Sustainable Ports Development Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Sustainable Ports Development Bill 2015 (the Bill).

Policy objectives and the reasons for them

The key policy objective of this Bill is to provide for the protection of the Great Barrier Reef World Heritage Area (GBRWHA) through managing port-related development in and adjacent to the area.

Over the last few years, increasing local, national and international attention has been focussed on the challenges of balancing port development and protection of the GBRWHA.

In *Saving the Great Barrier Reef*, the government made election commitments in relation to dredging and port development in the GBRWHA. The government has also committed in the *Reef 2050 Long-Term Sustainability Plan* (LTSP) to implementing a raft of actions to protect the GBRWHA.

The Bill will give effect to the government's commitments made in the LTSP to better manage the impacts of port development on the environment, particularly on the GBRWHA, while allowing Queensland's economy, jobs and regions to grow. The Bill will:

- protect greenfield areas by restricting new port development in and adjoining the GBRWHA to within current port limits;
- restrict capital dredging for the development of new or expansion of existing port facilities to within the regulated port limits of Gladstone, Hay Point/Mackay, Abbot Point and Townsville (to optimise the use of infrastructure at these long established major bulk commodity ports);
- prohibit the sea-based disposal of material into the GBRWHA generated by port-related capital dredging;
- mandate the beneficial reuse of port-related capital dredged material, such as for land reclamation, or disposal on land where it is environmentally safe to do so; and
- require master plans at the long-established major bulk commodity ports of Gladstone, Hay Point/Mackay, Abbot Point and Townsville to optimise the use of existing port infrastructure and address operational, economic, environmental and social relationships as well as supply chains and surrounding land uses.

The implementation of these port-related commitments in the Bill will play an integral part in demonstrating the government's commitment to protecting the GBRWHA.

The Bill will manage key environmental values across a range of planning jurisdictions while implementing an overarching economic vision for the priority ports.

Long-term port master planning at the four priority ports of Gladstone, Hay Point/Mackay, Abbot Point and Townsville will also align with the Council of Australian Governments (COAG) endorsed 2012 National Ports Strategy and industry demand for a comprehensive strategy to manage the State's port network.

Master planning will facilitate economic growth by articulating an economic and environmental vision for the port that extends beyond existing strategic port land to optimise port development through coordinated planning of land and marine areas.

Through this Bill, Queensland will be setting a new national standard in sustainable port development.

Achievement of policy objectives

The LTSP provides an overarching strategy for management of the GBRWHA to 2050. It coordinates actions to better guide management of the World Heritage Area and associated management activities in its adjacent catchment. It includes areas under the jurisdictions of both the Australian and Queensland governments.

The LTSP includes the following port-related commitments for action by the Queensland Government:

- restrict new port development in and adjoining the GBRWHA to within current port limits;
- restrict capital dredging for the development of new or expansion of existing port facilities to within the regulated port limits of Gladstone, Hay Point/Mackay, Abbot Point and Townsville;
- ensure that any new development inside these port limits is also consistent with the *Great Barrier Reef Marine Park Act 1975* (Cwlth), the *Marine Parks Act 2004* (Qld), their regulations and zoning plans;
- prohibit the sea-based disposal of material into the GBRWHA generated by port-related capital dredging;
- mandate the beneficial reuse of port-related capital dredged material, such as land reclamation in port development areas, or disposal on land where it is environmentally safe to do so;
- require all proponents of new dredging works to demonstrate their project is commercially viable;
- establish a maintenance dredging framework which identifies future dredging requirements, ascertains appropriate environmental windows to avoid coral spawning and protect seagrass, and examines opportunities for beneficial reuse of dredge material or on-land disposal where it is environmentally safe to do so;
- require master plans at the major ports of Gladstone, Hay Point/Mackay, Abbot Point and Townsville which optimise infrastructure and address operational, economic, environmental and social relationships as well as supply chains and surrounding land uses;
- support on-land disposal or land reclamation for dredge material at Abbot Point;
- not support transhipping operations that adversely affect the Great Barrier Reef Marine Park (GBRMP);

- further protect the Fitzroy Delta, including North Curtis Island and Keppel Bay which are clearly outside the Gladstone port area, through:
  - extension and strengthened conservation zoning in the Great Barrier Reef Coast Marine Park;
  - extension of the existing fish habitat area;
  - establishment of a new net-free zone under fisheries legislation;
  - additional protections in associated intertidal and terrestrial areas.

