

**NORTHERN TERRITORY OF AUSTRALIA**

**PORTS MANAGEMENT ACT 2015**

As in force at 4 May 2022

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 4 May 2022

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## PORTS MANAGEMENT ACT 2015

**An Act to provide for the control, management and operation of ports,  
and for related purposes**

### **Part 1                      Preliminary matters**

#### **1                      Short title**

This Act may be cited as the *Ports Management Act 2015*.

#### **2                      Commencement**

This Act commences on the day fixed by the Administrator by *Gazette* notice.

#### **3                      Definitions**

In this Act:

***access policy*** means an access policy approved by the Regulator under section 127.

***acting in an official capacity***, in relation to a person, means the person is exercising functions under, or otherwise related to the administration of, this Act.

***approved form*** means a form approved under section 154.

***Australian Standard AS 3846-2005*** means Australian Standard AS 3846-2005 *The handling and transport of dangerous cargoes in port areas*:

- (a) as in force immediately before the commencement of Part 5, Division 4; or
- (b) if the Minister has declared, by *Gazette* notice, that a particular amendment is to be adopted for this definition – as so amended.

***charging entity***, see section 106.

**commercial shipping** means the carrying of cargo, or transport of passengers, by sea to or from a designated port, for reward, on a vessel other than:

- (a) a commercial fishing vessel; or
- (b) a fishing charter vessel; or
- (c) a ferry; or
- (d) a vessel prescribed by regulation.

**commercial vessel** means a vessel that is for use in connection with a commercial, governmental or research activity, whether or not it is also used in connection with another activity at the same time.

**Competent Authority**, see section 3 of the *Dangerous Goods Act 1998*.

**compliance audit**, see section 34(1).

**compulsory pilotage area** means a pilotage area for which pilotage is compulsory under section 68.

**dangerous goods**, see section 7(1) of the *Marine Act 1981*.

**designated port** means:

- (a) the Port of Darwin; or
- (b) any other port within the Territory that, under a declaration in force under section 6, is a designated port for this Act.

**Director**, see section 7(1) of the *Marine Act 1981*.

**entity** includes a person and an unincorporated body.

**environment**, see section 6(1) of the *Marine Pollution Act 1999*.

**exercise**, a function, includes perform a duty.

**function** includes power, authority and duty.

**information direction**, see section 15(1).

**licensed pilot** means a person who holds a current pilotage licence.

**marine legislation** means:

- (a) this Act; or
- (b) the *Marine Act 1981*; or
- (c) the *Marine Pollution Act 1999*; or
- (d) subordinate legislation made under an Act mentioned in paragraph (a), (b) or (c).

**Marine Safety National Law** means the *Marine Safety (Domestic Commercial Vessel) National Law* (Cth) (being provisions applying as a law of the Commonwealth because of section 4 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth)).

**master**, see section 7(1) of the *Marine Act 1981*.

**mooring buoy** means a floating apparatus (other than a vessel) that is in navigable waters and used for securing a vessel.

**non-commercial vessel** means a vessel that is not a commercial vessel.

**Northern Territory waters**, see section 7(1) of the *Marine Act 1981*.

**owner**, in relation to a vessel, means:

- (a) an owner, joint owner or charterer of the vessel; or
- (b) an agent of the owner, joint owner or charterer; or
- (c) a person registered as the vessel's owner in a register kept under the marine legislation or the *Marine Safety National Law* or other certificate of registry for the vessel.

**pilotage area** means an area declared under section 65.

**pilotage authority**, for a pilotage area, means the person who is, or is appointed to be, the pilotage authority for the area under section 66.

**pilotage exemption certificate** means a pilotage exemption certificate issued under Part 8, Division 4.

**pilotage licence** means a pilotage licence issued under Part 8, Division 4.

***pilotage services contract*** means a contract entered into under section 86(1).

***pilotage services provider***, in relation to a pilotage area, means a person appointed by the Minister under section 85(1) to be a pilotage services provider for the area.

***place***, within a designated port, includes:

- (a) any infrastructure or other thing affixed to land within the port; and
- (b) any vehicle or other thing on land within the port; and
- (c) anything on or under the bed or foreshore of a waterway within the port; and
- (d) anything (other than a vessel) in, or floating on, water within the port that is anchored or otherwise attached to the bed or banks of a waterway within the port.

***port authority***, for Part 10, see section 106(1).

***port enforcement officer*** means a person appointed under section 24 to be a port enforcement officer.

***port facilities***, in relation to a designated port, means land, buildings, installations or equipment for:

- (a) berthing, towing, mooring, docking or moving vessels that are entering, using or leaving the port; or
- (b) the loading, unloading or transshipment of cargo; or
- (c) the embarking or disembarking of passengers; or
- (d) the lighterage, sorting, weighing, warehousing, storing or handling of cargo.

***port lessee***, of a designated port, means an entity that subleases or sublicences to the port operator land within the port that has been leased or licensed to the entity by a public sector entity.

***port management officer*** means a person appointed under section 22 to be a port management officer.

***port notice***, see section 57.

***Port of Darwin*** means the area of water and land comprised within the boundaries as declared from time to time under section 7 to constitute the Port of Darwin.

**port operating agreement** means an agreement entered into under section 9(1) that describes itself as a port operating agreement for this Act.

**port operator**, of a designated port, means the entity declared by the Minister under section 8 to be the operator of the port.

**port safety plan**, see section 28.

**port user**, see section 124(1).

**prescribed services** means:

- (a) for a private port operator – the services prescribed by regulation; or
- (b) for a private pilotage provider – pilotage services in a pilotage area within a designated port.

**preventative action**, in relation to a vessel, hull or hulk in a designated port, means one or more preventative measures.

**preventative measure**, in relation to a vessel, hull or hulk in a designated port, means:

- (a) removing the vessel, hull or hulk from the port; or
- (b) moving the vessel, hull or hulk to a specified place within the port; or
- (c) repairing the vessel, hull or hulk and making it safe; or
- (d) destroying the vessel, hull or hulk.

**private pilotage provider**, see section 118(b).

**private port operator**, see section 118(a).

**public sector entity** means any of the following:

- (a) the Territory (including the Crown in right of the Territory);
- (b) a minister of the Territory;
- (c) an Agency;
- (d) a Government owned corporation as defined in section 3 of the *Government Owned Corporations Act 2001*;
- (e) a public authority of the Territory;

- (f) a person holding or occupying an office established by a law of the Territory;
- (g) a transaction company all of the issued shares in which are held by, or on behalf of, a public sector entity mentioned in any other paragraph;
- (h) an entity that is wholly owned by an entity that is a public sector entity mentioned in any other paragraph.

**regional harbourmaster**, in relation to a designated port, means the person appointed to be the regional harbourmaster for the port under section 19(1).

**registered interest** means an interest registered under the *Shipping Registration Act 1981* (Cth) or *Personal Property Securities Act 2009* (Cth).

**Regulator**, see section 119(3).

**related body corporate**, see section 9 of the Corporations Act 2001.

**relevant function**, for Part 12, see section 138.

**reportable incident** means an event of a prescribed kind that involves:

- (a) actual or potential death of, or injury to, a person; or
- (b) actual or potential loss of, or damage to, property; or
- (c) actual or potential harm to the environment.

**step-in right**, see section 139.

**transaction company** means a body corporate established as a transaction company under section 11 of the *Port of Darwin Act 2015*.

**Tribunal** means the Civil and Administrative Tribunal.

**vehicle** includes rolling stock.

**vessel** means:

- (a) generally:
  - (i) a vessel as defined in section 8 of the Marine Safety National Law; or

- (ii) a seaplane; or
- (b) for Part 8 – see section 63.

**website** includes a webpage.

#### **4            Act binds Crown**

- (1) This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) However, this Act does not make the Crown liable to be prosecuted for an offence.

#### **5            Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 5*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 2            Ports and port operators**

### **Division 1        Declaration of designated ports**

#### **6            Declaration of designated port**

The Minister may, by *Gazette* notice, declare a port within the Territory to be a designated port for this Act.

#### **7            Boundaries of designated port**

The Minister may, by *Gazette* notice, declare the boundaries of the area of water and land constituting a designated port.

### **Division 2        Appointment of port operators**

#### **8            Declaration of port operator**

- (1) The Minister may, by *Gazette* notice, declare an entity to be the operator of a designated port.
- (2) Only one entity may be the operator of a designated port at any time.

**9            Agreements with port operators or port lessees**

- (1) The Territory or, with the consent of the Minister, any other public sector entity may enter into one or more agreements in relation to the operation of a designated port with an entity that is the port operator or port lessee of the port.
- (2) An agreement entered into under subsection (1) may:
  - (a) deal with a specific subject matter related to the operation of the designated port; and
  - (b) contain terms or conditions of any kind; and
  - (c) describe itself as a port operating agreement for this Act.

**10          Port operating agreements**

- (1) Without limiting section 9, a port operating agreement for a designated port may require the port operator or a port lessee to do all or any of the following:
  - (a) meet specified standards in the performance of functions;
  - (b) develop the port, or cause it to be developed, in a specified manner;
  - (c) give information of a specified kind to the Minister or an entity specified by the Minister.
- (2) Subsections (3) and (4) apply if:
  - (a) a provision of a port operating agreement provides for a payment to be made by the port operator or a port lessee or a deduction to be made from the amount of a payment otherwise payable to the port operator or a port lessee:
    - (i) for a failure by the port operator or port lessee to meet a performance standard specified in the agreement; or
    - (ii) for conduct engaged in by the port operator or port lessee that causes or materially contributes to, or is reasonably likely to cause or materially contribute to, a safety incident of a kind specified in the agreement; and
  - (b) that provision is described in the port operating agreement as a civil penalty provision for this Act.



- (3) A civil penalty provision may fix different amounts of payments or deductions for different classes of failures or in relation to different kinds of safety incidents.
- (4) The port operator or a port lessee is liable to pay (as a debt due to the Territory), or ceases to be entitled to be paid, the amount provided for by a civil penalty provision despite anything to the contrary in a law of the Territory.

## **11            Revocation of declaration of port operator**

- (1) The Minister may revoke the declaration of an entity as a port operator of a designated port on the ground that a circumstance set out in subsection (2) exists in relation to the entity.
- (2) The circumstances are that:
  - (a) the entity has, in the opinion of the Minister, engaged in conduct that:
    - (i) is in breach of any requirement or duty imposed on the entity under a law of the Territory or a port operating agreement; and
    - (ii) has materially compromised, or is likely to materially compromise, the safety of people, property or the environment at the designated port; or
  - (b) a port operating agreement for the port to which the entity is a party has been terminated or has expired.
- (3) However, for a circumstance mentioned in subsection (2)(a), the Minister may only exercise the power conferred by subsection (1) if:
  - (a) the Minister has given a written notice to the entity that:
    - (i) sets out particulars of the conduct; and
    - (ii) requires the entity to give a remedial plan to the Minister within a reasonable period specified in the notice (not being less than 21 days); and
  - (b) the entity:
    - (i) has failed to give a remedial plan within the specified period; or
    - (ii) has given a remedial plan within that period but the Minister is not satisfied that the plan is adequate for the purpose; or

- (iii) has given a remedial plan within that period but has failed to comply with the plan with the result that the circumstance mentioned in subsection (2)(a), in the opinion of the Minister, continues to exist or exists again.
- (4) For subsection (3), a remedial plan in relation to conduct is a plan that sets out:
  - (a) when and how the conduct will cease; and
  - (b) to the extent that any breach mentioned in subsection (2)(a)(i) is capable of being remedied, when and how it will be remedied; and
  - (c) the measures that will be implemented by the entity to prevent the conduct occurring in the future.

### **Division 3 Functions of port operators**

#### **12 Functions of port operator**

- (1) The port operator of a designated port has the functions conferred on the port operator by or under this or any other Act.
- (2) The principal functions of the port operator are:
  - (a) to establish, manage, maintain and operate facilities and services in the designated port that promote its safe and efficient operation; and
  - (b) to facilitate trade utilising the designated port and use its best endeavours to increase the volume of that trade.

#### **13 Dredging or other similar work**

- (1) A port operator of a designated port may carry out dredging or other work to deepen, extend, clear or maintain channels or berthing places within the port.
- (2) The power conferred by subsection (1) is subject to the port operator holding any authorisation for the work required under any law of the Territory or the Commonwealth.
- (3) This section does not affect or derogate from the power of the Territory to carry out dredging or other work mentioned in subsection (1) in any Northern Territory waters, including waters within a designated port.

#### 14 Hydrographic surveys

- (1) A port operator of a designated port may carry out hydrographic surveys within the port.
- (2) The power conferred by subsection (1) is subject to the port operator holding any authorisation for carrying out the survey required under any law of the Territory or the Commonwealth.
- (3) The port operator must give the regional harbourmaster for the designated port any information derived from a hydrographic survey that is relevant to the function of the regional harbourmaster under section 21.

#### 15 Power to require information to be given

- (1) The port operator of a designated port may, by written direction (an **information direction**), require any of the following to give to the port operator relevant information that is in their possession or under their control:
  - (a) the master of any vessel that is in the port area;
  - (b) a shipping agent for goods shipped to, from or within the port area;
  - (c) a consignor or consignee of goods shipped to, from or within the port area;
  - (d) an operator of stevedoring, pilotage or other facilities or services within the port area.
- (2) Information is **relevant information** if it is information that the port operator reasonably requires for any of the following purposes:
  - (a) monitoring compliance with port notices;
  - (b) determining liability for and the amount of, and facilitating the collection of, charges fixed under section 108;
  - (c) compiling statistics that the port operator is authorised or required to compile, whether by law or a port operating agreement;
  - (d) monitoring or preventing damage to the environment caused by conduct within the port area;
  - (e) monitoring, maintaining or improving the safe, secure and efficient operation of the port, including the movement, handling and storage of dangerous goods within the port area;

- (f) coordinating port communications;
  - (g) any purpose prescribed by regulation for this paragraph.
- (3) An information direction must allow a reasonable period (not being less than 14 days) for compliance with the direction.
- (4) Subsection (3) does not apply to an information direction that is given in response to an emergency or in order to avert or minimise an imminent threat of:
- (a) death, or serious injury, to any person; or
  - (b) loss of, or serious damage to, property; or
  - (c) material harm to the environment.
- (5) An information direction mentioned in subsection (4) must be complied with as soon as possible.
- (6) In this section:

**port area**, for a designated port, means the area of water and land constituting the port and any wharf adjacent to the waters of the port.

## **16            Use or disclosure of information collected**

- (1) A port operator of a designated port is authorised to use and disclose information given to the port operator in compliance with an information direction for any purpose for which the port operator is authorised to require the information.
- (2) Subsection (1) is subject to any provision made by a port operating agreement.
- (3) A port operator must give to the Territory, or to another public sector entity notified in writing to the port operator by the Territory for this subsection, any information of a kind mentioned in subsection (1) that is requested by the Territory or that public sector entity.

## **17            Compliance with information direction**

- (1) A person commits an offence if the person fails to comply with an information direction given to the person under section 15(1).
- Maximum penalty:        100 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.
- (4) It is not a reasonable excuse that compliance with the information direction would breach a duty of confidentiality.
- (5) The provision of information that would otherwise constitute a breach of a duty of confidentiality does not constitute such a breach if the information is provided in compliance with an information direction.

**18            Record-keeping and reporting obligations of port operator**

- (1) The port operator of a designated port must keep, in the prescribed manner, records containing the prescribed particulars of all reportable incidents that occur within the port.
- (2) The port operator of a designated port commits an offence if:
  - (a) a reportable incident occurs within the port; and
  - (b) the port operator fails to keep a record of the incident in accordance with subsection (1).

Maximum penalty:        100 penalty units.

- (3) The port operator of a designated port commits an offence if:
  - (a) a reportable incident occurs within the port; and
  - (b) the port operator fails to report, in writing, the prescribed particulars of the incident to the regional harbourmaster for the port within the prescribed period after it occurs.

Maximum penalty:        100 penalty units.

- (4) An offence against subsection (2) or (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (2) or (3) if the defendant has a reasonable excuse.
- (6) This section does not affect any requirement to keep a record of any kind, or report an event of any kind, that a port operator has under any other Act.

## **Part 3 Regional harbourmasters**

### **19 Appointment of regional harbourmaster**

- (1) The Minister may appoint a person employed in an Agency to be the regional harbourmaster for a designated port.
- (2) To avoid doubt, a person may be appointed as regional harbourmaster for more than one designated port.
- (3) If at any time there is not a regional harbourmaster for a designated port, the functions of the regional harbourmaster for that port are exercisable by the Director.

### **20 Functions of regional harbourmaster**

A regional harbourmaster has, in relation to any designated port for which the regional harbourmaster is appointed, the functions conferred on a regional harbourmaster under this Act or any other law of the Territory.

### **20A Delegation**

The regional harbourmaster for a designated port may, in writing, delegate any of the regional harbourmaster's powers and functions under this Act to a person employed in an Agency.

### **21 Promulgation of depths and under keel clearances**

- (1) The regional harbourmaster for a designated port may publish information about the depths and configurations of, and the under keel clearance required to be maintained by vessels in, channels, berthing pockets and other areas within the designated port.
- (2) The regional harbourmaster must ensure that the port operator of the designated port is given written notice of any information published under subsection (1) as soon as practicable after it is published.

## **Part 4 Port officers**

### **Division 1 Port management officers**

### **22 Appointment of port management officer**

- (1) The port operator of a designated port may appoint a person employed by the operator to be a port management officer for the port.

- (2) A port operator may only appoint as a port management officer a person whom the operator is satisfied has appropriate skills and knowledge to exercise the functions of such an officer.
- (3) A port management officer may resign by signed notice of resignation given to the port operator.
- (4) A port operator of a designated port must ensure that at least one person holds office as a port management officer for the port at any time.
- (5) A port operator of a designated port must give the regional harbourmaster for the port written notice of the name of any person who becomes, or ceases to be, a port management officer for the port.
- (6) A notice under subsection (5) must be given immediately after the event mentioned in that subsection occurs.
- (7) Despite subsection (1), in prescribed circumstances the port operator of a designated port may appoint a person employed or engaged by an entity specified in the regulations to be a port management officer for the port.

### **23 Functions of port management officer**

- (1) A port management officer may perform any function conferred on a port operator under Part 5, Division 2.
- (2) A port management officer has any other functions conferred on such an officer by this or any other Act.

## **Division 2 Port enforcement officers**

### **24 Appointment of port enforcement officer**

- (1) The port operator of a designated port may appoint a person employed by the operator to be a port enforcement officer for the port.
- (2) A port operator may only appoint as a port enforcement officer a person whom the operator is satisfied has appropriate skills and knowledge to exercise the functions of such an officer.
- (3) A port enforcement officer may resign by signed notice of resignation given to the port operator.

- (4) A port operator of a designated port must give the regional harbourmaster for the port written notice of the name of any person who becomes, or ceases to be, a port enforcement officer for the port.
- (5) A notice under subsection (4) must be given immediately after the event mentioned in that subsection occurs.

## **25 Functions of port enforcement officer**

- (1) A port enforcement officer may perform any function conferred on a port operator under Part 7 for the purpose of enforcing compliance with a port notice.
- (2) A port enforcement officer has any other functions conferred on such an officer by a port notice or by this or any other Act.

## **Division 3 General provisions**

### **26 Identity card**

- (1) A port operator of a designated port must give each port management officer and port enforcement officer appointed by the operator an identity card stating the person's name and that the person is such an officer for the port.
- (2) The identity card must:
  - (a) show a recent photograph of the port management officer or port enforcement officer; and
  - (b) show the card's date of issue and expiry; and
  - (c) be signed by the officer.
- (3) This section does not prevent the issue of a single identity card to a person for this and another Act.

