

NORTHERN TERRITORY OF AUSTRALIA
DARWIN WATERFRONT CORPORATION ACT 2006

Act No. 25 of 2006

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 25 of 2006

AN ACT

to establish the Darwin Waterfront Corporation and for related purposes

[Assented to 19 September 2006]

[Second reading 14 June 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the *Darwin Waterfront Corporation Act 2006*.

2. Objects of Act

The Darwin Waterfront Corporation is created by this Act for the achievement of the following objects:

- (a) to develop, manage and service the Precinct for the benefit of the community;
- (b) to promote the Precinct as a place of residence and business and a venue for public events and entertainment.

3. Definitions

In this Act:

"by-laws" means by-laws made under section 19;

"CEO", see section 9(1);

"chairperson" means the person holding or occupying the office of chairperson of the Corporation mentioned in section 6(3);

"committee" means a committee established under section 11;

"Corporation" means the Darwin Waterfront Corporation established by section 5(1);

"meeting" means a meeting of the Corporation held under section 33;

"member" means a member of the Corporation mentioned in section 6;

"municipal council", see section 3 of the *Local Government Act*;

"municipal services", see section 13;

"Precinct" means the Darwin Waterfront Precinct specified under section 4;

"promotional activities", see section 12(1)(c);

"regulation" means a regulation made under this Act;

"staff member", see section 23(1).

4. Darwin Waterfront Precinct

The regulations may specify the areas forming the Darwin Waterfront Precinct.

PART 2 – DARWIN WATERFRONT CORPORATION

Division 1 – General matters

5. Establishment

- (1) The Darwin Waterfront Corporation is established.
- (2) The Corporation:
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and

- (c) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the common seal affixed to a document; and
 - (b) presume the seal was duly affixed.

6. Composition of Corporation

(1) The Corporation is constituted by at least 3 but not more than 7 members appointed by the Minister.

(2) A member holds office for the period (not exceeding 3 years) specified in the appointment.

(3) The Minister must appoint a member (other than the CEO) to be the chairperson of the Corporation.

7. Corporation not within shield of Crown

The Corporation:

- (a) does not represent the Territory; and
- (b) does not enjoy any privileges, rights or immunities of the Crown in right of the Territory; and
- (c) is not within the shield of the Crown in right of the Territory.

8. Transfer of property

(1) The Territory may transfer the ownership or control of any of its property (whether situated in the Precinct or not) to the Corporation.

(2) The Corporation may transfer the ownership or control of any of its property to the Territory.

9. Chief executive officer

(1) The Minister must appoint a person recommended by the Corporation to be its chief executive officer (the "CEO").

(2) The CEO holds office for the period and on terms and conditions as decided by the Minister.

(3) The CEO may be a public sector employee.

(4) The CEO must, under the Corporation's directions, exercise the Corporation's powers and perform the Corporation's functions.

(5) The CEO is a member for section 6.

10. Termination of appointment of member

(1) The Minister may terminate a member's appointment on the grounds of inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) The Minister must terminate a member's appointment if the member:

(a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of the member's remuneration for their benefit; or

(b) is convicted in Australia of an offence punishable by imprisonment for 12 months or longer; or

(c) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Corporation; or

(d) fails to comply with section 34.

11. Committee

(1) The Corporation may establish a committee for one or more of its powers or functions.

(2) Each committee consists of 2 or more members and any other persons appointed by the Corporation.

Division 2 – Functions and powers of Corporation

12. Functions of Corporation

(1) The functions of the Corporation are:

(a) to do anything for the development of land in the Precinct that is owned or controlled by the Corporation; and

(b) to manage property (including land and marine infrastructure) in the Precinct that is owned or controlled by the Corporation; and

(c) to do anything ("promotional activities") for the promotion of the Precinct as a place of residence and business and a venue for public events and entertainment; and

- (d) to do anything for construction to be carried out in the Precinct; and
 - (e) to preserve good order in the Precinct; and
 - (f) to do anything for the provision of municipal services in the Precinct; and
 - (g) to do anything for the development and maintenance of other civic amenities and facilities in the Precinct (including the staging of public events and entertainment in the Precinct); and
 - (h) on the Minister's request, to advise the Minister about the Precinct; and
 - (i) to develop and manage land not forming part of the Precinct as directed by the Minister and in accordance with the regulations; and
 - (j) to perform other functions specified by regulation.
- (2) Without limiting subsection (1), the Corporation may:
- (a) as the owner or controller of land, give instructions to any Agency or other body that is engaged in the development of, or construction works on, the land; and
 - (b) consult with anyone in relation to the performance of any of its functions.
- (3) To avoid doubt, the Corporation's functions under subsection (1) include the maintenance of the quality of:
- (a) any enclosed body of sea water (whether treated or untreated) that is designed as a feature of the Precinct; and
 - (b) the water in any water feature or recreational facility on land owned or managed by the Corporation in the Precinct.
- (4) The Corporation must perform its functions having regard to the objects of this Act.

