Submission to the Port of Darwin Select Committee

From the

Port of Darwin Project Steering Committee
Northern Territory Government

Executive Summary

The Northern Territory is entering an unprecedented period of growth and is well placed to take advantage of the future development of the region. The strong economic and population growth forecast for the Territory in the coming years will drive increased demand for infrastructure and services and there is a need for the continued exploration of opportunities and options for enhancing and growing infrastructure to further develop the Northern Territory as a key trade route for the nation.

To address the infrastructure need, the Northern Territory must be prepared to test and investigate alternative forms of infrastructure funding and financing, including private investment. Continued reliance on Commonwealth Government support and borrowings are not long term solutions.

Historically, the NT Government has successfully used partnerships with the private sector to leverage private capital, operating experience and expertise. Given this, a decision was made to test private sector interest in partnering with NT Government to operate the Port of Darwin.

Government objectives from this process are:

- a partnership with a private operator which has a vision for growth and development of the port which is aligned with that of the NT Government
- access to new private sector capital into the Northern Territory economy
- opportunity to realise the value inherent in an NT Government asset to allow capital to be channelled into new productivity and growth enhancing infrastructure.

After consideration of recent port experiences elsewhere in Australia, the NT Government settled on a long term lease model of up to 99 years, supported by a robust but light-handed regulatory framework designed to manage and mitigate risks inherent in the move from public to private operation. The regulatory framework balances the desire to secure the NT Government objectives outlined above with a private sector operator’s commercial imperatives and need to manage its investments unhampered by government interference.

The regulatory model endeavours to ensure that Northern Territory and business interests are protected by:

- **Maximising Safety:** The Ports Management Bill creates a regulatory regime for all designated ports in the Territory which balances the port operators responsibility to safely manage the day-to-day operations of the port, while retaining Government’s ability to direct action and step-in to manage emergency situations or to avert actual or potential death or serious injury of people, loss or damage to property, or actual or potential harm to the environment.
- **Monitoring and regulating access and pricing:** The Ports Management Bill establishes a price and access regulatory framework overseen by an independent statutory regulator.

- **Ensuring aligned vision for growth and development:** The Ports Management Bill obliges the operator to facilitate and grow trade through the Port of Darwin and retains the NT Government’s ability to fund strategic infrastructure at the Port and charge port users for use of the infrastructure.

- **Sharing in future revenue:** A revenue sharing arrangement will be established to ensure that Government shares in future revenue which has not been captured in the bid price.

The NT Government has made clear that a key consideration in the decision whether to partner with a private port operator is ensuring that the strategic and long term objectives of the operator align with those of the Northern Territory, specifically in relation to securing trade growth and development of the Port of Darwin recognising the Port of Darwin’s strategic position in Northern Australia and its importance to the Northern Territory economy.

A consideration in the bidder evaluation process will be a bidder’s experience in developing and growing infrastructure investments and the operator’s preparedness to share in the Government’s long term vision of the Port of Darwin being a dynamic, agile and indispensable link in Australia’s key transport corridor.

**The case for bringing private sector funding to develop the Port of Darwin**

**Requirement for Infrastructure Investment**

The Northern Territory is entering an unprecedented period of growth and is well placed to take advantage of the future development of the region. The strong economic and population growth forecast for the Territory in the coming years will drive increased demand for infrastructure and services and there is a need for the continued exploration of opportunities and options for enhancing and growing infrastructure to further develop the Northern Territory as a key trade route for the nation.

The Northern Territory has a number of significant economic drivers which will underpin its continued growth into the future. These include the AustralAsia trade route, gas and related investment, mining and minerals processing, agribusiness, tourism, defence support and Darwin’s growth as a supply, service and distribution centre for the region.

Darwin is becoming an important supply, service and distribution base for major minerals and energy projects worth billions of dollars in northern Australia, the Timor Sea, and South-East Asia.