### **27 Return of identity card**

- (1) A person who ceases to be a port management officer or port enforcement officer must return the person's identity card to the port operator within 21 days after the cessation.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.



## **Part 5 Control and management of designated port**

### **Division 1 Port safety plans**

#### **28 Nature of port safety plan**

- (1) A **port safety plan**, for a designated port, is a plan that:
- (a) identifies the nature and extent of the safety hazards and risks associated with the operation of the port that are reasonably likely to cause death or serious injury to any person or loss of, or serious damage to, property; and
  - (b) assesses the likely impact of those hazards and risks on the port and the surrounding area; and
  - (c) specifies the measures and strategies to be implemented to eliminate or reduce those hazards or risks; and
  - (d) describes the system that the port operator has in place for implementing those measures and strategies, including the issue and enforcement of any port notices; and
  - (e) sets out the processes proposed to involve tenants, licensees and service providers in the port with the implementation of the plan by the port operator; and
  - (f) sets out the procedures proposed for implementing, reviewing and revising the plan; and
  - (g) is approved by the regional harbourmaster for the port under section 31(1).
- (2) A port safety plan:
- (a) must be prepared in accordance with any guidelines issued under section 32; and
  - (b) may consist of more than one document.

#### **29 Annual preparation of draft port safety plan**

- (1) The port operator of a designated port must, no later than 1 month before each anniversary of its declaration as port operator, prepare a draft port safety plan for the port and submit it for approval to the regional harbourmaster for the port.

Maximum penalty: 200 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

### **30 Direction to prepare new or amended port safety plan**

- (1) The regional harbourmaster for a designated port may at any time, by written notice given to the port operator of the port, direct the port operator:
- (a) to prepare a new draft port safety plan for the port, or amend the port safety plan for the port, as directed by the regional harbourmaster; and
  - (b) to submit the draft, or amended, port safety plan for approval to the regional harbourmaster within the period specified in the notice.
- (2) The port operator of a designated port commits an offence if the port operator fails to comply with a direction given under subsection (1).

Maximum penalty: 200 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

### **31 Role of regional harbourmaster on receiving port safety plan**

- (1) Within 60 days after receiving a draft, or amended, port safety plan under section 29(1) or 30(1), the regional harbourmaster for the designated port must:
- (a) approve the plan by written notice given to the port operator;  
or
  - (b) return the plan to the port operator for amendment as directed by the regional harbourmaster.
- (2) The port operator must, within 30 days after receiving a returned draft, or amended, port safety plan under subsection (1)(b), resubmit the plan as directed to the regional harbourmaster for approval under subsection (1).
- (3) If the regional harbourmaster fails to act in accordance with subsection (1) within the period of 60 days mentioned in that subsection, the draft or amended port safety plan is taken to have been approved by the regional harbourmaster on the expiration of that period.

### **32 Guidelines**

- (1) The regional harbourmaster for a designated port may issue guidelines about the following matters in relation to port safety plans for the port:
  - (a) their form;
  - (b) their content;
  - (c) the method and process for preparing them;
  - (d) the processes to involve tenants, licensees and service providers in the port with the implementation of the plan by the port operator;
  - (e) the processes for consultation with persons affected by them;
  - (f) the form and content of reports relating to them under section 36;
  - (g) the date by which a report relating to them must be prepared.
- (2) As soon as practicable after issuing guidelines, the regional harbourmaster must:
  - (a) publish the guidelines on the Internet and in any other way decided by the harbourmaster; and
  - (b) publish a notice in the *Gazette* stating the following:
    - (i) that the guidelines have been made;
    - (ii) the date on which the guidelines take effect, which may be the day on which the notice is published or any later date;
    - (iii) the place where copies of the guidelines can be obtained.

### **33 Obligations of port operator**

- (1) Subject to subsection (2), a port operator of a designated port must implement the port safety plan for the port.

Maximum penalty: 200 penalty units.
- (2) The regional harbourmaster for a designated port may, by written notice, exempt the port operator from the requirement to implement any part of the port safety plan for the port for a specified period or in specified circumstances.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps to implement the port safety plan as required by this section.

(4) The port operator of a designated port must ensure that copies of the port safety plan for the port are made available for inspection during normal business hours by any person at the principal place of business of the port operator in the Territory.

Maximum penalty: 20 penalty units.

(5) An offence against subsection (1) or (4) is an offence of strict liability.

### **34 Compliance audit**

(1) A **compliance audit** of the port operator of a designated port is an audit of the port operator's activities, operations and premises to determine whether the port operator is complying with the whole or any part of the port safety plan for the port.

(2) The regional harbourmaster for a designated port may approve a person to conduct a compliance audit of the port operator, at the port operator's expense.

(3) The regional harbourmaster must be satisfied the person has the appropriate qualifications or experience in safety assessment or safety management to conduct the compliance audit.

### **35 Requirement for compliance audit to be conducted**

(1) The regional harbourmaster for a designated port may, by written notice given to the port operator, direct the port operator to ensure that a compliance audit of the port operator is conducted within the period (not being less than 6 months) specified in the notice.

(2) Unless specified otherwise in the notice, the compliance audit must determine whether the port operator is complying with the whole of the port safety plan for the designated port.

(3) The port operator of a designated port commits an offence if:

(a) the port operator has been given a direction under subsection (1); and

(b) the port operator fails to comply with the direction.

Maximum penalty: 200 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.
- (6) The port operator of a designated port commits an offence if:
- (a) a compliance audit to determine whether the port operator is complying with the whole of the port safety plan for the port is not conducted for 3 years; and
  - (b) the port operator fails to ensure that such an audit is conducted within 6 months after the end of that period.

Maximum penalty: 200 penalty units.

- (7) Strict liability applies to subsection (6)(b).

### **36 Reporting**

- (1) A port operator of a designated port, in relation to whom a compliance audit has been conducted, must ensure that the auditor reports, in writing, to the regional harbourmaster (with a copy given at the same time to the port operator) the outcomes of the compliance audit and the auditor's recommendations (if any) about:
- (a) any changes required to the operations of the port to comply with the plan; and
  - (b) any suggested amendments to the plan to make it provide adequately for the matters required by section 28(1) or comply with any guidelines issued under section 32.
- (2) The port operator of a designated port must make a quarterly report to the regional harbourmaster for the port on any material instance of non-compliance during that quarter with the port safety plan for the port.
- (3) A report under subsection (2) must be prepared in accordance with any guidelines issued under section 32.

## **Division 2 Direction and control of vessels**

### **37 Exercise of powers under this Division**

A power conferred on the port operator of a designated port by this Division may only be exercised on its behalf by a port management officer for the port and not directly by the port operator.

*Note for section 37*

*Part 12 gives the regional harbourmaster for a designated port step-in rights in certain circumstances.*

### **38 Directions by port operator**

- (1) The port operator of a designated port may, by written notice published on the port operator's website or given to the owner, master or occupier of a vessel, give directions for regulating any of the following:
- (a) the time at which, and the manner (including the taking on board of a licensed pilot) in which, a vessel must enter into, depart from or lie in the port;
  - (b) the manner and position in which, and the times at which, within the port:
    - (i) cargo may be loaded on or unloaded from a vessel; or
    - (ii) ballast, water or fuel may be taken in or delivered from a vessel; or
    - (iii) passengers may embark or disembark a vessel.
- (1A) In addition, the port operator of a designated port may give directions for regulating the positioning, mooring, unmooring, placing or anchoring of a vessel and the removing of a vessel from one place to another within the port:
- (a) by written notice published on the port operator's website; or
  - (b) by written notice given to the owner, master or occupier of the vessel; or
  - (c) if there is an immediate threat to the vessel, or the vessel poses an immediate danger to another vessel, a person, property or the environment – orally to a person apparently in control of the vessel.
- (1B) A direction published on the port operator's website under subsection (1) or (1A):
- (a) must be addressed to the owner, master or occupier of the vessel to which the direction relates but, if the port operator does not know the name of the owner, master or occupier, may be addressed without specifying a name; and
  - (b) is taken to have been given to the person to whom it is addressed.

- (2) A person to whom a direction is given under subsection (1) or (1A) commits an offence if the person fails to comply with the direction.

Maximum penalty: 100 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

### **39 Removal etc. of vessel by port operator**

- (1) If a direction given under section 38(1A) is not complied with, the port operator of the designated port may cause the vessel to be positioned, moored, unmoored, placed, anchored or removed as directed.
- (2) Subsection (1) applies irrespective of whether a person has been charged with, or found guilty of, an offence against section 38(2).
- (3) The port operator may also cause a vessel to be positioned, moored, unmoored, placed, anchored or removed as the port operator thinks fit if there is no person on board the vessel to whom a direction may be given under section 38(1A).
- (4) The owner, master and occupier of the vessel are jointly and severally liable to pay all costs incurred by the port operator under subsection (1) or (3).
- (5) Any such amount is additional to any penalty imposed for an offence against section 38(2).
- (6) An amount that an owner, master or occupier is liable to pay under subsection (4) for costs may be recovered as a debt due and payable to the port operator.

### **40 Power to board vessel**

- (1) The owner, master or occupier of a vessel within a designated port must, at the request of a port management officer for the port, permit the officer to do any of the following for the purpose of investigating whether the vessel, or the business for which it is being used, is being operated lawfully:
- (a) board the vessel;
  - (b) inspect the vessel, its cargo and any other goods or things on the vessel;

- (c) do anything else on the vessel in connection with the investigation.
- (2) Before a port management officer boards a vessel under subsection (1), the officer must produce his or her identity card to the owner, master or occupier to whom the request under that subsection is made.
- (3) A port management officer may board a vessel and do any other thing mentioned in subsection (1) if there is no-one on board to whom a request may be made under that subsection.
- (4) The owner, master and occupier of the vessel are jointly and severally liable to pay all costs incurred under subsection (3).
- (5) An amount that a person is liable to pay under subsection (4) may be recovered as a debt due and payable to the port operator.

### **Division 3 Clearance of vessels and wrecks**

#### **40A Port operator's directions: removal of vessel or wreck in emergency**

- (1) This section applies to the following within a designated port:
  - (a) a vessel, the hull of a vessel or a hulk if:
    - (i) there is an immediate threat to it; or
    - (ii) it is in such a condition that it is an immediate threat or danger to persons or the environment;
  - (b) a commercial vessel or the hull of a vessel, or a hulk, that was a commercial vessel if it is in such a condition that it is an immediate threat or danger to any vessel or property within the port;
  - (c) a vessel if it is in such a condition that it is an immediate threat or danger to vessels or other property connected with commercial shipping in the port;
  - (d) a commercial vessel if the manner or means by which it is secured while at anchor or moored gives rise to an immediate threat or danger to:
    - (i) persons; or
    - (ii) vessels or other property connected with commercial shipping in the port; or



(iii) the environment.

(2) The port operator of the designated port must give an oral direction to a person apparently in control of the vessel, hull or hulk to remove the vessel, hull or hulk from the designated port.

(3) A person to whom a direction is given under subsection (2) commits an offence if the person fails to comply with the direction.

Maximum penalty: 100 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

(6) If a person to whom a direction is given under subsection (2) fails to comply with it:

(a) the port operator may cause the vessel, hull or hulk to be removed from the designated port or moved to another place within the port; and

(b) the person is liable to pay all costs incurred by the port operator under paragraph (a).

(7) Subsection (6) applies irrespective of whether the person has been charged with, or found guilty of, an offence against subsection (3), and an amount payable under subsection (6) is additional to any penalty imposed for an offence against subsection (3).

(8) If there is no person on board the vessel, hull or hulk to whom a direction may be given under subsection (2):

(a) the port operator may cause the vessel, hull or hulk to be removed from the designated port or moved to another place within the port; and

(b) the owner, master and occupier of the vessel, hull or hulk are, jointly and severally liable to pay all costs incurred by the port operator under paragraph (a).

(9) If the port operator takes action under subsection (8)(a), the operator must:

(a) publish on the operator's website written notice of the action taken; and

- (b) if the name and address of the owner, master and occupier of the vessel, hull or hulk are known – give written notice of the action taken to the owner, master and occupier.
- (10) An amount that a person is liable to pay under subsection (6) or (8) for costs may be recovered as a debt due and payable to the port operator.

**40B Regional harbourmaster's directions: removal of vessel or wreck in emergency**

- (1) This section applies to the following within a designated port:
- (a) a vessel, the hull of a vessel or a hulk if:
    - (i) there is an immediate threat to it; or
    - (ii) it is in such a condition that it is an immediate threat or danger to persons or the environment;
  - (b) a non-commercial vessel or the hull of a vessel, or a hulk, that was a non-commercial vessel if it is in such a condition that it is an immediate threat or danger to any vessel or property within the port;
  - (c) a vessel if it is in such a condition that it is an immediate threat or danger to vessels or other property within the port not connected with commercial shipping in the port;
  - (d) a non-commercial vessel if the manner or means by which it is secured while at anchor or moored gives rise to an immediate threat or danger to:
    - (i) persons; or
    - (ii) vessels or other property within the port not connected with commercial shipping in the port; or
    - (iii) the environment.
- (2) The regional harbourmaster for the designated port may give an oral direction to a person apparently in control of the vessel, hull or hulk to remove the vessel, hull or hulk from the designated port.
- (3) A person to whom a direction is given under subsection (2) commits an offence if the person fails to comply with the direction.

Maximum penalty: 100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.
- (6) If a person to whom a direction is given under subsection (2) fails to comply with it:
  - (a) the regional harbourmaster may cause the vessel, hull or hulk to be removed from the designated port or moved to another place within the port; and
  - (b) the person is liable to pay all costs incurred by the regional harbourmaster under paragraph (a).
- (7) Subsection (6) applies irrespective of whether the person has been charged with, or found guilty of, an offence against subsection (3), and an amount payable under subsection (6) is additional to any penalty imposed for an offence against subsection (3).
- (8) If there is no person on board a vessel, hull or hulk to whom a direction may be given under subsection (2):
  - (a) the regional harbourmaster may cause the vessel, hull or hulk to be removed from the designated port or moved to another place within the port; and
  - (b) the owner, master and occupier of the vessel, hull or hulk are jointly and severally liable to pay all costs incurred by the regional harbourmaster under paragraph (a).
- (9) If the regional harbourmaster takes action under subsection (8)(a), the harbourmaster must:
  - (a) publish on the harbourmaster's website written notice of the action taken; and
  - (b) if the name and address of the owner, master and occupier of the vessel, hull or hulk are known – give written notice of the action taken to the owner, master and occupier.
- (10) An amount that a person is liable to pay under subsection (6) or (8) for costs may be recovered as a debt due and payable to the Territory.

**40C Direction to pay prior costs and remove vessel, hull or hulk**

- (1) The port operator, or regional harbourmaster, of a designated port may give a direction to take action specified under subsection (2) if:
  - (a) a direction was made under section 40A or 40B in relation to a vessel, hull or hulk; and
  - (b) in the case of the port operator – action was taken under section 40A(6)(a) or (8)(a); and
  - (c) in the case of the regional harbourmaster – action was taken under section 40B(6)(a) or (8)(a).
- (2) The direction may require the following actions:
  - (a) payment of the reasonable costs associated with the prior action taken under section 40A(6)(a) or (8)(a) or 40B(6)(a) or (8)(a);
  - (b) removal of the vessel, hull or hulk to a place outside the port or a specified place inside the port.
- (3) The direction must include the following:
  - (a) the day by which the direction must be complied with;
  - (b) a warning that action may be taken under subsection (5) and that the owner, master and occupier of the vessel, hull or hulk may be liable to pay the reasonable costs of that action.
- (4) The direction must:
  - (a) be given orally to any person apparently in control of the vessel, hull or hulk; and
  - (b) be given, in writing, to the owner, master and occupier of the vessel, hull or hulk, if known; and
  - (c) be published on the website of the port operator or regional harbourmaster, as the case may be.
- (5) If the direction is not complied with by the day specified in the direction, the port operator or regional harbourmaster may:
  - (a) move the vessel, hull or hulk to a place outside the port or a specified place inside the port; or
  - (b) sell the vessel, hull or hulk; or

- (c) dispose of, other than by sale, or destroy the vessel, hull or hulk if:
  - (i) if it is unseaworthy; and
  - (ii) the cost of repairing it to make it seaworthy, or the cost of its storage and sale, exceeds its value.
- (6) Before selling, disposing or destroying the vessel, hull or hulk, written notice must be given to the following persons of the proposed sale, disposal or destruction 28 days in advance:
  - (a) the owner, master and occupier of the vessel, hull or hulk, if known;
  - (b) any person with a registered interest in the vessel, hull or hulk;
  - (c) any other person with an interest in the vessel, hull or hulk, if known.
- (7) The notice under subsection (6) must also be:
  - (a) published on the website of the port operator or regional harbourmaster, as the case may be; and
  - (b) affixed in a prominent position on the deck of the vessel, hull or hulk.
- (8) The owner, master and occupier of the vessel, hull or hulk are, jointly and severally liable to pay all reasonable costs incurred by the port operator or regional harbourmaster for taking any action under subsection (5).
- (9) The reasonable costs that a person is liable to pay under subsection (8) may be recovered as a debt due and payable to:
  - (a) the port operator; or
  - (b) in the case of action by regional harbourmaster – the Territory.

**41 Port operator's directions: vessels and wrecks likely to endanger or obstruct commercial vessels etc.**

- (1) This section applies to the following within a designated port:
  - (a) a commercial vessel or the hull of a vessel, or a hulk, that was a commercial vessel that is in such a condition that it is likely to cause damage to, endanger or obstruct the passage of, navigation of or use of the port by, any vessel;

- (b) any other vessel, hull or hulk that is in such a condition that it is likely to cause damage to, endanger or obstruct the passage of, navigation of or use of the port by, a commercial vessel.
- (2) The port operator of a designated port must, by written notice, direct the owner, master or occupier of a vessel, hull or hulk that, in the port operator's opinion, is one to which this section applies to:
  - (a) take the preventative action specified in the notice within the period specified in the notice which, for a direction in relation to a hull or hulk, must not be less than 14 days; or
  - (b) if the port operator decides (or, under subsection (3), is required) to allow the person to select, and take, one of 2 or more alternative preventative actions – select, and take, one of the preventative actions specified in the notice within the period specified in the notice which, for a direction in relation to a hull or hulk, must not be less than 14 days.
- (3) However, the port operator must not direct a person to take preventative action that includes destroying a vessel, hull or hulk unless the direction allows the person to select, and take, alternative preventative action that does not include destroying the vessel, hull or hulk.
- (4) A notice given under subsection (2) must include a statement that if the owner, master or occupier fails to comply with the direction the port operator may, at the owner, master or occupier's cost, do one or more of the following with the vessel, hull or hulk:
  - (a) remove it from the designated port;
  - (b) move it to another place within the port;
  - (c) repair it and make it safe;
  - (d) destroy it and all fittings and equipment on board;
  - (e) sell or otherwise dispose of it, and all fittings and equipment on board.
- (5) A direction given under subsection (2) to take preventative action that includes destroying a vessel, hull or hulk does not authorise the person to whom it is given to destroy the vessel, hull or hulk without the consent of its owner.
- (6) A person to whom a direction is given under subsection (2), other than a direction given in the manner mentioned in

subsection (12)(c), commits an offence if the person fails to comply with the direction within the period specified in it or any longer time that the port operator, in writing, allows.

