

Serial 198
Darwin Waterfront Corporation Amendment Bill 2012
Mr Henderson

A Bill for an Act to amend the *Darwin Waterfront Corporation Act*, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

DARWIN WATERFRONT CORPORATION AMENDMENT ACT 2012

Act No. [] of 2012

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2012

An Act to amend the *Darwin Waterfront Corporation Act*, and for related purposes

[Assented to [] 2012]
[Second reading [] 2012]

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 Amendment Act 2012*.

2 Commencement

This Act commences on 1 July 2012.

Part 2 Amendment of Darwin Waterfront Corporation Act

3 Act amended

This Part amends the *Darwin Waterfront Corporation Act*.

4 Section 3 amended

(1) Section 3, definition *regulation*

omit

(2) Section 3

insert (in alphabetical order)

common property means:

- (a) for a plan – the common property in relation to the plan as defined in section 4(1) of the *Unit Titles Act*; and
- (b) for a scheme – the common property of the scheme as defined in section 33 of the *Unit Title Schemes Act*.

land includes:

- (a) a unit, lot and common property created by registration of a plan; and
- (b) a unit and common property created by registration of a scheme.

plan means a units plan, or building development plan, as defined in section 4(1) of the *Unit Titles Act*.

scheme means a unit title scheme as defined in section 10(1) of the *Unit Title Schemes Act*.

unit means:

- (a) for a plan – a unit of the plan as defined in section 4(1) of the *Unit Titles Act*; and
- (b) for a scheme – a unit of the scheme as defined in section 37 of the *Unit Title Schemes Act*.

5 Section 5A inserted

After section 5

insert

5A Public office

- (1) The Corporation must have a public office.

- (2) The public office must be open to the public at reasonable times determined by the Corporation.

6 Section 15 amended

- (1) Section 15(3)

omit, insert

- (3) For subsection (2), there are 2 rates that may be imposed:

- (a) rates on all land other than common property; and
- (b) rates on all land other than units.

- (2) Section 15(7)(a) and (b)

omit

a year

insert

a financial year

- (3) Section 15(8) and (9)

omit, insert

Note for section 15

Part 3 contains further provisions relating to rates.

7 Section 26 amended

- (1) After section 26(d)

insert

- (da) the following amounts that are received or recovered by the Corporation:

- (i) rates imposed under section 15;
- (ii) interest that has accrued on rates under section 52;
- (iii) costs reasonably incurred by the Corporation in recovering, or attempting to recover, rates; and

(2) Section 26(e)

omit

15,

8 Section 27 amended

Section 27(2), after "section 15"

insert

, or interest mentioned in section 52,

9 Part 3 heading amended

Part 3, heading

renumber as Part 4

10 Section 38 amended

Section 38

renumber as section 72

11 Part 3 inserted

After section 37

insert

Part 3 Matters relating to rates

Division 1 Definitions

38 Definitions

In this Part:

administrative review committee, see section 69(1).

allotment, see section 41.

assessment record means the assessment record kept by the Corporation under section 45.

nominal owner, of an allotment, means:

- (a) if the allotment is common property – the body corporate that, under the by-laws, is liable to pay the rates imposed on the common property; or
- (b) if the allotment is held from the Territory under a lease – the lessee; or
- (c) if the allotment is held from the Corporation under a lease – the lessee; or
- (d) otherwise – the registered owner of the allotment.

occupier, of an allotment, means a person who is, either jointly or alone, in possession of the allotment to the substantial exclusion of others.

principal ratepayer, for an allotment, see section 44(1).

rate concession, see section 54(1).

rateable, see section 39(1).

ratepayer means a person who pays, or is liable to pay, rates imposed on an allotment under this Act.

registered owner, of an allotment, means the registered owner (as defined in section 4 of the *Land Title Act*) of a lot that comprises or includes the allotment.

Division 2 General matters

39 Rateability of land in Precinct

- (1) All land in the Precinct is ***rateable*** except land specified in subsection (2).
- (2) For subsection (1), the following land is specified:
 - (a) land that is exempt from rates under section 15(5);
 - (b) land of the Corporation, other than land that is leased for a purpose that does not give rise to an exemption from rates under section 15(5);
 - (c) land of the Commonwealth, other than land that the Commonwealth has agreed be rateable.

40 Commonwealth land

If the Commonwealth agrees that its land be rateable, the land is rateable on conditions agreed by the Commonwealth.