The Bill is the first step to action certain port-related commitments made by the Queensland Government in the LTSP. It actions the port-related commitments best dealt with by new stand-alone legislation.

Alternative ways of achieving policy objectives

The Bill is the only way to meet the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Committee's (WHC) expectations of stand-alone legislation to address LTSP commitments relating to ports adjacent to the Reef.

Estimated cost for government implementation

Costs will be met from within existing departmental resources.

Consistency with fundamental legislative principles

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

Does the legislation have sufficient regard to the rights and liberties of individuals – Legislative Standards Act 1992, section 4(2)(a)

Clause 22 of the Bill could be considered a potential breach of the FLPs. The clause may be considered to be inconsistent with principles of natural justice and to not have sufficient regard to the rights and liberties of individuals.

The clause provides for the Minister to make or amend a port overlay for a priority port's master planned area. A master planned area may include land outside a port's strategic port land but cannot include an area covered by tidal waters that is outside port limits or an area of a State or Commonwealth marine Park (even if that area is within the port's limits).

A port overlay will have a similar effect to a State planning regulatory provision under the *Sustainable Planning Act 2009*, prevailing over an existing planning instrument in a master planned area to the extent of any inconsistency, including regulating development in that area.

In making or amending a port overlay, the Minister will not be required to publicly notify or consult on the proposed instrument. It is considered that this is justified as the port overlay is merely the regulatory tool to implement the State's interests as identified in the master plan. In preparing a master plan, the Minister must conduct a comprehensive public notification

and consultation process, including consideration of all submissions received on the master plan during that process.

Though the port overlay will not be subordinate legislation, it must be tabled in the Legislative Assembly and will be subject to disallowance.

Further, existing development rights are protected under the Bill (see clauses 36 to 39). Compensation provisions are also included in the Bill (see clauses 40 to 53) for owners of an interest in land that may be adversely affected by a port overlay.

The Office of the Queensland Parliamentary Counsel has suggested the limited entitlement to compensation under clause 42 is a potential FLP breach that may affect or take away existing rights, for example, an overlay may make particular development assessable, which previously did not require a development permit.

Limiting compensation to a loss of use rights is consistent with the compensation provisions in the *State Development and Public Works Organisation Act 1971*, on which the provisions were based. This limitation of compensation is considered appropriate. The provision does not limit existing rights to compensation and existing lawful uses of premises and buildings are protected (as are existing development approvals) by the Bill. As a port overlay will not regulate State development areas or priority development areas, no compensation in relation to these areas is included in the Bill.

The Bill will prohibit the following in the GBRWHA:

- the development of port facilities outside existing port limits (clause 32 of the Bill) and in a State marine park;
- port-related capital dredging (clause 33 of the Bill) other than for priority ports; and
- the sea-based disposal of port-related capital dredged material (clause 34 of the Bill).

It may be argued that these clauses remove existing rights. The government has committed to implementing these actions to protect the GBRWHA. The potential abrogation of rights and liberties is considered proportionate and relevant to the issue being addressed. Careful consideration was given to the implications of applying the prohibitions/restrictions. The approach taken in the Bill is considered to provide the best balance between individual and community interests.

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

Clause 6 states that the master planned area for a priority port is the area identified in the master plan and approved by regulation as the master planned area for that port. In identifying the area, the Minister must prepare a draft master plan identifying the boundaries of the area. The draft master plan must then be publicly notified and submissions about the draft master plan, including the proposed master planned area, must be considered by the Minister in making the master plan.