13. Municipal services

- (1) The Corporation must ensure services and amenities relating to the following are provided for the Precinct:
- (a) sanitation, garbage collection and street cleaning;
 - (b) roads, footpaths, parking and traffic control;
 - (c) public places (including parks and public toilets);

- (d) storm drainage;
- (e) street lighting;
- (f) any other matters specified by regulation.

(2) The Corporation may also arrange for the provision of other services and amenities for the Precinct as are specified by regulation.

(3) Services and amenities provided under this section are municipal services.

14. General powers of Corporation

(1) The Corporation may do anything necessary or convenient for the performance of its functions.

(2) Without limiting subsection (1), the Corporation may:

(a) with the Treasurer's approval:

- (i) borrow, lend, raise or invest money under section 29; and
- (ii) form or participate in the formation of an incorporated body or partnership; and
- (iii) grant guarantees or indemnities for, or otherwise assume responsibility for, the obligations of a person; and

(b) engage persons to assist the Corporation; and

(c) consult with and enter into arrangements with other persons or bodies (including Agencies); and

(d) grant registrations and issue permits and licences.

15. Rates for municipal services

(1) The Corporation may impose rates on land in the Precinct for the funding of municipal services.

(2) However, before the end of 2020, the Corporation may only impose the rates specified in subsection (3) and may only do so as provided in subsections (4), (5), (6) and (7).

(3) For subsection (2), the following rates are specified:

(a) rates payable by all owners of land (including owners of unit titles);

(b) rates payable by all owners of land (other than owners of unit titles).

(4) The rates mentioned in subsection (3)(a) must be of the same rate and based on the same method of calculation for rates imposed on land in the central business district of the municipality of Darwin.

(5) Land that would have been exempt from rates under section 58 of the *Local Government Act* is exempt from the rates mentioned in subsection (3).

(6) However, common property in a registered plan is not exempt from the rates mentioned in subsection (3)(b).

(7) The rates mentioned in subsection (3)(b) must be imposed on the following basis:

(a) for common property in a registered plan – the rates mentioned in subsection (3)(b) that are imposed on the property for a year must not exceed 20% of sum of the rates mentioned in subsection (3)(a) that are imposed on all the units in the plan for that year;

(b) for any other land – the rates mentioned in subsection (3)(b) that are imposed on the land for a year must not exceed 20% of the rates mentioned in subsection (3)(a) that are imposed on the land for that year.

(8) The by-laws may make provision about the rates.

(9) In this section:

"common property" means common property as defined in the *Unit Titles Act*;

"registered plan" means a units plan or building development plan registered under the *Real Property (Unit Titles) Act*;

"unit" means a unit as defined in the *Unit Titles Act*.

16. Levy for promotional activities

(1) The Corporation may impose a levy for the funding of promotional activities.

(2) The levy may only be imposed on a person prescribed by regulation.

(3) The by-laws may make provision about the levy.

(4) The regulations may provide for the maximum amount of the levy that may be imposed on a person for a year (including specifying how that amount must be worked out).

17. Fees for services

(1) The Corporation may charge fees for services provided by or for the Corporation (whether the services are municipal services or not).

(2) The by-laws may make provision about the fees.

18. Corporation exempt from certain taxes and charges

(1) The Corporation, as the owner or controller of land in the Precinct:

(a) is not liable for any rates, levy or fees arising from section 15, 16 or 17; and

(b) is exempt from other requirements (for example, licensing or registration requirements) imposed by the by-laws.

(2) In addition, the Corporation is not liable for any stamp duty imposed under the *Stamp Duty Act* in relation to the land.

