivery mechanism in Abbot Point. The Department of Transport and Main Roads will work with the operator and/or relevant port management corporation to divest the responsibility for the provision of port pilotage services for the compulsory pilotage area of Abbot Point. This will ensure flexibility for future service delivery.

Queensland requires a pilotage service that is safe, sustainable and accessible as well as reliable and responsive to supply chain pressures. There are increasing demands on the port network to continually balance the commercial demands of commodity and trading interests with safety and environmental expectations of the community.

Devolving the responsibility to provide and deliver pilotage services from government to port authorities increases the opportunity for pilots and pilotage services to be better integrated into regional port management and operational arrangements and better able to contribute to overall economic efficiency. Once the port authorities have this responsibility and better understand the fundamentals of the service, they will be better placed to determine the best mechanism to deliver the required pilotage services in their responsible compulsory pilotage areas.

Achievement of policy objectives

Pilotage services in Queensland are a function of MSQ as set out in the MSQ Act and are regulated under the *Transport Operations (Marine Safety) Act 1994* (TOMSA). The *Transport Infrastructure Act 1994* sets out functions of port authorities. It is necessary to make amendments to this legislation to achieve the objective of devolvement of the responsibility for pilotage services to port authorities.

The Bill will achieve the objective of devolving the function of providing pilotage services from MSQ to port authorities by:

- providing that the provision of, or arranging for the provision of, pilotage services in specified compulsory pilotage areas is a function of port authorities;
- providing a general obligation for safety in relation to the provision of piloted movement of ships;
- providing that a harbour master may give a direction to particular parties to provide pilotage services in a specified way;
- providing that monitoring and managing the providing and arranging for the provision of pilotage services by responsible pilotage entities is a function of MSQ;
- authorising pilots to have conduct of a ship if they are employed by, or are acting under a written agreement with, the responsible pilotage entity responsible for that compulsory pilotage area;
- extending the existing immunity from civil liability scheme for general employers of pilots to cover responsible pilotage entities and other parties who enter into a written agreement with them for the provision of pilotage services;
- providing that MSQ may transfer funds from the Maritime Safety Queensland Fund to responsible pilotage entities;
- transferring the employment of pilots and pilot transfer crew to the relevant port authority or subsidiary;
- preserving key entitlements of pilots, pilot transfer crew and administrative staff who will be transferred to port authorities or a subsidiary;
- transferring contracts associated with pilotage services and pilots' employment to the relevant port authority or subsidiary;
- making provision for various matters related to the transfer of pilotage services to be dealt with by transfer notice.

Alternative ways of achieving policy objectives

The Department of Transport and Main Roads also considered the following options:

- **Option one** (Status quo): MSQ continues to have responsibility for the provision and delivery of port pilotage services for all ports north of Brisbane and for setting fees and pricing structures; and
- **Option two**: Tender the pilotage and the pilot transfer business on a regional basis and award the business to a successful party provided it could guarantee to supply the required number of competent and licensed pilots and ensure service continuity.

However, these options were not supported and thus not recommended. Both options would continue an inherent perceived conflict of interest between MSQ's roles as a pilotage service provider and safety regulator. An environmental scan indicates the responsibility for the provision and delivery of port pilotage is better placed with port corporations.

Financial analysis of port pilotage service revenue on a port-by-port basis shows that some ports cannot recover the cost of service provision and are required to be cross subsidised. This is currently accounted for through a state wide pricing basis. This renders tendering less desirable, particularly in terms of the continuity of safe and reliable services across the state.

Tendering the pilotage and pilot transfer business on a regional basis and awarding the business to the successful party does not address the issue of the current state wide pricing schedule or take into account the required level of cross-subsidisation. This option has potentially significant financial implications for the Department of Transport and Main Roads in terms of associated redundancy payments for the department's 69 pilots, as it would not be able to effectively transition existing staff to a new private entity. In summary, these factors would potentially threaten the Department of Transport and Main Roads' strategic aim of ensuring the continuity of safe and sustainable pilotage services for the state's entire port network.