Clause 59(2) provides that the Minister may make a regulation to approve the master planned area. Once a master planned area has been established, the Minister must make a port overlay for the master planned area. As mentioned above, the port overlay will have a similar effect

to a State planning regulatory provision and will be able to regulate development in the master planned area.

It may be argued that this arrangement does not provide for certainty or have sufficient regard to the institution of Parliament. The approach in the Bill is considered appropriate to allow the flexibility needed in deciding the master planned area for a priority port, including allowing for comprehensive consultation with affected stakeholders and the community. Under the *Statutory Instruments Act 1992*, the regulation approving the master planned area must be tabled in the Legislative Assembly and will be subject to disallowance.

Schedule 2 contains a consequential amendment to the *Sustainable Planning Regulation 2009* to ensure consideration of a port overlay in assessing development. As the Bill will commence on assent, it is necessary to include the amendment in the Bill.

Consultation

There was an urgent imperative to introduce the Bill into the Legislative Assembly before the 39th session in Bonn, Germany (from 28 June to 8 July 2015) of the UNESCO WHC.

As set out above, the Bill will implement Queensland Government commitments made in the LTSP and election commitments in relation to port-related development in the GBRWHA.

Engagement was undertaken with key stakeholder groups including:

- the Australian Marine Conservation Society;
- the Environmental Defenders Office Queensland;
- Ports Australia;
- the Queensland Ports Association;
- the Queensland Resources Council; and
- the Word Wildlife Fund - Australia.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another State. However, the prohibition in the Bill on the sea-based disposal of port-related capital dredged material (prescribed dredge material) within the GBRWHA (see clause 34) will accompany the Australian Government's ban, in the *Great Barrier Reef Marine Park Regulations 1983*, on the sea-based disposal of capital dredged material within the GBRMP.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Clause 1 states that, if enacted, the Bill will be cited as the Sustainable Ports Development Act 2015.

Clause 2 sets out the purpose of the Bill which is to provide for the protection of the GBRWHA through managing port-related development in and adjacent to the area. The purpose will be achieved by prohibiting particular future development in the GBRWHA and implementing master planning for the long-term development of the priority ports of Abbot Point, Gladstone, Hay Point/Mackay and Townsville, in a way that is consistent with the principles of ecologically sustainable development.

The purpose will be achieved in a way that includes long-term planning for priority ports, concentrating port development and efficiently using existing port and supply chain infrastructure, recognising the diverse functions of the port network.

The Bill will implement port-related actions from the LTSP to protect the GBRWHA.

Division 2 Interpretation

Clause 3 states that the dictionary in schedule one defines particular words used in the Bill.

Division 3 Application of Act

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

Part 2 Planning for priority ports

Division 1 Preliminary

Clause 5 states that each of the following GBRWHA strategic bulk ports is a priority port: Abbot Point; Gladstone; Hay Point/Mackay; and Townsville.

Each of these priority ports will have a master planned area.

Clause 6 states that the master planned area for a priority port is the area identified in the master plan and approved by regulation as the master planned area for that port. A master planned area may include land outside a port's strategic port land but cannot include an area covered by tidal waters that is outside port limits or an area of the GBRMP or the Great Barrier Reef Coast Marine Park (even if that area is within the port's limits).

Division 2 Master planning for priority ports

Subdivision 1 Requirement for master plan

Clause 7 provides that the Minister must make a master plan for each priority port that identifies the master planned area. The Minister must be satisfied a master plan adequately considers the principles of ecologically sustainable development before making it.

A master plan applies to the whole master planned area.

