

### 38. How planning and building requirements apply to port authorities

- (1) In this section —
  - “**Building Code**” means the latest edition of the Building Code of Australia published from time to time by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with that Code;
  - “**performance requirements**” means the provisions of the Building Code that set out the technical requirements in accordance with which buildings must be built;
  - “**port authority**” includes —
    - (a) a lessee or tenant of a port authority; and
    - (b) a person acting on behalf of a port authority under an arrangement under section 35(2);
  - “**responsible Minister**” means —
    - (a) in relation to a town planning matter, the Minister administering the *Town Planning and Development Act 1928*;
    - (b) in relation to a building matter, the Minister administering the *Local Government (Miscellaneous Provisions) Act 1960*.
- (2) For the purposes of port works and port facilities —
  - (a) section 32 of the *Town Planning and Development Act 1928*; and
  - (b) section 373(3) of the *Local Government (Miscellaneous Provisions) Act 1960*,apply to a port authority as if it were an agency of the Crown in right of the State.
- (3) Without limiting section 35(8), port works and port facilities are to be regarded as being public works for the purposes of section 32 of the *Town Planning and Development Act 1928* as applied by subsection (2)(a).
- (4) Subsection (2)(b) does not prevent the application of the performance requirements of the Building Code to a building or building work to which they would otherwise apply.
- (5) A port authority is to consult with the relevant local government before and during the carrying out of building work to ensure that the performance requirements of the Building Code are applied in accordance with subsection (4).
- (6) If there is a dispute between a port authority and a local government with respect to a town planning or building matter relating to port works or port facilities, the parties to the dispute are to refer it to the Minister.
- (7) The Minister may, after consulting the responsible Minister, make a decision on the dispute and that decision is final and binding on the parties.

[Section 38 amended by No. 74 of 2003 s. 93(3).]