Additionally, in tendering the pilotage and pilot transfer business on a regional basis and awarding the business to the successful party only those ports with positive cost recovery would be of interest and attract potential private sector pilotage service providers. This would threaten the service sustainability in all the other ports across Queensland and is why the relevant port authority needs to have a role in delivering pilotage services. Alternatively port pilotage would experience dramatic price rises. For example, a typical vessel visiting the community port of Karumba would be charged around \$850 for port pilotage under the current fee regime. However, under a port specific cost recovery arrangement this is likely to rise to approximately \$10,000. This option is not recommended which subsequently avoids the need to manage these price rises.

Consultation with stakeholders also indicated Option two would be high risk, particularly in the areas of safety outcomes and service sustainability.

Estimated cost for government implementation

The Department of Transport and Main Roads estimates that the administrative cost to government associated with the transfer of responsibility for pilotage services for ports north of Brisbane to the port government owned corporations will be minimal and met out of existing funding arrangements.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Whether the Bill has sufficient regard for rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(2)(a) and section 4(3).

Clause 9 (Insertion of Part 2A Pilotage Services into the MSQ Act)

Clause 9 will insert new part 2A into the MSQ Act which will provide for the transfer from MSQ to port authorities of the function of providing, or arranging for pilotage services in certain compulsory pilotage areas. This will include provisions to transfer employment of certain employees of the State to the relevant port authority or the Gladstone ports entity. Part 2A will also provide for the transfer of leases, instruments, contracts and other matters from the State to a port authority or the Gladstone ports entity. These provisions will operate despite other laws or instruments, and where consent, approval or notice would normally be necessary to do something under the Part, that consent, approval or notice will be taken to

have been given. For example, a transfer notice could override a contract under which the State has agreed with a third party not to transfer rights under the contract without that party's consent.

These provisions potentially breach the fundamental legislative principle that legislation should have sufficient regard for the rights and liberties of individuals. However, they are essential to facilitate the smooth transition of the function of providing pilotage services to port authorities. They will ensure that all existing facilities and services necessary for the provision of pilotage services are available to the relevant entity so that they are able to commence delivery of pilotage services on the transfer day without any interruption.

In relation to the transfer of employment, no positions will be terminated, retrenched or made redundant. All pilots and pilot transfer crew members will be transferred to the relevant port authority or the Gladstone ports entity. These employees will be employed after the transfer on the same conditions as they had been employed under by the State. Administration employees who support the provision of pilotage services will have a choice to either accept an offer of employment from a port authority or the Gladstone ports entity or to remain as an employee of the Department of Transport and Main Roads. Extensive and ongoing consultation has been carried out with all affected employees and their unions who have indicated that they support the transfer.

In addition, section 12H of the MSQ Act will ensure that key rights of transferred employees will be preserved. This will include ensuring that their total remuneration will be at least equal to their current remuneration, their existing or accruing rights to superannuation or annual, sick or long service leave will not be affected, and their continuity of service will not be interrupted.

It is considered that these safeguards ensure that sufficient regard is given to the rights and liberties of these employees.

Clause 18 (Insertion of new s43A into TOMSA) and clause 20 (Insertion of new s88A into TOMSA)

Clauses 18 and 20 introduce new offence provisions. New section 43A requires a managing pilotage entity to provide for the piloted movement of ships in a compulsory pilotage area in a safe way. The maximum penalty for this offence will be 500 penalty units or, if the managing pilotage entity is an individual, 1 year's imprisonment. If the contravention causes the death of, or grievous bodily harm to, another person, the person commits an indictable offence with a maximum penalty of 5000 penalty units or imprisonment for 2 years.

New section 88A creates an offence if a managing pilotage entity contravenes a direction given by a harbour master to provide, or arrange for the provision of pilotage services in a specified way. The maximum penalty for this offence will be 200 penalty units.

It is recognised that consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied. While the proposed penalties are relatively high, as both offences are aimed at ensuring marine safety and reflect the potentially serious consequences of a contravention they are considered proportionate and relevant. The proposed penalties are also consistent with existing penalties for similar offences.

Clause 21 (Amendment of section 101 MSQ Act)

Clause 21 amends the definition of ‘general employer’ that applies for the purpose of immunity from civil liability. It is a fundamental legislative principle that legislation should not confer immunity from proceeding or prosecution without adequate justification.

