

NORTHERN TERRITORY OF AUSTRALIA

DARWIN PORT AUTHORITY ACT 1983

No. 71 of 1983
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NORTHERN TERRITORY OF AUSTRALIA

No. 71 of 1983

AN ACT

To provide for the establishment of the Darwin Port Authority for the control and management of the Port of Darwin, and for related purposes
[Assented to 28 November 1983]

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:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Darwin Port Authority Act 1983*.

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(1) Section 7 of the *Marine Ordinance 1911* of the State of South Australia in its application to the Territory is repealed.

(2) The Acts specified in Schedule 2 are repealed.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. DEFINITIONS

In this Act, unless the contrary intention appears -

"approved" means approved by the Port Authority;

"assistant harbourmaster" means an employee appointed under section 27 to be an assistant harbourmaster;

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"Chairman" means the Chairman of the Port Authority and includes the person appointed under section 11(2) to act as Chairman, while he 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 sub-section (2) by the Minister;

"employee" means an employee within the meaning of the *Public Service Act* who is employed in the service of the Port Authority;

"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 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 member of the Port Authority and includes the Chairman and a person appointed under section 11(1) to act as a member, while he is so acting;

"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 of the Port of Darwin described in Schedule 1;

"Port Authority" means the Darwin Port Authority 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; or
- (d) the lighterage, sorting, weighing, warehousing, storing or handling of goods or cargo;

"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 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; or
- (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,

but does not include oil;

"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 sub-section (1) the Minister may, by notice in the *Gazette*, specify a date.

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PART II - DARWIN PORT AUTHORITY

Division 1 - Establishment and Constitution of Port Authority

6. DARWIN PORT AUTHORITY

(1) There is established by this Act an Authority by the name of the Darwin Port Authority.

(2) The Port Authority -

(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 Authority affixed to a document and shall presume that it was duly affixed.

7. CONSTITUTION OF PORT AUTHORITY

(1) The Port Authority shall consist of the Chairman and 2 other members, appointed by the Minister by notice in the Gazette.

(2) The members, other than the Chairman, shall be appointed for a period of 3 years.

(3) The exercise of a power or the performance of a function by the Port Authority is not affected by reason only of there being a vacancy in the membership of the Port Authority.

8. CONDITIONS OF CHAIRMAN, &c.

(1) The Chairman shall be paid such salary, allowances and expenses, and hold office on such terms and conditions, as the Minister determines.

(2) Where immediately before his appointment as Chairman a person was an employee within the meaning of the *Public Service Act*, the terms and conditions of his appointment as Chairman shall be as determined, from time to time, by the Minister and shall be not less favourable than those applicable to him immediately before his appointment as Chairman.

(3) Payment of salary, remuneration, allowances and expenses to the Chairman and fees and allowances to the members shall be made from the revenue of the Port Authority.

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9. RESIGNATION OF MEMBERS

(1) A member may resign his office by writing signed by him and delivered to the Minister.

(2) A resignation delivered to the Minister under sub-section (1) shall not be effective until it is accepted by the Minister.

10. DISMISSAL OF MEMBERS

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

(2) Where a member -

(a) is absent, except on leave granted by the Port Authority, from 3 consecutive meetings of the Port Authority; or

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the Minister shall terminate the appointment of the member.

11. ACTING APPOINTMENT

(1) Where a member is or is expected to be absent from duty or from the Territory, the Minister may appoint a person to act as a member during the absence.

(2) Where the office of Chairman is or is expected to be vacant or the Chairman is or is expected to be absent from duty or from the Territory, the Minister may appoint a person to act as Chairman during the vacancy or absence.

(3) The Minister may at any time terminate an appointment made under this section.

(4) The validity of a decision of the Port Authority 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.

12. DISCLOSURE OF INTEREST

(1) A member of the Port Authority who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Port Authority otherwise than as a member of, and in common with the other members of, an incorporated company consisting of

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not less than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Port Authority.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the Port Authority and the member -

- (a) shall not, while he has that interest, take part after the disclosure in any deliberation or decision of the Port Authority in relation to that matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Port Authority in relation to that matter.

