

NORTHERN TERRITORY OF AUSTRALIA

PORT OF DARWIN ACT 2015

As in force at 9 June 2015

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 9 June 2015

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## PORT OF DARWIN ACT 2015

**An Act to authorise and facilitate the transfer of assets, rights and liabilities relating to, or connected with, the Port of Darwin, and for related purposes**

### **Part 1 Preliminary matters**

#### **1 Short title**

This Act may be cited as the *Port of Darwin Act 2015*.

#### **2 Commencement**

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

#### **3 Interpretation**

(1) In this Act:

**assets** means any legal or equitable estate or interest (whether present or future, vested or contingent or personal or assignable) in real or personal property of any description and includes money, securities, choses in action and documents.

**authorised transaction** means a transfer of port assets authorised by section 7(1).

**Darwin Port Corporation** means the Darwin Port Corporation established by section 6 of the *Darwin Port Corporation Act 1983*.

**designated port**, see section 3 of the *Ports Management Act 2015*.

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

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

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

**GOC** means a Government owned corporation as defined in section 3 of the *Government Owned Corporations Act 2001*.

**land** includes land covered by water.

**Land Development Corporation** means the Land Development Corporation established under section 4 of the *Land Development Corporation Act 2003*.

**lease** includes concurrent lease and any subletting (or concurrent subletting).

**liabilities** means any liabilities, duties or obligations (whether present or future, vested or contingent or personal or assignable).

**modification** includes addition, exception, omission and substitution.

**new port operator** means the entity that, as a result of a declaration made under section 8 of the *Ports Management Act 2015*, is or will be the operator of the Port of Darwin.

**port assets**, see section 4.

**Port of Darwin** means:

- (a) until the making of a declaration in respect of it as a designated port under section 7 of the *Ports Management Act 2015* – the area of water and land comprised within the boundaries as declared from time to time under section 43A of the *Darwin Port Corporation Act 1983*; and
- (b) on and from the making of a declaration in respect of it as a designated port under section 7 of the *Ports Management Act 2015* – the area of water and land comprised within the boundaries as declared from time to time under that section.

*Note for definition Port of Darwin*

See Gazette No. G19 of 17 May 2000 at page 3 for the declaration made under section 43A of the *Darwin Port Corporation Act 1983* on 26 April 2000.

**Port of Darwin land** means land that is a port asset.

**private sector entity** means an entity other than a public sector entity.

**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 GOC;
- (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.

**relevant authorisation** means a licence, permit, consent, approval, entitlement, accreditation, exemption or other authorisation under an Act.

**rights** means any rights, powers, privileges or immunities (whether present or future, vested or contingent or personal or assignable).

**transaction arrangement** means an agreement or other arrangement entered into by or on behalf of a public sector entity for the purposes of an authorised transaction.

**transaction company** means a body corporate established as a transaction company under section 11.

**transfer**, of port assets, includes the sale, lease or licence of port assets and the creation and transfer of any interest in port assets.

**transferee**, for Part 4, see section 16.

**transferor**, for Part 4, see section 16.

**vesting order**, see section 17(1).

- (2) Words and expressions used in this Act that are defined in section 9 of the Corporations Act 2001 have the same meanings as in that section, except in so far as they are defined differently in this Act or the context or subject matter otherwise indicates or requires.
- (3) An act, matter or thing is done, or has effect, for the purposes of an authorised transaction if it is done or has effect:
  - (a) for the purpose of effecting or facilitating an authorised transaction; or

- (b) for any purpose that is ancillary or incidental to, or consequential on, an authorised transaction; or
  - (c) for any purpose connected with the vesting of port assets in a public sector entity at any time after completion of an authorised transaction.
- (4) The assets, rights and liabilities of a body corporate include the assets, rights and liabilities of a wholly-owned subsidiary of the body corporate.
- (5) If this Act provides for an event or other thing to occur on a particular day, that event or thing is taken to occur at the beginning of that day.

#### **4 Meaning of *port assets***

- (1) ***Port assets*** means any of the following:
- (a) the assets, rights and liabilities of the Darwin Port Corporation;
  - (b) any assets, rights and liabilities of any other public sector entity that:
    - (i) relate to, or are connected with, the Port of Darwin; and
    - (ii) are designated by the Chief Minister under section 9(2) as port assets for this Act.
- (2) Assets, rights and liabilities transferred to a public sector entity for the purposes of an authorised transaction that were port assets immediately before their transfer continue to be port assets after that transfer.
- (3) Assets, rights and liabilities cease to be port assets when they are transferred (otherwise than under a lease or licence) to a private sector entity for the purposes of an authorised transaction.