Maximum penalty: 200 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.
- (8) Subsection (9) applies if a person to whom a direction is given under subsection (2) fails to comply with it within the period specified in it or any longer time that the port operator, in writing, allows.
- (9) The port operator may do one or more of the following in relation to the vessel, hull or hulk that is the subject of the direction:
  - (a) remove it from the designated port;
  - (b) move it to another place within the port;
  - (c) repair it and make it safe;
  - (d) destroy it and all fittings and equipment on board;
  - (e) sell it, and all fittings and equipment on board, by public auction or after inviting public tenders;
  - (f) otherwise dispose of it, and all fittings and equipment on board, in any manner the port operator thinks fit;
  - (g) authorise a person to board it (with or without workers, vehicles, plant, equipment or materials) and do a thing mentioned in paragraphs (a) to (f).
- (10) However, the port operator must not destroy a vessel, hull or hulk, or authorise a person to do so, unless:
  - (a) in the opinion of the port operator:
    - (i) the vessel, hull or hulk is unseaworthy; and
    - (ii) the cost of repairing it to make it seaworthy, or the cost of storage and sale, exceeds its value; and
  - (b) either:
    - (i) the owner, master or occupier was, under subsection (2), directed to take preventative action that included destroying the vessel, hull or hulk; or

- (ii) the port operator has given the owner and each person who has a registered interest in, or who the operator knows has an interest in, the vessel, hull or hulk 28 days prior written notice of the operator's intention to do so.
- (11) In addition, the port operator must not sell or otherwise dispose of a vessel, hull or hulk, or authorise a person to do so, unless:
  - (a) the owner of the vessel, hull or hulk:
    - (i) cannot be located; or
    - (ii) fails to collect the vessel, hull or hulk and pay all costs associated with the securing of the vessel, hull or hulk after it has been secured by the port operator; and
  - (b) the port operator has given the owner and each person who has a registered interest in, or who the operator knows has an interest in, the vessel, hull or hulk 28 days prior written notice of the port operator's intention to do so; and
  - (c) for a disposal otherwise than by sale – in the opinion of the port operator:
    - (i) the vessel, hull or hulk is unseaworthy; and
    - (ii) the cost of repairing it to make it seaworthy, or the cost of storage and sale, exceeds its value.
- (12) For subsection (2), if the port operator does not know the name or address of the owner, master or occupier of the vessel, hull or hulk, a direction is taken to have been given to the person if a notice of the direction addressed to the owner, master or occupier, without specifying a name, is:
  - (a) published in a newspaper circulating generally in the Territory;  
or
  - (b) published on the port operator's website; or
  - (c) affixed in a prominent position on the deck of the vessel, hull or hulk.
- (13) For subsections (10)(b)(ii) and (11)(b):
  - (a) if the port operator does not know the name or address of the owner of the vessel, hull or hulk – the notice is taken to have been given to the owner if it is addressed to the owner, without specifying a name, and is published:



- (i) in a newspaper circulating generally in the Territory; or
    - (ii) on the port operator's website; and
  - (b) notice to a person who has an interest in a vessel, hull or hulk is taken to have been given if:
    - (i) for a person who has a registered interest and whose address is recorded in the register in which the interest is recorded – it has been sent by post to the person at that address; or
    - (ii) otherwise – it is addressed to the person and is published in a newspaper circulating generally in the Territory or on the port operator's website.
- (14) However, a notice under subsection (12)(a) or (13)(a) or (b)(ii) must identify the vessel, hull or hulk or describe it by any general description that the port operator thinks fit.
- (15) The person or persons to whom a direction is given under subsection (2), including a direction given in the manner mentioned in subsection (12)(c), are jointly and severally liable to pay all costs incurred under this section by the port operator or a person authorised under subsection (9).
- (16) Subsection (15) applies irrespective of whether any person has been charged with, or found guilty of, an offence against subsection (6), and an amount payable under subsection (15) is additional to any penalty imposed for an offence against subsection (6).
- (17) An amount that a person is liable to pay under subsection (15) for costs may be recovered as a debt due and payable to the port operator.

*Note for section 41*

*Part 12 gives the regional harbourmaster for a designated port step-in rights in certain circumstances.*

#### **42 Port operator's directions: vessels and wrecks that endanger commercial shipping etc.**

- (1) This section applies to a vessel, hull or hulk, within a designated port that, because of the condition of the vessel, hull or hulk or the manner or means by which it is secured while at anchor or moored, is a threat or danger to:
  - (a) persons; or

- (b) vessels or other property connected with commercial shipping in the port; or
  - (c) the environment.
- (2) The port operator of a designated port may, by written notice, direct the owner, master or occupier of a vessel, hull or hulk that, in the port operator's opinion, is one to which this section applies to:
- (a) take the preventative action specified in the notice within the period specified in the notice which, for a direction in relation to a hull or hulk, must not be less than 14 days; or
  - (b) if the port operator decides (or, under subsection (3), is required) to allow the person to select, and take, one of 2 or more alternative preventative actions – select, and take, one of the preventative actions specified in the notice within the period specified in the notice which, for a direction in relation to a hull or hulk, must not be less than 14 days.
- (3) However, the port operator must not direct a person to take preventative action that includes destroying a vessel, hull or hulk unless the direction allows the person to select, and take, alternative preventative action that does not include destroying the vessel, hull or hulk.
- (4) A notice given under subsection (2) must include a statement that if the owner, master or occupier fails to comply with the direction the port operator may, at the owner, master or occupier's cost, do one or more of the following with the vessel, hull or hulk:
- (a) remove it from the designated port;
  - (b) move it to another place within the port;
  - (c) repair it and make it safe;
  - (d) destroy it and all fittings and equipment on board;
  - (e) sell or otherwise dispose of it, and all fittings and equipment on board.
- (5) A direction given under subsection (2) to take preventative action that includes destroying a vessel, hull or hulk does not authorise the person to whom it is given to destroy the vessel, hull or hulk without the consent of its owner.
- (6) A person to whom a direction is given under subsection (2), other than a direction given in the manner mentioned in

subsection (12)(c), commits an offence if the person fails to comply with the direction within the period specified in it or any longer time that the port operator, in writing, allows.

Maximum penalty: 200 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.
- (8) Subsection (9) applies if a person to whom a direction is given under subsection (2) fails to comply with it within the period specified in it or any longer time that the port operator, in writing, allows.
- (9) The port operator may do one or more of the following in relation to the vessel, hull or hulk that is the subject of the direction:
  - (a) remove it from the designated port;
  - (b) move it to another place within the port;
  - (c) repair it and make it safe;
  - (d) destroy it and all fittings and equipment on board;
  - (e) sell it, and all fittings and equipment on board, by public auction or after inviting public tenders;
  - (f) otherwise dispose of it, and all fittings and equipment on board, in any manner the port operator thinks fit;
  - (g) authorise a person to board it (with or without workers, vehicles, plant, equipment or materials) and do a thing mentioned in paragraphs (a) to (f).
- (10) However, the port operator must not destroy a vessel, hull or hulk, or authorise a person to do so, unless:
  - (a) in the opinion of the port operator:
    - (i) the vessel, hull or hulk is unseaworthy; and
    - (ii) the cost of repairing it to make it seaworthy, or the cost of storage and sale, exceeds its value; and
  - (b) either:
    - (i) the owner, master or occupier was, under subsection (2), directed to take preventative action that included destroying the vessel, hull or hulk; or

- (ii) the port operator has given the owner and each person who has a registered interest in, or who the operator knows has an interest in, the vessel, hull or hulk 28 days prior written notice of the port operator's intention to do so.
- (11) In addition, the port operator must not sell or otherwise dispose of a vessel, hull or hulk, or authorise a person to do so, unless:
  - (a) the owner of the vessel, hull or hulk:
    - (i) cannot be located; or
    - (ii) fails to collect the vessel, hull or hulk and pay all costs associated with the securing of the vessel, hull or hulk after it has been secured by the port operator; and
  - (b) the port operator has given the owner and each person who has a registered interest in, or who the operator knows has an interest in, the vessel, hull or hulk 28 days prior written notice of the port operator's intention to do so; and
  - (c) for a disposal otherwise than by sale – in the opinion of the port operator:
    - (i) the vessel, hull or hulk is unseaworthy; and
    - (ii) the cost of repairing it to make it seaworthy, or the cost of storage and sale, exceeds its value.
- (12) For subsection (2), if the port operator does not know the name or address of the owner, master or occupier of the vessel, hull or hulk, a direction is taken to be given to the person if a notice of the direction addressed to the owner, master or occupier, without specifying a name, is:
  - (a) published in a newspaper circulating generally in the Territory;  
or
  - (b) published on the port operator's website; or
  - (c) affixed in a prominent position on the deck of the vessel, hull or hulk.

- (13) For subsections (10)(b)(ii) and (11)(b):
- (a) if the port operator does not know the name or address of the owner of the vessel, hull or hulk – the notice is taken to have been given to the owner if it is addressed to the owner, without specifying a name, and is published:
    - (i) in a newspaper circulating generally in the Territory; or
    - (ii) on the port operator's website; and
  - (b) notice to a person who has an interest in a vessel, hull or hulk is taken to have been given if:
    - (i) for a person who has a registered interest and whose address is recorded in the register in which the interest is recorded – it has been sent by post to the person at that address; or
    - (ii) otherwise – it is addressed to the person and is published in a newspaper circulating generally in the Territory or on the port operator's website.
- (14) However, a notice under subsection (12)(a) or (13)(a) or (b)(ii) must identify the vessel, hull or hulk or describe it by any general description that the port operator thinks fit.
- (15) The person or persons to whom a direction is given under subsection (2), including a direction given in the manner mentioned in subsection (12)(c), are jointly and severally liable to pay all costs incurred under this section by the port operator or a person authorised under subsection (9).
- (16) Subsection (15) applies irrespective of whether any person has been charged with, or found guilty of, an offence against subsection (6), and an amount payable under subsection (15) is additional to any penalty imposed for an offence against subsection (6).
- (17) An amount that a person is liable to pay under subsection (15) for costs may be recovered as a debt due and payable to the port operator.

*Note for section 42*

*Part 12 gives the regional harbourmaster for a designated port step-in rights in certain circumstances.*

**43 Regional harbourmaster's directions: vessels and wrecks likely to endanger or obstruct non-commercial vessels etc.**

- (1) This section applies to the following within a designated port:
- (a) a non-commercial vessel or the hull of a vessel, or a hulk, that was a non-commercial vessel that is in such a condition that it is likely to cause damage to, endanger or obstruct the passage of, navigation of or use of the port by, any vessel;
  - (b) any other vessel, hull or hulk that is in such a condition that it is likely to cause damage to, endanger or obstruct the passage of, navigation of or use of the port by, a non-commercial vessel;
  - (c) a vessel, hull or hulk that, because of its condition or the manner or means by which it is secured while at anchor or moored, is a threat or danger to:
    - (i) persons; or
    - (ii) vessels or other property within the port not connected with commercial shipping in the port; or
    - (iii) the environment.
- (2) The regional harbourmaster for a designated port may, by written notice, direct the owner, master or occupier of a vessel, hull or hulk that, in the harbourmaster's opinion, is one to which this section applies to:
- (a) take the preventative action specified in the notice within the period specified in the notice which, for a direction in relation to a hull or hulk, must not be less than 14 days; or
  - (b) if the harbourmaster decides (or, under subsection (3), is required) to allow the person to select, and take, one of 2 or more alternative preventative actions – select, and take, one of the preventative actions specified in the notice within the period specified in the notice which, for a direction in relation to a hull or hulk, must not be less than 14 days.
- (3) However, the regional harbourmaster must not direct a person to take preventative action that includes destroying a vessel, hull or hulk unless the direction allows the person to select, and take, alternative preventative action that does not include destroying the vessel, hull or hulk.

- (4) A notice given under subsection (2) must include a statement that if the owner, master or occupier fails to comply with the direction the regional harbourmaster may, at the owner, master or occupier's cost, do one or more of the following with the vessel, hull or hulk:
- (a) remove it from the designated port;
  - (b) move it to another place within the port;
  - (c) repair it and make it safe;
  - (d) destroy it and all fittings and equipment on board;
  - (e) sell or otherwise dispose of it, and all fittings and equipment on board.
- (5) A direction given under subsection (2) to take preventative action that includes destroying a vessel, hull or hulk does not authorise the person to whom it is given to destroy the vessel, hull or hulk without the consent of its owner.
- (6) A person to whom a direction is given under subsection (2), other than a direction given in the manner mentioned in subsection (12)(c), commits an offence if the person fails to comply with the direction within the period specified in it or any longer time that the regional harbourmaster, in writing, allows.
- Maximum penalty: 200 penalty units.
- (7) An offence against subsection (6) is an offence of strict liability.
- (8) Subsection (9) applies if a person to whom a direction is given under subsection (2) fails to comply with it within the period specified in it or any longer time that the regional harbourmaster, in writing, allows.
- (9) The regional harbourmaster may do one or more of the following in relation to the vessel, hull or hulk that is the subject of the direction:
- (a) remove it from the designated port;
  - (b) move it to another place within the port;
  - (c) repair it and make it safe;
  - (d) destroy it and all fittings and equipment on board;
  - (e) sell it, and all fittings and equipment on board, by public auction or after inviting public tenders;

- (f) otherwise dispose of it, and all fittings and equipment on board, in any manner the regional harbourmaster thinks fit;
  - (g) authorise a person to board it (with or without workers, vehicles, plant, equipment or materials) and do a thing mentioned in paragraphs (a) to (f).
- (10) However, the regional harbourmaster must not destroy a vessel, hull or hulk, or authorise a person to do so, unless:
- (a) in the opinion of the regional harbourmaster:
    - (i) the vessel, hull or hulk is unseaworthy; and
    - (ii) the cost of repairing it to make it seaworthy, or the cost of storage and sale, exceeds its value; and
  - (b) either:
    - (i) the owner, master or occupier was, under subsection (2), directed to take preventative action that included destroying the vessel, hull or hulk; or
    - (ii) the regional harbourmaster has given the owner and each person who has a registered interest in, or who the regional harbourmaster knows has an interest in, the vessel, hull or hulk 28 days prior written notice of the regional harbourmaster's intention to do so.
- (11) In addition, the regional harbourmaster must not sell or otherwise dispose of a vessel, hull or hulk, or authorise a person to do so, unless:
- (a) the owner of the vessel, hull or hulk:
    - (i) cannot be located; or
    - (ii) fails to collect the vessel, hull or hulk and pay all costs associated with the securing of the vessel, hull or hulk after it has been secured by the harbourmaster; and
  - (b) the regional harbourmaster has given the owner and each person who has a registered interest in, or who the regional harbourmaster knows has an interest in, the vessel, hull or hulk 28 days prior written notice of the regional harbourmaster's intention to do so; and



- (c) for a disposal otherwise than by sale – in the opinion of the regional harbourmaster:
  - (i) the vessel, hull or hulk is unseaworthy; and
  - (ii) the cost of repairing it to make it seaworthy, or the cost of storage and sale, exceeds its value.
- (12) For subsection (2), if the regional harbourmaster does not know the name or address of the owner, master or occupier of the vessel, hull or hulk, a direction is taken to have been given to the person if a notice of the direction addressed to the owner, master or occupier, without specifying a name, is:
  - (a) published in a newspaper circulating generally in the Territory;  
or
  - (b) published on the regional harbourmaster's website; or
  - (c) affixed in a prominent position on the deck of the vessel, hull or hulk.
- (13) For subsections (10)(b)(ii) and (11)(b):
  - (a) if the regional harbourmaster does not know the name or address of the owner of the vessel, hull or hulk – the notice is taken to have been given to the owner if it is addressed to the owner, without specifying a name, and is published:
    - (i) in a newspaper circulating generally in the Territory; or
    - (ii) on the regional harbourmaster's website; and
  - (b) notice to a person who has an interest in a vessel, hull or hulk is taken to have been given if:
    - (i) for a person who has a registered interest and whose address is recorded in the register in which the interest is recorded – it has been sent by post to the person at that address; or
    - (ii) otherwise – it is addressed to the person and is published in a newspaper circulating generally in the Territory or on the regional harbourmaster's website.
- (14) However, a notice under subsection (12)(a) or (13)(a) or (b)(ii) must identify the vessel, hull or hulk or describe it by any general description that the regional harbourmaster thinks fit.

- (15) The person or persons to whom a direction is given under subsection (2), including a direction given in the manner mentioned in subsection (12)(c), are jointly and severally liable to pay all costs incurred under this section by the regional harbourmaster or a person authorised under subsection (9).
- (16) Subsection (15) applies irrespective of whether any person has been charged with, or found guilty of, an offence against subsection (6), and an amount payable under subsection (15) is additional to any penalty imposed for an offence against subsection (6).
- (17) An amount that a person is liable to pay under subsection (15) for costs may be recovered as a debt due and payable to the Territory.

#### **44 Sale of vessel or wreck by port operator**

- (1) This section applies if the whole or part of a vessel, hull or hulk, or fittings or equipment from on board a vessel, hull or hulk, (the **property**) is sold by a port operator under section 40C, 41 or 42.
- (2) The purchaser of the property holds title to the property free of any interest existing in it before the sale.
- (3) The proceeds of the sale must be paid as follows:
- (a) first – in payment of the costs of the sale;
  - (b) second – in payment of the costs incurred by the port operator for the removal or storage of, or repairs to, the property;
  - (c) third – in payment of the costs incurred by the port operator for giving notice to a person about the proposed sale;
  - (d) fourth – to the Accountable Officer for payment into the Accountable Officer's Trust Account.
- (4) Within 14 days after selling the property, the port operator must prepare a record of the following particulars:
- (a) a description of the property;
  - (b) the date and means of giving notice of intention to sell the property;
  - (c) the name and address of any person to whom the notice was given;
  - (d) the date of sale;

- (e) the name and address of the purchaser;
  - (f) the sale price;
  - (g) the amount retained by the port operator to cover the costs mentioned in subsection (3)(a), (b) and (c);
  - (h) if the property was sold by public auction – the name and address of the principal place of business of the auctioneer who sold the property;
  - (i) if applicable – the amount of the balance of the proceeds of sale paid to the Accountable Officer and the date of payment.
- (5) The port operator must:
- (a) retain the record required under subsection (4) for 3 years from the date of sale; and
  - (b) make the record available on request by any of the following:
    - (i) the owner of the property;
    - (ii) any other person claiming to have an interest in the property;
    - (iii) the Commissioner of Police;
    - (iv) an authorised officer as defined in section 4(1) of the *Consumer Affairs and Fair Trading Act 1990*;
    - (v) the Accountable Officer.
- (6) Within 28 days after the sale, the port operator must:
- (a) make the payment mentioned in subsection (3)(d); and
  - (b) give the Accountable Officer a copy of the record required under subsection (4).
- (7) The port operator commits an offence if the port operator fails to comply with a requirement under subsection (4), (5) or (6).
- Maximum penalty: 50 penalty units.
- (8) An offence against subsection (7) is an offence of strict liability.

- (9) If satisfied a person had an interest in the property before the sale, the Accountable Officer must pay to that person out of the Accountable Officer's Trust Account:
- (a) an amount equivalent to that person's interest in the property;  
or
  - (b) if the person's interest in the property expressed as a monetary amount exceeds the balance of the proceeds of sale – the balance of the proceeds of sale.
- (10) A person claiming an interest in the property under subsection (9) must apply to the Accountable Officer within 3 years after the sale.
- (11) The Accountable Officer is not liable to make any further payment for the property if the balance of the proceeds of sale of the property has been paid under subsection (9)(b).
- (12) Subsection (11) does not prevent a person making a claim against the person to whom the Accountable Officer has paid the balance of the proceeds of sale.
- (13) Proceeds from the sale of the property that have remained unclaimed for 3 years must be paid into the Central Holding Authority.
- (14) In this section:

**Accountable Officer** means the Accountable Officer, as defined in section 3(1) of the *Financial Management Act 1995*, for the Agency.

