

# **NORTHERN TERRITORY OF AUSTRALIA**

## **DARWIN PORT CORPORATION ACT**

As in force at 20 September 1999

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 20 September 1999

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## DARWIN PORT CORPORATION ACT

**An Act to provide for the establishment of the Darwin Port Corporation for the control and management of the Port of Darwin, and for related purposes**

### 1 Short Title

This Act may be cited as the *Darwin Port Corporation Act*.

### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

### 3 Repeal

- (1) Section 7 of the *Marine Ordinance 1911* of the State of South Australia in its application to the Territory is repealed.
- (2) The Acts specified in Schedule 2 are repealed.

### 4 Act to bind Crown

This Act binds the Crown in right of the Territory.

### 5 Interpretation

- (1) In this Act, unless the contrary intention appears:

***approved*** means approved by the Port Corporation.

***assistant harbourmaster*** means an employee appointed under section 27 to be an assistant harbourmaster.

***Chairperson*** means the person appointed under section 7A(3) and includes a person elected under section 7F(4) to be the Chairperson for a meeting.

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**Chief Executive Officer** means the Chief Executive Officer appointed under section 8(1) and includes the person appointed under section 9 to act as Chief Executive Officer, while the person is so acting.

**dangerous goods** means goods listed as dangerous goods in the International Maritime Dangerous Goods Code, published by the International Maritime Organization, London, in 1965 or that Code as amended to the date, if any, specified under subsection (2) by the Minister.

**director** means a person appointed under section 7A.

**employee** has the same meaning as it has in the *Public Sector Employment and Management Act*.

**harbourmaster** means the employee appointed under section 25 to be the harbourmaster and includes an employee appointed under that section to act as harbourmaster, while he or she is so acting.

**land** includes land and buildings on land.

**licence** means a licence or permit granted under this Act or a renewal of a licence or permit.

**licensed pilot** has the same meaning as in the *Marine Act*.

**master** has the same meaning as in the *Marine Act*.

**member** means a director or the Chief Executive Officer.

**oil** means crude oil, fuel oil, heavy diesel oil or lubricating oil and includes a mixture containing oil.

**owner**, in relation to a vessel, includes an owner, part owner and charterer and an agent of any of them.

**place** includes:

- (a) every structure and apparatus on, and everything and every vehicle resting on or moving over, land;
- (b) everything resting on or lying under the bed or shores of waters within the Port; and
- (c) everything afloat (other than a vessel) if it is anchored or attached to the bed or shore of waters within the Port.

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**Port** means the area of water and land constituting the Port of Darwin comprised within the boundaries declared under section 43A.

**Port Corporation** means the Darwin Port Corporation established by section 6.

**port facilities** means land, buildings, machinery and equipment for:

- (a) berthing, towing, mooring or docking or moving vessels on entering, using or leaving the Port;
- (b) the loading or unloading of cargo, containers or goods;
- (c) the embarking or disembarking of passengers;
- (d) the lighterage, sorting, weighing, warehousing, storing or handling of goods or cargo; or
- (e) recreational, tourist and commercial purposes.

**port officer** means an employee appointed under section 28 to be a port officer.

**port superintendent** means the employee appointed under section 23 to be the port superintendent and includes an employee appointed under that section to act as port superintendent, while he or she is so acting.

**repealed Act** means the Acts repealed by section 3.

**undesirable substance** means:

- (a) rubbish, gravel, earth, stone or wreck;
- (b) flammable, corrosive or offensive substances (whether solid, liquid or gaseous) and includes dangerous goods;
- (c) an article or thing or a substance (whether solid, liquid or gaseous) which is capable of constituting a hazard to navigation or of preventing or hindering the development of or proper use of the Port;
- (d) oil; or
- (e) any other noxious or hazardous substance.

**vessel** has the same meaning as in the *Marine Act* and includes a seaplane.

- (2) For the purposes of the definition of ***dangerous goods*** in subsection (1) the Minister may, by notice in the *Gazette*, specify a date.

## **Part II                      Darwin Port Corporation**

### **Division 1                Establishment and constitution of Port Corporation**

#### **6                      Darwin Port**

- (1) There is established by this Act a Corporation by the name of the Darwin Port Corporation.
- (2) The Port Corporation:
- (a) is a body corporate with perpetual succession;
  - (b) shall have a common seal; and
  - (c) is capable, in its corporate name, of acquiring, holding and disposing of real, leasehold and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Port Corporation affixed to a document and shall presume that it was duly affixed.

#### **7                      Constitution of Port Corporation**

The Port Corporation is constituted by:

- (a) the Chief Executive Officer; and
- (b) the directors.

#### **7A                      Appointment of directors**

- (1) The Minister is to appoint 4 persons to be directors of the Port Corporation.
- (2) One of the persons appointed under subsection (1) is to be an employee.
- (3) The Minister is to appoint one of the directors to be the Chairperson of the Port Corporation.
- (4) In subsection (2), ***employee*** includes a Chief Executive Officer as defined in the *Public Sector Employment and Management Act*.

**7B Period of appointment**

- (1) A director holds office for the period specified by the Minister.
- (2) The period of a director's appointment is to be not longer than 3 years.
- (3) A director may be re-appointed at the end of his or her appointment.

**7C Leave of absence**

The Minister may grant leave of absence to a director on terms and conditions that the Minister thinks fit.

**7D Resignation of director**

A director may resign his or her office by writing signed by the director and delivered to the Minister.

**7E Dismissal of director**

- (1) The Minister may terminate the appointment of a director for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of a director who:
  - (a) is absent from 3 consecutive meetings of the Port Corporation, except on leave granted under section 7C; or
  - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

**7F Meetings of Port Corporation**

- (1) The Chairperson must call as many meetings of the Port Corporation as are necessary for it to perform its functions and to exercise its powers.
- (2) The Minister may direct the Chairperson to call a meeting of the Port Corporation and the Chairperson must call a meeting if directed to do so.
- (3) The Chairperson must preside at all meetings of the Port Corporation that he or she attends.
- (4) If the Chairperson is not present at a meeting, the members present are to elect a person to be Chairperson for the meeting.

