UTILITIES COMMISSION
OF THE NORTHERN TERRITORY

2023 Review of the Port Access and Pricing Regime – Issues Paper

A paper reviewing the regulatory regime for designated ports in the Northern Territory

November 2022

Disclaimer

Enquiries

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Contents

Acronyms and abbreviations

2018 Review	2018 Ports Access and Pricing Review, conducted by the Commission in accordance with section 123 of the *Ports Management Act 2015* and completed on 15 November 2018
2023 Review	2023 Ports Access and Pricing Review, currently being undertaken by the Commission in accordance with section 123 of the *Ports Management Act 2015*
AMEC	Association of Mining and Exploration Companies
CA Act	*Commercial Arbitration (National Uniform Legislation) Act 2011*
CEO	chief executive officer
Commission	Utilities Commission of the Northern Territory
CPI	consumer price index
DPO	Darwin Port Operations Pty Ltd
LNG	liquefied natural gas
PM Act	*Ports Management Act 2015*
PM Regulations	Ports Management Regulations 2015
UC Act	*Utilities Commission Act 2000*
WACC	weighted average cost of capital

Executive summary

The *Ports Management Act 2015* (PM Act) requires the Utilities Commission (Commission) to complete a second review of the Northern Territory's port access and pricing regime by 15 November 2023 (2023 Review). The Commission completed the first review of the port access and pricing regime in November 2018 (2018 Review).

This Issues Paper represents the start of the 2023 Review. It provides information and raises issues relevant to:

- whether there is an on-going need for regulatory oversight of access to, and pricing of, prescribed services at the Port of Darwin
- whether there is a need to change the form of regulatory oversight of access and if so, how
- whether there is a need to change the form of regulatory oversight of prices and if so, how
- and whether amendments should be made to Part 11 of the PM Act or the Ports Management Regulations 2015 (PM Regulations) and, if so, the nature of those amendments.

The Commission seeks feedback from stakeholders involved in the regulated port industry and other interested parties on the matters raised in this Issues Paper. To help guide submissions, the Issues Paper poses 18 questions for consideration by respondents.

Submissions should be submitted by **5 pm Friday 6 January 2023** and provided electronically by email to utilities.commission@nt.gov.au in Adobe Acrobat or Microsoft Word format. Submissions will be made publically available on the Commission's website.

Responses to this Issues Paper will inform the Commission's Draft Report, which will be the subject of a further round of consultation. Subsequent stages and associated timeframes for the 2023 Review are presented in the table below. The Commission's Final Report is due to the Minister by 15 November 2023. The Minister is required to table the report in the Legislative Assembly within seven sitting days of receipt.

Stage	Expected timing
Issues paper released	November 2022
Public consultation	November 2022 – January 2023
Draft report released	May 2023
Public consultation	May – June 2023
Final report provided to the Minister	November 2023
Tabling of Final Report in Legislative Assembly	Within 7 sitting days of receipt
Commission publication of Final Report	Following tabling

1 | Introduction

1.1 Part 11 of the PM Act and Part 3 of the PM Regulations set out the regulatory framework (port access and pricing regime) for designated ports in the Northern Territory. The object of the port access and pricing regime is "to promote the economically efficient operation of, use of and investment in major port facilities in the Northern Territory, so as to promote effective competition in upstream and downstream markets".[1]

1.2 The port access and pricing regime applies to certain (prescribed) services at designated ports and declared private port operators and private pilotage providers for those ports. At present, the regime applies to only one port – the Port of Darwin (a description of the port is provided in Appendix B) – and the private operator of the port – Darwin Port Operations Pty Ltd (DPO). DPO's operations encompass pilotage activities undertaken by Darwin Port Pilotage Pty Ltd. DPO is part of the Landbridge Group, which is a private company based in Rizhao city in Shandong Province in China.