#### **5 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) This Act does not render the Crown in any of its capacities liable to be prosecuted for an offence.

**6 Extraterritorial operation of Act**

- (1) It is the intention of the Legislative Assembly that the operation of this Act should, so far as possible, include operation in relation to the following:
  - (a) things situated outside the Territory, whether in or outside Australia;
  - (b) acts, omissions, transactions and matters done, made, entered into or occurring outside the Territory, whether in or outside Australia;
  - (c) things, acts, omissions, transactions and matters (wherever situated, done, made, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another Territory, a State or a foreign country.
- (2) This section does not limit the operation of any other provision of this Act.

**Part 2 Authorised transactions and proceeds****7 Authorised transactions**

- (1) The transfer of port assets from the Darwin Port Corporation or any other public sector entity to either a private sector entity or a public sector entity is authorised subject to the following limitations:
  - (a) Port of Darwin land can be leased or licensed to a private sector entity but the ownership of the freehold title to that land must remain with a public sector entity;
  - (b) a lease or licence of Port of Darwin land granted to a private sector entity cannot have a term that exceeds 99 years.
- (2) For subsection (1)(b), the period of 99 years begins from and includes the day on which the lease or licence is first granted to a private sector entity after the commencement of this Act and includes the term of any further lease or licence that may be granted to a private sector entity under an option.

- (3) There are no limitations on the nature of the entities that can be used, or on the kind of transaction arrangements that can be entered into, for the purposes of an authorised transaction.

*Examples for subsection (3)*

*An ownership structure involving a unit trust could be used. A transaction arrangement involving the grant of an easement could be entered into.*

- (4) Port assets can be transferred for the purposes of an authorised transaction in any manner.
- (5) Without limiting subsection (4), port assets of a body corporate (the **port assets holder**) can be transferred to another body corporate by the port assets holder becoming a wholly-owned subsidiary of the other body corporate.
- (6) No compensation is payable in connection with the transfer of port assets to a public sector entity under an authorised transaction, but this does not prevent the transfer being for consideration.
- (7) To avoid doubt, subsection (3) is not limited by section 11.

## **8 Proceeds of authorised transaction**

- (1) The proceeds of any transfer of port assets to a private sector entity under an authorised transaction (the **transaction proceeds**) belong to, and are payable directly to, the Territory.
- (2) The transaction proceeds include any payment to a public sector entity:
- (a) that is a premium or periodic payment under a lease or licence of port assets granted, or payable in respect of the grant of any other right, to the private sector entity; and
  - (b) in respect of a tax, duty, fee or charge imposed by any law of the Territory in connection with a transaction arrangement.
- (3) This section does not affect the validity or enforceability of any transaction arrangement, including one the validity of which is dependent on the provision of valuable consideration.



## **Part 3                    Facilitating authorised transactions**

### **9                    Chief Minister's functions**

- (1) The Chief Minister has, and may exercise:
  - (a) any functions that are necessary or convenient for the purposes of an authorised transaction; and
  - (b) any other function conferred on the Chief Minister under this Act.
- (2) The Chief Minister may, by written order, designate any assets, rights or liabilities of a public sector entity as port assets for this Act.

*Example for subsection (2)*

*Land within, or in the vicinity of, the Port of Darwin that is vested in a public sector entity.*

- (3) The Chief Minister may, by written order, designate a lease or licence of port assets as a port assets instrument for section 23.
- (4) The Chief Minister may, by written order, confirm that a specified thing done after the completion of an authorised transaction was done for the purposes of that transaction.
- (5) An order under subsection (2), (3) or (4) is conclusive as to the matters specified in it.

### **10                   Manner of effecting authorised transaction**

An authorised transaction must be effected as directed by the Chief Minister and can be effected in any manner considered appropriate by the Chief Minister.