Clause 8 sets out the required contents of a master plan. A master plan will:

- facilitate and optimise economic growth by articulating an economic vision for the port that extends beyond the existing strategic port land;
- provide greater transparency in understanding the economic, environmental, social, supply chain and surrounding land use relationships and impacts of port development beyond the traditional port boundaries;
- enable coordinated planning of land and marine areas by identifying port State interests – those matters that must be dealt with consistently across each planning instrument in a master planning area to achieve the vision of the port master plan; and
- provide a more comprehensive and coordinated approach to protecting and managing environmental values by articulating an environmental vision for the port master planning area and implementing an environmental management framework for the area.

Port State interests are those matters that must be dealt with consistently across each planning instrument in a master planning area in order to achieve the vision of the port master plan. For example, a State interest may require a buffer zone to separate proposed high density residential development from 24/7 port operations.

Subdivision 2 Making and amending master plans

Clause 9 states that the process stated in the subdivision must be followed to make or amend a master plan.

Clause 10 provides that the Minister must notify the port authority and a local government whose local government area includes the priority port of the Minister's intent to make or amend a master plan. The port authority or local government then has 20 business days to make a submission to the Minister about the proposal.

Clause 11 sets out the process the Minister must follow in preparing and notifying a proposed master plan, or proposed amendment of the plan, after giving notification under clause 10.

Clause 12 provides that after considering all submissions received under clause 11, the Minister may make the master plan, make the master plan with any amendments the Minister considers necessary or decide to take no further action.

For transparency, if the Minister decides to take no further action, the decision must be published in a public notice.

Subdivision 3 Repealing master plans

Clause 13 sets out the process the Minister must follow to repeal a master plan.

Subdivision 4 Reviewing master plans

Clause 14 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 takes effect. The review must include an assessment of whether the boundaries of the master planned area are still appropriate having regard to the strategic vision, objectives and desired outcomes for the area and the effectiveness of the objectives and priority management measures under the environmental management framework.

Clause 15 provides that the Minister must notify the port entity and each affected local government, as defined in the Bill, of the Minister's intent to review a master plan. The port authority or local government then has 20 business days to make a submission to the Minister about the proposal.

Clause 16 provides that, in conducting a review of a master plan, the Minister may require an affected local government or port authority for the priority port to provide the Minister with information relevant to the review.

For example, the Minister could request detailed information about the programs and measures adopted by the entity during the reporting period to—

- monitor the impacts of development carried out in the relevant area on the environmental values identified in the master plan; and
- implement the priority management measures identified in the master plan and monitor the effectiveness of those measures in the relevant area.

Clause 17 provides that after undertaking a review of a master plan the Minister may prepare a new plan, amend the existing plan or decide to take no action if the Minister considers that the existing plan continues to be suitable.

If the Minister decides to take no further action, the Minister must table reasons for this decision in the Legislative Assembly.

Subdivision 5 Guidelines for master plans

Clause 18 allows the Minister to make guidelines about matters that may be taken into account in preparing or reviewing a master plan, including matters that may be taken into account in identifying the master planned area. Any guidelines made under this clause must be published on the website of the department in which the Bill is administered.

Division 3 Port overlays for master planned areas

Subdivision 1 Requirement for port overlay

Clause 19 provides that the Minister must make a port overlay for a master planned area and that the overlay must identify the area to which it applies. The overlay will apply to the entire

master planned area (although it cannot regulate development in a priority development area or State development area).

A port overlay is a regulatory tool to implement the State's interests in a master planned area. It will prevail where there is an inconsistency with an existing planning instrument under the *Sustainable Planning Act 2009* or a port land use plan under the *Transport Infrastructure Act 1994*.

Planning instruments for priority development areas, provisional priority development areas or State development areas must consider the port overlay or provide a statement of reasons if it is determined they will remain inconsistent. The port overlay will ensure that port State interests for the relevant priority port will be considered in all planning decisions made in a master planned area.

An overlay will include, where necessary, development assessment provisions to be used during assessment processes under existing planning instruments, until such time as the relevant planning instrument is amended to incorporate requirements of the overlay. The overlay will ensure the operational implementation of the vision and objectives of the master plan.