(3) Where the Chairman is disqualified by this section from taking part in a deliberation or decision of the Port Authority, 2 other members present at the meeting at which the deliberation or decision is to take place or be made shall constitute a quorum and the member first appointed as a member or, if they were both appointed on the same date, the member nominated by the Minister as the senior member shall preside at the meeting during the disqualification of the Chairman.

13. MEETINGS OF PORT AUTHORITY

(1) The Chairman shall call such meetings of the Port Authority as are necessary for the exercise of its powers and the performance of its functions, but so that the interval between one meeting and the next does not exceed 3 months.

(2) The Minister may at any time direct the Chairman to convene a meeting of the Port Authority and the Chairman shall convene a meeting in accordance with that direction.

(3) At a meeting of the Port Authority -

- (a) subject to section 12(3), the Chairman shall preside;
- (b) subject to section 12(3), the Chairman and one member constitute a quorum;
- (c) questions arising shall be determined by a majority of the votes of members present and voting;
- (d) the Chairman or other member presiding has a deliberative vote and, in the event of an equality of votes, a casting vote; and

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- (e) subject to this Act, the Port Authority shall determine the procedure to be followed at or in connection with the meeting.

(4) The Port Authority shall keep records of its meetings.

14. PRESCRIBED STATUTORY CORPORATION UNDER *FINANCIAL ADMINISTRATION AND AUDIT ACT*

The Port Authority is a statutory corporation to which Divisions 1 and 2 of Part IV of the *Financial Administration and Audit Act* apply.

Division 2 - Functions and Powers of Port Authority

15. MINISTERIAL CONTROL

(1) The Port Authority, in the exercise of its powers and the performance of its functions, is subject to the directions of the Minister.

(2) An estate in fee simple in land within the Port vested in the Port Authority shall not be capable of being transferred or otherwise divested except with the approval in writing of the Minister.

16. FUNCTIONS OF PORT AUTHORITY

(1) Subject to section 15, the Port Authority 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; and
- (c) the provision and maintenance of port facilities.

(2) Without limiting the generality of sub-section (1), the functions of the Port Authority 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;

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- (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 Authority'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 authorized 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; and
- (xvi) do all such other acts as will facilitate the use of the Port by shipping; and

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- (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.

17. POWERS OF PORT AUTHORITY

(1) Subject to section 15, the Port Authority 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 sub-section (1), the Port Authority 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 at a prescribed rate 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;

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- (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;
- (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) prescribe 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;
- (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.

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18. DELEGATION BY PORT AUTHORITY

(1) The Port Authority 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 Authority.

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

19. REPORTS

(1) The Port Authority 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 sub-section (1) to be laid before the Legislative Assembly within 3 sitting days of the Legislative Assembly after its receipt by him.

Division 3 - Chairman

20. POWERS OF CHAIRMAN

(1) The Chairman shall, subject to the direction of the Port Authority -

- (a) administer the affairs of the Port Authority; and
- (b) be responsible for the management, and the execution of the policy, of the Port Authority.

(2) Without limiting the generality of sub-section (1), the Chairman may, in a case of emergency, direct the execution of work or the doing of an act which the Port Authority is empowered to execute and do and which he is not, by this Act, expressly empowered to execute or do, the immediate execution or doing of which is, in his opinion, necessary for the operation of the Port or the safety of persons or vessels.

(3) The Chairman may direct that the expense of the execution of work or the doing of an act under sub-section (2) shall be paid from the revenue of the Port Authority.

(4) The Chairman shall, as soon as practicable, report to the Port Authority anything executed or done under sub-section (2).

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21. DELEGATION BY CHAIRMAN

(1) The Chairman may, by instrument in writing, delegate to a person any of his 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 Chairman.

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

Division 4 - Staff of Port Authority

22. PRESCRIBED AUTHORITY

The Port Authority is a prescribed authority within the meaning and for the purposes of the *Public Service Act*.

23. PORT SUPERINTENDENT

(1) The Chairman 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 powers or perform his functions of port superintendent; or

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

the Chairman may, by instrument in writing, appoint an employee to act in the office of port superintendent during his 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 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.

