Submission to the Utilities Commission
2018 Ports Access and Pricing Review Issues Paper

Definitions

Act	the *Ports Management Act 2016* (NT)
Access Policy	the access policy for the Port approved by the Commission on 30 June 2017
Commission	the Utilities Commission of the Northern Territory
Issues Paper	the *2018 Ports Access and Pricing Review Issues Paper* released on 22 February 2018 by the Commission
DPO	Darwin Port Operations Pty Ltd (ABN 62 603 472 788), the private port operator for the Port
ESCOSA	Essential Services Commission of South Australia
GHD	GHD Pty Ltd, as advisor to the Commission in relation to the review of the Regime
GHD Report	means the Darwin Port Price Benchmarking Study, 2017 prepared by GHD (dated 21 February 2018)
Government	means the Northern Territory government
Landbridge	Landbridge Port Pty Ltd (ACN 606 908 945), the lessee of the Port and a related body corporate of DPO
Lease	the lease between the Government and Landbridge dated 16 November 2015 being a 99 year concurrent lease of port land and improvements at East Arm Wharf and Fort Hill Wharf
Port	the Port of Darwin
Prescribed Services	means the services prescribed by Regulation 12(2), being specifically: (a) providing or allowing for, access for vessels to the Port; (b) providing facilities for loading or unloading vessels at the Port; (c) providing berths for vessels at the Port; (d) providing or facilitating the provision of pilotage services in a pilotage area within the Port; and (e) allowing entry of persons and vehicles to any land on which Port facilities are located.
Regime	the regulatory framework for the Port, comprising the Act, Regulations and the Access Policy and associated determinations
Regulations	*Ports Management Regulations* (as in force from 16 March 2016)

1 Executive Summary

DPO welcomes the opportunity to provide this submission to the Commission for the purposes of its review of the Regime, as required by section 123 of the Act to be completed by 15 November 2018.

As the private port operator for the Port, DPO considers that it is uniquely positioned to provide its observations about the effectiveness of the Regime.

As noted in the Issues Paper, the Regime is governed in principle by Part 11 of the Act (supplemented by the Regulations). Section 117 of the Act specifies that the object of Part 11 is "*to promote the economically efficient operation of, use of and investment in major port facilities in the Territory by which services are provided, so as to promote effective competition in upstream and downstream markets*."

The Issues Paper further states that the intention of the Regime is:

> *…to protect the consumers of the services provided by the port operator from the exercise of market power by the operator. Such services are generally considered to have natural monopoly characteristics, and the exercise of market power, for example, through the imposition of unreasonable terms and conditions of access or charging excessive prices, can adversely impact upstream and downstream competitive markets, such as shipping, logistics and import and export markets.*[1]

As an overall observation, DPO considers that the Regime is operating effectively and has not lead to any instances of market failure or adverse economic outcomes in the operation of the Port.

As a further matter, DPO is of the view that the existing price monitoring regime is broadly effective. Based on the operations of the Port since the Lease commenced, there are no compelling reasons to introduce a more direct form of price regulation, which could risk having adverse effects on DPO's ability to grow the facilities, commercial operations and throughput at the Port.

Further detail in relation to these observations is set out in this submission in response to the questions from the Issues Paper. DPO would welcome the opportunity to discuss any questions from the Commission in relation to this submission or provide further input upon request.

2 Market power

Q 1a: Since the commencement of the regime, have there been any major changes in the market that may alter the need for regulatory oversight to continue?

Q 1b: Are there any expected future developments that may change the need for regulatory oversight?

Q 1c: Is there any evidence that additional constraints on the potential for the port operator to exercise market power are needed in the regime?

Q 1d: Is the regime's approach to addressing the potential for the exercise of market power sufficient, given the possibility that a port operator may expand its business operations into upstream or downstream markets?

In DPO's view, there have been no material changes to the relevant markets that would suggest a change to the level of competition since the commencement of the regulatory regime, and it is not aware of any changes that are likely to occur in the immediate future.