### **11                   Transaction companies**

- (1) For the purposes of an authorised transaction, the Chief Minister may, by written order, direct that a body corporate be established as a transaction company in any way mentioned in subsection (2).
- (2) The ways are:
  - (a) the formation or acquisition by, or on behalf of, one or more public sector entities of a body corporate limited by shares, so that all the issued shares in the body corporate are held by, or on behalf of, the public sector entity or entities; or

- (b) the formation or acquisition of a body corporate as a wholly-owned subsidiary of a transaction company.
- (3) A body corporate established in accordance with a direction of the Chief Minister under subsection (1) is a transaction company for this Act.
- (4) A transaction company that is a public sector entity may be converted from one kind of body corporate to another.
- (5) Except with the written agreement of the Chief Minister:
  - (a) a transaction company is not, and does not represent, the Territory; and
  - (b) the liabilities of a transaction company are not guaranteed by the Territory.
- (6) The Chief Minister may act for, or on behalf of, a public sector entity (including a transaction company that is a public sector entity) in connection with the rights and liabilities of the public sector entity as the holder of shares or other securities in, or issued by, a transaction company.
- (7) Shares and other securities in, or issued by, a transaction company that is a public sector entity must not be issued, sold or transferred except:
  - (a) in accordance with a direction of the Chief Minister under section 13; or
  - (b) by the Chief Minister on behalf of the transaction company under subsection (8).
- (8) The Chief Minister may, on behalf of a public sector entity (including a transaction company that is a public sector entity), enter into and carry out a transaction arrangement for the issue, sale or transfer of shares or other securities in, or issued by, a transaction company.

## **12 Functions of Darwin Port Corporation and transaction companies**

- (1) The Darwin Port Corporation and each transaction company has, and may exercise, any functions that are necessary or convenient for the purposes of an authorised transaction.
- (2) The Chief Minister may act for, or on behalf of, the Darwin Port Corporation, or a transaction company that is a public sector entity, in the exercise of any of its functions for the purposes of an authorised transaction.

- (3) The functions conferred by this section are in addition to any other functions that the Darwin Port Corporation or the transaction company has apart from this section and those other functions do not prevent or otherwise limit the exercise of the additional functions conferred by this section.

### **13 Direction and control of public sector entities**

- (1) A public sector entity is subject to the direction and control of the Chief Minister in the exercise of any of its functions for the purposes of an authorised transaction.
- (2) The Chief Minister may, for the purposes of an authorised transaction, give a written direction to a public sector entity or to a director or other officer of a public sector entity.

*Example for subsection (2)*

*The Chief Minister may direct a public sector entity to execute a lease.*

- (3) Without limiting subsection (1) or (2), a direction under this section may:
- (a) specify how the public sector entity is to conduct its business or other affairs; or
  - (b) require the public sector entity to allow a transaction company to make use of the services of any employee of that entity for the period, or until the occurrence of an event, specified in the direction; or
  - (c) require the public sector entity to do something that it could not otherwise lawfully do or refrain from doing something that it could not otherwise lawfully refrain from doing.
- (4) The public sector entity, or the director or other officer, as the case requires, must comply with a direction under this section.
- (5) To avoid doubt, a direction under this section can only be given to a transaction company (or to a director or other officer of the company), and is only required to be complied with, while the company is a public sector entity.
- (6) Despite anything to the contrary in any Act, action taken by a public sector entity, or a director or other officer of a public sector entity, to comply with a direction under this section does not require the consent or approval of:
- (a) any other minister; or
  - (b) any other public sector entity; or

- (c) any public sector employee or other officer of, or person employed by, a public sector entity.
- (7) A provision of any other Act specifying a procedure to be followed in relation to a direction given by the Chief Minister or any other minister to a public sector entity, or to a director or other officer of a public sector entity, does not apply to a direction under this section.
- (8) This section does not affect the ability of a minister to give directions:
  - (a) to a GOC under the *Government Owned Corporations Act 2001*; or
  - (b) to the Land Development Corporation under section 8(1) of the *Land Development Corporation Act 2003*.
- (9) However, if there is an inconsistency between a direction of the Chief Minister under this section and a direction of a minister to which this subsection applies (whether given before or after the Chief Minister's direction), the Chief Minister's direction prevails to the extent of the inconsistency.
- (10) Subsection (9) applies to a direction:
  - (a) mentioned in subsection (8); or
  - (b) given under section 15 of the *Darwin Port Corporation Act 1983*.

#### **14 Immunity of directors and other officers**

- (1) A director or other officer of a public sector entity is not personally liable for anything done or omitted to be done by the director or officer in good faith:
  - (a) for the purpose of complying with a direction of the Chief Minister under section 13; or
  - (b) in the reasonable belief that the act or omission was for the purpose of complying with a direction of the Chief Minister under section 13.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

**15 Interaction between this Part and Corporations Act 2001**

- (1) The provisions of this Part are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act 2001 in relation to the provisions of the Corporations legislation generally.
- (2) In this section:  
**Corporations legislation** means the Corporations legislation to which Part 1.1A of the Corporations Act 2001 applies.