Most recently, the NT Government has invested in the Marine Supply Base at East Arm in Darwin Harbour as it recognised the need to position itself to take advantage of the growing demand from the oil and gas industries in the region.
The Port of Darwin already plays a vital role for the Royal Australian Navy as a strategic base to the north and it hosts major naval activities and multi-national exercises involving approximately 100 visiting Australian and foreign warships each year. These numbers are expected to continue to increase as Australia and the United States of America continue to recognise the strategic significance of the Northern Territory’s location in the region.

The construction of the new abattoir on the outskirts of Darwin and expansion of the Ord River Project into the Northern Territory provides additional export opportunities from the Port of Darwin into South East Asia.

Northern Australia, and in particular the Northern Territory, is driving growth and creating jobs and new opportunities for Australia. This has been recognised in the Commonwealth Government’s ‘Australia in the Asian Century White Paper’ which calls for Government to work together with business to accelerate Darwin’s evolution as a sophisticated, liveable city build around a Gateway to Asia, and a regional hub for a large number of goods and services, through coordinated infrastructure, planning and international engagement activities.

However, the Northern Territory is a small economy the NT Government has limited capacity to raise capital, including to meet the challenges associated with demand for services from a population with relatively high needs. The infrastructure task to grow the economy, facilitate new industry, and generate jobs is large and beyond the Territory’s ability to unilaterally fund.

To be able to address the infrastructure need, the Northern Territory must be prepared to test and investigate alternative forms of infrastructure funding and financing, including private investment. This is critical if we want to be in a position to meet the infrastructure requirements of the future and be well positioned to seize economic opportunities as they arise.

The Northern Territory is heavily reliant on Commonwealth Government funding. However, the Commonwealth Government has clearly indicated that it is not prepared to provide infrastructure funding support, particularly where alternative sources of capital are potentially available.

A number of submissions have been made to Infrastructure Australia seeking Government funding for development of additional capacity at East Arm Wharf over the past four years. For example, in 2009, the NT Government requested $336 million to development additional facilities at East Arm however no funding was provided.

Arguably, the NT Government could continue to borrow to fund infrastructure investment. However, our capacity to borrow is not unlimited and there is an opportunity cost to using borrowed funds to invest in one project at the expense of another. Given this, it is prudent and reasonable for governments to make capital investment decisions based on their ability to access alternative funding sources for specific projects and to invest in the projects where there is no or limited private sector investment interest, for example in social infrastructure such as schools and hospitals.

There is also an opportunity cost to holding Government assets in various forms. Prudent financial management involves periodic reviews of the Government asset portfolio to assess whether revising the assets mix can result in greater returns and increased asset productivity.
Recycling assets and partnering with private operators where there is a commercial business proposition is one approach to freeing up capital for reinvestment in much needed infrastructure. This is particularly the case where there is already deep private sector experience and expertise in operating the infrastructure or delivering the service.

The Port of Darwin

Over the past four years, every existing usage record for the Port of Darwin has been broken. This growth in demand for facilities and port services has been planned for, and in most cases, met. However, what this period of high usage has shown is that the limited size of the port facilities can quickly be overtaken by demand. In order to continue to cater for growth in all sectors, further development will be required.

The ability to meet the demands over the past few years has been on the back of the introduction of modern management systems, new technology and port improvements to optimize the ports performance. The performance has been acknowledged, by the Port and Shipping industry, with the Port of Darwin being named Runner up in 2013 and, in 2014, the Outstanding Port Operator in Australia.

A decision was made in 2014 to test private sector interest in partnering with NT Government to operate the Port of Darwin. The outcomes sought as part of this process are:

- a partnership with a private operator which has a vision for growth and development of the port which is aligned with that of the NT Government
- access to new private sector capital into the Northern Territory economy
- opportunity to realise the value inherent in an NT Government asset to allow capital to be channelled into new productivity and growth enhancing infrastructure

With the right private sector partner, the Port of Darwin could become a major distribution hub into the rapidly expanding Asian market. Australian bulk ore and containerised goods could be transported into and shipped out of the Port of Darwin, rather than being transported out of already congested southern ports. Conversely, the ever increasing levels of containerised freight from Asian countries could be shipped to Darwin and distributed throughout the nation.