- (5) At a meeting of the Port Corporation:
  - (a) the Chairperson and not less than 3 other members constitute a quorum;
  - (b) questions arising are to be determined by a majority of the votes of the members present and voting;
  - (c) the Chairperson has a casting vote as well as a deliberative vote in the event of an equality of votes; and
  - (d) subject to this Act, the Port Corporation is to determine the procedure to be followed at or in connection with the meeting.
- (6) The Port Corporation must keep records of its meetings.

## **7G Disclosure of interest**

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Port Corporation must disclose the nature of the interest at a meeting of the Port Corporation as soon as possible after the relevant facts come to the member's knowledge.
- (2) The disclosure is to be recorded in the minutes of the Port Corporation.
- (3) After the disclosure and while he or she has the interest, the member:
  - (a) except as otherwise provided by a resolution of the Port Corporation, must not take part in any deliberation or decision of the Port Corporation in relation to the matter; and
  - (b) is to be disregarded for the purpose of constituting a quorum of the Port Corporation in relation to the matter.
- (4) The member:
  - (a) may withdraw from the meeting during any period of deliberation or decision in which the member is prohibited from taking part; and
  - (b) must withdraw if directed by the Chairperson.
- (5) A member does not have to disclose an interest that he or she holds in common with the other members of an incorporated company consisting of not less than 25 persons and of which he or she is not a director.



## **7H                      Protection of directors**

An action or proceeding, civil or criminal, does not lie against a member for or in respect of an act or thing done or omitted to be done in good faith by the member in his or her capacity as a member.

## **Division 1A              Chief Executive Officer**

### **8                      Chief Executive Officer**

- (1) The Minister shall appoint a person to be the Chief Executive Officer.
- (2) The Chief Executive Officer is, subject to the directions of the Port Corporation, to administer the day to day operations of the Port Corporation.
- (3) Subject to this section, the Chief Executive Officer holds office on such terms and conditions as the Administrator determines.

### **9                      Acting appointment**

- (1) The Minister may, in writing, appoint a person to act as the Chief Executive Officer during a period, or during all periods, when the Chief Executive Officer is absent from duty or from the Territory or during a vacancy in the office.
- (2) The Minister may at any time terminate an appointment made under subsection (1).
- (3) The validity of a decision of the Port Corporation shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment under this section had ceased to have effect.

### **10                     Delegation by Chief Executive Officer**

- (1) The Chief Executive Officer may, by instrument in writing, delegate to a person any of his or her powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Chief Executive Officer.

- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Chief Executive Officer.

## **Division 2                  Functions and powers of Port Corporation**

### **15                  Ministerial control**

- (1) The Port Corporation, in the exercise of its powers and the performance of its functions, is subject to the written directions of the Minister.
- (2) An estate in fee simple in land within the Port vested in the Port Corporation shall not be capable of being transferred or otherwise divested except with the approval in writing of the Minister.

### **16                  Functions of Port Corporation**

- (1) Subject to section 15, the Port Corporation is responsible for:
- (a) the regulation, improvement, management, operation and control of and the promotion of trade within the Port;
  - (b) the movement of vessels in the Port;
  - (c) the provision and maintenance of port facilities; and
  - (d) recreational, tourist and commercial activities in the Port.
- (2) Without limiting the generality of subsection (1), the functions of the Port Corporation are:
- (a) within the Port to:
    - (i) control and deal with land vested in it;
    - (ii) control and regulate the use of all waters;
    - (iii) provide, erect, maintain, operate and control, alter by design, improve and extend the port facilities placed under its control by or under this Act and to acquire land or property for that purpose;
    - (iv) provide, maintain, operate and control services and facilities for the berthing, mooring, loading and unloading of vessels and for the storage of goods at, and transport of goods to and from, a place where they are to be loaded onto or unloaded from a vessel;

- (v) provide, maintain, operate and control lighters and other craft for the loading or unloading of vessels;
  - (vi) provide a pilotage service;
  - (vii) provide, maintain, operate and control services and facilities for the reception, handling, packing and unpacking and repairs of containers;
  - (viii) acquire, erect, maintain and operate warehouses, storehouses, bins and tanks for the reception and holding of fuel (either solid or liquid) or liquids and yards for the holding of animals;
  - (ix) provide, maintain, operate and control vessels and equipment necessary for the Port Corporation's management, control and servicing of the Port;
  - (x) provide, maintain, operate and control services and facilities for the employment of stevedores and other persons employed within the Port;
  - (xi) construct and maintain harbour works;
  - (xii) dredge and maintain channels and berthing places;
  - (xiii) build retaining walls for the purpose of reclaiming, and reclaim and obtain title to, land being part of the bed of the Port;
  - (xiv) act as the agent of an approved person for the installation of navigation aids and the prevention of pollution of waters by oil;
  - (xv) provide for the security of property and for the preservation and protection of property and maintain law and order;
  - (xvi) do all such other acts as will facilitate the use of the Port by shipping; and
  - (xvii) develop and manage recreational, tourist and commercial facilities in the Port;
- (b) outside the Port to:
- (i) control and deal with land vested in it;
  - (ii) provide housing and accommodation for employees as it thinks fit;

- (iii) provide training facilities for employees; and
  - (iv) purchase or take land or otherwise acquire and construct buildings, for use by it; and
- (c) both within and outside the Port – to manage, control and assist in the clean up of any pollution of waters by oil or other noxious or hazardous substances.

