

2014

LEGISLATIVE ASSEMBLY OF THE

NORTHERN TERRITORY

CHIEF MINISTER

Ports Management Bill

SERIAL NO. 110

EXPLANATORY STATEMENT

GENERAL OUTLINE

The object of this Bill is to provide for the future regulatory framework for a privately operated Port of Darwin. The opportunity was taken at the same time to introduce an improved regulatory framework for the control, management and operation of all designated ports in the Northern Territory, by amalgamating legislative regimes currently operating across different ports.

It is part of a package of reforms designed to facilitate the NT Government seeking private investment opportunities in the Port of Darwin.

The regulatory regime created under this Bill allows private port operators of designated ports to have day to day control of port operations, while ensuring that the Northern Territory retains a number of residual regulatory and operational functions relating to (among other things) maritime safety, vessel safety, pilotage, and port access and pricing, to ensure the ongoing good, proper and safe operation of port operations.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short Title

This is a standard clause which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Ports Management Act 2014*.

Clause 2. Commencement

This is a standard clause which provides that the Act will commence on the day fixed by the Administrator by notice published in the Government *Gazette*.

Clause 3. Definitions

This clause defines various words and expressions used in the Act.

Clause 4. Act binds the Crown

This is a standard clause that provides that the Act binds the Crown in the right of the Territory and, to the extent that the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Clause 5. Application of the Criminal Code

This is a standard clause that provides that Part IIAA of the Criminal Code applies to an offence against this Act. Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences and deals with burden of proof.

Part 2 Ports and port operators

Division 1 Declaration of designated ports

Clause 6. Declaration of designated port

This clause provides that the Minister may, by *Gazette* notice, declare that a port within the Territory is a designated port for the Act.

Clause 7. Boundaries of designated port

This clause provides that the Minister may, by *Gazette* notice, declare the boundaries of the area of water and land that constitute a designated port.

Division 2 Appointment of port operators

Clause 8. Declaration of port operator

This clause provides that the Minister may, by *Gazette* notice, declare that an entity is the operator of a designated port.

Clause 9. Agreements with port operators or port lessees

This clause provides that the Territory (or a public sector entity with consent of the Minister) may enter into one or more agreements with the port operator or port lessee of a designated port in relation to the operation of the port, which may be described as a port operating agreement for the Act.

Clause 10. Port operating agreements

Without limiting what may be agreed between the parties under clause 9, sub-clause (1) provides that a port operating agreement may require the port operator or port lessee to meet certain standards, ensure that the port is developed in a certain way, or give certain information to the Minister or an entity specified by the Minister.

Sub-clause (2) provides that a port operating agreement may include provisions that are civil penalty provisions for the Act. These provisions may require a payment or deduction to be made if the port operator or port lessee fails to meet a performance standard or causes or contributes to a safety incident specified in the port operating agreement.

Sub-clause (3) provides that such payments or deductions may be fixed according to classes of failures or safety incidents.

Sub-clause (4) provides that the port operator or port lessee is liable to pay the amount as a debt due to the Territory, despite anything to the contrary in a law of the Territory.

Clause 11. Revocation of declaration of port operator

Sub-clause (1) provides that the Minister may, if the circumstances specified in sub-clause (2) exist in relation to a port operator of a designated port, revoke the declaration of an entity as a port operator. Those circumstances being where, in the Minister's opinion, the entity has engaged in conduct that is in breach of a requirement under the law of the Territory or a port operating agreement and that conduct has compromised, or may compromise, the safety of people, property or the environment at the designated port. The Minister may also exercise this power in circumstances where a port operating agreement for the port to which the entity is a party has expired or been terminated.

Sub-clause (3) specifies that, except in the case of revocation due to expiration or termination of the port operating agreement, the Minister may only exercise his or her power of revocation if the Minister has complied with its requirements under that sub-clause (3). Those requirements being to provide written

notice to the entity setting out particulars of the conduct and requiring the entity to give a remedial plan to the Minister within a reasonable period (being not less than 21 days), and to only exercise the power of revocation if the entity fails to give an adequate remedial plan within the required time, or gives a remedial plan, but fails to comply with it.

Sub-clause (4) clarifies that a remedial plan is a plan that sets out when and how the conduct will cease, the extent that any breach can be remedied and the measures that the entity will implement to prevent the conduct occurring in the future.

Division 3 Functions of port operator

Clause 12. Functions of port operator

This clause provides that the functions of a port operator are those conferred under the Act or another law of the Territory. Its principal functions are to establish, manage, maintain and operate facilities and services in the designated port that promote its safe and efficient operation, and to facilitate trade through the designated port.

Clause 13. Dredging or other similar work

This clause provides that the port operator of a designated port may carry out dredging or other work to deepen, extend, clear or maintain channels or berthing places within the port, provided that the port operator holds any authorisations for the work required by law.

Sub-clause (3) clarifies that this clause does not affect the power of the Territory to carry out dredging or other work mentioned in sub-clause (1) in any Territory waters, including waters within a designated port.

Clause 14. Hydrographic surveys

This clause provides that a port operator of a designated port may carry out hydrographic surveys within the port, provided that the port operator holds any authorisations for carrying out the survey required by law and that it gives any information derived from the survey that is relevant to the function of the regional harbourmaster under clause 21 (Promulgation of depths and under keel clearances) to the regional harbourmaster.

Clause 15. Power to require information to be provided

Sub-clause (1) provides that a port operator of a designated port may, by written direction, require a master of a vessel, shipping agent, consignor or consignee of shipped goods or operator of stevedoring, pilotage or other facilities within the designated port to give any information that the port operator reasonably requires for the purposes specified in sub-clause (2).

Sub-clauses (3) to (5) provide that any information direction given under sub-clause (1) must allow a reasonable period (being not less than 14 days) for compliance, except in the case of an emergency or in order to avert or minimise an imminent threat of death or serious injury to a person, loss of or serious damage to property, or harm to the environment, in which case the direction must be complied with as soon as possible.

Sub-clause (6) defines the term *port area* for the purposes of this clause.

Clause 16. Use or disclosure of information collected

This clause authorises a port operator of a designated port to use and disclose information given to the port operator under an information direction for any purpose for which the port operator is authorised to require the information, subject to the provisions of any port operating agreement.

Sub-clause (3) requires a port operator to give any such information to the Territory or another public sector entity if requested.

Clause 17. Compliance with information direction

This clause provides that it is an offence carrying a maximum penalty of 100 penalty units for a person to contravene an information direction given under clause 15(1). This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (4) provides that it is not a reasonable excuse that compliance with the information direction would breach a duty of confidentiality.

Sub-clause (5) provides that the provision of information in compliance with an information direction does not constitute a breach of a duty of confidentiality.

Clause 18. Record-keeping and reporting obligations of port operator

Sub-clause (1) requires a port operator of a designated port to keep records containing the prescribed particulars of all reportable incidents that occur within a port, in the prescribed manner.

Sub-clause (2) provides that it is an offence carrying a maximum penalty of 100 penalty units for a port operator to fail to keep a record of a reportable incident in accordance with sub-clause (1). This is a strict liability offence, with a reasonable defence excuse.

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 100 penalty units for a port operator to fail to report the prescribed particulars of an incident in writing to the regional harbourmaster of the port within the prescribed period after a reportable incident occurs. This is a strict liability offence, with a reasonable defence excuse.

Sub-clause (6) clarifies that this clause does not affect any recording or reporting requirements of a port operator under any other Act.

Part 3 Regional harbourmasters

Clause 19. Appointment of regional harbourmaster

This clause provides that the Minister may appoint a person employed in an Agency as the regional harbourmaster for a designated port.

Sub-clause (3) provides that if at any time there is not a regional harbourmaster for a designated port, the functions of regional harbourmaster are exercisable by the Director (where the term ‘Director’ has the meaning given in section 7(1) of the *Marine Act*).

Clause 20. Functions of regional harbourmaster

This clause provides that a regional harbourmaster has functions conferred under this Act or another Act of the Territory in relation to any designated port for which he or she is appointed.

Clause 21. Promulgation of depths and under keel clearances

Sub-clause (1) provides that the regional harbourmaster for a designated port may publish information about the depths and configurations of, and the under keel clearance required to be maintained by vessels in channels, berthing pockets and other areas within the designated port.

Sub-clause (2) requires the regional harbourmaster to ensure that written notice of any published information is made available to the port operator of the designated port as soon as practicable after it is published.

Part 4 Port officers

Division 1 Port management officers

Clause 22. Appointment of port management officers

This clause provides that a port operator of a designated port may appoint any of its employees as port management officers of the port, provided it is satisfied that the appointed employees have the appropriate skills and knowledge to exercise the functions of such an officer.

Sub-clauses (4) to (6) require the port operator of a designated port to ensure that at least one person holds office as port management officer at any time and to notify the regional harbourmaster for the port immediately in writing of the name of any person who becomes, or ceases to be, a port management officer for the port.

Clause 23. Functions of port management officer

This clause provides that a port management officer may perform any function conferred on the port operator under Division 2 of Part 5 of the Act (Direction and control of vessels) along with any other functions conferred on a port management officer under this Act or any other Act.

Division 2 Port enforcement officers

Clause 24. Appointment of port enforcement officers

This clause provides that a port operator of a designated port may appoint any of its employees as port enforcement officers for the port, provided it is satisfied that the appointed employees have appropriate skills and knowledge to exercise the functions of such an officer.

Sub-clauses (4) and (5) require the port operator of a designated port to notify the regional harbourmaster for the port immediately in writing of the name of any person who becomes, or ceases to be, a port enforcement officer for the port.

Clause 25. Functions of port enforcement officer

This clause provides that a port enforcement officer may perform any function conferred on a port operator under Part 7 of the Act (Port notices) for the purpose of enforcing compliance with a port notice issued by the port operator under that Part 7, along with any other functions conferred on a port enforcement officer by a port notice or under this or any other Act.

Division 3 General provisions

Clause 26. Identity card

Sub-clauses (1) and (2) require a port operator of a designated port to give each of its port management officers and port enforcement officers an identity card that states the person's name, states that the person is such an officer for the port, shows a recent photograph of the officer, shows the card's date of issue and expiry, and is signed by the officer.

Sub-clause (3) clarifies that a single identity card may be issued for this Act and another Act.

Clause 27. Return of identity card

This clause provides that it is an offence carrying a maximum penalty of 20 penalty units for a person who ceases to be a port management officer or port enforcement officer to fail to return his or her identity card to the port operator within 21 days after the cessation. This is a strict liability offence.