1.3 The Commission is the regulator for the port access and pricing regime. The Commission is an independent statutory body established by the *Utilities Commission Act 2000* (UC Act) with defined roles and functions for declared (regulated) industries in the Territory, which in addition to ports, includes the electricity supply, water supply and sewerage services industries.

Summary of the access and pricing regime

1.4 Port operations and pilotage services are generally considered to have natural monopoly characteristics with a single supplier typically serving the market due to high fixed costs, specialist expertise, geographic location or other barriers to entry. Without competition, a monopoly operator or provider is able to exercise market power, for example, through the imposition of unreasonable terms and conditions or charging excessive prices. This in turn can adversely impact upstream and downstream competitive markets including shipping, logistics and import and export markets.

1.5 The Northern Territory's port access and pricing regime is intended to protect existing and potential port users (port users) at designated ports from the exercise of market power by a private port operator or private pilotage provider. Part 11 of the PM Act, which establishes the port access and pricing regime, has four components:

- Division 1 deals with legal and administrative matters including the object and application of the Part and regulatory reporting requirements.
- Division 2 deals with access regulation including provisions for the development of an access policy and restraints on private port operators or private pilotage providers regarding conduct that prevents or hinders access to prescribed services or unfairly differentiates between port users.
- Division 3 deals with price regulation including pricing principles and empowering the Commission to make price determinations.
- Division 4 deals with the Commission's information-gathering powers and confidentiality.

1.6 Part 3 of the PM Regulations supplements Part 11 of the PM Act by defining the "prescribed services" to which Part 11 applies. Prescribed services are:

- Providing, or allowing for, access for vessels to the designated port
- providing facilities for loading or unloading vessels at the designated port
- providing berths for vessels at the designated port

[1] PM Act, section 117.

- providing or facilitating the provision of pilotage services in a pilotage area within the designated port and
- allowing entry of persons and vehicles to any land on which port facilities of the designated port are located.

1.7 Part 3 of the PM Regulations also states that the following **are not** prescribed services:

- any of the above services where they are provided under a lease granted by the private port operator
- a towage service for facilitating access to the designated port
- a bunkering service at the designated port
- a service for the provisioning of vessels (including the supply of electricity and water) at the designated port and
- a service for the removal of waste from vessels at the designated port.

1.8 Further, Part 3 of the PM Regulations:

- establishes requirements in relation to an access policy of a private port operator
- details requirements and procedures for the making of a price determination including that price monitoring must be used as the form of price regulation and
- provides for a private port operator or private pilotage operator to negotiate charges for a prescribed service.

1.9 For access regulation, the port access and pricing regime applies a negotiate/arbitrate framework. This is a low cost form of regulatory protection that improves a port user's position in commercial negotiation, with recourse to an arbitration process when a dispute arises that cannot be resolved between the parties. The PM Regulations specify the aspects of the negotiate/arbitrate framework that must be included in a private port operator's access policy. The access policy must be approved by the Commission, but only if it includes negotiation, arbitration and other requirements specified in the PM Regulations.

1.10 The form of price regulation in the port access and pricing regime is price monitoring. The Commission is empowered under section 132(1) of the PM Act to make a ports price determination under section 20(1)(a) of the UC Act. The UC Act allows the Commission to apply any form of price regulation that it considers appropriate; however, this discretion is negated in the port access and pricing regime with the regulation 16(2)(a) of the PM Regulations specifying price monitoring as the form of price regulation.

1.11 While other jurisdictions, such as South Australia[2], have sought to certify their ports regulatory regime under Part IIIA of the *Competition and Consumer Act 2010* (Cth), the Northern Territory Government has not chosen to take this path. The certification process of the National Competition Council assesses the effectiveness of a ports regulatory regime by applying relevant principles from clause 6 of the Competition Principles Agreement. While the Commission undertook an assessment of the port access and pricing regime against these principles in the 2018 Review, it does not propose to do so in the 2023 Review as the government can seek certification, if desired.

