

2015 – 2018
PRESCRIBED PORT
SERVICES
PRICE
DETERMINATION

PORT OF DARWIN

DRAFT DETERMINATION

17 December 2015

Table of Contents

PART A: GENERAL	5
1. Introduction.....	5
2. Next steps.....	5
3. Variations to the Determination.....	6
4. Definitions and interpretation.....	6
PART B: DETERMINATION	7
5. Application.....	7
6. Term.....	7
7. Price Monitoring.....	7
8. Published charges.....	7
9. Notice of fixing a standard charge for the first time.....	8
10. Notice of change to standard charges.....	8
11. Annual reports.....	9
12. Requirement to provide further information.....	9
13. Territory law prevails.....	9
PART C: SUMMARY OF REASONS AND INFORMATION USED	10
14. Summary of reasons.....	10
15. Information used.....	10
PART D: DEFINITIONS AND INTERPRETATION	11
16. Definitions.....	11
17. Interpretation.....	11

Address for Submissions

Submissions should be directed to:

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The closing date for submissions is Wednesday 13 January 2016.

Confidentiality

In the interests of transparency and to promote informed discussion, the *Commission* will generally make submissions publicly available.

Persons wishing to submit confidential information should:

- clearly identify the relevant sections of the submission that are confidential, so that the remainder of the document can be made publicly available; and
- provide a copy of the submission suitable for publication with any confidential material removed.

Confidential information is defined in section 26 of the *Utilities Commission Act* as information that could affect the competitive position of a licensed entity or other person or is commercially sensitive for some other reason.

Public Access to Submissions

Unless confidentiality claims have been made, submissions will be made available for public inspection at the office of the *Commission* and on its website (www.utilicom.nt.gov.au).

To facilitate publication on the *Commission's* website, submissions should be made electronically by disk or email. However, if this is not possible, submissions can be made in writing.

Important Notice and Disclaimer

This draft price determination has been prepared by the Utilities Commission in accordance with the *Ports Management Act* (NT), *Ports Management Regulations* (NT) and *Utilities Commission Act* (NT). It is a draft only and is subject to change when issued in final form. The Utilities Commission makes no representation or warranty as to the form that the final determination will take. To the maximum extent permitted by law, the Utilities 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):

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UTILITIES COMMISSION - DRAFT PRICE DETERMINATION

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PART A: GENERAL

1. Introduction

- (a) This document is a draft *determination* which the *Commission* is authorised to make under section 132 of the *Ports Management Act* and section 20(1)(a) of the *Utilities Commission Act*. It relates 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*. This draft *determination* relates to the charges fixed by the *Darwin Port Operator* for providing *prescribed services* at the Port of Darwin.
- (c) In making this draft *determination*, the *Commission* has had regard to sections 6(2) and 21(2) of the *Utilities Commission Act* and all matters that it is required to have regard to under regulation 16(1) of the *Ports Management Regulations* and consider under the *Ports Management Act*.
- (d) This draft *determination* is also consistent with:
 - (i) the *Ports Management Regulations*, which provide that the *determination* must use monitoring of the price levels of a *prescribed service* as the form of price regulation for that service; and
 - (ii) the *access and pricing principles* set out in section 133 of the *Ports Management Act*.

2. Next steps

- (a) The *Commission* will provide a copy of this draft *determination* to:
 - (i) the Minister;
 - (ii) the *Darwin Port Operator*; and
 - (iii) any other person the *Commission* reasonably considers will likely be affected by the *determination*.
- (b) The *Commission* will place a notice in a newspaper circulating generally in the Northern Territory and make the draft *determination* available on its website.
- (c) Each of the persons named in clause 2(a) and any other interested parties are invited to make submissions on this draft *determination* by Wednesday 13 January 2016.
- (d) The *Commission* will consider any submission that it receives by Wednesday 13 January 2016 before making the final *determination*.
- (e) The *Commission* intends to issue the final *determination* by 15 February 2016.

3. Variations to the Determination

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

4. Definitions and interpretation

- (a) Words and phrases printed in italics like *this* have the meaning given in clause 17.
- (b) This *determination* must be interpreted in accordance to the interpretation principles set out in clause 18.

PART B: DETERMINATION

5. Application

The *determination* will:

- (a) apply 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) bind the *Darwin Port Operator* providing *prescribed services* at the Port of Darwin.

6. Term

- (a) The *determination* will commence on 16 February 2016.
- (b) The *determination* will expire three (3) years from the date of commencement.