## **17 Powers of Port Corporation**

- (1) Subject to section 15, the Port Corporation has power to do all things that by or under this Act it is required or permitted to do, or that are necessary or convenient to be done for or in connection with, or that are reasonably incidental to, the performance of its functions.
- (2) Without limiting the generality of subsection (1), the Port Corporation has power to:
  - (a) purchase or lease or otherwise acquire land and construct buildings for use in the performance of its functions;
  - (b) dispose of land by way of sale, lease, licence or sub-lease;
  - (c) control the use of the foreshores in the Port subject to any right of tenancy or occupation granted by or under a law of the Territory;
  - (d) purchase, lease or take on hire plant, machinery, equipment or other things necessary for the performance of its functions and to sell, lease, hire or otherwise dispose of any plant, machinery, equipment or other things owned by it;
  - (e) appoint agents;
  - (f) impose dues and levy charges for or in respect of the Port on shipping using the Port or in respect of the use of a port facility provided or for an operation carried on by it or its agents in the Port;
  - (g) impose charges for or in respect of prescribed substances passing through the Port or any part thereof, regardless of whether there is any use of a port facility provided or any benefit is received from an operation carried on by it or its agents in the Port;
  - (ga) impose charges and fees for the conduct of activities in the Port, or the use of facilities of the Port Authority, for recreational, tourist and commercial purposes;

- (h) enter into contracts and agreements for or in respect of the exercise of a power or the performance of a function by it;
- (j) accept, hold and enforce undertakings, indemnities, bonds or securities protecting it against loss or damage;
- (k) seize, remove, attach or dispose of a vessel, hulk or hull which is unsafe, sunk or stranded within the Port;
- (m) construct in the Port such roadways, railways or tramways as are necessary or convenient for the performance of its functions;
- (n) construct within the Port or on land under its control wharves, warehouses, tanks, bins, storehouses or port facilities;
- (na) construct, within the Port, buildings or facilities for use in connection with recreational, tourist and commercial activities;
- (p) issue a licence to a person, subject to such conditions as it thinks fit, for the carrying on of the business of a stevedore within the Port and it may make as a condition of the licence that the person, to whom a licence is issued, only impose a reasonable charge for any services rendered not exceeding those charges determined from time to time by it;
- (q) impose a fee for the issue of a licence to a stevedore and for the renewal of such a licence;
- (r) authorize the setting apart of wharves, docks, sheds, warehouses or port facilities for the use of specified persons or vessels;
- (s) establish and conduct business as a stevedore, warehouseman, carter or carrier;
- (sa) manage, establish and conduct business in connection with recreational, tourist and commercial activities;
- (t) appoint officers, who are employees, for the purposes of carrying out the powers and functions vested in it under this Act;
- (u) regulate and control the driving and parking of vehicles within the Port or on its land;
- (w) regulate and control the conduct and behaviour of persons within the Port or on its land and the conditions upon which persons may be admitted to or excluded from any part of the Port or its land; and

- (y) do anything incidental to any of its powers.

#### **17A            Port Corporation to take general commercial approach**

- (1) Subject to this Act and within a budget approved by the Minister, the Port Corporation is to act in a commercial manner.
- (2) If:
  - (a) the Minister considers it necessary or desirable for facilities or services to be provided by the Port Corporation; and
  - (b) the Port Corporation considers it appropriate to seek a contribution from the Territory (whether by grant, subsidy or loan) to provide, operate and maintain those facilities and services,

the Treasurer may make a contribution to the cost of providing, operating and maintaining the facilities that is estimated by the Port Corporation and agreed by the Treasurer.

#### **18             Delegation by Port Corporation**

- (1) The Port Corporation may, by instrument under its seal, delegate to a person any of its powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Port Corporation.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Port Corporation.

#### **19             Reports**

- (1) The Port Corporation shall, as soon as practicable after 30 June in each year, prepare a report on the administration of this Act and on the operation of the Port during the year ending on that date and furnish it to the Minister.
- (2) The Minister shall cause a copy of each report referred to in subsection (1) to be laid before the Legislative Assembly within 3 sitting days of the Legislative Assembly after its receipt by him or her.

## **20 Corporations law does not apply**

The Corporations Law does not apply to the Port Corporation except to the extent that the Corporations Law expressly binds the Crown.

## **Division 4 Staff of Port Corporation**

### **23 Port superintendent**

(1) The Chief Executive Officer may, by instrument in writing, appoint an employee to be the port superintendent.

(2) Where:

(a) the port superintendent is, or is expected to be, absent or is unable, for any reason, to exercise his or her powers or perform his or her functions of port superintendent; or

(b) there is a vacancy in the office of port superintendent,

the Chief Executive Officer may, by instrument in writing, appoint an employee to act in the office of port superintendent during his or her absence or incapacity or until the filling of the vacancy.

### **24 Delegation by port superintendent**

(1) The port superintendent may, by instrument in writing, delegate to an employee any of his or her powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the port superintendent.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the port superintendent.

### **25 Harbourmaster**

(1) The Chief Executive Officer may, by instrument in writing, appoint an employee to be the harbourmaster.

(2) Where:

(a) the harbourmaster is, or is expected to be, absent or is unable, for any reason, to exercise his powers or perform his or her functions of harbourmaster; or

(b) there is a vacancy in the office of harbourmaster,

the Chief Executive Officer may, by instrument in writing, appoint an employee to act in the office of harbourmaster during his or her absence or incapacity or until the filling of the vacancy.

## **26 Delegation by harbourmaster**

- (1) The harbourmaster may, by instrument in writing, delegate to an employee any of his or her powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the harbourmaster.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the harbourmaster.

## **27 Assistant harbourmaster**

- (1) The Chief Executive Officer may, by instrument in writing, appoint an employee to be an assistant harbourmaster.
- (2) An assistant harbourmaster has such powers and functions, as an assistant to the harbourmaster, as the Chief Executive Officer specifies in the instrument of appointment.