Purpose of this review

1.12 Under section 123 of the PM Act, the Commission is required to review the operation of Part 11 of the PM Act in the third year after its commencement and thereafter, every five years. The Commission conducted the initial three year review (2018 Review), providing its final report to

[2] National Competition Council, Application for certification of the South Australian Ports Access Regime (Final recommendation and decision), accessed on 10 June 2022 at https://ncc.gov.au/application/application-for-certification-of-the-south-australian-ports-access-regime/5.

the Minister in November 2018. A copy of the final report and other documentation relating to the 2018 Review is available on the Commission's website.[3]

1.13 This review (2023 Review) will be the Commission's second appraisal of the port access and pricing regime. In accordance with section 123(2) of the PM Act, the purpose of the review is to determine:

- whether there is an on-going need for regulatory oversight of access to, and pricing of, prescribed services provided by the private port operator or private pilotage provider
- whether there is a need to change the form of regulatory oversight of access and if so, how
- whether there is a need to change the form of regulatory oversight of prices and if so, how
- and whether amendments should be made to Part 11 of the PM Act or the PM Regulations and, if so, the nature of those amendments.

1.14 In undertaking the 2023 Review, the Commission is required by section 123(3) of the PM Act to consult with each private port operator and private pilotage provider (that is, DPO as both operator for the Port of Darwin and pilotage provider). However, as a matter of good regulatory practice, the Commission also undertakes public consultation to give port users, other stakeholders and interested parties the opportunity to provide input to the Review.

Purpose of this paper

1.15 This Issues Paper has been prepared for the purpose of informing and consulting with stakeholders on identified issues relating to the port access and pricing regime and is structured as follows:

- the paper first assesses each of the three matters relating to the need for regulatory oversight and the form of regulatory oversight
- for the final matter relating to potential amendments, the paper revisits the Commission's recommendations from the 2018 Review and assesses whether these remain relevant and
- finally the paper raises new issues for consideration in this review.

1.16 Where relevant, the paper poses questions for stakeholders with the intent of guiding feedback on the issues under consideration.

Submissions

1.17 All interested parties (stakeholders) are invited to make submissions on matters raised in the Issues Paper by **5pm Friday 6 January 2023**.

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

1.19 As noted above, the Issues Paper poses a series of questions, which appear like this:

> Question X Example question…

1.20 Submissions do not have to address every question. Stakeholders need only respond to questions relevant to their areas of expertise or interest. Stakeholders may also provide feedback on other matters relating to the port access and pricing regime.

1.21 The Commission encourages stakeholders to include sufficient explanatory detail in their responses to questions in the Issues Paper and any other matters.

[3] At https://utilicom.nt.gov.au/projects/projects/2018-review-of-the-port-access-and-pricing-regime.

1.22 Any questions regarding the Issues Paper or the review should be directed to the Commission by email to utilities.commission@nt.gov.au.

Confidentiality

1.23 In the interests of transparency, the Commission will make all submissions publicly available on its website, with the exclusion of confidential information. Confidential information may include:

- information that could affect the competitive position of an entity or other person
- information that is commercially sensitive for some other reason.

1.24 Submissions must clearly specify any information that a respondent considers confidential and advise the Commission why they would like the information to be treated as confidential. A version of the submission suitable for publication (that is, with any confidential information removed) should also be submitted to the Commission.

1.25 The Commission may also exercise its discretion not to publish any submission based on its content such as submissions containing material that is offensive or defamatory.

Timetable for the review

1.26 The process for the 2023 Review commences with the release of this Issues Paper. Table 1 shows the other key stages in the review process and associated timeframes.

1.27 The Commission's final report for the 2023 Review is due to the Minister by 15 November 2023. The Minister must table the report in the Legislative Assembly within seven sitting days of receipt. Once tabled, the final report will be made available on the Commission's website (https://utilicom.nt.gov.au/).

