

2022 – 2025

PRESCRIBED PORT SERVICES

PRICE DETERMINATION

PORT OF DARWIN

FINAL DETERMINATION

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Enquiries

Any questions regarding this *determination* should be directed to the Utilities Commission at any of the following:

Utilities Commission
GPO Box 915
DARWIN NT 0801

Telephone: +61 8 8999 5480

Email: utilities.commission@nt.gov.au

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PART A: GENERAL

1. Introduction

- (a) The *Commission* is authorised to make a *determination* under section 132 of the *Ports Management Act 2015* and section 20(1)(a) of the *Utilities Commission Act 2000* relating to the charges fixed by a *private port operator* of a *designated port* in relation to the provision of *prescribed services*.
- (b) The *Darwin Port Operator* is the *private port operator* of the Port of Darwin, which is a *designated port*.
- (c) This *determination* relates to the charges fixed by the *Darwin Port Operator* for providing *prescribed services* at the Port of Darwin. It replaces the *determination* made by the Commission in 2019, which will expire on 15 February 2022.
- (d) The *Commission's* statement of reasons applicable to this *determination* is set out in Part C.
- (e) In making this *determination*, the *Commission* has considered sections 6(2) and 21(2) of the *Utilities Commission Act 2000* and all matters that it is required to have regard to or consider under regulation 16(1) of the *Ports Management Regulations 2015* and the *Ports Management Act 2015*.
- (f) In making this *determination*, the *Commission* must also give effect to regulation 16(2)(a) of the *Ports Management Regulations 2015*, which provides that the *determination* must use monitoring of the price levels of a *prescribed service* as the form of price regulation for that service.

2. Variations to the determination

- (a) In accordance with section 22(9) of the *Utilities Commission Act 2000* and all other enabling powers, the *Commission* may vary a *determination* during the *determination* period.
- (b) In varying a *determination*, the *Commission* must have regard to sections 6(2) and 21(2) of the *Utilities Commission Act 2000* and all matters that it is required to have regard to under the *Ports Management Act 2015* and *Ports Management Regulations 2015*.

3. Definitions and interpretation

- (a) Words and phrases printed in italics like *this* have the meaning given in clause 17.
- (b) The rules of interpretation applicable to the *determination* are set out in clause 18.

PART B: DETERMINATION

4. Application

This *determination*:

- (a) applies to prices fixed by the *Darwin Port Operator* for *prescribed services* provided at the Port of Darwin during the term of the *determination*; and
- (b) applies to prices for pilotage services provided at the Port of Darwin by the *Darwin Pilotage Provider*, the provision of which have been facilitated by the *Darwin Port Operator*, and
- (c) binds the *Darwin Port Operator* providing *prescribed services* at the Port of Darwin.

5. Term

- (a) The *determination* commences on 16 February 2022.
- (b) The *determination* expires 3 years from the date of commencement, on 15 February 2025.

6. Price monitoring and price monitoring reports

- (a) In accordance with the *Ports Management Act 2015* and regulation 16(2) of the *Ports Management Regulations 2015*, the *Commission* shall, during the period of this *determination*, monitor the price levels of *prescribed services* by the *Darwin Port Operator*.
- (b) In accordance with regulation 16(2)(b) of the *Ports Management Regulations 2015*, the basis upon which the *Commission* intends to monitor price levels is benchmarking against annual changes (the percentage change from the corresponding quarter of the previous year) in the *National CPI*.
- (c) Benchmarking will be undertaken so as to enhance transparency by comparing changes in prices for *prescribed services* to the chosen benchmark over time and providing that information to *port users* and other stakeholders. The *National CPI* will be used as the reference point when monitoring and reporting on price changes for *prescribed services*. The *National CPI* will not be used to measure the efficiency of prices for *prescribed services* at the Port of Darwin.
- (d) In undertaking benchmarking, the *Commission* may invite the *Darwin Port Operator*, the *Darwin Pilotage Provider* and other persons the *Commission* reasonably considers appropriate to provide information relevant to differences between changes in prices for *prescribed services* compared to changes in the *National CPI*.

- (e) The *Commission* may:
 - (i) publish reports on prices charged for *prescribed services* by the *Darwin Port Operator*; and
 - (ii) monitor and publish reports on matters relating to prices charged for *prescribed services* by the *Darwin Port Operator*.

7. Published charges

- (a) The *Darwin Port Operator* must, within 14 days of the commencement of this *determination*, publish in a prominent position on its website the following information:
 - (i) the *Darwin Port Operator's standard charges* for *prescribed services*;
 - (ii) the standard rate of other charges charged by the *Darwin Port Operator* for, or in respect of, the use of port facilities at the Port of Darwin;
 - (iii) a statement informing potential *port users* that if their access requests involve new capital investments then the price information provided may require adjustments to reflect the additional capital costs and noting that the *Access Policy* will apply to the request.
- (b) The *Darwin Port Operator* is not required to publish on its website any *negotiated charges*.