A strong commercial focus on growing trade through the Port of Darwin when coupled with NT Government infrastructure investments, including the sealing and improving of major freight roads, could see the Port of Darwin become one of the most strategically important ports in Australia. However, this can only be achieved through continued investment in building the port's capacity and efficiency.

The high demand for facilities at East Arm Wharf has been supported by the construction of the Ichthys LNG plant at Bladin Point. In addition, many trading sectors have continued to grow over recent years and are projected to do so into the future.

The demise of the iron ore exports over the last 6 months should be seen as merely a hiatus for a period of time. Darwin has previously seen exports of iron ore stop and start.

The NT Government remains confident that the future growth in areas such as livestock, agricultural exports, oil and gas support will again be competing with bulk ore exports such as iron ore or phosphate. The challenge is timing the development of the infrastructure to be able to cater for this growth. Private investment will provide flexibility and a sound business case to invest in the future growth of Northern Australia.
To ensure that the Port is equipped to meet this expected demand, it is essential that appropriate planning is in place. An essential plank of this planning is understanding the funding availability. The current process for the Darwin Port Corporation (DPC) seeking funding from either Federal or Territory governments is risky. Changes in Government funding priorities and the substantial timelines that are necessary in seeking public funding means that DPC is not in a position to agilely and effectively respond to addressing infrastructure bottlenecks. Private funding assurance will reduce these risks, allowing confident planning for the future.

Existing Northern Territory Government public/private sector partnerships

The Northern Territory has a long history of engaging private sector capital in local infrastructure projects with one of the first partnership arrangements in Australia being the delivery of the Amadeus Basin to Darwin gas pipeline.

Over the past 15 years, the Northern Territory has used Public Private Partnerships (PPP) as a method of leveraging investment in much needed infrastructure. Recent PPPs include:

- Darwin to Tarcoola Railway Project
- Darwin Waterfront Development
- Marine Supply Base.

Darwin to Tarcoola Railway Project:

The Darwin to Tarcoola Railway is the most significant government/private partnership in the Territory’s history, and was procured under a PPP model in partnership with the Commonwealth and South Australian Governments.

The $1.2 billion Adelaide to Tarcoola Railway was developed under a Build-Own-Operate-Transfer PPP model with lease arrangements covering 50 years’ operations before the railway is handed back to the Northern Territory and South Australian Governments.

FreightLink was the original operator of the railway with Genesee and Wyoming Australia (GWA) purchasing the operating lease for $334 million in 2010. The 50 year lease transferred to GWA at that time. The stronger financial position of the GWA lifted constraints on investment which led to substantial new expenditure in new rolling stock.

In its first year of operation, the line carried 600 000 tonnes of domestic freight and 20 000 tonnes of international cargo. The freight task grew quickly as new mines opened along the rail corridor, with bulk minerals increasing from 45 000 tonnes in 2006 to 2.74 million tonnes in 2014. A combined total of over 3.65 million tonnes of freight was transported in 2014.

The Australian Defence Force has also taken advantage of the railway’s potential to move heavy equipment such as tanks between southern and northern Australia.

The Ghan passenger service operated by Great Southern Railway has brought jobs, tourism and dollars to the Territory. Other infrastructure investment has followed including a common user terminal and business park near Darwin’s East Arm Port and a rapid expansion of logistics businesses on the back of the railway.
A 2008 independent assessment undertaken on the economic benefits generated by the railway conservatively estimates that since commencement of operations in 2004 to 2008 approximately 5 million tonnes of freight and 400,000 passengers have been moved at an estimated economic return to the Territory of $211 million. Benefits of the railway to the Territory over the next seven years were projected to reach $548 million.

