

**Submission from ConocoPhillips and their Stakeholders**  
**2018 Ports Access and Pricing Review – Issues Paper**

Reference Section	Comments
<b>Section 1.4 <i>The Regime</i></b>	Stakeholder seeks to understand the metrics used to define “economically efficient”.
<b>Section 1.7 <i>The Regime</i></b>	Stakeholder seeks to understand what may constitute “unreasonable terms and conditions of access or charging of excessive prices”. The DPO may have a different threshold to a port user, therefore we’d like to know what benchmarking is used to define this.
<b>Section 1.8 <i>Prescribed Services</i></b>	Stakeholder seeks to understand where the DPO contracts to a third-party service provider, such as the MSB, is the pricing regime exempt because the DPO is not the service provider for the facility? Furthermore, stakeholder requests the clarity on the recovery of cost associated by appointing a third-party service provider, benchmarked against by the DPO remaining as the sole service provider.
<b>Section 1.9 <i>Prescribed Services, part d)</i></b>	Stakeholders request the inclusion of the following “providing or facilitating the provision of pilotage services in a pilotage area within and through the designated port to non DPO operated assets”
<b>Section 1.8 <i>Prescribed Services</i></b>	Stakeholder requests the following services be included: f) providing the service to survey and perform bathymetry of all berths and access channels in the designated port and on behalf of port users g) executing the depth management and dredging techniques to provide access to all port users in accordance with the <i>Port Access Policy – Priority Principles</i> h) providing the service for the maintenance of all access channel safe navigation hardware such as buoys and marks.
<b>Section 1.13 <i>Hindering Access and Discrimination</i></b>	Stakeholder requests the inclusion, “where access to a prescribed service may be perceived by a port user as an unfair decision by the port operator to hinder competition, then the port operator shall notify the offended port user in writing not less than 24 hours in advance.
<b>Section 1.24 a) <i>Access and Pricing Principles (first bullet)</i></b>	Stakeholder has concern that the appointment of the private port operator may leverage parent company “efficient cost” benchmarking data that will yield higher rate of return on port services compared to peer port authorities around the country.
<b>Section 1.24 a) <i>Access and Pricing Principles (second bullet)</i></b>	Stakeholder requests a prescriptive timeframe on what is considered the “acceptable” return on investment.
<b>Section 2.1 <i>About the Port of Darwin</i></b>	Suggest that the reference to the two (2) high pressure natural gas pipelines pass through the Port of Darwin that service the two (2) gas liquefaction terminals as well.

<p><b>Section 2.5 Recent Trends</b></p>	<p>Although there has been ~ 25% decline in revenue for the port operator since the appointment, stakeholder does not expect that lost revenue be sourced from all upstream and midstream functions of the business to be leveraged to recover this decline. Stakeholder has also been impacted by the decline in commodity prices.</p>
<p><b>Section 2.11 Pricing Benchmarking</b></p>	<p>Stakeholder wishes to point out that the price benchmarking in the GHD Advisory report, denotes production of oil and gas port services is represented in one other port (Broome) in the list and can be considered possibly the most remote and highest cost per unit to operate. We suggest potentially including Dampier and Lakes Entrance as well to provide a more accurate, benchmarked price per unit to operate.</p>
<p><b>Section 2.14 Price Benchmarking (first bullet)</b></p>	<p>Stakeholder wishes to stress that although the port operator “experienced only relatively minor increases when compared to other interstate ports ....”, the legacy Port of Darwin users that continued to export commodities in good faith during the downturn exhibited considerable revenue and business value losses; therefore, the pricing increases implemented by the port operator were not timely and justified when there was no apparent improvement in port services.</p>
<p><b>Section 2.14 Price Benchmarking (third bullet)</b></p>	<p>Stakeholder emphasises the high capital outlay and the ongoing operational cost to safeguard commodity exports through the port, the cost consequence of incremental increases on both the supply of materials and resources to the upstream producer, then the delivery of the raw commodity does lead to the port operator collecting revenue from multiple sources within stakeholder’s business. Stakeholder is notionally targeted as the first opportunity to escalate the port operator’s revenue.</p>
<p><b>Section 3.3 Market Power</b></p>	<p>Stakeholder’s entire business model is dependent on the port operator’s capacity to deliver port services without prejudice. When the port operator is unable to provide port services in the capacity that stakeholder is unable to execute on the industrial mission the regime does not provide any framework for stakeholder to be compensated or remunerated for port operator’s under performance.</p>
<p><b>Section 3.5 Market Power</b></p>	<p>Third line typo. Replace “in dependent” with “independent”</p>
<p><b>Section 3.5 Market Power</b></p>	<p>Stakeholder is conscious of potential vertical integration into other activities such as the proposed waterfront hotel and restaurant precinct or infrastructure construction works. Stakeholder has concerns that cost and schedule escalation in this development may seek to offset these losses through changes in the pricing regime and thus exercising market power.</p>
<p><b>Issue 1: Market Power, Q1a</b></p>	<p>Yes – a market shift in stakeholder’s volume of commodity exports will require regulatory oversight as the port operator will collect increased revenue however have</p>

