

## STATEMENT OF REASONS

### PORT OF DARWIN – REPORTING GUIDELINES

The Utilities Commission (the Commission) is required to issue Reporting Guidelines (Guidelines) in accordance with section 128 of the *Ports Management Act* and regulation 14 of the Ports Management Regulations.

The Guidelines set out the requirements of annual reports to the Commission by the private port operator regarding material instances of non-compliance with its access policy.

On 19 May 2017, the Commission released draft Guidelines inviting submissions from relevant stakeholders by 9 June 2017. Two submissions were received, with one submission identified by the submitting stakeholder as commercial-in-confidence.

Some topics raised in the submissions related to matters that are currently being considered by the Commission as part of its 2018 Ports Access and Pricing Review. Therefore, those topics will be addressed in the Commission's Draft Report for the review, which is expected to be released in July 2018.

In making the final Guidelines, the Commission has made the following amendments to the draft version published on 19 May 2017:

- (i) specifying the date for the commencement of a review of the Guidelines (clause 1.4.1);
- (ii) to avoid confusion with other similar terminology, references to 'compliance report' have been changed to 'annual report';
- (iii) the definitions of 'non-compliance' and 'material instance' have been amended to provide more clarity and certainty (clauses 2.1 and 2.2);
- (iv) the information that the annual report must contain has been amended to increase clarity and to avoid duplication (clause 3.1.2);
- (v) a clause has been inserted to allow the Commission to seek further information or clarification from the private port operator about a reported instance of material non-compliance, if required (clause 3.1.3);
- (vi) a clause has been inserted recommending the annual report include a list of the number of disputes that have arisen under the access policy and whether it relates to an access application or the standard terms (clause 3.1.4). This will assist the Commission in assessing the effectiveness of the access policy;
- (vii) a clause has been inserted recommending the annual report includes certification by the private port operator that it has an adequate compliance framework in place that enables it to identify, record and rectify any material instances of non-compliance with its access policy (clause 3.2.1);

- (viii) clause 5 (now clause 4) has been amended to clarify that if the private port operator advises that the information is confidential when providing information to the Commission in its annual report, there is an obligation on the Commission to preserve confidentiality;
- (ix) clause 5 has been inserted to highlight that notwithstanding the obligation to preserve confidentiality, the Commission is required by law to report to the Minister on the contents of the annual report provided to it by the private port operator. This clause also emphasises that the Commission's report to the Minister is required by legislation to be tabled in Parliament; and
- (x) the definitions section has been amended where appropriate (clause 7).

In making the Guidelines, the Commission has considered the objects of the *Ports Management Act* and the *Utilities Commission Act*. The Commission has also had regard to section 6(2) of the *Utilities Commission Act* and all matters it is required to consider under the *Ports Management Act* and Ports Management Regulations.

The Guidelines take effect on and from the date of publication in the Northern Territory Government Gazette.

Dr Patrick Walsh  
Utilities Commissioner  
28 March 2018