

Mr Clinton Howe MLA
Chair
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Legislative Assembly of the Northern Territory

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Dear Mr Howe

RE: Public Accounts Committee Inquiry into the Darwin Waterfront Corporation

Thank you for your invitation to provide a submission in relation to the Parliamentary Committee Inquiry into the Darwin Waterfront Corporation (DWC), dated 27 May 2025.

The Department of the Chief Minister and Cabinet (CM&C) provides the following general background information to support the deliberations of the Committee:

1. DWC is a statutory authority established by the (NT) *Darwin Waterfront Corporation Act 2006*. DWC operates as a body corporate, with a common seal.
2. The AustraliaAsia Railway Corporation (AARC) is also a statutory organisation, prescribed under the (NT) *AustralAsia Railway Corporation Act 1996* and jointly owned by the Governments of the Northern Territory and South Australia. This arrangement is further auspiced by Intergovernmental Agreements between the two jurisdictions.
3. DWC's structure is as a statutory authority. DWC is not currently allocated to an Agency as defined in the Administrative Arrangements Order (AAO). Under the DWC Act, the CEO of DWC reports directly to the Minister.
4. Funding to DWC is comprised of a contractual operational funding agreement on-passed through a nominated agency per the AAO. This funding agreement is represented as the output of DWC within a nominated agency, assigned to a Minister's portfolio.
5. On 12 September 2016, by way of a new AAO following the NT General Election, the output of the DWC was transferred from the (then) Department of Lands, Planning and Environment, to the (then) Department of Tourism and Culture (DTC).
6. On 26 June 2018, by way of a new AAO, the DWC was transferred out of the DTC, and allocated to no agency, but still the responsibility of the (then) Minister for Tourism and Culture.
7. On 8 September 2020, by way of AAO No. 3 2020, following the NT General Election, the output of DWC was transferred from the Minister for Tourism and Culture to the Minister for Major Projects and Territory Economic Reconstruction (also the Chief Minister's portfolio at that time) and was not allocated to an agency.
8. On 10 September 2024, by way of AAO No. 3 2024, and as currently reflected in AAO No.4 of November 2024, the output of DWC was transferred to the Minister for Tourism and Hospitality, and not allocated to an agency.

9. CM&C understands that Mr Samuel Burke acted in the position of Executive Director Major Projects, which was part of the (then) Department of Trade, Business and Innovation (DTBI), on a 0.6 FTE basis for a period less than six months from 19 February 2018 to 30 June 2018, then a further and separate six month period from 1 July 2018 to 31 December 2018.
10. The Executive Director Major Projects position was established in August 2015 at an Executive Contract Officer 2 (ECO2) level, and formally assessed through the standard 'job evaluation system' (JES) process undertaken by Mercer.
11. The arrangement for Mr Burke to split his time between the DWC (0.4FTE) and DTBI (0.6FTE) was approved by the DWC CEO and Board, the then DTBI CEO and the then Chief Minister and Minister for Trade, Business and Innovation, the Hon Michael Gunner.
12. CM&C understands the DWC and DTBI utilised the Northern Territory Government's 'Ledger Transfer Facility' (LTF) mechanism to distribute Mr Burke's salary expenses between the two entities during the period in question.
13. An LTF is a government in-house system to recover funds between government entities, operating in the same way as an invoicing arrangement between government entities. This mechanism is commonly used to recoup funds between government entities, including for employee expenses.
14. Statutory authorities are classified as government entities, and therefore may transfer expenditure utilising this mechanism.
15. Inter-entity transfers form part of the agency's financial audit record and are expressed as such in the financial statements of the agency's Annual Report, which are subject to external audit assurance/review.
16. CM&C understands Mr Burke acted as the Chief Executive Officer of the AARC, in a part-time capacity, from 1 January 2019 to 28 June 2019, while the nominal CEO at that time, Mr Brendan Lawson, was on extended leave. Mr Burke received an entitlement of higher duties allowance (HDA) for this acting arrangement.
17. Subsequent time-limited and discrete periods of acting arrangements for the same role were made between 2019 and 2020. In each instance, these discrete acting periods were for a period not exceeding 6 months, in line with NT public sector requirements.
18. CM&C further understands that Mr Burke's employee expenses for the part-time AARC role was recovered by the DWC through an administrative, cost recovery arrangement between the AARC and the DWC, by way of a LTF. Refer to Clauses 13-15.
19. On 31 May 2020 the relevant Northern Territory Minister (the then Minister for Infrastructure, Planning and Logistics, the Hon Eva Lawler) and the relevant South Australian Minister formally recommended Mr Burke as CEO of AARC. This arrangement was formalised by an instrument of appointment made by the AARC, consistent with the prescribed requirements of the AARC legislation (s16 of the AARC Act refers).
20. While operating independently under the relevant legislative framework to the Northern Territory Government, statutory organisations generally mirror the provisions of the (NT) *Public Sector Employment and Management Act 1993*, and associated Executive Contract requirements.
21. Paragraph 127 of the Commissioner for Public Employment's Employment Determination 5 of 2019 ('the ECO Determination'), requires the Employer to discuss whether an ECO will be

re-appointed for a further period and, if so, on what terms. This discussion is to commence at least 6 months prior to contract expiry.

22. Mr Burke's 2020 executive contract of employment was due to expire in April 2024.
23. On 2 November 2023, the CEO DWC received a reminder by CM&C, provided via Department of Corporate and Digital Development Executive Contract Services as part of its monitoring and oversight function of executive contracts requiring action, to commence the required contract renewal process with Mr Burke.
24. Executive contract renewals do not require the position to be re-advertised, and may be offered for an equivalent period as per the original contract.
25. Paragraph 84 of the ECO Determination provides an entitlement to HDA where an Executive Contract Officer performs the duties of a higher designation for a continuous period in excess of two weeks. The Determination does not specify any cap on the number of times individual periods of the maximum allowance of up to 6 months of HDA may be provided.

Yours sincerely



Jean Doherty
Deputy Chief Executive Officer, Strategic and Corporate Services

02 June 2025