



**2019 – 2022**

**PRESCRIBED PORT  
SERVICES**

**DRAFT PRICE  
DETERMINATION**

**PORT OF DARWIN**

**DRAFT DETERMINATION**

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**30 November 2018**

## Table of Contents

PART A: GENERAL .....	4
1. Introduction .....	4
2. Variations to the Determination .....	4
3. Definitions and interpretation .....	4
PART B: DRAFT DETERMINATION.....	5
4. Application .....	5
5. Term.....	5
6. Price Monitoring and Price Monitoring Reports .....	5
7. Published charges .....	5
8. Change to a standard charge or fixing a standard charge for the first time .....	6
9. Information to be provided about changes to charges.....	6
10. Annual reports .....	7
11. Requirement to provide further information .....	7
12. Territory law prevails .....	7
PART C: DRAFT REASONS .....	8
13. Draft statement of reasons .....	8
14. Stakeholder consultation .....	9
PART D: DEFINITIONS AND INTERPRETATION .....	11
15. Definitions .....	11
16. Interpretation .....	12

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Persons wishing to submit confidential information should:

- clearly identify the relevant sections of the submission that are confidential; and
- provide a copy of the submission suitable for publication with any confidential material removed.

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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* and section 20(1)(a) of the *Utilities Commission Act* 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 2016, 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 2019.
- (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* and all matters that it is required to have regard to or consider under regulation 16(1) of the *Ports Management Regulations* and the *Ports Management Act*.
- (f) In making a *determination*, the *Commission* must also give effect to regulation 16(2)(a) of the *Ports Management Regulations*, 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* 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* and all matters that it is required to have regard to under the *Ports Management Act* and *Ports Management Regulations*.

### 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 draft *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 2019.

### 4. Application

The *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 2019.
- (b) The *determination* expires 3 years from the date of commencement, on 15 February 2022.

### 6. Price Monitoring and Price Monitoring Reports

- (a) In accordance with the *Ports Management Act* and regulation 16(2) of the *Ports Management Regulations*, 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*, the basis upon which the *Commission* intends to monitor price levels is benchmarking against changes in the *National CPI*.
- (c) 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:

## UTILITIES COMMISSION – DRAFT PRICE DETERMINATION

- (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 be 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

## UTILITIES COMMISSION – DRAFT PRICE DETERMINATION

- (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* and Parts 2 and 5 of the *Utilities Commission Act*.

### 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: DRAFT REASONS**

**13. Draft statement of reasons**

- (a) The *Commission* is authorised to make a determination under section 132 of the *Ports Management Act* (PM Act) and section 20(1)(a) of the *Utilities Commission Act* 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) On 16 February 2016, 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 2019.
- (d) The *Commission* intends on making a new *determination*, which will commence on 16 February 2019. The *Commission* proposes the new *determination* will expire 3 years after the date of commencement. Section 132(4) of the *Ports Management Act* specifies this 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) The *Commission* has recently completed the first review of the access and pricing regime (Part 11 of the *Ports Management Act* and Part 3 of the *Ports Management Regulations*) as required and in accordance with section 123 of the *Ports Management Act*. The next review is due to be completed in 5 years. Matters considered in the review under section 123 included the ongoing need for regulatory oversight of the pricing of *prescribed services* and the form of regulatory oversight of prices.
- (f) As stipulated by the *Ports Management Regulations*, the *Commission* will continue to use price monitoring as the form of price regulation.
- (g) Section 132(2)(b) of the *Ports Management Act* requires a *determination* to be consistent with the access and pricing principles in section 133 of the *Ports Management Act*. The *Commission* has observed in its review under section 123 of the *Ports Management Act* that price monitoring does not give the *Commission* information to determine whether prices are consistent with the access and pricing principles. The *Commission's* draft conclusion for the purposes of the proposed new *determination* is that the *Commission* may nonetheless exercise its powers to make a *determination* consistent with the requirements of the *Ports Management Act* and *Ports Management Regulations*.
- (h) Regulation 16(2)(b) of the *Ports Management Regulations* requires a *determination* to specify the basis on which, or the standard against which, the *Commission* intends to monitor price levels. The current price determination for the Port of Darwin indicates the *Commission* will use benchmarking of annual price increases linked to an indexation factor as considered appropriate for industry circumstances and good regulatory practice at the time. The *Commission* has conducted research into the various types of indices that may be suitable for monitoring prices for *prescribed services* at the Port of Darwin. The



## UTILITIES COMMISSION – DRAFT PRICE DETERMINATION

*Commission* also examined the indices used around Australia in other comparable regimes.<sup>1</sup> For the new *determination*, the *Commission's* draft conclusion is that it will monitor prices against the *National CPI*. The *Commission* has considered the use of the Darwin CPI as an alternative but considers that index is likely to be too volatile in the short term.

