

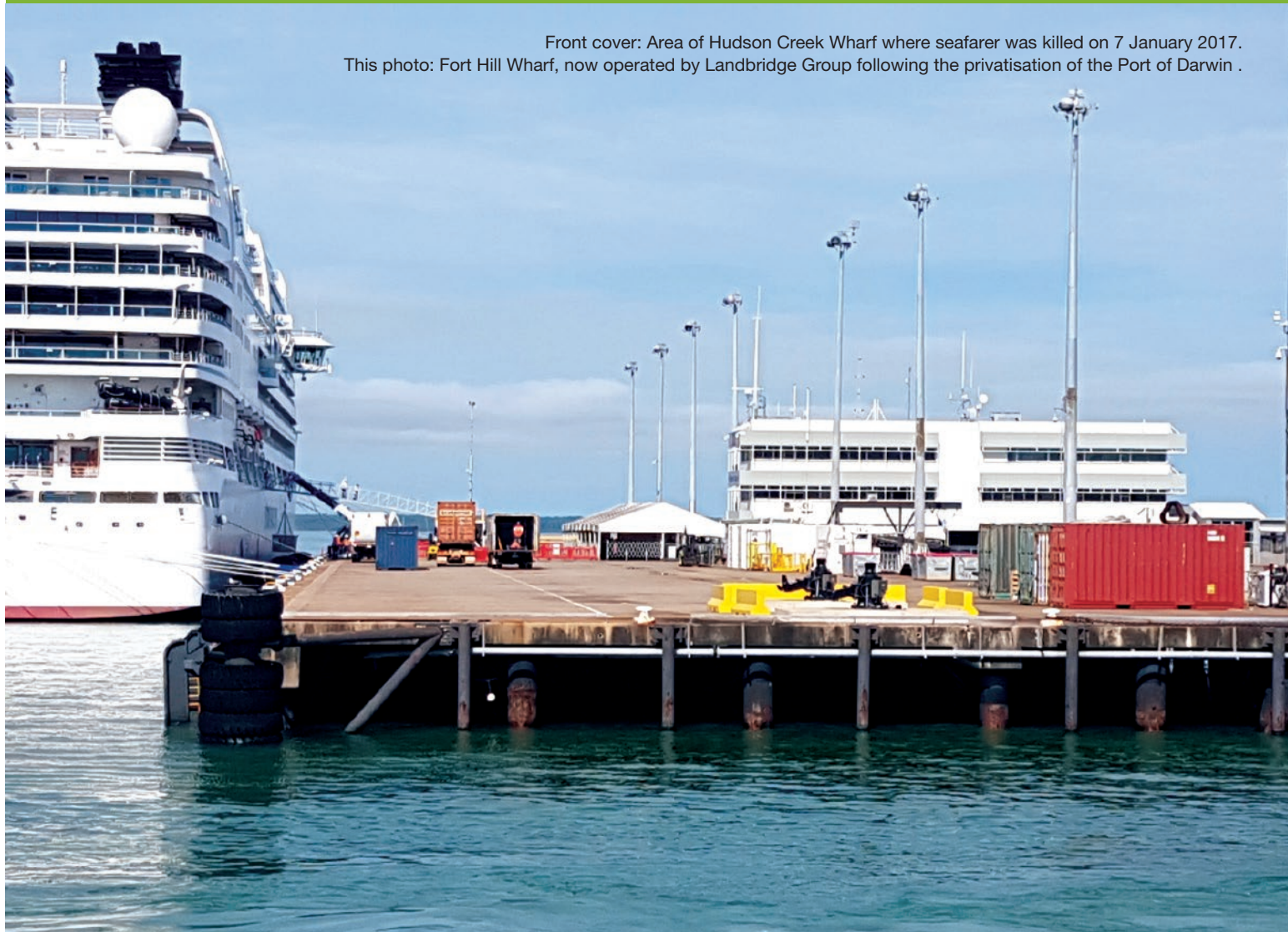
PLANNING FOR THE FUTURE

AGENDA FOR SAFER PORTS AND SHIPS IN THE NORTHERN TERRITORY



MARCH 2017

Front cover: Area of Hudson Creek Wharf where seafarer was killed on 7 January 2017.
This photo: Fort Hill Wharf, now operated by Landbridge Group following the privatisation of the Port of Darwin.



