



Northern
Territory
Government

Review of the the Regulatory Framework for Port of Darwin

Discussion Draft Report

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Introduction

Background

In February and July 2006, the Council of Australian Governments (COAG) approved the National Reform Agenda (NRA). The NRA is a comprehensive national reform program, which aims to promote national productivity and living standards in the face of emerging challenges for the Australian economy, including ageing of the population and increasing international competition from emerging economies in the region.

The Competition and Infrastructure Reform Agreement (CIRA) is a component of the NRA. The primary objectives of the CIRA include promoting the efficient provision and use of nationally significant economic infrastructure, including ports and rail. The CIRA implementation plan was approved by COAG in April 2007.

Clause 4.3 of the CIRA requires each jurisdiction to review the regulatory framework for significant ports, to ensure that effective competition in the provision of port infrastructure and related services is not impeded, unless the benefits to the community outweigh the costs. Appendix 2 of the CIRA identifies the Port of Darwin (the Port) as a significant port requiring regulatory review.

In December 2007, COAG announced it will build on the existing NRA infrastructure reforms. As part of these new reforms, an advisory council will be established to, amongst other things, conduct national infrastructure audits; develop an infrastructure investment priority list; and advise COAG on policy, pricing and regulatory issues that impact on infrastructure utilisation. It is anticipated that port infrastructure will be a key focus of these reforms.

A working group of officials comprising Northern Territory Treasury, Darwin Port Corporation and Departments of the Chief Minister; Business, Economic and Regional Development; and Planning and Infrastructure representatives has convened to undertake the review of the Port of Darwin.

Terms of Reference for the review are at Appendix A.

Objective of Review

The objective of the review is to examine whether the regulatory framework for the Port is consistent with the relevant principles in the CIRA.

Scope of Review

The review will examine the regulatory framework for the Port to ensure it complies with the relevant principles of the CIRA. These principles are:

Clause 4.1

- a. ports should only be subject to economic regulation where a clear need for it exists in the promotion of competition in upstream or downstream markets or to prevent the misuse of market power; and

- b. where economic regulation of significant ports is considered warranted, it should conform to a consistent national approach based on the following principles:
 - iii. wherever possible, third party access to services provided by means of ports and related infrastructure facilities should be on the basis of terms and conditions agreed between the operator of the facility and the person seeking access;
 - iv. where possible, commercial outcomes should be promoted by establishing competitive market frameworks that allow competition in and entry to port and related infrastructure services, including stevedoring, in preference to economic regulation;
 - v. where regulatory oversight of prices is warranted, this should be undertaken by an independent body which publishes relevant information; and
 - vi. where access regimes are required, those regimes should be certified in accordance with the *Trade Practices Act 1974* and the Competition Principles Agreement.

Clause 4.2

Allow for competition in the provision of port and related infrastructure facilities services (unless the benefits to the community outweigh the costs), including through:

- a. port planning which facilitate the entry of new suppliers of port and infrastructure services;
- b. third party access provision on a competitively neutral basis;
- c. charters for port authorities which seek commercial returns while not exploiting monopoly powers; and
- d. review of vertically integrated structures to ensure there are no material conflicts of interest between port owners, operators or service providers.

The review will focus on freight flows through the Port.

Structure of this Discussion Paper Draft Review

Part A provides an overview of the Port and the Darwin Port Corporation (DPC):

- describes the trade flow through the Port, terminal infrastructure and related infrastructure services.
- provides an outline of DPC's functions and governance arrangements.

Part B establishes the framework to assess the Port's regulatory and planning arrangements against the requirements of the CIRA.

- assesses the Port against clause 4.1 of the CIRA. In particular it will assess whether there is a need for economic regulation in the provision of port infrastructure and related services.

- assesses the Port against clause 4.2 of the CIRA. It assesses whether there are any restrictions on competition in the provision of port infrastructure and related services, with a particular focus on:
 - the impact of planning practices on potential new service providers;
 - competitive neutrality in the provision of third party access to services;
 - pricing of infrastructure services provided by DPC;
 - addressing any conflicts of interest in vertically integrated operations;
and
 - addressing any conflicts of interest in DPC’s role as regulatory authority for pilotage and provider of pilotage services.

Stakeholders are asked to make comment on the assessments made in Part B.

PART A: Overview of the Port and Darwin Port Corporation

Port of Darwin

The Port is geographically positioned as Australia's closest port to the South-East Asia region and is connected to the national rail network (through the AustralAsia Railway) and the national road network. The development of the Port is central to the Northern Territory Government's vision to establish Darwin as a regional transport and logistics centre and an integral part of the development of the 'Australasia Trade Route'.^{1, 2}

The most recent sea freight statistics are for 2004-05. Cargo loaded and unloaded at the Port for 2004-05 was 2159 megatonnes, 34th highest of all 84 Australian ports. Over half this cargo (1100 megatonnes) is imported from the South-East Asia region. Table 1 illustrates the trade flows between ingoing and outgoing domestic freight, and imports and exports.

Table 1. Coastal and international sea freight through Port of Darwin (2004-05)

	Coastal incoming	Coastal outgoing	Imports	Exports	Total
Weight (thousand tonnes)	373	445	1 113	228	2 159

Source: Bureau of Transport and Regional Economics *Australian Sea Freight 2004-05 Information Paper 58*

Note: 257 megatonnes of domestic freight was armour rock used in construction of the liquefied natural gas pipeline.

In 2004-05, approximately 88 per cent of the Port's annual throughput was serviced by DPC terminal operations. DPC commercial wharves comprise:

- East Arm Wharf, which incorporates:
 - 754m of continuous berth space including 154m of bulk liquids berth with a vessel design capacity of 80 000 deadweight tonnage and 200m of common-user berth facility for container vessels (600m of berth area is land-backed);
 - 18 hectares of sealed hard stand, a 4000sqm undercover cargo handling facility, and 18 hectares of bundled area for future reclamation;
 - 4 hectares of an inter-modal container terminal with capacity to handle 250 000 tonne equivalent units per year; and
 - a 16m wide railway access causeway and inter-modal container facility linking to the Adelaide to Darwin railway.
- Fort Hill Wharf, which includes two 150m multi-user berths with a high-capacity Ro-Ro linkspan located at one berth.

Perkins Shipping Company handled the majority of the remaining throughput at its Frances Bay wharf. This was predominantly container and general cargo.

