

Our Ref: 18:D18:3244

The Honourable Eva Lawler MLA
Minister for Infrastructure, Planning and Logistics
GPO Box 3146
DARWIN NT 0801

Dear Minister

ANNUAL REPORT ON MATERIAL INSTANCES OF NON-COMPLIANCE WITH THE PORT ACCESS POLICY AND DETERMINATIONS

The *Ports Management Act* (the Act) establishes the Utilities Commission (the Commission) as the economic regulator of the port access and pricing regime for the Port of Darwin.

Section 121(1) of the Act requires the Commission to report to the Minister for Infrastructure, Planning and Logistics by 1 December each year about:

- (a) any reports received from the private port operator on material instances of non-compliance with its Access Policy; and
- (b) any instances of material non-compliance with a determination made by the Commission.

This letter is the Commission's annual report to the Minister in accordance with section 121(1) of the Act. Section 121(2) of the Act requires the Minister to table the report in the Legislative Assembly within seven sitting days after receiving it.

Section 130 of the Act obliges the private port operator to report to the Commission, by 30 September each year, on any material instances of non-compliance with its Access Policy. The private port operator's Access Policy was approved by the Commission on 30 June 2017. The private port operator reported to the Commission by the due date and advised that there were no material instances of non-compliance with its Access Policy for 2017-18.

The 2015-2018 *Prescribed Port Services Price Determination for the Port of Darwin* (price determination) was issued by the Commission on 16 February 2016. This is the only determination issued by the Commission under the regime to date. The Commission is not aware of any instances of non-compliance by the private port operator with the price determination during 2017-18.

As the current price determination will expire in mid-February 2019, the Commission is preparing a new price determination for 2019-22. In accordance with regulation 17 of the Ports Management Regulations (the Regulations), a draft of the new determination will be provided to the Minister, private port operator and relevant stakeholders. The Commission will consult with stakeholders on the draft version. It is anticipated the new determination will be issued by 15 February 2019.

The Commission has recently completed a review of the ports access and pricing regime (Part 11 of the Act and Part 3 of the Regulations), as required by section 123 of the Act. The Final Report was delivered to the Acting Minister for Infrastructure, Planning and Logistics on 15 November 2018, and makes a number of recommendations based on ensuring the regime is fit for purpose and effective in meeting its legislative objectives. The Commission reiterated that compliance auditing of the regime needs to be strengthened, recommending that the Commission should have an auditing power.

Please feel free to contact me if you would like to discuss further. Any queries can be directed in the first instance to Ms Kimberlee McKay, Acting Director Utilities Commission on kimberlee.mckay@nt.gov.au or (08) 8999 7476.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P Walsh', with a long horizontal flourish extending to the right.

Dr Patrick Walsh
Utilities Commissioner

19 November 2018