

Our Ref: UTCDOC2016/88

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

Dear Minister

**RE: REPORT ON MATERIAL INSTANCES OF NON-COMPLIANCE WITH THE
DARWIN PORT ACCESS POLICY AND DETERMINATIONS**

The *Ports Management Act* (the Act) is committed to the Minister for Infrastructure, Planning and Logistics in accordance with the Administrative Arrangements Order. Section 119(3) of the *Ports Management Act* establishes the Utilities Commission as the Regulator in relation to port access and pricing. A report is due to the Minister by 1 December each year pursuant to section 121(1) of the Act, in relation to:

- (a) any reports received from the private port operator (Darwin Port Operations Pty Ltd (DPO)) of material instances of non-compliance with the private port operator's access policy (report made pursuant to section 130 of the Act); and
- (b) any instances of material non-compliance with a determinations made by the Commission.

This letter is the Commission's 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 7 sitting days after receiving it.

In relation to (a) above, the Commission advises that it is yet to approve an access policy submitted by DPO for the Port of Darwin. Part 11, Division 2 of the Act provides a framework for the private port operator to prepare and submit an access policy to the Commission for approval. Regulation 13(1) requires the private port operator to give the Commission a draft access policy no later than four months after the private port operator commences. DPO commenced as the private port operator on 16 November 2015 and provided its initial draft access policy on 10 March 2016.

Although the Act requires the port operator to consult with port users prior to requesting any amendments to its access policy, there is no legislative requirement for the first access policy to be consulted with port users. The Commission and DPO considered it would be good practice to consult with stakeholders and in particular port users on the first access policy of the Port of Darwin.

The Commission sought submissions from stakeholders on the draft access policy in April and August 2016. The submissions received raised issues regarding compliance with the Act and Regulations, made suggestions for improvements to the access policy and sought amendments and clarifications regarding operational aspects of the proposed access policy.

Under section 127(3) of the Act, the Commission has 60 days after receiving a draft access policy to approve the access policy or to advise the private port operator of the changes that are needed to the policy to meet the requirements of the Act and Regulations. Section 127(6) of the Act allows the private port operator to amend a draft access policy that has not been approved and give it to the Commission. Amended versions of the draft access policy supersede earlier drafts and the Commission is not required to take any further action regarding the earlier versions. If not approved, the port operator must resubmit the access policy, amended as directed, to the Commission for approval.

The Commission is currently considering an amended draft access policy provided by DPO in October 2016 and both the Commission and DPO are continuing to consult with stakeholders in relation to the draft access policy. As the access policy is intended to establish the framework for how DPO and port users will negotiate access to prescribed services provided at the Darwin Port and the terms on which access will be provided, the Commission must ensure that the provisions of the access policy meet the requirements of the Act and Regulations and are not inconsistent with the objectives of the access and price regulation regime. The access policy also establishes a negotiate/arbitrate framework for resolving disputes between the port operator and port users. Therefore, it is important to ensure that the access policy is appropriately balanced between the interests of all relevant parties.

In relation to (b) above, the Commission has made one determination under the *Ports Management Act*. The 2015-2018 Prescribed Port Services Price Determination for the Port of Darwin (Final Determination) was made on 16 February 2016. The Commission is not aware of any instances of non-compliance with the final determination for 2015-16 that need to be reported to the Minister in line with section 121(1)(b) of the Act.

Please feel free to contact me if you would like to discuss further. Any queries can be directed in the first instance to Ms Vanessa Sutcliffe, Director Utilities Commission on vanessa.sutcliffe@nt.gov.au or (08) 8999 7980.

Yours sincerely



Dr Patrick Walsh
Utilities Commissioner

29 November 2016