Required content will include a statement about the purpose of the overlay, how environmental impacts will be managed and any other matter prescribed by regulation. The overlay will have a similar effect to a State planning regulatory provision under the *Sustainable Planning Act 2009*, including codes with performance outcomes and acceptable solutions, and criteria for assessing development.

In this way, it is intended that those authorities responsible for planning and development within a master planning area retain autonomy of decision making for their respective planning instruments, while dealing consistently with any port State interests.

Clause 20 provides that a port overlay is a statutory instrument under the *Statutory Instruments Act 1992* but is not subordinate legislation.

Clause 21 sets out the content requirements for a port overlay (which is the regulatory tool to implement a master plan) including, for example regulatory requirements to restrict particular development or to protect economic impacts in the master planned area.

Subdivision 2 Making, amending and repealing port overlays

Clause 22 sets out the process the Minister must follow if making or amending a port overlay, including notification requirements. A port overlay, or an amendment to it, takes effect on the day it is published in the gazette, or if a later day is stated in the instrument, that day.

A port overlay, or an amendment to it, must be tabled in the Legislative Assembly within 14 sitting days after it is made.

Clause 23 sets out the process the Minister must follow to repeal a port overlay, including notification requirements.

Subdivision 3 Relationship with other instruments

Clause 24 states that a port overlay prevails over a planning instrument under the *Sustainable Planning Act 2009* to the extent of any inconsistency (for example, where a provision in a local government's planning scheme is inconsistent with the port overlay, the overlay would prevail to the extent of that inconsistency).

Clause 25 states that a port overlay prevails over a land use plan made under the *Transport Infrastructure Act 1994* to the extent of any inconsistency.

Subdivision 4 Relationship with Economic Development Act

Clause 26 provides that where a priority development area under the *Economic Development Act 2012* is in a master planned area and a port overlay is made for that area, the Minister for Economic Development Queensland (MEDQ) must consider whether a development scheme for that priority development area is consistent with the overlay. If there is an inconsistency between the development scheme and the overlay, MEDQ must decide whether or not to amend the development scheme to remove the inconsistency.

If MEDQ decides the development scheme should be inconsistent, within 14 sitting days of making its decision, MEDQ must table its reasons in the Legislative Assembly.

Clause 27 provides that, when making or amending a development scheme for a priority development area under the *Economic Development Act 2012* and that priority development area is in a master planned area, MEDQ must consider but is not bound by a port overlay for that master planned area.

If MEDQ decides to make or amend the development scheme in a way that is inconsistent with a port overlay, within 14 sitting days of making its decision, MEDQ must table its reasons in the Legislative Assembly.

Subdivision 5 Relationship with Planning Act

Clause 28 provides that, subject to this clause, the *Sustainable Planning Act 2009* applies for development on land in a master planned area, but if there is an inconsistency between this clause and that Act, this clause prevails to the extent of that inconsistency.

If a port overlay declares development to be of a particular type for the *Sustainable Planning Act 2009*, the development is taken to be of that type.

If the port overlay states matters an assessment manager must consider in assessing an application, the assessment manager must consider those matters. An assessment manager's decision must be consistent with a port overlay applying in that area.

Subdivision 6 Relationship with State Development Act

Clause 29 provides that, where a State development area under the *State Development and Public Works Organisation Act 1971* is in a master planned area and a port overlay is made for that area, the Coordinator-General must consider whether an approved development scheme for that State development area is consistent with the overlay. If there is an

inconsistency between the approved development scheme and the overlay (for example, the purpose of a precinct in the State development area development scheme may be inconsistent with a port overlay), the Coordinator-General must decide whether or not to amend the development scheme to remove the inconsistency.

If the Coordinator-General decides the approved development scheme should be inconsistent, within 14 sitting days of making that decision, the Coordinator-General must table reasons for that decision in the Legislative Assembly.