19. By-laws

(1) The Corporation may make by-laws, not inconsistent with this Act or any other law of the Territory, for any of the following matters:

(a) any matter relating to its common seal, meetings or procedures;

(b) promotional activities;

(c) controlling the Precinct (including the use of the land and water within the Precinct) and access to any part of it;

(d) care and maintenance of all or any part of the Precinct;

(e) preserving good order in the Precinct;

(f) regulating conduct (including omissions) occurring in the Precinct;

(g) prescribing a fine not exceeding 200 penalty units for an offence against the by-laws;

(h) providing for an offence against the by-laws to be a regulatory offence;

- (i) providing for:
 - (i) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against the by-laws; and
 - (ii) the service of a notice relating to payment of the amount on a person alleged to have committed the offence; and
 - (iii) the particulars to be included in the notice;
- (j) any other matter for the exercise of any of its powers or the performance of any of its functions under this Act;
- (k) any other matter required or permitted by a law of the Territory.

(2) The by-laws may apply, adopt or incorporate (with or without changes) the whole or part of an Act or other instrument (including the by-laws of a municipal council) as in force or existing at a particular time or from time to time.

20. Direction by Minister

(1) The Minister may give directions to the Corporation for the exercise of any of its powers or the performance of any of its functions.

(2) The Corporation must comply with the direction.

21. Minister's approval required for acquisition or disposal of real property

The Corporation must not, without the Minister's approval, acquire or dispose of any real property or interest in real property.

22. Effect of non-compliance

(1) The validity of an act of the Corporation is not affected by a failure of the Corporation to:

- (a) obtain an approval of the Treasurer as required by section 14(2)(a); or
- (b) comply with a direction of the Minister given under section 20; or
- (c) obtain an approval of the Minister as required by section 21.

(2) Without limiting subsection (1), the validity of a contract for a matter mentioned in section 14(2)(a) is not affected by a failure of the Corporation to obtain an approval of the Treasurer for that contract.

23. Staff members

(1) The Corporation may be assisted by each of the following (a "staff member") in exercising its powers or performing its functions:

- (a) a person who:
 - (i) is a public sector employee; and
 - (ii) is made available to the Corporation with the agreement of the Commissioner for Public Employment;
- (b) a person employed or engaged by the Corporation.

(2) A person employed by the Corporation as mentioned in subsection (1)(b):

- (a) must be employed on terms and conditions as decided by the Corporation; and
- (b) may be a public sector employee.

24. Staff member may enter land for certain purposes

(1) A staff member may enter any land or building within the Precinct as required or permitted under this Act for an inspection or the carrying out of works.

- (2) The staff member may only do so:
 - (a) during reasonable hours; and
 - (b) except with the consent of the occupant of the land or building – at least 24 hours after written notice for the entry has been given by the CEO to the occupant.

25. Corporation may compound

The Corporation may compound with any of the following persons for an amount of money or other consideration as the Corporation considers appropriate:

- (a) a person who has entered into a contract with the Corporation;
- (b) a person who has commenced or intends to commence proceedings against the Corporation;
- (c) a person against whom the Corporation has commenced or intends to commence proceedings.

Division 3 – Financial matters

26. Money of Corporation

The money of the Corporation consists of:

- (a) amounts appropriated for the Corporation; and
- (b) dividends on shares owned by the Corporation; and
- (c) interest on investments held by the Corporation; and
- (d) proceeds from the disposal of the Corporation's property; and
- (e) amounts imposed or charged under section 15, 16 or 17 that are received by the Corporation; and
- (f) any other amounts that become available for use by the Corporation under a law of the Territory.

27. Application of money

(1) The money of the Corporation must be applied only for the exercise of its powers or performance of its functions.

(2) An amount of rates mentioned in section 15 that is received by the Corporation may only be used for the provision of municipal services.

(3) An amount of levy mentioned in section 16 that is received by the Corporation may only be used for the funding of promotional activities.

(4) An amount of fees mentioned in section 17 that is received by the Corporation may only be used for the provision of the service relating to the fees.

28. Account keeping

(1) The Corporation must ensure:

- (a) proper accounts and records of the Corporation's transactions and financial affairs are kept; and
- (b) there are adequate controls over the incurring of the Corporation's liabilities; and
- (c) all payments out of the Corporation's money are correctly made and properly authorised; and
- (d) adequate control is maintained over:
 - (i) the Corporation's property; and

- (ii) property in the Corporation's custody, control or management.

(2) The Treasurer may request the Corporation to give the Treasurer any information the Treasurer reasonably requires to accurately assess the Corporation's financial position and financial affairs.

- (3) The Corporation must comply with the request.

29. Treasurer's approval required for certain contracts

(1) The Corporation must not enter into a contract for any of the following without the Treasurer's approval:

- (a) borrowing of money by the Corporation;
- (b) lending of money by the Corporation;
- (c) raising of money, otherwise than by borrowing, by the Corporation in a manner that is not specified for subsection (2);
- (d) investing the Corporation's money, otherwise than by lending, in a class of investment that is not specified for subsection (2).

