

PORT OF DARWIN DRAFT REPORTING GUIDELINES

REQUEST FOR SUBMISSIONS

19 May 2017

Submissions are due by 9 June 2017

Table of Contents

Glossary	3
Introduction	Error! Bookmark not defined.
Purpose	Error! Bookmark not defined.
Submissions	4
Confidentiality	5
Disclaimer.....	5
About the Commission	6
Overview of the Guidelines	7
Appendix A: Draft Reporting	Error! Bookmark not defined.

Glossary

access policy	Has the same meaning as given to that term in the <i>Ports Management Act</i> .
Commission	The Utilities Commission of the Northern Territory as established by the <i>Utilities Commission Act</i> .
compliance report	The report made by the <i>private port operator</i> to the <i>Commission</i> under section 130 of the <i>Ports Management Act</i> .
Government	The Northern Territory Government of Australia.
Guidelines	Means the guidelines made pursuant to section 128 of the <i>Ports Management Act</i> .
material instance of non-compliance	As defined by clause 3 of these <i>Guidelines</i> .
port user	Has the same meaning as is given to that term in the <i>Ports Management Act</i> .
<i>Ports Management Act</i>	The <i>Ports Management Act</i> (NT).
<i>Ports Management Regulations</i>	The <i>Ports Management Regulations</i> (NT).
private port operator	Has the same meaning as is given to that term in the <i>Ports Management Act</i> .
<i>Utilities Commission Act</i>	The <i>Utilities Commission Act</i> (NT).

1 Introduction

1.1 Purpose

- 1.1.1 The purpose of this paper is to offer stakeholders the opportunity to comment on the Utilities Commission's (*Commission*) proposed Port of Darwin Reporting Guidelines (*Guidelines*). It also provides transparency about the decision making process undertaken by the *Commission* when issuing *Guidelines*. The Commission is seeking feedback on the *Guidelines* from interested parties by 9 June 2017.

1.2 Background

- 1.2.1 In 2015, the Port of Darwin was leased to a *private port operator*. As part of this arrangement, the Government enacted the *Ports Management Act* and the *Ports Management Regulations*. This legislation establishes a regulatory regime to promote the economic efficiency of the operation, use and investment in ports in the Northern Territory.
- 1.2.2 Under this regime, the private port operator is required to prepare and submit an access policy to the *Commission* for approval.¹ A draft version of the *access policy* is currently out for public consultation. The proposed *Guidelines* should be read in conjunction with the draft *access policy*, which is available on the *Commission's* website.
- 1.2.3 Each year the *private port operator* is required to submit a report to the *Commission* about its compliance with the *access policy*.² As a result, the *Commission* needs to publish *guidelines* to assist the *private port operator* in preparing their *compliance report*.³

1.3 Submissions

- 1.3.1 The *Commission* seeks feedback from ports users and stakeholders on the proposed *Guidelines*. This paper does not limit stakeholders' ability to make comments or suggestions for improvement on any aspect of the *Guidelines*.
- 1.3.2 General issues stakeholders may wish to consider include whether:
- the objectives of the *Guidelines* are appropriate;
 - the *Guidelines* provide adequate support to the *private port operator* in preparing their *compliance report* for the *Commission*; and
 - the *Guidelines* provide sufficient assistance to the *Commission* for determining whether the *private port operator* is complying with the

¹ Section 127 *Ports Management Act*.

² Section 130 *Ports Management Act*.

³ Section 128 *Ports Management Act* and regulation 14 *Ports Management Regulations*.

access policy.⁴

- 1.3.3 Submissions on the draft guidelines are due by 9 June 2017.
- 1.3.4 Submissions received will be made available on the *Commission's* website www.utilicom.nt.gov.au. To facilitate publication, submissions should be provided in Adobe Acrobat or Microsoft Word format.
- 1.3.5 The *Commission* is also seeking early feedback from stakeholders and interested parties via meetings. If you would like to meet with the *Commission* please contact us to schedule a time.
- 1.3.6 Any questions should be directed to the Utilities Commission by email utilities.commission@nt.gov.au or telephone (08) 8999 5480.

1.4 Confidentiality

- 1.4.1 The *Commission* will make submissions publicly available, with the exclusion of confidential information that is commercially sensitive or that could affect the competitive position of a stakeholder or other party.
- 1.4.2 Submissions must clearly identify the confidential information. In addition, a version suitable for publication with the confidential information removed should be provided to the *Commission*.