41 Allotments

- (1) An *allotment* is a lot or part of a lot for which the Corporation proposes to make a separate assessment and imposition of rates.
- (2) The Corporation may only divide a lot that is subject to the same ownership into separate allotments if:
 - (a) the allotments are subject to separate occupation; or
 - (b) the allotments fall within different zones; or
 - (c) there is some other good reason for dividing the lot into separate allotments.

Example for subsection (2)(a)

If a lot comprises a block of flats and the flats are owned by one person but separately occupied, the Corporation could either:

- (a) treat the block of flats as a single allotment and impose rates on the block as a whole; or*
- (b) treat each flat as a separate allotment and impose rates on each flat.*

- (3) In this section:

lot, see section 4 of the *Land Title Act*.

zone, see section 3(1) of the *Planning Act*.

42 Apportionment if allotment rateable for part of financial year

- (1) If an allotment becomes, or ceases to be, rateable during the course of a financial year:
 - (a) the allotment is liable to rates under section 15 for the financial year; but
 - (b) the amount of rates payable is the amount that is proportionate to the part of the financial year during which the allotment is rateable.
- (2) The Corporation must make any refund or remission of rates necessary to give effect to this section.

43 Joint and several liability

- (1) The nominal owner and the occupier (if not the nominal owner) of an allotment are jointly and severally liable for rates imposed on the allotment.
- (2) However, the occupier does not become liable for the rates unless, under section 44, the occupier is designated in the assessment record as the principal ratepayer for the allotment.

44 Principal ratepayer for allotment

- (1) The *principal ratepayer* for an allotment is the nominal owner of the allotment but, if a person other than the nominal owner is, under this section, designated in the assessment record as the principal ratepayer for the allotment, that person is the principal ratepayer.
- (2) If, under subsection (1), 2 or more people would be the principal ratepayer for an allotment, the CEO may designate one or more of them in the assessment record as the principal ratepayer for the allotment.
- (3) On the application of an occupier of an allotment, the CEO may designate the occupier in the assessment record as the principal ratepayer for the allotment.
- (4) If the occupier subsequently applies for the designation to be removed from the assessment record, the CEO must remove the designation.
- (5) A ratepayer designated under subsection (2) or (3) as the principal ratepayer for an allotment is the principal ratepayer to the exclusion of others.
- (6) If rates are paid by, or recovered from, a ratepayer who is not the principal ratepayer for an allotment, the ratepayer may, subject to any relevant agreement, recover the amount of the rates from the principal ratepayer or set the amount off against any liability owed to the principal ratepayer.

45 Assessment record

- (1) The Corporation must keep an assessment record.
- (2) The assessment record must contain the following information for each allotment:
 - (a) a brief description of the allotment;

- (b) if rates for the allotment are to be calculated as a proportion of the value of the allotment – a statement of the value;
- (c) the name and postal address of the registered owner of the allotment;
- (d) if the registered owner is not the nominal owner of the allotment – the name and postal address of the nominal owner;
- (e) if the nominal owner is not the principal ratepayer for the allotment – the name and postal address of the principal ratepayer;
- (f) if the allotment is subject to a differential rate on the basis of its use – a statement of the use;
- (g) other information the Corporation resolves to include in the record.

Note for paragraph (b)

Section 15(4) and (7) specifies how rates are to be calculated.

- (3) The assessment record may be kept in the form the Corporation considers appropriate.
- (4) A copy of the assessment record must be available for inspection, free of charge, by any member of the public at the Corporation's public office.
- (5) The CEO must, at the request of a person to whom an entry in the assessment record relates, suppress the person's name or address (or both) from the publicly available copy of the record.

46 Notices to be given by ratepayers

- (1) If a person becomes the principal ratepayer for a particular allotment, the person must, within 28 days of becoming the principal ratepayer, give the CEO written notice of that fact and of the person's postal address.

Maximum penalty: 20 penalty units.

- (2) If a principal ratepayer's postal address changes, the principal ratepayer must, within 28 days of the change, give the CEO written notice of the new address.

Maximum penalty: 20 penalty units.

- (3) If a person ceases to be the principal ratepayer for a particular allotment, the person must, within 28 days of ceasing to be the principal ratepayer, give the CEO written notice of that fact.

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (1), (2) or (3) is a regulatory offence.