Table 1 Key stages and timeframes for the 2023 Review of the port access and pricing regime

Stage	Expected timing
Issues paper released	November 2022
Public consultation	November 2022 – January 2023
Draft report released	May 2023
Public consultation	May – June 2023
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2 | Ongoing need for regulatory oversight

2.1 The purpose of the port access and pricing regime is to prevent the potential misuse of market power in the ports industry and promote competition in upstream or downstream markets to benefit the long-term interests of consumers. This chapter provides information on the existence of market power, the potential to exercise that power and the benefit and costs of regulatory oversight. It focusses on whether there are recent or future changes that could affect the ongoing need for regulatory oversight.

Existence of market power

2.2 Substantial market power is generally held when a firm does not face effective competition from other businesses due to there being no or few close competitors in the same market, few substitutes for the services it provides and high barriers to entry for potential rivals. This contrasts with a competitive market where the attention of competing businesses will be on production costs, pricing structures and product/service quality so they can gain and retain customers. A business that has market power, however, has the ability to set and keep prices above the level that would occur in a competitive market and/or provide a lower level of output or service than might otherwise be delivered in a competitive market.

2.3 In the 2018 Review, the Commission formed the view that DPO has substantial market power and potential to exercise that power based on:

- limited competition for the provision of most prescribed services, for example, there are no other nearby ports of equivalent size or services.
- a lack of substitutes for most prescribed services, for example, few avenues that are economically viable for exporting or importing goods particularly for port users based in the Top End of the Northern Territory (such as shipping by road or rail to interstate ports), and port users locked into using DPO's services and infrastructure due to the location of their business (such as on-shore liquefied natural gas [LNG] processing facilities) or those servicing other port users (such as towage and tug operators).
- the existence of high barriers to entry for potential competitors for the provision of prescribed services at the required scale (for example, high fixed costs for infrastructure and limited options for the location of a deep water port).
- limited countervailing market power, that is, there are few port users who are in a strong position to counteract DPO's market power with viable alternative options, for example, being able to switch to an alternative provider or vertically integrate and provide the relevant service themselves.
- the balancing of commercial incentives, that is, while there may be a commercial objective to increase use and patronage of and throughput at the port, DPO still has the ability (if it chose to exercise it) to increase prices and profit without increasing port throughput or improving the quality of services as there are few alternatives available to port users.
- limitations on port users relying on additional constraints on DPO through the port lease[4] (instead of the access and pricing regime) as these do not address the key risks associated with the exercise of market power although the DPO is prevented from becoming an integrated operator (for example, by providing stevedoring or road, rail or marine transport services) without the consent of the Northern Territory Government.

2.4 These conclusions and the Commission's reasoning are discussed in more detail in chapter 5 of the Commission's final report for the 2018 Review and are not reproduced in this paper.[5] The Commission notes that although the 2018 Review found that DPO had market power, the

[4] The lease documents are available from the Northern Territory Lands Titles Office (lease numbers 859663 and 859664).

[5] Available at https://utilicom.nt.gov.au/__data/assets/pdf_file/0012/767883/2018-Ports-Access-and-Pricing-Review-Final-Report.pdf

Commission did not find evidence that DPO had exercised that market power to the detriment of port users.

Changes in the ports market

2.5 Objection to the lease of the Port of Darwin to a Chinese company has continued to be aired in the media with numerous articles appearing in recent years. A review by the Department of Defence in 2021 reported there were no security grounds to recommend the Commonwealth overturn the 99-year lease of the Port of Darwin, but this has not quelled the debate and the port remains subject to continued national scrutiny. These issues are not, however, relevant to the Commission's review as they do not relate to the extent or exercise of DPO's market power or the need for an access and pricing regulatory regime.