1 Growing Our Trade Route, *A Strategy for New Transport and Trade Links*, p.4

2 *Encouraging Economic Growth Through Investment*, Action 15

Since 2004-05, freight flows through the Port of Darwin have changed markedly, and continue to change, reflecting the early stage of development of the Port. In February 2006, ConocoPhillips' terminal at Middle Arm began operation, exporting significant volumes of its own liquefied natural gas (LNG) cargo. In the coming year, DPC wharves will significantly increase throughput of dry bulk cargo, particularly for bulk manganese and iron ore exports.

Loading and unloading of vessels at the DPC wharves are undertaken by third-party stevedores, accessing common-user berth areas, equipment (cranes/straddles) and storage areas from DPC. At the Perkins' Frances Bay wharf, stevedoring is provided in-house.

Ancillary port services include harbour towage and pilotage. Harbour tugs assist some vessels to manoeuvre in restricted waters and to enter and leave berths. Pilotage includes the navigation of vessels within ports by a licensed pilot to ensure safety and efficiency of passage and the protection of the environment.

Darwin Port Corporation

DPC is a Northern Territory Government business division established under the *Darwin Port Corporation Act*. Under the Act, DPC is responsible for the operation of the Port, including regulatory and management functions, as well as responsible for undertaking certain commercial activities.

Responsibilities

Regulatory and control/management functions include:

- controlling the movement of vessels in the Port;
- authorising the setting apart of wharves, docks, sheds, warehouses or port facilities for the use of specified persons or vessels;
- regulation of stevedore businesses; and
- regulation of pilotage requirements of vessels entering and exiting the Port.

Major commercial activities include:

- navigation and safety (including provision of channel infrastructure services);
- lease of common-user berth, equipment and storage areas; and
- delivery of pilotage services.

DPC also undertakes non-commercial activities as directed by the Minister. Non-commercial activities pertain to the development, operation, and maintenance of wharf facilities that support the cruise ship and naval presence in the Northern Territory, the Darwin fishing and tourism industries and international trade through the Port.

Governance

In performing its functions, the DPC is subject to the directions of the Minister.

The *Darwin Port Corporation Act* requires DPC to act in a commercial manner while also having regard to Government strategic objectives including trade development.

As a government business division, DPC is also subject to the Territory Government's competitive neutrality policy framework. This requires DPC to adopt commercial management and operating practices: to account for full costs of supply; to meet all relevant government taxes, fees and charges; to make dividend payments to Government; and, where directed, to act in a non-commercial manner subject to community service obligation payments.

DPC is declared to be an excluded party in relation to the whole of the Corporations Legislation, which includes the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*. These Acts provide for governance and disclosure arrangements to be administered by the Australian Securities and Investment Commission.

An Advisory Board consisting of five members provides advice on DPC's management to the Chief Executive Officer. Members are appointed by the Minister, and must take a generally commercial approach, but must also have regard to Government strategic objectives including trade development.

DPC is required to prepare an annual report within three months after the end of the financial year. DPC is also required to prepare any other financial information requested by the Minister or the Treasurer.

All fees and charges levied by the DPC must be approved by the Minister.

PART B: Assessment of the Port's Regulatory Arrangements Against Requirements of the CIRA

Is Economic Regulation of Port Infrastructure and Related Services Necessary?

The CIRA and many other elements of economic policy start from the assumption that, as a general rule, effective competition will promote economic efficiency and consumer welfare. Effective competition reduces or eliminates the market power of producers by placing pressure on businesses to operate at the minimum cost compatible with delivering quality of service that customers require.³

By contrast, where competition is not effective (i.e. where suppliers have substantial market power), suppliers have both the ability as well as the incentive to pursue behaviour that would be detrimental to economic efficiency (i.e. they will increase prices, decrease service standards and/or restrict supply).

The benefits of economic regulation are therefore largely associated with improving resource allocation by preventing the misuse of market power.

The potential market power possessed by a provider of Port infrastructure and related services depends first on the magnitude of the demand and the extent of competition from current providers in the market. Competition 'within' the market is in turn determined by the nature of costs and investment, such as the 'lumpiness' of investment, economies of scale, and sunk costs.

However, even where low demand and/or high fixed costs lead to only one provider of services in a market, it does not necessarily follow that the incumbent firm will earn excess profits. This will depend on the significance of barriers to entry, that is, the size of any cost disadvantage of new entrants relative to the incumbent, and the availability of similar but not identical substitute services.

Potential barriers to entry include the requirement for large up-front capital costs that are sunk in nature, to be incurred by a new entrant, arrangements by the incumbent that lock in customers or suppliers, and regulation that blocks entry or imposes higher costs on a potential entrant than incumbents. The lower these barriers, the less scope the incumbent operator will have to set prices too high, operate inefficiently or not be responsive to customer needs.⁴

Alternatively, where goods or services that are supplied through a separate market but provide a similar function or utility are available, the capacity for an incumbent supplier to exercise market power is diminished. For example, the operators of fixed-line telephony networks have historically

³ Essential Services Commission, *Regulation of the Victorian Ports Final Report* (2004) p.50

⁴ Productivity Commission, *Economic Regulation of Harbour Towing and Related Services* (2002) p75

been considered to have market power as it is uneconomical to duplicate the infrastructure. However, due to technological development, a number of substitute services are available to consumers.

Where it is clear there is market power in the provision of port infrastructure and related services, and this market failure is being misused, the CIRA requires that:

- regulatory oversight of prices should be undertaken by an independent body which publishes relevant information; and/or
- regulatory access regimes should be certified in accordance with the *Trade Practices Act 1974* and the Competition Principles Agreement.

Part IIIA of the *Trade Practices Act* establishes a legal regime to facilitate third party access to significant infrastructure facilities of national significance. Formal third party access regimes under the *Trade Practices Act* require that access arrangements conform with the relevant principles of the Competition Principles Agreement, which can be viewed at the National Competition Council website (<http://www.ncc.gov.au/>).

An assessment of potential market power for the Port of Darwin's infrastructure services and related ancillary service markets, and hence the need for independent pricing oversight or a formal third party access regime under the *Trade Practices Act*, is provided below.

Port Infrastructure Services

As discussed in Part A, the majority of annual throughput (around 2200 thousand tonnes) is serviced by DPC terminal operations, with some container and general cargo handled at the Perkins' terminal. DPC also provides major channel and navigation infrastructure in the Port.

Port infrastructure charges, which include direct charges by infrastructure owners and indirect hard stand lease charges through stevedoring charges, constitute the majority of costs incurred by transport companies using the Port.