1.5 Disclaimer

- 1.5.1 These draft *Guidelines* have been prepared by the *Commission* in accordance with the *Ports Management Act*, the *Ports Management Regulations* and the *Utilities Commission Act*. The *Guidelines* are subject to change. The Commission makes no representation or warranty as to the form that the final *Guidelines* will take. To the maximum extent permitted by law, the *Commission* disclaims and excludes all liability for any loss, claim, demand, damages, costs and expenses of any nature (whether or not foreseeable and whether direct, indirect or consequential and whether arising from negligence or otherwise):
- suffered or incurred by any person relying or acting on any information provided in, referred to or omitted from, this document; or
 - arising as a result of or in connection with information in this document being inaccurate or incomplete in any way or by reason of any reliance on it by any person, including by reason of any negligence, default or lack of care.

⁴ Regulation 14 of the *Ports Management Regulations*.

1.6 About the Utilities Commission

- 1.6.1 The Utilities Commission of the Northern Territory was established in 2000 by the *Utilities Commission Act*. The *Commission* is an independent industry regulator, overseeing the electricity, water and sewerage industries and declared ports.
- 1.6.2 The *Commission* is part of an economic framework for regulated industries. It promotes and safeguards competition and fair market behaviour. In the absence of a competitive market, the Commission encourages stimulation of competitive market conduct and the prevention of misuse of monopoly power.⁵
- 1.6.3 The *Commission's* functions include regulating the port access and price regulation regime as established by the *Ports Management Act* and the *Ports Management Regulations*. A key regulatory function of the *Commission* is to promote the economically efficient operation of and investment in major port facilities in the Northern Territory. The *Commission* aims to ensure that port services are provided so as to promote effective market competition.⁶
- 1.6.4 In performing its functions the *Commission* must have regard to the need to:
- promote competitive and fair market conduct;
 - prevent misuse of monopoly or market power;
 - facilitate entry into relevant markets;
 - promote economic efficiency;
 - ensure consumers benefit from competition and efficiency;
 - protect the interests of consumers with respect to reliability and quality of services and supply in regulated industries;
 - facilitate maintenance of the financial viability of regulated industries; and
 - ensure appropriate rate of return on regulated infrastructure assets.⁷

⁵ Section 2 *Utilities Commission Act*.

⁶ Section 117 *Ports Management Act*.

⁷ Section 6(2) of the *Utilities Commission Act*.

- 1.6.5 The *Ports Management Act and Regulations* sets out the powers and obligations for the *Commission* to make *Guidelines* regarding the *private port operator's* compliance with the *access policy*.

2 Overview of the Guidelines

- 2.1.1 In making these *Guidelines*, the *Commission* has considered the objects of the *Ports Management Act* and the *Utilities Commission Act*. The *Commission* has 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*.
- 2.1.2 These objectives seek to protect port users by ensuring that the *private port operator* complies with the *access policy*. This allows for the efficient control, management and operation of ports in the Northern Territory,⁸ promoting competition and safeguarding fair market conduct.
- 2.1.3 The draft Reporting Guidelines are attached at Appendix A.
- 2.1.4 Chapter 1 covers introductory material about the *Guidelines* including the scope, authority and legislative need for the *Commission* to make *Guidelines*.
- 2.1.5 Chapter 2 addresses the statutory requirement for the *private port operator* to prepare an annual *compliance report* for the *Commission* about their conformity with the *access policy*.
- 2.1.6 Chapter 3 sets out the subject of the *compliance report* and defines *material instances of non-compliance*.
- 2.1.7 Chapter 4 establishes the content that needs to be included in *compliance reports*. It also deals with the format and method of submission.
- 2.1.8 Chapter 5 discusses the potential for reports to be published and how the *Commission* deals with confidential information.
- 2.1.9 Chapter 6 includes a glossary of the terms used in the *Guidelines*.

⁸ Objective *Ports Management Act*.

Appendix A: Draft Reporting Guidelines

UTILITIES COMMISSION OF THE NORTHERN TERRITORY

PORT OF DARWIN
REPORTING GUIDELINES

19 May 2017

1 Introduction

1.1 Authority

- 1.1.1 These *Guidelines* are made by the *Commission* under section 128 of the *Ports Management Act* and regulation 14 of the *Ports Management Regulations*.

1.2 Scope

- 1.2.1 These *Guidelines* set out the requirements for reporting by the *private port operator* about compliance with its *access policy*.
- 1.2.2 In making these *Guidelines*, the *Commission* has considered the objects of the *Ports Management Act* and the *Utilities Commission Act*.
- 1.2.3 In making these *Guidelines*, the *Commission* has 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*.

1.3 Date of commencement

- 1.3.1 These *Guidelines* take effect on and from the date of publication in the *Gazette*.