Clause 30 provides that, when making or amending an approved development scheme for a State development area under the *State Development and Public Works Organisation Act 1971* and that State development area is in a master planned area, the Coordinator-General must consider but is not bound by a port overlay for that master planned area.

If the Coordinator-General decides to make, or amend, the approved development scheme in a way that is inconsistent with a port overlay, within 14 sitting days of making that decision, the Coordinator-General must table the reasons in the Legislative Assembly.

Part 3 Provisions relating to Great Barrier Reef World Heritage Area

Queensland's legal jurisdiction over GBRWHA waters is constrained. In addition to the three nautical mile limit on the application of State powers, the 1979 Offshore Constitutional Settlement gives primacy to the *Great Barrier Reef Marine Park Act 1975* (Cwlth) over State law. This applies to areas declared as GBRMP which, with some exceptions (for example, around ports), extends to the low-water mark on the Queensland coast.

In *Australian Offshore Laws* (2009), M.W.D. White states in his conclusions on GBR laws that:

> "… the laws that operate in the GBR gives rise to a complex legal situation. There are general regulatory and zoning laws, administered by the GBRMP Authority although a small part of the World Heritage Area is in Queensland territory and not that of the Commonwealth. The numerous Queensland islands in the GBR each generate a three mile territorial zone in which the Queensland laws operate and not the Commonwealth ones except where the *Great Barrier Reef Marine Park Act 1975* prevails. The marine environmental laws, therefore, for the first three miles from the land are those of the State of Queensland and thereafter those of the Commonwealth under the *Environment Protection and Biodiversity Conservation Act 1999*. However, an exception applies to activities, people and vessels if they have sufficient connection with the State of Queensland to have a "nexus" between them and the law which they have offended. Overarching are the laws, both Commonwealth and State, regulating shipping and also fisheries.
>
> It is difficult not to use the word "chaotic" to describe this complex jurisdictional matrix of offshore laws in the GBR. It is only saved by the sensible administration of the system by those charged with administrative responsibilities in the area and reasonable cooperation by most of those in the shipping, fisheries and tourism industries that use it."

Division 1 Preliminary

Clause 31 provides that an area within the GBRWHA but outside the GBRMP is a *restricted area* for the purposes of part 3. It is within this restricted area that the port-related prohibitions and restrictions in relation to port development, capital dredging and sea-based disposal of capital dredged material apply.

Division 2 Particular applications for port facilities

Clause 32 provides that an assessment manager must refuse a development application for a new port facility within the GBRWHA but outside of existing port limits. The assessment manager must also refuse a development application for a new port facility if it is within the Great Barrier Reef Coast Marine Park, despite the development being within port limits. A port facility is defined (in the dictionary) to mean a facility or land used in the operation or strategic management of a port authority's port.

Consistent with the LTSP, for the purposes of this Bill, a port facility does not include a small-scale recreational or tourism facility, such as a boat ramp, boat harbour or marina.

The clause does not apply to development that is dredging (see instead clause 33) or the disposal of material generated by dredging activities (see instead clause 34).

This clause implements the government commitment made in the LTSP to protect greenfield areas by restricting new port development in the GBRWHA to within current port limits. These port limits are long-established and fixed under the *Transport Infrastructure (Ports) Regulation 2005*.

Optimising the use of existing infrastructure at ports will minimise their environmental footprint, particularly on the GBR.

The clause does not apply to development the subject of an active environmental impact statement process that started before the commencement of the Bill.

Division 3 Capital dredging and disposal of dredge material

Clause 33 prohibits capital dredging in the restricted area. Capital dredging is defined in the dictionary in a way that is consistent with the *National Assessment Guidelines for Dredging 2009*.

An exemption applies to allow dredging for the purpose of establishing or constructing new port facilities, or improving existing port facilities within a priority port's master planned area.