## **28 Pilots and port officers**

The Chief Executive Officer may, by instrument in writing, appoint:

- (a) a person who is a licensed pilot to carry out pilotage services within the compulsory pilotage areas of the Port as determined by the Port Corporation under the *Marine Act*; and
- (b) a port officer, who is an employee, for the purposes of carrying out powers and functions vested in the Port Corporation under this Act.



## **Part III                      Control and management of Port**

### **Division 1                  Control and management of Port**

#### **29                      Directions for movement, &c., of vessels within Port**

- (1) The port superintendent may give directions for regulating:
  - (a) the time and manner (including the taking on of a licensed pilot) in which a vessel shall enter into, depart from or lie in the Port; and
  - (b) the manner and position in which and the times at which cargo may be loaded onto, or unloaded from, a vessel, or ballast, water or fuel may be taken in or delivered from a vessel, or passengers may be taken in or landed from a vessel within the Port.
- (2) The harbourmaster 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.
- (3) The master of a vessel in the Port shall regulate the vessel according to the directions of:
  - (a) the port superintendent given under subsection (1); or
  - (b) the harbourmaster given under subsection (2).

Penalty:            \$1,000.

#### **30                      Removal, &c., of vessel for failure to comply with direction**

- (1) Where the master of a vessel fails to comply with a direction of the harbourmaster given under section 29(2), the harbourmaster may cause the vessel to be positioned, moored, unmoored, placed, anchored or removed accordingly.
- (2) In addition to a penalty for an offence of failing to comply with the directions of the harbourmaster, the owner or master of a vessel which the harbourmaster has caused to be positioned, moored, unmoored, placed, anchored or removed under subsection (1) is liable to pay all expenses incurred in the positioning, mooring, unmooring, placing, anchoring or removal of the vessel.
- (3) An amount which an owner or master is liable to pay under subsection (2) may be recovered as a debt due and payable to the Port Corporation.

- (4) A person shall not hinder or obstruct, or aid or abet a person to hinder or obstruct, the harbourmaster, or a person lawfully assisting the harbourmaster, in causing a vessel to be positioned, moored, unmoored, placed, anchored or removed under subsection (1).

Penalty: \$1,000.

**31 Vessel carrying flammable cargo, &c.**

- (1) Where a vessel requiring entry into the Port has on board as cargo:
- (a) flammable liquid in a quantity not less than 500 tonnes; or
  - (b) an explosive or other substance considered for the purposes of this section by the Chief Executive Officer to be a hazard or danger to the Port,

the Chief Executive Officer may require the owner of the vessel to:

- (c) give to him or her such security by way of bond, indemnity, guarantee or otherwise, or any combination of those methods, as he or she determines; or
- (d) have or obtain from an insurer, approved by him or her for the purposes of this section, a policy of insurance,

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.

- (2) The Chief Executive Officer may refuse or restrict entry into the Port of a vessel in respect of which the owner has refused or failed to give a security or to have an insurance as required under subsection (1), or refuse or restrict the loading, unloading, handling or storage of cargo on, from or in that vessel in the Port.

**32 Vessel, hulk or hull likely to cause damage, &c.**

- (1) Where, in the opinion of the Chief Executive Officer, a vessel, hulk or hull within the Port is in such a condition that it is unsafe, or likely to cause damage to, endanger or obstruct the passage, navigation or use of, the Port by a vessel, the Chief Executive Officer may, by notice in writing, direct the owner, master or occupier of the vessel, hulk or hull to remove, repair and make safe or destroy it and that person shall, within 7 days after the notice is served on him or her or such longer time as the Chief Executive Officer, in writing, allows, comply with the direction.
- (2) Where the owner, master or occupier on whom a notice under subsection (1) has been served fails to comply with the direction within the time allowed for his or her so doing, the Chief Executive

Officer may authorize a person to board, with or without workmen, vehicles, plant, equipment or materials, a vessel, hulk or hull and carry out the work required to comply with the direction (other than the destruction of the vessel, hulk or hull).

- (3) For the purposes of subsection (2), where the Chief Executive Officer does not know the name or address of the owner of the vessel, hulk or hull a notice shall be sufficiently given if it is addressed to the owner of the vessel, hulk or hull without specifying the name of any person and, in the absence of identification of the vessel, hulk or hull, if it describes the vessel, hulk or hull by such general description as the Chief Executive Officer thinks fit.
- (4) A notice shall be sufficiently given in circumstances referred to in subsection (3) if it is published in a newspaper circulating in Darwin.
- (5) The costs incurred by the Chief Executive Officer or authorized person in carrying out an action under subsection (2) may be recovered from the owner, master or occupier as a debt due and payable to the Port Corporation.
- (6) An owner, master or occupier who fails to comply with or contravenes a direction under subsection (1) is guilty of an offence.

Penalty: \$10,000 and \$1,000 for each day during which the offence continues.

- (7) A person shall not hinder or obstruct or aid or abet a person to hinder or obstruct, the Chief Executive Officer or a person authorized under subsection (2), or a person lawfully assisting him or her, in carrying out an action under that subsection.

Penalty: \$1,000.

### **33 Removal of vessel from Port**

- (1) Where the Minister is satisfied that a vessel is, because of its condition, a threat or danger to the Port or persons within or in the vicinity of the Port, he or she may, by notice in writing, direct the owner or master to remove the vessel or cause it to be removed from the Port and may specify the time within which the direction is to be complied with.
- (2) An owner or master who fails to comply with or contravenes a direction under subsection (1) is guilty of an offence.

Penalty: \$10,000 and \$1,000 for each day during which the offence continues.