This fundamentally important piece of transport infrastructure would never have been delivered without leveraging private investment.

**Darwin Waterfront Development**

The $1 billion Waterfront Development is comprised of a convention centre, community facilities and a mixed residential/commercial development. The Territory contributed 25 hectares of unused industrial land up front, infrastructure to the boundary and the cost of construction relating to the Darwin Convention Centre. The NT Government provided a concession to the Darwin Cove Consortium to operate the convention centre for 25 years until June 2033 and continues to have a return from the project through a percentage of the sale of the residential/commercial component constructed by Toga.

The concession arrangements provide for periodic payments by the Territory to the consortium for the life of the concession period of 25 years following the construction of the centre. These payments primarily represent payments made in respect of debt, equity, construction and maintenance aspects of the project. The legal framework for the Convention Centre includes incentives intended to encourage the operator to exceed benchmark levels of performance.

**Marine Supply Base**

The Territory funded and owned marine supply base has been built on 8.55 hectares of previously vacant land adjacent to East Arm Wharf and will play an important role in cementing Darwin’s position as a major oil and gas hub.

ASCO Australia Pty Ltd has been granted a concession to operate the base for 15 years with a five-year extension option based on performance. ASCO operates and maintains the MSB for an agreed contract amount.

Parent company, ASCO Holdings, is an international oil and gas logistics company that has over 40 years’ experience and 20 bases around the world.

The base will:

- increase Darwin’s capacity to support offshore oil and gas developments in northern Australia, including the operations in the Arafura and Timor seas and Browse Basin
- grow the number of rig tender vessels working out of Darwin, providing opportunities for local businesses to service and supply the industry
- improve the efficiency of East Arm Wharf by providing a purpose-built marine supply base and support facilities
- allow local businesses that support the offshore oil and gas industry to grow
- attract new investment and business opportunities to provide services to support the offshore oil and gas industry that are not currently available in the Northern Territory.
The base includes three marine berths with water, fuel, chemical and drilling mud connections, hard stand and lay down areas, warehousing, waste management facility, storage capacity for drilling muds, chemicals, water and fuel, office space and associated facilities.

The facility will have the capacity to service in excess of 1000 vessels per annum with a 12 hour turn around.

The MSB Concession Agreement framework incorporates:

- minimum performance requirements for efficient and effective operations; and
- incentives to grow the business and maximise revenues.

This partnership model has allowed the Northern Territory to align itself with proven industry leaders and provide a platform for further development in providing oil and gas support services.

Best practice models for maintaining positive government/private sector partnering in lease arrangements.

Private Investment in Ports Nationally

Until the late 1990s, the majority of Australian capital city ports were publicly owned. However, since then, Australia has followed the international trend of reducing governments’ involvement in port operations as it is not core government business and there is no market failure which requires government intervention to address.

- 1996 - Victorian Government sold both the Ports of Portland and Geelong
- 2001 - South Australian Government entered into a long term lease for the Port of Adelaide
- 2010 - Queensland Government leased the Port of Brisbane
- 2013 - New South Wales Government leased the Ports of Botany and Kembla
- 2014 - New South Wales Government leased the Port of Newcastle
- August 2014 - WA Government announced that it was offering long term leases of port facilities in Port Hedland and Kwinana. The Utah Point Bulk Handling Facility in Port Headland was owned by the Pilbara Port Authority. The Kwinana Bulk Terminal is operated by the Fremantle Port Authority.

The Port of Melbourne is the only major capital city port on the East coast still owned by a state government, and the Victorian Government has commenced a process for seeking private investment in the Port of Melbourne through a lease arrangement.

