

NORTHERN TERRITORY OF AUSTRALIA

DARWIN PORT AUTHORITY AMENDMENT ACT 1998

No. 80 of 1998

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NORTHERN TERRITORY OF AUSTRALIA

No. 80 of 1998

AN ACT

to amend the *Darwin Port Authority Act*

[Assented to 21 October 1998]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Darwin Port Authority Amendment Act 1998*.

2. COMMENCEMENT

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Darwin Port Authority Act* is in this Act referred to as the Principal Act.

4. REPEAL AND SUBSTITUTION

Section 1 of the Principal Act is repealed and the following substituted:

"1. SHORT TITLE

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

5. INTERPRETATION

Section 5 of the Principal Act is amended —

- (a) by omitting from the definition of "approved" in subsection (1) "Authority" and substituting "Corporation";
- (b) by inserting after the definition of "assistant harbourmaster" in subsection (1) the following:

"'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;"
- (c) by omitting the definition of "Council" in subsection (1);
- (d) by inserting after the definition of "dangerous goods" the following"

"'director' means a person appointed under section 7A;"
- (e) by omitting from the definition of "harbourmaster" in subsection (1) "he" and substituting "he or she";
- (f) by omitting the definition of "member" in subsection (1) and substituting the following:

"'member' means a director or the Chief Executive Officer;"
- (g) by omitting from the definition of "Port Authority" in subsection (1) "Authority" (twice occurring) and substituting "Corporation";
- (h) by omitting from the definition of "port superintendent" in subsection (1) "he" and substituting "he or she";
- (j) by omitting from paragraph (b) of the definition of "undesirable substance" in subsection (1) "goods; or" and substituting "goods;"
- (k) by omitting from paragraph (c) of the definition of "undesirable substance" in subsection (1) "Port," and substituting "Port;"

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- (m) by omitting from the definition of "undesirable substance" in subsection (1) "but does not include oil"; and
- (n) by inserting after paragraph (c) of the definition of "undesirable substance" in subsection (1) the following:
 - "(d) oil; or
 - (e) any other noxious or hazardous substance".

6. REPEAL AND SUBSTITUTION

Section 7 of the Principal Act are repealed and the following substituted:

"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.

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"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

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- (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.

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Division 1A - Chief Executive Officer".

7. CHIEF EXECUTIVE OFFICER

Section 8 of the Principal Act is amended by inserting after subsection (1) the following:

"(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."

8. MINISTERIAL CONTROL

Section 15 of the Principal Act is amended -

- (a) by omitting from subsections (1) and (2) "Authority" and substituting "Corporation"; and
- (b) by inserting in subsection (1) "written" before "directions".

9. FUNCTIONS OF PORT CORPORATION

Section 16 of the Principal Act is amended -

- (a) by omitting from subsection (2)(a)(xvii) "and";
- (b) by omitting from subsection (2)(b)(iv) "by it." and substituting "by it; and"; and
- (f) by inserting after subsection (2)(b) the following:

"(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".

10. NEW SECTION

The Principal Act is amended by inserting after section 17 the following:

"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

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- (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."

11. NEW SECTION

The Principal Act is amended by inserting after section 19 the following:

"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."

12. REPEAL

Division 3 of Part II of the Principal Act is repealed.

13. BY-LAWS

Section 48 of the Principal Act is amended —

- (a) by omitting from subsection (1) "Authority", (wherever occurring) and substituting "Corporation";
- (b) by omitting from subsection (1) paragraphs (j) and (s); and
- (c) by omitting from subsection (1)(zc) "or the by-laws".

14. FURTHER AMENDMENTS

The Principal Act is further amended as set out in the Schedule.

15. REFERENCES TO PORT AUTHORITY

(1) On the commencement of this Act, a reference to the Port Authority in any lease, licence, agreement or other document is to be taken to be a reference to the Port Corporation.

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(2) On the commencement of this Act, a reference to the Port Authority in any register or certificate relating to the ownership of interests in land is to be taken to be a reference to the Port Corporation.

SCHEDULE

Section 14

Provision	Amendment	
	omit	substitute
Long title	"Authority"	"Corporation"
Heading to Part II	"AUTHORITY"	"CORPORATION"
Heading to Division 1 of Part II	"Authority"	"Corporation"
Section 6(1), (2) and (3)	"Authority"	"Corporation"
Section 9(3)	"Authority"	"Corporation"
Heading to Division 2 of Part II	"Authority"	"Corporation"
Section 16(1) and (2)	"Authority" (wherever occurring)	"Corporation" "Corporation's"
	"Authority's"	
Section 17(1) and (2)	"Authority" (wherever occurring)	"Corporation"
Section 17(2)(g)	"at a prescribed rate"	

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Section 17(2) (q)	"prescribe"	"impose"
Section 18(1), (2) and (3)	"Authority"	"Corporation"
Section 19(1)	"Authority"	"Corporation"
Section 19(2)	"him"	"him or her"
Heading to Division 4 of Part II	"Authority"	"Corporation"
Section 23(2)	"his" (wherever occurring)	"his or her"
Section 24(1)	"his"	"his or her"
Section 25(2)	"his" (wherever occurring)	"his or her"
Section 26(1)	"his"	"his or her"
Section 28(a) and (b)	"Authority"	"Corporation"
Section 30(3)	"Authority"	"Corporation"
Section 31(1) (c) and (d)	"him"	"him or her"
Section 31(1) (c)	"he"	"he or she"
Section 32(1) and (7)	"him"	"him or her"
Section 32(2)	"his"	"his or her"

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Section 32(5)	"Authority"	"Corporation"
Section 33(1)	"he"	"he or she"
Section 34(3)	"his"	"his or her"
Section 34(4)	"Authority"	"Corporation"
Section 36	"Authority" (wherever occurring)	"Corporation"
Section 38	"Authority" (wherever occurring)	"Corporation"
Section 39	"Authority" (wherever occurring)	"Corporation"
Section 39(1)	"his"	"his or her"
Section 40(1)	"he"	"he or she"
Section 41	"Authority"	"Corporation"
	"him"	"him or her"
	"his" (twice occurring)	"his or her"
Section 43	the whole section	
Section 44	"Authority"	"Corporation"
	"his"	"his or her"

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Section 45	"Authority" (wherever occurring)	"Corporation"
Section 46	"Authority" (wherever occurring)	"Corporation"
Section 50(4)	"he"	"he or she"

ALTERATIONS TO SECTION HEADINGS

On the day on which the *Darwin Port Authority Act* is amended by this Act, in addition to any alteration to section headings indicated in the text of this Act, the headings to sections 6, 16, 17, 18, and 41 of the *Darwin Port Authority Act* are altered by omitting "AUTHORITY" and substituting "CORPORATION".