Part 5 Control and management of designated port

Division 1 Port safety plans

Clause 28. Nature of port safety plan

Sub-clause (1) describes the nature of a port safety plan for a designated port, including specific content requirements.

Sub-clause (2) provides that a port safety plan must be prepared in accordance with guidelines issued under clause 32 and may consist of more than one document.

Clause 29. Annual preparation of draft port safety plan

This clause provides that it is an offence carrying a maximum penalty of 200 penalty units for a port operator of a designated port to fail to prepare a draft port safety plan and submit it to the regional harbourmaster for the port no later than one month before each anniversary of the port operator's declaration as port operator. This is a strict liability offence, with a reasonable excuse defence.

Clause 30. Direction to prepare new or amended port safety plan

Sub-clause (1) provides that the regional harbourmaster for a designated port may, by written notice, direct the port operator to prepare a new draft port safety plan or amend the port safety plan as directed, and to submit the draft (or amended) port safety plan to the regional harbourmaster for approval within the period specified in the notice.

Sub-clause (2) provides that it is an offence carrying a maximum penalty of 200 penalty units for the port operator to fail to comply with a direction under sub-clause (1). This is a strict liability offence, with a reasonable excuse defence.

Clause 31. **Role of regional harbourmaster on receiving port safety plan**

Sub-clause (1) requires the regional harbourmaster for a designated port to, within 60 days after receiving a draft (or amended) port safety plan, either approve the plan by written notice to the port operator or return it to the port operator for amendment as directed. If the regional harbourmaster fails to do so, sub-clause (3) deems that the plan is approved on the expiration of that period.

Sub-clause (2) requires the port operator to, within 30 days after receiving a returned draft or amended port safety plan, re-submit the plan as directed to the regional harbourmaster for approval.

Clause 32. Guidelines

This clause provides that the regional harbourmaster for a designated port may issue guidelines about matters in relation to port safety plans for the port, as specified in sub-clause (1).

Sub-clause (2) requires that any guidelines issued under this clause are published in the *Gazette* and made available for inspection free of charge at the regional harbourmaster's office.

Clause 33. Obligations of port operator

Sub-clause (1) provides that it is an offence carrying a maximum penalty of 200 penalty units for a port operator to fail to implement the port safety plan for a designated port, subject to any written exemption granted by the regional harbourmaster under sub-clause (2). This is a strict liability offence, with sub-clause (3) providing a defence if the defendant took reasonable steps to implement the port safety plan.

Sub-clause (4) provides that it is an offence carrying a maximum penalty of 20 penalty units for a port operator to fail to ensure that copies of the port safety plan are available for inspection by any person during normal business hours at the port operator's principal place of business in the Territory. This is a strict liability offence.

Clause 34. Compliance audit

Sub-clause (1) defines the term *compliance audit* for the purposes of this Part.

Sub-clauses (2) and (3) provide that the regional harbourmaster for a designated port may approve a person to conduct a compliance audit of the port operator at the port operator's expense, provided that the regional harbourmaster is satisfied that the person has the appropriate qualifications or experience in safety assessment or management to do so.

Clause 35. Requirement for compliance audit to be conducted

Sub-clause (1) provides that the regional harbourmaster for a designated port may, by notice in writing to the port operator, direct that a compliance audit of the port operator be conducted within a specified period (not being less than 6 months).

Sub-clause (2) provides that it is an offence carrying a maximum penalty of 200 penalty units for a port operator to fail to comply with a direction given under sub-clause (1). This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (5) provides that a port officer commits an offence carrying a maximum penalty of 200 penalty units if a compliance audit to determine whether the port operator is complying with the port safety plan for the port is not conducted for 3 years and the port operator fails to ensure that such an audit is conducted within 6 months after the end of that period. This is a strict liability offence.

Clause 36. Reporting

Sub-clause (1) requires a port operator of a designated port in relation to whom a compliance audit has been conducted to ensure that the auditor reports, in writing, to the regional harbourmaster on the outcomes of the compliance audit and the auditor's recommendations (if any) about the matters specified in sub-clauses (1)(a) and (b).

Sub-clauses (2) and (3) require a port operator of a designated port to make a quarterly report to the regional harbourmaster for the designated port on any material instance of non-compliance with the port safety plan during that quarter, which report must be prepared in accordance with any guidelines issued under clause 32.

Division 2 Direction and control of vessels

Clause 37. Exercise of powers under this Division

This clause provides that the powers granted to a port operator of a designated port under this Division 2 may only be exercised on its behalf by a port management officer for the port and not directly by the port operator.

Clause 38. Directions by port operator

Sub-clause (1) provides that the port operator of a designated port may (by written notice published on the operator's website or giving it to the master of a vessel) give directions for the regulating of the time at which and manner in which a vessel may enter, depart or lie in the port and otherwise for the regulating of operations and activities carried out in the port, as specified in sub-clauses (1)(a) to (c).

Sub-clause (2) provides that it is an offence carrying a maximum penalty of 100 penalty units for a master of a vessel within the designated port to fail to comply with a direction given under sub-clause (1). This is a strict liability offence, with a reasonable excuse defence.

Clause 39. Removal etc. of vessel by port operator

This clause provides that, if the master of a vessel fails to comply with a direction from the port operator of the designated port given under clause 38(1)(c) or if there is no person on board the vessel to whom the direction may be given, the port operator may cause a vessel to be positioned, moored, unmoored, placed, anchored or removed as directed or required.

Sub-clause (4) provides that the owner or master of the vessel is liable to pay all expenses incurred by the port operator in taking any such action.

Sub-clauses (5) and (6) provide that an amount that an owner or master is liable to pay under this clause for expenses is in addition to any penalty imposed for an offence against clause 38(2) and may be recovered as a debt due and payable to the port operator.

Clause 40. Power to board vessel

Sub-clause (1) requires the master of a vessel within a designated port to, at the request of a port management officer, permit the officer to board the vessel, inspect the vessel, its cargo and any other things on the vessel, and do anything else for the purpose of investigating whether the vessel is being operated lawfully.

Sub-clause (2) requires a port management officer to produce his or her identify card to the master of the vessel before boarding the vessel under sub-section (1).

Sub-clause (3) provides that a port management officer may board a vessel and do any of the things mentioned in sub-clause (1) if there is no-one on board the vessel to whom a request may be made under sub-clause (1).

Sub-clauses (4) and (5) provide the owner of the vessel is liable to pay all expenses incurred under sub-clause (3) and that the amount of such expenses may be recovered as a debt due and payable to the port operator.

Division 3 Clearance of wrecks

Clause 41. Wrecks likely to cause damage etc to commercial vessels

Sub-clause (1) provides that this clause applies to any commercial vessel (including hulks and hulls) that is likely to cause damage to, endanger or obstruct the passage, navigation or use of the port by any vessel. This clause also applies to any other vessel (including hulks and hulls) that is in such a condition that it is likely to cause damage to, endanger or obstruct the passage, navigation or use of the port by a commercial vessel.

Sub-clause (2) requires the port operator of a designated port to, by written notice (in the manner described in sub-clauses (7) and (8)), direct the owner, master or occupier of a vessel within the port to remove, repair or destroy the vessel if it is, in the port operator's opinion, one to which this clause applies.

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 200 penalty units for an owner, master or occupier to whom a direction is given under sub-clause (2) to fail to comply with the direction within 14 days or any longer time that the port operator allows in writing. This is a strict liability offence.

Sub-clauses (5) and (6) provide that, if a direction given under sub-clause (2) is not complied with, the port operator may authorise a person to board a vessel and carry out work to comply with the direction.

Sub-clause (9) provides that the costs incurred under this clause by the port operator, or by the person authorised to carry out work, may be recovered from the owner, master or occupier as a debt due and payable to the port operator.

Clause 42. Wrecks likely to cause damage etc to non-commercial vessels

Sub-clause (1) provides that this clause applies to a non-commercial vessel (including hulks and hulls) that is likely to cause damage to, endanger or obstruct the passage, navigation or use of the port by any vessel. This clause also applies to any other vessel (including hulks and hulls) that is in such a condition that it is likely to cause damage to, endanger or obstruct the passage, navigation or use of the port by a non-commercial vessel.

Sub-clause (2) provides that the regional harbourmaster of a designated port may, by written notice (in the manner described in

sub-clauses (7) and (8)), direct the owner, master or occupier of a vessel within the port to remove, repair or destroy the vessel if it is, in the regional harbourmaster's opinion, one to which this clause applies.

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 200 penalty units for an owner, master or occupier to whom a direction is given under sub-clause (2) to fail to comply with the direction within 14 days or any longer time that the port operator allows in writing. This is a strict liability offence.

Sub-clauses (5) and (6) provide that, if a direction given under sub-clause (2) is not complied with, the regional harbourmaster may authorise a person to board a vessel and carry out work to comply with the direction.

Sub-clause (9) provides that the costs incurred under this clause by the regional harbourmaster, or by the person authorised to carry out work, may be recovered from the owner, master or occupier as a debt due and payable to the Territory.

Clause 43.**Removal of vessel that threatens commercial shipping**

Sub-clause (1) provides that this clause applies to a vessel within a designated port that, because of its condition, is a threat or danger to persons or vessels or other property not connected with commercial shipping in the designated port.

Sub-clause (2) provides that the port operator of a designated port may, by written notice (in the manner described in sub-clauses (7) and (8)), direct the owner or master of a vessel within that port to remove, repair or destroy the vessel if it is, in the port operator's opinion, one to which this clause applies.

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 200 penalty units for an owner or master to whom a direction is given under sub-clause (2) to fail to comply with the direction within the period specified in the direction. This is a strict liability offence.

Sub-clauses (5) and (6) provide that, if a direction given under sub-clause (2) is not complied with, the port operator may authorise a person to board a vessel and carry out work to comply with the direction.

Sub-clause (9) provides that the costs incurred under this clause by the port operator, or a person authorised to carry out work, may be recovered from the owner or master as a debt due to the port operator.

Clause 44.**Removal of vessel in other cases**

This clause applies to a vessel within a designated port that, because of its condition, is a threat or danger to persons or vessels or other property connected with commercial shipping in the port.

Sub-clause (2) provides that the regional harbourmaster of a designated port may, by written notice (in the manner described in sub-clauses (7) and (8)), direct the owner or master of a vessel within that port to remove, repair or destroy the vessel if it is, in the regional harbourmaster's opinion, one to which this clause applies.