### **34            Offence to cause damage to Port**

- (1) Subject to subsection (4), a person who:
- (a) puts an undesirable substance into or on a part of the Port; or
  - (b) allows an undesirable substance to fall or flow into or on the Port,
- is guilty of an offence.
- Penalty:        \$5,000 and \$500 for each day during which the offence continues.
- (2) Subject to subsection (4), where an undesirable substance is put, falls or flows into or on a part of the Port from a vessel, a place or apparatus used for transferring an undesirable substance from or to a vessel (whether to or from a place or to or from another vessel) and the undesirable substance is put, falls or flows into or on the Port from:
- (a) a vessel – the owner and the master of the vessel are each;
  - (b) a place – the occupier of the place is; or
  - (c) an apparatus – the person in charge of the apparatus is,
- guilty of an offence.
- Penalty:        \$5,000 and \$500 for each day during which the offence continues.
- (3) For the purposes of this section and sections 35 and 36 **occupier** means:
- (a) the person exercising by his or her servants or agents or otherwise a right of occupation of a place; or
  - (b) where the place has no occupier, the owner of the place but, if the place is a vehicle, does not include the occupier of the land on or over which the vehicle stands or moves.
- (4) This section does not apply to or in relation to anything done by or with the consent of the Port Corporation in the proper management, improvement or use of the Port.

## **35 Special defences**

- (1) Where the owner, master or another person concerned with a vessel is charged with an offence against section 34, it is a defence to prove that:
  - (a) putting the undesirable substance, or allowing the undesirable substance to fall or flow, into or on the Port was necessary for the purpose of securing the safety of the vessel or of preventing damage to the vessel or cargo or of saving life, and was reasonable in the circumstances;
  - (b) the undesirable substance fell or flowed from the vessel in consequence of damage to the vessel or cargo, and that all reasonable steps were taken after the occurrence of the damage for stopping or reducing the escape of the undesirable substance; or
  - (c) the undesirable substance fell or flowed from the vessel in consequence of leakage or loss which could not have been foreseen and avoided, and that all reasonable steps were taken to locate the leakage or loss and stop or reduce the leakage or loss of the undesirable substance.
- (2) Where the occupier of a place or the person in charge of apparatus is charged with an offence against section 34, it is a defence to prove that the undesirable substance fell or flowed into the Port in consequence of an accident which could not have been foreseen and avoided, and that all reasonable steps were taken to locate the leakage or source of escape of the undesirable substance and stop or reduce it.

## **36 Recovery of costs and expenses of removal of undesirable substance, &c.**

- (1) Where an undesirable substance is put, falls or flows into or on the Port, the Port Corporation may take such action as it thinks fit to remove, disperse, destroy or mitigate the damage caused by, the undesirable substance.
- (2) The Port Corporation may recover as a debt due and payable to it, and notwithstanding that proceedings for an offence against section 34 have not been taken, the costs incurred by it in taking action under subsection (1) from the person who put the undesirable substance, or allowed the undesirable substance to fall or flow, into or on the Port, or from the owner or master of the vessel, the occupier of the place on land, or the person in charge of the apparatus, from which the undesirable substance was put or fell or flowed into or on the Port and if there is more than one such

person, from any of them jointly or severally.

- (3) Where an undesirable substance has been removed under subsection (1), the Port Corporation may, if it thinks fit, sell the undesirable substance or any part of it and out of the proceeds of sale recover the costs incurred by it in taking action under that subsection, together with the costs and expenses of the sale, but:
- (a) nothing in this subsection shall prevent the destruction, dispersal or disposal (otherwise than by sale) of the whole or any part of the undesirable substance in any manner by the Port Corporation as it thinks fit;
  - (b) before selling the undesirable substance, the Port Corporation shall in writing demand payment by the person or, if more than one, one of the persons from whom they are recoverable under this section, of the costs incurred by it in taking action under subsection (1), and the undesirable substance shall not be sold until the expiration of 14 days after the demand is made;
  - (c) where, before the expiration of the time referred to in paragraph (b), the costs of removal are repaid in full to the Port Corporation and a person produces to the Port Corporation reasonable evidence of ownership of the undesirable substance, the undesirable substance shall be released by the Port Corporation to that person; and
  - (d) where the undesirable substance is sold under this subsection, the part, if any, of the net proceeds of sale remaining after the costs incurred in taking action under subsection (1) and the costs and expenses of the sale have been paid and recovered by the Port Corporation under this subsection:
    - (i) shall be held by the Port Corporation in a trust fund for 12 months and during that time may be paid by it to a person who produces reasonable evidence of ownership of the undesirable substance at the time of the sale; and
    - (ii) if not so paid during that time, shall be paid to and become part of the revenue of the Port Corporation.
- (4) The rights conferred on the Port Corporation by this section shall be in addition to and not in derogation of or in substitution for any other rights which the Port Authority is entitled to exercise or pursue.

**37 Chief Executive Officer may declare certain wharfs, &c., to be set apart**

- (1) The Chief Executive Officer may, by instrument in writing, declare that a port facility be set apart for:
  - (a) the use of a specified vessel;
  - (b) the use of vessels engaged in a specified trade or trades;
  - (c) the use of vessels of a specified class or description;
  - (d) the use of a specified person or a person carrying on a specified business or trade for or in connection with:
    - (i) the berthing of vessels;
    - (ii) the reception, storage or handling of goods; or
    - (iii) the performance or provision of services with respect to vessels or the reception, storage or handling of goods; or
  - (e) any other use which the Chief Executive Officer thinks fit.
- (2) A declaration under subsection (1), shall include, where applicable:
  - (a) the period of use;
  - (b) the terms and conditions of use;
  - (c) the rent to be paid or other payment in respect of that use; and
  - (d) any limitations or restrictions to which that use is subject.

**Division 2 Issue of licences**

**38 Application for licence**

- (1) A person may apply to the Port Corporation for a licence for the purposes of the carrying on of a business of a stevedore within the Port.
- (2) An application under subsection (1) shall be in an approved form.
- (3) The Port Corporation shall consider an application made under subsection (1) and may grant or refuse to grant a licence, subject to such conditions, including as to its duration, as it thinks fit and endorses on the licence.

