

Serial 264
Darwin Port Corporation Amendment Bill 2004
Dr Burns

**A BILL
for
AN ACT**

to amend the *Darwin Port Corporation Act*

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NORTHERN TERRITORY OF AUSTRALIA
DARWIN PORT CORPORATION AMENDMENT ACT 2004

No. of 2004

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to amend the *Darwin Port Corporation Act*

[Assented to 2004]

[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Darwin Port Corporation Amendment Act 2004*.

PART 2 – AMENDMENT OF *DARWIN PORT CORPORATION ACT*

2. Principal Act amended

This Part amends the *Darwin Port Corporation Act*.

3. Amendment of section 5 (Interpretation)

- (1) Section 5(1), definitions of "assistant harbourmaster", "Chairperson", "Chief Executive Officer", "director", "member", "port officer" and "port superintendent" –

omit

- (2) Section 5(1) –

insert (in alphabetical order)

"Board" means the Advisory Board established by section 27A;

"Chairperson" means the Chairperson of the Board appointed under section 27D;

"member" means a member of the Board, and includes the Chairperson;

4. Amendment of section 6 (Darwin Port Corporation).

After section 6(3) –

insert

(4) The Port Corporation is an Agency for the *Public Sector Employment and Management Act* and *Financial Management Act* and is subject to each of those Acts in its operations.

(5) Subsection (4) applies whether or not the Port Corporation is nominated in an Administrative Arrangements Order as an Agency for either or both of the Acts.

(6) The Port Corporation is constituted by the Chief Executive Officer appointed under the *Public Sector Employment and Management Act* for the Agency.

5. Repeal of sections 7 to 7H and Part II, Division 1A

Sections 7 to 7H (inclusive) and Part II, Division 1A –

repeal

6. Repeal and substitution of section 15

Section 15 –

repeal, substitute

15. Minister may give Port Corporation directions

(1) In performing its functions, the Port Corporation is subject to the directions of the Minister.

(2) The Minister may, in writing, direct the Port Corporation to act in a particular manner, including a non-commercial manner.

(3) If the Minister directs the Port Corporation to act in a non-commercial manner, the direction must specify how the Corporation is to act.

(4) Before the Minister issues a direction, he or she must consult with the Port Corporation and, if the opinion of the Corporation is that the direction is

not in the Corporation's best interests, the Corporation must advise the Minister in writing of its objection and the reasons for the objection.

(5) If, after receiving the Port Corporation's objection, the Minister confirms in writing the direction to the Corporation, the Corporation must comply with the direction.

(6) The Minister must table in the Legislative Assembly a copy of a direction given under this section within 6 sitting days of the Assembly after giving the direction.

7. Amendment of section 16 (Functions of Port Corporation)

(1) Section 16(1)(a) –

omit

within

substitute

utilising

(2) Section 16(1)(c) –

omit

facilities; and

substitute

facilities;

(3) Section 16(1)(d) –

omit, substitute

(d) recreational and tourist activities within the Port; and

(e) other commercial activities (related to the business of the Port) within the Port.

(4) Section 16(2)(a)(xvi) –

omit

shipping; and

substitute

shipping;

(5) Section 16(2)(a)(xvii) –

omit, substitute

(xvii) develop and manage recreational and tourist facilities within the Port; and

(xviii) develop and manage other commercial facilities (related to the business of the Port) within the Port.

8. Amendment of section 17A (Port Corporation to take general commercial approach)

Section 17A(2) –

omit, substitute

(2) The Port Corporation, while acting generally in a commercial manner, must also have regard to government strategic objectives including trade development.

(3) Despite subsection (1), changes to, or general variations from, the Port Corporation's pricing structure must be approved by the Minister.

(4) However, individual variations from the pricing structure do not require the Minister's approval.

9. Repeal of sections 19, 23 and 24

Sections 19, 23 and 24 –

repeal

10. Repeal and substitution of sections 27 and 28

Sections 27 and 28 –

repeal, substitute

PART IIA – ADVISORY BOARD

Division 1 – Establishment and membership of Board

27. Application

Sections 27C, 27E, 27F and 27G do not apply in relation to the person who constitutes the Port Corporation.

27A. Establishment of Advisory Board

(1) There is an Advisory Board consisting of not more than 7 members.

(2) The person who constitutes the Port Corporation is a member of the Board.

27B. Function of Board

(1) The function of the Board is to advise the Port Corporation on its activities and the manner in which it carries out its activities.

(2) The Port Corporation may refer a matter relating to its activities to the Board and the Board must advise the Port Corporation on the matter.

(3) In considering its advice to the Port Corporation, the Board must take a generally commercial approach but must also have regard to government strategic objectives including trade development.

27C. Appointment of members

The Minister must, in writing, appoint as members of the Board persons who hold suitable qualifications or have suitable knowledge or experience.

27D. Chairperson

(1) Subject to subsection (2), the Minister must appoint a member to be the Chairperson of the Board.

(2) The Minister must not appoint a member who is a Chief Executive Officer, or an employee, within the meaning of the *Public Sector Employment and Management Act* to be the Chairperson.