Competition within the market

For many freight types, particularly international freight, the Port's infrastructure services compete with infrastructure providers in other Australian ports. For example, the Port competes with Adelaide and Melbourne for time-sensitive international imports/exports (via the AustralAsia Railway) and cargo going to/from regions surrounding the AustralAsia Railway. The Port also competes with Townsville, Broome and Derby ports for the export of live cattle.

Within the Port, there is competition between DPC's and Perkins' terminal infrastructure for the container and general cargo market segments. Currently, DPC and Perkins have an approximate equal market share for this freight.

Prices charged for DPC infrastructure services are only marginally above operating costs. There have been no complaints about third party access

arrangements made to either the Northern Territory Government or the National Competition Council.

Draft findings

There is effective competition for port infrastructure services both with other Australian ports and within the Port of Darwin. Accordingly, no independent pricing oversight or formal third party access regime under the *Trade Practices Act* is considered necessary for infrastructure services in the Port.

Stevedoring

Under a direction from the Australian Treasurer, the Australian Competition and Consumer Commission (ACCC) monitors prices, costs and profits of container terminal operator companies at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney.

The ACCC does not monitor stevedore pricing in the Port of Darwin, which is negotiated between the operator (stevedore) and the land/sea transport company seeking access.

Competition within the market

Patricks and P&O AGS are the only stevedores operating at the DPC wharves. Perkins Shipping Company is licensed to operate as a stevedore at the DPC wharves but does not currently do so.

In most Australian ports, stevedoring firms own the container-handling equipment (cranes/straddles) but lease berth space from the relevant port authorities, usually as exclusive and long-term leases. In contrast, stevedores at the DPC's wharves are licensed to operate on a common-user berth facility (with DPC charging the vessel owner directly for use of these facilities) and lease container crane, bulk ship-loader and hard stand facilities from DPC on a short-term basis. Smaller equipment requirements are provided by stevedores.

Common-user berth facilities, hard stand facilities and major container-handling equipment have the effect of significantly reducing capital investment required for stevedores in the Port of Darwin. Also, common-user facilities reduce any economies of scale that may exist for stevedoring firms. At the current level of throughput, this increases the number of stevedores that could otherwise operate in the Darwin market.

As throughput increases, common-user berth/equipment could provide the opportunity for DPC to restrict competition by under-investing in infrastructure or denying access to individual stevedoring firms. However the likelihood of this restriction materialising is considered low as:

- the incentive for DPC to do this would be outweighed by its incentive to increase trade through the Port; and
- firms would have redress through the *Trade Practices Act* by seeking to have facilities declared under the National Access Regime.

Competition for the market

Potential market barriers to entry include wharf capacity constraints such as limited quay length, number of cranes, container storage (yard) space and equipment storage space. While there are no major capacity constraints impacting on stevedores at this stage, trade forecasts suggest there will be capacity constraints at the East Arm Wharf as early as 2009 if significant infrastructure developments are not undertaken (this is discussed further in Port Planning). Access to common-user berth, container crane, bulk ship-loader and hard stand facilities is discussed further in Third Party Access on a Competitively Neutral Basis.

Other market barriers to entry include development of a customer base, training of crews and redundancy payments on exit. The available evidence suggests that these market barriers are not significant.

Regulatory barriers include a requirement for stevedores to have an operating licence. Licences are non-exclusive and aim to ensure high standards of health, safety and environmental requirements, which cannot be achieved through the *Work Health Act* and the *Marine Act*. Licenses are appropriate for common-user facility arrangements where the administration/ transaction costs of negotiating health, safety and environmental requirements in lease arrangements would be high.

DPC stevedoring licences also require potential stevedores to be in a suitable financial position and meet certain operational efficiency standards. The rationale for financial soundness and operational efficiency standards as licensing criteria are not evident, and hence they may represent an unnecessary barrier to entry. Rather, it would seem that market forces are sufficient to determine both whether stevedores are suitably financed and the efficient level of service standards as:

- financial viability of stevedore ventures is, as a general rule, controlled by the operation of efficient capital markets, whereby capital firms will undertake checks and risk assessments of stevedore proposals to ensure they make a sound investment;
- if stevedore operations were to become insolvent, the market would act to take up residual business with either existing operators expanding or new firms entering; and
- shippers and land-based transport operators will choose stevedores that provide the quality of service (including operational efficiency) they require at the minimum price.

Only a few ports such as the Port of Albany and the Port of Geraldton licence stevedores, and only the Port of Geraldton licences include financial and operational efficiency type requirements which, in this case, is in the form of a service delivery guarantee, satisfaction of certain operational key performance indicators and indemnity insurance cover.

Other smaller/regional ports such as the Port of Bunbury, which handles around 13 million tonnes per year compared to Darwin's 2.2 million tonnes, tender out exclusive three to five year contracts according to a range of criteria and requirements. However, where markets can support multiple

suppliers (as is the case for Darwin and would appear to be the case for Bunbury), non-exclusive access arrangements lead to more efficient service delivery as competition within a market is generally stronger than competition for a market.

The larger Australian ports typically have single-stevedore berth areas where regulatory requirements are negotiated as part of long-term leases (typically 20 to 40 years). Due to the commercially sensitive nature of these lease agreements, information on their regulatory requirements is not readily available.

Nonetheless, stevedore licences are not considered to be a material barrier to entry as licence fees only recover administrative costs; and compliance costs associated with the stevedore licensing requirement are not significant over and above those necessary to comply with generic occupational health and safety laws. Moreover, there have been no instances where stevedore license applications have been rejected.

The process for administering stevedore licences is discussed in Access to Operate as a Stevedore at DPC Wharves.

Draft findings

Lease of common-user equipment has allowed several stevedores to operate within the Port of Darwin despite relatively low freight movements. This, coupled with low barriers to entry, has resulted in effective competition within the Port of Darwin stevedoring market.

The existing regulatory framework promotes public benefit objectives and is not considered to act as a material impediment to competition in the provision of stevedoring services in the Port. Nonetheless, financial soundness and operational efficiency standards as licensing criteria may represent an unnecessary barrier to entry. Stakeholders are invited to provide comment on this matter. Information on the experience of other ports is particularly welcomed.

Towage

There is a large variety of towage arrangements and requirements across Australian ports which depend on the number and size of large commercial ships entering a port, the type of cargo being carried, and the tidal characteristics of the port.

In most Australian ports, towage services are provided by private firms directly to shipping lines, with some port authorities also monitoring price. Several port authorities have also conducted competitive tenders for the provision of harbour towage, following concerns that incumbent towage operators were exercising market power. The outcomes of these tenders suggest that previous prices by incumbents in these ports contained some margin over efficient prices but that the gap was not large.⁵

⁵ Productivity Commission, *Economic Regulation of Harbour Towage and Related Services* (2002), p. 109

In the Port of Darwin, towage services are provided by private firms directly to shipping lines with terms and conditions negotiated between the two parties. There is no economic regulation of towage in the Port of Darwin or restrictions on entry by towage operators.