2.6 The Commission notes that the Commonwealth Government's 2022-23 Budget in May 2022 announced $1.5 billion to build "new port infrastructure such as a wharf, an offloading facility and dredging of the shipping channel".[6] The port infrastructure would be part of a proposed industrial and low emission energy hub at Darwin's Middle Arm. The Commonwealth Government's October 2022-23 Budget reconfirmed its investment in the Middle Arm Sustainable Development Precinct, which includes "common use marine infrastructure".[7]

2.7 At present, there is little detail on the proposed infrastructure, the timeframes for its development or the services to be provided. While the proposed infrastructure may increase competition in the ports sector, the Commission notes that major projects typically have a lengthy planning, procurement and construction phase. This means any market impact from the proposed infrastructure is not likely to be felt in the near term and may be best considered in the next (2028) review.

2.8 In the 2018 Review, the Commission noted that throughput at the Port of Darwin was not at previous levels and there appeared to be significant spare capacity. This is still the case, as shown in Figure 1, with total trade (exports and imports) affected by a COVID-19 induced downturn in 2019-20. While there was some recovery in throughput in 2020-21, total trade declined again in 2021-22 to about 1.8 million tonnes. This is less than half the level of total trade in 2013-14 of 4.6 million tonnes.

2.9 The volume of trade in 2013-14 was boosted by the construction phase of the Ichthys LNG project. The annual report of the then port operator (Darwin Port Corporation) indicated that a total of 3,178 trading vessels visited the port; however, utilisation of East Arm Wharf was only at 43%.[8] While DPO has not published a current utilisation rate for the wharf, at a total of 1,510 trading vessels in 2021-22[9], it is likely there remains substantial spare capacity.

2.10 The reduction in trade volumes and resulting spare capacity means the incentives for DPO to grow demand should be greater. Further, it is likely to reduce DPO's ability and incentive to exercise market power.

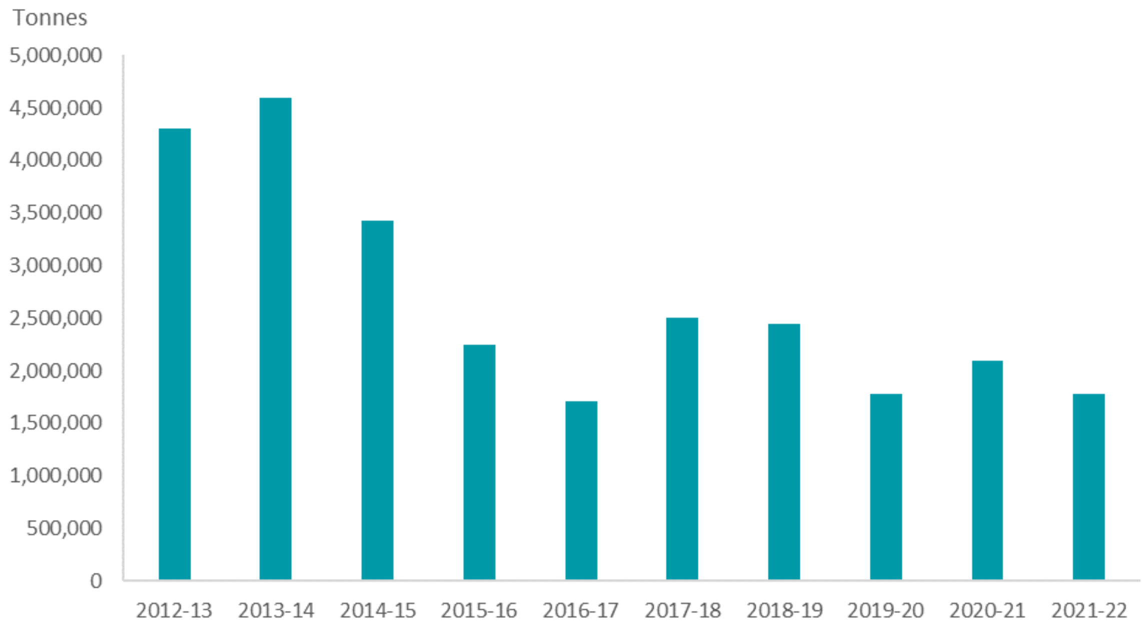
[6] The Hon Barnaby Joyce MP, Media Releases, *2022-23 Budget delivers $7.1 billion to turbocharge our regions*. Accessed 17 May 2022 at https://minister.infrastructure.gov.au/joyce/media-release/2022-23-budget-delivers-71-billion-turbocharge-our-regions.