8. Change to a standard charge or fixing a standard charge for the first time

- (a) If the *Darwin Port Operator* proposes to make any change to its *standard charges* for the provision of the *prescribed services* (including a change in an existing *standard charge* or the removal of an existing *standard charge*), it must:
 - (i) provide notice of the proposed change to the *standard charge* to the *Commission*, that provides the information described in clause 9, at least 20 days before the change is proposed to be made; and
 - (ii) publish a notice of the proposed change to the *standard charge*, that provides the information described in clause 9, in a prominent position on its website, at least 10 days before the change is proposed to apply.
- (b) If the *Darwin Port Operator* proposes to fix a *standard charge* for the first time, it must:
 - (i) provide notice of the proposed *standard charge* to the *Commission*, that provides the information described in clause 9, at least 20 days before the *standard charge* is proposed to apply; and
 - (ii) publish a notice of the proposed *standard charge*, that provides the information described in clause 9, in a prominent position on its website, at least 10 days before the *standard charge* is proposed to apply.

9. Information to be provided about changes to charges

A notice provided in accordance with clause 8(a) or clause 8(b) must, for each separate *standard charge* to which the notice relates:

- (a) identify the *standard charge*; and
- (b) provide the following information about the *standard charge*:
 - (i) the basis on which the amount of the *standard charge* is calculated including, for a *standard charge* payable on a unit basis (such as a unit of vessel cargo capacity or vessel gross tonnage), the unit on which the *standard charge* is imposed;
 - (ii) for a change in an existing *standard charge* or the removal of an existing *standard charge*, the reason for the change or removal; and
- (c) if the charge is being fixed for the first time, also provide the following information about the *standard charge*:
 - (i) the purpose and function of the *standard charge*;
 - (ii) the basis on which the amount of the charge is calculated; and
 - (iii) the persons who will be required to pay the charge.

10. Annual reports

The *Darwin Port Operator* must submit an annual report to the *Commission* by 30 September each year containing the following information in respect of the immediately preceding financial year:

- (a) a list of the types of charges for *prescribed services* that the *Darwin Port Operator* has charged;
- (b) the amount of revenue received by the *Darwin Port Operator* from charges for *prescribed services* (showing the amount of revenue for each separate charge);
- (c) for a charge for a *prescribed service* payable on a unit basis (such as a unit of vessel cargo capacity or vessel gross tonnage), the total number of units charged for, or in respect of, each separate charge;
- (d) if, during the year, there was a change in an existing charge for a *prescribed service*, the amount of the change and the reason for it; and
- (e) if, during the year, the *Darwin Port Operator* entered into an agreement to fix a *negotiated charge* for a *prescribed service*, the number of those agreements and their terms.

11. Requirement to provide further information

The *Commission* may require the *Darwin Port Operator* to provide it with further information in accordance with its powers under Division 4 of Part 11 of the *Ports Management Act 2015* and Parts 2 and 5 of the *Utilities Commission Act 2000*.

12. Territory law prevails

In the event that this *determination* is found to be inconsistent with any applicable Territory law, the applicable Territory law will prevail over this *determination* to the extent of that inconsistency.

PART C: STATEMENT OF REASONS

13. Introduction

- (a) The *Commission* is authorised to make a *determination* under section 132 of the *Ports Management Act 2015* and section 20(1)(a) of the *Utilities Commission Act 2000* relating to the charges fixed by a *private port operator* of a *designated port* in relation to the provision of *prescribed services*. The *Darwin Port Operator* is the *private port operator* of the Port of Darwin, which is a *designated port*.
- (b) The *Commission* made the first *determination* relating to the charges fixed by the *Darwin Port Operator* for providing prescribed services at the Port of Darwin on 16 February 2016. That *determination* expired on 15 February 2019 and was replaced by the 2019-2022 *determination*, which came into effect on 16 February 2019 and is due to expire on 15 February 2022.
- (c) On 23 September 2021, the *Commission* approved a draft *determination*, which was subsequently published on the *Commission's* website and a copy provided to the *Minister*, Darwin Port Operations Pty Ltd and other stakeholders that the *Commission* identified as likely to be affected by the final *determination*.¹ The Appendix lists identified stakeholders and includes *port users* and others who have been involved in previous consultations relating to the Port of Darwin.
- (d) The *Commission* invited responses to the draft *determination* by 5 November 2021 and received one submission from the Association of Mining and Exploration Companies (AMEC). The *Minister* and Darwin Port Operations Pty Ltd acknowledged, but did not lodge submissions on the draft *determination*.