The Port of Darwin is essential to the prosperity of all aspects of the NT's economy. Ambitious plans are afoot for the expansion of the Port of Darwin in refrigerated goods, mining exports, container traffic, liquid bulk, and cruise ships¹. The Inpex project is scheduled to ship its first gas in 2017. Ports all along the NT coast sustain communities and boost local development. Regional communities that rely on marine access need support to develop this infrastructure and to ensure that the needs of communities are balanced with commercial users.

More and more demands will be placed on NT ports and ships - yet our marine governance and regulatory processes are not fit for purpose.

The crisis of safety and governance in the NT maritime industry has been highlighted by the recent coroner's report into the death of Ryan Donoghue, the death of a seafarer in Hudson Creek, the rushed sale of the Port of Darwin, numerous collisions at sea between commercial and recreational vessels, and the unauthorised construction of Port Melville (details in Appendix 3). Most NT ports have no government oversight at all.

The solution is not complicated: broader maritime expertise and proper governance processes are needed in our ports and safety agencies.

This paper outlines the urgent steps the NT government must take to address the safety crisis in NT ports and to ensure that as our ports expand, they safely serve the best interests of our community. The MUA makes these recommendations based on our members' experience of working in ports across Australia, and our membership in the International Transport Workers' Federation. In the NT, MUA members work in port administration, maintenance, and stevedoring across all ports, as well as on vessels delivering community supplies, in the offshore oil and gas industry, in marine construction, diving, and aquaculture.

WHAT IS THE PROBLEM?

The Northern Territory maritime industry suffers from:

- Lack of safety oversight, enforcement and maritime expertise in NT WorkSafe and Advisory Council.
- A maritime regulatory system that is disjointed, particularly in the regulation of ports, occupational safety and maritime safety.
- A Northern Territory 'Regional Harbourmaster' that has jurisdiction only over the Port of Darwin, and then only at arm's length.
- A lack of oversight from the Minister and no Advisory Council for either the Harbourmaster or the Darwin Port Operator.
- A Port Safety Plan that covers only one port of many in the Northern Territory, with significant gaps in consultation, required qualifications, and jurisdiction.

The NT Coroner recently summarised the problems in the Northern Territory maritime industry:

"One of the fundamental issues is undoubtedly the artificial separation of work health and safety from marine safety... That no Commonwealth, State or Territory regulatory authority has pursued any action against the employer is most unsatisfactory. The lack of action beggars belief and is shameful.

Workers are entitled to the benefit of the safety laws that control workplaces. They should not pay with their lives for failures by others to abide the law. Families should be entitled to have confidence that their children will not be killed in the workplace through the non-compliance of employers. The community is entitled to think that when its laws are breached, resulting in the death of its members, there will be a response."

(Judge Greg Cavanagh, Inquest into the death of Ryan Harry Donoghue [2016], p.44-5).



Barge cargo depot Groote Eylandt

WHAT IS THE SOLUTION?

The maritime safety crisis requires immediate action from government. The Northern Territory Chief Minister, Attorney General and Transport Minister must take control of the situation to address the significant gaps in legislation that now exist:

- NT WorkSafe must be overhauled to ensure that it meets its core mission of protecting workers on the job, and increases its maritime capability
- The recent death in Hudson Creek must be thoroughly investigated
- An audit of all NT maritime infrastructure must be carried out to identify shortfalls in WHS, engineering and environmental standards
- The government must create a Northern Territory Maritime Safety Board to give proper oversight and expertise to the relevant agencies and advise on the drafting of legislation identified below
- The Darwin Port Safety Plan must be reviewed and overhauled

Legislation must also be drafted to:

- Amend the *Port Management Act 2015* (Ports Act) to improve port governance and safety, with a view to creating a Territory-wide framework for port management
- Establish a maritime compliance unit within NT WorkSafe
- Improve qualifications and standards for vessels in NT Designated Ports and elsewhere
- Improve the NT Work Health and Safety (NUL) Act 2011 in relation to port safety
- Establish a maritime training hub in Darwin
- Create a Maritime Labour Inspector in the Ports Act

CREATING A NT MARITIME SAFETY BOARD TO IMPROVE MECHANISMS FOR SAFETY CONSULTATION AND OVERSIGHT

The minister should bring together the expertise of safety and maritime organisations in a Maritime Safety Board to advise on new safety and governance processes and to continue as a standing body under the Ports Act.