It is an established principle of maritime law that a pilot is considered to have conduct of a ship for the purpose of navigation but the ship’s master retains command of the ship. This is reflected in section 7 and section 102 of TOMSA. Section 101 of TOMSA currently provides that conducting pilots, supervising pilots and their general employers are not liable for damage or loss caused while the pilot has conduct of the ship. This is considered essential because of the risks assumed by pilots and the vital role they play in facilitating port movements. However, the ship’s master and owner remain liable for loss or damage that occurs while the ship is under compulsory pilotage (section 102(3) TOMSA).

The amendment will extend the definition of ‘general employer’ to provide immunity from civil liability for responsible pilotage entities and other entities who have entered into a written agreement with a responsible pilotage entity to supply pilotage services. Similar liability provisions are in place in most other Australian jurisdictions, including those where the responsibility for provision and delivery of pilotage services lies with port authorities.

Whether the Bill has sufficient regard for the institution of parliament – *Legislative Standards Act 1992*, section 4(2)(b) and section 4(4).

Clause 9 (Insertion of Part 2A Pilotage Services into the MSQ Act)

Clause 9 will insert new part 2A into the MSQ Act which includes new section 12F that will provide for the Minister to transfer leases, instruments and other matters from the State to a port authority, including the Gladstone ports entity, by transfer notice for the purpose of transferring pilotage services. Section 12O provides that a thing may be done under this part despite other laws or instruments.

This may breach the fundamental legislative principle that legislation should have sufficient regard for the institution of Parliament by allowing an administrative instrument to prevail in any conflict or inconsistency with legislation.

It is considered that this is justified for a number of reasons. Firstly, the transfer of particular matters by transfer notice will enable the objectives of the Bill to be met by ensuring that the transfer of the function of providing or arranging for pilotage services to port authorities can proceed efficiently. The power to issue a transfer notice is limited by the requirement that a transfer notice only be used for the purpose of transferring pilotage services.

Matters which will be dealt with by a transfer notice include transfer of assets (such as boats, navigational equipment and computers), leases of premises used in the delivery of pilotage services and licences for technical software used by pilots. The need to prescribe an extensive and detailed list of these items makes it more appropriate to be done in a transfer notice than in legislation.

Secondly, the inclusion of an express statement in section 12O makes it clear that it is the intention of Parliament to allow this power to be exercised by the Minister. In addition, generally transfer notices must be published in the Queensland Government Gazette which will ensure any matters dealt with in this way are available for public scrutiny. In particular situations, for example where an issue of confidentiality arises, the transfer notice will not be published but will be available to persons to whom the matter relates.

Finally, the use of transfer notices for this purpose have been included in other Acts, including the *Queensland Rail Transit Authority Act 2013* (section 78), the *Hospital and Health Boards Act 2011* (section 307), the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* (section 9). In its consideration of the Queensland Rail Transit Authority Bill 2013, the Transport, Housing and Local Government Committee noted the transfer notice provision and stated that it had no concerns about its inclusion in the Bill.

Consultation

The Department of Transport and Main Roads will write to major shipping companies and ship's agents to inform them of the change in policy for pilotage services. Consultation with other community stakeholders and organisations independent of government has occurred but as the nature of the policy change is machinery in nature, consultation has been minimal. The change in policy for the responsibility for the provision and delivery of pilotage services brings Queensland into alignment with other Australian jurisdictions.

Consultation with key stakeholders and government agencies has been extensive and ongoing and all issues raised through consultation have been comprehensively addressed.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland but will align Queensland with the majority of other Australian jurisdictions in who is responsible for the provision and delivery of pilotage services. Other Australian jurisdictions also have similar legislative safeguards regarding who may have conduct of a ship in compulsory pilotage area; protection for employers and pilots for loss or damage caused while conducting pilotage services and fee arrangements for the provision of pilotage services.

Notes on provisions

Part 1 Preliminary

Clause 1 provides for the short title of the Act.

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Maritime Safety Queensland Act 2002

Clause 3 provides that this part amends the MSQ Act.

Clause 4 amends section 4 to provide that the main purpose of the Act is the creation of MSQ to perform particular functions in relation to marine safety. Clause 4 also amends the Act to provide that it facilitates the transfer of the function of providing, or arranging for the provision of pilotage services in particular compulsory pilotage areas from MSQ to port authorities.