Competition within the market

Harbour towage services at individual ports are generally provided by a single operator, in most cases by Svitzer. In the Port of Darwin there are two main providers of towage services. Svitzer supplies two tugs primarily to assist ConocoPhillips' LNG operations. Coastal Tug and Barge operates another two smaller tugs that service ConocoPhillips' LNG operations and general port operations. Coastal Tug and Barge is a joint venture between Svitzer and Stannards.

Defence Maritime Services also operates two small tugs which service Navy vessels using the Port. Towage services are one of many maritime services provided by Defence Maritime Services and occupy only a small proportion of the total Darwin towage market.

The former Price Surveillance Authority noted that multi-tug operators have cost advantages over their single tug counterparts in being able to spread utilisation, crews, maintenance and administration costs over a fleet rather than a single vessel. Multi-tug operators also benefit from operating vessels of different sizes as this enables better matching of tug capacities with the requirements of tug jobs.

However while visits by large ships and fluctuations in towage demand may necessitate a number of tugs in ports, the low utilisation of tugs indicates that in most ports, demand can only support one operator. This appears to be the case in the Port of Darwin.

Competition for the market

Potential barriers to entry into the Port towage market include the costs of transporting tugs, losses on resale of tugs, development of a customer base, training of crews and redundancy payments on exit.

In its 2002 Inquiry Report of *Economic Regulation of Harbour Towage and Related Services (2002)*, the Productivity Commission found that the available evidence suggests that these barriers, although not insignificant, are not large and that there is a pool of alternative towage operators able to enter the Australian market.⁶

Draft findings

Although scale factors limit the number of firms that can operate in the Port towage market, potential barriers to entry are low and therefore there appears to be effective competition for the towage market. The available evidence suggests there is no need to regulate for market power in the Port of Darwin towage market.

⁶ Productivity Commission, *Economic Regulation of Harbour Towage and Related Services (2002)*, p. 92

Pilotage

Pilotage is provided under a number of different frameworks across Australian ports. For example, Victorian ports operate under a non-exclusive licensing framework, with the privately-owned Port Phillip Sea Pilots servicing the ports of Melbourne, Geelong and Hastings, and the Portland Port Authority providing pilotage services to its port. Pilotage in Queensland ports is provided under an exclusive licensing framework, which is contracted out using a tender process. The ports of Bunbury, Albany, Geraldton and Esperance operate under a similar exclusive licensing framework, though pilotage is provided internally by the port authority in these ports.

In the Port of Darwin, the DPC is the pilotage regulatory authority and regulates pilotage through an informal exclusive licence arrangement.

Competition within the market

In the Port of Darwin, DPC is the only provider of pilotage services.

The former Industry Commission argued that fixed costs of pilotage provision (eg. launches/helicopters that transport pilots to vessels) are negligible⁷, and that there can be multiple pilots operating on a part-time or contractual basis even when there are low ship movements.⁸

However, in the Port, boarding systems costs do not appear to be negligible. DPC uses special purpose pilot vessels, which alone are estimated to cost about \$2.5 million.

Competition for the market

In addition to the losses on resale of launches/helicopters, other market barriers to entry include the requirement for pilots to be suitably qualified. While the cost to an individual of obtaining pilot qualifications may be considerable, it is generally incurred by nautical officers in the course of their careers and does not significantly deter entry.⁹

The major impediments to entry are regulatory. As mentioned above, DPC (as pilotage regulatory authority) operates an informal exclusive licensing framework with DPC providing in-house pilotage. This regulation has the effect of blocking private companies from entering the market.

The purpose of DPC's in-house regulatory policy is to ensure safety standards and reliability of supply, especially as there is a global shortage of Master Class 1 pilots (as required as an entry level for all Australian ports except for Western Australia ports). However, it would seem that these concerns could be appropriately managed through a non-exclusive licensing framework or similar, as is done in the ports of Melbourne, Geelong, Hastings and Portland. Under this arrangement, DPC could continue to provide pilotage services internally but would also allow private firms to enter the market.

7 Industry Commission, *Port Authority Services and Activities (1993)* p. 94

8 Industry Commission, *Port Authority Services and Activities (1993)* p. 93

9 Industry Commission, *Port Authority Services and Activities (1993)* p. 93

The current pilotage regulatory framework is inconsistent with clause 4.1 b (ii) of the CIRA which requires establishing competitive market frameworks that allow competition in and entry to port and related infrastructure services.

Despite having monopoly power, there is no evidence to suggest that DPC has abused its market power. Prices charged are only marginally above operating costs, and standards of service appear to be high.

Draft findings

The major determinant of market power in the Port of Darwin pilotage market is DPC's in-house, exclusive licensing framework. The purpose of this regulatory policy is to ensure safety standards and reliability of supply, however, it would seem that these concerns could be appropriately managed through a non-exclusive licensing framework or similar, as is done in the ports of Melbourne, Geelong, Hastings and Portland. Under a non-exclusive licensing arrangement, DPC could continue to provide pilotage services internally but would also allow private firms to enter the market.

Port Planning

The CIRA requires that port planning should facilitate the entry of new suppliers of port and infrastructure services.

Port planning is intended to satisfactorily address the implications of strong international trade growth on port infrastructure capacity requirements (and the most appropriate timing and staging of new port developments) and port performance. Port planning also addresses the need to manage the impacts of port cargo growth on the adjoining transportation system, and on neighbouring communities. At a strategic level, port plans are intended to facilitate the integrated or co-ordinated development of the port with the land-side interface infrastructure.¹⁰

Potentially, port planning may act as a barrier to the entry of port services to the defined port area, including through restricting the availability of infrastructure and/or land required to facilitate unimpeded entry. Other barriers to entry can also arise through safety or environmental requirements, however these are beyond the scope of this review.

There are three levels to planning for the Port. At the highest level, the *Planning Act* establishes the framework for planning, use and development of land in the Territory. Under the *Planning Act*, a planning scheme for the Darwin area has been established that includes all wharf areas of the Port except for East Arm Wharf. All applications for development on land in these areas are required to be publicly disclosed and are subject to approval by a consent authority. For the East Arm area of the Port, the consent authority is the Minister for Planning and Lands, and for all other land areas of the Port the consent authority is the Development Consent Authority. In making development approval decisions, the consent authority must have regard to criteria such as public amenity, the natural environment and safety, which

10 Essential Services Commission, *Review of Port Planning (2007)*, p.22

are outlined in the *Planning Act*. This process is transparent, promotes public benefit objectives, and is not considered to act as a material impediment to entry of new suppliers of port and infrastructure services.