Private sector operation of ports is therefore not a new phenomenon. The majority of governments have moved away from managing ports and this has resulted in increased port efficiency. The primary drivers for private sector operation is the experience and expertise the private sector brings to commercial operations and the access to private capital to increase operating efficiencies and productivity.
Private partnerships at the Port of Darwin

Over the past few years, DPC has actively sought private investment to facilitate small scale infrastructure improvements. The demise of the Port Container Crane provided an opportunity for DPC to allow stevedoring operations to replace the service previously provided by DPC. The cost of a replacement container crane was in excess of $12 million. The usage rate of the previous crane provided no business case for DPC to invest in this significant infrastructure. DPC worked with both QUBE and Patricks to facilitate them procuring and deploying mobile harbour cranes to Darwin. This has resulted in the competitive environment which now exists with both providers exceeding the previous cranes container movement rate.

An upgrade to the Vessel Traffic Management System was undertaken by entering into a long lease. This again was a partnership arrangement with the equipment provider and a financier to facilitate the introduction of state of the art harbour control systems which improved safety and efficiency within the Port of Darwin.

These small scale partnerships have been driven by DPC recognising infrastructure challenges which it is not able to meet. More significant levels of private sector capital will only be able to be sourced price competitively if the private sector has an interest and stake in operations.

Risk Management

A transition from public operation to private operation is not without risk. The NT Government recognises this and undertook detailed investigations of regulatory frameworks adopted in other Australian states. The Ports Management Bill was developed based on a model and framework for the regulation of the Port of Darwin which seeks to balance risks inherent in a public/private partnership model with the desire to allow the private sector to manage the asset in a manner which delivers on its commercial objectives and therefore increases asset efficiency and productivity.

The regulatory model proposed for the Port of Darwin is driven by the NT Government concern to ensure that safety in the harbour is paramount. The regulatory framework also recognises access and pricing risks and provides for an independent statutory regulator to monitor price and access to services. Recognising and consistent with regulatory frameworks adopted in other port transactions around Australia, a light-handed approach is proposed with the threat of more heavy handed regulation expected to ably serve as a strong disincentive to monopolistic behaviour.

How the proposed lease model ensure an aligned vision for growth and development?

The NT Government has made clear that a key consideration in the decision whether to partner with a private port operator is ensuring that the strategic and long term objectives of the operator align with those of the Northern Territory, specifically in relation to securing trade growth and development of the Port of Darwin, recognising its strategic position in Northern Australia and its importance to the Northern Territory economy.
A fundamental consideration in the bidder evaluation process will be the experience of the bidder in developing and growing infrastructure investments and the operator's preparedness to share in the Government's long-term vision of a dynamic, agile and indispensable link in Australia's key transport corridor.

Ensuring that the NT Government receives value for money is important in the design of the lease model. However, more important is ensuring that the Port of Darwin is developed to be the trigger and driver for economic growth in the Northern Territory. Given this, the Ports Management Bill obliges the port operator to facilitate and grow trade through the port.

Whilst the Ports Management Bill includes the key structural components of the new management regime for designated ports, it would not be appropriate for legislation to cover micro operational details. The Ports Management Bill therefore allows the Northern Territory to enter into separate agreements with the new port operator. These agreements will cover the manner in which the port is to be developed and recognise the importance of social and environmental considerations in addition to economic outcomes.

How the proposed lease model requires the charging of realistic and competitive pricing that promotes business and economic development?

Regulatory approaches to pricing and access vary throughout Australia. In Queensland, the Port of Brisbane has no statutory price monitoring or access regime. There is no formal oversight of prices by an independent statutory regulator. The only obligation is that the port operator must publish its prices on its website.

In New South Wales, the Minister for Roads and Ports monitors prices rather than an independent statutory regulator. Port operators are required to give notice and provide information about pricing to the Minister. They must also publish prices in their websites. The Minister has information gathering powers, and can publish reports and statements from time to time.

In South Australia, the Essential Services Commission of SA (ESCOSA) is the independent regulator. Port operators must publish their prices on their websites and notify ESCOSA of any changes. ESCOSA has information gathering powers, evaluates any price changes against changes to the CPI and publishes an annual price monitoring report. Failing the statutory negotiate-arbitrate framework for access, the independent arbitrator may set terms and conditions for access. ESCOSA may impose more interventionist economic regulation including setting prices, without Government approval. ESCOSA must conduct a review every five years to determine whether there is an ongoing need for regulation.

