

2025 – 2028

PRESCRIBED PORT SERVICES

PRICE DETERMINATION

PORT OF DARWIN

DRAFT DETERMINATION

12 September 2024

Submissions

Submissions on this Draft Price Determination are sought by **5pm (CST) 25 October 2024** and will be made publicly available on the Utilities Commission's website.

To facilitate publication, submissions should be provided electronically by email to utilities.commission@nt.gov.au in Adobe Acrobat or Microsoft Word format.

Should submissions contain confidential information, the part of the document that contains confidential information should be clearly specified and a version of the submission suitable for publication (i.e., with any confidential information removed) should also be provided.

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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 2015* and section 20(1)(a) of the *Utilities Commission Act 2000* relating to the charges fixed by a private port operator and a private pilotage provider of a designated port in relation to the provision of prescribed services.
- (b) In 2022, the Commission made a determination relating to the charges fixed by the private port operator and private pilotage provider for providing prescribed services at the Port of Darwin, which is a designated port. The determination will expire on 15 February 2025.
- (c) 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.
- (d) In making a determination, the Commission is required to have regard to sections 6(2) and 21(2) of the *Utilities Commission Act 2000* and all matters that it is required to have regard to or consider under regulation 16(1) of the *Ports Management Regulations 2015* and the *Ports Management Act 2015*.
- (e) In making a determination, the Commission must also give effect to regulation 16(2)(a) of the *Ports Management Regulations 2015*, 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 2000* 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 2000* and all matters that it is required to have regard to under the *Ports Management Act 2015* and *Ports Management Regulations 2015*.

3. Definitions and interpretation

- (a) In this draft determination a word or phrase has the meaning given to it in clause 16 or if the word or phrase is not defined in clause 16, then it has the meaning given to it in the *Ports Management Act 2015*.
- (b) The rules of interpretation applicable to the determination are set out in clause 17.

PART B: DRAFT DETERMINATION

This Part B sets out the Commission's draft determination for the 3 year period commencing 16 February 2025.

4. Application

This determination:

- (a) applies to prices fixed by a private port operator for prescribed services provided at the Port of Darwin during the term of the determination; and
- (b) applies to prices fixed by a private pilotage provider for prescribed services provided at the Port of Darwin; and
- (c) binds a private port operator and private pilotage provider providing prescribed services at the Port of Darwin.

5. Term

- (a) The determination commences on 16 February 2025.
- (b) The determination expires 3 years from the date of commencement, on 15 February 2028.

6. Price monitoring and price monitoring reports

- (a) In accordance with the *Ports Management Act 2015* and regulation 16(2) of the Ports Management Regulations 2015, the Commission shall, during the period of this determination, monitor the price levels of prescribed services by a private port operator and a private pilotage provider.
- (b) In accordance with regulation 16(2)(b) of the Ports Management Regulations 2015, the basis upon which the Commission intends to monitor price levels is benchmarking against annual changes (the percentage change from the corresponding quarter of the previous year) in the National CPI.
- (c) Benchmarking will be undertaken so as to enhance transparency by comparing changes in prices for prescribed services to the chosen benchmark over time and providing that information to port users and other stakeholders. The National CPI will be used as the reference point when monitoring and reporting on price changes for prescribed services. The National CPI will not be used to measure the efficiency of prices for prescribed services at the Port of Darwin.
- (d) In undertaking benchmarking, the Commission may invite a private port operator, private pilotage provider and other persons the Commission reasonably considers appropriate to provide information relevant to differences between changes in prices for prescribed services compared to changes in the National CPI.

- (e) The Commission may:
 - (i) publish reports on prices charged for prescribed services by a private port operator and private pilotage provider; and
 - (ii) monitor and publish reports on matters relating to prices charged for prescribed services by a private port operator and private pilotage provider.

7. Published charges

- (a) A private port operator must, within 14 days of the commencement of this determination, publish in a prominent position on its website the following information:
 - (iii) the private port operator's standard charges for prescribed services;
 - (iv) the standard rate of other charges charged by the private port operator for, or in respect of, the use of port facilities at the Port of Darwin;
 - (v) 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) A private pilotage provider must, within 14 days of the commencement of this determination, publish in a prominent position on its website the following information:
 - (i) the private pilotage provider's standard charges for prescribed services;
 - (ii) the standard rate of other charges charged by the private pilotage provider for, or in respect of, services provided at the Port of Darwin.
- (c) A private port operator or private pilotage provider 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 a private port operator or private pilotage provider 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 a private port operator or private pilotage provider 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 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
- (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

A private port operator and private pilotage provider 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 have been charged;
- (b) the amount of revenue received 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, a private port operator or private pilotage provider 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 a private port operator or private pilotage provider to provide it with further information in accordance with its powers under Division 4 of Part 11 of the *Ports Management Act 2015* and Parts 2 and 5 of the *Utilities Commission Act 2000*.