Below this are strategic Government documents encompassing trade development and the inter-relationship of the Port with other elements of the transport system. The most relevant strategic Government document for the Territory is *Growing Our Trade Route* which outlines the Government's vision to establish Darwin as a regional transport and logistics centre and an integral part of the development of the Australasia Trade Route.¹¹ This document is currently being revised.

At the lowest level are DPC's internal port planning documents, which are not only the outcome of the higher level planning requirements and principles but also represent DPC's approach to planning. Documents that are publicly available include the DPC Annual Report which outlines broad strategic planning information, and the Port of Darwin Handbook which provides some limited information about the expansion of the East Arm Wharf. There is no long-term port development plan for the East Arm Wharf area beyond the draft plan of 2005 and the Maunsell plan of the East Arm Peninsula of 1998. Most other Australian ports have publicly available port development plans, which outline the optimum timing for providing new infrastructure over a 25 year horizon. Normally, development plans are updated every five years through a public consultation process with internal reviews being continuously undertaken in response to new trade forecast information.

A study prepared by Maunsell Australia for DPC in February 2007 on facilities utilisation at East Arm Wharf¹² found that there are a number of major restrictions relating to traffic congestion (mainly relates to the intersection of the main port access road and the road running along the rear of the wharf) and land use planning (e.g. storage of motor vehicles at a highly valued common-user hard stand area), which will impact on port productivity over the longer term. The Maunsell study recommended that DPC undertake an integrated port planning study, which addresses:

- trade forecasts to 2030;
- shipping traffic;
- port capacity;
- future infrastructure needs;
- road and rail traffic;
- land use compatibility; and
- environmental impact.

More recent analysis by DPC also indicates that, over the coming three to five years, there will be impediments to entry of new suppliers of port

11 *Growing Our Trade Route, A Strategy for New Transport and Trade Links*, p.4

12 Maunsell Australia, *East Arm Wharf Review of Facilities*, February 2007

and infrastructure services associated with insufficient berth, channels and navigation capability.

DPC has commissioned a study to prepare a Master Plan and Staged Development Plan to guide development at the East Arm Wharf to the year 2030. In addition to the areas of review recommended by the 2003 Maunsell study and detailed in the new study's tender, this study should outline a process for continuous review of port planning including public disclosure of demand forecasts, future infrastructure developments, capacity constraints and criteria for capital/investment decision making. This is important to assist businesses making informed investment decisions and hence facilitate the entry of new suppliers of port and infrastructure services.

Draft findings

There is no long-term port development plan for the East Arm Wharf area beyond the draft plan of 2005 and the 1998 Maunsell plan of the East Arm Peninsula of 1998. Moreover, internal studies indicate that potentially significant constraints on the entry of new suppliers of port and infrastructure services associated with insufficient berth length and height, traffic congestion, and land planning may emerge in the short to medium term.

To improve DPC's planning processes and thus facilitate the entry of new suppliers of port and infrastructure services, the upcoming study to prepare a Master Plan and Staged Development Plan to guide development at the East Arm Wharf to the year 2030 should also outline a process for continuous planning including public disclosure of demand forecasts, future infrastructure developments, capacity constraints and criteria for capital/investment decision making.

Third Party Access on a Competitively Neutral Basis

The CIRA requires that third party access is provided on a competitively neutral basis. The rationale is that by ensuring a level playing field for all businesses seeking to access the Port's infrastructure, an efficient allocation of resources will prevail.

Access to Use Common-User Berth Areas, Equipment and Storage Areas

Use of common-user berth areas, handling equipment and storage areas at DPC wharves is undertaken by stevedoring operators, which are allocated access to these facilities relative to the criteria for allocating terminal infrastructure to shipping vessels.

DPC determines use of its wharfage infrastructure according to:

- order of arrival of vessels;
- vessel dimensions and draft;
- berth and cargo available;
- best utilisation of DPC facilities;
- minimising or eliminating delays to all port users;

- a vessel in the berth and working cargo retaining the berth until cargo operations are completed;
- a vessel unable to work cargo continuously may be asked to vacate the berth in favour of a waiting vessel that is prepared to work maximum hours;
- tidal and weather conditions; and
- being subject to the Harbour Master's discretion at all times.

There have been no formal complaints to the Northern Territory Government or the National Competition Council to indicate that these criteria may have been inconsistently applied. However, there is a lack of transparency about the process as criteria are not publicly available and reasons for access decisions are not disclosed. Transparency is necessary to ensure access to common-user facilities is provided on a competitively neutral basis, and could be improved by:

- formally establishing the criteria in the Port Handbook, the DPC's Charter of Operations, and/or through a formal policy statement; and
- requiring DPC to disclose reasons for its access decisions to users.

In the event that a firm considers access to common-user facilities has not been provided in a competitively neutral manner, there is opportunity for redress through the *Trade Practices Act* by seeking to have facilities such as common-user berth areas, handling equipment and storage areas declared under the National Access Regime.

Draft findings

From the available evidence, access to common-user facilities appears to be allocated on a competitively neutral basis. Nonetheless, there is benefit in improving the transparency of this process. This could be achieved by formally establishing the criteria in the Port Handbook, a formal policy statement, and/or in DPC's Charter of Operations; and by requiring DPC to disclose reasons for its access decisions to stevedores.

Access to Operate as a Stevedore at DPC Wharves

As mentioned under Stevedoring, DPC requires stevedores to hold a stevedoring licence in order to operate at its terminals. Under the *Darwin Port Corporation Act*, DPC may issue stevedoring licences subject to conditions it thinks fit for the carrying out of the business of a stevedore within the Port, including:

- whether the applicant is a fit and proper person to possess the licence;
- the applicant's experience, equipment and financial position;
- the standard of the applicant's equipment, efficiency, skill and ability to provide services; and
- any other matter it thinks fit.

To date, no stevedore licence applications have been rejected. Nonetheless, the above criteria are vague and allow scope for applications to be

inconsistently assessed. For example, it is not clear what constitutes an appropriate financial position or what is the required standard for equipment. Also, there are no publicly defined criteria to assess renewals. To improve transparency and thus competitive neutrality of the assessment process, licence criteria (new licences and renewals) should be further defined and formally established under statute.