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 200 penalty units for an owner or master to whom a direction is given under sub-clause (2) to fail to comply with the direction within the period specified in the direction. This is a strict liability offence.

Sub-clauses (5) and (6) provide that, if a direction given under

sub-clause (2) is not complied with, the regional harbourmaster may authorise a person to board a vessel and carry out work to comply with the direction.

Sub-clause (9) provides that the costs incurred under this clause by the regional harbourmaster, or a person authorised to carry out work, may be recovered from the owner or master as a debt due to the Territory.

Division 4 Dangerous goods

Clause 45. Advance notification of entry of vessels

This clause provides that a port operator commits an offence carrying a maximum penalty of 100 penalty units if the port operator receives advance notification of the entry into the port of a vessel carrying dangerous goods (in accordance with Australian Standard

AS 3846-2005 or any other prescribed Australian or International Standard applicable to the storage, handling or transport of dangerous goods, or in accordance with a requirement of the port operator), and the port operator fails to give a copy of the notification to the regional harbourmaster for the port immediately. This is a strict liability offence, with a reasonable defence excuse.

Clause 46. Requirements relating to vessel carrying dangerous goods

This clause provides that a port operator of a designated port may require the owner of a vessel requiring entry into the port, which has dangerous goods on board as cargo, to give security or have or obtain a policy of insurance in respect of any loss or damage that may occur from the loading, unloading, handling or storage of the cargo in the designated port.

Sub-clause (3) provides that a port operator of a designated port may refuse or restrict entry into, or the handling of cargo in, the port if the owner has refused or failed to comply with a requirement made to give security or have a policy of insurance.

Clause 47. Handling of dangerous goods

This clause provides that it is an offence carrying a maximum penalty of 500 penalty units for a person to engage in conduct within a designated port in relation to the storage, handling or transport of dangerous goods which contravenes Australian Standard AS 3846-2005 or any other prescribed Australian or International Standard that applies to the handling and transport of dangerous goods within a designated port.

Sub-clause (2) provides that a prosecution of an offence under this clause cannot be instituted without written consent of the Competent Authority (under section 3 of the *Dangerous Goods Act*).

Clause 48. Forfeiture of dangerous goods

This clause provides that a court may, if a person is found guilty of an offence against clause 47(4), order the dangerous goods in respect of which the offence was committed to be forfeited to the Territory, or destroyed.

Sub-clause (3) clarifies that the court may order forfeiture or destruction of dangerous goods despite the goods not belonging to the person found guilty of the offence or the owner of the goods having no knowledge of the proceeding concerning the forfeiture or destruction.

Sub-clause (4) provides that the Competent Authority (under section 3 of the *Dangerous Goods Act*) may recover from the person found guilty the costs incurred by it in relation to the destruction or forfeiture of the goods as a debt due and payable to the Territory.

Clause 49. Application of *Dangerous Goods Act*

This clause provides that for the application of the *Dangerous Goods Act* to water and land constituting a designated port, any reference to a vehicle is taken to include a vessel, any reference to a load on a vehicle is taken to be cargo on a vessel, and Parts 4 and 5 of the *Dangerous Goods Act* have effect as if the term ‘*dangerous goods*’, when used in those Parts, has the meaning given to it in this Act.

Division 5 Closed waters

Clause 50. Power of port operator to close waters

Sub-clause (1) provides that the port operator of a designated port may, by *Gazette* notice or notice published in a newspaper circulating generally in the vicinity of the port, close all or part of the waters in the designated port to all or specified classes of persons and vessels for a specified period (subject to the regulations).

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 50 penalty units for a person to be in closed waters contrary to a notice published under sub-clause (1). This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (4) provides that a master of a vessel commits an offence carrying a maximum penalty of 100 penalty units if that vessel is in closed waters contrary to a notice published under sub-clause (1). This is a strict liability offence, with a reasonable defence excuse.

Sub-clause (7) provides that a port operator, or a port management officer, may direct a person apparently in control of a vessel that is in closed waters contrary to a notice published under sub-clause (1) to remove the vessel from the closed waters.

Clause 51. Power of regional harbourmaster to close waters

Sub-clause (1) provides that, if a regional harbourmaster for a designated port satisfies the conditions in sub-clause (2), the regional harbourmaster may, by *Gazette* notice or notice published in a newspaper circulating generally in the vicinity of the port, close all or part of the waters in the port to all or specified classes of persons and vessels for a period specified in the notice.

Sub-clause (2) specifies that the regional harbourmaster may only close the port under sub-clause (1) if satisfied that the closure would not have an impact on commercial shipping within the port and if the regional harbourmaster gave prior written notice of the publication to the port operator.

Sub-clause (4) provides that it is an offence carrying a maximum penalty of 50 penalty units for a person to be in closed waters contrary to a notice published under sub-clause (1). This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (5) provides that a master of a vessel commits an offence carrying a maximum penalty of 100 penalty units if that vessel is in closed waters contrary to a notice published under sub-clause (1). This is a

strict liability offence, with a reasonable excuse defence.

Sub-clause (8) provides that the regional harbourmaster, or a person authorised by the regional harbourmaster, may direct a person apparently in control of a vessel that is in closed waters contrary to a notice published under sub-clause (1) to remove the vessel from the closed waters.

Clause 52. Removal etc. of vessel for failure to comply with direction

This clause provides that a port operator of a designated port or regional harbourmaster for a designated port may, if the port operator or regional harbourmaster has given a direction under sub-clause 50(7) or 51(8) and the person in apparent control of a vessel has failed to comply with the direction, cause the vessel to be removed to a place outside closed waters.

Sub-clauses (3) and (4) provide that the person who failed to comply with a direction is liable to pay all expenses incurred by the port operator or regional harbourmaster in causing a vessel to be removed from closed waters and that amount is in addition to any amount imposed for an offence against clause 50(3) or 51(4).

Sub-clause (5) provides that the amount may be recovered as a debt due and payable to the port operator (for expenses incurred by the port operator) or the Territory (for expenses incurred by the regional harbourmaster).

Division 6 Erection of structures

Clause 53. Erection of structures

Sub-clause (1) provides that it is an offence carrying a maximum penalty of 100 penalty units for a person to erect any jetty, wharf, pontoon or structure (temporary or permanent) below the high water mark in or on waters within a designated port, without the prior written approval of the regional harbourmaster for the port. This is a strict liability offence, with a reasonable excuse defence.

Sub-clauses (4) and (5) provide that the regional harbourmaster must not withhold approval under sub-clause (1) except on reasonable grounds set out in a written notice to the person seeking approval, which must specify that the person has the right to have the decision reviewed by the Civil and Administrative Tribunal.

Part 6 Stevedore licences

Clause 54. Application for grant or renewal of licence

This clause provides that a person may apply to the Minister for a licence, or a licence renewal, to carry on a business as a stevedore within a designated port, an application for which must be in the approved form and accompanied by the prescribed fee.

Sub-clause (4) provides that a licence granted or renewed is subject to any conditions that the Minister thinks fit and endorses on the licence.

Sub-clauses (3), (5) and (6) require the Minister to consider an application under this clause and in doing so, the Minister must have regard to specified matters, including whether an applicant is a suitable person to hold, or to continue to hold, the licence.

Sub-clauses (7) provides that the Minister must not make a decision in relation to a licence without first consulting the port operator of the port.

Sub-clause (8) requires the Minister to, as soon as practicable after deciding an application, give written notice to the applicant and the port operator specifying the reasons for the decision and, if the decision is a refusal, the notice must specify that the applicant has the right to have the decision reviewed by the Civil and Administrative Tribunal.

Clause 55. Suspension or cancellation of licence

Sub-clause (1) provides that the Minister may, if the holder of a stevedore licence contravenes a condition of the licence, cancel the license or suspend it for a specified period (after first consulting with the port operator of the relevant designated port).

Sub-clause (2) requires the Minister to give written notice of any decision to cancel or suspend a stevedore licence to the licence holder and the port operator. The notice must specify the reasons for the decision and that the former licence holder has a right to have the decision reviewed by the Civil and Administrative Tribunal. If the licence is cancelled, the notice must require the former licence holder to surrender the licence document to the Minister within a specified period.

Clause 56. **Penalty for carrying on business etc. while unlicensed**

Sub-clause (1) provides that it is an offence carrying a maximum penalty of 500 penalty units for a person to carry on a business of a stevedore within a designated port without a licence under this Part authorising the person to do so.

Sub-clause (2) is an evidentiary provision that provides that an averment by the prosecutor in a complaint or information that a specified person did not hold a licence under this Part at the time when the offence was committed is evidence of that fact.

Part 7 Port Notices

Clause 57. Port operator may issue port notices

This clause provides that a port operator of a designated port may, by notice issued under this clause, control activities or conduct within the designated port for the purpose of maintaining or improving the designated port's safe, secure or efficient operation.

Sub-clause (2) specifies a non-exhaustive list of the activities or conduct that a port notice may control.

Sub-clause (3) provides that if there is an inconsistency between a port notice and another provision of the law of the Territory, the Territory law prevails to the extent of the inconsistency.

Clause 58. How port notice may be issued

Sub-clause (1) provides that a port notice may be issued by being displayed in a prominent position within the port, published on the port operator's website or given to the person or persons to whom it applies.

Sub-clauses (2) and (3) require the port operator to, not less than 14 days before issuing or revoking a port notice, give written notice to the regional harbourmaster of the proposed issue or revocation, unless the issue or revocation occurs because of an emergency or in order to avert or minimise an imminent threat of death or serious injury to a person, loss of or serious damage to property, or harm to the environment.

Sub-clause (4) provides that if a port notice is issued or revoked in the case of an emergency or in order to avert or minimise an imminent threat without notice, the port operator is required to give written notice to the regional harbourmaster of the issue or revocation within 3 days after that event.

Clause 59. Enforcement of port notices

This clause specifies the ways in which a port operator of a designated port may enforce compliance with a port notice.

Sub-clause (3) requires a port enforcement officer to produce his or her identity card before exercising any power to enforce compliance with a port notice in relation to any individual.

Sub-clauses (4) and (5) provide that a port operator of a designated port is entitled to recover the reasonable costs incurred in enforcing compliance with a port notice from the person contravening the port notice, as a debt due and payable to it.

Sub-clause (6) provides that a certificate issued by the port operator certifying as to the reasonable costs incurred in enforcing compliance with a port notice is evidence of the matters certified.