RECOMMENDATION: Creation of a NT Maritime Safety Board with responsibility for:

- Reviewing and approving the Port Safety Plan
- Overseeing the work of the Regional Harbourmaster
- Receiving reports about investigations of maritime incidents, with a view to implementing recommendations
- Approving Designated Ports and ensuring that appropriate governance processes are in place to support local circumstances.

- Approving new Stevedoring and Towage Licences
- Reporting to the Ministers with responsibility for the Ports Act and for NT WorkSafe
- Commission and receive Port Safety Plan Compliance Audits (s34, Ports Act)
- Reviewing the adequacy of ‘minimum safe manning’ and non-STCW compliant qualifications for the complex and remote conditions in the Northern Territory
- Regularly auditing and reviewing the condition of all NT maritime infrastructure

Members of the NT Maritime Safety Board should include:

- A delegate of The Maritime Union of Australia
- One workplace Health and Safety Representative elected under the WHS Act, elected by workers across Designated Ports
- One NT WorkSafe delegate
- A member of the NT WorkSafe maritime compliance unit
- One Australian Maritime Safety Authority delegate
- An elected Traditional Owner from Designated Port areas
- The Environment Centre NT

DARWIN PORT SAFETY PLAN: NEEDS IMPROVEMENT AND EXPOSES PROBLEMS

The main mechanism for public control over the privatised Port of Darwin is the current Darwin Port Safety Plan, approved in February 2016 by the Regional Harbourmaster. It is deficient in several areas:

- It does not include port workers or maritime unions as stakeholders in the port (p.6, 11-12, 23)
- The Port of Darwin Health and Safety Representatives were not consulted in the development of the plan
- The Maritime Union of Australia was not consulted in the development of the plan
- The Maritime Union of Australia is concerned that the Port Operator is moving to a “risk assessment” plan rather than a safer, more prescriptive plan.
- Mechanisms for consultation are only vaguely outlined, so it cannot be determined if they meet the requirements of the WHS Act. Australian and the NT WHS law is underpinned with the importance of workers’ consultation and participation
- Many critical sections are excluded as ‘commercial in confidence’, for example the ‘Emergency Management Plan’ (p.32), the ‘Hazard Identification, Risk Assessment & Control Processes’ (p.16), and the ‘Safety Action Plan’ (p. 29)

- Qualified crew are not required on commercial vessels in the harbour, only masters (p.17). Qualified crew are essential to ensuring that maritime operations are safe. Safe operational manning and internationally recognised STCW qualifications should be required for port operations
- It is unclear who has safety responsibility for areas of the Port of Darwin outside of the larger workplaces. The plan states ‘the Port Operator has responsibility for the Port of Darwin’ (p.7) and includes a map of the entire port (p.9) but also states that the Plan applies to Port Operator Workplaces, which is a much more limited area.
- This gap is highlighted by the recent death in Hudson Creek, which is within the Port of Darwin boundaries, but is not one of the ‘Port Operator Workplaces’.
- We are very concerned that the Regional Harbourmaster is not immediately investigating this death and its causes, with a view to identifying and fixing gaps in the Port Safety Plan.

RECOMMENDATION: The Port Safety Plan must be reviewed and amended in consultation with port workers and the Maritime Union of Australia to reflect proper consultation and inclusion of workers, in accordance with current WHS law and safety best practice.



Darwin Tug “Marrakai” returning to sub standard mooring berths..

This photo demonstrates how substandard mooring berths do not provide safe access and egress for seafarers.



The Western Desert Mine at the port of Bing Bong.

RECOMMENDATION: Maritime unions and port workers must be formally involved with the required audits of the Port Safety Plan.

RECOMMENDATION: The application of the Port Safety Plan to port facilities such as those at Frances Bay and Hudson Creek must be clarified.

MARITIME TRAINING

A training hub for maritime workers should be created in Darwin. At present, workers must travel approximately 2,000km to Cairns to get proper STCW-compliant seafarer and maritime safety qualifications. A training centre could attract workers from all over the NT and northern WA, with flow-on economic benefits. The training hub could also work in partnership with regional maritime workers to offer training, building on the strong relationship that exists between maritime workers in Timor Leste and Darwin.