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: STATEMENT OF REASONS

13. Introduction

- (a) The Commission is authorised to make a determination under section 132 of the *Ports Management Act 2015* and section 20(1)(a) of the *Utilities Commission Act 2000* relating to the charges fixed by a private port operator or private pilotage provider of a designated port in relation to the provision of prescribed services.
- (b) The current determination relating to the charges (2022-2025 determination) came into effect on 16 February 2022 and is due to expire on 15 February 2025. The Commission intends on making a new determination, as outlined in this draft determination, to commence on 16 February 2025.
- (c) The Commission's 2023 Review of the Port Access and Pricing Regime¹ did not recommend a change to the form of oversight of prices and the Commission is not aware of any other matters that might result in a change to the form of oversight of prices in the proposed term of the draft determination. Accordingly, as stipulated by the Ports Management Regulations 2015, the Commission will continue to use price monitoring as the form of price regulation.
- (d) The Commission notes stakeholders have previously advocated for publication of the weighted average cost of capital and introduction of an efficiency dividend (refer submissions from the Association of Mining and Exploration Companies during consultation on the current determination and the 2023 Review of the Port Access and Pricing Regime, available on the Commission's website); however, the current regulatory framework does not provide the Commission with access to relevant information or powers to implement such measures so they have not been considered in making this draft determination.
- (e) The Commission recommended in its 2023 Review of the Port Access and Pricing Regime that the maximum term for a determination be increased from 3 to 5 years. To date, there has been no change to section 132(4) of the *Ports Management Act 2015* and 3 years continues to be 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.
- (f) The draft determination at Part B is largely the same as the current determination, although terminology has been aligned with that in the *Ports Management Act 2015* and Ports Management Regulations 2015 so the draft determination refers separately, and without identification, to a private port operator and private pilotage provider. As a result, the draft determination is

¹ Utilities Commission. 2023 Port Access and Pricing Review, Final Report, November 2023 available at <https://utilicom.nt.gov.au/ports/reporting/review-of-the-ports-access-and-pricing-regime>

specific to the Port of Darwin, and applies to each private port operator or private pilotage provider providing prescribed services at the Port of Darwin.

- (g) Consistent with the current determination, the Commission proposes to continue to benchmark changes in price levels using the annual change in National CPI. This will typically be the percentage change between the March quarter National CPI in the current year and the March quarter National CPI in the previous year, as that is the data available from the Australian Bureau of Statistics at the time when the Commission typically receives advice of forthcoming changes in prices.
- (h) The Commission notes that a range of matters may influence the costs of providing prescribed services and that these may differ from matters underlying changes in National CPI. Accordingly, the Commission will take a range of matters into consideration when assessing whether price changes are consistent with the determination. For this reason, and consistent with the current determination, the draft determination provides for a private port operator or private pilotage provider to provide information relevant to differences between changes in prices for prescribed services compared to changes in the National CPI (refer clause 6(d)).

14. Information used in making the draft determination

- (a) The information used in making this draft determination comprises the *Ports Management Act 2015*, the Ports Management Regulations 2015, the Access Policy, the Commission's 2023 Review of the Port Access and Pricing Regime and matters arising during consultation on the current determination.

15. Stakeholder consultation

- (a) In accordance with regulation 17(1) of the Ports Management Regulations 2015, 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) each private port operator and private pilotage provider; and
 - (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 15(a) and any other interested parties are invited to make submissions on this draft determination by **5 pm Friday, 25 October 2024**. Submissions should be provided electronically by email to utilities.commission@nt.gov.au in Adobe Acrobat or Microsoft Word format and will be made publicly available on the Commission's website.
- (d) The Commission will take submissions into consideration in making 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 15(a) and publish the final

determination on its website. In accordance with section 22(4) and (5) of the *Utilities Commission Act 2000*, the Commission will also publish a notice of the making of the final determination in the Northern Territory Gazette and place a notice in a newspaper that circulates generally in the Northern Territory.

PART D: DEFINITIONS AND INTERPRETATION

16. Definitions

Access Policy	The access policy made by Darwin Port Operations Pty Ltd pursuant to section 127 of the <i>Ports Management Act 2015</i> and regulation 13 of the Ports Management Regulations 2015, and approved by the Commission.
Commission	The Utilities Commission of the Northern Territory established by the <i>Utilities Commission Act 2000</i> .
determination	A determination made by the Commission relating to charges fixed by a private port operator or a private pilotage provider in relation to the provision of prescribed services.
Minister	The Minister to whom the <i>Ports Management Act 2015</i> is committed.
National CPI	The consumer price index (all groups, weighted average of 8 capital cities) published by the Australian Bureau of Statistics.
negotiated charge	A charge for a prescribed service that is different to the standard charge for that prescribed service published in accordance with clause 7(a) or 7(b) of this determination, which is fixed by means of an agreement between a private port operator or private pilotage provider and a port user of a kind contemplated by regulation 18 of the Ports Management Regulations 2015 or section 110 of the <i>Ports Management Act 2015</i> .
prescribed services	As defined by regulation 12 of the Ports Management Regulations 2015.
standard charge	A charge for a prescribed service, which is published in accordance with clause 8(a) and (b) of this determination, and is not a negotiated charge.

17. 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.