Clause 60. Advance notice of proposed work

Sub-clauses (1) and (2) provide that in order to enforce compliance with a port notice by carrying out any work at the port that a person has failed to carry out, the port operator of a designated port must give that person not less than 7 days written notice of the proposed works, which details the alleged contravention.

Sub-clause (3) provides that advance notice is not required if the work is necessary because of an emergency or in order to avert or minimise an imminent threat of death or serious injury to a person, loss of or serious damage to property, or harm to the environment.

Clause 61. Power of entry

This clause provides that a port operator of a designated port may, on giving reasonable notice to the occupier, enter any land or premises at the designated port to establish whether a port notice has been complied with or to enforce compliance with a port notice as authorised under the Act.

Clause 62. Monitoring of port notices

Sub-clause (1) requires a port operator of a designated port to give details to the regional harbourmaster for the port of any reportable matters. The clause specifies 'reportable matters' as being a contravention of a port notice, any exercise by the port operator of its power of entry to land or premises and any action

taken by the port operator to enforce compliance with a port notice.

Sub-clause (2) requires the port officer to give the details of reportable matters to the regional harbourmaster within the period specified in sub-clause (1) or otherwise within the period requested by notice in writing from the regional harbourmaster to the port operator (being not be less than 21 days).

Sub-clause (4) provides that the regional harbourmaster may, by written notice to the port operator, direct the manner and form in which information required under this clause must be given.

Sub-clause (5) provides that the regional harbourmaster may publish reports and statements based on information given under this clause. The report or statement must not identify a person who has contravened a port notice. The relevant port operator must be given a copy of the proposed report at least 14 days before publication.

Sub-clause (6) provides that no liability (including for defamation) is incurred by a person for publishing in good faith a report or statement under this clause, or a fair report or summary of such a report or statement.

Part 8 **Pilotage**

Division 1 **Preliminary matters**

Clause 63. **Definitions**

This clause defines the term *vessel* for the purposes of this Part.

Clause 64. **Pilotage authority may declare exempt vessels**

This clause provides that the pilotage authority for a pilotage area may, by *Gazette* notice, declare a vessel or a class of vessel to be an exempt vessel for the pilotage area.

Division 2 **Pilotage areas and authorities**

Clause 65. **Pilotage areas**

This clause provides that the Minister may, by *Gazette* notice, declare an area of Northern Territory waters to be a pilotage area.

Clause 66. **Pilotage authorities**

This clause declares that the regional harbourmaster is the pilotage authority for any pilotage area within a designated port for which he or she is the regional harbourmaster. The clause also provides that the Minister may, by *Gazette* notice, appoint a person to be the pilotage authority for any other pilotage area.

Clause 67. **Technical and safety standards**

Sub-clause (1) requires the pilotage authority for a pilotage area to make technical and safety standards for pilotage, and the provision of pilotage services in that area.

Sub-clause (2) requires the pilotage authority to have regard to any Marine Order or other relevant law in making technical and safety standards under sub-clause (1).

Sub-clauses (3) and (4) require the pilotage authority to, by *Gazette* notice (specifying the date on which the standards take effect), notify the making of the standards and to otherwise disseminate the standards as specified by sub-clauses (3)(b) and (c), as soon as practicable after the standards are made.

Sub-clause (5) provides that it is an offence carrying a maximum penalty of 200 penalty units for a person to contravene a standard made under this clause when conducting pilotage, or providing pilotage services,

in the pilotage area to which the standard applies. This is a strict liability offence, with a reasonable defence excuse.

Division 3 Pilotage generally

Clause 68. Compulsory pilotage

Sub-clause (1) provides that pilotage is compulsory for every pilotage area within a designated port.

Sub-clauses (2) and (3) provide that a pilotage authority for any other pilotage area may, by *Gazette* notice (if the pilotage authority is a public sector entity) or in a newspaper circulating in the Territory (if it is not), publish a declaration that pilotage is compulsory for that area or a specified part of it.

Sub-clause (4) provides that a declaration takes effect on the day it is published, or any later date specified in the declaration.

Sub-clause (5) provides that a pilotage authority that makes a declaration that is published in a newspaper must give a copy of the declaration to the Director within 3 days after its publication.

Clause 69. Special pilotage requirements

This clause provides that a pilotage authority for a pilotage area or the port operator of a designated port within which a pilotage area is situated may, if the pilotage authority or port operator is of the opinion (having regard to the matters specified in sub-clause (3)) that there would be a special risk or danger arising from a vessel entering, plying or moving in or leaving a pilotage area, require the master of a vessel to have on board a licensed pilot in circumstances where compulsory pilotage would not otherwise be required.

Sub-clause (4) provides that it is an offence carrying a maximum penalty of 500 penalty units if the master of a vessel engages in conduct that contravenes a requirement of a pilotage authority or port operator under sub-clause (2).

Clause 70. Failure to take pilot on board

This clause provides that subject to the exemption specified in clause 73 (which permits a vessel entering, moving within or exiting a compulsory pilotage area without having a licensed pilot on board in limited, specified circumstances), it is an offence carrying a maximum penalty of 500 penalty units for the master of a vessel to permit the vessel to enter, ply or move in or leave a compulsory pilotage area without having a licensed pilot on board.

Clause 71. Procedure on entering compulsory pilotage area

This clause provides that, subject to the exemption specified in clause 73 (which permits a vessel entering, moving within or exiting a compulsory pilotage area without having a licensed pilot on board in the limited circumstances as specified in that clause), it is an offence carrying a maximum penalty of 500 penalty units for the master of a vessel to enter a compulsory pilotage area without first complying with the procedures specified in this clause.

Clause 72. Duty of licensed pilot

This clause provides that the duty of a licensed pilot is to pilot the vessel, subject to the authority of the master of a vessel.

Clause 73. Pilotage not required in certain cases

This clause defines the term *relevant entity* for the purposes of the clause and provides that the pilotage requirements and procedures under clauses 70 and 71 do not apply to a vessel if, having regard to the safety of the vessel or a person on board, the relevant entity is of the opinion that it is necessary for the vessel to be immediately brought into, moved within or taken out of a compulsory pilotage area.

Clause 74. Owner's liability

This clause provides that if a master of a vessel is found guilty of an offence against clause 70 or 71, the owner of the vessel is taken to be guilty of the same offence and is liable to the same penalty.

Division 4**Pilotage licences and pilotage exemption certificates****Clause 75.****Application for pilotage licence or exemption certificate**

This clause provides that a person may apply in writing to a pilotage authority for a pilotage licence or a pilotage exemption certificate (or a renewal of such a licence or exemption certificate) in respect of a pilotage area for which it is the pilotage authority.

Clause 76.**Issue and renewal of pilotage licence and exemption certificate**

This clause specifies the circumstances in which a pilotage authority is authorised to issue or renew a pilotage licence or exemption certificate in respect of a pilotage area, along with conditions upon which the licence or exemption certificate may be issued or renewed.

Clause 77.**Form of pilotage licence and exemption certificate**

This clause specifies the form, mandatory content requirements and the period of effect of a pilotage licence and a pilotage exemption certificate.

Clause 78.**Suspension or cancellation**

Sub-clause (1) provides that a pilotage authority may, after receiving the report of a person appointed to conduct an inquiry into misconduct by a licensed pilot under clause 82(1) and satisfying itself as to any of the matters mentioned in that clause, cancel or suspend (for such period as it thinks fit) the pilotage licence of that licensed pilot.

Sub-clause (2) provides that a pilotage authority may, if of the opinion that the holder of a pilotage exemption certificate is unfit to continue to hold the certificate, cancel the certificate at any time.

Clause 79.**Production of pilotage licence**

This clause provides that it is an offence carrying a maximum penalty of 100 penalty units for a licensed pilot to fail to produce his or her pilotage licence to the master of a vessel upon request. This is a strict liability offence, with a reasonable defence excuse.

Clause 80.**Person other than licensed pilot not to pilot vessel**

Sub-clause (1) provides that it is an offence carrying a maximum penalty of 200 penalty units for a person to pilot a vessel in a pilotage area in respect of which a licensed pilot is required by this Part to be on

board a vessel, if the person is not a licensed pilot or the holder of a pilotage exemption certificate in respect of a pilotage area.

Sub-clause (2) provides that it is an offence carrying a maximum penalty of 200 penalty units or 2 years' imprisonment for a person to knowingly falsely represent (by word or conduct) that the person is a licensed pilot or the holder of a pilotage exemption certificate in respect of a pilotage area.

Clause 81. Misconduct by licensed pilot

Sub-clause (1) provides that it is an offence carrying a maximum penalty of 500 penalty units if a licensed pilot has pilotage charge of a vessel while under the influence of alcohol or a drug. Sub-clause (2) provides that it is a defence to the offence if the licensed pilot was under the influence of a drug taken for medical purposes at the time of the offence and either the pilot either took the drug on, and in compliance with, medical advice, or the pilot had no reason to believe that the drug might have the influence it did.

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 500 penalty units if a licensed pilot has pilotage charge of a vessel and engages in conduct that causes, or is likely to cause, the loss or destruction of, or serious damage to, the vessel or any other vessel, port facility or other property.

Clause 82. Inquiry into misconduct by licensed pilot

Sub-clause (1) provides that the Minister, at the request of a pilotage authority, may appoint a person to conduct an inquiry into whether a licensed pilot is unfit to discharge its duties, has been seriously negligent in the discharge of those duties, or has repeatedly failed to comply with requests made to the licensed pilot by the pilotage authority under this Act.

Sub-clause (2) provides that the pilotage authority may, if it considers it desirable to do so, suspend the pilotage licence held by a licensed pilot pending the outcome of the inquiry.

Clause 83. Conduct of inquiry

Sub-clause (1) sets out powers of a person appointed to conduct an inquiry under clause 82(1).

Sub-clause (2) provides that it is an offence carrying a maximum penalty of 200 penalty units for a person required to answer a question relating to an inquiry to fail to answer the question, or for a person required to produce a document relevant to the inquiry to fail to produce the document. This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (5) requires a person appointed to conduct an inquiry under clause 82(1) to provide a report on

the results of the inquiry to the pilotage authority and Minister.

Clause 84. Reviews of decisions under this Division

Sub-clause (1) provides that this clause applies to decisions in relation to a person by a pilotage authority, where the decision concerns any refusal to issue or renew a pilotage licence or pilotage exemption certificate, or is a decision to specify or vary conditions of, or to suspend or cancel, a pilotage licence or pilotage exemption certificate.