7. Price Monitoring

- (a) In accordance with the *Ports Management Act* and regulation 16(2) of the *Ports Management Regulations*, the Commission shall, during the period of this *determination*:
 - (i) monitor the price levels of a *prescribed services* by the *Darwin Port Operator*; and
 - (ii) from time to time, publish reports on charges and matters relating to charges for *prescribed services* fixed by the *Darwin Port Operator*.
- (b) In accordance with regulation 16(2)(b) of the *Ports Management Regulations*, the basis upon which the *Commission* intends to monitor price levels is using benchmarking or annual price increases linked to an indexation factor, as considered appropriate for the industry circumstances and good regulatory practice at the time.

8. 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 as to the *Darwin Port Operator's* general pricing policies for any *prescribed service*; and
 - (iv) a statement informing potential *port users* that if their access requests involve new capital investments then the price information provided may

UTILITIES COMMISSION - DRAFT PRICE DETERMINATION

require adjustments to reflect the additional capital costs and noting that both parties will need to discuss each such access request further in good faith.

- (b) The Darwin Port Operator is not required to publish on its website any *negotiated charges*.

9. Notice of fixing a standard charge for the first time

- (a) 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*, in the form described in clause 9(b), at least 20 days before the *standard charge* is proposed to apply; and
 - (ii) publish a notice of the proposed *standard charge*, in the form described in clause 9(b), in a prominent position on its website, at least 10 days before the *standard charge* is proposed to be apply.
- (b) A notice provided in accordance with clause 9(a) must:
 - (i) identify each separate *standard charge*; and
 - (ii) provide the following information about each *standard charge*:
 - (A) the basis on which the amount of the charge *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;
 - (B) for a change in an existing *standard charge* or the removal of an existing *standard charge*, the reason for the change or removal;
 - (C) the purpose and function of the *standard charge*; and
 - (D) the persons who will be required to pay the *standard charge*.

10. Notice of change to standard charges

- (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* and the removal of an existing *standard charge*) it must:
 - (i) provide notice of the proposed change to the *Commission*, in the form described in clause 9(b), at least 20 days before the change is proposed to be made; and
 - (ii) publish a notice of the proposed change, in a prominent position on its website, in the form described in clause 9(b) (other than clauses 9(b)(C) and (D)), at least 10 days before the change is proposed to be made.

11. 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.

12. 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* and Parts 2 and 5 of the *Utilities Commission Act*.

13. 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: SUMMARY OF REASONS AND INFORMATION USED

14. Summary of reasons

The *Commission* has made this *determination* to be consistent with:

- (a) its powers and functions under the *Utilities Commission Act*;
- (b) the requirements of Part 11 of the *Ports Management Act*, including the access and pricing principles in section 133; and
- (c) the *Ports Management Regulations* which require the use of price monitoring as the form of price regulation.

15. Term

The Commission has made this *determination* for a term of three (3) years from the date of commencement on the following basis:

- (a) the *Ports Management Act* requires that a determination cannot have effect for a period of more than three (3) years; and
- (b) the *Commission* must commence a review of Part 11 of the *Ports Management Act*, including the ongoing need for regulatory oversight and form of regulatory oversight, within two (2) years from the appointment of the *private port operator*.

16. Information used

In making this *determination*, the *Commission* has not considered any information beyond the documents and legislation referred to in clause 14.

PART D: DEFINITIONS AND INTERPRETATION

17. Definitions

<i>Authority</i>	Any government, government department, instrumentality, Minister, agency, statutory authority or other body in which a government has a controlling interest, and includes the <i>Commission</i> and its successors.
<i>Darwin Port Operator</i>	Landbridge Group , 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</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> . In the context of this document, this <i>determination</i> .
<i>Commission</i>	The Utilities Commission of the Northern Territory established in April 2000 in accordance with the <i>Utilities Commission Act</i> or such other <i>Authority</i> who is responsible from time to time for the administration of this <i>determination</i> .
negotiated charge	A charge for a prescribed service which is different to the <i>standard charge</i> for that prescribed service published in accordance with clause 8(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</i> or section 110 of the <i>Ports Management Act</i> .
<i>port user</i>	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).
<i>prescribed services</i>	Has the same meaning as is given to that term in the <i>Ports Management Regulations</i> .
<i>private port operator</i>	Has the same meaning as is given to that term in the <i>Ports Management Act</i> .
<i>standard charge</i>	A charge for a <i>prescribed service</i> which is published in accordance with clause 8(a) of this <i>determination</i> , and is not a <i>negotiated charge</i> .

18. Interpretation

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

UTILITIES COMMISSION - DRAFT PRICE DETERMINATION

- (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.