- (4) In considering an application under subsection (1), the Port Corporation may have regard to:
- (a) whether the applicant is a fit and proper person to possess the licence;
  - (b) the applicant's experience, equipment and financial position;
  - (c) the standard of the applicant's equipment, efficiency, skill and ability to provide services; and
  - (d) any other matter it thinks fit.

### **39 Suspension and cancellation of licence**

- (1) The Minister may, if in or her opinion it is necessary or desirable in the public interest so to do, direct the Port Corporation to suspend, cancel, vary or impose a condition on, a licence in accordance with subsection (2).
- (2) The Port Corporation, on receiving a direction from the Minister under subsection (1) shall, by 6 months notice served on the licensee:
- (a) suspend the licence;
  - (b) cancel the licence;
  - (c) vary a condition to which the licence is subject; or
  - (d) impose in respect of the licence a condition in accordance with the direction.
- (3) A notice under subsection (2) shall:
- (a) set out the reasons for the action specified in the notice; and
  - (b) if the licence is to be cancelled, require the surrender of the licence document on the expiration of the 6 months period of the notice.
- (4) Where a notice under subsection (2) has been served on a licensee and, within the period of the notice, the term of the licence would, but for this subsection, expire, the licence shall be deemed to remain in force until the expiration of the period of the notice unless it is sooner cancelled under subsection (5).



- (5) Notwithstanding subsections (1) and (2), the Port Corporation may cancel, or suspend for such period as it thinks fit, a licence where the licensee contravenes or fails to comply with a condition to which the licence is subject.

**40            Penalty for carrying on business, &c., whilst unlicensed**

- (1) A person shall not carry on a business of a stevedore within the Port unless he or she holds a licence to do so which has not been suspended.

Penalty:        \$1,000 and \$100 for each day during which the offence continues.

- (2) In any proceedings for an offence against subsection (1), an averment by the prosecutor in a complaint or information that a specified person was unlicensed at the time when the offence was committed is evidence of the fact so averred.

**Division 3            Liability**

**41            Liability of Port Corporation, &c., for loss or damage**

The Port Corporation or an employee is not civilly or criminally liable for:

- (a) loss or damage arising out of an action or omission under this Part; or
- (b) loss or damage arising out of an action or omission in the storage or handling of goods,

caused or permitted by it or him or her in the performance, in good faith, of its or his or her duties or powers under this Act, including its or his or her duties or powers as a bailee.

**42            Liability of owner and master**

The owner of a vessel is liable for loss or damage caused by a vessel within the Port with or without proof of negligence or intent, and the master is, with proof of negligence or intent, with the owner, jointly and severally so liable.

## **Part IV                      Miscellaneous**

### **43A              Boundaries of Port**

The Minister may, from time to time, by notice in the *Gazette*, declare the boundaries of the area of water and land constituting the Port of Darwin.

### **44                      Value of improvements, &c.**

The Port Corporation may, on the expiration or determination of a lease granted or deemed to have been granted by it:

- (a) pay to the lessee the value, as determined by the Valuer-General, of any improvements lawfully erected by the lessee on the land comprised in the lease;
- (b) pay to the lessee the cost of reclamation work lawfully carried out by the lessee for or in connection with the purpose of the lease; or
- (c) require the lessee to remove, at his or her own expense, any improvements erected on the land comprised in the lease.

### **45                      Exemption from rates, charges, &c.**

- (1) Subject to subsection (3), land vested in the Port Corporation is exempt from local government rates, charges and taxes.
- (2) Subsection (1) does not apply so as to exempt the Port Corporation from payment of charges for a commodity or service provided or supplied by a municipal or community government council whether the charge made be assessed on the value of land occupied by or vested in the Port Corporation or otherwise.
- (3) Where land vested in the Port Corporation is leased to a person, that land is not exempt from rates, charges or taxes under this section.
- (4) Where a law authorizes the imposition or levy of a rate, charge or tax on the land referred to in subsection (3), that rate, charge or tax shall be payable by the lessee or tenant of the land and not by the Port Corporation.

### **46                      Recovery of fees, &c.**

- (1) A fee, rate, due or charge imposed or levied by or under this Act is a debt due and payable to the Port Corporation.

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- (2) The Port Corporation shall have a lien on a vessel or goods in respect of which a fee, rate, due or charge or rental for storage is due and payable and the Port Corporation may seize, attach and detain the vessel or goods until the fee, rate, due, charge or rental for storage is fully paid.
  - (3) Where a fee, rate, due or charge or rental for storage remains unpaid, the Port Corporation may, after the expiration of 3 months after the date of the seizure, attachment and detention referred to in subsection (2), sell the vessel or goods by public auction to recover the amount owing to it.
  - (4) In proceedings for the recovery of a fee, rate, due, charge or rental, the production of a document certified in writing by the Chief Executive Officer showing what purports to be the amount owing and particulars of a fee, rate, due, charge or rental is prima facie evidence that the amount and particulars in respect of that fee, rate, due, charge or rental are correct.

#### **47 Contravention of or failure to comply with order or direction**

A person who contravenes or fails to comply with an order or direction given in pursuance of this Act or the by-laws by an employee, being an order or direction for the contravention of which, or failure to comply with which no other penalty is expressly provided by this Act or the by-laws, is guilty of an offence.

Penalty:       \$1,000 and \$100 for each day during which the offence continues.