Sub-clause (2) requires the pilotage authority to, as soon as practicable after making the decision, give written notice to the relevant person specifying reasons for the decision, that the person may appeal to Civil and Administrative Tribunal and that, if the licence or certificate is cancelled, the person must surrender the pilotage licence or pilotage exemption certificate to the pilotage authority within the period specified in the notice.

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 50 penalty units for a person to contravene a requirement under sub-clause (2)(c) to surrender a pilotage licence or pilotage exemption certificate. This is a strict liability offence, with a reasonable excuse defence.

Division 5 Pilotage services providers

Clause 85. Minister may appoint pilotage services provider

This clause provides that, provided the Minister (having regard to the matters specified in sub-section (3)) is satisfied that a person meets the conditions specified in sub-clause (2), the Minister may appoint that person to be a pilotage services provider for a pilotage area for the term and on the conditions specified in sub-clause (4).

Clause 86. Pilotage services contracts

This clause provides that the Minister may, without a competitive tender process having been undertaken and despite anything to the contrary in any Act, enter into a contract with a pilotage services provider in relation to the provision of pilotage services by that provider on such terms and conditions as the Minister sees fit.

Sub-clause (5) provides a non-exhaustive list of examples of matters that may be included in a pilotage services contract.

Clause 87. Record-keeping and reporting obligations

Sub-clause (1) requires a pilotage services provider for a pilotage area within a designated port to keep, in the prescribed manner, records containing the prescribed particulars of all reportable incidents that occur within the pilotage area.

Sub-clause (2) provides that it is an offence carrying a maximum penalty of 100 penalty units if a reportable incident occurs within a pilotage area within a designated port and the pilotage services provider fails to keep a record of the incident in accordance with

sub-clause (1). This is a strict liability offence with a reasonable excuse defence.

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 100 penalty units if a reportable incident occurs within a pilotage area within a designated port and the pilotage services provider fails to report the prescribed particulars of the incident in writing to the regional harbourmaster for the port within the prescribed period after it occurs. This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (6) clarifies that this clause does not affect any requirement of a pilotage services provider to

keep a record or report an event under any other Act.

Clause 88. Offences

Sub-clause (1) provides that it is an offence carrying a maximum penalty of 500 penalty units if a person provides pilotage services in a pilotage area and the person is not a pilotage service provider for the area.

Sub-clause (2) provides that it is an offence carrying a maximum penalty of 500 penalty units if a pilotage services provider provides pilotage services and in doing so contravenes a condition specified in of the provider's appointment.

Clause 89. Termination and suspension, and variation of conditions, of appointment

Sub-clause (1) provides that, if the conditions specified in sub-clauses 89(1)(a) and (b) are met, the Minister may terminate or suspend the appointment of a person as a pilotage services provider.

Sub-clause (3) provides that, if considered necessary to do so to ensure compliance with this Act or in other circumstances prescribed by regulation for safety purposes, the Minister may vary a condition of appointment of a person as a pilotages services provider.

Sub-clause (4) requires the Minister to, as soon as practicable after making a decision to terminate or suspend or vary a condition of the appointment of a person as a pilotage services provider under

sub-clauses (1) or (3), give written notice to the pilotage services provider specifying the reasons for the decision and the pilotage services provider's right to appeal to the Civil and Administrative Tribunal against the decision.

Clause 90. Regulations may provide for other matters about appointment

The clause provides that the regulations may provide for a matter arising from the appointment of a pilotage services provider.

Division 6 General

Clause 91. Master responsible for vessel

This clause provides that the master of a vessel is not relieved of the master's responsibility for the conduct and navigation of the vessel by reason of the vessel being in pilotage charge of a licensed pilot or a person holding a pilotage exemption certificate, or being navigated in a pilotage area or compulsory pilotage area without a pilot.

Clause 92. Protection of licensed pilot, pilotage authority and pilotage services provider

This clause provides that the pilot, the pilotage authority that licensed the pilot and the pilotage services provider which employed or engaged the pilot are not liable for any loss or damage caused or suffered by a vessel while a licensed pilot is acting as pilot of the vessel. This clause does not affect liability of the pilotage services provider for employing or engaging a person as a pilot who was not qualified or competent to be a pilot.

Part 9 Marine navigational aids

Division 1 Preliminary Matters

Clause 93. Interpretation

This clause defines the terms *aid*, *light* and *owner* for the purposes of this Part.

Clause 94. Application of Part

This clause provides that this Part applies to an aid within Northern Territory waters, or on land within the Territory, except for an aid that is the property of, or under the control of, the Commonwealth or the Australian Maritime Safety Authority under the *Navigation Act 2012* (Cth).

Division 2 Aids

Clause 95. Establishment etc of aids by port operator

This clause applies with respect to an aid, lamp or light that is within a designated port, or that may affect the safety or convenience of marine navigation within a designated port.

The clause provides that the port operator of a designated port may establish, maintain, operator, alter or remove an aid. However, the port operator may only establish, alter or remove an aid with the prior written approval of the regional harbourmaster for the designated port.

Sub-clause (3) provides that the port operator may authorise in writing another person to carry out any work necessary for the exercise of the port operator's functions under this clause.

Clause 96. Establishment etc of private aids

This clause provides that it is an offence carrying a maximum penalty of 100 penalty units for a person to establish, maintain, operate, alter or remove an aid within a designated port, or that may affect the safety or convenience of marine navigation within a designated port, without the written approval of the port operator. This is a strict liability offence, with a reasonable excuse defence.

Clause 97. Control of aids and lights

Sub-clause (1) provides that this clause applies to an aid, lamp or light that is within a designated port, or that may affect the safety or convenience of marine navigation within a designated port.

Sub-clause (2) provides that, if the port operator of the designated port considers it desirable for the safety or convenience of marine navigation to do so, the port operator may, by written notice, require the owner to take any of the actions specified in sub-clause (2) in respect of the aid, lamp or light.

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 100 penalty units for a person given a notice under

sub-clause (2) to fail to comply with the requirement contained in the notice. This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (7) provides that if a person fails to comply with a requirement contained in a notice given under sub-clause (2) the port operator may take possession or control of the aid, lamp or light and do anything that was required under the notice. This sub-clause also provides that if a notice cannot be given because the port operator does not know who the owner is, a port operator may take possession or control of an aid, lamp or light to do anything that the port operator considers necessary for the safety of marine navigation.

Sub-clause (8) provides that any costs incurred under sub-clause (7) may be recovered as a debt due and payable by the owner of the aid, lamp or light to the port operator.

Clause 98. Inspection of aids

This clause provides that a person authorised by the port operator of a designated port may, at any reasonable time, inspect an aid, lamp or light that is within the port, or that may affect the safety or convenience of marine navigation within the port.

Clause 99. Entry on land

This clause provides that the regional harbourmaster for a designated port (or a person authorised by the regional harbourmaster), may enter any land, and transport goods through or over it, for the purpose of erecting, inspecting or maintaining an aid, lamp or light that is within the port, or that may affect the safety or convenience of marine navigation within the port.

Sub-clause (3) clarifies that the powers under this clause apply in relation to entry onto Aboriginal land even if the person does not hold a permit to enter the land under the *Aboriginal Land Act*.

Clause 100. Mooring at aids

This clause provides that it is an offence carrying a maximum penalty of 100 penalty units for a person to moor, make fast or attach a vessel to an aid within a designated port, or that may affect the safety or convenience of marine navigation within a designated port. This is a strict liability offence, with a reasonable excuse defence.

Clause 101. Obligation in relation to defective or damaged aids

Sub-clause (1) provides that this clause applies with respect to an aid that is within a designated port, or that may affect the safety or convenience of marine navigation within a designated port.

Sub-clause (2) requires the owner of a defective or damaged aid to ensure that the aid is repaired or replaced as soon as practicable after the owner becomes aware of the defect or damage.

Sub-clause (3) provides that the regional harbourmaster for a designated port may, by written notice, direct the owner of a defective or damaged aid to repair or replace it within a period specified in the notice.

Sub-clause (4) provides that it is an offence carrying a maximum penalty of 200 penalty units for the owner of an aid to fail to comply with a direction given under sub-clause (3). This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (7) provides that if the owner fails to comply with a direction given under sub-clause (3), the regional harbourmaster for a designated port may cause the defective or damaged aid to be repaired or replaced, irrespective of whether the owner has been charged with or found guilty of an offence against sub-clause (4).

Sub-clauses (8) and (9) provide that the owner is liable for all expenses incurred by the regional harbourmaster under sub-clause (7) in addition to any penalty imposed for an offence against sub-clause (4).

Sub-clause (10) clarifies that an amount that the owner is liable to pay under sub-clause (8) may be recovered as a debt due and payable to the Territory.

Clause 102. Offences in relation to aids

Sub-clause (1) provides that this clause applies to an aid that is within a designated port, or that may affect the safety or convenience of marine navigation within a designated port.

Sub-clause (2) provides that it is an offence carrying a maximum penalty of 200 penalty units for a person to damage, or destroy the aid. This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 200 penalty units if a person engages in conduct that results in the view of the aid being obstructed in a manner that lessens its efficiency, or conduct that hinders the effective use of the aid. This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (4) provides that it is an offence carrying a maximum penalty of 100 penalty units for a person to be in or on the aid, or in or on any enclosed area of land on which the aid is situated. This is a strict liability offence, with a reasonable excuse defence.

Clause 103. Notification of damage

This clause provides that it is an offence carrying a maximum penalty of 100 penalty units for a person to fail to immediately report to the port operator and the regional harbourmaster for the designated port, any damage or destruction to, or interference with, an aid within a designated port, or that may affect the safety or convenience of marine navigation within a designated port. This is a strict liability offence, with a reasonable excuse defence.

Clause 104. Costs of rectification

This clause provides that any costs or expenses incurred by port operator of a designated port in replacing, repairing or reinstating an aid that is damaged, destroyed or interfered with in contravention of clause 101, are a debt due to the port operator from the person who caused the damage, destruction or interference.

Clause 105. Immunity from certain proceedings

This clause provides that legal proceedings can only be instituted against the port operator of a designated port in respect of an act or omission of the port operator that is done or made under this Part, if the act or omission arises from wilful misconduct.

Part 10 Port charges

Division 1 Preliminary matters

Clause 106. Interpretation

This clause defines the terms *charging entity* and *port authority*, and clarifies the meaning of *owner* of a vessel and *owner* of a cargo in for the purposes of this Part.