**Part 4 Vesting orders**

**16 Definitions**

In this Part:

**transferee** means an entity in which port assets are vested by a vesting order.

**transferor** means an entity from which port assets are divested by a vesting order.

**17 Making of vesting order**

- (1) For the purposes of an authorised transaction, the Chief Minister may, by written order (a **vesting order**), vest port assets in an entity specified in the order as the transferee.
- (2) To avoid doubt, a vesting order may be made:
  - (a) in respect of port assets that were vested in the transferor by an earlier vesting order; and
  - (b) for the purposes of an authorised transaction after the completion of that transaction.

**18 Vesting of port assets in transferee**

- (1) When port assets are vested by a vesting order:
  - (a) any assets comprised in the port assets vest in the transferee by operation of this Part and without the need for any conveyance, transfer, assignment or assurance; and
  - (b) any rights and liabilities comprised in the port assets become, by operation of this Part, rights and liabilities of the transferee; and

- (c) any proceedings relating to the port assets by or against the transferor that are pending immediately before the vesting are taken to be proceedings pending by or against the transferee; and
  - (d) the transferee has all the entitlements and obligations (whether actual or potential) in relation to the port assets that the transferor would have had but for the vesting; and
  - (e) any act, matter or thing done or omitted to be done in relation to the port assets by, to or in respect of the transferor is (to the extent that the act, matter or thing continues to have any force or effect) taken to have been done or omitted by, to or in respect of the transferee; and
  - (f) a reference in any Act, any instrument made under any Act or any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to the port assets) to be read as, or as including, a reference to the transferee; and
  - (g) the transferee becomes, by operation of this Part, the successor in law of the transferor in relation to the port assets.
- (2) The vesting of land that is subject to a lease is valid without an attornment by the lessee.
- (3) This section is subject to any provision made by the vesting order.

## **19 Terms and conditions**

- (1) A vesting order may be made on any terms and conditions that are specified in the order.
- (2) Without limiting subsection (1), a vesting order may:
- (a) specify the consideration for which a vesting is made and the value or values at which port assets are vested; or
  - (b) vest an interest in respect of land vested in the transferor without vesting the whole of the interests of the transferor in that land.
- (3) If an interest in land vested under a vesting order is not a separate interest, the vesting order operates to create the vested interest in the terms specified in the order.
- (4) This section does not limit any other provision of this Part.

**20 Certification to registration authorities**

- (1) A transferee or transferor may lodge with a registration authority a certificate certifying as to any information that may reasonably be required by the registration authority to enable the registration authority to exercise any of its functions arising in connection with a vesting under a vesting order.
- (2) The certificate must be accepted and acted on by the registration authority.
- (3) Despite anything to the contrary in any law, the registration authority is not entitled to require that information be provided to it in any particular form or in any particular manner.
- (4) No fee or charge is payable by the transferee or transferor to a registration authority for or in respect of the exercise by it of any function mentioned in subsection (1).
- (5) Unless the contrary is established, a document purporting to be a certificate given under this section is taken to be such a certificate and to have been properly given.
- (6) In this section:

**registration authority** means an entity that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities.

**21 Confirmation of vesting**

- (1) The Chief Minister may, by written order, confirm a vesting of particular port assets by a vesting order.
- (2) The written order is evidence of that vesting.

**22 Access to vesting orders**

- (1) This section applies if:
  - (a) a person requests a copy of the whole or any part of a vesting order from the Chief Minister; and
  - (b) the Chief Minister is satisfied that the person has a proper interest in having access to the vesting order.
- (2) The Chief Minister must give the person a copy of so much of the vesting order as relates to the person's interest.