#### **48 By-laws**

- (1) The Port Corporation may make by-laws, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed by by-laws or are necessary or convenient to be so prescribed, for the control, regulation and management of the Port and in particular for providing for or in relation to:
  - (a) the control, supervision and instruction of employees of, and the control of property vested in or belonging to, the Port Corporation;
  - (b) the security and facility of navigation in the Port;
  - (c) the regulation, control and supervision of loading and unloading and of the use of machinery, equipment and appliances in loading and unloading and of the storage, and handling of goods and cargo, in the Port;
  - (d) the mode of leasing and licensing under this Act;

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- (e) the construction of wharves, docks, piers, jetties or embankments and of sheds, landing stages, slips, platforms, railways, tramways or hoisting sheers and engines;
  - (f) the dredging, cleansing and scouring and the improvement of the bed and channel of the Port and the abating and removing of wrecks and impediments, obstructions and nuisances to navigation in the Port;
  - (g) the supply and removal of ballast and water for shipping;
  - (h) the improvement and management of facilities in the Port;
  - (ha) the control, regulation, management and conduct of recreational, tourist and commercial activities and the use of facilities in the Port for those purposes;
  - (k) prescribing substances for the purposes of section 17(2)(g) and the charges which may be imposed in respect of those substances;
  - (m) carrying out and performing the functions and responsibilities of a pilotage authority;
  - (n) the regulation and management of vessels, except where provided by the *Marine Act*, but including the anchoring, mooring and fastening and shifting,
  - (p) the regulation and control of the use of lights and fire on board vessels within the Port;
  - (q) the appointing of places for the loading or unloading and the manner of loading or unloading, handling and storage of dangerous goods;
  - (r) the licensing of persons to establish and operate as, or carry on the business of, stevedores;
  - (t) the sorting, stacking, storage or delivery of cargo;
  - (u) the prevention of pollution;
  - (w) the procedure and the manner in which tenders are to be invited and contracts made;
  - (y) the regulation (including the prohibition), management and control of vehicular traffic and pedestrians;
  - (z) the erection and form of traffic signs;

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- (za) the manner in which the length or tonnage of a vessel may be ascertained;
  - (zb) the regulation and control of the conduct and behaviour of persons within the Port and the conditions upon which persons may be admitted to or excluded from any part of the Port;
  - (zc) the payment and recovery of fees, rates, dues, rentals or charges imposed by this Act; and
  - (zd) the imposition of penalties (not exceeding a fine of \$10,000) for a contravention of or failure to comply with the By-laws.
- (2) Where there is an inconsistency between a by-law made under this section, or continued under section 50(1) to apply, and a provision of or under the *Dangerous Goods Act*, the provision of or under the *Dangerous Goods Act* shall, to the extent of the inconsistency, cease to apply.

#### **49 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

#### **50 Savings**

- (1) Notwithstanding the repeals effected by section 3, the By-laws made under the repealed Act and in force immediately before the commencement of this Act continue to apply to the same extent as if the repealed Act had continued in operation and may be amended or repealed as if they were by-laws made under this Act.
- (2) Where, immediately before the commencement of this Act, the Northern Territory Port Authority had a title to or an interest in an asset, or had a right, privilege, obligation or liability, contingent or otherwise, that title, interest, right, privilege, obligation or liability is transferred to the Port Authority.
- (3) Where, immediately before the commencement of this Act, an activity was being carried on by or in the name of the Northern Territory Port Authority, the Port Authority may, subject to this Act, continue to carry on that activity.
- (4) Where, immediately before the commencement of this Act, a person was:
- (a) the Chairman;

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- (b) a member;
  - (c) the harbourmaster or assistant harbourmaster; or
  - (d) an authorized officer,

of the Northern Territory Port Authority he or she continues under this Act to be the Chairman, member, harbourmaster, assistant harbourmaster or authorized officer, as the case may be, as if appointed under this Act.

- (5) An action, prosecution or other proceeding begun under the Ports Act as then in force before the commencement of this Act may be continued as if this Act had never commenced, and an action, prosecution or other proceeding in respect of a thing done or omitted to be done under the Ports Act as then in force before the commencement of this Act may be brought, taken and prosecuted in the same manner as if this Act had never commenced.
- (6) Money that, if this Act had not come into operation, would be or become payable to the Northern Territory Port Authority is, or will become, as the case may be, payable to the Port Authority.
- (7) Where a transfer is effected by subsection (2), the Port Authority continues an action by virtue of subsection (5), or money is or becomes payable by virtue of subsection (6), this Act is sufficient authority in relation to that money or to the matter transferred or continued:
  - (a) for a person having control of a register to register the transfer;
  - (b) for the Port Authority, in its own name, to take or continue an action, or to do any other thing that, if this Act had not commenced, the Northern Territory Port Authority could have taken, continued or done; and
  - (c) for a person or body to take or continue an action, or to do any other thing, in relation to the Port Authority, that, if this Act had not commenced, that person or body could have taken, continued or done in relation to the Northern Territory Port Authority.
- (8) Where, immediately before the commencement of this Act, a person had under the repealed Act, or the By-laws as then in force, a licence, or a certificate of registration in respect of a vessel, issued by the Northern Territory Port Authority, that person or vessel shall, on the commencement of this Act, be deemed to be licensed or registered, as the case may be, under this Act or the By-laws, and this Act, or the By-laws shall apply subject to the

same terms and conditions, not inconsistent with this Act or the By-laws, as then applied to and in relation to the licence or certificate of registration as if the licence or certificate of registration were specified under this Act or the By-laws in the licence or certificate of registration.

- (9) In this section ***the Northern Territory Port Authority*** means the Northern Territory Port Authority established under the repealed Act.