**Accountable Officer's Trust Account**, see section 3(1) of the *Financial Management Act 1995*.

#### **44A Sale of vessel or wreck by regional harbourmaster**

- (1) This section applies if the whole or part of a vessel, hull or hulk, or fittings or equipment from on board a vessel, hull or hulk, (the **property**) is sold by a regional harbourmaster under section 40C or 43.
- (2) The purchaser of the property holds title to the property free of any interest existing in it before the sale.
- (3) The proceeds of the sale must be paid as follows:
- (a) first – in payment of the costs of the sale;

- (b) second – in payment of the costs incurred by the regional harbourmaster for the removal or storage of, or repairs to, the property;
  - (c) third – in payment of the costs incurred by the regional harbourmaster for giving notice to a person about the proposed sale;
  - (d) fourth – in payment of the amount owing to the following:
    - (i) the holder of a registered interest in the property;
    - (ii) the holder of a known unregistered interest in the property;
  - (e) fifth – to the owner of the property.
- (4) If the regional harbourmaster is unable to locate the owner after making reasonable attempts to do so, the amount payable to the owner under subsection (3)(e) must be paid to the Central Holding Authority.

#### **44B Other disposal of vessel or wreck**

- (1) This section applies if the whole or part of a vessel, hull or hulk, or fittings or equipment from on board a vessel, hull or hulk, is disposed of to a person, otherwise than by sale, under this Division.
- (2) The person holds title to the vessel, hull, hulk, fittings or equipment free of any interest existing in it before the disposal.

#### **44C Acquisition on just terms**

- (1) If the operation of this Division would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:
  - (a) the person is entitled to receive the compensation necessary to ensure the acquisition is on just terms from:
    - (i) if the acquisition arises from the exercise of a power or function by a port operator – the port operator; or
    - (ii) if the acquisition arises from the exercise of a power or function by a regional harbourmaster – the Territory; and
  - (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

- (2) Subsection (3) applies if:
  - (a) a court has decided an amount of compensation is payable; and
  - (b) under subsection (1)(a)(i), a port operator is required to pay the compensation; and
  - (c) the port operator fails to do so within a reasonable time.
- (3) The Territory must pay the compensation and the port operator is liable to pay the Territory the amount of compensation paid by the Territory together with all costs incurred by the Territory in consequence of the port operator's failure.
- (4) An amount that a port operator is liable to pay under subsection (3) may be recovered as a debt due and payable to the Territory.

## **Division 4 Dangerous goods**

### **45 Advance notification of entry of vessels**

- (1) The port operator of a designated port commits an offence if:
  - (a) the port operator receives advance notification of the entry into the port of a vessel carrying dangerous goods in accordance with one of the following:
    - (i) Australian Standard AS 3846-2005;
    - (ii) any other Australian or International Standard generally applicable to the storage, handling or transport of dangerous goods in ports that is prescribed for this paragraph;
    - (iii) a requirement of the port operator; and
  - (b) the port operator fails to give a copy of the notification to the regional harbourmaster for the port immediately after receiving it.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

#### **46 Requirements relating to vessel carrying dangerous goods**

- (1) This section applies if a vessel requiring entry into a designated port has dangerous goods on board as cargo.
- (2) The port operator of the designated port may require the owner of the vessel, in respect of the whole of any loss or damage that may occur from the loading, unloading, handling or storage of the cargo in the port:
  - (a) to give to the port operator such security by way of bond, indemnity, guarantee or otherwise, or any combination of those methods, as the port operator determines; or
  - (b) to have or obtain a policy of insurance of a kind approved by the port operator for this section.
- (3) The port operator may refuse or restrict entry into the port of a vessel, or refuse or restrict the loading, unloading, handling or storage of cargo on, from or in a vessel, in respect of which the owner has refused or failed to give a security or have a policy of insurance as required under subsection (2).

#### **47 Handling and transport of dangerous goods**

- (1) Australian Standard AS 3846-2005 applies to, and in respect of, the handling and transport of dangerous goods within a designated port.
- (2) For subsection (1), Australian Standard AS 3846-2005 applies as if:
  - (a) **dangerous cargoes** were defined by that Standard as having the same meaning as dangerous goods in this Act; and
  - (b) the whole of the area of a designated port were a **port area** as defined by that Standard.
- (3) Regulations may provide that, instead of Australian Standard AS 3846-2005, another Australian Standard, or an International Standard, generally applicable to the handling and transport of dangerous goods in ports applies in relation to the handling and transport of dangerous goods within a designated port with any prescribed modifications.
- (4) A person commits an offence if:
  - (a) the person engages in conduct within a designated port in relation to the handling or transport of dangerous goods; and

- (b) the conduct contravenes Australian Standard AS 3846-2005 or another Standard that applies under subsection (3).

Maximum penalty: 500 penalty units.

- (5) A prosecution cannot be instituted in respect of an offence against subsection (4) without the written consent of the Competent Authority.

#### **48 Forfeiture of dangerous goods**

- (1) This section applies if a person is found guilty by a court of an offence against section 47(4).
- (2) The court may order the dangerous goods in respect of which the offence was committed:
- (a) to be forfeited to the Territory; or
  - (b) to be destroyed.
- (3) The court may order the forfeiture or destruction of the dangerous goods despite:
- (a) them not belonging to the person found guilty; or
  - (b) their owner having no knowledge of the proceeding.
- (4) The Competent Authority may recover from the person found guilty, as a debt due and payable to the Territory, the costs incurred by it in relation to the forfeiture or destruction of the dangerous goods.

#### **49 Application of *Dangerous Goods Act 1998***

For the application of the *Dangerous Goods Act 1998* to water and land constituting a designated port:

- (a) any reference in that Act to a vehicle is taken to include a vessel; and
- (b) any reference in that Act to a load on a vehicle is taken, in relation to a vessel, to be a reference to cargo; and
- (c) Parts 4 and 5 of that Act have effect as if ***dangerous goods*** within the meaning of those Parts had the same meaning as in this Act.



## **Division 5 Closed waters**

### **50 Power of port operator to close waters**

- (1) Subject to the regulations, the port operator of a designated port may, by notice published in accordance with subsection (1A), close, for a period specified in the notice, all or part of the waters of the port:
- (a) to all persons and vessels; or
  - (b) to specified classes of persons and vessels.
- (1A) The notice must be published on the port operator's website or in the manner that, in the opinion of the port operator, is most likely to bring it to the attention of persons who may be affected by it.
- (2) If a notice is published under subsection (1), the waters described in the notice are, for the period specified in the notice, closed waters to all persons and vessels or to the classes of persons and vessels specified in the notice, as the case requires.
- (3) A person commits an offence if the person is in closed waters contrary to a notice published under subsection (1).
- Maximum penalty: 50 penalty units.
- (4) The master of a vessel commits an offence if the vessel is in closed waters contrary to a notice published under subsection (1).
- Maximum penalty: 100 penalty units.
- (5) An offence against subsection (3) or (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (3) or (4) if the defendant has a reasonable excuse.
- (6A) Subsections (3) and (4) do not apply to a police officer if:
- (a) the officer is acting in the course of the officer's duties and taking reasonable care; and
  - (b) it is reasonable for the officer to enter the closed waters.

- (7) The port operator, a port management officer or a police officer may direct a person apparently in control of a vessel that is in closed waters contrary to a notice published under subsection (1) to remove the vessel from the closed waters.

*Note for section 50*

*Part 12 gives the regional harbourmaster for a designated port step-in rights in certain circumstances.*

- (8) A person commits an offence if:
- (a) the person is directed to remove a vessel from closed waters under subsection (7); and
  - (b) the person fails to comply with the direction.

Maximum penalty: 50 penalty units.

- (9) An offence against subsection (8) is an offence of strict liability.
- (10) It is a defence to a prosecution for an offence against subsection (8) if the defendant has a reasonable excuse.

## **51 Power of regional harbourmaster to close waters**

- (1) Subject to the regulations, the regional harbourmaster for a designated port may, by notice published in accordance with subsection (1A), close, for a period specified in the notice, all or part of the waters of the port:
- (a) to all persons and vessels; or
  - (b) to specified classes of persons and vessels.
- (1A) The notice must be published on the regional harbourmaster's website or in the manner that, in the opinion of the regional harbourmaster, is most likely to bring it to the attention of persons who may be affected by it.
- (2) However, the regional harbourmaster for a designated port may only exercise the power given by subsection (1) if:
- (a) the harbourmaster:
    - (i) is satisfied that the closure would not have, and could not reasonably be expected to have, an adverse impact on commercial shipping; and
    - (ii) has given the port operator of the port written notice of its intention to do so; or

- (b) the closure is for 30 days or less and the port operator of the port consents to the closure.
- (3) If a notice is published under subsection (1), the waters described in the notice are, for the period specified in the notice, closed waters to all persons and vessels or to the classes of persons and vessels specified in the notice, as the case requires.
- (4) A person commits an offence if the person is in closed waters contrary to a notice published under subsection (1).
- Maximum penalty: 50 penalty units.
- (5) The master of a vessel commits an offence if the vessel is in closed waters contrary to a notice published under subsection (1).
- Maximum penalty: 100 penalty units.
- (6) An offence against subsection (4) or (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subsection (4) or (5) if the defendant has a reasonable excuse.
- (7A) Subsections (4) and (5) do not apply to a police officer if:
- (a) the officer is acting in the course of the officer's duties and taking reasonable care; and
- (b) it is reasonable for the officer to enter the closed waters.
- (8) The regional harbourmaster, a police officer or a person authorised by the regional harbourmaster may direct a person apparently in control of a vessel that is in closed waters contrary to a notice published under subsection (1) to remove the vessel from the closed waters.
- (9) A person commits an offence if:
- (a) the person is directed to remove a vessel from closed waters under subsection (8); and
- (b) the person fails to comply with the direction.
- Maximum penalty: 50 penalty units.
- (10) An offence against subsection (9) is an offence of strict liability.
- (11) It is a defence to a prosecution for an offence against subsection (9) if the defendant has a reasonable excuse.

**52 Removal etc. of vessel for failure to comply with direction**

- (1) This section applies if the person apparently in control of a vessel fails to comply with a direction given under section 50(7) or 51(8), irrespective of whether that person has been charged with, or found guilty of, an offence against section 50(3) or (8) or 51(4) or (9), as the case requires.
- (2) The port operator of the designated port or regional harbourmaster for the port may cause the vessel to be removed to a place outside the closed waters.
- (3) The person who failed to comply with the direction is liable to pay all costs incurred by the port operator or regional harbourmaster under subsection (2).
- (4) Any such amount is additional to any penalty imposed for an offence against section 50(3) or (8) or 51(4) or (9).
- (5) An amount that a person is liable to pay under subsection (3) for costs may be recovered as a debt due and payable to the port operator, for costs incurred by the port operator, or to the Territory, for costs incurred by the regional harbourmaster.

**Division 6 Erection of structures and dredging**

**53 Erection of structures and dredging**

- (1) A person must not, without the prior written approval of the regional harbourmaster for a designated port or otherwise than in accordance with the terms of any such approval, in or on waters within the designated port:
  - (a) erect, or cause to be erected, below the highwater mark any jetty, wharf, pontoon (whether or not attached to the shore), mooring or structure, whether temporary or permanent; or
  - (b) moor, anchor or otherwise fasten a floating structure or mooring buoy to the sea floor, a lake or riverbed or the shore; or
  - (c) undertake dredging or any other activity that would cause a significant alteration of the bathymetry of the port.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

- (4) The regional harbourmaster must not withhold an approval under subsection (1), or impose a condition on such an approval, except on reasonable grounds set out in a written notice given to the person seeking to do the thing mentioned in subsection (1).
- (5) A notice under subsection (4) must specify that the person has a right to have the decision to withhold approval, or to impose a condition on the approval, reviewed by the Tribunal.
- (6) Subsection (1) does not apply in relation to dredging in a designated port undertaken by the port operator of the port in accordance with an agreement made under section 9(1).

## **Part 6                      Stevedore licences**

### **54                      Application for grant or renewal of licence**

- (1) A person may apply to the Minister for a licence, or for the renewal of a licence, to carry on a business of a stevedore within a designated port.
- (2) An application under subsection (1) must be:
  - (a) in the approved form; and
  - (b) accompanied by the prescribed fee.
- (3) The Minister must consider an application made under subsection (1) and may grant or renew, or refuse to grant or renew, the licence.
- (4) A licence granted or renewed by the Minister is subject to any conditions, including as to its duration, that the Minister thinks fit and endorses on the licence.
- (5) In considering an application under subsection (1), the Minister must have regard to:
  - (a) whether the applicant has, or is likely to have, adequate access to land at the designated port to carry on the business of a stevedore in the port; and
  - (b) whether the applicant is a suitable person to hold, or to continue to hold, the licence; and
  - (c) the applicant's experience, skill and ability to provide services in relation to the business of a stevedore in a port; and

- (d) whether the grant or renewal would lessen effective competition in upstream or downstream markets, either within or outside the designated port; and
  - (e) the standard of the applicant's equipment; and
  - (f) any other matter relating to ensuring the safety of anyone connected with the provision of the services.
- (6) In considering whether an applicant is a suitable person to hold, or to continue to hold, a licence, the Minister must have regard to the following matters:
- (a) whether the applicant has ever been:
    - (i) found guilty of an offence against a law of the Territory, the Commonwealth, a State or another Territory that is punishable by imprisonment for more than 12 months; or
    - (ii) a director of, or involved in the management of, a body corporate that was found guilty of such an offence;
  - (b) whether in the 10 years before making the application, the applicant has been:
    - (i) found guilty of an offence against a law of the Territory, the Commonwealth, a State or another Territory; or
    - (ii) a director of, or involved in the management of, a body corporate that was found guilty of such an offence;
  - (c) whether the applicant has been a director of, or involved in the management of, a body corporate that was wound up in the 2 years before making the application or is in the process of being wound up;
  - (d) whether the applicant has ever:
    - (i) become bankrupt; or
    - (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounded with creditors or made an assignment of the applicant's remuneration for their benefit;
  - (e) whether the applicant is a body corporate that is under administration, is in the process of being wound up or has executed a deed of company arrangement that is in force.

- (7) The Minister must not grant or renew a licence, or refuse to grant or renew a licence, to carry on a business of a stevedore within a designated port without first consulting the port operator of the port.
- (8) The Minister must, as soon as practicable after deciding an application under subsection (1), give written notice of the decision to the applicant and to the port operator of the designated port, specifying:
  - (a) the reasons for the decision; and
  - (b) for a decision to refuse the application – that the applicant has a right to have the decision reviewed by the Tribunal.

## **55 Suspension or cancellation of licence**

- (1) If the holder of a licence under this Part contravenes a condition of the licence, the Minister may, after consulting with the port operator of the relevant designated port:
  - (a) suspend the licence for a specified period; or
  - (b) cancel the licence.
- (2) If the Minister decides to suspend or cancel a licence under subsection (1), the Minister must give written notice of the decision to the licence holder and the port operator:
  - (a) specifying the reasons for the decision; and
  - (b) specifying that the licence holder has a right to have the decision reviewed by the Tribunal; and
  - (c) if the licence is to be cancelled – requiring the licence holder to surrender the licence document to the Minister within the period specified in the notice.
- (3) In this section:

***licence holder*** includes former licence holder.

## **56 Penalty for carrying on business etc. while unlicensed**

- (1) A person commits an offence if:
  - (a) the person carries on a business of a stevedore; and
  - (b) the business is carried on within a designated port; and

- (c) the person does not hold a licence under this Part authorising the person to do so.

Maximum penalty: 500 penalty units.

- (2) In any proceedings for an offence against subsection (1), an averment by the prosecutor in a complaint or information that a specified person did not hold a licence under this Part at the time when the offence was committed is evidence of the fact so averred.

## **Part 7 Port notices**

### **57 Port operator may issue port notice**

- (1) The port operator of a designated port may, by a notice issued under this section (a **port notice**), control activities or conduct within the port for the purpose of maintaining or improving its safe, secure or efficient operation.
- (2) Without limiting the activities or conduct that it may control, a port notice may:
- (a) control the entry of persons to the designated port, or any part of it, and their behaviour while within the port; or
  - (b) control the movement, stopping or parking of vehicles within the port; or
  - (c) control the movement or mooring of vessels within the port; or
  - (d) control activities on or by vessels within the port; or
  - (e) control the movement, handling or storage of goods loaded, waiting to be loaded or unloaded on or from vessels within the port.
- (3) If there is an inconsistency between a provision of a port notice and a provision of any other law of the Territory, the provision of the other law prevails to the extent of the inconsistency.

### **58 How port notice may be issued**

- (1) A port notice may be issued in any of the following ways:
- (a) by being displayed in a prominent position within the port;
  - (b) by being published on the port operator's website;
  - (c) by being given to the person or persons to whom it applies.



- (2) The port operator of a designated port must, not less than 14 days before issuing or revoking a port notice, give the regional harbourmaster written notice of the proposed issue or revocation.
- (3) Subsection (2) does not apply if the port notice is issued or revoked:
  - (a) because of an emergency; or
  - (b) in order to avert or minimise an imminent threat of:
    - (i) death, or serious injury, to any person; or
    - (ii) loss of, or serious damage to, property; or
    - (iii) material harm to the environment.
- (4) If subsection (2) does not apply, the port operator must give the regional harbourmaster written notice of the issue or revocation of a port notice within 3 days after that event.

## **59 Enforcement of port notice**

- (1) A port operator of a designated port may enforce compliance with a port notice issued by it in any of the following ways:
  - (a) by directing any person who is contravening the notice to leave the designated port;
  - (b) by removing from the port, or moving within the port, any vehicle that is stopped or parked in contravention of the notice;
  - (c) by removing from the port, or moving within the port, anything placed or located in contravention of the notice;
  - (d) by carrying out any work at the port that a person has failed to carry out in contravention of the notice or that is reasonably required to be carried out to remedy a contravention of the notice.
- (1A) A police officer may enforce compliance with a port notice that was issued to control activities or conduct on the water within a designated port by:
  - (a) directing any person who is contravening the notice to leave the port; or
  - (b) removing from the port, or moving within the port, anything placed or located in contravention of the notice.

- (2) The power to remove or move a vehicle or other thing from or within the port includes the power to place the vehicle or other thing in secure storage pending its return to its owner.
- (3) Before a port enforcement officer exercises, in relation to any individual, a power to enforce compliance with a port notice, the officer must produce his or her identity card to that individual.
- (4) A port operator of a designated port is entitled to recover as a debt due and payable to the operator the reasonable costs incurred by the operator in enforcing compliance with a port notice.
- (5) The costs are recoverable from the person whose contravention of the port notice resulted in them being incurred.
- (6) A certificate issued by the port operator certifying as to the reasonable costs incurred in enforcing compliance with a port notice is evidence of the matters certified.

#### **60 Advance notice of proposed work**

- (1) A port operator of a designated port is not authorised by section 59(1)(d) to enforce compliance with a port notice by carrying out work that a person has failed to carry out unless the port operator has notified the person of the proposed work in accordance with subsection (2).
- (2) Notice of proposed work under section 59(1)(d) must:
  - (a) be given no less than 7 days before the work commences; and
  - (b) be given in writing; and
  - (c) give details of the alleged contravention concerned.
- (3) Notice is not required to be given in accordance with subsection (2) if the work is necessary:
  - (a) because of an emergency; or
  - (b) in order to avert or minimise an imminent threat of:
    - (i) death, or serious injury, to any person; or
    - (ii) loss of, or serious damage to, property; or
    - (iii) material harm to the environment.

**61 Power of entry**

A port operator of a designated port may, on giving reasonable notice to the occupier, enter any land or premises at the port for the purpose of:

- (a) finding out whether a port notice is being complied with; or
- (b) doing anything that the port operator is authorised to do to enforce compliance with a port notice.