Moreover, there is no independent appeals process available for stevedores to appeal or make complaints against licence decisions. The ability to have a decision assessed by an independent entity is consistent with best practice regulation principles and endeavours to, among other things, maximise accountability, regulatory certainty and the conditions for the decision maker to make the correct initial decision.

An independent appeals process could be achieved by providing capacity to a Minister, different to the Minister for Infrastructure and Transport (who has portfolio responsibility for DPC), to directly appoint a suitable independent party to advise on such matters.

Assessment of new licence applications has been undertaken by different groups for the three existing stevedore licences. For the Patricks and P&O AGS stevedore licences, DPC has assessed licence applications internally while for the Perkins licence, an expert panel was drawn from DPC technical officers and relevant Northern Territory Government agencies including the Departments of the Chief Minister and Planning and Infrastructure, and Northern Territory Treasury. External representation (i.e. non-DPC officers) on the licence assessment group is not considered necessary for competitive neutrality purposes, providing that transparency of the assessment process is improved and an independent appeals mechanism is introduced, as discussed above.

Draft findings

To date, no stevedore licence applications have been rejected. Nonetheless, the existing licence criteria are vague and allow scope for applications to be inconsistently assessed. Also, there are no publicly defined criteria or formal process to assess licence renewals. To improve transparency and thus competitive neutrality of the assessment process, licence criteria (new licences and renewals) should be further defined and formally established under statute.

Also, there is no independent appeals process available for stevedores to appeal or make complaints against licence decisions. An independent appeals process could be achieved by providing capacity to a Minister, different to the Minister with portfolio responsibility for DPC, to directly appoint a suitable independent party to advise on such matters.

Pilotage Requirements for Shipping Vessel Entry to the Port

The ability for shipping vessels to enter and exit the Port is, in effect, governed by the requirements to take on board a pilot.

Currently, pilotage is compulsory for all craft exceeding 25m length overall unless a valid pilotage exemption certificate is held by the vessel's Master. Applications for exemption certificates involve a two to four hour theoretical test, provision of qualifications and medical certificates, six observation trips and lodgement of an application 24 hours prior to arrival. Fees are charged for exemption certificate applications. In accordance with the *Darwin Port Corporation Act By Laws*, fees are determined on a cost recovery basis.

Under the *Marine Act*, it is specified that DPC shall have regard to the following considerations in making pilotage requirement decisions:

- the condition of a ship and its equipment;
- the nature and condition of any cargo carried on the ship;
- the existence of a nuclear power source on the ship; and
- the circumstances of, and the conditions within, the particular pilotage area.

These criteria are in line with competitive neutrality principles, and there do not appear to have been any formal complaints to the Northern Territory Government or the National Competition Council to indicate that these criteria have been inconsistently applied.

Assessment of pilotage requirements and exemption applications are transparently recorded in DPC corporate files and are available to applicants upon request. However, there is no independent review mechanism in place for shipping firms to appeal or make complaints against these decisions. As for use/lease of DPC common-user facilities and stevedore licences, discussed above, this could be undertaken by providing for the Minister to directly appoint a suitable independent party to advise on such matters.

Draft findings

From the available evidence, pilotage requirements for shipping vessel entry to the Port appear to be administered on a competitively neutral basis. Nonetheless, there would be benefit in establishing an independent appeals process to ensure these requirements are assessed on a competitively neutral basis. This could be undertaken by providing for a Minister, different to the Minister with portfolio responsibility for DPC, to directly appoint a suitable independent party to advise on such matters.

Pricing of Infrastructure Services Provided by Darwin Port Corporation

The CIRA requires that charters for port authorities seek commercial returns while not exploiting monopoly powers.

Under the *Darwin Port Corporation Act*, DPC must act in a commercial manner while also having regard to Government strategic objectives, including trade development. The current DPC charter is consistent with this and includes key strategies to:

- turn DPC into a profitable commercial operation;
- develop new and existing cargoes through the Port of Darwin; and
- maximise use of East Arm.

A copy of DPC's charter is provided at Appendix B.

Since 1992, there have been only two changes to pricing for DPC infrastructure services. The first was in 2000 to adjust for goods and services tax and the second in 2003 to adjust for inflation. Until 2004-05, these prices had been sufficient to cover aggregate operating costs and a small return on and of assets. After 2004-05, revenues have been below operating costs.¹³

Pricing reforms are required to improve the profitability of DPC as well as the efficient pricing of port infrastructure services.

Meyrick and Associates was commissioned by DPC to undertake a review of port pricing in late 2001 and again in 2006. The 2001 Meyrick review proposed a building blocks methodology for pricing. The 2006 review did not undertake a full building blocks determination of pricing due to time constraints, instead recommending that pricing focus on meeting operating costs and the capacity to service capital works requirements. DPC has not implemented any pricing reforms as recommended by Meyrick.

DPC is currently undertaking a further pricing review.

The building blocks approach to pricing is generally accepted practice within Australia. It involves calculating the maximum allowable revenue stream (calculated as the sum of operating and maintenance costs, return on capital, a return on regulatory asset value, and a return on working capital) for each class of customer. Pricing levels and structures are then derived from this maximum allowable revenue stream.

By building in future capital requirements and demand forecasts and providing for a risk weighted return on the capital employed, the building blocks model also provides greater capacity to undertake timely and efficient investment and thus maintain service standards over time.

Valuation of assets (for the purpose of identifying the appropriate return on and of assets) and the determination of the required cost of capital are important aspects of the building blocks approach, requiring careful and considered analysis.

Draft findings

Pricing reforms are required to improve the profitability of DPC as well as the efficient pricing of port infrastructure services. A building blocks approach to pricing is the generally accepted practice within Australia. This approach seems appropriate for the DPC.

Vertical Integration

The CIRA requires that vertically integrated structures are reviewed to ensure there are no material conflicts of interest between port owners, operators or service providers.

Vertical integration within ports concerns the absorption of two or more aspects of infrastructure services (i.e. ownership of terminal infrastructure,

¹³ Financial indicators summary taken from Darwin Port Corporation Annual Reports 2000-01 to 2006-07

provision of stevedoring, provision of pilotage) into a single firm. The risk with vertically integrated structures is that it can be used strategically to achieve anti-competitive effects.

The only potentially significant vertically integrated structure within the Port of Darwin is DPC as owner of major wharf infrastructure and provider of pilotage services. As provider of pilotage services, there is potential for DPC to give preferential treatment/create delays to favour shipping vessels that use its wharf infrastructure. However the likelihood of this restriction materialising is considered low as firms would have redress through the *Trade Practices Act* by seeking to declare facilities under the National Access Regime.