Clause 107. Part does not apply to recreational vessels

This clause specifies the pleasure craft and vessels to which this Part does not apply.

Division 2 Fixing of charges

Clause 108. Port authority charges

Sub-clause (1) provides that a port operator of a designated port (as a port authority of the port) may, by written notice published on its website, fix charges in respect of the use by a vessel of the waters of the designated port, or port facilities of the designated port owned, operated or maintained by the port operator.

Sub-clause (2) provides that the Minister (as a port authority of a designated port) may, by *Gazette* notice, fix charges in respect of the use by a vessel of the waters of the designated port, or port facilities of the designated port owned, operated or maintained by the Minister.

Sub-clause (3) provides that the power of a port operator to fix charges under sub-clause (1) is subject to any conditions, restrictions or exclusions imposed by a port operating agreement to which the port operator is a party.

Sub-clause (4) provides examples of the kinds of charges that may be fixed in relation to a designated port.

Sub-clause (5) provides that different charges may be fixed in respect of different classes of vessels, cargo or berths, or according to other factors as a port authority thinks fit.

Sub-clause (6) defines the terms *berth* and *dolphin* for the purposes of this section.

Clause 109. Pilotage services provider charges

Sub-clause (1) provides that a pilotage services provider for a pilotage area may, by written notice published on its website, fix the rate of charges payable to the pilotage services provider for the provision of pilotage services.

Sub-clause (2) provides that the owner or master of a vessel is liable to pay a pilotage services provider the charges for pilotage services provided in relation to the vessel.

Sub-clause (4) provides that this clause is subject to any provision made by a pilotage services contract.

Division 3 General Matters

Clause 110. Agreements in respect of charges

Sub-clause (1) provides that a port authority or pilotage services provider may enter into an agreement with a person liable to pay charges of any kind under this Part.

Sub-clause (2) provides that an agreement may fix the amount of any charge payable, provide for any other matter (in respect of the charge) that the charging entity is permitted to determine under this Part, or provide for any right or privilege that, by or under this Part, accrues to the person liable to pay the charge, or that the charging entity may confer on the person.

Sub-clause (3) enables the agreement to contain a provision displacing any determinations of the charging entity in relation to the charge or to the matter, right or privilege concerned.

Clause 111. Payment and collection of charges

Sub-clause (1) provides that a charge under this Part is payable on demand by the port authority or pilotage services provider (the charging entity) that fixed the charge, or at such a time, or on such terms, as the entity determines.

Sub-clauses (2) and (3) provide that a charge fixed by a port authority may only be collected by that authority and not the other port authority, except where that authority appoints an agent (who may be the other port authority) to collect charges.

Sub-clause (4) provides that a charge under this Part may be recovered as a debt due and payable to the charging entity that fixed the charge by the person liable to pay it.

Sub-clause (5) provides that if more than one person is liable to pay a charge under this Part, those persons are jointly and severally liable to pay the charge.

Clause 112. Interest on overdue payments

This clause provides that a port authority or pilotage services provider may charge interest on charges under this Part that are unpaid by their due date at a rate determined by the charging entity.

Clause 113. Security for payment of charges

Sub-clauses (1) and (2) provide that a port authority or pilotage services provider may require a person to

lodge a security deposit (which may be in the form of cash or guarantee) in or for an amount determined by the charging entity, as security for the payment of charges that have been, or may be, incurred under this Part.

Sub-clause (3) provides that the charging entity may appropriate a security deposit to meet the liabilities of the depositor under this Part that are unpaid after becoming due (including any interest payable). If the charging entity does so, sub-clause (4) provides that the entity may require lodgment of further security.

Sub-clause (5) provides that a charging entity may, if it considers that a depositor's potential liabilities under this Part should be more adequately secured, require that the entity provide security in a greater amount and/or in a different form.

Clause 114. Failure to comply with charging entity's requirements

This clause provides that a port authority or pilotage services provider may withhold or withdraw services or facilities to a person who fails to comply with any lawful requirement made by the charging entity with respect to those services or facilities.

Clause 115. Liability of current owners and agents

Sub-clause (1) provides that where a charge under this Part is not paid by the person who was the owner of the vessel at the time the charge was incurred, the charge is payable by the person who is the owner at the time the charge is demanded by a authority charging entity.

Sub-clauses (2) and (3) provide that if, at the time a vessel left a designated port, there was an agent for the berthing or working of the vessel and no other agent for the vessel, that agent is liable, to the same extent as the owner of the vessel, for charges under this Part that are unpaid.

Sub-clause (4) provides that if, at the time a vessel left a designated port, there was an agent for the vessel other than an agent for the berthing or working of the vessel, that agent is liable, to the same extent as the owner of the vessel, for charges under this Part that are unpaid.

Clause 116. Waiver or refund of charges

This clause provides that a port authority or pilotage services provider may waive or refund any charge under this Part that is due to the charging entity in any particular case.

Part 11 Port access and pricing

Division 1 Preliminary matters

Clause 117. Object of Part

This clause explains that the object of this Part is to promote the economically efficient operation of, use of and investment in major port facilities in the Territory, so as to promote effective competition in upstream and downstream markets.

Clause 118. Application of Part

This clause defines the term *private port operator* and confirms that this Part applies to prescribed services provided by a private port operator.

Clause 119. Application of *Utilities Commission Act*

This clause declares the provision of prescribed services by a private port operator to be a regulated industry for the purposes of the *Utilities Commission Act*, with the Utilities Commission of the Northern Territory specified as the Regulator for the purposes of this Part.

Sub-clause (4) clarifies that a private port operator is taken to be a licensed entity for the purposes of the application of the *Utilities Commission Act*, as affected by this Part.

Clause 120. Reports and statements by Regulator

Sub-clause (1) provides that the Regulator may publish reports and statements about the provision of access to prescribed services or charges fixed in relation to prescribed services, based on information given or obtained under this Part.

Sub-clause (2) provides that no liability is incurred for publishing a report or statement (or a summary of the same) in good faith under this clause.

Clause 121. Regulations

This clause provides that regulations made for this Part are required to promote the object of the Part.

Clause 122. Review of Part

This clause requires the Regulator to review the operation of this Part and regulations made for this Part, and specifies the timing and purpose of such reviews.

Sub-clause (3) requires the Regulator to consult with each private port operator during a review.

Sub-clauses (4) and (5) require that the Regulator give a copy of a report of a review to the Minister for tabling by the Minister in the Legislative Assembly within 7 sitting days after receiving it.

Sub-clause (6) clarifies that this clause does not prevent this Part or any regulations made for it from being amended or repealed at any time.

Division 2 Access regulation

Clause 123. Preventing or hindering access

This clause defines the term *port user* and *competitor* and provides that a private port operator must not engage in conduct for the purpose of preventing or hindering access of a port user to any prescribed service by providing itself (or a related body corporate) access to the prescribed service on more favourable terms than those on which it provides such access to a competitor. To determine whether the port operator has engaged in conduct in breach of this clause, regard must be had to the conduct described in sub-clause (3) and the criterion specified in sub-clause (4).

Sub-clause (5) provides that a private port operator does not contravene the clause if its conduct constitutes any of the matters specified in the sub-clause.

Clause 124. Unfairly differentiating

This clause provides that, in negotiating arrangements for access to any prescribed service (or changes to such arrangements), a private port operator must not unfairly differentiate between port users in a way that has a material adverse effect on the ability of any one or more port users to compete with any other port users.

Sub-clause (2) clarifies that sub-clause (1) does not prevent the private port operator treating port users differently to the extent that the different treatment is for a reason specified in the sub-clause.

Sub-clause (3) clarifies that this clause does not prevent a private port operator from applying a different charge to different port users for the provision of the same prescribed service. It also clarifies that

sub-clause (2) does not authorise a private port operator to engage in conduct for the purpose of preventing or hindering a port user's access to the prescribed service.

Clause 125. Enforcement of obligations

This clause provides that, if a court of competent jurisdiction is satisfied that a private port operator has engaged, is engaging, or proposes to engage in conduct that contravenes clauses 123(1) or 124(1), the court may, on application, make such orders as it considers appropriate.

Clause 126. Access policy

This clause provides that it is an offence carrying a maximum penalty of 500 penalty units for a private port operator to contravene the requirement to prepare a draft access policy and give the draft to the Regulator by the date specified in the guidelines issued under clause 127 of this Part.

Sub-clauses (2) to (8) clarify the required content for the access policy, approval process requirements for the policy and the effect of approval.

Sub-clause (9) provides that a private port operator must comply with its access policy.

Clause 127. Guidelines

This clause requires the Regulator to, in accordance with the regulations, issue guidelines about the prescribed matters in relation to access policies and reports relating to them under clause 129. The clause also requires the Regulator to publish the guidelines in the *Gazette* and make them available for inspection free of charge at the office of the Regulator.

Clause 128. Content required by Minister

This clause provides that the Minister may, by *Gazette notice*, require that an access policy deal with a matter specified in the notice.

Clause 129. Reporting

This clause requires a private port operator to report annually to the Regulator on any material failure to comply with its access policy during that year, and specifies that the report must be prepared in accordance with any guidelines issued under clause 127.

Clause 130. Information required by Regulator

Sub-clause (1) provides that the Regulator may, by written notice, require a private port operator to give information on any matter arising out of a report under clause 129(1) or the private port operator's compliance with clauses 123(1) or 124(1).

Sub-clause (2) clarifies that a notice given under sub-clause (1) is taken to be a notice given under section 25(1) of the *Utilities Commission Act*.

Division 3 Price determinations

Clause 131. Determinations by Regulator

Sub-clauses (1) and (2) define the term *price determination* and provide that the Regulator may make a price determination under section 20(1)(a) of the *Utilities Commission Act*, provided the determination is consistent with the regulations and the access and pricing principles specified in clause 132 of this Part.

Sub-clause (4) provides that a price determination cannot have effect for a period of more than three years.

Sub-clause (5) requires the Regulator to notify the Minister and the private port operator in writing as

soon as practicable after becoming aware that a private port operator has fixed, or proposes to fix, a charge that the Regulator considers to be inconsistent with a price determination.

Clause 132. Access and pricing principles

This clause specifies the access and pricing principles for the purposes of this Part.

Sub-clause 132(a) provides that the price of access to a prescribed service should be set so as to generate expected revenue sufficient to meet the efficient costs of providing access to it, and should include a return on investment commensurate with the regulatory and commercial risks involved.