47 Correction of record

- (1) A person may apply to the Corporation for correction of an entry in the assessment record.
- (2) The application may be made on one or more of the following grounds:
- (a) the entry wrongly classifies an allotment that is not rateable as rateable;
 - (b) the entry wrongly records the use of an allotment;
 - (c) the entry contains some other relevant misclassification or misdescription of an allotment;
 - (d) the entry wrongly records ownership or occupation of an allotment;
 - (e) the entry wrongly designates the applicant as the principal ratepayer for an allotment;
 - (f) the entry contains some other relevant error.
- (3) The application must be in writing and state:
- (a) the applicant's interest in the allotment to which the application relates; and
 - (b) the nature of the amendment that should, in the applicant's opinion, be made.
- (4) If the application is uncontroversial, the CEO may decide the application on behalf of the Corporation but, if it raises matters of possible controversy, the application is to be dealt with by the Corporation or a Corporation committee.
- (5) The CEO must give the applicant written notice of the decision on the application as soon as practicable.

Note for subsection (5)

A person who is adversely affected by the decision may apply for a review under Division 5.

Division 3 Imposition of rates

48 Declaration and notification of rates

- (1) To impose rates under section 15 for a financial year, the Corporation must, on or before 31 July in that financial year, declare rates on allotments in the Precinct.
- (2) The declaration must state the following:
 - (a) the basis or bases of the rates;
 - (b) if the rates may be paid by instalment – the number of instalments payable and the date on which each instalment will fall due for payment;
 - (c) if a discount or other form of concession or benefit is to be given for prompt payment of rates in full:
 - (i) details of the discount, concession or benefit; and
 - (ii) the conditions on which it is to be given.
- (3) Within 21 days after declaring rates, the Corporation must publish notice of the declaration of rates and the matters specified in subsection (2):
 - (a) on its website; and
 - (b) in a newspaper circulating generally in the Precinct.
- (4) Failure to publish the notice within the time limit fixed by subsection (3) does not invalidate the declaration.

49 Rates notice

- (1) At least 28 days before the payment of the rates, or the first instalment of the rates, falls due, the Corporation must issue an account for the payment of rates (a *rates notice*) for each allotment.
- (2) The rates notice must be given to the principal ratepayer for an allotment or, if it is not practicable to do so, to any other ratepayer for the allotment.
- (3) The rates notice must:
 - (a) state the due date for payment of the rates or, if the rates may be paid by instalment, the due date for payment of each instalment; and

- (b) if a discount is to be given for prompt payment of rates in full – state:
 - (i) the percentage discount; and
 - (ii) the conditions on which the discount will be given; and
 - (iii) both the discounted and undiscounted amount payable; and
 - (c) if another form of concession or benefit is to be given for prompt payment of rates in full – state:
 - (i) details of the concession or benefit; and
 - (ii) the conditions on which it will be given; and
 - (d) contain any other information prescribed by the by-laws; and
 - (e) be given at least 28 days before the payment of the rates, or the first instalment of the rates, falls due.
- (4) Failure to give the rates notice within the time limit fixed by subsection (3)(e) does not invalidate the rates notice.

50 Payment by instalment

- (1) If the Corporation allows payment of rates by instalment:
 - (a) each instalment must be paid by the due date for payment; but
 - (b) if a ratepayer fails to pay an instalment by the due date – all remaining instalments become immediately due.
- (2) However, the Corporation may relieve a ratepayer, or ratepayers generally, from the consequences of a failure to pay an instalment to an extent decided by the Corporation.

51 Validity of declaration

- (1) The Minister may, by *Gazette* notice, declare that rates have been validly declared, or declared and levied, by the Corporation despite a particular procedural non-compliance or some other irregularity or error of a minor or technical nature.
- (2) The declaration validates the rates from the date of their purported declaration.

52 Accrual of interest on overdue rates

- (1) If rates are not paid by the due date for payment, interest accrues on the amount of the unpaid rates at the relevant interest rate.

Note for subsection (1)

If the ratepayer defaults in payment of an instalment of rates, all remaining instalments become due and payable. Therefore, interest accrues on the total amount of the unpaid rates and not merely the amount of the instalment. (See section 50(1)).

- (2) Interest is calculated on a daily basis on the amount of the unpaid rates (exclusive of interest) from the due date until the date of payment.
- (3) In this section:

relevant interest rate means the rate of interest fixed by the Darwin City Council as the relevant interest rate under section 162(4) of the *Local Government Act*.

53 Remission of interest

The Corporation may remit interest wholly or partly.

54 Rate concessions generally

- (1) A ***rate concession*** is:
- (a) a waiver in whole or part of rates or a component of rates; or
 - (b) a deferment in whole or part of a liability to pay rates or a component of rates; or
 - (c) both.
- (2) The Corporation may, by written notice, grant a rate concession under section 55, 56 or 57 unconditionally or on conditions determined by the Corporation.
- (3) If the Corporation grants a rate concession on conditions and the ratepayer fails to comply with a condition, the Corporation may by written notice to the ratepayer:
- (a) withdraw the concession; and
 - (b) require the ratepayer to pay an amount, on or before a date specified in the notice, to neutralise any benefit to the ratepayer of the rate concession.