## **Part 5                    Other arrangements related to authorised transactions**

### **23                    Effect of certain provisions of port assets instruments**

- (1) A provision of a port assets instrument dealing with any of the following matters has effect as if it were a provision of this Act, despite anything to the contrary in any law:
- (a) the payment of any amount by way of premium under the instrument, or the prepayment of amounts (including periodic payments such as rent) under the instrument, and the retention of those amounts by a party to the instrument or the Territory;
  - (b) the circumstances or conditions under which the instrument may be terminated by a party to it;
  - (c) the continuation of the instrument, including any obligation to make periodic payments, despite unintended or unforeseen circumstances arising including, for example, circumstances that would otherwise result in any obligations under the instrument:
    - (i) being incapable of performance; or
    - (ii) not being required to be performed;
  - (d) the amounts payable, and the rights and obligations of the parties to the instrument, in the event of a breach or termination of the instrument;
  - (e) the non-refundability in any circumstances (including the termination of the instrument) of any amount paid on account of rent, licence fee, premium, option fee, outgoings, security deposit or otherwise;
  - (f) the entitlement to, or the retention or application of, security;
  - (g) the payment of a sum that is in the nature of a penalty;
  - (h) the ownership of, or the vesting or forfeiture of ownership of, any real or personal property on termination of the instrument or on the occurrence of some other specified event or other thing;
  - (i) the liability of any party to the instrument in relation to the port assets;



- (j) the operation of any set-off.
- (2) In this section:
- port assets instrument*** means:
- (a) a lease or licence of port assets entered into for the purposes of an authorised transaction; or
  - (b) a lease or licence of port assets that is designated by the Chief Minister under section 9(3) as a port assets instrument for this section.

## **24 Direction to grant, issue or transfer relevant authorisation**

- (1) The Chief Minister may give a direction to a public sector entity for or with respect to the grant or issue of any relevant authorisation, or the transfer of any relevant authorisation, to a new port operator.
- (2) Without limiting subsection (1), a direction may do any of the following:
  - (a) require the grant, issue or transfer to be done without an application being made or determined;
  - (b) displace or modify any provision of a relevant law in its application to the grant, issue or transfer;
  - (c) specify the terms, conditions or endorsements subject to which the relevant authorisation is to be granted, issued or transferred or that are to be attached to it.
- (3) A direction for the grant or issue of a relevant authorisation may only require the grant or issue of an authorisation that:
  - (a) will replace a relevant authorisation that is in force immediately before the grant or issue; and
  - (b) is subject to terms, conditions or endorsements that are the same, or are to substantially the same effect, as those to which the replaced relevant authorisation is subject.
- (4) The Chief Minister must consult with a public sector entity before giving a direction to it under this section.
- (5) A public sector entity exercising functions under a relevant law must comply with a direction under this section.
- (6) This section does not prevent a relevant authorisation being vested in a new port operator under a vesting order.

(7) In this section:

**relevant law** means any Act or statutory instrument under which the Darwin Port Corporation held a relevant authorisation immediately before the commencement of this Act.

## **25 Provisions relating to grant, issue or transfer of relevant authorisation**

- (1) A relevant authorisation granted, issued or transferred to the Darwin Port Corporation or to a new port operator may not be suspended or cancelled on the ground of:
  - (a) the conversion of the Darwin Port Corporation or the new port operator into a different kind of entity; or
  - (b) any change in officers or shareholders resulting from that conversion or under a transaction arrangement.
- (2) Subsection (3) applies to anything done by the Darwin Port Corporation in relation to port assets in compliance with a term, condition or endorsement of a relevant authorisation.
- (3) The thing is to be taken to have been done by a new port operator for the purposes of any corresponding term, condition or endorsement of a relevant authorisation granted, issued or transferred to the new port operator under section 24.

## **26 Severance of fixtures**

- (1) This section applies to any fixtures that are:
  - (a) owned by the Darwin Port Corporation or another public sector entity; and
  - (b) situated on land owned by the Darwin Port Corporation or another public sector entity.
- (2) For the purposes of an authorised transaction, the Chief Minister may, by written order, direct that specified fixtures are severed from the land on which they are situated.
- (3) The effect of an order under subsection (2) is that the fixtures are severed from the land, and may be dealt with as personal property separate from the land, for the purposes of an authorised transaction.

- (4) An order under subsection (2) may provide for or with respect to:
- (a) the right for the fixture to continue to be situated on the land;  
or
  - (b) any right to do anything on that land in relation to the fixture.

**27 No relief against forfeiture**

- (1) Relief against forfeiture of a sublease of port assets (whether under section 138 or 139 of the *Law of Property Act 2000* or any other law of the Territory) is not available if the sublease is being terminated as a consequence of the lawful termination of the head lease of those port assets.
- (2) This section only applies to a sublease granted for the purposes of an authorised transaction.