Sub-clause 132(b) provides that price structures should allow multi-part pricing and price discrimination when it aids efficiency, and should not allow a vertically integrated provider of access to services to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to others is higher.

Sub-clause 132(c) provides that access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.

Clause 133. Regulations

Sub-clause (1) enables the making of regulations specifying a form of price regulation for prescribed services.

Sub-clause (2) provides examples of the forms of price regulation that may be specified by regulation.

Sub-clause (3) provides that the form of price regulation for prescribed services in place can only be changed by regulation if the requirements specified in the sub-clause are met.

Sub-clause (4) provides that regulations made under this clause must not be inconsistent with the access and pricing principles specified in clause 132.

Sub-clause (5) defines the term *independent regulatory body* for the purposes of this clause.

Clause 134. Relationship with *Utilities Commission Act*

This clause provides that, to the extent of any inconsistency, a provision of this Division prevails over a provision of the *Utilities Commission Act*.

Division 4 General matters

Clause 135. Power of Regulator to require information

Sub-clauses (1) and (2) provide that the Regulator may, by written notice, require a private port operator to give information or documents relating to a particular charge fixed by the private port operator.

Sub-clause (3) provides that the notice must specify the information or documents to which it applies, and state the reasonable time and manner for the provision of the information or documents.

Sub-clause (4) provides that the Regulator may only give a notice under sub-clause (1) if satisfied that the provision of the information or documents is reasonably necessary for achieving the object of this Part and the likely cost of complying with the requirement is not disproportionate to the resultant benefit.

Sub-clause (5) requires a private port operator to give the information or documents required by a notice under sub-clause (1).

Sub-clause (6) provides that it is an offence carrying a maximum penalty of 200 penalty units for a private port operator to fail to comply with the requirement under sub-clause (5). This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (8) provides that it is not a reasonable excuse that the prosecution would breach a duty of confidentiality.

Clause 136. Confidentiality of information

Sub-clause (1) enables a private port operator to claim, when giving information in response to a notice under clause 130(1) or 135(1), that the information is confidential if it appears to the private port operator that disclosure of the information could adversely affect its competitive position (or that of another person) or would constitute a breach of confidentiality owed by the private port operator to another person.

Sub-clause (2) provides that a claim that information is confidential must be accompanied by a detailed statement of reasons in support of the claim.

Sub-clause (3) requires the Regulator to take all reasonable steps to prevent the disclosure of information that is claimed to be confidential unless the disclosure is authorised.

Sub-clauses (4) and (5) clarify when disclosure of information that is claimed to be confidential is authorised, and confirm that disclosure of information that is claimed to be confidential is authorised if the Regulator is of the opinion that there are insufficient grounds for the claim.

Sub-clause (6) requires the Regulator to, prior to disclosing the information, notify the person who made the claim of confidentiality of the proposed disclosure and reasons for it.

Sub-clause (8) provides that a disclosure of information authorised by this clause does not constitute a breach of any duty of confidentiality.

Part 12 Step-in rights

Clause 137. Definition

This clause defines the term *relevant function* for the purposes of this Part.

Clause 138. Nature of step-in rights

Sub-clause (1) provides that a step-in right is the right of the regional harbourmaster for a designated port to direct (orally or in writing) the port operator to exercise a relevant function in the manner and within the period specified in the direction and, if the port operator fails to comply with the direction without a reasonable excuse, to exercise the relevant function that the port operator failed to exercise.

Sub-clause (2) provides that, where a direction under sub-clause (1) is oral, the harbourmaster must, as soon as practicable, confirm the direction in writing.

Sub-clause (4) specifies things that the regional harbourmaster may do (accompanied by any assistants required) to enable the regional harbourmaster to exercise the relevant function. This sub-clause provides that the regional harbourmaster may enter any land or premises occupied by the port operator, and gain access to and operate any computer or other equipment on the premises. This sub-clause also provides that the regional harbourmaster may require any person on the premises to provide access to, or to operate any computer or other equipment, and to otherwise assist the regional harbourmaster as reasonably required.

Sub-clause (5) provides that the regional harbourmaster for a designated port may require a port management officer to exercise, in a manner required by the regional harbourmaster, any function that the officer has under this or any other Act.

Sub-clause (6) provides that if a port management officer fails to comply with a requirement under sub-clause (5), the regional harbourmaster may exercise that function as if the regional harbourmaster were the port management officer.

Sub-clause (7) clarifies that the regional harbourmaster may exercise a relevant function whether or not the port operator has been charged with, or found guilty of, an offence against sub-clause 140(1).

Clause 139. When step-in rights may be exercised

This clause provides that the regional harbourmaster for a designated port may exercise step-in rights only if he or she is of the opinion that it is necessary to do so because of an emergency, or in order to avert or minimise a threat of death or serious injury to a person, or serious loss or damage to property, or harm to the environment.

Clause 140. Port operator must comply with direction

Sub-clause (1) provides that it is an offence carrying a maximum penalty of 200 penalty units for a port operator to fail to comply with a direction given by the regional harbourmaster of the designated port under sub-clause 139(1). This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (4) provides that a port operator does not contravene marine legislation merely by complying with the direction.

Clause 141. Protection for port operator

This clause provides that a port operator of a designated port, port management officer of the port or any

other employee, officer or agent of the port operator is not personally liable for anything done or omitted to be done in good faith for the purpose of complying with a direction under sub-clause 138(1)(a) (or in the reasonable belief that the act or omission was for the purpose of complying with such a direction). This clause also provides that the Territory will be liable for any such liability.

Clause 142 Port operator liable for costs

Sub-clause (1) provides that a port operator of a designated port is liable to pay all expenses incurred by the regional harbourmaster in exercising any step-in right under clause 138.

Sub-clauses (2) and (3) provide that an amount that a port operator is liable to pay under this clause for expenses is in addition to any penalty imposed for an offence against clause 140(1) and may be recovered as a debt due and payable to the port operator.

Clause 143. Failure to comply with requirement

Sub-clause (1) provides that it is an offence carrying a maximum penalty of 100 penalty units for a person to fail to comply with a requirement under sub-clause 138(4)(c). This is a strict liability offence, with a reasonable excuse defence.

Sub-clause (2) provides that it is an offence carrying a maximum penalty of 200 penalty units for a port management officer to fail to comply with a requirement under sub-clause 138(5). This is a strict liability offence, with a reasonable excuse defence.

Part 13 Miscellaneous matters

Division 1 Jurisdiction of Tribunal

Clause 144. Reviewable decisions

This clause defines the terms *reviewable decision* and *affected person* for the purposes of this clause and provides that an affected person for a reviewable decision may apply to the tribunal for a review of the decision.

Division 2 Liability

Clause 145. Protection from liability

This clause provides that an entity to which the clause applies is not civilly or criminally liable for any act or omission done by the entity in good faith in the exercise of a function under the Act. This clause does not affect any liability the Territory would, apart from this clause, have for the act or omission.

Clause 146. Liability of owner and master

This clause provides that in relation to loss or damage caused by a vessel within a designated port, the owner of the vessel is liable with or without proof of negligence or intent. This clause also provides that the master of the vessel, with proof of negligence or intent, is jointly and severally liable with the owner.

Clause 147. Effect of things done under Act

This clause prevents the enactment, commencement or operation of the Act (or of any statutory instruments made under it) and the various arrangements and actions they authorise from constituting a breach of various civil obligations.

Division 3 Land within designated port

Clause 148. Exemption from local government rates etc.

Sub-clauses (1) to (3) provide that land owned by a public sector entity within a designated port is exempt from local government rates, except in relation to charges for works carried out or goods or services provided by a local government council in relation to the land.

Sub-clause (4) clarifies that if the land is leased or licensed to the port operator of the designated port, the local government rates exemption does not apply and that any local government rates in relation to the land are payable by the port operator.

Sub-clause (5) defines the terms *leased*, *licenced* and *local government rates* for the purposes of this clause.

Division 4 Offences

Clause 149. Obstruction of officers

This clause provides that it is an offence carrying a maximum penalty of 100 penalty units or imprisonment for 12 months if a person obstructs a port management officer or port enforcement officer and the person knows the officer is acting in an official capacity. Strict liability attaches to the fact that the other person is a port management officer or a port enforcement officer.

Clause 150. Misleading information

Sub-clause (1) provides that a person commits an offence carrying a maximum penalty of 200 penalty units or 2 years' imprisonment if the person gives information to another person that the other person is authorised by this Act to require, and the person giving the information knows that the information is misleading and that the other person is acting in an official capacity. Strict liability attaches to the fact that the other person is authorised to require the information.

Sub-clause (2) provides that a person commits an offence carrying a maximum penalty of 200 penalty units or 2 years' imprisonment if the person gives a document to another person that the other person is authorised by this Act to require, and the person giving the document knows that the document contains misleading information and that the other person is acting in an official capacity. Strict liability attaches to the fact that the other person is authorised to require the document.

Sub-clause (4) clarifies that sub-clause (2) does not apply if the person, when giving the document, draws the misleading aspect of the document to the other person's attention or, to the extent reasonable, gives the other person the information necessary to remedy the misleading aspect of the document.

Sub-clause (5) defines the term *misleading information* for the purposes of this clause.

Clause 151 Prosecutions under Act

This clause provides that proceedings for an offence against this Act must be commenced within 2 years after the commission of the alleged offence, or 1 year after the day on which the alleged offence was first discovered.

Division 5 Darwin Marine Supply Base

Clause 152 Port operator may not perform certain functions

This clause specifies particular functions that a port operator of the Port of Darwin may not exercise in relation to offshore industry supply services while an agreement between the Territory and the Darwin Marine Supply Base operator relating to the operation of the Darwin Marine Supply Base is in force.

Sub-clause (3) defines various terms for the purposes of this clause.

Division 6 Forms

Clause 153 Approved forms

This clause provides that the Minister may approve forms for this Act.

Division 7 Regulations

Clause 154. Regulations

This clause provides that the Administrator may make regulations under the Act.

Clause 155. Amendment of this Act by regulation

Sub-clause (1) provides that the Administrator may make a regulation that amends the Act (other than this clause) in relation to any matter.

Sub-clause (2) enables a regulation made under sub-clause (1) to take effect prior to the day on which it is made, provided that day is not earlier than the day on which this clause commences.

Sub-clause (3) provides that this clause expires one year after the day on which it commences.

Part 14 Repeals and transitional matters

Division 1 Repeals

Clause 156. Repeals

This clause repeals the Acts specified in Schedule 2.