	provided indications of potential changes to the tariff and pricing regimes to obtain a potential “double dip”. For example, a deep draft user levy etc.
<b>Issue 1: Market Power, Q1b</b>	Stakeholder is planning to enter significant capital works to secure alternative commodity upstream supplies and require the regulator to closely monitor the pricing regime as unplanned cost escalation does have considerable impact on the surety of the project’s feasibility and net positive value.
<b>Issue 1: Market Power, Q1d</b>	Stakeholder does have legitimate concern that the port operator’s expansion into upstream and downstream markets will impact the Port Access Priority Principles, particularly where the business may be considered a port user.
<b>Issue 2: Impact of the Regime, Q2a</b>	Stakeholder would have to consider a “yes” for economic efficiency, but it is not likely down to the access and pricing regime, rather the stakeholder has leveraged an opportunity to provide input to more optimised scheduling, risk assessments and improved communication with the port operator.
<b>Issue 2: Impact of the Regime, Q2b</b>	The benefit for access affords the stakeholder with higher priority under the Priority Principles and a better understanding for the port operator into the safety and business risks associated with not affording higher priority. The cost for port services however may be considered on the high side, particularly when the port operator struggles to provide the service due to limited resources.
<b>Issue 2: Impact of the Regime, Q2c</b>	Stakeholder believes that penalties imposed on the port operator as a result of compromised port services will naturally drive higher operational efficiencies. Without penalties imposed on the port operator, stakeholders will naturally accept a reduced port services expectation.
<b>Issue 3: Exemption of Services Provided Under the Lease, Q3a</b>	Stakeholder does believe the application of regulation 12(2) is too wide, for two reasons. First being that the appointment of a third party to operate the MSB does increase the cost in excess of the regime. By charging a lease to operate the MSB, the MSB operator has to then raise revenue to offset this cost in addition to the operational and achieving their desired profit margins. Secondly stakeholder is cautious of potential conflicts of interest in providing access and services to the MSB, particularly ASCO also provide logistics services to a peer stakeholder. Although the MSB operator does convey the two branches are different and that no afforded priority is awarded, it is not clear whether the peer stakeholder incurs the same costs in accordance with the regime.
<b>Issue 3: Exemption of Services Provided Under the Lease, Q3b</b>	Returning the operation to the port operator will ensure revenue raising mechanisms are more aligned with the regime and certainly access will remain equal across all peer stakeholders.

<b>Issue 4: Regulated Services, Q4a and b</b>	Please refer to comments from Section 1.8 <i>Prescribed Services</i>
<b>Issue 5: Price Monitoring, Q5</b>	Stakeholder considers price monitoring as a fundamental tool for price regulation. A better mechanism for price regulation would be to benchmark against peer ports for commodity export and stakeholders core businesses. Also, a market study of port services against a peer port is also warranted. If the peer port operator does provide services in excess of the Darwin port operator and the market study discovers that the pricing regime is comparable, then there are grounds to adjust pricing to match equivalent services.
<b>Issue 6: Threat of Regulatory Intervention, Q6a:</b>	Stakeholder and our peers are comfortable with executing our business under regulators. The Darwin port operator is not. At this stage stakeholder is comfortable to watch and assess further the light-handed regulatory model. This is contingent on whether the port operator remains amicable for negotiation.
<b>Issue 6: Threat of Regulatory Intervention, Q6b:</b>	Please refer to comments for Issue 5: <i>Price Monitoring, Q5</i>
<b>Issue 7: Assessing the Access Regime, Q7</b>	Stakeholder is comfortable with a national framework for assessing access
<b>Issue 8: Consultation on the Initial Access Policy, Q8</b>	Stakeholder believes that the port operator consultation on the Access Policy should have been the correct course of action and should be included in the legislation. Port access has considerable bearing on stakeholder's ability to execute upon the industrial mission.
<b>Issue 9: Amending the Access Policy, Q9a</b>	Stakeholder does believe that the port operator should report on the outcome of the review of the Access Policy because it does have direct impact on stakeholder's industrial mission
<b>Issue 9: Amending the Access Policy, Q9b</b>	Stakeholder believes that the port operator should review the policy on a three (3) yearly basis and/or whenever there is a change to upstream or downstream business interests.
<b>Issue 9: Amending the Access Policy, Q9c</b>	Stakeholder does believe that the Commission should have the power to require amendments, particularly with the port operator's parent company investing in business and infrastructure that may or may not have potential influence over access arrangements. Secondly when additional upstream or downstream businesses or infrastructure changes may impact on access arrangements.
<b>Issue 9: Amending the Access Policy, Q9d</b>	Stakeholder would like to see a policy in place at all times to keep the port operator consistent with their service provisions.
<b>Issue 10: Decision-making Framework for Approving the Access Policy, Q10</b>	Stakeholder believes that the Commission should have discretion to require changes to a draft Access Policy. This will empower the Commission to provide fair and reasonable consideration based on port users concerns and/or issues, then direct the port operator to act in accordance with and remove potential advantages to port operator's parent company.