[7] Commonwealth Government Budget October 2022-23. Budget measures, Budget Paper no. 2. Accessed 2 November 2022 at https://budget.gov.au/2022-23-october/content/bp2/download/bp2_2022-23.pdf.

[8] Darwin Port Corporation. Annual Report 2013-14, page 45.

[9] Landbridge Darwin Port. Trade & Port Statistics website, vessel visits, accessed 18 October 2022 at https://www.darwinport.com.au/trade/vessel-visits.

Figure 1 Port of Darwin. total trade, 2012-13 to 2021-22



Source: Landbridge Darwin Port, Trade & Port Statistics website, total trade, accessed on 18 October 2022 at https://www.darwinport.com.au/trade/total-trade

2.11 Cruise ships typically berth at Fort Hill Wharf and there has been a substantial downturn in cruise ship visits due to restrictions associated with the COVID-19 pandemic. Only nine cruise ships visited in 2020-21 with this increasing to 36 vessels in 2021-22. Although it is expected that there will be a post-pandemic recovery, long term trends show cruise ship visits peaking in 2016-17 at 75 vessels, carrying a total of 95,252 passengers and crew. [10] In May 2022, the Northern Territory Government released its Cruise Tourism Strategy 2022-2025, which seeks to facilitate recovery of the sector and identify opportunities to grow cruise tourism through the medium and long term.[11]

2.12 There has been a substantial increase in LNG vessel visits, up from 60 in 2017-18 to 166 in 2021-22 as the Ichthys LNG project transitioned to the production phase.[12,13] Consistent with the increase in LNG vessels, gross registered tonnage through the Port of Darwin has risen from 15.9 million tonnes in 2017-18 to 29.9 million tonnes in 2021-22.

2.13 The Northern Territory Government's 2022-23 Budget indicates a number of mining projects in development or pending final approvals.[14] If these result in a substantial increase in port activity and throughput, this will impact on port access and capacity for existing port users. Equally, some previously proposed projects such as Project Sea Dragon (a prawn farm) and the luxury hotel development at the Darwin Waterfront are no longer progressing as originally planned.[15,16]

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[10] Landbridge Darwin Port. Trade & Port Statistics website, cruise ships, accessed 18 October 2022 at https://www.darwinport.com.au/trade/cruise-ships.

[11] Accessed on 25 May 2022 at https://www.tourismnt.com.au/system/files/uploads/files/2022/cruise-strategy-2022-2025.pdf.

[12] Landbridge Darwin Port. *A Year in Review 2018-19*, accessed 17 May 2022 at https://www.darwinport.com.au/about/publications

[13] Landbridge Darwin Port. Trade & Port Statistics website, vessel visits, accessed 18 October 2022 at https://www.darwinport.com.au/trade/vessel-visits.

[14] Northern Territory Government. 2022-23 Budget, Industry Outlook, Map 1. Accessed on 20 May 2022 at https://budget.nt.gov.au/budget-papers/what-is-happening-in-the-territory-economy.

[15] Seafarms Group Limited. Project Sea Dragon Review - Investor Briefing Presentation accessed on 20 May 2022 at https://seafarms.com.au/wp-content/uploads/2022/04/Project-Sea-Dragon-Review-Investor-Briefing-Presentation-March-31-2022-1.pdf.

[16] Landbridge Darwin Luxury Hotel website accessed on 20 May 2022 https://landbridgedarwinhotel.com.au/.

Question 1: What changes (recent or future) in the ports sector may substantially affect competition or alter the market power of DPO?