RECOMMENDATION: Establish a maritime training hub in Darwin to serve the NT, northern WA and to develop relations with Darwin's neighbours to the north including Timor Leste. This could be a satellite campus of another maritime training college, operating in conjunction with a local educational institute. It could be funded with a levy on local maritime operators.

NT WORKSAFE: IMPROVE MECHANISMS FOR SAFETY CONSULTATION AND OVERSIGHT

Currently there is no maritime expertise within NT WorkSafe nor is there a maritime worker representative on the WHS Advisory Council. This speaks for itself as an obvious shortcoming that has been highlighted by Coroner Judge Greg Cavanagh in his report on the death of Ryan Donoghue.

RECOMMENDATION: Appoint an MUA representative onto the NT WorkSafe Advisory Council

RECOMMENDATION: Establish a new maritime compliance unit with maritime-qualified staff within NT WorkSafe to:

- Carry out maritime inspections and investigations
- Review and approve operational manning requirements for vessels
- Ensure compliance with minimum safe operational manning
- Ensure compliance with minimum qualifications required in Designated Ports

PORTS ACT: REGULAR AUDITS OF NT MARITIME INFRASTRUCTURE

The 2014 wharf collapse in Hudson Creek (see photo, p. 11) has highlighted the poor standard of some of the NT's maritime infrastructure. Some of this infrastructure has been

constructed without proper building controls, putting worker and community safety at risk.

RECOMMENDATION: An initial audit of all NT maritime infrastructure must be carried out under the supervision of the Maritime Safety Board to identify shortfalls in WHS, engineering and environmental standards.

RECOMMENDATION: the Ports Act should be amended to include regular audits and reviews of NT maritime infrastructure.

CODE OF PRACTICE FOR MANAGING RISKS IN STEVEDORING

Port safety is vital to stevedore workers and their families, and also to the reputation of the port and therefore the NT economy. After extensive consultation across the maritime industry, the Code of Practice for Managing Risks in Stevedoring was officially approved by Safe Work Australia in December 2016.

RECOMMENDATION: The NT Work Health and Safety (NUL) Act 2011 should be amended to call up the Code of Practice for Managing Risks in Stevedoring and other relevant codes of practice for maritime work.

RECOMMENDATION: Amend the Ports Act (s.28) to require that Port Safety Plans be developed with reference to relevant safety codes of practice, particularly those for the maritime industry, for managing fatigue, and for carrying out consultation.

PORTS ACT: DESIGNATION OF PORTS

There are many ports used by commercial maritime operators across the 11,000km of the NT's coast. Yet only the Port of Darwin is a Designated Port subject to the Ports Act. In other states with similarly dispersed ports a Regional Port Authority is in place to oversee port operations (details in Appendix 2).

The MUA is aware that safety breaches are occurring as a matter of regular practice at these ports, endangering the lives of the workers and surrounding communities.

Most remote ports have limited infrastructure, with sea cargo delivery often done by the crew of the landing barge. In some cases, it is reported that sea cargo is delivered by forklift through schools and across public areas. There are also instances of perishable cargoes being left at landings compromising health standards for such cargoes.

RECOMMENDATION: The Minister should designate the remote ports listed in Appendix 1 to be covered by the Ports Act and overseen by the NT Regional Harbourmaster.

RECOMMENDATION: The minister should ensure that resources are in place to effectively supervise the operations of Designated Ports, and investigate organisational options for doing so ranging from increasing the powers of the Regional Harbourmaster to establishing a Regional Port Authority (see Appendix 2).

Port of Bing Bong dredging operation, 2014. Maritime worker shown is wearing no safety gear.





Lucrative Oil and Gas work conducted at public wharves without licensed stevedores.

PORTS ACT: PORT OPERATORS AND A PORT AUTHORITY

The Ports Management Act assumes that ports have a private operator. In the case of the Port of Darwin, there is a dedicated port operator. In other ports, resource companies have built ports, which are then shared with other users and used to supply community needs. In some cases, port infrastructure is public and shared by various users. In all cases, there is a need to ensure that there is an appropriate balance between the needs of the community, safety and commercial interests.