[1] Issues Paper, at [1.7]

The Regime has been operating as expected, and there is no evidence to suggest that additional constraints are needed on the possible exercise of market power by DPO. There are already sufficient constraints on DPO, not only in the Regime itself, but also under the contractual documents which DPO has entered into with the Government. Further detail on these constraints is provided in the confidential schedule.

Insofar as pricing and access matters are concerned, DPO considers that it has been able to satisfactorily meet the requirements of its major customers and other Port users, in the supply of the Prescribed Services since commencement of the Lease.

In particular, DPO has successfully negotiated approximately 12 agreements relating to port access and pricing since the Regime commenced. Over the same period, no customer or access seeker has sought to invoke the dispute resolution provisions in the Regime in respect of any Prescribed Service.

We consider that the findings of the GHD Report commissioned by the Commission for this review provide further significant support for the conclusion that the current Regime is appropriate. In particular, the GHD Report identifies the Port's charges as competitive relative to pricing for services at equivalent ports, and not indicative of any pricing behaviour that would lead to DPO earning excessive (or 'monopolistic') profits.

Whilst DPO has some specific issues with the methodology applied by GHD in some instances for the purposes of compiling its report (see further below), overall it considers the GHD benchmarking findings to be a fair and broadly accurate reflection of the Port's pricing.

Port users have strong countervailing power

As is the case for many other commercial ports in Australia, users of the Port are, for the most part, sophisticated commercial entities themselves, and have extensive shipping and port usage operations in Australia and (often) internationally. It should be expected that these customers have the financial and commercial experience to exercise commercial countervailing bargaining power on DPO, particularly if they identified any aspect of DPO's services at the Port which is uncompetitive with equivalent services offered elsewhere.

DPO's commercial incentive is expansion

As the Port is still a relatively small commercial port (by comparison to other major Australian ports), a further effective source of commercial constraint on DPO is the strong incentive to maximise throughput and encourage increased demand for Port services. The Development Plan for the Port illustrates that DPO is actively seeking to develop the Port and increase trade flow through Darwin. [2]

As part of the decision to grant the initial Lease to DPO, the Government acknowledged DPO's role was to grow and develop the Port and associated infrastructure, to accommodate the growth the Northern Territory's economy.[3]

Accordingly, in addition to the commercial incentive to deliver a return on investment, increasing the level of demand for Port services by offering competitive pricing and services can underwrite additional capital expenditure by DPO for expansion of the Port, and to improve Port services for customers (including, for example, upgrades to land-side loading and other facilities).

ESCOSA Review

DPO notes that the contentions outlined in this section of the Submission are also broadly consistent with the findings of ESCOSA in its 2017 review of access and price regulation of

[2] See https://www.darwinport.com.au/trade/projects
[3] See *NT Government selects Landbridge as its partner for the Port of Darwin* (Media release 15 October 2015) http://newsroom.nt.gov.au/api/attachment/byId/7260

ports in South Australia, which found that while port operators may have had the ability to exercise market power, they had not been doing so.

As a consequence, ESCOSA found a lack of compelling grounds for modifying the regimes because there appeared to be no major problems, and there would be time and financial costs associated with introducing more stringent regulatory regimes.[4] In particular, ESCOSA stated that:

> "*If there is no evidence of the exercise of market power, it would be difficult for the Commission to recommend further consumer protections than those already afforded under the regimes.*"[5]

Further, unlike certain port operators, DPO is not a vertically integrated business, and therefore has no ability or incentive to take advantage of its position as operator of the Port in order to influence the effectiveness of any integrated business it operates in a market upstream or downstream from the Port services it supplies. Specifically, the Lease contains a prohibition on Landbridge or DPO becoming an integrated operator. An integrated operator is defined under the Lease as a person who owns, operates or has a material influencing interest in a business that provides any of the following services to users of the Port at the Port:

- stevedoring services;
- road transport or logistics services;
- marine transport services;
- rail transport services; or
- services of a marine supply base.