In setting the proposed pricing and access regime for the Northern Territory, the NT Government analysed the implications of each of the above regimes and determined that a hybrid regime would be the most suitable approach for the Northern Territory given its local context and the specific environment in which the Port of Darwin operates.

The proposed regime attempts to balance the competing objectives of allowing a port operator to manage access and pricing and therefore maximise value to secure investor interest in growing and developing trade through the port, while, at the same time ensuring that port clients and Territorians are protected from the negative impacts of unreasonable pricing and access decisions.
While the light-handed approach to regulation is consistent with that adopted in other states, the Northern Territory model introduces an independent price and access regulator who has the ability to recommend to that the Minister adopts a more heavy-handed approach. Ultimately, the decision to do so is that of the Minister and not the regulator.

It is noted that the independent statutory regulator will not factor the price paid by a bidder in its port pricing considerations. Instead, what will be relevant is the regulator’s assessment of the economically efficient value of the port package assets and ensuring that an operator is able to generate an appropriate commercial return on this asset value. The bid price is therefore irrelevant in the regulatory price setting context.

The light-handed regulatory framework sets the high level parameters within which a port operator is expected to operate while at the same time provides the flexibility and autonomy for the operator to make commercial business decisions aimed at increasing the value of its investment through trade growth and business expansion. The threat of more heavy-handed regulation has been demonstrated to work in other jurisdictions in managing reckless pricing or access behaviour. A further deterrent is the ability of the Australian Consumer and Competition Commission to intervene where a port client requests this review.

**How the proposed lease model requires work practices and processes which represent international best practice in the areas of safety, environmental and operational efficiency?**

Under the proposed regulatory framework, no single piece of legislation sets the framework for safety, environmental protection and operational safety.

Under the Ports Management Bill, port operators will be responsible for the day-to-day operation of the designated port, including:

- undertaking dredging or other work to deepen, widen, extend, clear or maintain channels or berthing areas
- carrying out hydrographic surveys and providing results to the Regional Harbormaster
- keeping records of all reportable incidents that occur within the port and advising the Regional Harbormaster in writing of such incidents as soon as practicable after the incident occurs
- providing advanced notification to the Regional Harbormaster of any vessel entering the port carrying dangerous goods
- preparing a Port Safety Plan in accordance with guidelines promulgated by the Regional Harbormaster for Government’s approval, implementing the plan and auditing compliance with the plan when requested by the Regional Harbormaster
- making quarterly reports to the Regional Harbormaster of material instances of non-compliance with the Port Safety Plan through a Port Management Officer
- directing and controlling vessel movements within the port area. Where a master fails to comply with a direction above, the Port Management Officer can cause the vessel to be positioned, moored, unmoored, placed, anchored or removed as directed, at the cost of the master of the vessel
- clearing wrecks and removing vessels which threaten commercial shipping
• requiring owners of vessels carrying dangerous goods to provide a security by way of bond, indemnity or guarantee, or to obtain a policy of insurance. Should vessel owners refuse or fail to provide the requested security or insurance, the Port Management Officer can refuse the vessel entry to the port or restrict the loading, unloading, handling or storage of the cargo on the vessel

• closing the waters of the port and directing vessels to be removed from said closed waters

• issuing Port Notices to control activities or conduct within a port and enforcing compliance

• fixing charges in respect of vessel use of waters of the designated port, or of port facilities operated and maintained by the port operator

• with the prior written approval of the Regional Harbourmaster, establishing, maintaining, operating, altering or removing marine aids within the port.