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25. HARBOURMASTER

(1) The Chairman 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 functions of harbourmaster; or

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

the Chairman may, by instrument in writing, appoint an employee to act in the office of harbourmaster during his 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 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 Chairman 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 Chairman specifies in the instrument of appointment.

28. PILOTS AND PORT OFFICERS

The Chairman 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 Authority 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 Authority under this Act.

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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 sub-section (1); or
- (b) the harbourmaster given under sub-section (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 sub-section (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 sub-section (2) may be recovered as a debt due and payable to the Port Authority.

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(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 sub-section (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 Chairman to be a hazard or danger to the Port,

the Chairman may require the owner of the vessel to -

- (c) give to him such security by way of bond, indemnity, guarantee or otherwise, or any combination of those methods, as he determines; or
- (d) have or obtain from an insurer, approved by him 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 Chairman 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 sub-section (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 Chairman, 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 Chairman 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 such longer time as the Chairman, in writing, allows, comply with the direction.

(2) Where the owner, master or occupier on whom a notice under sub-section (1) has been served fails to comply with the direction within the time allowed for his

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so doing, the Chairman 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 sub-section (2), where the Chairman 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 Chairman thinks fit.

(4) A notice shall be sufficiently given in circumstances referred to in sub-section (3) if it is published in a newspaper circulating in Darwin.

(5) The costs incurred by the Chairman or authorized person in carrying out an action under sub-section (2) may be recovered from the owner, master or occupier as a debt due and payable to the Port Authority.

(6) An owner, master or occupier who fails to comply with or contravenes a direction under sub-section (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 Chairman or a person authorized under sub-section (2), or a person lawfully assisting him, in carrying out an action under that sub-section.

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 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 sub-section (1) is guilty of an offence.

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

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34. OFFENCE TO CAUSE DAMAGE TO PORT

- (1) Subject to sub-section (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 sub-section (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 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 Authority 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 -

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- (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 Authority may take such action as it thinks fit to remove, disperse, destroy or mitigate the damage caused by, the undesirable substance.

(2) The Port Authority 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 sub-section (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 sub-section (1), the Port Authority may, if it thinks fit, sell the undesirable substance or any part of it and out of the proceeds of sale recover the costs

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incurred by it in taking action under that sub-section, together with the costs and expenses of the sale, but -

- (a) nothing in this sub-section 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 Authority as it thinks fit;
- (b) before selling the undesirable substance, the Port Authority 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 sub-section (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 Authority and a person produces to the Port Authority reasonable evidence of ownership of the undesirable substance, the undesirable substance shall be released by the Port Authority to that person; and
- (d) where the undesirable substance is sold under this sub-section, the part, if any, of the net proceeds of sale remaining after the costs incurred in taking action under sub-section (1) and the costs and expenses of the sale have been paid and recovered by the Port Authority under this sub-section -
 - (i) shall be held by the Port Authority 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 Authority.

(4) The rights conferred on the Port Authority 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. CHAIRMAN MAY DECLARE CERTAIN WHARFS, &c., TO BE SET APART

(1) The Chairman may, by instrument in writing, declare that a port facility be set apart for -

- (a) the use of a specified vessel;

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- (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;
 - (e) any other use which the Chairman thinks fit.
- (2) A declaration under sub-section (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 Authority for a licence for the purposes of the carrying on of a business of a stevedore within the Port.

(2) An application under sub-section (1) shall be in an approved form.

(3) The Port Authority shall consider an application made under sub-section (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 sub-section (1), the Port Authority 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;

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- (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 his opinion it is necessary or desirable in the public interest so to do, direct the Port Authority to suspend, cancel, vary or impose a condition on, a licence in accordance with sub-section (2).

(2) The Port Authority, on receiving a direction from the Minister under sub-section (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 sub-section (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 sub-section (2) has been served on a licensee and, within the period of the notice, the term of the licence would, but for this sub-section, 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 sub-section (5).

(5) Notwithstanding sub-sections (1) and (2), the Port Authority 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 holds a licence to do so which has not been suspended.