**62 Monitoring of port notices**

(1AA) A police officer who, under section 59(1A), enforces compliance with a port notice within a designated port must, as soon as practicable after doing so, give the port operator of the port details of:

- (a) the contravention of the port notice; and
- (b) the action taken by the officer to enforce compliance with the port notice.

(1) A port operator of a designated port must, within 3 months after each 6 month period ending on 30 June or 31 December in a year, give the regional harbourmaster for the port details of such of the following matters (**reportable matters**) as occurred during the 6 month period:

- (a) a contravention of a port notice issued by the port operator of which the port operator is aware;
- (b) any exercise by the port operator of the power under section 61 to enter land or premises;
- (c) any action taken to enforce compliance with a port notice issued by the port operator.

(2) A port operator must also give details of reportable matters to the regional harbourmaster as and when directed to do so by the regional harbourmaster by written notice given to the port operator.

(3) A notice under subsection (2) must allow not less than 21 days for compliance with the direction.

(4) Information required to be given by or under this section must be given in any manner and form that the regional harbourmaster may from time to time direct by written notice given to the port operator.

- (5) The regional harbourmaster may from time to time publish reports and statements, based on information given to him or her under this section about reportable matters, subject to the following requirements:
- (a) the report or statement must not include information that identifies a person (or is likely to lead to the identification of a person) as a person who has contravened a port notice;
  - (b) the regional harbourmaster must give the relevant port operator a copy of the proposed report or statement at least 14 days before it is published.
- (6) No liability (including liability in defamation) is incurred by a person for publishing in good faith a report or statement under this section or a fair report or summary of such a report or statement.

## **Part 8 Pilotage**

### **Division 1 Preliminary matters**

#### **63 Definition**

In this Part:

**vessel** includes an off-shore industry mobile unit as defined in section 7(1) of the *Marine Act 1981*, but does not include:

- (a) a vessel propelled by oars; or
- (b) an air-cushioned vehicle as defined in section 7(1) of the *Marine Act 1981*; or
- (c) in relation to a particular pilotage area – a vessel or a class of vessel that is prescribed by regulation as an exempt vessel for that area.

#### **64 Pilotage authority may declare exempt vessels**

The pilotage authority for a pilotage area may, by *Gazette* notice, declare a vessel or a class of vessel to be an exempt vessel for the pilotage area or part of the pilotage area, subject to any conditions the pilotage authority thinks fit.

## **Division 2 Pilotage areas and authorities**

### **65 Pilotage areas**

The Minister may, by *Gazette* notice, declare an area of Northern Territory waters to be a pilotage area.

### **66 Pilotage authorities**

- (1) The regional harbourmaster is the pilotage authority for any pilotage area within a designated port for which he or she is the regional harbourmaster.
- (2) The Minister may, by *Gazette* notice, appoint a person to be the pilotage authority for any other pilotage area.

### **67 Technical and safety standards**

- (1) The pilotage authority for a pilotage area must, by written notice, make technical and safety standards for pilotage, and the provision of pilotage services, in that area.
- (2) In making technical and safety standards the pilotage authority must have regard to:
  - (a) any Marine Order made under the *Navigation Act 2012* (Cth) and order made under the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth); and
  - (b) any other relevant law of the Territory or the Commonwealth.
- (3) As soon as practicable after making technical and safety standards, the pilotage authority must:
  - (a) publish a notice in the *Gazette* stating the following:
    - (i) that the standards have been made;
    - (ii) the date on which the standards take effect, which may be the day on which the notice is published or any later date;
    - (iii) the place where copies of the standards can be obtained; and
  - (b) publish the standards on the Internet and in any other way decided by the pilotage authority; and

- (c) give a copy of the standards to:
  - (i) the port operator of any designated port within which the pilotage area is situated; and
  - (ii) any pilotage services provider for the pilotage area.
- (5) A person must not contravene a standard made under subsection (1) when conducting pilotage, or providing pilotage services, in the pilotage area to which the standard applies.

Maximum penalty: 200 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subsection (5) if the defendant has a reasonable excuse.

### **Division 3 Pilotage generally**

*Note for Division 3*

*Part 12 gives the regional harbourmaster for a designated port step-in rights in certain circumstances.*

#### **68 Compulsory pilotage**

- (1) Pilotage is compulsory for every pilotage area within a designated port.
- (2) A pilotage authority for any other pilotage area may declare that pilotage is compulsory for the whole or a specified part of that area.
- (3) A declaration must be published:
  - (a) if the pilotage authority is a public sector entity – in the *Gazette*; or
  - (b) otherwise – in a newspaper circulating generally in the Territory.
- (4) A declaration takes effect on the date it is published in the *Gazette* or in a newspaper, as required under subsection (3), or any later date specified in the declaration.
- (5) A pilotage authority that makes a declaration that is published in accordance with subsection (3)(b) must give a copy of the declaration to the Director within 3 days after its publication.

## **69 Special pilotage requirements**

- (1) This section applies only in relation to:
  - (a) a pilotage area, or a part of a pilotage area, for which pilotage is not compulsory; or
  - (b) a vessel, including a vessel that but for paragraph (c) of the definition **vessel** in section 63 would be a vessel for this Part, entering, plying or moving in or leaving a pilotage area, or a part of a pilotage area, for which pilotage is compulsory.
- (2) A pilotage authority for a pilotage area (or the port operator of a designated port within which a pilotage area is situated) may require the master of a vessel to have on board a licensed pilot if of the opinion that there would be a special risk or danger arising from the vessel entering, plying or moving in or leaving that area.
- (3) In forming the opinion, the pilotage authority or port operator must have regard to:
  - (a) the condition of the vessel and its equipment; and
  - (b) the nature and condition of any cargo carried on the vessel; and
  - (c) whether or not there is a nuclear power source on the vessel; and
  - (d) the circumstances of, and the conditions within, the particular pilotage area.
- (4) The master of a vessel commits an offence if:
  - (a) the master engages in conduct; and
  - (b) the conduct contravenes a requirement under subsection (2).

Maximum penalty: 500 penalty units.

## **70 Failure to take pilot on board**

Except as provided by section 73, the master of a vessel commits an offence if:

- (a) the master allows the vessel to enter, ply or move in or leave an area; and
- (b) the area is a compulsory pilotage area; and

(c) there is not a licensed pilot on board.

Maximum penalty: 500 penalty units.

## **71 Procedure on entering compulsory pilotage area**

(1) Except as provided by section 73, the master of a vessel, before the vessel enters a compulsory pilotage area, must:

- (a) present the vessel at a boarding ground for the area; and
- (b) receive on board a licensed pilot; and
- (c) receive on board any persons and equipment required by the pilot; and
- (d) if the pilot is to conduct pilotage as part of pilotage services provided by a pilotage services provider – receive on board any persons and equipment as required by the provider; and
- (e) provide any reasonable assistance required by the pilot or a person mentioned in paragraph (c) or (d); and
- (f) give pilotage charge of the vessel to the pilot.

(2) The master of a vessel commits an offence if:

- (a) the master engages in conduct; and
- (b) the conduct contravenes a requirement of subsection (1).

Maximum penalty: 500 penalty units.

## **72 Duty of licensed pilot**

Subject to the authority of the master of a vessel, the duty of a licensed pilot is to pilot the vessel.

## **73 Pilotage not required in certain cases**

(1AA) Sections 70 and 71 do not apply to a vessel if:

- (a) the vessel is a vessel, or of a class of vessel, declared to be exempt under section 64 and the conditions of the exemption, if any, are satisfied; or
- (b) the master of the vessel holds a pilotage exemption certificate and the conditions of the certificate, if any, are satisfied.

(1) In addition, sections 70 and 71 do not apply to a vessel if, in the opinion of the relevant entity, it is necessary, having regard to the



safety of the vessel or of a person on board the vessel, for the vessel to be immediately brought into, moved within or taken out of a compulsory pilotage area.

(1A) As soon as practicable after a vessel is brought into, moved within or taken out of a compulsory pilotage area within a designated port under subsection (1), the relevant entity must give notice to:

(a) if the relevant entity is the pilotage authority for the compulsory pilotage area – the port operator of the designated port; or

(b) if the relevant entity is the port operator of the designated port – the pilotage authority for the compulsory pilotage area.

(2) In this section:

**relevant entity** means the pilotage authority for the compulsory pilotage area or the port operator of any designated port within which the compulsory pilotage area is situated.

#### **74 Owner's liability**

If a master of a vessel is found guilty of an offence against section 70 or 71, the owner of the vessel is taken to be guilty of the same offence and is liable to the same penalty.

### **Division 4 Pilotage licences and pilotage exemption certificates**

#### **75 Application for pilotage licence or exemption certificate**

(1) A person may apply in writing to a pilotage authority for a pilotage licence or pilotage exemption certificate in respect of a pilotage area for which it is the pilotage authority.

(2) An application for renewal of a pilotage licence or pilotage exemption certificate may be made in the same manner as the original application was made.

#### **76 Issue and renewal of pilotage licence or exemption certificate**

(1) A pilotage authority may issue or renew a pilotage licence or pilotage exemption certificate in respect of a pilotage area for which it is the pilotage authority on an application under section 75 if:

(a) for a pilotage area within a designated port – the port operator of the port is satisfied of the matters prescribed by regulation; or

- (b) otherwise – the pilotage authority is satisfied of those matters.
- (2) The pilotage authority may, when issuing or renewing a pilotage licence, specify that the licence is subject to one or more of the following conditions:
- (a) a condition that the licence applies only to specified vessels (including, for example, vessels of a specified size or kind);
  - (b) a condition specifying that the licence only applies to a specified part of the pilotage area.
- (3) The pilotage authority may, when issuing or renewing a pilotage exemption certificate, specify that the certificate is subject to one or more of the following conditions:
- (a) a condition that the certificate only applies to:
    - (i) a specified vessel; or
    - (ii) specified vessels (including, for example, vessels of a specified size or kind);
  - (b) a condition specifying that the certificate only applies to specified hours during a day;
  - (c) a condition specifying that the certificate only applies to a specified part of the pilotage area.
- (4) In addition, the pilotage authority must not issue a pilotage exemption certificate to, or renew a pilotage exemption certificate held by, a person who is not the master of a vessel to which the certificate relates.
- (5) Subsections (2) and (3) do not limit the conditions that may be imposed by the pilotage authority on a pilotage licence or pilotage exemption certificate.
- (6) The regulations may provide for:
- (a) the matters that a pilotage authority or a port operator for a designated port may take into account in making a decision under this section; and
  - (b) a qualification or requirement in relation to any of the matters mentioned in paragraph (a) (including, for example, whether an applicant for a pilotage licence has undertaken a specified number of supervised transits); and

- (ba) the medical examination of a licensed pilot in order that his or her fitness to discharge his or her duties may be determined; and
- (c) a pilotage authority to vary a condition of a pilotage licence or pilotage exemption certificate.

#### **77 Form of pilotage licence and exemption certificate**

- (1) A pilotage licence or pilotage exemption certificate must:
  - (a) be in the approved form; and
  - (b) specify the pilotage area in respect of which it is issued.
- (2) A pilotage licence has effect for 3 years from the date it is issued.
- (3) A pilotage exemption certificate has effect for 2 years from the date it is issued.

#### **78 Suspension or cancellation**

- (1) If a pilotage authority, after receiving a report under section 83(5), is satisfied as to any of the matters mentioned in section 82(1), it may cancel or suspend, for any period that it thinks fit, the pilotage licence held by the licensed pilot in respect of whom the inquiry was held.
- (2) A pilotage exemption certificate may be cancelled or suspended at any time if, in the opinion of the pilotage authority, the holder is unfit to continue to hold the certificate.

#### **79 Production of pilotage licence**

- (1) A licensed pilot, on request by the master of a vessel that the pilot proposes to take in pilotage, must produce his or her pilotage licence to the master.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

#### **80 Person other than licensed pilot not to pilot vessel**

- (1) A person commits an offence if:
  - (a) the person pilots a vessel in a pilotage area; and

- (b) a licensed pilot is required by this Part to be on board the vessel while it is in that area; and
- (c) the person is not a licensed pilot or the holder of a pilotage exemption certificate in respect of that area.

Maximum penalty: 200 penalty units.

- (2) A person commits an offence if the person:
  - (a) represents, by word or conduct, that the person is a licensed pilot or the holder of a pilotage exemption certificate in respect of a pilotage area; and

- (b) knows that the representation is false.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

## **81 Misconduct by licensed pilot**

- (1) A licensed pilot commits an offence if the licensed pilot:

- (a) has pilotage charge of a vessel; and
- (b) is under the influence of alcohol or a drug.

Maximum penalty: 500 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) that the licensed pilot:

- (a) was, at the time of the alleged offence, under the influence of a drug taken by the pilot for medical purposes; and

- (b) either:

- (i) the pilot took the drug on medical advice and complied with any direction given as part of that advice; or
- (ii) the pilot had no reason to believe that the drug might have the influence it did.

- (3) A licensed pilot commits an offence if the licensed pilot:

- (a) has pilotage charge of a vessel; and
- (b) engages in conduct; and

- (c) the conduct causes, or is likely to cause, the loss or destruction of, or serious damage to, the vessel or any other vessel, a port facility or any other property.

Maximum penalty: 500 penalty units.

- (4) In this section:

**drug**, see section 19(1) of the *Traffic Act 1987*.

## **82 Inquiry into misconduct by licensed pilot**

- (1) The Minister may, at the request of a pilotage authority, appoint a person to conduct an inquiry into whether a licensed pilot:
  - (a) is unfit to discharge his or her duties; or
  - (b) has been seriously negligent in the discharge of his or her duties; or
  - (c) has repeatedly failed to comply with requests made to him or her by the pilotage authority under this Act.
- (2) If the pilotage authority is of the opinion that it is desirable to do so, it may suspend the pilotage licence held by the licensed pilot pending the outcome of the inquiry.

## **83 Conduct of inquiry**

- (1) A person appointed under section 82(1) to conduct an inquiry may:
  - (a) go on board a vessel; and
  - (b) enter on a wharf or installation within a pilotage area in respect of which the pilot is licensed; and
  - (c) require a person to answer any question relating to the subject of the inquiry; and
  - (d) require the production of a document, including a report or transcript of an inquiry or investigation held under this Act, relevant to the inquiry.
- (2) A person commits an offence if the person contravenes a requirement made under subsection (1)(c) or (d).

Maximum penalty: 200 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.
- (5) A person appointed to conduct an inquiry under section 82(1) must report on it to the pilotage authority, and forward a copy of the report to the Minister.

#### **84 Reviews of decisions under this Division**

- (1) This section applies to any of the following decisions of a pilotage authority in relation to a person:
  - (a) a refusal to issue or renew a pilotage licence or pilotage exemption certificate;
  - (b) a decision to specify or vary a condition of a pilotage licence or pilotage exemption certificate;
  - (c) a decision to suspend or cancel a pilotage licence or pilotage exemption certificate.
- (2) The pilotage authority must, as soon as practicable after making the decision, give written notice of it to the person specifying:
  - (a) the reasons for the decision; and
  - (b) that the person has a right to have the decision reviewed by the Tribunal; and
  - (c) if the pilotage licence or pilotage exemption certificate is cancelled – that the person must surrender the licence or certificate to the pilotage authority within the period specified in the notice.
- (3) If the notice requires a person to surrender the licence or certificate to the pilotage authority as mentioned in subsection (2)(c), the person must not contravene the requirement.

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

## **Division 5 Pilotage services providers**

### **85 Minister may appoint pilotage services provider**

- (1) The Minister may appoint a person to be a pilotage services provider for a pilotage area.
- (2) The Minister may appoint a person under subsection (1) only if satisfied that:
  - (a) the person has the necessary capability to provide pilotage services by one or more licensed pilots in the pilotage area; and
  - (b) in providing pilotage services in the pilotage area, each of the licensed pilots would be under the control of the person and be:
    - (i) employed or engaged by the person; or
    - (ii) in prescribed circumstances, employed or engaged by an entity specified in the regulations; and
  - (c) the person is a suitable person to be appointed; and
  - (d) the person meets any prescribed requirements.
- (3) In considering whether a person is a suitable person for subsection (2)(c), the Minister must take into account all of the following matters:
  - (a) whether the person has ever been:
    - (i) found guilty of an offence against a law of the Territory, the Commonwealth, a State or another Territory that is punishable by imprisonment for more than 12 months; or
    - (ii) a director of, or involved in the management of, a body corporate that was found guilty of such an offence;
  - (b) whether, in the immediately preceding 10 years:
    - (i) the person has been found guilty of an offence against a law of the Territory, the Commonwealth, a State or another Territory; or
    - (ii) the person has been a director of, or involved in the management of, a body corporate that was found guilty of such an offence;

- (c) whether the person has been a director of, or involved in the management of, a body corporate that was wound up in the immediately preceding 2 years or is in the process of being wound up;
  - (d) whether the person has ever:
    - (i) become bankrupt; or
    - (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounded with creditors or made an assignment of the person's remuneration for their benefit;
  - (e) whether the person is a body corporate that is under administration, is in the process of being wound up or has executed a deed of company arrangement that is in force.
- (4) The appointment has effect:
- (a) subject to any conditions specified in the appointment and in any pilotage services contract entered into between the Minister and the appointee; and
  - (b) for the term specified in the appointment unless it is terminated at an earlier time:
    - (i) under section 89; or
    - (ii) in accordance with the terms of a contract mentioned in paragraph (a).
- (5) Subsection (4) does not prevent the reappointment of the appointed person under subsection (1).
- (6) The regulations may provide for the following matters:
- (a) requirements for subsection (2)(d) including, for example:
    - (i) safety requirements; and
    - (ii) the qualifications of persons providing the service; and
    - (iii) the requirement to pay any fees or charges;
  - (b) the conditions that may be specified under subsection (4)(a) including, for example, conditions about:
    - (i) the pilotage services provider's insurance coverage; and



- (ii) the pilotage services provider's capability for providing pilotage services; and
  - (iii) the qualifications of persons to provide the service; and
  - (iv) the provision of reports to the Minister about the performance of the pilotage services provider;
- (c) matters that may be considered by the Minister when specifying the conditions;
- (d) any other matters arising from this section.

## **86 Pilotage services contracts**

- (1) The Minister may enter into a contract with a pilotage services provider in relation to the provision of pilotage services by that provider.
- (2) Despite anything to the contrary in the *Procurement Act 1995* or any other Act, a pilotage services contract may be entered into without a competitive tender process having been undertaken.
- (3) A pilotage services contract may (but need not) appoint the pilotage services provider to provide pilotage services on an exclusive basis within the relevant pilotage area.
- (4) A pilotage services contract may be entered into for any term, and contain any terms or conditions, that the Minister thinks fit.
- (5) Without limiting subsections (1), (3) and (4), a pilotage services contract may:
- (a) specify the level of pilotage services to be provided under the contract; and
  - (b) set out performance standards, and quality assurance programs, for pilotage services to be provided under the contract; and
  - (c) specify the amount of consideration to be paid to the Minister by the pilotage services provider under the contract; and
  - (d) require the pilotage services provider to keep records of the pilotage services provided by the provider and the amounts charged and paid in respect of those services; and
  - (e) empower the Minister and any person authorised by the Minister to inspect those records; and

- (f) require the pilotage services provider to provide information, as and when the Minister requires, as to the costs incurred by the provider in providing pilotage services for the pilotage area concerned; and
- (g) empower the Minister to terminate or suspend the contract:
  - (i) on the ground that the pilotage services provider is unable to provide pilotage services at the level mentioned in paragraph (a); or
  - (ii) on the ground that the pilotage services provider has contravened the marine legislation or the Marine Safety National Law; or
  - (iii) on any other specified ground.