**28 Crown Lands Act 1992 not to apply to lease or licence**

The *Crown Lands Act 1992* does not apply to a lease or licence of port assets entered into for the purposes of an authorised transaction.

**Part 6 Miscellaneous matters**

**29 Excluded matter for Corporations Act 2001**

Any act or omission of the Chief Minister under this Act is declared to be an excluded matter for the purposes of section 5F of the Corporations Act 2001 in relation to Chapter 2D of that Act.

**30 General relationship of Act with other provisions**

- (1) The following provisions do not operate to prevent, restrict or otherwise limit the carrying out of a transaction arrangement or the exercise of a function for the purposes of an authorised transaction:
- (a) any provision of the *Darwin Port Corporation Act 1983*;
  - (b) any provision of the *Government Owned Corporations Act 2001*;
  - (c) any provision of the *Land Development Corporation Act 2003*;
  - (d) any provision of the constitution of a GOC or a subsidiary of a GOC.

- (2) The *Information Act 2002* does not apply to anything done:
- (a) under a direction of the Chief Minister given under this Act or a vesting order or otherwise for the purposes of an authorised transaction; and
  - (b) that is, or involves, a disposal (as defined in section 4 of the *Information Act 2002*) of a record (as defined in that section) to a transaction company.
- (3) If there is an inconsistency between a provision of this Act or the regulations and a provision of any other law of the Territory that is prescribed by the regulations as an inconsistent provision for this section, the provision of this Act or the regulations (as the case requires) prevails to the extent of the inconsistency.

### 31 Compensation not payable

- (1) Compensation is not payable by or on behalf of the Crown, a public sector entity or an officer, employee or agent of the Crown or of a public sector entity:
- (a) because of 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); or
  - (b) for any consequence of that enactment, making, commencement or operation; or
  - (c) for any statement or conduct relating to that enactment or making.
- (2) This section does not extend to compensation payable under a transaction arrangement to a party to the arrangement in connection with the performance of obligations under it.
- (3) In this section:

**compensation** includes damages and any other form of monetary compensation.

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**Crown**, see section 4 of the *Crown Proceedings Act 1993*.

**operation of this Act** includes the operation of any agreement entered into under, or for, this Act or any statutory instrument made under this Act.

**statement** includes a representation of any kind:

- (a) whether made orally or in writing; and
- (b) whether negligent, false, misleading or otherwise.

### **32 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) a transfer of port assets for the purposes of an authorised transaction, including under a vesting order;
- (c) the entering into of, or performance of obligations by a public sector entity under, a transaction arrangement;
- (d) a disclosure of information by, on behalf of or with the consent or approval of, a public sector entity for the purposes of an authorised transaction;
- (e) 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; or
- (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; or
- (c) are not to be regarded as fulfilling any condition which allows a person to exercise a right or remedy in respect of, or to terminate, any agreement or obligation; or

- (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; or
- (e) are not to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
- (f) are not to be regarded as frustrating any contract; or
- (g) do not release any surety or other obligee wholly or in part from any obligation.

### **33 Delegation**

The Chief Minister may delegate any of the Chief Minister's functions under this Act to the Treasurer or any other minister.

### **34 Orders**

- (1) An order made under this Act takes effect at the beginning of the day on which it is made or any later time specified in the order.
- (2) A document purporting to be an order made under this Act is, unless the contrary is established, taken to be such an order and to have been properly made.
- (3) A certificate purporting to be signed by the Chief Minister or an officer prescribed by regulation certifying that an order mentioned in the certificate is an order made under a specified provision of this Act is admissible in evidence in any legal proceedings and is evidence of the matters certified.

### **35 Regulations**

The Administrator may make regulations under this Act.

### **36 Amendment or modification of operation of Act by regulation**

- (1) The Administrator may make a regulation that amends, or modifies the operation of, this Act (other than this section) in relation to any matter arising from, connected with or consequential on an authorised transaction.
- (2) A regulation made under subsection (1) may be expressed to have taken effect on a day earlier than the day on which it is made, other than a day earlier than the day on which this section commences.

- (3) The Administrator may only make a regulation under subsection (1) before the completion of the authorised transaction.

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## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
Gaz = Gazette  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

### 2 LIST OF LEGISLATION

#### ***Port of Darwin Act 2015 (Act No. 10, 2015)***

Assent date	22 May 2015
Commenced	9 June 2015 ( <i>Gaz S57</i> , 9 June 2015)

### 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 3, 13, 27, 28, 30 and 31.