

PORT OF DARWIN

REPORTING GUIDELINES

DRAFT FOR CONSULTATION

June 2021

Foreword

This second version of the Port of Darwin Reporting Guidelines (Guidelines) replaces the previous version of the Guidelines.

Notice of the revised Guidelines was published in the Gazette on [date to be inserted] 2021.

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Version History

<u>Version</u>	<u>Date published</u>	<u>Date of Commencement</u>
<u>1</u>	<u>28 March 2018</u>	<u>2 May 2018</u>
<u>2</u>	<u>[date to be inserted]</u>	<u>[date to be inserted]</u>

1 Introduction

1.1 Authority

- 1.1.1 These *Guidelines* are made by the *Commission* under section 128 of the *Ports Management Act* and regulation 14 of the *Ports Management Regulations*.

1.2 Application

- 1.2.1 Darwin Port Operations Pty Ltd (DPO) was declared the operator of the Port of Darwin under the *Ports Management Act* on and from 1 July 2015. On 15 November 2015, ownership of DPO was acquired by Landbridge Infrastructure Australia Pty Ltd (Landbridge) as part of Landbridge's 99 year lease of the Port of Darwin. This changed the status of DPO to a *private port operator*, to whom these *Guidelines* apply.

- 1.2.2 Pursuant to the *Ports Management Act*, ~~the private port operator~~ DPO prepared and submitted an *access policy* to the *Commission* for approval, which was approved on 30 June 2017. While DPO's *access policy* nominally expires on 30 June 2022, section 127 (13) of the *Ports Management Act* requires DPO to continue to comply with its *access policy* until it is replaced with a new *access policy* prepared by DPO and approved by the *Commission*.

1.3 Scope

- 1.3.1 Section 130 of the *Ports Management Act* requires a *private port operator* to make an *annual report* about any *material instance of non-compliance* with the *private port operator's access policy*. The report is due to the *Commission* by 30 September each year and is to cover the immediately preceding *financial year*.
- 1.3.2 These *Guidelines* set out requirements in relation to *annual reports* by the *private port operator* to the *Commission*.
- 1.3.3 In making these *Guidelines*, the *Commission* has sought to promote and achieve the objects of the *Ports Management Act* and the *Utilities Commission Act*. The *Commission* has also had regard to section 6(2) of the *Utilities Commission Act*, and all matters it is required to consider under the *Ports Management Act* and *Ports Management Regulations*.

1.4 Date of commencement

- 1.4.1 These *Guidelines* take effect on and from the date of publication in the *Gazette*.

1.5 **Review**Amending or adding to the Guidelines

1.5.1 A review of these *Guidelines* will be commenced by March 2024. The *Commission* may vary these *Guidelines*.

1.5.2 A *private port operator* may request the *Commission* to vary any part of these *Guidelines*.

~~4.5.4~~1.5.3 The *Commission* will consult with affected parties before varying these *Guidelines*.

1.6 Interpretation

1.6.1 In these *Guidelines*:

- (a) a reference to a clause is a reference to a clause in these *Guidelines*; and
- (b) words appearing in italics like '*this*' are defined in clause 6.

2 Subject of annual reports: Material instance of non-compliance

2.1 Non-compliance

2.1.1 The *Commission* considers an instance of non-compliance to mean an action taken, or a failure to take action, by a *private port operator* which is not consistent with the *access policy* of the *private port operator*.

2.2 Material instance

2.2.1 For an instance of non-compliance to be considered material, it needs to:

- (a) affect a significant number of *port users*; or
- (b) have an adverse financial impact on one or more *port users*; or
- (c) adversely affect access to *prescribed services* by one or more *port users*; or
- (d) significantly compromise, or be likely to significantly compromise, the *private port operator's* ability to provide one or more *prescribed services*.

3 Content of annual reports

3.1.1 The *annual report* must address all *material instances of non-compliance* that occurred in the immediately preceding *financial year*.