RECOMMENDATION: Amend the Ports Management Act to allow for the NT Maritime Safety Board to sign off on governance plans that are appropriate to the varied structures of potential Designated Ports, extending the responsibilities of the Regional Harbourmaster or appointing local Harbourmasters as needed.

PORTS ACT: APPLICATIONS FOR AND APPROVAL OF ADDITIONAL STEVEDORING AND TOWAGE LICENCES

New stevedoring and towage entrants can destabilise safe working arrangements in place and create a race to the bottom with considerable safety implications.

RECOMMENDATION: Insert strict criteria in Part 6 of the Ports Act for the Minister and the Marine Safety Board to examine and approve additional stevedoring licence applications, linked to significant increases in trade through the port. Any application for additional stevedoring licences must include a clear economic case, showing increased trade exists to support an additional operator, that an additional operator will be viable, and will deliver positive employment and labour standards outcomes.

RECOMMENDATION: Insert strict criteria for towage licences into Part 6 of the Ports Act for the Minister and the Marine Safety Board to examine and approve towage licences, modelled on the revised requirements for stevedoring licences.

PORTS ACT: MARITIME LABOUR INSPECTOR

Ship crews, especially international crews transiting Australia, are in vulnerable and isolated positions and regularly require support and advocacy. The ongoing Senate inquiry into Flag of Convenience shipping has exposed the many flaws in this system, including wage theft, abuse, crew abandonment, and murder.

RECOMMENDATION: Create a Maritime Labour Inspector in the Ports Act. The Maritime Labour Inspector will be appointed by the Maritime Safety Board with the advice of the Australian

Coordinator of the International Transport Workers Federation International Ship Inspectorate. The person must be from a maritime union in the Northern Territory and will have powers to enter ports and assist and advocate for seafarers where required.

PORTS ACT: DEFINITION OF STEVEDORING

Employers in the NT have used various mechanisms to avoid engaging licensed stevedores in this hazardous industry. If this undermining of stevedore work continues, experienced stevedores will be forced to seek work elsewhere, and a reliance on new inexperienced workers will put the efficiency of the port at risk as well as the lives of those workers.

For example, logistics company QUBE recently used their non-stevedore company QUBE Energy and employed cheaper casual labour from outside the port to receive pipe on the wharf and prepare it for loading on vessels. Between vessels, the stevedore workers were left without work.

The growth of trade through the Port of Darwin is important to the Northern Territory economy. To grow we need to gain recognition globally as an efficient and safe trading hub which can only be done with strong unambiguous stevedoring regulation that ensures we have the best stevedores in the world.

RECOMMENDATION: To avoid doubt when discussing the stevedoring industry, the Ports Act should be amended to define stevedoring as per the *Stevedoring Industry Award 1999*. This includes preparing goods for transport by vessel from the port.

VESSEL CREWING: IMPROVE VESSEL SAFETY BY REVIEWING SAFE CREWING AND QUALIFICATION LEVELS

Recent maritime reforms have significantly expanded the pool of vessels classified as 'domestic commercial vessels', and significantly reduced the maritime qualifications required on many vessels. The MUA is very concerned about the safety implications of this change, particularly in relation to the complex and remote operations required in the Northern Territory.

RECOMMENDATION: The Maritime Safety Board must review the adequacy of 'minimum safe manning' and qualifications that are not at STCW standards, and their application in relation to the complex and remote conditions in the Northern Territory.