However, given the strategic nature of designated ports, it is proposed that the Northern Territory retain a number of regulatory functions to safeguard public interests, including as recreational activities in the harbour are expected to continue unaffected by the transaction. These regulatory functions include:

- **Maritime Safety Regulation:** The roles and functions of the current Harbourmaster will be divided between the port operator (being responsible for the day to day safe management of the port) and the Department of Transport (as agency responsible for the shipping and maritime industries). The Department of Transport will retain the position of Regional Harbourmaster, which has a number of roles and functions under the Ports Management Bill, including:
  - setting technical and safety standards for pilotage and the provision of pilotage services
  - promulgating depths and under keel clearances
  - issuing guidelines for the preparation of Port Safety Management Plans and approval and audit of such plans
  - being the Pilotage Authority for the Port. As such, the Regional Harbourmaster will licence Pilots and will have powers to direct and step-in in times of emergency
  - exercising step-in rights because of an emergency, or in order to avert a threat of death or serious injury to any person, or loss or serious damage to property, or actual or potential harm to the environment. The Regional Harbourmaster has step-in rights for the following relevant functions:
    - direction and control of vessels within the port
    - pilotage
    - movement, handling and storage of dangerous goods
    - approval and management of marine navigational aids
    - clearances of wrecks and removal of vessels
    - closure of the port and relevant waters
    - approval of closures of waters for events not affecting commercial vessel operation (for example the Beer Can Regatta, fireworks displays and sporting events).

- **Pilotage:** The Minister will continue to declare pilotage areas and appoint Pilotage Authorities for other Pilotage Areas. He will also appoint pilotage service providers for a pilotage area. Pilotage Authorities will licence Pilots. At the request of a Pilotage Authority, the Minister may appoint a person to conduct an inquiry into misconduct by a licenced pilot.
A key element of the safety regime is the requirement for the operator to develop and implement a Safety Management Plan. The NT Government has the capacity to step-in to rectify any safety issues where the operator fails to do so. The operator will be required to cover the costs of step-in and rectification due to operator default.

The NT Government will also continue to undertake the following regulatory roles through its various agencies:

- **Planning Regulation**: The Planning regime for the Port of Darwin will remain unchanged.
- **Environmental Regulation**: The NT Environment Protection Authority will continue to regulate environmental issues at all ports in the Northern Territory.
- **Dangerous Goods Regulation**: WorkSafe NT will continue to regulate dangerous goods issues on land at ports. Port operators will be responsible for management of dangerous goods on vessels, with the Regional Harbourmaster having direction/step-in rights.
- **Worker Safety Regulation**: Worksafe NT and the Australian Maritime Safety Authority will continue to investigate and prosecute worker safety issues at ports.
- **Vessel Safety**: The Northern Territory will continue to issue vessel surveys and safety Manning requirements as a delegate of the National Marine Safety Regulator.
- **Residual maritime regulatory functions**: The Department of Transport will be responsible for regulating activities outside designated ports. It will also retain its role in relation to Recreational Boating Safety.

The NT Government has designed a regulatory regime which ensures that the day-to-day management and control of port operations will be undertaken by the private port operator. However, it recognises that there are issues which the NT Government is very concerned to ensure are appropriately managed. The proposed regulatory regime secures this by retaining a significant role for government in relation to ensuring safety, protecting the environment and securing operational efficiency.

Structure, duration and timing of proposed lease arrangements to provide the necessary certainty to a potential operator while retaining the government’s ability to consider the operator’s performance

**Structure of Lease**

The Port of Darwin project lease structure has been designed based on a review of recent Australian precedents for securing private investment in ports. A lease of an agreed term (see discussion below) over defined port assets is entered into with the successful bidder. The bidder also purchases a special purpose corporate entity which has been established to operate the port within defined operational and geographical parameters. The operational parameters are defined in the Ports Management Bill, the port lease, and other contractual transaction documents.

The regulatory framework which supports the lease arrangement and mitigates risks associated with the long term arrangement have been canvassed above.
Duration of Lease

Recent precedents in seeking private investments in ports within Australia have all moved away from outright sale of the asset to entering long term leases over port package assets, with associated legislative regimes and concession agreements relating to operational issues. This ensures that jurisdictions retain ownership of strategically significant port assets and retain a level of control.