55 Alleviation of financial hardship

- (1) The Corporation may grant a rate concession to alleviate financial hardship.
- (2) The Corporation may grant the rate concession on application by a person who establishes to the Corporation's satisfaction that the person will suffer financial hardship if the concession is not granted.

56 Correction of anomaly in operation of rating system

- (1) The Corporation may grant a rate concession to a ratepayer or ratepayers of a particular class if satisfied it is necessary to do so in order to correct an anomaly in the operation of the rating system.
- (2) The Corporation may grant the rate concession on the Corporation's own initiative or on application by an affected ratepayer.

57 Public benefit

- (1) The Corporation may grant a rate concession to advance one or more of the following purposes:
 - (a) securing the proper development of the Precinct;
 - (b) preserving buildings or places of historical interest;
 - (c) protecting the environment;
 - (d) encouraging cultural activities;
 - (e) promoting community health or welfare;
 - (f) providing recreation or amusement for the public.
- (2) However, the rate concession:
 - (a) may only be granted if authorised under a policy formally adopted by resolution of the Corporation; and
 - (b) is subject to limitations and conditions specified in that policy.
- (3) The Corporation may grant the rate concession on its own initiative or on application by a ratepayer.

Division 4 Recovery of rates

Subdivision 1 Definition

58 Definition

In this Division:

rates includes, if the rates are overdue:

- (a) accrued interest; and
- (b) costs reasonably incurred by the Corporation in recovering, or attempting to recover, the rates.

Subdivision 2 Court action

59 Recovery by court action

- (1) Rates imposed on an allotment may be recovered as a debt due to the Corporation from the principal ratepayer for the allotment, or any other ratepayer for the allotment, by action in a court of competent jurisdiction.
- (2) The proceedings may be commenced at any time within 6 years after the rates were imposed.

Subdivision 3 Overriding statutory charge

60 Application of Subdivision

This Subdivision does not apply to rates imposed on common property.

61 Overdue rates to be charge on allotment

- (1) If rates imposed on an allotment are not paid by the due date, the rates become a charge on the allotment.
- (2) However, the rates do not become a charge if the registered owner of the allotment is not a ratepayer who is liable for the rates that are in arrears.

62 Registration of charge

- (1) If rates imposed on an allotment are a charge on the allotment and have been in arrears for at least 6 months, the Corporation may apply to the Registrar-General for registration of the charge.

- (2) The Registrar-General must, on payment of the appropriate fee by the Corporation:
 - (a) register the charge as an overriding statutory charge; and
 - (b) notify all persons with a registered interest in or over the allotment of the registration of the charge.
- (3) Failure to give notice of the registration of the overriding statutory charge under subsection (2)(b) does not invalidate the registration of the charge.
- (4) The Registrar-General must, on payment of the appropriate fee, cancel the registration of the overriding statutory charge if the Corporation applies for the cancellation.
- (5) The Corporation must apply for the cancellation if the liability to which the overriding statutory charge relates is fully satisfied, and may apply for the cancellation for any other reason.

63 Effect of registered charge

While a charge is registered as an overriding statutory charge under this Subdivision, it has priority over all other registered and unregistered mortgages, charges and encumbrances except a previously registered overriding statutory charge.

Subdivision 4 Sale of allotment

64 Power to sell allotment for non-payment of rates

The Corporation may sell an allotment if:

- (a) rates imposed on the allotment have been in arrears for at least 3 years; and
- (b) an overriding statutory charge securing liability for the rates is registered over the allotment and has been registered for at least 6 months.

65 Pre-conditions of sale

- (1) Before selling an allotment for non-payment of rates, the Corporation must give notice to the principal ratepayer for the allotment at the address recorded in the assessment record.
- (2) The notice must:
 - (a) state the period for which rates have been in arrears; and

- (b) state the amount of rates currently outstanding on the allotment; and
 - (c) warn that if that amount is not paid in full within a stated period (which must not be less than 30 days) after the date of the notice, the Corporation will sell the allotment for non-payment of rates.
- (3) A copy of the notice must be given to:
- (a) any other person with a registered interest in the allotment; and
 - (b) if the allotment is held from the Territory under a lease – the Minister administering the legislation under which the lease was granted.
- (4) If the whereabouts of a person to whom a notice (or copy) is required to be given is, after reasonable inquiries, not ascertained by the Corporation, the notice may be given by:
- (a) publishing it in a newspaper circulating generally throughout the Territory; and
 - (b) leaving a copy of the notice in a conspicuous place at the allotment.