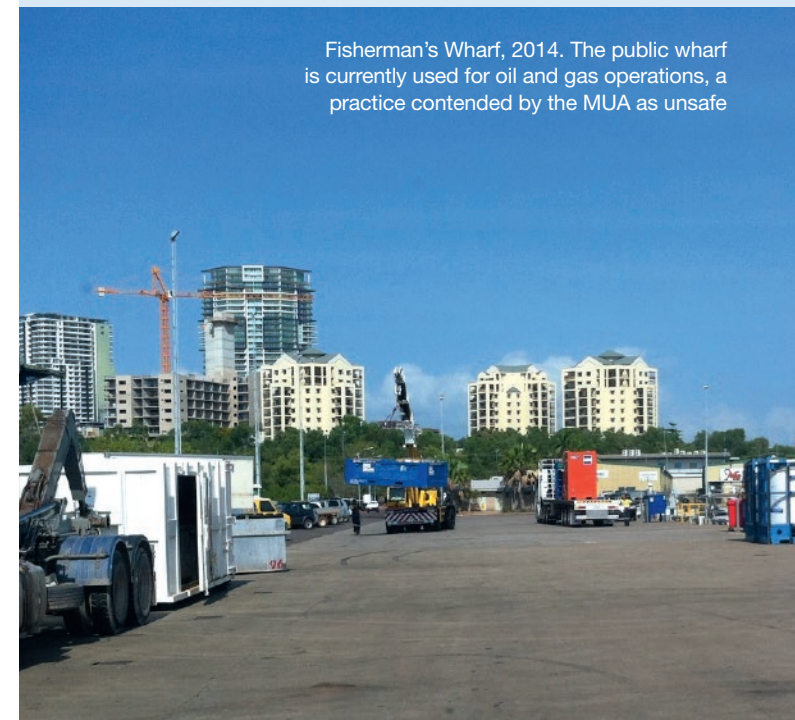
APPENDIX 1: PORTS TO CONSIDER FOR DESIGNATION UNDER THE PORTS ACT

The ports listed below all have either significant commercial operations and/or are serviced by the commercial supply service currently operated by Seaswift.

Designation under the *Ports Act* would bring these ports under the responsibility of the NT Regional Harbourmaster.

- Bing Bong (McArthur River)
- Nhulunbuy/Gove
- Groote Eylandt
- Port Melville, Tiwi Islands
- Manigrida
- Port Keats/Wadeye
- Elcho Island
- Bickerton Island
- Umbakumba
- Numbulwar
- Tiwi Islands: Nguiu, Paru, Garden Point, Snake Bay
- Croker Island
- Goulbourn Island
- Mililinginbi
- Ramingining

Fisherman's Wharf, 2014. The public wharf is currently used for oil and gas operations, a practice contended by the MUA as unsafe



APPENDIX 2: OTHER REGIONAL PORT AUTHORITIES COVERING MULTIPLE REMOTE PORTS

The NT Regional Harbourmaster only has responsibility for the Port of Darwin. There is no Port Authority covering NT regional ports. In other states, regional Port Authority's cover remote ports.

Far North Queensland Ports Corporation Limited, trading as Ports North: a Queensland Government Owned Corporation responsible for the development and management of the declared Ports of Cairns, Cape Flattery, Karumba, Mourilyan, Skardon River, Quintell Beach, Thursday Island, Burketown and Cooktown. Regulated under the *Queensland Transport Infrastructure Act 1994* (Chapter 8).

Pilbara Ports Authority: governed under the West Australian *Port Authorities Act 1999* and operates as a corporatised entity with a board of management that reports to the State Government of Western Australia's Minister for Transport. It is mandated to oversee operations of the Port of Dampier, Port of Port Hedland, Port of Ashburton area and the future ports of Anketell and Cape Preston East.

Kimberly Ports Authority: oversees the operations of the Port of Broome and is governed under the West Australian *Port Authorities Act 1999*. It operates as a corporatised entity with a board of management reporting to the Minister for Transport. Plans are in place to bring smaller ports currently regulated under the West Australian *Shipping and Pilotage Act 1967 and the Marine and Harbours Act 1981* under the responsibility of the Kimberly Ports Authority, including the Port of Wyndham, Cockatoo Island, Koolan Island, the Port of Derby, and potentially a new Port of Browse at James Price Point.

Flinders Ports: is a privately owned entity that operates the Port of Adelaide as well as Port Lincoln, Port Pirie, Thevenard, Port Giles, Wallaroo and Klein Point. Regulated by the *South Australian Harbours and Navigation Act*.

APPENDIX 3: MARINE SAFETY INCIDENTS IN THE NT

Death of Ryan Donoghue

Ryan Donoghue was fatally electrocuted while using a non-surge protected angle-grinder on the open deck of a Domestic Commercial Vessel (prawn trawler) in 2013. In the subsequent coronial inquest, Judge Greg Cavanagh determined that the employer was not adhering to workplace health and safety laws, and that the response of the NT WorkSafe regulator and other Commonwealth, State and Territory authorities was grossly insufficient. Disturbingly, Ryan's death occurred in near-identical circumstances to that of another young fisherman some 13 years' prior and yet no changes were or have been made to the regulatory environment for marine operations. This is indicative of a complex framework that facilitates non-compliance and is absent of appropriate maritime expertise.

