

Transport Infrastructure (Ports) Regulation 2016

Explanatory notes for SL 2016 No. 149

made under the

Government Owned Corporations Act 1993

Marine Parks Act 2004

Transport Infrastructure Act 1994

General Outline

Short title

Transport Infrastructure (Ports) Regulation 2016

Authorising law

Sections 267AA, 268, 270, 271, 272, 274, 274A, 275(1)(g), 285(1)(g), 290(2) and 490 of the *Transport Infrastructure Act 1994*.

Section 8 and 150 of the *Marine Parks Act 2004*.

Sections 54, 161 and 167 of the *Government Owned Corporations Act 1993*.

Policy objectives and the reasons for them

Under the provisions of section 54(1) of the *Statutory Instruments Act 1992* (SIA), all subordinate legislation expires on 1 September first occurring after the 10th anniversary of the day of its making. Under the *Transport Infrastructure Act 1994* (the Act) the *Transport Infrastructure (Ports) Regulation 2005* (the 2005 Regulation) was due to expire on 1 September 2015. The 2005 Regulation was granted a one year exemption from expiry under section 56A of the SIA.

The key policy objectives for the *Transport Infrastructure (Ports) Regulation 2016* are to provide for:

- continuing consistency with the objectives of the Act;
- contemporary drafting, including accuracy in describing port limits and maritime boundaries; and

- the removal of unnecessary administrative provisions.

Achievement of policy objectives

The amendments will provide updated provisions consistent with the objectives of the Act.

Section 1 states the short title of the *Transport Infrastructure (Ports) Regulation 2016* (the Regulation).

Section 2 sets the date of commencement for the Regulation as 1 September 2016.

Section 3 states that certain words used in the Regulation are defined in the dictionary in Schedule 3.

Section 4 is for information purposes, and allows each port that is managed by a Port Authority to be named, and for the port authority managing that port to be named.

Section 5 is authorised by section 267AA (3) of the Act and defines the port limits. The limits of the Port of Brisbane are drawn with reference to the extent of an area and the rules for defining the extent of that area. The area is described in Schedule 2, part 1. All areas of land above the high-water mark are excluded from the area defined. The intent is to make it clear that the port limits are fixed to the areas described, which will be areas where water would be, if it were at the high-water mark. The intent of the section is also to preserve the inclusion of Mud Island and other relevant mangrove areas within the port limits, as they are inundated at high tide.

Section 5, subsection 2 creates a restriction for determining the extent of the area in Schedule 2, part 1. It intends that the extent of any waterway that might form part of the extent of the area when it is being described by the high-water mark, is excluded from the area. A straight line is drawn across the entrance of the waterway, as it would be at high-water, so that the area of its waters is excluded.

Section 6 of the Regulation defines the limits for other particular ports. Section 6 is authorised by section 274(a) of the Act. The limits of other particular ports are drawn with reference to the extent of the area for that port and the rules for defining the extent of that area. All areas of land above the high-water mark are excluded from the area defined for that particular port. The area for each particular port is described in Schedule 2, part 2.

If a port is mentioned in Schedule 2, part 2, division 1, the extent of the area is taken to include the waters of navigable rivers or creeks flowing directly or indirectly into waters within the area described. The waters within the area described must be the types of waters mentioned in section 6(2)(b).

If a port is mentioned in Schedule 2, part 2, division 2, the limits are taken not to include the extent of the area of waters of rivers or creeks upstream from the mouths of those rivers or creeks. An exception to this exemption exists for each port listed in Schedule 2, part 2, division 2. For these ports, the extent of the area of the specific river (or rivers) mentioned in section 6(4), does form part of the limits.

Section 7 is authorised by section 275(1)(g) of the Act and is carried over with minor typographical amendments from the 2005 Regulation. Section 7 confers an additional function on Far North Queensland Ports Corporation Limited (FNQPC) to lease or license its strategic port land at Cairns for cultural or tourism facilities.

Section 8 is authorised by section 285(1)(g) of the Act and defines an additional purpose for the port land which FNQPC uses for cultural and tourism facilities. Section 8 makes it clear that land used for this purpose by FNQPC is land to be included in FNQPC's Land Use Plan for Cairns.

Section 9 is carried over from the 2005 Regulation and is authorised by section 290(2) of the Act. It provides protection for an official, other than a director of the board of a port authority, from civil liability for an act or omission done honestly and without negligence for the port authority for which they are an official.

Section 10 refers to Schedule 4 in order to update references to the Regulation found in other Regulations in Schedule 4 as well as fixing other minor typographical matters.

Schedule 1 lists ports managed by a port authority and the port authority responsible for managing that port.

Schedule 2 is the Schedule of areas described for the purposes of defining port limits under section 5 or 6. Schedule 2 must be read in conjunction with:

- Section 5 of the Regulation for the Port of Brisbane; and
 - Section 6 of the Regulation for other particular ports;
- in order to determine the full extent of the area that is the limit of each port.

