

**2022 – 2025**

**PRESCRIBED PORT SERVICES**

**PRICE DETERMINATION**

**PORT OF DARWIN**

**DRAFT DETERMINATION**

*23 September 2021*

## Submissions and enquiries

Submissions on this Draft Price Determination are sought by **5 pm (CST) 5 November 2021** and will be made publicly available on the Utilities Commission's website.

To facilitate publication, submissions should be provided electronically by email to [utilities.commission@nt.gov.au](mailto:utilities.commission@nt.gov.au) in Adobe Acrobat or Microsoft Word format.

Should submissions contain confidential information, the part of the document that contains confidential information should be clearly specified and a version of the submission suitable for publication (i.e., with any confidential information removed) should also be provided.

Any questions regarding this Draft Price Determination should be directed to the Utilities Commission email [utilities.commission@nt.gov.au](mailto:utilities.commission@nt.gov.au) or telephone (08) 8999 5480.

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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) In 2019, the *Commission* made a *determination* relating to the charges fixed by the *Darwin Port Operator* for providing *prescribed services* at the Port of Darwin. The *determination* will expire on 15 February 2022.
- (d) The *Commission* intends replacing the current *determination* when it expires with a new *determination*. A draft of the new *determination* is contained in Part B. The *Commission's* statement of reasons applicable to the draft *determination* is set out in Part C.
- (e) In making a *determination*, the *Commission* is required to 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 or consider under regulation 16(1) of the *Ports Management Regulations 2015* and the *Ports Management Act 2015*.
- (f) In making a *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 15.
- (b) The rules of interpretation applicable to the *determination* are set out in clause 16.

## PART B: DRAFT DETERMINATION

This Part B sets out the *Commission's* draft *determination* for the 3 year period commencing on 16 February 2022.

### 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: REASONS – DRAFT DETERMINATION

### 13. Statement of reasons

- (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 current *determination*, which came into effect on 16 February 2019 and is due to expire on 15 February 2022. The *Commission* intends on making a new *determination*, as outlined in this draft *determination*, to commence on 16 February 2022.
- (c) The *Commission's* 2018 review of the Ports access and pricing regime<sup>1</sup> did not recommend a change to the form of oversight of prices and the *Commission* is not aware of any other matters that might result in a change to the form of oversight of prices in the proposed term of the draft *determination*. Accordingly, as stipulated by the *Ports Management Regulations 2015*, the *Commission* will continue to use price monitoring as the form of price regulation.
- (d) Section 132(4) of the *Ports Management Act 2015* specifies that 3 years is the maximum term for which a *determination* can be made. The *Commission* has considered whether it would be appropriate for the new *determination* to apply for a period less than 3 years and has reached the draft conclusion that the 3-year period is suitable.
- (e) This draft *determination* is largely unchanged from the current *determination* except to further clarify the basis on which, or the standard against which, the *Commission* intends to monitor price levels as required by regulation 16(2)(b) of the *Ports Management Regulations 2015*. Consistent with the current *determination*, the *Commission* proposes to continue to benchmark changes in price levels using the change in *National CPI*; however, the draft *determination* clarifies 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 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).

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<sup>1</sup> Utilities Commission. 2018 Ports Access and Pricing Review, Final Report, November 2018 available at <https://utilicom.nt.gov.au/ports/reporting/review-of-the-ports-access-and-pricing-regime>

- (f) 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* will take a range of matters into consideration when assessing whether price changes are consistent with the *determination*. For this reason, and consistent with the current *determination*, the draft *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)).
- (g) The *Commission* notes that clause 9 of the current *determination* incorrectly references clause 1.1(b) and this has been corrected in the draft *determination* to refer to clause 8(b).

#### 14. Information used in making the draft determination

- (a) The information used in making this draft *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* and matters arising during consultation on the current *determination*.

#### 15. Stakeholder consultation

- (a) In accordance with regulation 17(1) of the *Ports Management Regulations 2015*, prior to issuing this draft *determination* as the final *determination*, the *Commission* will provide a copy of the 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 final *determination*.
- (b) The draft *determination* will be available on the *Commission's* website.
- (c) Each of the persons named in clause 14(a) and any other interested parties are invited to make submissions on this draft *determination* by **Friday, 5 November 2021**. Submissions should be provided electronically by email to [utilities.commission@nt.gov.au](mailto:utilities.commission@nt.gov.au) in Adobe Acrobat or Microsoft Word format and will be made publicly available on the *Commission's* website.
- (d) The *Commission* will take submissions into consideration in preparing the final *determination*. As soon as practicable after making the final *determination*, the *Commission* will provide a copy to the persons listed in clause 14(a) and publish the final *determination* on its website. In accordance with section 22(4) and (5) of the *Utilities Commission Act 2000*, the *Commission* will also publish a notice of the making of the final *determination* in the Northern Territory Government Gazette and place a notice in a newspaper that circulates generally in the Northern Territory.

## PART D: DEFINITIONS AND INTERPRETATION

### 16. Definitions

<b><i>Access Policy</i></b>	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.
<b><i>Commission</i></b>	The Utilities Commission of the Northern Territory established by the <i>Utilities Commission Act 2000</i> .
<b><i>Darwin Pilotage Provider</i></b>	Darwin Port Pilotage Pty Ltd in its capacity as trustee for the Darwin Port Pilotage Trust (ABN 98 744 318 229).
<b><i>Darwin Port Operator</i></b>	Darwin Port Operations Pty Ltd (ACN 603 472 788), the <i>private port operator</i> of the Port of Darwin.
<b><i>Designated port</i></b>	Has the same meaning as is given to that term in the <i>Ports Management Act 2015</i> .
<b><i>determination</i></b>	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> .
<b><i>Minister</i></b>	The Minister to whom the <i>Ports Management Act 2015</i> is committed.
<b><i>National CPI</i></b>	The consumer price index (all groups, weighted average of 8 capital cities) published by the Australian Bureau of Statistics.
<b><i>negotiated charge</i></b>	A charge for a prescribed service that is different to the <i>standard charge</i> for that prescribed service 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> .
<b><i>port user</i></b>	Has the same meaning as is given to that term in the <i>Ports Management Act 2015</i> .
<b><i>prescribed services</i></b>	As defined by regulation 12 of the <i>Ports Management Regulations 2015</i> .
<b><i>private port operator</i></b>	Has the same meaning as is given to that term in the <i>Ports Management Act 2015</i> .

<b><i>standard charge</i></b>	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> .
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## 17. 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.