GHD Report

In relation to Part 3.1 of the GHD Report, on inflation at comparator ports, we note the following:

- the Port's operating costs are growing at a rate higher than the Darwin All Groups CPI rate, because the Port's operating costs are influenced by more than just those items that are considered in that index.
- The All Groups CPI relates to changes in the price of a "basket" of goods and services for residential households and does not reflect the changes in costs base for business.
- A significant proportion of the Port's operating costs is attributable to the cost of labour – to better understand the impacts of inflation on labour it would be necessary to also refer to the Wages Price Index. The Wages Price Index, for the 12 month period ended 30 September 2017, shows wages growth has been 1.9% for private sector, even higher for public sector.

Additionally, for many of the Port's local contractors, wages are a key cost. Given the small market of expert services within Darwin and the Northern Territory, many supplies, services and the costs of our subcontractors are directly impacted by national CPI as against Darwin CPI.

[4] ESCOSA – *2017 Ports Access and Pricing Review* – Final report (September 2017) section 3.2
[5] ESCOSA (above, note 4) at 3.2 (p14)

3 Impact of the regime

Q 2a: Does the access and pricing regime promote the economically efficient operation of and investment in major ports, and competition in upstream and downstream markets?

Q 2b: What are the benefits and costs of the access and pricing regime?

Q 2c: Are there any effective alternatives?

As the Regime has only been operating for a relatively short timeframe, DPO considers that it would be premature to assess its impact and costs.

In conducting its review, DPO considers that the Commission should be mindful that further intervention in the market – particularly at this early stage – may result in unintended consequences, or impose an administrative or compliance burden which is disproportionate to any purported benefit.

The Draft Port of Darwin Reporting Guidelines (**Draft Guidelines**) published in May 2017 are a good example of this. The Draft Guidelines are meant to clarify DPO's obligation under section 130 of the Act, which requires it to make an annual report to the Commission on any "material instance of non-compliance with the operator's access policy". However, in DPO's view, the Draft Guidelines initially included a number of requirements which exceeded the legislative intent of section 130.

For example the Guidelines:

- effectively required DPO to report on all instances of non-compliance, not just material instances; and
- recommended that DPO provide the Commission with additional data not required by the Act, including data on the number of access applications received, the date applications were received, and how they were dealt with (e.g., accepted, executed, not feasible, withdrawn).

This reporting would require DPO to incur considerable expense in terms of staff time and system costs, and in our view is unnecessary in circumstances where users already have access to a dispute resolution process under the Access Policy and can write to the Commission if they are dissatisfied with any action or inaction by the Port.

In our view the Guidelines, which are still to be finalised, should provide clarity in relation to the reporting obligation under the Act without creating a disproportionate administrative burden.

4 Exemption of services provided under lease

Q 3a: Is the application of regulation 12(2) too wide in allowing the port operator to lease prescribed services, and thus potentially setting these services outside of the regime?

Q 3b: Are there any effective alternatives?

In DPO's view, it is entirely appropriate for the Regulations to provide an exclusion from the access and pricing regime for services leased by DPO to third parties.

Whilst it is correct that the effect of the Regulations would be to place any land or services the subject of a lease outside the scope of the Prescribed Services for the purposes of the Regime, there are a number of other regulatory and commercial aspects of the Regime that remain applicable to the manner in which such leases must be granted by DPO.

Specifically, DPO must adhere to the requirements of the Access Policy, including the exclusivity principles in clause 5.6 of the Access Policy when considering a request for a lease. A request for a lease from DPO, is likely to constitute a Prescribed Service under paragraph (e) of the definition and will constitute a 'Non-Standard Service' for the purposes of the Access Policy.[6]

In addition to the Access Policy, clause 7.6 of the Lease includes an obligation on DPO to ensure that, when granting to a person a right to use or occupy part of the Port Lease Land for the purposes of providing services to third parties, that it procures that the relevant user has a contractual obligation to DPO or Landbridge that requires the user to offer access to those services to third parties on reasonable commercial terms.

5 Regulated services

Q 4a: Is it necessary to regulate all of the current prescribed services?

Q 4b: Are there any services not currently prescribed that should be?

As a preliminary observation, the Issues Paper notes that in making any assessment as to whether there is an ongoing need for regulatory oversight, the "critical question" to consider is whether there is the potential or actual exercise of market power.

