

**2025 – 2028**

**PRESCRIBED PORT SERVICES**

**PRICE DETERMINATION**

**PORT OF DARWIN**

**FINAL DETERMINATION**

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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) This determination relates 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. It replaces the determination made by the Commission in 2021, which will expire on 15 February 2025.
- (c) The Commission's statement of reasons applicable to this determination is set out in Part C.
- (d) In making this determination, the Commission has considered 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) Pursuant to regulation 16(2)(a) of the *Ports Management Regulations 2015*, the determination uses 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 17 or if the word or phrase is not defined in clause 17, 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 18.

## PART B: DETERMINATION

### 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 for the provision of prescribed services at the Port of Darwin (2022-2025 determination) came into effect on 16 February 2022 and is due to expire on 15 February 2025.
- (c) On 5 September 2024, the Commission approved a draft determination, which was subsequently published on the Commission's website and a copy provided to the Minister, the private port operator and private pilotage provider at the Port of Darwin (Landbridge Darwin Port) and other stakeholders that the Commission identified as likely to be affected by the final determination.<sup>1</sup> The Appendix lists identified stakeholders and includes port users and others who have been involved in previous consultations relating to the Port of Darwin.
- (d) The Commission invited responses to the draft determination by 25 October 2024 and received no submissions. Landbridge Darwin Port acknowledged receipt, but did not lodge a submission on the draft determination.

### 14. Issues for consideration in making the determination

- (a) The Commission's 2023 Review of the Port Access and Pricing Regime<sup>2</sup> 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 determination. Accordingly, as stipulated by the *Ports Management Regulations 2015*, the Commission continues to use price monitoring as the form of price regulation.
- (b) In the draft determination, the Commission noted 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). The current regulatory framework does not, however, provide the Commission with access to relevant information or powers to implement such measures. Accordingly, they were not considered in making this determination.

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<sup>1</sup> As required under regulation 17(1) of the *Ports Management Regulations 2015*.

<sup>2</sup> 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>

- (c) In its 2023 Review of the Port Access and Pricing Regime, the Commission recommended that the maximum term for a determination be increased from 3 to 5 years; however, as there had been no change to section 132(4) of the *Ports Management Act 2015*, the Commission proposed in the draft determination to apply the maximum allowable term of 3 years to the new determination. Accordingly, the final determination is to come into effect on 16 February 2025 and expire on 15 February 2028.
- (e) The determination at Part B is the same as that proposed in the draft determination. Accordingly, in comparison to the current (2022-2025) determination, this final determination aligns with terminology in the *Ports Management Act 2015* and Ports Management Regulations 2015, referring separately, and without identification, to a private port operator and private pilotage provider. Consequently, the final determination is 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.
- (f) Consistent with the current determination, the Commission continues 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. The final determination also continues to provide, through clause 6(d), for the Commission to consider other matters that may influence costs and lead to differences between the changes in prices for prescribed services compared with changes in National CPI.

## **15. Information used in making the final determination**

- (a) The information used in making this final 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.

## **16. Stakeholder consultation**

- (a) After making this final determination, the Commission will provide a copy to the Minister, Landbridge Darwin Port and the list of stakeholders in the Appendix and publish the final determination on its website.
- (b) In accordance with section 22(4) and (5) of the *Utilities Commission Act 2000*, the Commission will publish a notice of the making of this 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

### 17. Definitions

<b>Access Policy</b>	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.
<b>Commission</b>	The Utilities Commission of the Northern Territory established by the <i>Utilities Commission Act 2000</i> .
<b>determination</b>	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.
<b>Minister</b>	The Minister to whom the <i>Ports Management Act 2015</i> is committed.
<b>National CPI</b>	The consumer price index (all groups, weighted average of 8 capital cities) published by the Australian Bureau of Statistics.
<b>negotiated charge</b>	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> .
<b>prescribed services</b>	As defined by regulation 12 of the Ports Management Regulations 2015.
<b>standard charge</b>	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.

### 18. 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.

## APPENDIX: LIST OF STAKEHOLDERS

In addition to the Minister for Logistics and Infrastructure and Landbridge Darwin Port (as the private port operator and private pilotage provider at the Port of Darwin), the following stakeholders were identified by the Commission as likely to be affected by the final determination. Stakeholders were provided with a copy of the draft determination and were invited to make a submission.

AGC Ausgroup

Arafura Resources

Argonaut Marine Group

Association of Mining and Exploration Companies

Australasian Railway Association

Australian Border Force/Department of Home Affairs (Commonwealth)

Australian Cruise Association

Australian Ilmenite Resources Pty Ltd

Australian Livestock Exporters Council

Australian Logistics Council

Australian Maritime Officers Union

Australian Petroleum Production and Exploration Association

Barge Express

Bhagwan Marine

Chamber of Commerce Northern Territory

Coastal Tug and Barge Pty Ltd

Core Lithium

Department of Defence (Commonwealth)

DMS Maritime (Serco Defence)

DOF Subsea

Duratec Australia

East Arm Logistics Precinct (Land Development Corporation Northern Territory Government)

Hall Contracting Pty Ltd

Infrastructure Australia

Infrastructure Partnerships Australia

INPEX Operations Australia

KGL

Linx Port Services Pty Ltd

Maritime Industry Australia Limited

Maritime Union of Australia (Northern Territory Branch)  
McConnell Dowell Constructors (Aust) Pty Ltd  
Meat and Livestock Australia  
Minerals Council of Australia  
Monson Offshore Pty Ltd  
National Transport Commission  
Northern Territory Business Council  
Northern Territory Cattleman's Association  
Northern Territory Department of Chief Minister and Cabinet  
Northern Territory Department of Logistics and Infrastructure  
Northern Territory Department of Treasury and Finance  
Northern Territory Livestock Export Association  
NT Port and Marine  
OM Manganese Limited  
Ports Australia  
Qube Group  
Regional Harbourmaster for the Port of Darwin  
Santos (Darwin LNG)  
Sea Swift  
Shipping Australia  
Shorelands  
Suncable  
Svitzer Australia  
Tellus Holdings  
TNG Limited  
Tourism and Transport Forum  
Tourism NT  
Verdant Minerals  
Vopak Terminal Darwin