- (i) The *Darwin Pilotage Provider* has been appointed as the pilotage services provider for the Port of Darwin under section 85 of the *Ports Management Act*. Pilotage services are a standard service under the *Access Policy*. The *Darwin Port Operator* publishes *standard charges* for pilotage services and arranges for the *Darwin Pilotage Provider* to be the party to access agreements for the provision of pilotage services, as provided for in the *Access Policy*.
- (j) Under the *Ports Management Regulations*, the *Darwin Port Operator* facilitating the provision of pilotage services at the Port of Darwin is a *prescribed service*. In the current *determination* period, the *Darwin Port Operator* has included charges for pilotage services in its reporting under the *determination*. The *Commission's* draft conclusion for the purposes of the proposed new *determination* is that the *determination* should expressly state that it extends to prices for pilotage services at the Port of Darwin. This is consistent with current practice and the *Commission* considers that referring to prices for pilotage services in the new *determination* will aid transparency without adding cost.
- (k) As indicated in the draft *determination*, the *Commission* may publish reports on prices. The *Commission's* intention is to commence publishing an annual price monitoring report for the Port of Darwin to inform *port users* and stakeholders about price changes at the Port of Darwin from year to year and over time.
- (l) The information used in making this draft *determination* comprises the *Ports Management Act*, the *Ports Management Regulations*, the *Access Policy*, information from the *Darwin Port Operator* about the appointment of the *Darwin Pilotage Provider* and the materials considered for research into the various types of indices that may be suitable for monitoring prices for *prescribed services* at the Port of Darwin.

### 14. Stakeholder consultation

- (a) In accordance with regulation 17(1) of the *Ports Management Regulations*, 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

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<sup>1</sup> The Essential Services Commission of South Australia (ESCOSA) uses the Adelaide March to March annual CPI for price monitoring for ports in South Australia. The *National CPI* is used for the Port of Melbourne pricing regime and by the Australian Competition and Consumer Commission (ACCC) for airport price monitoring. For wheat terminal price monitoring, the ACCC uses an average for CPI figures for the capital cities of Adelaide, Perth, Melbourne, Sydney and Brisbane, averaged to make a 'five city average' and based on wheat shipping years, which run from October to September.

## UTILITIES COMMISSION – DRAFT PRICE DETERMINATION

- (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 **Wednesday, 9 January 2019**.
- (d) The *Commission* will take submissions into consideration in preparing the final *determination*.
- (e) As soon as practicable after making the final *determination*, the Commission will provide a copy to the persons listed in clause 14(a).
- (f) The Commission will publish the final *determination* on its website.
- (g) In accordance with section 22(4) and (5) of the *Utilities Commission Act*, the *Commission* will publish a notice of the making of the 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**

**15. 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</i> and regulation 13 of the <i>Ports Management Regulations</i> , and approved by the Utilities Commission on 30 June 2017.
<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</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>Commission</i></b>	The Utilities Commission of the Northern Territory established by the <i>Utilities Commission Act</i> .
<b><i>Minister</i></b>	The <i>Minister</i> to whom the PM Act is committed, currently the Minister for Infrastructure, Planning and Logistics.
<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</i> or section 110 of the <i>Ports Management Act</i> .
<b><i>port user</i></b>	Has the same meaning as is given to that term in the <i>Ports Management Act</i> .
<b><i>Ports Management Act</i></b>	The <i>Ports Management Act</i> (NT).
<b><i>Ports Management Regulations</i></b>	The <i>Ports Management Regulations</i> (NT).
<b><i>prescribed services</i></b>	As defined by regulation 12 of the <i>Ports Management Regulations</i> .
<b><i>private port operator</i></b>	Has the same meaning as is given to that term in the <i>Ports Management Act</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> .

## 16. 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.