## **87 Record-keeping and reporting obligations**

- (1) A pilotage services provider for a pilotage area within a designated port must keep, in the prescribed manner, records containing the prescribed particulars of all reportable incidents that occur within the pilotage area and that involve:
  - (a) a licensed pilot employed or engaged by the pilotage services provider; or
  - (b) a vessel of which a licensed pilot employed or engaged by the pilotage services provider has pilotage charge.
- (2) A pilotage services provider for a pilotage area within a designated port commits an offence if:
  - (a) a reportable incident mentioned in subsection (1) occurs within the pilotage area; and
  - (b) the pilotage services provider fails to keep a record of the incident in accordance with subsection (1).

Maximum penalty: 100 penalty units.

- (3) A pilotage services provider for a pilotage area within a designated port commits an offence if:
  - (a) a reportable incident mentioned in subsection (1) occurs within the pilotage area; and

- (b) the pilotage services provider fails to report, in writing, the prescribed particulars of the incident to the regional harbourmaster for the port within the prescribed period after it occurs.

Maximum penalty: 100 penalty units.

- (4) An offence against subsection (2) or (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (2) or (3) if the defendant has a reasonable excuse.
- (6) This section does not affect any requirement to keep a record of any kind, or report an event of any kind, that a pilotage services provider has under any other Act.

## **88 Offences**

- (1) A person commits an offence if:
- (a) the person provides pilotage services in a pilotage area; and
- (b) the person is not a pilotage services provider for the area.

Maximum penalty: 500 penalty units.

- (2) A pilotage services provider commits an offence if:
- (a) the pilotage services provider provides pilotage services; and
- (b) in providing the pilotage services, the pilotage services provider contravenes a condition specified in the provider's appointment.

Maximum penalty: 500 penalty units.

## **89 Termination and suspension, and variation of conditions, of appointment**

- (1) The Minister may terminate, or suspend for a specified period, the appointment of a person as a pilotage services provider if:
- (a) the Minister considers the person:
- (i) has contravened a condition of the appointment; or
- (ii) no longer meets the requirements for the appointment under this Division; and

- (b) for a termination of the appointment, the Minister:
  - (i) has notified the person of the Minister's intention to terminate the appointment; and
  - (ii) has specified in the notice that the person may, within a reasonable period specified in the notice, explain to the Minister why the appointment should not be terminated; and
  - (iii) has taken into account any explanation given to the Minister within the specified period.
- (2) If a pilotage services contract to which a person appointed as a pilotage services provider is a party is terminated or expires, their appointment as a pilotage services provider is terminated by force of this subsection.
- (3) The Minister may vary a condition of the appointment of a person as a pilotage services provider if the Minister considers the variation is necessary:
  - (a) to ensure compliance with this Act; or
  - (b) in other circumstances prescribed by regulation for the purposes of safety.
- (4) The Minister must, as soon as practicable after making a decision under subsection (1) or (3) in relation to a pilotage services provider, give written notice of the decision to the pilotage services provider specifying:
  - (a) the reasons for the decision; and
  - (b) that the pilotage services provider has a right to have the decision reviewed by the Tribunal.

## **90 Regulations may provide for other matters about appointment**

The regulations may provide for a matter arising from the appointment of a pilotage services provider, including, for example, the monitoring of compliance with this Division by the pilotage services provider.

## **Division 6 General matters**

### **91 Master responsible for vessel**

The master of a vessel is not relieved of the master's responsibility for the conduct and navigation of the vessel by reason of the vessel being:

- (a) in pilotage charge of a licensed pilot or a person holding a pilotage exemption certificate; or
- (b) navigated in a pilotage area or compulsory pilotage area without a pilot.

### **92 Protection of licensed pilot, pilotage authority and pilotage services provider**

- (1) Each of the following is not liable for any loss or damage caused or suffered by a vessel while a licensed pilot is acting as pilot of the vessel:
  - (a) the pilot;
  - (b) the pilotage authority that licensed the pilot;
  - (c) subject to subsection (2), the pilotage services provider or other entity by which the pilot was employed or engaged at the time the pilot was acting as pilot of the vessel.
- (2) Subsection (1) does not affect any liability of the pilotage services provider or other entity for employing or engaging as a pilot a person who was not qualified or competent to be a pilot.

## **Part 9 Marine navigational aids**

### **Division 1 Preliminary matters**

#### **93 Definitions**

In this Part:

**aid** means:

- (a) a lighthouse, lightship, beacon or buoy; or
- (b) any other structure, marker, device or apparatus that is an aid to marine navigation, including a radio beacon or an electronic aid, but not including a device or apparatus used, or for use, on a vessel (not being a lightship).

**light** includes a fire and a street light or other illuminating device.

**owner**, in relation to an aid, light or lamp, includes a person in possession or control of the aid, light or lamp.

#### **94 Application of Part**

This Part applies in relation to an aid that is within Northern Territory waters, or on land within the Territory, other than an aid that is, under the *Navigation Act 2012* (Cth), the property of, or under the control of:

- (a) the Commonwealth; or
- (b) the Australian Maritime Safety Authority (established by the *Australian Maritime Safety Authority Act 1990* (Cth)).

### **Division 2 Aids**

#### **95 Establishment etc. of aids by port operator**

- (1) Subject to subsection (2), the port operator of a designated port may establish, maintain, operate, alter or remove an aid that:
  - (a) is within the port; or
  - (b) may affect the safety or convenience of marine navigation within the port.
- (2) A port operator may only establish, alter or remove an aid mentioned in subsection (1) with the prior written approval of the regional harbourmaster for the designated port.
- (3) The port operator may, by written notice, authorise a person to carry out on its behalf any work necessary for the exercise of the port operator's functions under subsection (1).

#### **96 Establishment etc. of private aids**

- (1) Subject to subsection (1A), a person must not, without the written approval of the port operator of a designated port, establish, maintain, operate, alter or remove an aid that:
  - (a) is within the port; or
  - (b) may affect the safety or convenience of marine navigation within the port.

Maximum penalty: 100 penalty units.

- (1A) The port operator of a designated port may only approve the establishment, alteration or removal of an aid mentioned in subsection (1) with the prior written approval of the regional harbourmaster for the designated port.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

**97 Control of aids, lamps and lights**

- (1) This section applies with respect to an aid, lamp or light that:
  - (a) is within a designated port; or
  - (b) may affect the safety or convenience of marine navigation within a designated port.
- (2) The port operator of the designated port may, if of the opinion that it is desirable for the safety or convenience of marine navigation to do so, by written notice given to the owner of the aid, lamp or light, require the owner:
  - (a) to remove it entirely or to some other position; or
  - (b) to modify it, or to alter its character or mode of exhibition, to the extent, or in the manner, specified in the notice; or
  - (c) to cease using it; or
  - (d) to use it only at the times and in the manner specified in the notice.
- (3) A person given a notice under subsection (2) must comply with the requirement contained in the notice.

Maximum penalty: 100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.
- (6) Subsection (7) applies if:
  - (a) a person fails to comply with a requirement contained in a notice under subsection (2); or
  - (b) a notice under subsection (2) cannot be given because the port operator does not know who owns the aid, lamp or light.

- (7) The port operator may take possession or control of the aid, lamp or light and do anything that:
  - (a) if subsection (6)(a) applies – the person specified in the notice under subsection (2) was required by the notice to do; or
  - (b) if subsection (6)(b) applies – must, in the opinion of the port operator, be done for the safety of marine navigation.
- (8) Any costs incurred in doing a thing under subsection (7) in relation to an aid, lamp or light may be recovered as a debt due and payable by the owner of the aid, lamp or light to the port operator.

## 98 Inspection of aids

A person authorised by the port operator of a designated port may inspect, at any reasonable time, an aid, lamp or light that:

- (a) is within the port; or
- (b) may affect the safety or convenience of marine navigation within the port.

## 99 Entry on land

- (1) The regional harbourmaster for a designated port, or a person authorised by the regional harbourmaster, may enter any land, and transport goods through or over it, for the purpose mentioned in subsection (2).
- (2) The purpose is to erect, inspect or maintain an aid, lamp or light that:
  - (a) is within the port; or
  - (b) may affect the safety or convenience of marine navigation within the port.
- (3) The powers of the regional harbourmaster, or a person authorised by the regional harbourmaster, under subsection (1) in relation to land includes powers in relation to Aboriginal land even though the regional harbourmaster or the person does not hold a permit to enter Aboriginal land under the *Aboriginal Land Act 1978*.
- (4) In this section:

**Aboriginal land**, see section 3(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).



**100 Mooring at aids**

- (1) A person must not moor, make fast or attach a vessel to an aid that:
  - (a) is within a designated port; or
  - (b) may affect the safety or convenience of marine navigation within a designated port.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

**101 Obligation in relation to defective or damaged aids**

- (1) This section applies with respect to an aid that:
  - (a) is within a designated port; or
  - (b) may affect the safety or convenience of marine navigation within a designated port.

- (2) If an aid is defective or damaged its owner must ensure that it is repaired or replaced as soon as practicable after the owner becomes aware of the defect or damage.
- (3) The regional harbourmaster for a designated port may, by written notice to the owner of a defective or damaged aid, direct the owner to repair or replace it within a period specified in the notice.
- (4) The owner of the aid must comply with a direction given under subsection (3).

Maximum penalty: 200 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse.
- (7) If the owner fails to comply with a direction given under subsection (3), the regional harbourmaster may cause the aid to be repaired or replaced, irrespective of whether the owner has been charged with, or found guilty of, an offence against subsection (4).
- (8) The owner is liable to pay all costs incurred by the regional harbourmaster under subsection (7).

- (9) Any such amount is additional to any penalty imposed for an offence against subsection (4).
- (10) An amount that the owner is liable to pay under subsection (8) for costs may be recovered as a debt due and payable to the Territory.

## **102 Offences in relation to aids**

- (1) This section applies with respect to an aid that:
  - (a) is within a designated port; or
  - (b) may affect the safety or convenience of marine navigation within a designated port.
- (2) A person must not damage or destroy the aid.

Maximum penalty: 200 penalty units.

- (3) A person commits an offence if the person engages in conduct that:
  - (a) results in the view of the aid being obstructed in a manner that lessens its efficiency; or
  - (b) hinders the effective use of the aid.

Maximum penalty: 200 penalty units.

- (4) A person must not be in or on:
  - (a) the aid; or
  - (b) any enclosed area of land on which the aid is situated.

Maximum penalty: 100 penalty units.

- (5) An offence against subsection (2), (3) or (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (2), (3) or (4) if the defendant has a reasonable excuse.

## **103 Notification of damage**

- (1) A person commits an offence if:
  - (a) an aid within a designated port, or that may affect the safety or convenience of marine navigation within a designated port, is damaged, destroyed or interfered with; and

(b) the person fails to report the damage, destruction or interference immediately to both the port operator of, and the regional harbourmaster for, the designated port.

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(b).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

#### **104 Costs of rectification**

- (1) This section applies to any costs that are incurred by a port operator of a designated port in replacing, repairing or reinstating an aid that is damaged, destroyed or interfered with in contravention of section 102.
- (2) The costs are a debt due to the port operator from the person who caused the destruction, damage or interference.

#### **105 Immunity from certain proceedings**

Legal proceedings cannot be instituted against the port operator of a designated port in respect of an act or omission of the port operator that is done or made under this Part unless the act or omission arises from wilful misconduct.

## **Part 10 Port charges**

### **Division 1 Preliminary matters**

#### **106 Interpretation**

- (1) In this Part:

**charging entity** means a port authority or pilotage services provider.

**port authority**, of a designated port, means the port operator of the port or the Minister.

- (2) A reference in this Part to the **owner** of a vessel includes a reference to a person who, whether on the person's own behalf or on behalf of another:
- (a) exercises any of the functions of the owner of the vessel; or

- (b) represents to a port authority that the person has those functions or accepts the obligation to exercise those functions.
- (3) A reference in this Part to the **owner** of cargo includes a reference to:
  - (a) a joint owner of the cargo; and
  - (b) any person who, whether on the person's own behalf or on behalf of another:
    - (i) exercises any of the functions of the owner of the cargo; or
    - (ii) represents to a port authority that the person has those functions or accepts the obligation to exercise those functions.
- (4) For this Part, a person does not cease to be the owner of a vessel because the vessel is mortgaged, chartered, leased or hired to another person.

#### **107 Part does not apply to recreational vessels**

This Part does not apply to:

- (a) a pleasure craft as defined in section 7(1) of the *Marine Act 1981*; or
- (b) a hire-and-drive vessel (as defined in section 7(1) of the *Marine Act 1981*) used solely for pleasure; or
- (c) a vessel used for an expedition organised for reward, fee or other valuable consideration so as to enable people to engage in:
  - (i) amateur fishing; or
  - (ii) sightseeing activities where the expedition is conducted wholly within a designated port.

## **Division 2 Fixing of charges**

### **108 Port authority charges**

- (1) The port operator of a designated port may, as a port authority of the port, by written notice published on the port operator's website, fix charges in respect of the use by a vessel of any or all of the following:
  - (a) the waters of the designated port;
  - (b) port facilities of the designated port that are owned by, or leased or licensed to, or operated or maintained by, the port operator.
- (2) The Minister may, as a port authority of a designated port, by *Gazette* notice, fix charges in respect of the use by a vessel of any or all of the following:
  - (a) the waters of the designated port;
  - (b) port facilities of the designated port that are owned by, or leased or licensed to, or operated or maintained by, the Minister or another public sector entity.
- (3) Subsection (1) is subject to any conditions or restrictions on, or exclusions from, the power of a port operator of a designated port to fix charges imposed by a port operating agreement to which the port operator is a party.
- (4) Without limiting subsection (1) or (2), charges of the following kind may be fixed in relation to a designated port:
  - (a) a port due, being a charge in respect of the entry (however made) of a vessel into the port or its movement within the port;
  - (b) a wharfage charge, being a charge calculated by reference to the quantity, volume or weight of cargo loaded on, or unloaded from, a vessel occupying a berth, or transhipped between vessels, within the port;
  - (c) a berthing charge, being a charge calculated by reference to the amount of time, as determined by a port authority:
    - (i) that a vessel occupies a berth within the port for any purpose; or
    - (ii) that a vessel anchors within the port in an area of water that is not adjacent to a wharf, pontoon, mooring buoy, dolphin or structure of any other kind; or

- (iii) for which a berth is reserved for occupation by a vessel for any purpose.
- (5) Different charges may be fixed in respect of different classes of vessels, cargo or berths or according to such other factors as a port authority thinks fit.
- (6) In this section:

***berth***, in relation to a charge fixed by a port authority, means an area of water within a designated port surrounding or adjacent to a wharf, mooring buoy or dolphin that is owned by, leased or licensed to, or operated or maintained by the port authority.

***dolphin*** means an apparatus or structure (other than a wharf or mooring buoy) that is permanently fixed to the bed of navigable waters and that is used for securing a vessel.

### **109 Pilotage services provider charges**

- (1) A pilotage services provider for a pilotage area may, by written notice published on the pilotage services provider's website, fix the rates of charges payable to the pilotage services provider for the provision of pilotage services.
- (2) Different charges may be fixed in respect of different classes of vessels or according to such other factors as a pilotage services provider thinks fit.
- (3) The owner or master of a vessel is liable to pay to a pilotage services provider the charges for pilotage services provided in relation to the vessel.
- (4) Charges payable under subsection (3) and collected by the pilotage services provider may be retained by the provider.
- (5) This section is subject to any provision made by a pilotage services contract.

## **Division 3 General matters**

### **110 Agreements in relation to charges**

- (1) A charging entity may enter into an agreement with a person liable to pay to the entity any kind of charge under this Part.
- (2) The agreement may:
  - (a) fix the amount of any charge payable by the person to the charging entity; or

- (b) provide for any other matter that the entity is permitted by or under this Part to determine in respect of the charge; or
  - (c) provide for any right or privilege that, by or under this Part, accrues to the person liable to pay the charge, or that the entity may confer on the person.
- (3) To the extent the agreement provides, the agreement displaces any determinations of the charging entity in relation to the charge or to the matter, right or privilege concerned.

### **111 Payment and collection of charges**

- (1) A charge under this Part is payable on demand by the charging entity that fixed the charge, or at such time, or on such terms, as the entity may determine in respect of the person liable to pay it.
- (2) Subject to subsection (3), a charge fixed by a port authority may only be collected by that port authority and not by the other port authority.
- (3) A port authority may appoint an agent for the collection of charges, and the agent may be the other port authority.
- (4) A charge under this Part may be recovered as a debt due and payable to the charging entity that fixed the charge by the person liable to pay it.
- (5) If there is more than one person liable to pay a charge under this Part, those persons are jointly and severally liable to pay the charge.

### **112 Interest on overdue payments**

- (1) A charging entity may charge interest, at a rate determined by the entity, on charges fixed under this Part by the entity that are unpaid by the due date.
- (2) Different rates may be determined for charges that remain unpaid for different periods of time.

### **113 Security for payment of charges**

- (1) A charging entity may require a person to lodge with it a security deposit as security for the payment of charges that have been, or may be, incurred under this Part by the person.

- (2) The security deposit:
  - (a) may take the form of cash or a guarantee from a bank, building society or credit union or any other form that the charging entity approves; and
  - (b) must be in or for an amount determined by the entity.
- (3) A charging entity may appropriate a security deposit or the proceeds of a security deposit to meet liabilities of the depositor (including any interest payable) under this Part that are unpaid after becoming due.
- (4) In the event that a security deposit or the proceeds of a security deposit have been appropriated or partly appropriated, a charging entity may require lodgement of further security.
- (5) If at any time a charging entity considers that a depositor's potential liabilities under this Part should be more adequately secured, the entity may require the lodgement of security in a greater amount, or in a different form, or both.

#### **114 Failure to comply with charging entity's requirements**

- (1) A charging entity may withhold or withdraw the provision of services or facilities to a person who fails to comply with any lawful requirement made by the entity with respect to the provision of those services or facilities, whether or not the person has paid a charge for their provision.
- (2) This section does not affect any other function or discretion of the charging entity in relation to its services and facilities.

#### **115 Liability of current owners and agents**

- (1) To the extent to which a charge under this Part, payable by the owner of a vessel, is not paid by the person who was the owner at the time the charge was incurred, the charge is payable by the person who is the owner at the time payment is demanded by a charging entity.
- (2) Subsection (3) applies if at the time a vessel left a designated port:
  - (a) there was an agent for the berthing or working of the vessel; and
  - (b) there was no other agent for the vessel.



- (3) The agent is liable, to the same extent as the owner of the vessel, for charges under this Part incurred in relation to the vessel while in port that are unpaid.
- (4) If, at the time a vessel left a designated port, there was an agent for the vessel other than an agent for the berthing or working of the vessel, that agent is liable, to the same extent as the owner of the vessel, for charges under this Part incurred in relation to the vessel while in port that are unpaid.

**116 Waiver or refund of charges**

A charging entity may waive or refund the whole or any part of any charge under this Part that is due to the entity in any particular case or class of case.

**Part 11 Port access and pricing**

**Division 1 Preliminary matters**

**117 Object of Part**

The object of this Part is to promote the economically efficient operation of, use of and investment in major port facilities in the Territory by which services are provided, so as to promote effective competition in upstream and downstream markets.

**118 Application of Part**

This Part applies to prescribed services provided by:

- (a) a port operator of a designated port that is not a public sector entity (a ***private port operator***); or
- (b) a pilotage services provider that is not a public sector entity (a ***private pilotage provider***).

**119 Application of *Utilities Commission Act 2000***

- (1) The provision of prescribed services by a private port operator or private pilotage provider is declared to be a regulated industry for the *Utilities Commission Act 2000*.
- (2) The charges fixed by a private port operator or private pilotage provider in relation to the provision of prescribed services provided by the operator or provider are prices for goods or services for the *Utilities Commission Act 2000*.