Further, it notes that industries should only be subject to economic regulation where there is a clear need "*to promote competition in dependent markets or to prevent the misuse of market power*".[7] The particular concern that flows from the existence of assets that have 'natural monopoly' characteristics, is that a port operator:

> "*…can hold substantial market power and, for example,* ***have the ability to increase prices while reducing supply or discriminate against access seekers to its own benefit***."[8]

On this basis, DPO does not consider that there is any evidence that supports the suggestion that ongoing regulation of any Prescribed Service is ***necessary***, as there is no evidence it is aware of that it has engaged in any behaviour of the kind referred to above in relation to any Prescribed Service (or otherwise).

In general (and subject to the comments below) DPO considers that the current scope of the Prescribed Services broadly captures the types of services that could be susceptible to exploitation, in the event an operator of a port with market power opted to engage in behaviour of the kind referred to.

Adjustment to the definition of Prescribed Services

It appears that the current definition of "Prescribed Services" in the Regulations is unintentionally too broad, as it defines the services by reference to the "designated port". "Designated Port" is defined under the Act to mean the Port of Darwin. The Port of Darwin is subsequently defined in the Act by reference to the area of "water and land" within the boundaries of any gazettal notice by the relevant Minister.[9]

The Port in this case is the subject of boundaries declared by Government gazette on 1 July 2015.[10]

In DPO's view, this series of definitions leads to a drafting error, as the Lease does not cover the whole area which constitutes the "Designated Port". The immediate consequence of this

[6] See clause 6.2 of the current Access Policy
[7] Issues Paper – section [3.2] – [3.5] (emphasis added)
[8] Issues Paper – section [3.5] (emphasis added)

[9] Section 7 of the Act
[10] Declaration by Peter Glen Chandler, Minister for Transport - Northern Territory Government Gazette No. S73, 1 July 2015

is that DPO does not have the appropriate authority to undertake services across all areas which fall within the boundaries of the "Designated Port".

We respectfully submit that the definition of "Designated Port" under the Act should be examined more closely, and amended to align with the actual operation of the Port.

No other services should be included

The Issues Paper has listed a number of services not currently regulated as 'prescribed services' for the purposes of the Regulations, including towage, bunkering, waste removal, and the supply of electricity and water. None of these services are of the kind that warrant pricing or access regulation.

As acknowledged by the Commission, the Regime is intended to protect consumers of the services provided by DPO from the exercise of market power by DPO, as such services are generally considered to have natural monopoly characteristics.[11] All of the services listed by the Commission for consideration for inclusion as prescribed services in the Issues Paper are services which are currently provided by third parties, and none are services which DPO considers have 'natural monopoly' characteristics, or would be services that could be exploited by DPO for anti-competitive purposes.

6 Price monitoring

Q 5: Is price monitoring alone a sufficient form of price regulation?

Yes.

In DPO's view, the 'light-handed' model of regulatory oversight remains appropriate for the Port, and there is no compelling basis for moving to a more detailed and intrusive form of regulatory oversight (in particular, in relation to pricing for Prescribed Services).

The Port is different from some of the other Australian ports mentioned in the Issues Paper because it is a developing port. The Port was privatised to encourage its development, and it is important that any regulation of the Port is sufficiently flexible to allow DPO to grow the Port, including through expansion of facilities and growth of throughput. For this reason and others, there was a deliberate decision by the Government to establish a 'light-handed' regulatory framework in relation to the Port.

The broad obligations on DPO to provide access to Prescribed Services on 'reasonable terms' are sufficiently firm obligations to ensure access to all prescribed services is on competitive terms for all potential access seekers.

This view is supported by the benchmarking report prepared by GHD for the Commission, as it indicates that the Port's charges for Prescribed Services are largely in line with (or not materially more costly than) those charged by comparable interstate ports.[12] It is also supported by the fact that since the commencement of the Regime DPO has only increased the standard charges for prescribed services once.[13]

Additionally, continuance of a 'light-handed' regulatory approach offers strong commercial incentives for DPO to continue to comply with the requirements of the regulatory framework, by virtue of the threat of a more intrusive regulatory regime if it fails to do so.

Moreover, as the Port has only been operated by a private port operator for a relatively short period, it would be premature to increase the level of price regulation, as it is too early to fully assess the longer term effectiveness of the 'light-handed' approach.