Clause 5 amends section 8 to provide that monitoring and managing the provision by responsible pilotage entities of pilotage services and arrangements made by responsible pilotage entities for providing those services is a function of MSQ. For this function, responsible pilotage entity does not include MSQ itself.

Clauses 6 amends section 12 for consistency with the defined term ‘pilot’ inserted by clause 13. It will also amend section 12(2) to clarify that the necessary expertise or experience, prescribed in a regulation, to be employed as a pilot is that the individual is licensed under TOMSA as a pilot.

Clauses 7 and 8 amend sections 12A and 12B for consistency with the defined term ‘pilot’ inserted by clause 13.

Clause 9 inserts new part 2A into the Act.

Division 1 contains sections 12C to 12E and deals with preliminary matters for part 2A.

Section 12C inserts new definitions for Part 2A.

Section 12D sets out who is the ‘new employer’ for employees whose employment will be transferred to port authorities. The new employer for pilots will be determined by which of the Department of Transport and Main Roads’ regional offices they are based in. For pilots based in the Department’s regional offices in Cairns, Mackay or Townsville their new employer will be Far North Queensland Ports Corporation Ltd, North Queensland Bulk Ports Corporation Ltd or Port of Townsville Ltd respectively.

The new employer for pilot transfer crew members and pilots based in the Department’s regional office in Gladstone will be the Gladstone ports entity. This will be either Gladstone Ports Corporation Ltd, or, if the Gladstone Ports Corporation Ltd has entered into a written agreement with a subsidiary of Gladstone Ports Corporation Ltd for the provision of pilotage services and the general manager has approved this agreement before the transfer day, the subsidiary.

The new employer for the transferred administrative staff will be the port authority or the Gladstone ports entity that offered them a transfer of employment. The definition of ‘transferred administrative staff’ in section 12C will only include those persons who accepted the offer of a transfer of employment from the port authority or the Gladstone ports entity. If any administrative staff offered transfer of employment with a port authority or the Gladstone ports entity do not accept the offer they will remain as employees of the State.

Section 12E provides that a ‘transferred pilotage area’ is a compulsory pilotage area other than the areas of Queensland waters declared to be compulsory pilotage areas under TOMSA and referred to as Brisbane pilotage area and Southport pilotage area. Transferred pilotage areas are those compulsory pilotage areas where the function of providing or arranging for

the provision of pilotage services will be transferred to port authorities. It also includes Abbot Point compulsory pilotage area, where MSQ proposes to enter into an agreement with the Port of Townsville Ltd for the delivery of pilotage services.

Division 2 contains new section 12F and deals with the transfer of assets, liabilities and other matters related to the transfer of pilotage services. These transfer notices will facilitate matters related to the current devolvement of the function of providing or arranging pilotage services in compulsory pilotage areas north of Brisbane except Abbot Point outlined above. It will also enable the transfer of assets and other things in relation to Abbot Point compulsory pilotage area from the State to the Port of Townsville Ltd to ensure the Port is able to provide pilotage services in this area under an agreement with MSQ.

Section 12F(1) provides that the Minister may provide for certain matters by gazette notice for the transfer of pilotage services. For this purpose, a definition of 'transfer' is inserted into schedule 2 of the Act by clause 13. This gazette notice is defined as a 'transfer notice'. A transfer notice may transfer assets, liabilities, leases, instruments, rights and other things from the State to the relevant port authority. It may also make provision regarding legal matters and for incidental, consequential or supplemental matters necessary or convenient for the transfer of pilotage services. In this section, 'port authority' includes the Gladstone ports entity.

Division 3 contains new sections 12G to 12J and deals with the transfer of employees and contracts.

Section 12G(1) provides that, on the transfer day, the transferred employees cease to be employees of the State and become employees of the relevant new employer. For transferred pilots and pilot transfer crew their employment with the new employer will be on the same conditions on which they were employed by the State. An example of these conditions is whether the person was employed on a full time or part time basis. For transferred administrative employees, their conditions will be as provided for in the offer of employment from their new employer which they accepted.

On the transfer day, the State's records about the employment of the transferred employees will become the records of the new employer. On the transfer day the State's liabilities relating to the employees' accrued rights to leave will become liabilities of the new employer.