Division 2 **Transitional matters for Ports Management Act 2014**

Clause 157 **Definition**

This clause defines the term *commencement* for the purposes of this Division.

Clause 158. **Port safety plans for Port of Darwin**

This clause provides that on and from commencement of Part 15, Division 2, a port safety plan approved under section 20A of the *Darwin Port Corporation Act* and in force immediately before commencement is taken to be a port safety plan for the Port of Darwin approved by the regional harbormaster for that port under Part 5, Division 1 of this Act.

Clause 159. **Stevedore licences**

This clause provides that on and from commencement of Part 15, Division 2, a licence to carry on a business of a stevedore within the Port of Darwin issued under Part 3, Division 2 of the *Darwin Port Corporation Act* and in force immediately before the commencement is taken to be a licence issued under Part 6 of this Act and remains in force and subject to the same conditions for the remainder of its term.

Clause 160. **Monitoring of port notices for Port of Darwin**

This clause provides that, despite clause 62(1), the first date by which the port operator of the Port of Darwin must comply with clause 62(1) is 31 March 2016, and that the details to be given under sub-clause 62(1)(a) of that clause are of reportable matters occurring from the date on which the port operator became the port operator of the Port of Darwin until 31 December 2015.

Clause 161. **Pilotage**

This clause provides that, on and from commencement of Part 15, Division 2, a pilotage licence or pilotage exemption certificate issued under section 171 of the *Marine Act* that is in force immediately before commencement is taken to be a pilotage licence or pilotage exemption certificate issued under Part 8, Division 4 of this Act, and remains in force and subject to the same conditions for the remainder of its term

Clause 162. Technical and safety standards of Port of Darwin

This clause provides that, on and from commencement of Part 15, Division 2, technical and safety standards for pilotage and the provision of pilotage services in relation to the Port of Darwin in force under section 26A(1) of the *Darwin Port Corporation Act* immediately before the commencement of this clause, are taken to be technical and safety standards for pilotage and the provision of pilotage services in the Port of Darwin made under clause 67.

Part 15 Consequential amendments

Division 1 Amendments relating to powers of Darwin Port Corporation and port safety plan

Clause 163. Act amended

This clause provides that this Division amends the *Darwin Port Corporation Act*.

Section 164. Section 6 amended

This clause inserts a new section (2A) which, without limiting

sub-section (2), grants the Port Corporation the power to form a body corporate or unit trust, to acquire interests in and sell interests in bodies corporate, unit trusts and joint ventures, or to form a partnership, joint venture or other association with other entities.

Clause 165. Section 20A inserted

This clause inserts a new section 20A dealing with port safety plans.

Sub-clause (1) requires the Port Corporation to prepare a draft port safety plan for the Port as soon as practicable after the commencement of this clause and to submit the plan to the harbourmaster of the Port for approval.

Sub-clause (2) requires the harbourmaster to, within 60 days after receiving a port safety plan under sub-clause (1), approve the plan by written notice given to the Port Corporation, or to return the plan to the Port Corporation for amendment as directed by the harbourmaster.

Sub-clause (3) requires the Port Corporation to re-submit the port safety plan within 30 days after receiving a draft plan back from the harbourmaster under sub-clause (2)(b) for approval by the harbourmaster under sub-clause (1).

Sub-clause (4) provides that, if the harbourmaster fails to act in accordance with sub-clause (2) within the specified 60 days, the draft plan is taken to have been approved by the harbourmaster on the expiration of that period.

Sub-clause (5) defines the term *port safety plan* for the purposes of this clause.

Division 2 Other amendments

Subdivision 1 Darwin Port Corporation Act

Clause 166. Act amended

This clause provides that this subdivision amends the *Darwin Port Corporation Act*.

Clause 167. Long title amended

This clause amends the long title of the *Darwin Port Corporation Act* by omitting the words ‘for the control and management of the Port of Darwin’.

Clause 168. Section 5 amended

This clause amends section 5 by omitting a number of existing definitions in sub-section (1) and by omitting sub-section 5(2) in its entirety.

Clause 169. Section 16 replaced

This clause replaces existing section 16 in its entirety and specifies the functions of the Port Corporation.

Clause 170. Section 17 amended

This clause amends section 17(1) to clarify that the powers of the Port Corporation extend to complying with a direction of the Chief Minister under section 13 of the *Port of Darwin (Authorised Transactions) Act*. It also omits section 17(2) in its entirety.

Clause 171. Section 17A and 20A, Part 2, Division 4, Part 2A, Part 3, Divisions 1 and 2, sections 42, 43A and 46 to 49 and Parts 6 and 7 repealed

This clause repeals section 17A and 20A, Part 2, Division 4, Part 2A, Part 3, Divisions 1 and 2, sections 42, 43A and 46 to 49, and Parts 6 and 7 on the basis that they are replicated (with appropriate amendments) in this Act or are not necessary following the commencement of this Act.

Subdivision 2 *Marine Act*

Clause 172. **Act amended**

This clause provides that this Subdivision amends the *Marine Act*.

Clause 173. **Section 7 amended**

This clause amends section 7 to omit a number of existing definitions, insert additional definitions for the terms *designated port*, *land*, and *Tribunal*, and amends the definition of *Port of Darwin*.

Clause 174. **Part 2, Division 2 and section 20 repealed**

This clause repeals Part 2, Division 2 and section 20, on the basis that matters formerly heard and determined by the Marine Appeals Tribunal under that Part will now fall under the jurisdiction of the Northern Territory Civil and Administrative Tribunal in accordance with relevant provisions of this Act.

Clause 175. **Section 102 amended**

This clause amends section 102 by including a new sub-section (4) which provides that the section does not apply to a vessel within a designated port.

Clause 176. **Section 105 amended**

This clause amends section 105 by including a new sub-section (3) which provides that the section does not apply to a vessel within a designated port.

Clause 177. **Section 106 replaced**

This clause replaces the existing section 106 in its entirety.

Sub-clause (1) provides that the Minister may, by *Gazette* notice, make a determination in relation to the method of packing and stowing, marking, and carriage of dangerous goods in a vessel.

Sub-clause (2) provides for additional requirements to be included in a determination relating to a vessel in which passengers are being, or are going to be, carried.

Sub-clause (3) provides that it is an offence carrying a maximum penalty of 100 penalty units or 6 months' imprisonment for a person to contravene a determination under sub-clause (1). Sub-clause (4) provides a defence to the offence if the person has a reasonable excuse

Sub-clause (6) provides that the section does not apply to a vessel within a designated port.

Clause 178. Section 107 amended

This clause amends section 107 by including a new sub-section (2) which provides that the section does not apply to a vessel within a designated port.

Clause 179. Section 115D amended

This clause amends section 115D to replace the Minister with the Director, as the person empowered to deal with a wrecked vessel under the section, and sub-clause (6) amends the section by including a new sub-section (5) which provides that the section does not apply to a vessel within a designated port.

Clause 180. Section 118 amended

This clause amends section 118 to replace the Minister with the Director, as the person empowered to appoint a person to inquire into a marine incident in Northern Territory waters and the person to whom the associated report must be given.

Clause 181. Section 119 replaced

This clause replaces existing section 119 in its entirety.

The clause grants a person holding a formal investigation into a marine incident in relation to a vessel to, by written notice, appoint such number of persons as he or she thinks fit to assist with the conduct of the investigation.

Clause 182. Section 122 amended

This clause amends section 122 by omitting section 112(2)(a).

Clause 183. Section 144A inserted

This clause inserts a new section 144A which provides that, despite section 144, the Division does not apply in relation to an aid that is within a designated port, or that may affect the safety or convenience of marine navigation within such a port.

Clause 184. Part 7 repealed

This clause repeals Part 7 (Pilotage) on the basis that these provisions have been moved to Part 8 of this Act, with necessary amendments.

Clause 185. Section 188A amended

This clause amends section 188A by including a new sub-section (4) which provides that the section does not apply to waters within a designated port.

Clause 186. Section 188B amended

This clause amends section 188B to replace the Minister with the Director, as the person empowered to close Northern Territory waters to shipping. Sub-clause (2) amends the section by including a new sub-section (4) which provides that the section does not apply in relation to a designated port.

Clause 187. Section 194 amended

This clause amends section 194 to grant the Administrator the power to make regulations authorising the relaxation of the requirements of documents specified in sub-section 196(7), which is newly inserted under clause 188.

Clause 188. Section 196 amended

This clause amends section 196 to insert a new sub-section (7) which provides that a reference in the section to the Uniform Shipping Laws Code includes a reference to various other documents specified in the sub-clause.

Clause 189. Section 202 amended

This clause amends section 202 on the basis that the Marine Appeals Tribunal is repealed under clause 174.

Clause 190. Section 206 replaced

This clause replaces existing section 206 in its entirety.

The clause clarifies that the power of the Administrator under section 194 includes the power to make regulations with respect to the prevention or reporting of collisions.

Clause 191. Section 208 amended

This clause amends section 208 by omitting sub-section (1)(a).

Clause 192. Section 209 repealed

This clause repeals section 209 on the basis that the provisions relating to pilotage have been moved to Part 8 of this Act, with necessary amendments.

Clause 193. Section 211A inserted

This clause inserts section 211A in Part 9 to clarify that the power of the Administrator under section 194 includes the power to make regulations in relation to additional matters specified in this clause.

Clause 194. Part 10 heading replaced

This clause replaces the heading of Part 10 with the heading ‘Transitional matters’. It also inserts Division 1 of Part 10 titled ‘Darwin Port Corporation Legislation Amendment Act 2011’ after the Part 10 heading.

Clause 195. Part 10, Division 2 inserted

This clause inserts a new Division 2 titled ‘Ports Management Act 2014’, comprising a new section 213 titled ‘Marine Appeals Tribunal’ after section 212.

The new section 213 defines the terms *amendments*, *former Act* and *former Tribunal* for the purposes of the section, and requires the former Tribunal to continue to deal with any application that had been lodged but not determined before the commencement of the amendments, as if the amendments had not commenced.

Division 3 Expiry of Part

Clause 196. Expiry of Part

This clause provides that this Part expires on the day after it commences.

Schedule 1 Reviewable decisions

This table lists the decisions that are reviewable by the Northern Territory Civil and Administrative Tribunal, along with the persons eligible to apply for review of decisions, for the purposes of clause 144 of the Act.

Schedule 2 Repealed Acts

This Schedule lists the Act repealed by clause 156.