

# **PORT OF DARWIN**

# **REPORTING GUIDELINES**

*August 2021*

## Foreword

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

The revised Guidelines are published in the Northern Territory of Australia Government Gazette on 25 August 2021.

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## Version History

Version	Date published	Date of Commencement
1	28 March 2018	2 May 2018
2	25 August 2021	25 August 2021

## 1 Introduction

### 1.1 Authority

- 1.1.1 These *Guidelines* are made by the *Commission* under section 128 of the *Ports Management Act 2015* and regulation 14 of the *Ports Management Regulations 2015*.

### 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 2015* 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 2015*, 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 2015* 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 2015* 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 2015* and the *Utilities Commission Act 2000*. The *Commission* has also had regard to section 6(2) of the *Utilities Commission Act 2000*, and all matters it is required to consider under the *Ports Management Act 2015* and *Ports Management Regulations 2015*.

### 1.4 Date of commencement

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

## 1.5 Amending or adding to the Guidelines

- 1.5.1 The *Commission* may vary these *Guidelines*.
- 1.5.2 A *private port operator* may request the *Commission* to vary any part of these *Guidelines*.
- 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 2000* will apply.

## 5 Reporting to the Minister

- 5.1.1 Notwithstanding the obligation to preserve confidentiality under section 26 of the *Utilities Commission Act 2000*, section 121 of the *Ports Management Act 2015* 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 2000*, 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 2015* stipulates that the *Commission's* report to the *Minister* is tabled in Parliament within seven sitting days of its receipt.

## 6 Definitions

<b>access policy</b>	Has the same meaning as given to that term in the <i>Ports Management Act 2015</i> .
<b>annual report</b>	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 2015</i> .
<b>Commission</b>	The Utilities Commission of the Northern Territory as established by the <i>Utilities Commission Act 2000</i> .
<b>dispute</b>	Means an access dispute as defined in the <i>Ports Management Regulations 2015</i> .
<b>financial year</b>	1 July to 30 June.
<b>Gazette</b>	The Northern Territory of Australia Government Gazette.
<b>Guidelines</b>	Means this document made pursuant to section 128 of the <i>Ports Management Act 2015</i> and regulation 14 of the <i>Ports Management Regulations 2015</i> .
<b>material instance of non-compliance</b>	Has the same meaning as when used in section 130 of the <i>Ports Management Act 2015</i> .
<b>Minister</b>	The Minister to whom the <i>Ports Management Act 2015</i> is committed.

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<b>port user</b>	Has the same meaning as given to that term in the <i>Ports Management Act 2015</i> .
<b>prescribed services</b>	Means the prescribed services defined by regulation 12 of the <i>Ports Management Regulations 2015</i> .
<b>private port operator</b>	Has the same meaning as given to that term in the <i>Ports Management Act 2015</i> .