[11] Issues Paper [1.7]
[12] See section 5.1 – Key Findings
[13] Issues Paper [2.7]

No benefit but additional costs

Finally, while DPO acknowledges that a price monitoring regime offers a more limited degree of regulatory control than other more prescriptive regimes, the introduction of more intrusive regulatory arrangements (such as the fixing of prices) would bring about significant additional costs to both DPO (including the costs of additional compliance obligations, as well as the ensuing commercial limitations) and the Commission (including the costs of ongoing pricing surveillance to ensure any fixed pricing is appropriate and reflects efficient business operating conditions).

In this respect, DPO considers that the conclusions of the ESCOSA Review in 2017 are equally applicable to the Regime. In particular, in determining that it was appropriate to retain a price monitoring regime for a further 5-year period, ESCOSA noted that:

> *Given no real benefits of increasing the level of prescription of price regulation have been identified at this stage, these costs* [to both ESCOSA and the port operators] *would outweigh the benefits for ports.*[14]

7 Threat of regulatory intervention

Q 6a: Should arbitration be included in the PM Act or Regulations rather than the port operator's access policy?

Q 6b: Should the regulator have flexibility to use other forms of price regulation where price monitoring is insufficient? If so how?

Consistent with the responses outlined above, DPO considers that there is no pressing need for pursuing the proposal in the Issues Paper to move the arbitration process to the Regulations or the Act. In DPO's view, such a proposal is inconsistent with the "light handed" regulatory framework in the Regulations generally, and the scheme of the negotiate-arbitrate model more specifically.

Further, transferring the arbitration process to a statutory instrument that is separate from the remainder of the Access Policy could lead to confusion in the interpretation of the relevant provisions, and/or have unintended consequences insofar as the construction of the arbitration process is concerned.

The Issues Paper appears to suggest that because the Regime doesn't currently allow the Commission to use other forms of price regulation, there isn't a sufficient threat of more stringent regulation in the event DPO misuses its market power.[15]

The threat of more stringent regulation already exists, because it is always possible for Parliament to change the Regime – one of the objectives of the Commission's current review, which the Act requires to be conducted annually, is to determine whether there is any need to change the Regime.

As there is no evidence to suggest that the current price monitoring framework is providing an insufficient constraint on the exercise of market power by DPO, there is no compelling basis to change the Regime and allow the Commission to use other forms of price regulation at this stage.

8 Assessing the access regime

Q 7: Are the criteria for certification (clause 6 of the Competition Principles Agreement) an appropriate tool for assessing the access regime for the purposes of this review?

[14] ESCOSA Report, at [3.4.8.2]
[15] Issues Paper, [4.9] and Q6(b).

As noted above, in DPO's view, the Regime is currently operating effectively. Any assessment of the Regime should proceed principally on the basis of measuring whether:

- the objects of Part 11 of the Act (as set out in section 117 of the Act) are being achieved, and
- users of the Port are not otherwise subject to any anti-competitive behaviour in relation to the Prescribed Services.

To the extent that the Regime is not as extensive as the measures set out in clause 6 of the Competition Principles Agreement, this is appropriate because:

- there has been a deliberate decision by the Government to establish a 'light-handed' regulatory framework in relation to the Port;
- the Port is a developing port, and the Regime needs to allow DPO sufficient flexibility to develop and grow the facilities and throughput at the Port;
- the Port may not necessarily meet the applicable criteria for declaration under the National Access Regime under Part IIIA of the *Competition and Consumer Act 2010* (Cth) (for reasons that include it may not satisfy the test for a facility of 'national significance')[16]; and
- no application for certification of the access regime at the Port has been made by the Government.

9 Amending the access policy

Q 9a: Should the port operator publicly report on the outcome of the review of the access policy and should this report be assessed or approved by the Commission?

Q 9b: Should the port operator be required to revise the access policy and if so in what circumstances?

Q 9c: Should the Commission have the power to require amendments be made to the access policy and, if so, in what circumstances?

Q 9d: Is it necessary to amend the regime to ensure there is an access policy in place at all times?