27E. Term of office of members

A member holds office for –

- (a) 3 years; or
- (b) a lesser period specified in the instrument of appointment,

and is eligible for re-appointment.

27F. Vacation of office

A member vacates office as a member if –

- (a) his or her term of office expires; or

- (b) the member resigns office by writing and given to the Minister.

27G. Termination of appointment of member

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

(2) The Minister must terminate the appointment of a member if –

(a) the member is absent, except on leave granted by the Chairperson, from 3 consecutive meetings of the Board; or

(b) the member knowingly contravenes or fails to comply with section 27J.

(3) A member's appointment terminates on either of the following occurring:

(a) the member 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;

(b) the member is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more or is found guilty by a court outside the Territory of an offence which, if committed against a law in force in the Territory, would be an offence punishable by imprisonment for 12 months or more.

(4) The termination of an appointment under subsection (1) or (2) must be in writing and a copy must be given to the member.

27H. Leave of absence

The Chairperson may grant a member leave of absence.

27J. Disclosure of interests by members

(1) If a member has a direct or indirect interest in a matter being considered, or about to be considered, by the Board, the member must disclose the nature of the interest to a meeting of the Board as soon as practicable after the relevant facts come to his or her knowledge.

(2) The disclosure must be recorded in the Board's minutes.

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(3) Subject to a resolution of the Board to the contrary, a member who has made a disclosure under subsection (1) –

- (a) must not, while he or she has the interest, take part in any deliberation or decision of the Board relating to the matter; and
- (b) must be disregarded for the purpose of constituting the quorum of the Board for the purpose of any deliberation or decision of the Board relating to the matter.

(4) The resolution of the Board to the contrary must be deliberated and voted on in the absence of the member.

Division 2 – Procedures of Board

27K. Meetings

(1) The members of the Board must meet as often as is necessary to perform its functions.

(2) The Minister may, in writing, direct the Board to meet.

(3) The Chairperson must make the arrangements that enable the members to meet.

27L. Presiding and quorum at meetings

(1) The Chairperson or, in the absence of the Chairperson, the member elected by the members present from among their number must preside at a meeting of the Board.

(2) At a meeting of the Board, 2 members constitute a quorum.

27M. General procedures

(1) Unless otherwise prescribed, the procedures of the Board are as determined by the Board.

(2) The Board must keep a record of all its meetings and other proceedings.

Division 3 – Other matters

27N. Protection from liability

- (1) This section applies to a person who –
 - (a) constitutes or formerly constituted the Port Corporation; or
 - (b) is or was a member of the Board.

(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 Port Corporation in the exercise or purported exercise, or the performance or purported performance of a function, under this Act.

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

27P. Validity of action of Port Corporation

An action of, or decision taken by, the Port Corporation is not invalidated by reason only of a defect in the appointment of a person to be the Corporation or a defect in the appointment of a member of the Board.

PART IIB – PROPERTY, FINANCE AND REPORTS

28. Acquisition of estates in fee simple in Crown land

(1) The Port Corporation may be granted an estate in fee simple in Crown land, or a lease of Crown land, under the *Crown Lands Act*.

(2) If the Port Corporation is granted land in accordance with subsection (1), the Minister must give notice of the grant by notice in the *Gazette*.

28A. Money of Port Corporation

(1) The money of the Port Corporation consists of –

- (a) money received in performing its functions and exercising its powers;
- (b) money received as grants; and
- (c) any other money that from time to time becomes available for use by the Corporation.

(2) The money of the Port Corporation must be applied only for the purposes of the Corporation.

28B. Proper accounts to be kept etc.

The Port Corporation must ensure –

- (a) proper accounts and records of the transactions and affairs of the Corporation are kept;

- (b) there are adequate controls over the incurring of liabilities of the Corporation;
- (c) all payments out of the money of the Corporation are correctly made and properly authorised; and
- (d) adequate control is maintained over the property of, or in the custody, control and management of, the Corporation.

28C. Port Corporation to report to Minister regarding financial position

(1) If the Port Corporation considers a matter is affecting, or is likely to affect, its operations in a way that hinders, prevents or otherwise adversely affects to a significant degree the performance of its functions or its financial position, the Corporation must, as soon as practicable after becoming aware of the matter, inform the Minister in writing of –

- (a) the matter;
- (b) the reasons why it considers the matter is affecting, or will affect, that performance or financial position; and
- (c) the effect the matter is having, or the likely effect the matter will have, on that performance or financial position.

(2) The Port Corporation must, in writing, report to the Minister for each financial year or other reporting period determined by the Minister about its financial performance during that period and its expected financial performance during the next 2 reporting periods.

- (3) The report must –
 - (a) specify the financial performance targets of the Port Corporation for the reporting period, identify the targets the Corporation achieved and the targets it exceeded and identify the targets it did not achieve and specify the reasons why it did not achieve them;
 - (b) detail the financial performance objectives of the Corporation for the next 2 reporting periods and include details of –
 - (i) the projected nature and scope of its activities for those periods, including material contracts and terms and conditions of any lease or sale or purchase of real property;
 - (ii) its financial projections for those periods; and
 - (iii) the likely financial risks for the Corporation and its strategies to minimise the risks; and

(c) contain any other information the Minister requires.