Section 12H preserves key employment rights of transferred employees. The total remuneration for transferred pilots and pilot transfer crew will not be affected by the transfer. For transferred administrative employees, their total remuneration on the transfer to the new employer will be as specified in their offer of employment and may be equal to or greater than their total remuneration immediately before the transfer.

The transfer will not prejudice the transferred employee's existing or accruing rights to superannuation or annual, sick or long service leave or interrupt their continuity of service, although the employee may not claim the benefit of a right or entitlement more than once in relation to the same period of service.

Subsection 12H(1)(d) provides that the transfer of a transferred employee to the new employer does not constitute a retrenchment, redundancy or termination of the employee's employment with the State and does not entitle the employee to a payment or other benefit

because he or she is no longer employed by the State. As the *Fair Work Act 2009 (Cwlth)* (Fair Work Act) currently applies to the employment of transferred pilots, subsection 12H(3) provides that subsection 12H(1)(d) applies to transferred pilots subject to that Act.

Subsection 12H(1)(e) provides that the transfer does not require the State to make any payment to the employee in relation to their accrued rights to annual, sick or long service leave irrespective of any arrangement between the State and the employee.

Subsection (5) provides that, subject to the Fair Work Act, an industrial instrument applying to a transferred pilot or pilot transfer crew member immediately before the transfer day will continue to apply to the employee after the transfer day. This will ensure that the relevant industrial instrument continues to apply to these employees either under the Fair Work Act or under this Act. The industrial instrument for transferred administrative staff after the transfer day will be the relevant instrument that applies to their employment with the new employer.

Section 12I applies to contracts entered into by the State that are in force immediately before the transfer day and that relate or are incidental to the employment of a transferred pilot. Examples of these types of contracts are contracts for mobile phones and vehicle leases that are part of a transferred pilot's salary package. Section 12I(2) provides that, to the extent the contract applies to the transferred pilot, the new employer of the pilot will take the place of the State as a party to the contract and the contract may be enforced by or against the new employer. No compensation is recoverable from the State or anyone else in relation to the transfer of the rights or obligations under the contract.

Section 12J applies to contracts for services entered into by the State for the supply of a pilotage service or services in one or more transferred pilotage areas, and are in force immediately before the transfer day. An example of these types of contracts is contracts for the transport of a pilot onto or off a ship. Subsection (2) provides that, to the extent the contract applies to a transferred pilotage area, the pilotage entity for the area will take the place of the State as a party to the contract and the contract may be enforced by or against the pilotage entity. No compensation is recoverable from the State or anyone else in relation to the transfer of the rights or obligations under a contract to which this section applies. For this section, the pilotage entity is: for the Abbot Point compulsory pilotage area, the Port of Townsville Ltd, for the Bundaberg, Rockhampton and Gladstone compulsory pilotage areas, the Gladstone ports entity and otherwise, the relevant responsible pilotage entity.

Division 4 contains sections 12K to 12R and deals with other matters for the transfer of pilotage services.

Section 12K provides that no duty is payable under the *Duties Act 2001* in relation to anything done under a transfer notice.

Section 12L confirms that anything done under a transfer notice or section 12G that is or involves a disposal of a public record under the *Public Records Act 2002* is done under legal authority, justification or excuse.

Section 12M applies if a transfer notice or section 12I or 12J provides for an instrument that applied to the State to apply to a port authority. An instrument is defined in schedule 2 to mean a document of any type or an oral agreement. Without limiting the application of the

transfer notice or the section, section 12M(2) applies certain rules of construction to such instruments, including that any right, title, interest or liability of the State arising under or relating to the instrument will be transferred to the port authority. In this section 'port authority' includes the Gladstone ports entity.

Section 12N provides that the registrar of titles or other person required or authorised by law to register transactions affecting assets or liabilities may, without formal application, register or record a transfer or other dealing affecting an asset or liability under a transfer notice. If a transferee port authority makes written application, the registrar of titles or other person must register or record the transfer in the appropriate way.

Subsection (2) requires the registration of a transaction related to an asset or liability transferred under a transfer notice even if the transferee entity has not been registered as proprietor of the asset or liability. This subsection applies only if specified conditions regarding the transaction are met.