14. Issues for consideration in making the determination

- (a) In the draft *determination*, the *Commission* proposed applying the maximum term allowable under section 132(4) of the *Ports Management Act 2015*, that is, the new *determination* would apply for a period of 3 years. No comments were received on this matter and the *Commission* confirms that the final *determination* is to come into effect on 16 February 2022 and expire on 15 February 2025.
- (b) As stipulated by the *Ports Management Regulations 2015*, the *Commission* continues to use price monitoring as the form of price regulation.
- (c) Consistent with the 2019-2022 *determination*, the *Commission* will continue to benchmark changes in price levels using the change in *National CPI*; however, the draft *determination* clarified the measure of change as the annual change, that is, the percentage change from the corresponding quarter of the previous year. This will typically be the percentage change between the March quarter *National CPI* in the current year and the March quarter *National CPI* in the previous year as this is the data available from the Australian Bureau of Statistics

¹ As required under regulation 17(1) of the *Ports Management Regulations 2015*.

at the time when the *Darwin Port Operator* typically advises the *Commission* of forthcoming changes in prices (typically advice is provided in early June, for new prices to take effect early July). No comments were received regarding this clarification and the *Commission* confirms this clarification is included in the final *determination*.

- (d) The *Commission* notes that a range of matters may influence the costs of providing *prescribed services* and that these may differ from matters underlying changes in *National CPI*. Accordingly, the *Commission* needs to take a range of matters into consideration when assessing whether price changes are consistent with the *determination*. For this reason, and consistent with the 2019-2022 *determination* and draft *determination*, this final *determination* provides for the *Darwin Port Operator* and other appropriate persons to provide information relevant to differences between changes in prices for *prescribed services* compared to changes in the *National CPI* (refer clause 6(d)).
- (e) Since 2019, the *Commission* has published an annual Ports Price Monitoring Report, under section 6(e) of the 2019-2022 *determination*, a practice that will continue under this final *determination*. The AMEC expressed its support for the *Commission's* Ports Price Monitoring Report, but considers the *Commission* should also document the weighted average cost of capital (WACC) for the Port of Darwin in its report. The AMEC advised that the WACC could assist in identifying whether price gouging is occurring and ensure that the economically efficient price is being charged. The *Commission* notes publication of the WACC or other measures may improve transparency and efficiency of pricing; however, as acknowledged by the AMEC, the *Commission* does not have access to relevant information under the statutory framework governing its price monitoring role to include other measures in its annual Ports Price Monitoring Report.
- (f) The AMEC encouraged the *Commission* consider introduction of an efficiency dividend (an annual funding reduction) or similar model to incentivise the *Darwin Port Operator* to pursue efficiencies in operations; however, as price monitoring is the legislated form of price regulation, the *Commission* has no power to apply price or cost control measures in a price *determination*.
- (g) The AMEC expressed support for recommendations from the *Commission's* 2018 Review of the Port Access and Pricing Regime relating to the ability for the *Commission* to have greater oversight of which services are considered *prescribed services* and creation of reference tariffs for bulk minerals. The *Commission* notes these matters are beyond the scope of the price *determination*, but will be reconsidered as part of the next review of the Port Access and Pricing Regime due to commence in late 2022.

15. Information used in making the determination

- (a) The information used in making this final *determination* comprises the *Ports Management Act 2015*, the *Ports Management Regulations 2015*, the *Access Policy*, the *Commission's* 2018 Review of the Ports Access and Pricing Regime, matters arising during consultation on the 2019-2022 *determination* and the AMEC's submission on the draft *determination*.

16. Publication of the final determination

- (a) After making this final *determination*, the Commission will provide a copy to the *Minister*, the *Darwin Port Operator* and the list of stakeholders in the Appendix and publish the final *determination* on its website.
- (b) In accordance with section 22(4) and (5) of the *Utilities Commission Act 2000*, the *Commission* will publish a notice of the making of this *determination* in the Northern Territory Gazette and place a notice in a newspaper that circulates generally in the Northern Territory.