1.4 Review

- 1.4.1 A review of these *Guidelines* will be initiated three years after the commencement of the *Guidelines*.

1.5 Interpretation

- 1.5.1 In these *Guidelines*:
- (a) a reference to a clause is a reference to a clause in these *Guidelines*; and
 - (b) words appearing in italics like '*this*' are defined in clause 6.

2 Requirement for compliance reports

- 2.1.1 Section 130 of the *Ports Management Act* requires a *private port operator* to prepare a report about any *material instances of non-compliance* with the *private port operator's access policy*. The *compliance report* is due annually to the *Commission* by 30 September and is to cover the immediately preceding financial year.

3 Subject of compliance reports: Material instance of non-compliance

3.1 Non-compliance

- 3.1.1 The *Commission* considers an instance of non-compliance to include, without limitation, an action taken, or a failure to take an action, by a *private port operator* that is not consistent with the *private port operator's access policy*.

3.2 Material instance

- 3.2.1 For an instance of non-compliance to be considered material it needs to:
- (a) affect a significant number of *port users*; or
 - (b) have an adverse financial impact on one or more *port users*; or
 - (c) adversely affect the *prescribed services* provided to one or more *port users*; or
 - (d) significantly compromise, or is likely to significantly compromise, the *private port operator's* ability to provide one or more *prescribed services*.

4 Content of reports

- 4.1.1 The *compliance report* must address all *material instances of non-compliance* that occurred in the immediately preceding financial year.
- 4.1.2 The compliance report must include the following information for each *material instance of non-compliance*:
- (a) the date that the non-compliance occurred, or the dates the non-compliance began and ended;
 - (b) the clause of the *access policy* that the *private port operator* has contravened;
 - (c) details of when the *private port operator* became aware of the non-compliance;
 - (d) a description of the conduct that constitutes the non-compliance;
 - (e) a description of the impact of the non-compliance;
 - (f) any reasons why the *private port operator* did not comply with the *access policy*;
 - (g) the number of times that the particular type of *material instance of non-compliance* has occurred in the relevant year, and in all past years since the *access policy* was approved;
 - (h) a description of any thresholds that the *private port operator* has applied to

determine materiality, including examples of instances of non-compliance which would be considered material and non-material;

- (i) details of any *port users* or other parties involved in or affected by the non-compliance;
- (j) any independent reports commissioned by the *private port operator* regarding the *material instance of non-compliance*;
- (k) actions taken or to be taken by the *private port operator* to ensure future compliance; and
- (l) any other relevant information.

4.2 Format and submission

4.2.1 *Compliance reports* are to be submitted to the *Commission* electronically in Microsoft Word, Adobe pdf or equivalent format. The report must include any calculations that form the basis for any statement made in the report.

5 Publication of reports

5.1.1 In the interests of transparency, the *Commission* may publish *compliance reports* submitted by a *private port operator*.

5.1.2 *Compliance reports* submitted to the *Commission* must be of a professional standard suitable for publication to an external audience.

5.1.3 If a *compliance report* contains confidential information, the *Commission* is required to comply with section 26 of the *Utilities Commission Act* and will observe the confidential interests of the parties providing information to the *Commission*.

5.1.4 If a *compliance report* contains confidential information, the *private port operator* must clearly identify the confidential information. An additional version of the report with the confidential information removed should be provided to the *Commission*.

6 Definitions

access policy	Has the same meaning as given to that term in the <i>Ports Management Act</i> .
Commission	The Utilities Commission of the Northern Territory as established by the <i>Utilities Commission Act</i> .
compliance report	The report made by the <i>private port operator</i> to the <i>Commission</i> under section 130 of the <i>Ports Management Act</i> .

Request for Submissions – Draft Port of Darwin Reporting Guidelines

Gazette	The Northern Territory of Australia Government <i>Gazette</i> .
Guidelines	Means this document made pursuant to section 128 of the <i>Ports Management Act</i> .
material instance of non-compliance	As defined by clause 3 of these <i>Guidelines</i> .
port user	Has the same meaning as is given to that term in the <i>Ports Management Act</i> .
<i>Ports Management Act</i>	The <i>Ports Management Act</i> (NT).
<i>Ports Management Regulations</i>	The <i>Ports Management Regulations</i> (NT).
prescribed services	Means the <i>prescribed services</i> defined by regulation 12 of the <i>Ports Management Regulations</i> .
private port operator	Has the same meaning as is given to that term in the <i>Ports Management Act</i> .
<i>Utilities Commission Act</i>	The <i>Utilities Commission Act</i> (NT).