The current scheme of the Regulations and section 127(10) of the Act specifies a clear process for amendments to be made to an access policy following a review by the Commission as required under Regulation 15.

Importantly, the clear intent of the Regulations is that the decision as to whether or not to implement any amendments to an access policy is at the discretion of the operator to which the policy applies.

These regulatory arrangements are consistent with the "light-handed" regulatory approach under which the Regime has been designed, and DPO is not aware of any issue that has arisen since the Regulations were enacted which would suggest the Regime is not working effectively.

[16] As that test now applies pursuant to the meaning of the declaration criteria set out in section 44CA of the *Competition and Consumer Act 2010* (Cth), following the amendments that took effect on 6 November 2017.

Accordingly, in DPO's view, no change to the Regime in this regard is necessary, particularly given that the Access Policy is less than 1 year into its initial five-year term (and is therefore not due for review until the year-ending 30 June 2022).

However, if the proposals in section 9 of the Issues Paper were to be given further consideration, any amendments to the Regime would need to be framed in line with the following principles:

- the statutory framework must remain one that is consistent with the level of regulatory oversight intended by the Regime (i.e. a 'light touch' approach);
- any ability for the Commission to require changes to the Access Policy unilaterally should be limited to very narrow circumstances, and should be subject to appropriate review and appeal rights for the affected operator; and
- appropriate interim and other procedural mechanisms would need to be included, to ensure DPO is able to continue operation at the Port, in the event of a disagreement over proposed amendments to the Access Policy.

10 Conflict with other agreements

Q 11: Should the regime include guidance on how to resolve a conflict between the access policy and other agreements to which the port operator is bound?

In DPO's view, it would not be appropriate for the Regime to include guidance on how to resolve a conflict between the Access Policy and other agreements to which DPO is bound.

DPO's contractual arrangements are a commercial matter for it to manage. Any prescription as to the terms on which it may contract with, or the manner in which it must act in relation to agreements with, third party providers would be likely to increase the regulatory burden and cost on DPO in providing the Prescribed Services.

11 Hindering access and unfairly differentiating

Q 12a: Should the access policy allow the port operator to create exceptions to the hindering access and unfairly differentiating provisions through the access policy?

Q 12b: Should the legislation expressly permit the Commission to take the hindering access and unfairly differentiating provisions into account when considering a draft access policy for approval?

Q 12c: Would it be beneficial for the Commission to have the power to consider the merits of the port operator's priority/queueing policy and how it operates in practice?

The suggestions in section 12 of the Issues Paper regarding amendments to the legislation in the context of the priority and queuing principles to permit the Commission to take the "hindering access and unfairly differentiating provisions into account when considering a draft access policy for approval" are misconceived.

In our view, the Commission does not have the operational experience or expertise to assess the 'merits' of DPO's priority/queueing policy or 'how it operates in practice'.

DPO's priority/queuing policy should remain a commercial matter for it to determine (subject to the overall requirements of the Regime, including sections 124 and 125 of the Act), as opposed to a matter for the Commission to approve.

DPO consulted extensively with Port users when drafting the priority/queuing aspects of the Access Policy, and these matters are dealt with in detail in clauses 5.7 to 5.9 of the Access Policy. Placing further constraints on DPO's ability to determine its priority/queuing policy

would unduly restrain DPO's ability to operate the Port efficiently and in accordance with best commercial practices.

12 Matters to be taken into account by an arbitrator

Q 13a: Regarding dispute resolution, should the legislation specify the matters that must be taken into account by the arbitrator?

Q 13b: If so, is there a preferred decision-making framework?

Given there have not been any disputes under the Regime, DPO considers it is premature to consider any legislative amendment of this nature.

13 Reporting breaches with the access policy

Q 14a: Under the regime, should port users and industry stakeholders be able to report a material instance of non-compliance with the access policy to the Commission?

Q 14b: Regarding the access policy, should the port operator report to the Commission on broader information such as the access sought, provided, refused, or the time it takes for negotiations?

Q 14c: Should the Chief Executive Officer of the port operator sign a compliance certificate?

Q 14d: Should the regime include penalties to be imposed on the private port operator if it fails to report any material instances of non-compliance with its access policy?