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**Schedule 2**

section 3

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**REPEALED ORDINANCES AND ACTS**


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Number and year	Short title
No. 47, 1962	<i>Ports Ordinance 1962</i>
No. 51, 1963	<i>Ports Ordinance 1963</i>
No. 1, 1968	<i>Ports Ordinance (No. 2) 1967</i>
No. 2, 1970	<i>Ports Ordinance 1969</i>
No. 52, 1971	<i>Ports Ordinance 1971</i>
No. 7, 1972	<i>Ports Ordinance 1972</i>
No. 12, 1973	<i>Ports Ordinance 1973</i>
No. 44, 1974	<i>Ports Ordinance 1974</i>
No. 45, 1974	<i>Ports Ordinance (No. 2) 1974</i>
No. 64, 1974	<i>Ports Ordinance (No. 3) 1974</i>
No. 25, 1975	<i>Ports Ordinance 1975</i>
No. 34, 1976	<i>Ports Ordinance 1976</i>
No. 50, 1978	<i>Ports Ordinance 1978</i>
No. 81, 1979	<i>Ports Act 1979</i>
No. 36, 1981	<i>Ports Amendment Act 1981</i>
No. 81, 1981	<i>Ports Amendment Act (No. 2) 1981</i>

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## ENDNOTES

**1****KEY**

Key to abbreviations

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

**2****LIST OF LEGISLATION*****Darwin Port Authority Act 1983 (Act No. 71, 1983)***

Assent date	28 November 1983
Commenced	1 January 1984 ( <i>Gaz</i> S44, 30 December 1983)

***Darwin Port Authority Amendment Act 1984 (Act No. 27, 1984)***

Assent date	20 July 1984
Commenced	20 July 1984

***Public Service and Statutory Authorities Amendment Act 1985 (Act No. 28, 1985)***

Assent date	26 June 1985
Commenced	26 June 1985

***Darwin Port Authority Amendment Act 1986 (Act No. 74, 1986)***

Assent date	30 December 1986
Commenced	30 December 1986

***Statute Law Revision Act (No. 2) 1987 (Act No. 59, 1987)***

Assent date	31 December 1987
Commenced	31 December 1987

***Darwin Port Authority Amendment Act 1993 (Act No. 15, 1993)***

Assent date	16 June 1993
Commenced	8 July 1993 ( <i>Gaz</i> S57, 8 July 1993)

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and <i>Gaz</i> S53, 29 June 1993)

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***Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)***

Assent date 31 December 1993  
Commenced 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and Gaz S35, 20 May 1994)

***Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)***

Assent date 21 March 1995  
Commenced 1 April 1995 (s 2, s 2 *Financial Management 1995* (Act No. 4, 1995) and Gaz S13, 31 March 1995)

***Darwin Port Authority Amendment Act 1998 (Act No. 80, 1998)***

Assent date 21 October 1998  
Commenced 20 September 1999 (Gaz S37, 1 September 1999)

### 3 SAVINGS AND TRANSITIONAL PROVISIONS

s 9(2) *Darwin Port Authority Amendment Act 1993* (Act No. 15, 1993)  
s 15 *Darwin Port Authority Amendment Act 1998* (Act No. 80, 1998)

### 4 LIST OF AMENDMENTS

It	amd No. 80, 1998, s.14
s 1	sub No. 80, 1998, s 4
s 5	amd No. 15, 1993, ss 4 and 12; No. 28, 1993, s 3; No. 80, 1998, s 5
pt 2 hdg	amd No. 80, 1998, s 14
pt 2	
div 1 hdg	amd No. 80, 1998, s 14
s 6	amd No. 80, 1998, s 14
s 7	sub No. 15, 1993, s 5; No. 80, 1998, s 6
ss 7A – 7H	ins No. 80, 1998. s. 6
pt 2	
div 1A hdg	ins No. 80, 1998, s 6
s 8	amd No. 28, 1985, s 9
	sub No. 15, 1993, s 5
	amd No. 28, 1993, s 3; No. 80, 1998, s 7
s 9	sub No. 15, 1993, s 5
	amd No. 80, 1998, s 14
s 10	amd No. 28, 1985, s 9
	sub No. 15, 1993, s 5
ss 11 – 13	rep No. 15, 1993, s 5
s 14	rep No. 5, 1995, s 19
pt 2	
div 2 hdg	amd No. 80, 1998, s 14
s 15	amd No. 80, 1998, s 8
s 16	amd No. 15, 1993, s 6; No. 80, 1998, ss. 9 and 14
s 17	amd No. 15, 1993, s 7; No. 80, 1998, s 14
s 17A	ins No. 80, 1998, s 10
ss 18 – 19	amd No. 80, 1998, s 14
pt 2	
div 3 hdg	om No. 80, 1998, s 12
ss 19A – 19G	ins No. 15, 1993, s 8
	rep No. 80, 1998, s 12
s 20	rep No. 15, 1993, s 8
	ins No. 80, 1998, s 11
s 21	rep No. 15, 1993, s 8

pt 2	
div 4 hdg	amd No. 80, 1998, s 14
s 22	amd No. 28, 1985, s 9 rep No. 28, 1993, s 3
s 23	amd No. 15, 1993, s 12; No. 80, 1998, s 14
s 24	amd No. 80, 1998, s 14
s 25	amd No. 15, 1993, s 12; No. 80, 1998, s 14
s 26	amd No. 80, 1998, s 14
s 27	amd No. 15, 1993, s 12
s 28	amd No. 15, 1993, s 12; No. 80, 1998, s 14
s 30	amd No. 80, 1998, s 14
ss 31 – 32	amd No. 15, 1993, s 12; No. 80, 1998, s 14
ss 33 – 34	amd No. 80, 1998, s 14
s 36	amd No. 80, 1998, s 14
s 37	amd No. 15, 1993, s 12
ss 38 – 41	amd No. 80, 1998, s 14
s 43	rep No. 80, 1998, s 14
s 43A	ins No. 15, 1993, s 9
s 44	amd No. 80, 1998, s 14
s 45	amd No. 84, 1993, s 6; No. 80, 1998, s 14
s 46	amd No. 15, 1993, s 12; No. 80, 1998, s 14
s 48	amd No. 15, 1993, s 10; No. 80, 1998, s 13 and 14
s 50	amd No. 80, 1998, s 14
sch 1	amd No. 27, 1984, s 2; No. 74, 1986, s. 2; No. 59, 1987, s 5 rep No. 15, 1993, s 11