Subsection (3) provides that the registering authority may register a dealing for a transaction about an asset or liability registered in the name of the State without enquiring about whether or not it is an asset or liability transferred under a transfer notice.

Subsection (4) provides that in this section 'port authority' includes the Gladstone ports entity.

Section 12O provides that a thing may be done under this part despite any other law or instrument. This is subject to the Fair Work Act as outlined above for section 12H. For example a contract may be transferred under section 12J or 12K even if under the terms of the contract the parties have agreed not to transfer the rights under the contract.

Section 12P(1) provides for certain matters in relation to legal relationships arising as a result of things done under this part. Subsection (2) provides that if advice, consent or approval of a person would be necessary to do something under the part, the advice is taken to have been obtained, or the consent or approval given unconditionally. Subsection (3) provides that the giving of any notice necessary to do something under the part is taken to have been given.

Section 12Q clarifies that a thing is taken to be done under this part if the thing is done by or in compliance with a transfer notice, even if steps are required to be taken under another Act.

Section 12R provides that, if a provision of part 2A or a transfer notice is held by a court or judge to be beyond power, invalid or unenforceable, that provision is to be disregarded or severed and the decision will not affect the remaining provisions of the part or transfer notice. Subsection (3) confirms that the section does not affect the operation of section 9 of the *Acts Interpretation Act 1954* in any way.

Clause 10 amends section 13 to provide that, without limiting subsection (5), an amount may be paid from the Maritime Safety Queensland Fund to a responsible pilotage entity for a compulsory pilotage area for providing, or arranging for the provision of a pilotage service in the pilotage area.

Clause 11 omits the definition of 'registrar of titles' from section 18. The definition will be inserted into schedule 2 by clause 13 to apply for the Act.

Clause 12 inserts new part 5 division 3 which deals with transitional matters for the *Transport Legislation (Port Pilotage) Amendment Act 2013*.

Section 19 provides for immunity for general employers of a transferred pilot who is a conducting pilot or a supervising pilot under section 101 of TOMSA. If the conducting pilot has conduct of the ship as its pilot immediately before and after the transfer day, the general employer of the transferred pilot is taken to be MSQ and also the new employer for the transferred pilot while the conducting pilot has conduct of the ship.

Section 20 confirms that a transferred pilot's licence to have conduct of a ship as its pilot continues in force after the transfer day as if part 2A had not commenced.

Section 21 provides that a reference to the State or MSQ in particular documents may, if the context permits, be taken to be a reference to the port authority. In this section 'port authority' includes the Gladstone ports entity.

Clause 13 inserts new definitions into schedule 2.

Part 3 Amendment of Transport Infrastructure Act 1994

Clause 14 provides that this part amends the *Transport Infrastructure Act 1994*.

Clause 15 amends section 276 which provides that port authority has, in addition to its functions under section 275, the function of providing port services whether in or outside its port, in or outside Australia, and for another port authority or for someone else. The amendment will amend the definition of 'port service' to include pilotage services, or arranging for the provision of pilotage services in compulsory pilotage areas for which the port authority is the responsible pilotage entity.

Section 276(2) provides that a government owned corporation (GOC) port authority is taken to have had the function of providing port services and ancillary services under subsection (1) from when it became a GOC. Clause 15(1) will insert new subsection 276(2A) that will provide that this does not apply to the function of providing port services to the extent that it includes pilotage services or arranging for the provision of pilotage services.

Clause 15(2) adopts definitions for section 276.

Part 4 Amendment of Transport Operations (Marine Safety) Act 1994

Clause 16 provides that this part amends the *Transport Operations (Marine Safety) Act 1994*.

Clause 17 amends section 30 to include managing pilotage entities for compulsory pilotage areas as a person on whom the Act may impose general obligations for safety. A managing pilotage entity for a compulsory pilotage area is defined in the schedule as the responsible pilotage entity and also, any other entity the responsible pilotage entity has entered into a written agreement with for that entity to supply pilotage services in the pilotage area.

Clause 18 inserts new section 43A which provides that a managing pilotage entity must not provide for the piloted movement of ships in a compulsory pilotage area in an unsafe way. The maximum penalty for this offence is 500 penalty units, or, if the managing pilotage entity is an individual, imprisonment for 1 year.