However, the duration of any lease arrangement is a key issue, both from an investor and a jurisdictional perspective. A longer lease period enhances the operator’s incentive to invest and manage the asset with a long term view to driving efficiency and increase productivity. It enhances the value of having a private operator.

Lease duration options considered by the NT Government are outlined below.

1. **Maximum 99 year lease term**: Recent Australian port transactions (Flinders, Brisbane, Botany/Kembla, and Newcastle) have been based on a 99 year lease term. This lease term maximises incentives for long term investment in infrastructure, as it provides sufficient time for operators to recover their investment. It also maximises value for the Territory of a lease arrangement.

2. **Minimum 50 year lease term**: A 50 year lease term is the minimum lease period required for an operator to access the tax benefits which make a lease transaction attractive. However, operators will be reluctant to make long term investment decisions in the later part of the lease term given uncertainties around pay back periods. This fails to achieve the objectives of the Northern Territory which is to see long term capital investment in port infrastructure as the driver for trade growth and economic expansion.

3. **50 year lease term with a 49 year option to renew**: The 49 year option will only be valued by investors if they have sufficient certainty over the form of the exercisable right of renewal. This option potentially has the same issues in terms of long term investment and unless the renewable option is exercisable at the option of the investor very early in the initial lease term, will be perceived and valued as a 50 year lease.

4. **A lease term between 50 and 99 years**: a longer term lease would be viewed more favourably than a shorter term lease. The lease term will have a direct influence on capital investment decisions and business plan of the operator.

The risk associated with any lease term is to a great extent mitigated by the regulatory and contractual arrangements supporting the lease. The balance between port operators being responsible for the day-to-day operation of the port, while ensuring that Government has the ability to direct, and if not satisfied, step-in, including to manage safety, will ameliorate risks associated with private operations.

The NT Government proposes a 99 year lease on the basis that it incentivises the operator to treat the asset as a long term investment and therefore encourages infrastructure expansion and long term business planning to grow and develop the asset.

Transaction Timing

The Northern Territory is very conscious of investor concerns around sovereign risk and a key matter is to preserve investor confidence in both the Northern Territory and the NT Government. The NT Government is well aware that any damage to private sector confidence will have ramifications beyond the Port of Darwin Project.
Prospective investors have been briefed of the current Parliamentary Select Committee process and the NT Government continues to reinforce its commitment to investigating private sector interest in the Port of Darwin package.

**Mechanisms for the NT Government to receive ongoing financial returns over the duration of the lease while continuing to motivate the private sector partner to continue to invest in and grow business through the Port.**

The NT Government has invested significantly in capacity building infrastructure at the port. It recognises that some of this investment may not be captured in the upfront bid price of the long term lease arrangement.

Given this, the NT Government has publicly stated that it will seek to capture some of this value in port assets through a revenue sharing arrangement and has been investigating revenue sharing mechanisms which could come into operation once a long term lease is secured.

The aim for government will be to share in the future value of Port of Darwin assets that are not expected to be fully valued by bidders at this point in time. This particularly relates to the highly uncertain trade volumes such as bulk ore from mining projects which have declined substantially over the past 12 months as commodity prices have eased.

The revenue sharing arrangement will be carefully crafted to ensure that the operator remains encouraged to actively seek to grow new trade, and continues to invest in port infrastructure to develop the port in line with the Territory economy. The revenue sharing arrangement will also be designed such that it is simple to administer from both the private operator and government perspectives.

A broad based revenue sharing mechanism that is not specific to any commodity or cargo type is proposed to be adopted to avoid perverse incentives for an operator to favour or avoid particular cargo types. The revenue sharing mechanism will retain financial incentives for the operator to actively seek new trade and will be structured such that any investment decision made by the operator to increase capacity will not burden users with higher costs than they would otherwise face.