66 Sale of allotment

- (1) If the outstanding rates for an allotment are not paid within the period allowed by a notice given under section 65, the Corporation may sell the allotment.
- (2) The sale must be by public auction.
- (3) However, if the allotment is held from the Territory under a lease, the sale must be made as approved by the Minister administering the legislation under which the lease was granted.
- (4) A public auction must be advertised:
 - (a) on the Corporation's website; and
 - (b) on at least 2 separate occasions in a newspaper circulating generally throughout the Territory.
- (5) If, before the date of the sale, the outstanding rates (including costs incurred by the Corporation with a view to sale of the allotment) are paid, the Corporation must call off the sale.

- (6) If an auction fails, the Corporation may sell the allotment by private contract for the best price that it can reasonably obtain.
- (7) If the Corporation sells an allotment under this section, the Corporation may execute a conveyance of the allotment under its common seal.
- (8) On registration of the conveyance, title to the allotment vests in the purchaser freed and discharged from all mortgages, charges and encumbrances securing the payment of money.

67 Proceeds of sale

- (1) The Corporation must apply the proceeds of the sale of an allotment under this Subdivision as follows:
 - (a) firstly, in the payment of the costs incurred in selling the allotment;
 - (b) secondly, in the payment of all liabilities secured on the allotment (including the liability to the Corporation) in the order of their priority;
 - (c) thirdly, in payment to the registered owner of the allotment.
- (2) If the Corporation fails, after reasonable inquiry, to discover the identity or whereabouts of a person entitled to payment under this section, the Corporation may make the payment to the Public Trustee as unclaimed property.
- (3) A payment made to the Public Trustee under subsection (2) vests in the Public Trustee as mentioned in section 59A of the *Public Trustee Act*.

Division 5 Review and appeal

68 Right to apply for review

- (1) A person who is adversely affected by a decision mentioned in section 47(5) may, within 14 days after the date of the decision, apply to the CEO for a review of the decision.
- (2) The application must:
 - (a) be in writing; and
 - (b) set out in detail the grounds on which the decision should, in the applicant's opinion, be reconsidered.

- (3) The CEO may extend the period allowed for making an application under subsection (1) if the CEO is satisfied there are exceptional circumstances justifying the extension.

69 Consideration of application by administrative review committee

- (1) The CEO must, on receiving an application under section 68, refer the application to a committee established by the Corporation for inquiring into such applications (an *administrative review committee*).
- (2) The administrative review committee may summarily reject the application if satisfied the application is frivolous, vexatious or lacking in substance.
- (3) If it does not reject the application, the administrative review committee must:
- (a) inquire into the matters raised by the application; and
 - (b) recommend to the Corporation that the Corporation does one of the following:
 - (i) confirm the decision under review;
 - (ii) amend the decision under review;
 - (iii) revoke the decision under review;
 - (iv) make a further decision to mitigate the effect of the decision under review.

70 Corporation's decision on recommendation and appeal

- (1) After receiving a recommendation from an administrative review committee, the Corporation must make a final decision on an application under section 68.
- (2) The decision need not be consistent with the administrative review committee's recommendation.
- (3) The CEO must notify the applicant of the Corporation's final decision on the application.
- (4) The applicant may, within 28 days after the date of the notice of the Corporation's final decision on the application, appeal against the decision to the Local Government Tribunal continued under Part 18.2 of the *Local Government Act*.

12 Section 71 inserted

Before section 72, in Part 4 (as renumbered)

insert

71 Acquisition on just terms

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

13 Part 5 inserted

After section 72 (as renumbered)

insert

Part 5 Transitional matter for Darwin Waterfront Corporation Amendment Act 2012

73 Rates imposed before commencement

- (1) The amended Act continues to apply in relation to rates imposed by the Corporation before 1 July 2012, and to matters in relation to those rates dealt with in the amended Act, as if Part 2 of the *Darwin Waterfront Corporation Amendment Act 2012* had not commenced.

- (2) In this section:

amended Act means the *Darwin Waterfront Corporation Act* as in force immediately before 1 July 2012.

Part 3 Consequential amendments

14 Act amended

This Part amends the *Local Government Act*.

15 Section 237 amended

- (1) Section 237, after "this"

insert

or any other

- (2) Section 237, note heading, at the end

insert

for section 237

- (3) Section 237, note, at the end

insert

The Tribunal also has jurisdiction to hear appeals under the Darwin Waterfront Corporation Act.