(4) The Port Corporation must give the report to the Minister within 3 months after the end of the reporting period it refers to.

28D. Provision of financial information to Treasurer

(1) The Treasurer may at any time request the Port Corporation to provide the Treasurer with the information the Treasurer considers will enable him or her to accurately assess its financial affairs.

(2) The Port Corporation must comply with the Treasurer's request.

28E. Annual report of Port Corporation

(1) After the end of each financial year, the Port Corporation must prepare a report on the administration of this Act and the operations of the Corporation during the financial year.

(2) The report must include details of any directions given to the Port Corporation under section 15 during the financial year.

(3) The Port Corporation must give a copy of the report to the Minister –

(a) within 5 months immediately following the end of the financial year; or

(b) if the Minister has specified another period – within that period.

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

11. Repeal and substitution of section 29

Section 29 –

repeal, substitute

29. Directions by harbourmaster

(1) The harbourmaster may give directions for regulating any of the following:

(a) the time and manner (including the taking on of a licensed pilot) in which a vessel must enter into, depart from or lie in the Port;

(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;

- (c) the positioning, mooring, unmooring, placing or anchoring of a vessel and the removing of a vessel from one place to another within the Port.

(2) The master of a vessel must comply with a direction under subsection (1).

Penalty: 100 penalty units.

12. Amendment of section 30 (Removal etc. of vessel for failure to comply with direction)

- (1) Section 30(1) –

omit

section 29(2)

substitute

section 29(1)(c)

- (2) Section 30(4), penalty provision –

omit, substitute

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

13. Amendment of section 32 (Vessel, hulk or hull likely to cause damage etc.)

- (1) Section 32(6), penalty provision –

omit, substitute

Penalty: If the offender is a natural person – 200 penalty units and 2 penalty units for each day the offence continues.

If the offender is a body corporate – 1 000 penalty units and 10 penalty units for each day the offence continues.

- (2) Section 32(7), penalty provision –

omit, substitute

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 1 000 penalty units.

14. Amendment of section 33 (Removal of vessel from Port)

Section 33(2), penalty provision –

omit, substitute

Penalty: If the offender is a natural person – 200 penalty units and 2 penalty units for each day the offence continues.

If the offender is a body corporate – 1 000 penalty units and 10 penalty units for each day the offence continues.

15. Amendment of section 34 (Offence to cause damage to Port)

Section 34(1) and (2), penalty provision –

omit, substitute

Penalty: If the offender is a natural person – 100 penalty units and 1 penalty unit for each day the offence continues.

If the offender is a body corporate – 500 penalty units and 5 penalty units for each day the offence continues.

16. Amendment of section 40 (Penalty for carrying on business etc. while unlicensed)

Section 40(1), penalty provision –

omit, substitute

Penalty: If the offender is a natural person – 500 penalty units and 5 penalty units for each day the offence continues.

If the offender is a body corporate – 2 500 penalty units and 25 penalty units for each day the offence continues.

17. Amendment of section 47 (Contravention of or failure to comply with order or direction)

Section 47, penalty provision –

omit, substitute

Penalty: If the offender is a natural person – 100 penalty units and 1 penalty unit for each day the offence continues.

If the offender is a body corporate – 500 penalty units and 5 penalty units for each day the offence continues.

18. Amendment of section 48 (By-laws)

Section 48(1)(zd) –

omit, substitute

(zd) the imposition of a penalty for a contravention of or failure to comply with the By-laws not exceeding –

(i) if the offender is a natural person – 200 penalty units and 2 penalty units for each day the offence continues; or

(ii) if the offender is a body corporate – 1 000 penalty units and 10 penalty units for each day the offence continues.

19. New Part V heading

Before section 50 –

insert

PART V – TRANSITIONAL MATTERS FOR *DARWIN PORT AUTHORITY ACT 1983*

20. New Part VI

After section 50 –

insert

PART VI – TRANSITIONAL MATTERS FOR *DARWIN PORT CORPORATION AMENDMENT ACT 2004*

51. Transitional – directors

(1) If, immediately before the commencement of the *Darwin Port Corporation Amendment Act 2004*, a person was a director of the Port

Corporation, the person is taken to have been appointed to be a member of the Board.

(2) Subject to this Act, the appointment remains in force for the remainder of the term for which the person was appointed as a director.

PART 3 – AMENDMENT OF BY-LAWS

21. Amendment of Port By-laws

(1) This section amends the Port By-laws.

(2) Schedule 1, Forms 1 and 2 –

omit

Port Superintendent

substitute

Harbourmaster

22. Amendment of Port (Handling of Dangerous Goods and Oils) By-laws

(1) This section amends the Port (Handling of Dangerous Goods and Oils) By-laws.

(2) By-law 2 –

omit

Port Superintendent

substitute

harbourmaster

23. Amendment or repeal of by-laws

A by-law amended by this Part may be amended or repealed by a by-law as if the amendment had been made by a by-law.