Existing section 30 of TOMSA specifies that the Act imposes general obligations for safety on various parties in the maritime industry and that these obligations are generally intended to be performance based rather than prescriptive. The new offence is consistent with this approach and with existing offences regarding general safety obligations in Part 4 of the Act. The safety obligation being imposed on managing pilotage entities by section 43A would include, for example, ensuring that pilots employed by the entity are operating under an appropriate drug and alcohol policy.

Subsection 43A(2) provides that, without limiting subsection (1), piloted movement of ships is provided in an unsafe way if the managing pilotage entity employs an individual as a pilot who is not appropriately licensed.

Subsection (3) provides that if a contravention of subsection (1) causes death or grievous bodily harm to a person, the maximum penalty for the offence is 5000 penalty units or, if the managing pilotage entity is an individual, imprisonment for 2 years.

As noted above in relation to the Fundamental Legislative Principles, the penalties are considered proportionate given the potentially serious consequences of a breach of the general safety obligation. Such a breach may result in significant public harm by way of serious damage to property or the marine environment, as well as injury to persons. Higher penalties apply where death or grievous bodily harm of a person have been caused by the contravention. The penalties in section 43A are consistent with the penalties imposed on other persons under the general safety obligations in Part 4 of TOMSA.

Clause 19 inserts new section 71A. This section provides that the responsible pilotage entity for a compulsory pilotage area is the entity prescribed under a regulation as the responsible pilotage entity for the pilotage area. Subsection (2) provides that the function of a responsible pilotage entity is to provide, or arrange for the provision of pilotage services in its compulsory pilotage area.

Clause 20 inserts new section 88A which provides for a harbour master to give a direction to a managing pilotage entity. The direction which may be given is for the managing pilotage entity to provide, or arrange for the provision of pilotage services in the pilotage area in a specified way.

Subsection (2) provides that the managing pilotage entity must not contravene a direction under subsection (1) unless the entity has a reasonable excuse. The maximum penalty for this offence is 200 penalty units.

As noted above in relation to the Fundamental Legislative Principles, the penalty for this offence is considered proportionate and relevant to the actions. A harbour master may only give a direction under TOMSA if it is reasonably considered necessary to ensure safety (section 86(1) TOMSA). Contravention of a direction aimed at ensuring safety could potentially have serious consequences and as such, a high penalty is appropriate. The

maximum penalty is consistent with the penalty for similar offences regarding harbour master directions in Part 7 Division 2 Subdivision 1 of TOMSA.

Clause 21 amends the definition of ‘general employer’ in section 101(5). Section 101 provides for immunity for pilots and general employers for civil liability for damage or loss caused by an action or omission of a pilot. The amended definition of ‘general employer’ will provide that the general employer of a conducting pilot or supervising pilot means the responsible pilotage entity for the compulsory pilotage area in which the pilot is acting to supply pilotage services. If the responsible pilotage entity has entered into a written agreement for the supply of pilotage services and the pilot is acting in the supply of the services each party to the agreement will also be covered by the definition.

Clause 22 amends section 102A which provides for restrictions on when a pilot may have the conduct of a ship as its pilot. Subsection 102A(1) will be amended to provide that a pilot must not have the conduct of a ship as its pilot in a compulsory pilotage area unless the pilot is an employee of the responsible pilotage entity for the pilotage area or is acting in the supply of pilotage services the subject of a written agreement between the responsible pilotage entity for the pilotage area and the pilot or another person.

Section 102A(2) will also be amended to provide that, despite subsection (1), a pilot may have the conduct of a ship as its pilot in a compulsory pilotage area if another pilot is training the pilot or assessing the pilot’s competence and the supervisor is an employee of the responsible pilotage entity for the pilotage area or is acting in the supply of pilotage services the subject of a written agreement between the responsible pilotage entity for the pilotage area and the supervisor or another person.

Clause 22(3) replaces references to ‘person’ with ‘entity’. Under the *Acts Interpretation Act 1954* ‘entity’ includes both a person and an unincorporated body. The use of this broader term will ensure maximum flexibility in arrangements that may be made for the supply of pilotage services.

Clause 23 inserts new definitions into the schedule.