As a preliminary observation, the comments in Issue 14 of the Issues Paper seem to conflate the question of *granting* access to access seekers with non-compliance by DPO, which is not how the Regime operates.

The proposal to allow Port users and industry stakeholders be able to report "*a material instance of the operator's non-compliance with the Access Policy*" presumes that such a report would be correct. It is also unclear why this proposal is needed, as there is nothing which currently prevents Port users from writing to the Commission in the event they are dissatisfied with any action or inaction by DPO.

As noted in the Issues Paper, the Commission is "not aware of any material instances of non-compliance" at this stage, so it must be considered whether there is any reason to introduce a reporting regime that largely overlaps with the existing regulatory framework and oversight regime for the Port, in circumstances where no material breaches have occurred.

If such information is necessary for the Commission to obtain, DPO's view is that compliance information should be provided by DPO, rather than any third parties.

In relation to Question 14b specifically, collecting, processing and analysing data is not an easy or inexpensive task. Compliance with the suggested additional reporting requirements would require DPO to incur considerable expense in terms of staff time and system costs. In our view these additional reporting requirements are not warranted in the current circumstances, given that:

- there is no discernible benefit to the Commission or public interest in DPO disclosing these matters;
- users have access to a dispute resolution process under the Access Policy;
- DPO already reports quarterly on its trade statistics which are made available publicly on the Port's website;

- DPO already has significant reporting obligations under other agreements it has in place with the Government.

14 Access to meaningful information

Q 15a: Regarding prices for prescribed services, should the regime include powers for the Commission to obtain information from the private port operator about profit, cost and investment levels?

Q 15b: Should the regime specifically require the port operator to keep separate accounts and records about prescribed services, rather than the Commission relying on its information-gathering powers under the UC Act?

Q 15c: Should the regime include powers for the Commission to initiate an independent audit of the port operator's compliance with the regime?

Q 15d: Is it appropriate for the Commission to have an investigative function for breaches of the port operator's obligations under the regime?

The matters described in section 15 of the Issues Paper appear to relate to a more onerous level of price monitoring and information gathering than contemplated by the current 'light-touch' access regime. These proposals would impose an additional administrative burden and additional costs on DPO, and such additional costs would inevitably need to be recovered through increased charges at the Port. In the absence of any evidence to suggest that the existing regime is not operating effectively, it's unclear why the Issues Paper would canvass these options.

Further to this, DPO's ownership and management accounting and reporting structures have been in place since the commencement of the access regime. The Issues Paper provides no basis for suggesting that a change in reporting detail is now necessary.

The suggestion that 'separate accounts' are required is a vague proposal, but appears more relevant to entities that have significant other, non-regulated (but related) businesses that operate alongside the regulated asset or facility. As DPO is not a vertically-integrated entity, this issue does not seem to be a relevant concern in the present case. Furthermore, as discussed in section 2 (Market Power) of our submission, the Lease contains a prohibition on Landbridge or DPO becoming an integrated operator.

Finally, in light of the Commission's existing information gathering powers under both the Regime and the *Utilities Commission Act* (NT), increasing the legislative burden on DPO is not warranted.

15 Standards of service

Q 16: Should the Commission be able to specify or insist on a commitment to service standards for prescribed services by the port operator?

In DPO's view, it would not be appropriate for the Commission to specify or insist on a commitment to service standards for Prescribed Services.

The Regime – and particularly the Access Policy and the Standard Terms – already prescribe a number of specific procedural and substantive obligations for DPO on how the Prescribed Services must be delivered.

Beyond that however, DPO notes that Port users include a diverse set of businesses that have different requirements in terms of service delivery (and pricing). As such, the current Regime offers the appropriate flexibility to enable DPO to deliver Prescribed Services in a manner that best suits users. DPO considers that any attempt to specify minimum standards

would reduce this flexibility, and lead to unnecessary increases to operating costs for the Port, which would need to be passed through to users via Port charges.

Finally, for the reasons noted in section 2 above, it should be noted that DPO already has a strong commercial incentive to provide a superior service for all Port users, as a means of encouraging greater use of the Port.