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

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(2) In any proceedings for an offence against sub-section (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 AUTHORITY, &c., FOR LOSS OR DAMAGE

The Port Authority 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 in the performance, in good faith, of its or his duties or powers under this Act, including its or his 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

43. LAND TO BE GRANTED TO PORT AUTHORITY

(1) As soon as practicable after the commencement of this Act the minister primarily responsible for the administration of the *Crown Lands Act* shall grant to the Port Authority an estate in fee simple in all that land within the Port which, immediately before the commencement of this Act, was land committed under section 20A(1) of the repealed Act to the care, control and management of the Northern Territory Port Authority.

(2) On the granting of the estate in fee simple referred to in sub-section (1), the reservation under section 103 of the *Crown Lands Act* in respect of the land is, by force of this sub-section, revoked.

(3) Where, immediately before the granting of an estate in fee simple in land referred to in sub-section (1), a person was the lessee of, or held a licence over, the land or a part of the land, which lease or licence was purported to have been granted by the Northern Territory Port Authority under the repealed Act, that lease or licence shall be deemed to have been granted by the Port Authority, on the date on which the fee simple referred to in sub-section (1) was granted, for the

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remainder of the term for which it was purported to have been granted, and be subject to the same terms and conditions to which it was purported to be subject, under the repealed Act.

(4) All moneys paid and things done for or under a lease or licence over land referred to in sub-section (1), the fee simple in which is granted to the Port Authority, which lease or licence was purported to have been granted by the Northern Territory Port Authority under the repealed Act, shall be deemed to have been as effectively paid or done as if, at the time that the lease or licence was purported to have been granted, the land was vested in the Northern Territory Port Authority.

(5) In this section "the Northern Territory Port Authority" means the Northern Territory Port Authority established under the repealed Act.

44. VALUE OF IMPROVEMENTS, &c.

The Port Authority 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 own expense, any improvements erected on the land comprised in the lease.

45. EXEMPTION FROM RATES, CHARGES, &c.

(1) Subject to sub-section (3), land vested in the Port Authority is exempt from municipal rates, charges and taxes.

(2) Sub-section (1) does not apply so as to exempt the Port Authority from payment of charges for a commodity or service provided or supplied by a municipal council whether the charge made be assessed on the value of land occupied by or vested in the Port Authority or otherwise.

(3) Where land vested in the Port Authority 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 sub-section (3), that rate, charge or tax shall be payable by the lessee or tenant of the land and not by the Port Authority.

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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 Authority.

(2) The Port Authority 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 Authority 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 Authority may, after the expiration of 3 months after the date of the seizure, attachment and detention referred to in sub-section (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 Chairman 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 Authority 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 Authority;
- (b) the security and facility of navigation in the Port;

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- (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;
- (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;
- (j) the imposing and levying of fees, rates, dues or charges for services rendered by the Port Authority for entry into or anchoring in the Port or for the use of the Port or port facilities or for any other service;
- (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, removal and control of vessels in the Port whether under way or at anchor, afloat or aground, hove down, hauled up or in dock;
- (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;

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- (s) prescribing a fee for the issue of a licence to a stevedore and for the renewal of such a licence;
- (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;
- (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 or the by-laws; 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.

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

of the Northern Territory Port Authority he 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 sub-section (2), the Port Authority continues an action by virtue of sub-section (5), or money is or becomes payable by virtue of sub-section (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

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- (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 1