There is no evidence to suggest that this has occurred.

Draft findings

There are no material conflicts of interest between port owners, operators or service providers in the Port of Darwin.

Other Potential Restrictions on Competition

Conflict of Interest

There is a conflict of interest in DPC's role as both pilotage regulatory authority and provider of pilotage services, which could potentially result in DPC overstating safety requirements in order to generate more pilotage revenues. If a non-exclusive licensing framework were introduced for pilotage, this conflict of interest may also result in DPC unfairly assessing external pilotage licence applications.

Although there is no evidence to suggest that DPC has abused its powers as pilotage regulatory authority, this conflict of interest arrangement is significantly out of step with fundamental best practice regulatory principles. This said, many other regional ports (e.g. the ports of Albany, Esperance, Geraldton and Bunbury) operate in the same manner. The reason for this is pilotage regulation is very costly, requiring technical and port-specific expertise that can only be provided by a locally-based, qualified pilot. As mentioned under Pilotage, there is a global shortage of Master Class 1 pilots.

The Port of Albany advises that at its current and short to medium term forecasted port activity levels, the costs of establishing a separate pilotage regulatory body would be expected to outweigh any efficiency benefits that may result from regulation – a net public loss. This is also expected to be the case for the Port of Darwin which handles approximately one-third less tonnage than the Port of Albany.

In this light, the existing conflict of interest issue would be best managed by introducing additional transparency measures. These include publicly disclosing pilotage licensing criteria, reporting reasons for licence and exemption assessment decisions, regular reviews of the pilotage regulation process, and introducing an independent appeals process.

Draft findings

There is a conflict of interest in DPC's role as both pilotage regulatory authority and provider of pilotage services, which could potentially result in DPC overstating safety requirements in order to generate more pilotage revenues. This arrangement is inconsistent with best practice regulation principles.

This said, many other regional ports (e.g. the ports of Albany, Esperance, Geraldton and Bunbury) operate in the same manner, as the costs of establishing a separate pilotage regulatory body (which requires technical and port-specific expertise that can only be provided by a locally-based, qualified pilot) are considered to outweigh any efficiency benefits that may result from such an arrangement – a net public loss.

In this light, the existing conflict of interest issue would be best managed by introducing additional transparency measures. These include publicly disclosing pilotage licensing criteria, reporting reasons for licence and exemption assessment decisions, regular reviews of the pilotage regulation process, and introducing an independent appeals process.

Appendix A: Terms of Reference

Review of Regulatory Framework for Port of Darwin

Background

In February and July 2006, Council of Australian Governments (COAG) approved the National Reform Agenda (NRA). The NRA is a comprehensive national reform program that aims to promote national productivity and living standards in the face of emerging challenges for the Australian economy, including ageing of the population and increasing international competition from emerging economies in the region.

The Competition and Infrastructure Reform Agreement (CIRA) is a component of the NRA. The primary objectives of the CIRA include promoting the efficient provision and use of nationally significant economic infrastructure, including ports and rail. The CIRA implementation plan was approved by COAG in April 2007.

Clause 4.3 of the CIRA requires each jurisdiction to review the regulatory framework for significant ports to ensure that effective competition in the provision of port and related infrastructure facility services is not impeded unless the benefits to the community outweigh the costs.

Significant ports include:

- major capital city ports and port facilities;
- major bulk commodity export ports and related facilities; and
- major regional ports catering to agricultural and other exports.

The ports to be reviewed under NRA principles are listed in Appendix 2 to the CIRA implementation plan. The Port of Darwin is included in the Appendix.

Objective of Review

The overarching objective is to ensure that the benefits of restrictions on competition in the provision of infrastructure and related services at the Port of Darwin exceed the costs, and that the benefits of such restrictions are maximised.

Scope of Review

The review will examine the following:

- the extent to which the entry of new suppliers of port and related infrastructure services is restricted by the regulatory framework, and the costs and benefits of such restrictions;
- the efficiency of third party access arrangements for the Port of Darwin, including pricing arrangements and the capacity for users to gain access on a competitively neutral basis;
- the guiding charter for the Darwin Port Corporation and its compliance with commercial and pricing principles for Government owned enterprises as defined by the CIRA and the Competition Principles Agreement;

- potential conflicts of interest between Darwin Port Corporation and service providers and the likely impact on competition; and
- consistency of the regulatory framework for the Port of Darwin with the relevant principles outlined in the CIRA.

The above is not intended to limit the scope of the review and related matters may be considered as required in terms of meeting the objectives of the review.

Review Process

The review is to be conducted by a working group of officials comprising Northern Territory Treasury, Darwin Port Corporation and Departments of the Chief Minister; Business, Economic and Regional Development; and Planning and Infrastructure representatives.

The review is to be completed by December 2007, with the findings implemented by December 2008.

A draft report will be produced for stakeholder comment prior to completion of a final draft report for Cabinet consideration.

Appendix B: DARWIN PORT CORPORATION CHARTER OF OPERATIONS

Mission

The Mission for the Darwin Port Corporation is to:-

To facilitate the efficient movement of trade through the Port of Darwin as a strategic element of a multi-modal transport hub in a commercial manner and deliver specific community service obligations as required by Government.

The Darwin Port Corporation will meet its obligations under the *Darwin Port Corporation Act* and strategic vision, outlined in its Corporate Business Plan and mission statement, through its core business objectives consisting of:

- World Class Cargo facilitation;
- Port related Business Growth; and
- Community Service to meet Government needs.

In achieving these objectives the following key strategic issues have been identified for each line of business.

- development of new and existing cargoes through the Port of Darwin;
- maximising use of East Arm;
- development of transport logistic solutions (a strategy particularly associated with the railway and land bridging operations); and
- turn Darwin Port Corporation into a profitable commercial operation (a strategy to improve the profitability of all aspects of the business).

Scope of Operations

All activities and services of the Darwin Port Corporation are provided through the following six lines of business:

1. Commercial Wharves
2. Small Craft Services
3. Pilotage
4. Navigation and Safety
5. Cruise and Defence facilities
6. Tourism Real Estate Development

Limitations on the operations of the Corporation are defined within the *Darwin Port Corporation Act* and the *Port By-Laws*.

Localities

In accordance with the *Darwin Port Corporation Act*, section 16, the Darwin Port Corporation is responsible within the Port:

- for the regulation, improvement, management, operation and control of and the promotion of trade;
- the movement of vessels;
- the provision and maintenance of port facilities; and
- recreational, tourist and commercial activities.