The prohibition will not apply to capital dredging proposed as part of a project the subject of an active environmental impact statement process which started before the commencement of the Bill.

The Bill does not regulate dredging carried out to ensure the safe and effective ongoing operation of existing port facilities. This dredging will be administered in accordance with the maintenance dredging framework (which identifies future dredging requirements, ascertains appropriate environmental windows to avoid coral spawning and protect seagrass, and examines opportunities for beneficial reuse of dredge material or on-land disposal where it is environmentally safe to do so).

Together, clauses 32 and 33 implement the government's commitment in the LTSP to restrict capital dredging for the development of new or expansion of existing port facilities to within the regulated port limits of the priority ports.

The four priority ports are key economic assets necessary to increase investment and job creation. In 2013-14, the combined total throughput of the priority ports (Gladstone, Hay Point/Mackay, Abbot Point and Townsville) was over 242 million tonnes, representing 77 per cent of the total throughput of all Queensland ports combined. This represents trade worth $32 billion.

Providing for the long-term sustainable development of these four ports will mean a huge step forward for the protection of the GBR in a way that will also allow the growth of Queensland's economy, jobs and regions.

Clause 34 provides that an approving authority must not grant an approval for the sea-based disposal of capital dredged material generated as a result of dredging to establish or construct new port facilities, or to improve existing port facilities within a priority port's master planned area in a part of the GBRWHA that is outside the GBRMP (the boundaries of which are established under the *Great Barrier Reef Marine Park Act 1975* (Cwlth)).

This clause implements the government's commitment in the LTSP to prohibit the sea-based disposal of material generated by port-related capital dredging into the GBRWHA.

From the commencement of the Bill, all sea-based disposal of port-related capital dredged material in the GBRWHA will be banned, regardless of whether a project has an existing approval for such disposal.

Together with the Australian Government's ban on the disposal of capital dredged material in the GBRMP, no sea-based disposal of port-related capital dredged material will be allowed in any part of the GBRWHA.

This clause also implements the commitment made in the LTSP to mandate the beneficial reuse of port-related capital dredged material, such as land reclamation in port development areas, or disposal on land where it is environmentally safe to do so.

Under the clause, an approval for the disposal of prescribed dredge material can only be given if the material can be beneficially reused, or if it is impracticable to beneficially reuse it, where it can be used on land, other than on tidal land, in a way that is consistent with the principles of ecologically sustainable development (as set out in the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), section 3A).

The beneficial reuse of port-related capital dredged material may include:

- engineered uses—for example: land reclamation; beach nourishment; offshore berms; capping material;
- agriculture and product uses—for example: aquaculture; construction material; liners; and
- environmental enhancement—for example: restoration and establishment of wetlands, upland habitats, nesting islands and fisheries.

Clause 35 provides that part 3 applies despite anything in an Act listed in the clause.

Part 4 Miscellaneous

Division 1 Protection of particular uses and rights

Clause 36 protects the lawful use of premises in a master planned area to which a port overlay applies if, immediately before the overlay or an amendment to the overlay takes effect, such use of the premises was lawful.

Clause 37 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 overlay.

Clause 38 provides that a port overlay or an amendment to it cannot stop or further regulate development for which approval already exists for premises.

Clause 39 provides that, despite a port overlay having effect, an existing development application in the master planned area must be decided under the applicable Act, and that Act continues to apply as if the overlay were not in effect.

Division 2 Compensation for port overlays

Subdivision 1 Preliminary

Clause 40 defines particular terms used for the purposes of division 2.

Clause 41 provides that a reference to a port overlay in this division includes amendment to a port overlay.

Subdivision 2 Compensatory circumstances

Clause 42 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 purpose as a result of a port overlay (or amendment of an overlay) taking effect and this results in a loss in the value of the owner's interest in the land.

Clause 43 provides that the owner of an interest in land who is entitled to compensation from the State under clause 42 must, to claim compensation, first have made a written request to the Minister to carry out the alternative lawful use on the land and had that request refused by the Minister.