Schedule 3 is the dictionary with defined terms.

Schedule 4 is the Schedule of consequential amendments to other regulations being made as a consequence of the Regulation.

Key changes achieved in the Regulation are.

- The authorising legislation permits the Regulation to define or amend port limits. The way the port limits are described has been altered slightly to make it clear that the limit is the extent of - the area described in Schedule 2, taking into account the relevant inclusions and exemptions for each particular port. The 2005 Regulation did not specifically define limits for the port, instead describing an area of water. Consultation revealed that this definition has been widely misunderstood and misinterpreted. Additionally, concerns were raised that the terminology could have been misinterpreted in such a way that port limits were constantly in flux, being they were tied to an area of water which would fluctuate with ordinary tidal activities. Port limits have been redefined to resolve this inconsistency whilst maintaining the objective of establishing the limits within which a port can exercise its powers and functions.
- A power under section 285(1)(g) has been added to the Regulation to remove any doubt that FNQPC should include the land used for the additional functions prescribed by this regulation under section 275(1)(g) in its Land Use Plan. In this instance the function undertaken by FNQPC to lease and licence its port land at Cairns for cultural and tourism

facilities occurs under the existing power granted by section 275(1)(g) of the Act, and is achieved by section 7 of the Regulation. FNQPC already includes this land in their Land Use Plan for the Port of Cairns, the addition of section 9 clarifies this requirement. It should be noted that functions granted under section 275(1)(g) of the Act and purposes for which a Land Use Plan are prepared under section 285(1)(g) of the Act may not always be linked. For example, additional functions conferred on a port authority may not require the use of land, or may not require land that is to be included in the Land Use Plan for that port. Similarly, not all purposes prescribed under section 285(1)(g) of the Act must necessarily be functions of a port authority prescribed under section 275(1)(g). This change has the additional benefit of removing any doubt as to the separate functions of section 275(1)(g) and section 285(1)(g) as well as setting the precedent that each section can be used for its intended purpose or in conjunction when required.

- The structure of the Regulation has been altered to move the descriptions of how limits are defined for each port to their own distinct section within the Regulation. This method achieves the desired effect of naming limits with a reduced text load. These changes are structural and do not alter the intent of the 2005 Regulation, nor do they alter the limits intended by the 2005 Regulation. The Port of Brisbane and other ports have been separated into their own sections within both the Regulation and within Schedule 2. This is consistent with the fact that the authorising powers for defining and amending port limits for the Port of Brisbane and other ports are contained in different sections of the Act.
- Some small errors and inconsistencies contained within the coordinate descriptions for port limits have been rectified. This includes ensuring that the correct terminology has been used to describe lines and point locations.
- The Regulation has removed provisions relating to the transfer of port management and the revocation and declaration of entities as port authorities. These administrative functions have occurred and are no longer required as part of the Regulation.

Consistency with policy objectives of authorising law

The amendments to the Regulation are consistent with the objectives in section 2(2)(e) of the Act which, for ports, aims to establish a regime under which a ports system is provided and can be managed within an overall strategic framework.

Establishing and defining the port limits and additional functions of a port authority is part of the overall strategic framework by which ports are managed and assists in allowing Government to have a strategic overview of the provision and operation of all transport infrastructure.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The amendments to clarify how port limits are defined are expected to benefit all agencies who use the data provided in determining relevant boundaries for the purposes of safety and defining port areas.

The proposal to include a new section under the head of power in section 285(1)(g) of the Act clarifying that additional functions conferred on FNQPC under section 275(1)(g) of the Act are, in this instance, matters to be included in their Land Use Plan.

There is an additional benefit in that the head of power in section 285(1)(g) of the Act is given a precedent. This will clarify the intended legislative process for future amendments to this Regulation. This will allow the State to declare that port authority land held for other purposes defined by the Regulation may be included in a Land Use Plan if required.

The amendments to the description of port limits, streamlines and reduces duplication.

The changes will not result in significant costs for government, industry or the community.

Consistency with fundamental legislative principles

The amendments are consistent with the fundamental legislative principles.

Consultation

Consultation was conducted with the following stakeholders:

- Department of State Development;
- Department of Natural Resources and Mines;
- Office of Best Practice Regulation, Queensland Competition Authority.

The following Queensland port corporations were consulted:

- Far North Queensland Ports Corporation
- North Queensland Bulk Ports Corporation
- Port of Townsville Limited
- Gladstone Ports Corporation
- Port of Brisbane Corporation.

The Maritime Jurisdiction Advice Unit within Geoscience Australia was consulted in determining the current best practice for describing maritime boundaries.

There was general support for the Regulation. North Queensland Bulk Ports Corporation did not agree that changes were required to the existing wording in the 2005 Regulation. Given feedback during consultation that there was some existing confusion about such descriptions, the amendments are considered to be necessary and sufficient for the purposes of defining port limits accurately.