In order to achieve its mission in relation to commercial operations the Corporation's focus and trade development and marketing activities extend beyond the Northern Territory.

1. Commercial Wharves Line of Business

Commercial Wharves are the functions associated with East Arm Wharf, Fort Hill Wharf and Iron Ore Wharf. These functions include the facilitation of live stock, container handling, break bulk and bulk cargo, including liquids through the control of berthage, provision of storage and related services to vessels.

The bulk liquids will be transferred from the Iron Ore Wharf to East Arm Wharf on completion of the Joint User Terminal (JUT). Most commercial operations will also be transferred from Fort Hill Wharf to East Arm Wharf. Fort Hill Wharf will remain a spill over berth to support East Arm Wharf.

The Commercial Wharves must meet the requirements of AQIS, Customs, the new ISPS Code, Environmental and OH&S, as well as, National and International Standards and Codes.

The Client Base is:

- Northern Territory Government;
- Ship Operators;
- Cargo Interests;
- Rail Operator;
- Federal Agencies.

Competitive Base

The Darwin Port Corporation operates in a nation wide environment of alternative competitive transport logistics solutions.

The Darwin Port Corporation competes for cargo with private operators of facilities in the Port of Darwin and, in the future, with private operators at Wickham Point and Melville Island.

At this point in time, the Darwin Port Corporation, as a trade facilitator, does not compete directly with the private sector for Government funded projects.

At this point in time, the Darwin Port Corporation, as a trade facilitator, does not jointly tender with the private sector for Government funded projects.

2. Small Craft Services Line of Business

Through this business line the Darwin Port Corporation provides management, operation and maintenance of Frances Bay Mooring Basin, Fisherman's Wharf, Hornibrooks Wharf and moorings for vessels in Frances Bay and Sadgroves Creek. The operations include the provision of a cyclone proof facility that provides a safe haven for the fishing fleet of northern Australia and the local seafood industry. Cyclone shelter is also provided for other small commercial and pleasure craft. Other services include the provision of power and water, careening piles, pontoons for barramundi fishermen and hardstands for vessel maintenance.

The Client Base is:

- Northern Territory Government;
- Fishing Industry;
- Seafood Council;
- Pearling Industry;
- Pleasure crafts (yachts/cruises/charters);
- Defence Force.

Competitive Base

The Darwin Port Corporation provides services to the Northern Territory Government to support the fishing industry under the guidelines of the Government's Community Service Obligation (CSO) Policy.

There are no comparable services provided by the private sector, except for marinas that accept the smaller pleasure/charter vessels (such as Cullen Bay, Tipperary Waters and Bayview Haven).

The Darwin Port Corporation does not compete directly with the private sector for Government funded projects, noting the Darwin Port Corporation facilities relate primarily to the fishing industry.

The Darwin Port Corporation does not jointly tender with the private sector for Government funded projects.

3. Pilotage Line of Business

This is the provision of a compulsory 24/7 pilotage service for commercial and non-commercial vessels of 25m or more in length overall. Pilotage is provided to ensure a safe and efficient service which protects all users of the harbour, infrastructure and environment.

The Client Base is:

- Northern Territory Government;
- Ship Operators;
- Defence Force (RAN and Foreign Navies);
- Other ports (Rooney's, Tiwi and Perkins);
- Offshore facilities – subject to cabinet approval.

Competitive Base

The Darwin Port Corporation is the nominated pilotage authority under the *Marine Act*.

There are no comparable services provided by the private sector.

The Darwin Port Corporation does not compete directly with the private sector for Government funded projects.

The Darwin Port Corporation does not jointly tender with the private sector for Government funded projects.

4. Navigation & Safety Line of Business

Activities undertaken include the provision of moorings, anchorages, navigational aids, safe channels, Quarantine services (incineration and washdown facilities) and Customs services for all the port's stakeholders. The service is also responsible for:

- the provision of various emergency procedures;
- administration of Port Occupational Health & Safety Management system;
- ensuring compliance with Port related international, national, and local legislative requirements;
- Port Security Plan;
- ship scheduling;
- safe navigation;
- Coast Radio Darwin.

The Client Base is:

- Northern Territory Government;
- Ship Operators;
- Port service providers;
- Defence Force (Royal Australian Navy (RAN) and foreign navies);
- Recreational providers.

Competitive Base

Navigation and safety functions are provided according to nominated maritime standards with pricing established on conventional commercial grounds.

There are no comparable services provided by the private sector.

The Darwin Port Corporation does not compete directly with the private sector for Government funded projects.

The Darwin Port Corporation does not compete directly with the private sector for Government funded projects.

5. Cruise and Defence Facilities Line of Business

This service supports the cruise shipping and naval presence in the Northern Territory and includes the facilities of Fort Hill and Stokes Hill Wharves, the roll on/roll off facility and the Cruise Ship Terminal. The Service also facilitates visiting ships by providing passenger and crew services, cleaning, marketing, security, garbage and water supply services.

The Client Base is:

- Northern Territory Government;
- Tourism Industry (NTTC/Tourism Top End);
- Department of Defence (Royal Australian Navy (RAN) and foreign navies);
- International cruise companies;
- Darwin City Council.

Competitive Base

The Darwin Port Corporation provides services to the Northern Territory Government to support the cruise shipping and naval presence under the guidelines of the Government's Community Service Obligation (CSO) Policy.

There are no comparable services provided by the private sector to visiting cruise ships and defence vessels.

6. Tourism Real Estate Development Line of Business

This service manages the Wharf Precinct, which incorporates retail outlets and associated facilities, entertainment, infrastructure and services on Stokes Hill Wharf, in support of general tourism. The Service also facilitates major events and functions within the Wharf Precinct.

The Client Base is:

- Northern Territory Government;
- Tourism Industry (Operators/visitors);
- Wharf Precinct Tenants;
- NTTC/Tourism Top End.

Limitations on the operations of the Corporation are defined within the *Darwin Port Corporation Act* and the *Port By-Laws*.

Competitive Base

The Darwin Port Corporation provides services to the Northern Territory Government to support general tourism under the guidelines of the Government's Community Service Obligation (CSO) Policy. While there are a number private sector dining and function facility providers in the Darwin Central Business District (CBD) area, the Darwin Port Corporation is the only facilities provider within the Wharf Precinct.

The Darwin Port Corporation as a facilities provider of the Wharf Precinct does not compete directly with the private sector for Government funded projects.

The Darwin Port Corporation as a facilities provider of the wharf precinct does not jointly tender with the private sector for Government funded projects.