PART D: DEFINITIONS AND INTERPRETATION

17. Definitions

<i>Access Policy</i>	The access policy made by Darwin Port Operations Pty Ltd pursuant to section 127 of the <i>Ports Management Act 2015</i> and regulation 13 of the <i>Ports Management Regulations 2015</i> , and approved by the <i>Commission</i> on 30 June 2017.
AMEC	Association of Mining and Exploration Companies.
<i>Commission</i>	The Utilities Commission of the Northern Territory established by the <i>Utilities Commission Act 2000</i> .
<i>Darwin Pilotage Provider</i>	Darwin Port Pilotage Pty Ltd in its capacity as trustee for the Darwin Port Pilotage Trust (ABN 98 744 318 229).
<i>Darwin Port Operator</i>	Darwin Port Operations Pty Ltd (ACN 603 472 788), the <i>private port operator</i> of the Port of Darwin.
<i>Designated port</i>	Has the same meaning as is given to that term in the <i>Ports Management Act 2015</i> .
<i>determination</i>	A determination made by the <i>Commission</i> relating to charges fixed by a <i>private port operator</i> in relation to the provision of <i>prescribed services</i> .
<i>Minister</i>	The Minister to whom the <i>Ports Management Act 2015</i> is committed.
<i>National CPI</i>	The consumer price index (all groups, weighted average of 8 capital cities) published by the Australian Bureau of Statistics.
<i>negotiated charge</i>	A charge for a <i>prescribed service</i> that is different to the <i>standard charge</i> for that <i>prescribed service</i> published in accordance with clause 7(a) of this <i>determination</i> , which is fixed by means of an agreement between the <i>Darwin Port Operator</i> and a <i>port user</i> of a kind contemplated by regulation 18 of the <i>Ports Management Regulations 2015</i> or section 110 of the <i>Ports Management Act 2015</i> .
<i>port user</i>	Has the same meaning as is given to that term in the <i>Ports Management Act 2015</i> .
<i>prescribed services</i>	As defined by regulation 12 of the <i>Ports Management Regulations 2015</i> .
<i>private port operator</i>	Has the same meaning as is given to that term in the <i>Ports Management Act 2015</i> .

<i>standard charge</i>	A charge for a <i>prescribed service</i> , which is published in accordance with clause 8(a) and (b) of this <i>determination</i> , and is not a <i>negotiated charge</i> .
WACC	Weighted average cost of capital

18. Interpretation

In this *determination*, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this *determination*;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) when italicised, other parts of speech and grammatical forms of a word or phrase defined in this *determination* have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any government agency;
- (f) a reference to anything includes a part of that thing;
- (g) a reference to a chapter, condition, clause, schedule or part is to a chapter, condition, clause, schedule or part of this *determination*;
- (h) a reference to any statute, regulation, proclamation, order in council, ordinances or by-laws includes all statutes, regulations, proclamations, orders in council, ordinances and by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations issued under that statute;
- (i) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- (j) a reference to a person includes that person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (k) mentioning anything after include, includes or including does not limit what else might be included; and
- (l) a period of time:
 - (i) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or

- (ii) which commences on a given day or the day of an act or event is to be calculated inclusive of that day.

APPENDIX: LIST OF STAKEHOLDERS

In addition to the Minister for Infrastructure, Planning and Logistics and the *Darwin Port Operator*, the following stakeholders were identified by the *Commission* as likely to be affected by the final *determination*. Stakeholders were provided with a copy of the draft *determination* and were invited to make a submission.

AGC Ausgroup

Arafura Resources

Argonaut Marine Group

Association of Mining and Exploration Companies

Australasian Railway Association

Australian Border Force/Department of Home Affairs (Commonwealth)

Australian Cruise Association

Australian Federation of International Forwarders

Australian Ilmenite Resources Pty Ltd

Australian Livestock Exporters Council

Australian Logistics Council

Australian Maritime Officers Union

Australian Petroleum Production and Exploration Association

Barge Express

BGC (Australia) Pty Ltd

Bhagwan Marine

Chamber of Commerce Northern Territory

Coastal Tug and Barge Pty Ltd

Core Lithium

Department of Defence (Commonwealth)

DMS Maritime (Serco Defence)

DOF Subsea

East Arm Logistics Precinct (Land Development Corporation Northern Territory Government)

Hall Contracting Pty Ltd

Infrastructure Australia

Infrastructure NT

Infrastructure Partnerships Australia

INPEX Operations Australia

KGL

Maritime Industry Australia Limited

Maritime Union of Australia (Northern Territory Branch)
Meat and Livestock Australia
Minerals Council of Australia
Monson Offshore Pty Ltd
National Transport Commission
Northern Territory Business Council
Northern Territory Cattleman's Association
Northern Territory Department of Chief Minister
Northern Territory Department of Infrastructure, Planning and Logistics
Northern Territory Department of Treasury and Finance
Northern Territory Livestock Export Association
NT Port and Marine
OM Manganese Limited
One Rail Australia
Ports Australia
Qube Group
Regional Harbourmaster for the Port of Darwin
Santos (Darwin LNG)
Sea Swift
Shipping Australia
Shorelands
Suncable
Svitzer Australia
Tellus Holdings
TNG Limited
Toll Group
Tourism and Transport Forum
Tourism NT
Toxfree Australia Pty Ltd
Verdant Minerals
Vopak Terminal Darwin
Ward Keller Lawyers