Subdivision 3 Limits on compensatory circumstances

Clause 44 provides that compensation under subdivision 2 is only payable if a claim is made to the Minister within three years of the port overlay that gave rise to the claim for compensation coming into effect.

Clause 45 provides that, despite clause 42, compensation is not payable if it has already been paid to a previous owner, or for anything done in contravention of this Bill.

For clarity, the effect of this provision is that if a claim can be made under another Act, that Act must be used.

Subdivision 4 Processing claims

Clause 46 provides that the Minister must decide a compensation claim within 60 business days after the claim is made.

Clause 47 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 48 sets out the process for working out the amount of compensation payable to an owner of an interest in land affected by a port overlay or an amendment to it.

The amount is the difference between the market value of the interest immediately before the change effected by the overlay and its value immediately after the change effected by the overlay, adjusted as appropriate to particular criteria set out in the provision.

Clause 49 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 ends.

Clause 50 provides that the Minister must give the registrar of titles written notice of the payment of compensation in a form approved by the registrar. The registrar must keep the information given by the Minister as information under the *Land Title Act 1994*, section 34 (Other information not part of the freehold land register).

Subdivision 5 Appeals

Clause 51 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 52 provides that to start an appeal 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 53 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.

Division 3 Offences

Clause 54 provides it is an offence for a person to give the Minister a document in relation to the administration of the Bill that contains information the person knows is false or misleading in a material particular.

A maximum penalty of 1665 penalty units applies.

Division 4 Evidentiary and legal proceedings

Clause 55 provides that a document (certificate) purporting to be signed by the chief executive is evidence of a matter. A range of matters is set out in the clause.

Division 5 Other administrative matters

Clause 56 provides that the chief executive must keep a register of all master plans and amendments of master plans (including proposed master plans or proposed amendments of master plans) and port overlays or amendments of port overlays.

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

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 57 provides that the chief executive must keep the register under clause 56 open for inspection during office hours on business days, must allow a person to search and take extracts from the register and must give a person who asks a copy of all or part of the register at a fee of not more than the cost of giving the copy.

Clause 58 provides for the chief executive to approve forms for use under the Bill.

Clause 59 provides that the Governor in Council may make regulations under the Bill, including to approve a master planned area, prescribe matters for inclusion in a master plan or port overlay, to set fees, and to impose a penalty of not more than 20 penalty units for the contravention of a regulation.

Part 5 Transitional provision

Clause 60 provides that clauses 32 and 33 do not apply to development the subject of an environmental impact statement process that started before the commencement of the Bill. The provision does not apply to any port-related capital dredged material resulting from the project, which, consistent with clause 34, must be either beneficially reused or disposed of on land.

Part 6 Amendment of Acts

Division 1 Amendment of this Act

Clause 61 states that division 1 amends the *Sustainable Ports Development Act 2015*.

Clause 62 makes a consequential amendment to the long title of the *Sustainable Ports Development Act 2015* to remove words no longer required as they relate to amendments that have already been given effect.

Division 2 Amendment of Transport Infrastructure Act 1994

Clause 63 states that division 2 amends the *Transport Infrastructure Act 1994*.

Clause 64 provides that the *Transport Infrastructure Act 1994* is amended to ensure a priority port's land use plan under that Act is consistent with a port overlay for the master planned area.

Part 7 Amendment of other legislation

Clause 65 states that Schedule 2 amends the legislation mentioned in that Schedule.

Schedule 1 Dictionary

Schedule 1 defines particular words used in the Bill.

Schedule 2 Other amendments

Schedule 2 makes consequential amendments to the following legislation, required as a result of the Bill to ensure consideration of a port overlay:

- the *Economic Development Act 2012*;
- the *State Development and Public Works Organisation Act 1971*; and
- the *Sustainable Planning Regulation 2009*.