Section 5

DESCRIPTION

Area of the Port of Darwin

ALL THAT area bounded by an imaginary line commencing at Lee Point at high-water mark at a post on a true bearing of 19° 37' 20" distant 411.665 m from a peg at the north-eastern corner of former Lot 4872 Town of Nightcliff Hundred of Bagot; thence along the high-water mark of Port Darwin and Fannie Bay generally southwesterly southerly and southeasterly to its intersection with a northwestern boundary of Lot 5262 Town of Darwin Hundred of Bagot; thence generally southeasterly northeasterly easterly southerly again easterly northerly and westerly by part of a northwestern boundary and northeastern northern eastern northern western and southern boundaries of the said Lot to the intersection of the southeastern boundary of Lot 5280 Town of Darwin; thence southwesterly by part of the southeastern boundary of the said Lot to its intersection with the high-water mark of Frances Bay; thence generally northerly along the high-water mark; from time to time, of Frances Bay (with the said high-water mark subject to variation from time to time as a result of land reclamation work carried out on private Lots in Frances Bay) to its intersection with the northern boundary of Lot 5236 Town of Darwin; thence westerly, northerly, again westerly, again northerly by part of the southern boundary and western, southern and western boundaries of the land described in the *Northern Territory Government Gazette* on 1 March 1973 as constituting Reserve 1419 to the northwestern corner of the said land; thence northerly by a line to the southwestern corner of Lot 5276 Town of Darwin; thence by lines on grid bearings 99° 56' 20" 155.165 m; 9° 56' 20" 50 m; 99° 56' 20" 50m; 9° 56' 20" 50m; 279° 56' 20" 50m; thence by a line bearing 9° 56' 20" to its intersection with the high-water mark of Frances Bay; thence generally northerly by the said high-water mark to its intersection with the northern boundary of Lot 5269 Town of Darwin; thence westerly by part of the said northern boundary of the said Lot to the northwestern corner of the said Lot; thence northerly by the northerly prolongation of the western boundary of the said Lot to the southwestern corner of Lot 5268 Town of Darwin; thence easterly and northerly by southern and eastern boundaries of the said Lot 5268 to the north-eastern corner of the said Lot; thence northeasterly by the southwesterly prolongation of the southeastern boundary of Lot 2543 Town of Darwin to the southeastern corner of the said Lot; thence generally northeasterly by the southeastern boundaries of the said Lot to the northeastern corner of Lot 2543; thence southeasterly by part of the southwestern boundary of Lot 5266 Town of Darwin to its intersection with the high-water mark of Frances Bay; thence generally northerly; thence generally

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westerly northeasterly and easterly to the southwestern corner of Lot 4646 Town of Darwin; thence generally southeasterly by southerly boundaries being high-water mark of the said Lot to the intersection with a line grid bearing 302° from a point on O'Ferrals Rock A.M.G. co-ordinates 8623750 N 702 140 E; thence by the said line to the said point on O'Ferrals Rock; thence south to the low-water mark left hand side of Sadgroves Creek; thence generally westerly southerly southeasterly and northerly along the low-water mark of Sadgroves Creek Frances Bay East Arm and Reichardt Creek to its intersection with the westerly prolongation of the southern boundary of former Section 385 Hundred of Bagot; thence easterly by the said prolongation to its intersection with high-water mark of East Arm; thence generally southeasterly along high-water mark of East Arm; thence generally southeasterly along the high-water mark of East Arm and Elizabeth River to the junction of Bennetts Creek with Elizabeth River; thence south-westerly to the northeast corner of Section 1670 Hundred of Ayers; thence west along the northern boundaries of Sections 1670 and 1657 Hundred of Ayers; thence north along the eastern boundary of Section 1661 Hundred of Ayers; thence slightly south of west to the northern corner of the easternmost boundary of Section 1 Hundred of Ayers; thence generally northerly westerly southerly and southeasterly along the boundaries of the said Section 1 to the southern corner of the easternmost boundary of the said Section 1; thence generally southerly along the high-water mark of the eastern side of Middle Arm and Blackmore River to its intersection with the southern boundary of the Hundred of Ayers; thence generally westerly along the said southern boundary of the Hundred of Ayers to its intersection with high-water mark on the western side of the Blackmore River; thence along the high-water mark generally northerly northwesterly westerly southerly westerly and northerly to its northernmost intersection with the western boundary of the Hundred of Ayers; thence south along the said western boundary to a point 120.7 m south of the said intersection; thence generally northwesterly by a line 120.7 m above the said high-water mark to the intersection of the said line and the southern boundary of the Hundred of Bray; thence east 120.7 m along the said Hundred boundary to the high-water mark of West Arm; and thence generally northerly and westerly along the said high-water mark of West Arm and Port Darwin to the northern extremity of Charles Point; thence by a straight line to the point of commencement,

EXCLUDING all those areas that would otherwise be included in the Port of Darwin that are, or are parts of, lots or sections in the Hundreds of Strangways and Ayers which have been surveyed and which are shown on a plan of survey lodged with the Surveyor-General before 1 January 1981.

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SCHEDULE 2

Section 3

REPEALED ORDINANCES AND ACTS

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>