- (3) The Utilities Commission of the Northern Territory established by Part 2 of the *Utilities Commission Act 2000* is the **Regulator** for this Part.
- (4) A private port operator or private pilotage provider is taken to be a licensed entity for the purpose of the application of the *Utilities Commission Act 2000*, as affected by this Part, in relation to the operator or provider.

#### **120 Reports and statements by Regulator**

- (1) The Regulator may from time to time publish reports and statements, based on information given or obtained under this Part, about the provision of access to prescribed services or charges fixed in relation to the provision of prescribed services.
- (2) No liability (including liability in defamation) is incurred for publishing in good faith a report or statement under this section or a fair report or summary of such a report or statement.

#### **121 Annual report to Minister on material non-compliance**

- (1) The Regulator must make an annual report to the Minister, by 1 December in each year, on each of the following:
  - (a) if the Regulator has received a report under section 130 from a private port operator on any material instance of non-compliance with the operator's access policy that occurred during the immediately preceding financial year – the contents of the report;
  - (b) if the Regulator is satisfied that there were one or more material instances, during the immediately preceding financial year, of non-compliance by a private port operator or private pilotage provider with a determination of the Regulator mentioned in section 132 that applied to the operator or provider at the time of the non-compliance – the instance or instances.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 7 sitting days after receiving it.

#### **122 Regulations**

Regulations made for this Part must promote the object of this Part.

## **123 Review of Part**

- (1) Within the last year of each review period, the Regulator must:
  - (a) conduct and complete a review of the operation of this Part and the regulations made for this Part; and
  - (b) prepare a report on the review; and
  - (c) give a copy of the report to the Minister.
- (2) The purpose of a review is to determine:
  - (a) whether there is an ongoing need for regulatory oversight of access to, and pricing of, prescribed services provided by private port operators or private pilotage providers; and
  - (b) whether there is a need to change the form of regulatory oversight of access and, if so, how; and
  - (c) whether there is a need to change the form of regulatory oversight of prices and, if so, how; and
  - (d) whether amendments should be made to this Part or the regulations made for it and, if so, the nature of those amendments.
- (3) The Regulator must consult with each private port operator and private pilotage provider during a review.
- (4) The Minister must table a copy of a report on a review in the Legislative Assembly within 7 sitting days after receiving it.
- (5) To avoid doubt, this section does not prevent this Part or the regulations made for it being amended or repealed at any time.
- (6) In this section:

***review period*** means each of the following:

- (a) the 3 year period starting on the commencement of this Part;
- (b) each successive 5 year period after the period mentioned in paragraph (a).

## **Division 2 Access regulation**

### **124 Preventing or hindering access**

- (1) A private port operator or private pilotage provider must not engage in conduct for the purpose of preventing or hindering the access of a user or potential user (**port user**) to any prescribed service.
- (2) A private port operator or private pilotage provider that acts as mentioned in subsection (3) is taken to be engaging in conduct of a kind mentioned in subsection (1).
- (3) Having regard to the relevant criterion, the private port operator or private pilotage provider provides, or proposes to provide, access to the prescribed service to itself, or a related body corporate of itself, on more favourable terms than the terms on which it provides, or proposes to provide, access to the prescribed service to a competitor of itself.
- (4) For subsection (3), the relevant criterion is the terms, taken as a whole, on which the private port operator or private pilotage provider provides, or proposes to provide, access to the prescribed service to itself, or a related body corporate of itself, and the competitor:
  - (a) having regard, in particular, to the nature and quality of the prescribed service provided, or proposed to be provided; but
  - (b) disregarding the charges fixed for access to the prescribed service.
- (5) A private port operator does not contravene subsection (1) if the conduct is constituted by:
  - (a) a refusal to alter or add to port facilities if, in the reasonable opinion of the private port operator, the alteration or addition is not required for the provision of the requested prescribed service; or
  - (b) an act done in accordance with the operator's access policy; or
  - (c) a reasonable act done:
    - (i) because of an emergency; or
    - (ii) in order to avert or minimise an imminent threat of:
      - (A) death, or serious injury, to any person; or

- (B) loss of, or serious damage to, property; or
- (C) material harm to the environment.

(6) In this section:

**competitor**, of a private port operator or private pilotage provider, means an entity that has, or seeks to have, access to the prescribed service to compete in a market with the operator or provider or a related body corporate of the operator or provider.

## 125 Unfairly differentiating

- (1) In negotiating arrangements to provide access to any prescribed service, or a change to any such arrangement, a private port operator or private pilotage provider must not unfairly differentiate between port users in a way that has a material adverse effect on the ability of one or more of the port users to compete with other port users.
- (2) Subsection (1) does not prevent a private port operator treating port users differently to the extent the different treatment is:
  - (a) due to a refusal of a kind mentioned in section 124(5)(a); or
  - (b) reasonably justified because of the different circumstances, relating to access to the prescribed service, applicable to the port operator or any of the port users; or
  - (c) expressly required or permitted by the operator's access policy.
- (2A) In addition, subsection (1) does not prevent a private pilotage provider treating port users differently to the extent the different treatment is reasonably justified because of the different circumstances, relating to access to the prescribed service, applicable to the provider or any of the port users.
- (3) To avoid doubt:
  - (a) this section does not operate to prevent a private port operator or private pilotage provider from applying a different charge to different port users for the provision of the same prescribed service; and
  - (b) subsections (2) and (2A) do not authorise a private port operator or private pilotage provider to engage in conduct for the purpose of preventing or hindering a port user's access to the prescribed service.

## **126 Enforcement of obligations**

- (1) This section applies if, on the application of a person, a court of competent jurisdiction is satisfied that a private port operator or private pilotage provider has engaged, is engaging, or proposes to engage in conduct constituting a contravention of section 124(1) or 125(1).
- (2) The court may make all or any of the following orders:
  - (a) an order granting an injunction, on terms the court considers appropriate:
    - (i) restraining the private port operator or private pilotage provider from engaging in the conduct; or
    - (ii) if the conduct involves failing to do something – requiring the private port operator or private pilotage provider to do the thing;
  - (b) an order directing the private port operator or private pilotage provider to compensate a person for loss or damage suffered by the person because of the contravention;
  - (c) another order the court considers appropriate.
- (3) If the court has power under subsection (2)(a) to make an order against a private port operator or private pilotage provider, it may make any other order (including granting an injunction) it considers appropriate against any other person involved in the contravention concerned.

## **127 Access policy**

- (1) A private port operator commits an offence if:
  - (a) the operator fails to prepare a draft access policy in accordance with this section; or
  - (b) the operator fails to give the operator's initial draft access policy to the Regulator by the date specified in, or calculated in accordance with, the regulations; or
  - (c) the operator fails to give a new draft access policy to the Regulator before its existing access policy nominally expires under subsection (10).

Maximum penalty: 500 penalty units.

- (2) An access policy:
  - (a) must be in accordance with any requirements prescribed by regulation; and
  - (b) must contain any matter required by the Minister under section 129; and
  - (c) may consist of more than one document.
- (2A) After preparing a draft access policy, other than an amended policy prepared under subsection (5) or (6), a private port operator must:
  - (a) consult with port users on the draft policy; and
  - (b) prepare a written summary of the comments received during the consultations; and
  - (c) when giving the draft policy to the Regulator, also give the Regulator a copy of the summary.
- (3) After receiving a draft access policy, the Regulator must give the private port operator written notice of one of the following:
  - (a) that the Regulator approves the draft policy;
  - (b) that the Regulator does not approve the draft policy because it does not meet the requirements of subsection (2) and that the private port operator must amend the draft policy, as directed by the Regulator, so it meets those requirements.
- (3A) Notice under subsection (3) must be given:
  - (a) within 60 days after the Regulator receives the draft access policy; or
  - (b) if, during that 60 day period, the Regulator gives the private port operator written notice that it needs more time to consider the draft access policy – within 120 days after the Regulator receives the policy.
- (4) The Regulator must approve a draft access policy that meets the requirements of subsection (2).
- (5) A private port operator who receives a notice mentioned in subsection (3)(b) must, within 30 days after the date of the notice, resubmit the draft access policy, amended as directed, to the Regulator, for approval under this section.

- (6) A private port operator may amend a draft access policy that has not been approved and give it to the Regulator.
- (7) Subsections (3) to (5) apply to an amended draft access policy in the same way that they apply to the initial draft.
- (8) If the Regulator fails to act in accordance with subsection (3) within the period allowed under subsection (3A), the draft access policy is taken to have been approved by the Regulator on the expiration of that period.
- (9) On being approved, the policy is the access policy of the private port operator for this Division until it is replaced with a new access policy prepared by the operator and approved by the Regulator.
- (10) An access policy nominally expires on:
  - (a) the day that is 5 years after the day on which it was approved by the Regulator; or
  - (b) if the policy states that it nominally expires on an earlier date – the earlier date.
- (12) A private port operator must comply with its access policy.
- (13) To avoid doubt, a private port operator must continue to comply with its access policy, even if it has nominally expired under subsection (10), until it is replaced with a new access policy prepared by the operator and approved by the Regulator.

## **128 Guidelines**

- (1) The Regulator must, in accordance with the regulations, issue guidelines about the prescribed matters in relation to reports relating to access policies under section 130.
- (1A) The regulations may include among the prescribed matters any matter about which the Regulator considers that guidelines should be issued with a view to assisting the Regulator in determining whether a private port operator is complying with its access policy.
- (2) The guidelines must be published in the *Gazette* and made available for inspection free of charge at the office of the Regulator.

## **129 Content required by Minister**

The Minister may, by *Gazette* notice, require that an access policy deal with a matter specified in the notice.



### **130 Reporting**

- (1) A private port operator must, no later than 30 September in each year, make an annual report to the Regulator on any material instance of non-compliance with the operator's access policy that occurred during the immediately preceding financial year.
- (2) In addition, a private port operator must make any other report on a material instance of non-compliance with its access policy that is required by regulation.
- (3) A report under subsection (1) or (2) must be prepared in accordance with any guidelines issued under section 128.

### **131 Information required by Regulator**

- (1) The Regulator may, by written notice given to a private port operator, at any time require the private port operator to give, within the period specified in the notice, information of a kind so specified on:
  - (a) any matter arising out of a report under section 130(1) or (2);  
or
  - (b) the private port operator's compliance with section 124(1) or 125(1).
- (1A) The Regulator may, by written notice given to a private pilotage provider, at any time require the provider to give, within the period specified in the notice, information of a kind so specified on the provider's compliance with section 124(1) or 125(1).
- (2) A notice given under subsection (1) or (1A) is taken to be a notice given under section 25(1) of the *Utilities Commission Act 2000*.

## **Division 3 Price determinations**

### **132 Determinations by Regulator**

- (1) The Regulator is authorised to make a determination under section 20(1)(a) of the *Utilities Commission Act 2000* relating to the charges fixed by a private port operator or private pilotage provider in relation to the provision of prescribed services (a **price determination**).
- (2) A price determination must be consistent with:
  - (a) the regulations; and
  - (b) the access and pricing principles specified in section 133.

- (2A) The regulations may require the Regulator:
- (a) to send a copy of a draft price determination to specified persons, invite submissions on the draft from those persons and consider any submissions received; and
  - (b) to send a copy of a price determination to specified persons and publish the determination on the Regulator's website.
- (3) A price determination may require a private port operator or private pilotage provider to whom it applies to publish at a specified time information of a specified kind relating to specified prices.
- (4) A price determination cannot have effect for a period of more than 3 years.
- (4A) A price determination must specify its expiry date.
- (5) The Regulator must give written notice to the Minister and a private port operator or private pilotage provider as soon as practicable after becoming aware that the operator or provider has fixed, or proposes to fix, a charge that the Regulator considers to be inconsistent with a price determination.

### **133 Access and pricing principles**

The access and pricing principles for this Part are as follows:

- (a) the price of access to a prescribed service should be set so as to:
  - (i) generate expected revenue from the service that is at least sufficient to meet the efficient costs of providing access to it; and
  - (ii) include a return on investment commensurate with the regulatory and commercial risks involved;
- (b) price structures should:
  - (i) allow multi-part pricing and price discrimination when it aids efficiency; and
  - (ii) not allow a vertically integrated provider of access to services to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to others is higher;
- (c) access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.

## **134 Regulations**

- (1) Regulations may be made that specify a form of price regulation for prescribed services.
- (2) Without limiting subsection (1), the form specified may include any, or a combination, of the following:
  - (a) monitoring the price levels of a specified prescribed service;
  - (b) requiring private port operators or private pilotage providers to comply with pricing policies or principles;
  - (c) fixing the price of a prescribed service or the rate of increase or decrease in such a price;
  - (d) fixing a maximum price for a specified prescribed service;
  - (e) fixing a maximum revenue in relation to a specified prescribed service;
  - (f) applying an average price cap to a basket of prescribed services;
  - (g) revenue yield control;
  - (h) any other form of economic regulation used by an independent regulatory body.
- (3) However, regulations may only be made under this section that change the form of price regulation for prescribed services then applying if the Minister certifies in writing to the Administrator that:
  - (a) the draft regulations are consistent with a written recommendation for that change made to the Minister by the Regulator following a process of public consultation on the proposed change engaged in by the Regulator, including consultation with private port operators and private pilotage providers likely to be affected by the proposed change; and
  - (b) the Minister is satisfied that the likely cost of the proposed changed form of price regulation will not outweigh the benefits of applying it.
- (4) Regulations under this section must not be inconsistent with the access and pricing principles specified in section 133.

(5) In this section:

***independent regulatory body*** means a body established under an Act of the Territory, the Commonwealth, a State or another Territory that:

- (a) is not subject to direction or control by a Minister of that jurisdiction; and
- (b) has a function relating to the regulation of access to a service, or the economic regulation of services, provided by a facility.

**135 Relationship with *Utilities Commission Act 2000***

If there is an inconsistency between a provision of this Division and a provision of the *Utilities Commission Act 2000*, the provision of this Division prevails to the extent of the inconsistency.

**Division 4 General matters**

**136 Power of Regulator to require information**

- (1) The Regulator may require a private port operator or private pilotage provider to give the Regulator information or documents relating to a particular charge fixed by the operator or provider.
- (2) A requirement may only be made under subsection (1) by written notice given to the private port operator or private pilotage provider.
- (3) The notice must:
  - (a) specify the information or documents, or kind of information or documents, to which it applies; and
  - (ab) state that the information and documents provided must be certified as accurate by the Chief Executive Officer of, or another specified officer of, the private port operator or private pilotage provider; and
  - (b) state the time and manner (which must be reasonable) for the provision of that information or those documents.
- (4) The Regulator may only give a notice under subsection (1) if satisfied that:
  - (a) the provision of the information or documents is reasonably necessary for achieving the object of this Part; and

- (b) the likely cost to the private port operator or private pilotage provider of complying with the requirement is not disproportionate to the benefit that provision of the information or documents will provide for achieving that object.
- (5) A private port operator or private pilotage provider required to give information or documents by a notice under subsection (1) must do so within the time and in the manner stated in the notice.

Maximum penalty: 200 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subsection (5) if the defendant has a reasonable excuse.
- (8) It is not a reasonable excuse that compliance would breach a duty of confidentiality.

### **137 Confidentiality of information**

- (1) A private port operator or private pilotage provider may, when giving information in response to a notice under section 131(1) or 136(1), claim that the information is confidential if it appears to the operator or provider that disclosure of the information:
  - (a) could adversely affect the competitive position of the operator or provider or any other person; or
  - (b) would result in the operator or provider being in breach of a duty of confidentiality owed to another person.
- (2) A claim that information is confidential must be accompanied by a detailed statement of the reasons in support of the claim and is not duly made unless accompanied by such a statement.
- (3) The Regulator must take all reasonable steps to prevent the disclosure of information that is claimed to be confidential unless the disclosure is authorised by this section.
- (4) The disclosure of information that is claimed to be confidential is authorised if:
  - (a) the disclosure is for the purposes of the administration of this Part and to a person engaged in that administration; or
  - (b) the disclosure is made with the consent of the person who gave the information and, if disclosure could adversely affect the competitive position of another person, that other person; or

- 
- (c) the disclosure is authorised or required under any other law of the Territory; or
  - (d) the disclosure is authorised or required by a court; or
  - (e) the disclosure is, in the opinion of the Regulator, in the public interest and the Regulator is of the opinion that the public benefit in disclosing the information outweighs any detriment that might be suffered by a person as a result of the disclosure.
- (5) In addition, the disclosure of information that is claimed to be confidential is authorised if the Regulator is of the opinion that there are insufficient grounds for the claim.
- (6) However, the Regulator, before disclosing information as mentioned in subsection (5), must give the person who made the claim of confidentiality written notice of the proposed disclosure and the reasons for it.
- (7) A disclosure of information authorised by this section does not constitute a breach of any duty of confidentiality (either by the person making the disclosure or by the private port operator or private pilotage provider).

## Part 12 Step-in rights

### 138 Definition

In this Part:

**relevant function** means any of the following functions of the port operator of a designated port:

- (a) functions under Part 5, Divisions 2 and 3;
- (b) functions in relation to the movement, handling or storage of dangerous goods under this Act;
- (c) functions in relation to the closure of waters of the port under section 50;
- (d) functions in relation to pilotage under Part 8, Division 3;
- (e) functions in relation to marine navigational aids under Part 9.

**139 Nature of step-in rights**

- (1) A ***step-in right*** is the right of the regional harbourmaster for a designated port:
  - (a) to direct, orally or in writing, the port operator of the port to exercise a relevant function in the manner, and within the period, specified in the direction; and
  - (b) if the port operator fails to comply with the direction without a reasonable excuse – to exercise the relevant function that the port operator failed to exercise.
- (2) For subsection (1)(a), the regional harbourmaster must confirm in writing as soon as practicable a direction that is given orally.
- (3) For subsection (1)(b), the regional harbourmaster may exercise the relevant function as if the regional harbourmaster were the port operator of the designated port.
- (4) To enable the regional harbourmaster to exercise the relevant function, the regional harbourmaster, accompanied by any assistants the regional harbourmaster requires, may:
  - (a) enter any land or premises occupied by the port operator; and
  - (b) gain access to, and operate, any computer or other equipment or facilities on the premises; and
  - (c) require any person who is on the premises:
    - (i) to provide access to, or to operate, any computer or other equipment or facilities; and
    - (ii) to give any other assistance that the regional harbourmaster reasonably requires.
- (5) The regional harbourmaster may require a port management officer for the designated port to exercise, in the manner required by the regional harbourmaster, any function the officer has under this or any other Act.
- (6) If a port management officer fails to comply with a requirement under subsection (5), the regional harbourmaster may exercise the function as if the regional harbourmaster were the port management officer.
- (7) The regional harbourmaster may exercise a relevant function irrespective of whether the port operator has been charged with, or found guilty, of an offence against section 141(1).

**140 When step-in rights may be exercised**

The regional harbourmaster for a designated port may exercise step-in rights only if of the opinion that it is necessary to do so:

- (a) because of an emergency; or
- (b) in order to avert or minimise a threat of:
  - (i) actual or potential death, or serious injury, to any person; or
  - (ii) actual or potential loss of, or serious damage to, property; or
  - (iii) actual or potential harm to the environment.

**141 Port operator must comply with direction**

- (1) A port operator of a designated port commits an offence if:
  - (a) the regional harbourmaster gives a direction to the port operator under section 139(1)(a); and
  - (b) the port operator fails to comply with the direction.

Maximum penalty: 200 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.
- (4) A port operator does not contravene the marine legislation merely by complying with the direction.