- 3.1.2 The *annual report* must include the following information for each *material instance of non-compliance*:
- (a) the date the non-compliance occurred, or the dates on which the non-compliance began and ended;
 - (b) the clause of the *access policy* the *private port operator* has contravened;
 - (c) a description of the conduct that constitutes the non-compliance;
 - (d) a description of the impact of the non-compliance;
 - (e) any reasons why the *private port operator* did not comply with the *access policy*;
 - (f) details of any *port users* or other parties involved in or affected by the non-compliance;
 - (g) any independent reports commissioned by the *private port operator* regarding the *material instance of non-compliance*;
 - (h) actions taken or to be taken by the *private port operator* to ensure future compliance; and
 - (i) any other information the *private port operator* considers relevant and that will be of assistance to the *Commission*.
- 3.1.3 The *Commission* may seek further information or clarification from the *private port operator* about a *material instance of non-compliance* with its *access policy*.
- 3.1.4 It is recommended that the *annual report* incorporate a list of the number of *disputes* that have arisen under the *access policy*, the date notice of the *dispute* was given and whether it relates to an application for access to standard or non-standard services.

3.2 Format and submission

- 3.2.1 In the *annual report*, the *private port operator* is required to certify that it has an adequate compliance framework in place that enables it to properly identify, record and rectify any *material instances of non-compliance*.
- 3.2.2 *Annual reports* are to be submitted to the *Commission* electronically in Microsoft Word, Adobe pdf or equivalent format. The report must include any calculations that form the basis for any statement made in the *annual report*.

4 Confidentiality

- 4.1.1 In the interest of transparency, the *Commission* may publish material contained within *annual reports* submitted by the *private port operator*.

- 4.1.2 If the *private port operator* advises the *Commission* in writing that the information could affect the competitive position of the *private port operator*, or is commercially sensitive for some other reason, the obligation to preserve confidentiality under section 26 of the *Utilities Commission Act* will apply.

5 Reporting to the Minister

- 5.1.1 Notwithstanding the obligation to preserve confidentiality under section 26 of the *Utilities Commission Act*, section 121 of the *Ports Management Act* requires the *Commission* to report to the *Minister* each year about the contents of the *annual report* of the *private port operator* regarding *material instances of non-compliance* with its *access policy*. Under section 26(2)(c) of the *Utilities Commission Act*, confidential information may be disclosed if the disclosure is required by any Act or law.
- 5.1.2 Section 121(2) of the *Ports Management Act* stipulates that the *Commission's* report to the *Minister* is tabled in Parliament within seven sitting days of its receipt.

6 Definitions

access policy	Has the same meaning as given to that term in the <i>Ports Management Act</i> .
annual report	The report made by the <i>private port operator</i> to the <i>Commission</i> in accordance with section 130 of the <i>Ports Management Act</i> .
Commission	The Utilities Commission of the Northern Territory as established by the <i>Utilities Commission Act</i> .
dispute	Means an access dispute as defined in the <i>Ports Management Regulations</i> .
<u>financial year</u>	<u>1 July to 30 June.</u>
Gazette	The Northern Territory of Australia Government Gazette.
Guidelines	Means this document made pursuant to section 128 of the <i>Ports Management Act</i> and regulation 14 of the <i>Ports Management Regulations</i> .
material instance of non-compliance	Has the same meaning as when used in section 130 of the <i>Ports Management Act</i> .
Minister	The Minister to whom the <i>Ports Management Act</i> is committed, currently the Minister for Infrastructure, Planning and Logistics.
port user	Has the same meaning as given to that term in the <i>Ports Management Act</i> .

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<i>Ports Management Act</i>	The <i>Ports Management Act</i> <u>2015</u> (NT).
Ports Management Regulations	The Ports Management Regulations <u>2015</u> (NT).
prescribed services	Means the prescribed services defined by regulation 12 of the <i>Ports Management Regulations</i> .
private port operator	Has the same meaning as given to that term in the <i>Ports Management Act</i> .
<i>Utilities Commission Act</i>	The <i>Utilities Commission Act</i> <u>2000</u> (NT).