<p><b>Issue 11: Conflict with Other Agreements, Q11</b></p>	<p>Stakeholder does believe that guidance should be provided within the regime to resolve conflict between access and the other agreements because the port operator has growing stake in port infrastructure and businesses. As a result, the port operator may deliver on port services that favour the parent company.</p>
<p><b>Issue 12: Hindering Access and Unfairly Differentiating, Q12a</b></p>	<p>Stakeholder does not support the port operator being given the provision to create exceptions or hinder access. Stakeholder’s concern is that the port operator may leverage this capacity to prioritise their business interest outside the Priority Principles.</p>
<p><b>Issue 12: Hindering Access and Unfairly Differentiating, Q12b</b></p>	<p>Stakeholder does believe this is the correct course of action. Stakeholder’s commodity export has safety and commercial consequences if the port operator has capacity to hinder or unfairly differentiate.</p>
<p><b>Issue 12: Hindering Access and Unfairly Differentiating, Q12c</b></p>	<p>For stakeholder to support the Commission to consider and query how it is applied in accordance with the port operator’s access policy, stakeholder would want the Commission to employ a suitably qualified and experienced resource that understands the bespoke port users, the consequence in their operations and any potential safety implications. Stakeholder is not aware that this resource is available within the Commission.</p>
<p><b>Issue 13: Matters to be taken into Account by an Arbitrator, Q13a</b></p>	<p>Stakeholder believes that legislation within the regime should provide “matters that should be taken into account” by an arbitrator during conflict resolution to keep the arbitrator’s decision process consistent and objective.</p>
<p><b>Issue 13: Matters to be taken into Account by an Arbitrator, Q13b</b></p>	<p>Port users and the port operator should understand the common language used in the industry is a measure of risk. Stakeholder suggests the decision-making framework leverage the common metrics to measure risk in conflict resolution.</p>
<p><b>Issue 14: Reporting Breaches with the Access Policy, Q14a</b></p>	<p>Stakeholder recommends a mechanism be established for material instances of non-compliance with the Access Policy. This will act as a deterrent to the port operator and steward compliance within the terms of the Access Policy.</p>
<p><b>Issue 14: Reporting Breaches with the Access Policy, Q14b</b></p>	<p>Stakeholder believes a set of Access Policy compliance KPIs is a transparent and simple way for the Commission to monitor the port operator’s performance.</p>
<p><b>Issue 14: Reporting Breaches with the Access Policy, Q14c</b></p>	<p>Stakeholder chooses to remain neutral on whether the port operator CEO should sign a certificate of compliance. This position may change once port users and businesses escalate.</p>
<p><b>Issue 15: Access to Meaningful Information, Q15a</b></p>	<p>Stakeholder does agree the Commission should be provided with profit, cost and investment information separate to parent company’s financial reports. This will ensure the port operator’s true financials are not being absorbed or inaccurately represented to the Commission.</p>
<p><b>Issue 15: Access to Meaningful Information, Q15b</b></p>	<p>Please refer to comments in Issue 15: Access to Meaningful Information, Q15a</p>

<p><b>Issue 15: Access to Meaningful Information, Q15c</b></p>	<p>Stakeholder believes that the Commission should have the power to audit the port operator to determine compliance within the regime</p>
<p><b>Issue 15: Access to Meaningful Information, Q15d</b></p>	<p>Stakeholder believes that the Commission should have the power to investigate reported breaches by the port operator in their obligations within the regime.</p>
<p><b>Issue 16: Standards of Service, Q16</b></p>	<p>Stakeholder remains neutral on the capacity of the Commission to insist on a commitment to service standards or prescribed services until a suitably qualified and experienced resource is appointed to provide informed recommendations.</p>