**142 Protection for port operator**

- (1) The port operator of a designated port, a port management officer of the port or any other employee, officer or agent of the port operator, is not personally liable for anything done or omitted to be done by them in good faith:
  - (a) for the purpose of complying with a direction given by, or a requirement of, the regional harbourmaster under section 139; or
  - (b) in the reasonable belief that the act or omission was for the purpose of complying with a direction or requirement mentioned in paragraph (a).



- (2) Any liability resulting from an act or omission that, but for subsection (1) would attach to the port operator, port management officer or other person, attaches instead to the Territory.

**143        Port operator liable for costs**

- (1) The port operator of a designated port is liable to pay all costs incurred by the regional harbourmaster for the port in exercising a step-in right under section 139.
- (2) An amount that the port operator is liable to pay under subsection (1) for costs may be recovered as a debt due and payable to the Territory.
- (3) Any such amount is additional to any penalty imposed for an offence against section 141(1).

**144        Failure to comply with requirement**

- (1) A person commits an offence if:
- (a) the person is required to do anything under section 139(4)(c); and
  - (b) the person fails to comply with the requirement.

Maximum penalty:        100 penalty units.

- (2) A port management officer commits an offence if:
- (a) the officer is required to do anything under section 139(5); and
  - (b) the officer fails to comply with the requirement.

Maximum penalty:        200 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.

**Part 13            Miscellaneous matters**

**Division 1        Jurisdiction of Tribunal**

**145        Reviewable decisions**

- (1) A **reviewable decision** is a decision specified in Schedule 1.

- (2) An **affected person**, for a reviewable decision, is a person specified in Schedule 1 opposite the decision.
- (3) An affected person for a reviewable decision may apply to the Tribunal for a review of the decision.

## **Division 2      Liability**

### **146      Protection from liability**

- (1) This section applies to:
  - (a) the Territory; and
  - (b) the Minister; and
  - (c) a regional harbourmaster; and
  - (d) an Agency; and
  - (e) the Competent Authority; and
  - (f) a person acting, within the scope of their employment or engagement, on behalf of the Territory, the Minister, a regional harbourmaster, an Agency or the Competent Authority; and
  - (g) a port operator of a designated port, or a person acting on behalf of such an operator, in doing or omitting to do anything for the purpose of enforcing compliance with a port notice; and
  - (h) a port operator of a designated port, or a person acting on behalf of such an operator, in doing or omitting to do anything for the purposes of Part 5, Division 2 or 3; and
  - (i) a police officer.
- (2) An entity to which this section applies is not civilly or criminally liable for an act done or omitted to be done by the entity in good faith in the exercise of a function under this Act.
- (3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3A) This section has effect subject to Part VIIA of the *Police Administration Act 1978*.
- (4) In this section:
  - exercise**, of a function, includes the purported exercise of the function.

**147      Liability of owner and master**

- (1) The owner of a vessel is liable for loss or damage caused by the vessel within a designated port with or without proof of negligence or intent.
- (2) The master of a vessel, with proof of negligence or intent, is jointly and severally liable with the owner for loss or damage caused by the vessel within a designated port.

**148      Effect of things done under Act**

- (1) This section applies to the following:
  - (a) the enactment, commencement or operation of this Act or the making, commencement or operation of any statutory instrument made under this Act (including a statutory instrument that amends this Act);
  - (b) the amendment, repeal or modification by this Act of any law of the Territory;
  - (c) any alteration resulting from this Act to any rules applicable to the management or operation of a designated port (including any notices, directions or orders issued or given, or policies adopted, by the Darwin Port Corporation under the *Darwin Port Corporation Act 1983* before its repeal);
  - (d) the doing, or omitting to do, of any other act, matter or thing under, or for, this Act or any statutory instrument made under this Act.
- (2) The acts, matters or things to which this section applies:
  - (a) are not to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; and
  - (b) are not to be regarded as placing any person in breach of, or as constituting a default under:
    - (i) any law of the Territory; or
    - (ii) any provision in any agreement, arrangement or understanding including, but not limited to, any provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information; and

- (c) are not to be regarded as fulfilling any condition that allows a person to exercise a right or remedy in respect of, or to terminate, any agreement or obligation; and
- (d) are not to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any property, right or liability; and
- (e) are not to be regarded as causing any contract or instrument to be void or otherwise unenforceable; and
- (f) are not to be regarded as frustrating any contract; and
- (g) do not release any surety or other obligee wholly or in part from any obligation.

### **Division 3      Land within designated port**

#### **149      Exemption from local government rates etc.**

- (1) This section applies to land owned by a public sector entity within a designated port.
- (2) The land is exempt from local government rates.
- (3) Subsection (2) does not apply in relation to charges for works carried out or goods or services provided by a local government council in relation to the land.
- (4) However, if the land is leased or licensed to the port operator of the designated port:
  - (a) subsection (2) does not apply in relation to local government rates in relation to the land for the period for which it is leased or licensed; and
  - (b) any local government rates in relation to the land for that period:
    - (i) are not payable by the public sector entity; and
    - (ii) are payable instead by the port operator.
- (5) In this section:

***leased*** includes subleased and concurrently leased and subleased.

***licensed*** includes sublicenced.

**local government rates** means any rates, charges or taxes under the *Local Government Act 2019* or *Northern Territory Rates Act 1971*.

## **Division 4      Offences**

### **150      Obstruction of officers**

- (1) A person commits an offence if:
- (a) the person obstructs another person; and
  - (b) the other person is a port management officer or port enforcement officer; and
  - (c) the person knows the officer is acting in an official capacity.

Maximum penalty:      100 penalty units or imprisonment for  
12 months.

- (2) Strict liability applies to subsection (1)(b).

- (3) In this section:

**obstruct** includes hinder and resist.

### **151      Misleading information**

- (1) A person commits an offence if:
- (a) the person gives information to another person; and
  - (b) the other person is authorised by this Act to require the provision of that information; and
  - (c) the person knows the information is misleading; and
  - (d) the person knows the other person is acting in an official capacity.

Maximum penalty:      200 penalty units or imprisonment for  
2 years.

- (2) A person commits an offence if:

- (a) the person gives a document to another person; and
- (b) the other person is authorised by this Act to require the provision of that document; and

- (c) the person knows the document contains misleading information; and
- (d) the person knows the other person is acting in an official capacity.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) Strict liability applies to subsections (1)(b) and (2)(b).
- (4) Subsection (2) does not apply if the person, when giving the document:
  - (a) draws the misleading aspect of the document to the other person's attention; and
  - (b) to the extent to which the person can reasonably do so – gives the other person the information necessary to remedy the misleading aspect of the document.
- (5) In this section:

***misleading information*** means information that is misleading in a material particular or because of the omission of a material particular.

## **152 Prosecutions under Act**

Proceedings for an offence against this Act must be commenced within:

- (a) 2 years after the commission of the alleged offence; or
- (b) 1 year after the day on which the alleged offence was first discovered.

## **Division 5 Darwin Marine Supply Base**

### **153 Port operator may not perform certain functions**

- (1) While the DMSB agreement is in force, the port operator of the Port of Darwin may not exercise the following functions in relation to offshore industry supply services:
  - (a) providing, maintaining, operating or controlling services or facilities for:
    - (i) the berthing, mooring, loading or unloading of vessels; or

- (ii) the storage of goods at, or transport of goods to and from, a place where they are to be loaded on or unloaded from a vessel; or
  - (iii) the reception, handling, packing or unpacking or repair of containers; or
  - (iv) the employment of stevedores or other persons within the Port of Darwin;
- (b) acquiring, erecting, maintaining or operating:
  - (i) warehouses, storehouses, bins or tanks for the reception and holding of fuel (whether solid or liquid) or liquids; or
  - (ii) yards for the holding of animals.
- (2) Despite subsection (1), the port operator may perform the functions mentioned in that subsection in relation to offshore industry supply services if:
  - (a) the DMSB operator is unable to provide those services because:
    - (i) there is a major incident; or
    - (ii) there has been a delay of 24 hours or more in accommodating an offshore industry support vessel at a wharf at the DMSB; or
  - (b) the DMSB operator requests the port operator to perform one or more of the functions on a temporary basis; or
  - (c) the offshore industry supplies in relation to which the port operator performs the function are only ancillary to a general cargo.
- (3) In this section:

**DMSB** (which is an acronym for Darwin Marine Supply Base) means the area of land and facilities provided by the Territory to the DMSB operator for the provision of offshore industry supply services.

**DMSB agreement** means the agreement relating to the operation of the DMSB entered into by the Territory and the DMSB operator, as amended and in force from time to time.

**DMSB operator** means the person or group of persons responsible under the DMSB agreement for operating the DMSB and:

- (a) if the operator is a person – includes the successors and assignees of the person; and
- (b) if the operator is a group of persons – includes a member of the group and the successors and assignees of the group and of a member of the group; and
- (c) includes a contractor or other person acting for or on behalf of the DMSB operator.

**major incident** means an occurrence that prevents, or significantly disrupts, the operation of the DMSB.

**offshore industry** means offshore oil and gas facilities, drilling platforms, pipe-laying vessels and other construction support vessels for the offshore oil and gas exploration, production and processing industries.

**offshore industry supplies** means goods carried to offshore industry by offshore industry support vessels.

**offshore industry supply services** means the following services but does not include non-wharf face activities such as pilotage and mooring:

- (a) the services of transshipping personnel or offshore industry supplies to or from offshore industry;
- (b) servicing or supporting offshore industry support vessels;
- (c) handling general cargo if that cargo is ancillary to offshore industry supplies.

**offshore industry support vessel** includes offshore support vessels, anchor handling tug supply vessels and similar support vessels involved in offshore industry.

## **Division 5A      Delegation**

### **153A      Delegation by Minister**

The Minister may delegate any of the Minister's powers and functions under this Act to a person.



## **Division 6 Forms**

### **154 Approved forms**

The Minister may approve forms for this Act.

## **Division 7 Regulations**

### **155 Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) A regulation may:
  - (a) prescribe fees payable under this Act; or
  - (b) provide for an offence against a regulation to be an offence of strict or absolute liability; or
  - (c) provide for moorings within a designated port, including the materials permitted to create moorings and the location and use of moorings.

## **Part 14 Repeals and transitional matters**

### **Division 2 Transitional matters for Ports Management Act 2015**

#### **158 Definition**

In this Division:

**commencement** means the commencement of Part 15, Division 2.

#### **159 Port safety plan for Port of Darwin**

- (1) This section applies to a port safety plan approved under section 20A of the *Darwin Port Corporation Act 1983* that is in force immediately before the commencement.
- (2) On and from the commencement, the plan is taken to be a port safety plan for the Port of Darwin approved by the regional harbourmaster for that port under Part 5, Division 1.

**160 Stevedore licences**

- (1) This section applies to a licence to carry on a business of a stevedore within the Port of Darwin issued under Part 3, Division 2 of the *Darwin Port Corporation Act 1983* that is in force immediately before the commencement.
- (2) On and from the commencement, the licence is taken to be a licence issued under Part 6 and continues in force for the balance of the duration for which it was issued and subject to the conditions to which it was subject immediately before the commencement.

**161 Monitoring of port notices for Port of Darwin**

Despite section 62(1):

- (a) the first date by which the port operator of the Port of Darwin must comply with section 62(1) is 31 March 2016; and
- (b) the details to be given under paragraph (a) are of reportable matters occurring in the period starting on the date on which the port operator became the port operator of the Port of Darwin and ending on 31 December 2015.

**162 Pilotage**

- (1) This section applies to a pilotage licence or pilotage exemption certificate issued under section 171 of the *Marine Act 1981* that is in force immediately before the commencement.
- (2) On and from the commencement, the licence or certificate is taken to be a pilotage licence or pilotage exemption certificate issued under Part 8, Division 4 and continues in force for the balance of the term for which it was issued and subject to the conditions to which it was subject immediately before the commencement.

**163 Technical and safety standards for Port of Darwin**

- (1) This section applies to technical and safety standards for pilotage and the provision of pilotage services in relation to the Port of Darwin made under section 26A(1) of the *Darwin Port Corporation Act 1983* that are in force immediately before the commencement.
- (2) On and from the commencement, the standards are taken to be technical and safety standards for pilotage and the provision of pilotage services in the Port of Darwin made under section 67.

### **Division 3            Transitional matters for Ports Legislation                                  Amendment Act 2020**

#### **164            Definitions**

In this Division:

***commencement*** means the commencement of Part 2 of the *Ports Legislation Amendment Act 2020*.

***former Act*** means this Act, as in force immediately before the commencement.

#### **165            Directions**

- (1) This section applies in relation to a direction given under section 38, 41, 42, 43 or 44 of the former Act before the commencement.
- (2) The former Act continues to apply in relation to the direction, as if the *Ports Legislation Amendment Act 2020* had not commenced.

#### **166            Access policies**

- (1) This section applies to an access policy approved under the former Act that was the access policy of a private port operator immediately before the commencement.
- (2) On the commencement, the access policy is taken to be an access policy approved under section 127 that:
  - (a) states that it nominally expires on 30 June 2022; and
  - (b) is in accordance with the requirements prescribed by regulation.

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**Schedule 1 Reviewable decisions**

section 145

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<b>Reviewable decision</b>	<b>Affected person</b>
A decision by the regional harbourmaster for a designated port to withhold an approval under section 53(1) or impose a condition on such an approval	The person seeking to do the thing mentioned in section 53(1)(a), (b) or (c)
A decision by the Minister to refuse an application under section 54(1)	The applicant
A decision by the Minister under section 55(1) to suspend or cancel a licence under Part 6	The licence holder
A decision of a pilotage authority of a kind mentioned in section 84(1)	The person to whom the decision relates
A decision by the Minister under section 89(1) to terminate, or suspend for a specified period, the appointment of a person as a pilotage services provider	The pilotage services provider
A decision by the Minister under section 89(3) to vary a condition of the appointment of a person as a pilotage services provider	The pilotage services provider

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Ports Management Act 2015 (Act No. 11, 2015)***

Assent date	22 May 2015
Commenced	pt 14, div 1: nc (rep by Act No. 33, 2019 before comm); pt 15, div 2: 1 July 2015; rem: 9 June 2015 ( <i>Gaz S57</i> , 9 June 2015, p 2)

***Ports Management (Repeals and Related and Consequential Amendments) Act 2015 (Act No. 12, 2015)***

Assent date	22 May 2015
Commenced	pt 4 (other than ss 52 and 54 to 56): 9 June 2015; ss 52 and 54 to 56: nc (Act rep by Act No. 20, 2020, before comm); rem: 1 July 2015 ( <i>Gaz S57</i> , 9 June 2015, p 2)

***Statute Law Revision and Repeals Act 2019 (Act No. 33, 2019)***

Assent date	6 November 2019
Commenced	pts 2 and 3: 11 December 2019 ( <i>Gaz G50</i> , 11 December 2019, p 2); rem: 7 November 2019 (s 2)

***Local Government Act 2019 (Act No. 39, 2019)***

Assent date	13 December 2019
Commenced	pt 8.6: 1 July 2022; rem: 1 July 2021 ( <i>Gaz S27</i> , 30 June 2021)

**Amending Legislation*****Statute Law Revision Act 2020 (Act No. 26, 2020)***

Assent date	19 November 2020
Commenced	20 November 2020 (s 2)

***Local Government Amendment Act 2021 (Act No. 15, 2021)***

Assent date	25 May 2021
Commenced	26 May 2021 (s 2)

**Ports Legislation Amendment Act 2020 (Act No. 20, 2020)**

Assent date 1 July 2020  
Commenced 30 July 2020 (*Gaz* G30, 29 July 2020, p 1)

**Transport Legislation Amendment Act 2022 (Act No. 1, 2022)**

Assent date 1 March 2022  
Commenced 4 May 2022 (*Gaz* S20, 29 April 2022)

**3 GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: ss 1, 3, 49, 63, 81, 86, 99, 107, 119, 131, 132, 135, 148, 149, 159, 160, 162 and 163.

**4 LIST OF AMENDMENTS**

s 3	amd No. 12, 2015, s 44; No. 20, 2020, s 4
s 20A	ins No. 20, 2020, s 5
s 32	amd No. 20, 2020, s 6
s 38	amd No. 20, 2020, s 7
s 39	sub No. 20, 2020, s 8
s 40	amd No. 20, 2020, s 9
pt 5	
div 3 hdg	sub No. 20, 2020, s 10
ss 40A – 40B	ins No. 20, 2020, s 10
s 40C	ins No. 1, 2022, s 20
ss 41 – 43	sub No. 20, 2020, s 10
s 44	sub No. 20, 2020, s 10 amd No. 1, 2022, s 21
s 44A	ins No. 20, 2020, s 10 amd No. 1, 2022, s 22
ss 44B – 44C	ins No. 20, 2020, s 10
s 50	amd No. 20, 2020, s 11
s 51	amd No. 20, 2020, s 12
s 52	amd No. 20, 2020, s 13
pt 5	
div 6 hdg	amd No. 20, 2020, s 14
s 53	amd No. 12, 2015, s 45; No. 20, 2020, s 15
s 59	amd No. 20, 2020, s 16
s 62	amd No. 20, 2020, s 17
s 63	amd No. 20, 2020, s 18
s 64	amd No. 20, 2020, s 19
s 67	amd No. 20, 2020, s 20
s 73	amd No. 20, 2020, s 21
s 76	amd No. 12, 2015, s 46
s 87	amd No. 12, 2015, s 47
s 96	amd No. 12, 2015, s 48
s 101	amd No. 20, 2020, s 42
s 104	amd No. 20, 2020, s 42
s 108	amd No. 12, 2015, s 49
s 118	sub No. 20, 2020, s 22
s 119	amd No. 20, 2020, s 23
s 121	amd No. 20, 2020, s 24
s 123	amd No. 20, 2020, s 25

## ENDNOTES

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s 124	amd No. 20, 2020, s 26
s 125	amd No. 20, 2020, s 27
s 126	amd No. 20, 2020, s 28
s 127	amd No. 20, 2020, s 29
s 128	amd No. 12, 2015, s 50
s 131	amd No. 20, 2020, s 30
s 132	amd No. 12, 2015, s 51; No. 20, 2020, s 31
s 134	amd No. 20, 2020, s 32
s 136	amd No. 20, 2020, s 33
s 137	amd No. 20, 2020, s 34
s 143	amd No. 20, 2020, s 42
s 146	amd No. 20, 2020, s 35
s 148	amd No. 20, 2020, s 36
s 149	amd No. 20, 2020, s 37; No. 39, 2019, s 370
pt 13	
div 5A hdg	ins No. 20, 2020, s 38
s 153A	ins No. 20, 2020, s 38
s 155	amd No. 12, 2015, s 53; No. 20, 2020, s 39
s 156	exp No. 11, 2015, s 156(3)
pt 14	
div 1 hdg	rep No. 33, 2019, s 52
s 157	rep No. 33, 2019, s 52
pt 14	
div 3 hdg	ins No. 20, 2020, s 40
ss 164 – 166	exp No. 11, 2015, s 197 ins No. 20, 2020, s 40
pt 15 hdg	exp No. 11, 2015, s 197
pt 15	
div 1 hdg	exp No. 11, 2015, s 197
pt 15	
div 2 hdg	exp No. 11, 2015, s 197
pt 15	
div 2	
sdiv 1 hdg	exp No. 11, 2015, s 197
ss 167 – 172	exp No. 11, 2015, s 197
pt 15	
div 2	
sdiv 2 hdg	exp No. 11, 2015, s 197
ss 173 – 196	exp No. 11, 2015, s 197
pt 15	
div 3 hdg	exp No. 11, 2015, s 197
s 197	exp No. 11, 2015, s 197
sch 1	amd No. 12, 2015, s 57; No. 20, 2020, s 41
sch 2	rep No. 33, 2019, s 52