See the report of Judge Greg Cavanagh, *Inquest into the death of Ryan Harry Donoghue* [2016] NTLC 009, 3 June 2016.

Death at Hudson Creek

A 37-year-old seafarer died while working on a structurally unsound section of the Hudson Creek wharf in the Port of Darwin, on 7 January 2017. Since 2014, the MUA has raised concerns regarding the integrity of the wharf structures at Hudson Creek with the NT WorkSafe regulator. NT WorkSafe failed to appropriately inspect, condemn or modify the operational area. The MUA also attempted to exercise their Right of Entry to carry out their own safety inspections but were wrongfully denied access. It also appears that the Hudson Creek operator mislead the regulator, without repercussion. The death of this seafarer raises serious questions about the adequacy of the Darwin Port Safety Plan and the ability of NT WorkSafe and the Regional Harbourmaster to ensure safe working conditions in the harbour. MUA NT Branch Secretary Thomas Mayor said that "if NT WorkSafe had acted, this death would not have happened" (ABC News, 10 February 2017). Since the incident, the MUA has called for the (NT WorkSafe regulator) to appoint a maritime expert to the regulator's investigations. In the MUAs view, this request has not been appropriately acknowledged.

Development of Port of Melville

A major development costing between \$130-\$180 million at the Port of Melville on the Tiwi Islands, an environmentally diverse and fragile area listed as internationally significant for wildlife, proceeded without a legally required environmental impact assessment. Singapore-listed company Ausgroup did not, under Northern Territory or Federal law, seek approval for the large-scale construction project before commencing works. The



Collapsed area of Hudson Creek wharf in 2014.
A fatality occurred at the wharf in 2017

Northern Territory Environment Protection Authority (NTEPA) was not able to commence its 12-step review process until the project was near completion. The matter was referred to then-Federal Minister for the Environment Greg Hunt who approved the ongoing development of the port, still without a full environmental assessment having taken place.

This was challenged by the Environment Centre Northern Territory (ECNT), with legal representation from the Environment Defender's Office (EDO) and in October 2016 they were successful in appealing Minister Hunt's decision at the Federal Court. In December 2016, current Federal Minister for the Environment Josh Frydenberg overturned the Court's Decision, again allowing for the development and operation of the Port to continue without an environmental assessment or enforceable conditions in place (The Guardian, 15 December 2016). It has been unclear which NT Minister under the previous-Liberal government had responsibility for the Port. On the conditions under which the project took place, Drew English, convenor of the ECNT, commented "what was done was inadequate, and the Northern Territory community, and our environment, expect and deserve better" (ECNT media statement, 22 October 2016).

See the *Environment Centre Northern Territory, A Port in a storm: A huge win for ECNT as the Port Melville approval is overturned by the Federal Court*, 22 October 2016 and *NT Environmental Protection Authority, Port of Melville, Statement of Reasons*, 16 October 2015.

Jane Virgo collision with a pleasure craft

Four men were rescued after spending 90 minutes in the water at night off Charles Point at the entrance to Darwin Harbour. "The men were lucky to survive this horrific collision" said Water Police Acting Sergeant Travis Edwards (NT News, 23 May 2016). The men say that their fishing boat was run over by the 45m landing barge Jane Virgo. The company operating the barge say that the crew "saw nothing in the path of the barge" (NT News, 26 May 2016), and the Darwin Pilot allowed the Jane Virgo to continue on its journey to West Australia once it finished relaying radio messages between the vessel that rescued the men and Darwin Pilot. The Australian Maritime Safety Authority and NT Transport Marine Safety carried out an investigation into the incident but the results have not yet been released.

Privatisation of the Port of Darwin

The Giles government signed a lease with the Landbridge Group of Rizhao, China for them to operate the Port of Darwin from 16 November 2015 to 15 November 2114. Significant concerns have been raised about the implications for the port and port users, in relation to the monopoly position of the port, how decisions will be made about the development of the port, and the security of the port.

See the *Senate Economic References Committee, Foreign investment review framework, Interim Report*, February 2016 and final report April 2016.