Question 2: What prescribed services (or services that are currently not prescribed) may be affected by these changes and how would it potentially change the need for regulatory oversight?

Compliance and conduct of DPO

2.14 DPO has met all requirements under the port access and pricing regime since the regime's commencement in 2015. These requirements include:

- annual reporting to the Commission on any instances of material non-compliance with DPO's access policy by 30 September each year[17]
- annual reporting on charges and revenue by 30 September each year[18]
- providing notice of changes to or new standard charges to the Commission at least 20 days before the change is to be made and publishing a notice of the proposed change on DPO's website at least 10 days before it is to apply[19]
- consultation with port users on DPO's draft 2022 access policy[20]
- submission of a new draft access policy to the Commission for approval prior to expiry of DPO's existing access policy.[21]

2.15 DPO has reported no material instances of non-compliance with its access policy.

2.16 In terms of pricing, DPO can increase existing prices and establish new pricing structures without seeking Commission approval. It must, however, meet notification timelines, as set out in the Commission's Prescribed Port Services Price Determination Port of Darwin.[22] As noted above, DPO has provided advice within relevant timeframes.

2.17 The Commission notes that while there may be some large port users who could have countervailing market power, this is unlikely to be the case for smaller port users. While there is the commercial incentive to price competitively to attract business given the port is operating at below full capacity, this in itself does not prevent DPO from engaging in monopolistic or discriminatory pricing behaviour, if it so chose.

Question 3: Do current reporting requirements give sufficient reassurance and visibility of compliance with the access and pricing regime and visibility? If not, how could they be enhanced?

Question 4: What changes (recent or future) in the ports sector could mitigate DPO's ability to exercise market power in setting prices for prescribed services?

[17] As required by section 130 of the PM Act

[18] As required under clause 10 of the Commission's 2022-2025 Prescribed Port Services Price Determination Port of Darwin available at https://utilicom.nt.gov.au/ports/price-regulation/price-determination

[19] As required by clause 8 of the Commission's 2022-2025 Prescribed Port Services Price Determination Port of Darwin

[20] As required by section 127(2A) of the PM Act

[21] As required by section 127(1)(c) of the PM Act

[22] Available at https://utilicom.nt.gov.au/publications

Costs and benefits of regulation

2.18 The benefits of access and price regulation are likely to be highest when there is a monopoly service provider as any excess in pricing and profits will be paid for by users and ultimately passed on to consumers. A monopoly provider's access or pricing behaviour may also limit investment and innovation in upstream or downstream industries, thereby impacting on the growth and productivity of the Northern Territory's economy. For example, a company may not invest in new equipment to reduce costs or increase output if the benefits of the investment could be captured by the monopoly provider increasing its charges.[23]

2.19 While an effective regulatory regime can inhibit the exercise of market power, it imposes administrative and compliance costs on the regulated entity as well as costs to the regulator and government in giving effect to the regulatory regime. These are offset by benefits such as more certainty and protections for port users and more transparent information on prices, market conditions and terms and conditions of access.

2.20 The port access and pricing regime is a 'light-handed' approach to regulation. This does not imply non-compliance will be accepted or the regime not enforced; rather, it means strategies for regulatory oversight aim to achieve the highest levels of compliance while keeping costs as low as practical. For example, it allows DPO the freedom to make price, quality and investment decisions without approval from the Commission or Northern Territory Government, but requires independent approval of an access policy, imposes reporting requirements in relation to pricing and compliance and provides users with access to a negotiation and arbitration regime. While a stronger form of regulation may offer more benefits to port users, this would substantially increase the cost of administration and compliance with these passed on to port users and taxpayers.

> Question 5: What major changes (recent or future) in the ports sector may alter the balance between the benefits and costs of the port access and pricing regime?