(2) The Treasurer may in writing specify:

- (a) a manner of raising money for which the Treasurer's approval is not required; and
- (b) a class of investment for which the Treasurer's approval is not required.

Division 4 – Reporting requirements

30. Annual report

(1) For each financial year, the Corporation must prepare an annual report on its operation during that year.

(2) The report must include:

- (a) the record of each Ministerial direction given under section 20(1) during that year; and
- (b) financial statements relating to the Corporation's operation for that year that are prepared because of section 31; and
- (c) the Auditor-General's report on the financial statements given to the Corporation under section 32.

(3) The Corporation must give the annual report to the Minister within:

- (a) one month after receiving the Auditor-General's report; or
- (b) another period specified by the Minister.

(4) The Minister must table in the Legislative Assembly a copy of the annual report within 6 sitting days after receiving it.

31. Application of Corporations Act

(1) The accounting and reporting obligations imposed on a public company under the Corporations Act 2001 apply to the Corporation as if:

- (a) the Corporation were a public company; and
- (b) the Territory were the shareholders of the company.

(2) To avoid doubt, the obligations mentioned in subsection (1) include obligations to prepare financial statements and the application of the relevant standards for those obligations.

32. Auditor to be given financial statements

(1) The Corporation must give the Auditor-General the financial statements prepared because of section 31 for a financial year within:

- (a) 2 months after the end of that year; or
- (b) another period specified by the Minister.

(2) The Auditor-General must:

- (a) audit the financial statements; and
- (b) report to the Corporation on the financial statements.

(3) The Auditor-General must do so within:

- (a) 2 months after receiving the financial statements; or
- (b) another period specified by the Administrator.

Division 5 – Meetings

33. Meetings

(1) The chairperson must convene as many meetings as are necessary to perform its functions.

- (2) The Minister may direct the chairperson to convene a meeting to deal with a matter specified by the Minister.
- (3) The chairperson must comply with the direction.
- (4) The quorum for a meeting of the Corporation is a majority of its members.
- (5) Questions arising at a meeting are determined by a majority of votes.
- (6) A member nominated by the chairperson must preside at a meeting in which the chairperson is absent.
- (7) At a meeting, the presiding member:
 - (a) has a deliberative vote; and
 - (b) in the event of an equality of votes, also has the casting vote.
- (8) The procedures for meetings must be determined by the Corporation.

34. Disclosure of interests

- (1) If a member has a direct or indirect interest in a matter being considered, or about to be considered, by the Corporation, the member must disclose the nature of the interest in a meeting as soon as practicable after the relevant facts come to the member's knowledge.
 - (2) The disclosure must be recorded in the Corporation's minutes.
 - (3) Subject to a resolution of the Corporation to the contrary, the member:
 - (a) must not, while the member has the interest, take part in any deliberation or decision of the Corporation relating to the matter; and
 - (b) must be disregarded for constituting the quorum of the Corporation for any deliberation or decision of the Corporation relating to the matter.
 - (4) The Corporation must maintain a register of the interests of the members.

Division 6 – Other administrative matters

35. Delegation

The Corporation may delegate any of its powers or functions to one or more of the following:

- (a) a member;
- (b) a staff member;
- (c) a committee.

36. Protection from liability

(1) This section applies to a person who is or has been a member.

(2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(3) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Corporation in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

(4) Subsections (2) and (3) do not affect any liability the Territory or the Corporation would, apart from those subsections, have for the act or omission.

Division 7 – Review of Corporation's operation

37. Review

(1) The Corporation must conduct a review of its operation and the operation of this Act within 12 months after an occupancy permit has been issued under the *Building Act* for a residential dwelling in the Precinct for the first time.

(2) The Corporation must prepare a report of the review, incorporating any recommendations on the following:

- (a) the management of the Precinct;
- (b) the representation of individuals and groups in the membership of the Corporation;
- (c) the devolution of the Corporation's powers and functions to another body;

- (d) any other matter for which the Minister has requested a recommendation;
- (e) any other matter the Corporation considers appropriate.

PART 3 – MISCELLANEOUS MATTERS

38. Regulations

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may:
 - (a) prescribe a fine not exceeding 200 penalty units for an offence against the regulations; and
 - (b) provide for an offence against this Act to be a regulatory offence; and
 - (c) apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time.