[23] R Sims. *How did the light handed regulation of monopolies become no regulation?* Speech at Gilbert + Tobin Regulated Infrastructure Policy Workshop, 29 October 2015. Accessed on 24 May 2022 at https://www.accc.gov.au/speech/how-did-the-light-handed-regulation-of-monopolies-become-no-regulation

3 | Form of regulatory oversight - access

3.1 As discussed in Chapter 1, the port access and pricing regime adopts a negotiate/arbitrate model. The strength of this model is that it allows commercial negotiations to occur and avoids the need for the Commission to set regulated access terms and conditions. Instead, the negotiate/arbitrate model seeks to provide port users with greater leverage in dealing with a monopoly provider. This is achieved by requiring the private port operator, through its access policy, to state the process and a preferred form for making an access request, negotiate in good faith, provide port users with certain information and have a process for resolving access disputes including referral to independent arbitration when the parties cannot resolve matters.

3.2 In the 2018 Review, the Commission identified some omissions and weaknesses in the ports negotiate/arbitrate model. These will be re-examined in Chapter 5. This chapter looks at levels of compliance with the current access regime, the sufficiency of information available for port users to negotiate effectively with the private port operator and the effectiveness of dispute resolution processes as potential drivers of change in the form of access regulation.

Compliance with the access policy

3.3 The Commission is reliant on self-reporting by DPO of non-compliance with its access policy (under section 130 of the PM Act), possibly supplemented by reports or complaints by port users. To date, DPO has reported no material instances of non-compliance with its access policy and the Commission has not received any complaints or advice from other sources to suggest otherwise. Minor non-compliance is not required to be reported nor has the Commission been advised of any minor breaches through other sources.

3.4 The Commission notes there is no specific provision in the PM Act or PM Regulations to allow another entity such as a port user to report a material breach. Equally, there is no provision preventing such a report. The Commission has general powers under section 6 of the UC Act including to investigate and help resolve complaints relating to the conduct or operations of licensed entities under relevant industry regulation Acts. Although there is no licensing arrangement under the PM Act, section 119(4) provides for a private port operator or private pilotage operator to be taken to be a licenced entity for the purpose of the UC Act so those provisions will apply to complaints related to DPO.

3.5 The Commission notes that neither the PM Act nor PM Regulations provide a definition or guidance on what constitutes a 'material instance of non-compliance'. Instead, a 'material instance of non-compliance' remains open to interpretation, although the Commission provides guidance on what it considers to be 'non-compliance' and 'material' through its Port of Darwin Reporting Guidelines.

3.6 The Commission is required to make an annual report to the Minister, by 1 December each year, on any material instances of non-compliance. The Minister must table the Commission's report within seven sitting days, and once tabled, the report is also published on the Commission's website. As a result, any non-compliance would be publically reported; however, beyond this, there is no specific penalty for non-compliance by DPO. Further, there is no penalty for failing to report a material instance of non-compliance.

Question 6: How effective is the current access and pricing regime at ensuring DPO complies with its access policy and reports appropriately to the Commission if there is a material breach? If not effective, what changes are required?

Question 7: What uncertainty and consequences arise, if any, from the absence of a legislative definition of 'materiality' and 'non-compliance'?

Question 8: Are there any barriers faced by port users in notifying the Commission of instances of non-compliance? If yes, what are they?

Question 9: Are stakeholders aware of any material instances of non-compliance by DPO with its access policy? If yes, what are they?

Sufficiency of information for port users

3.7 During the negotiation and decision-making process, port users need to have access to information to inform discussions and understand whether the terms offered by the private port operator are reasonable. To facilitate this and reduce search and other costs for port users, the PM Regulations require the private port operator's access policy include a number of commitments and undertakings aimed at improving transparency and addressing information imbalances. These include:

- a commitment to give (upon request) a port user information about the availability of, and the terms and conditions of access to, a prescribed service
- setting out the process for making an access request including information on fees and the information required for an access request (as well as what information cannot be required)
- specifying a preferred form of access request, but allowing an applicant to use an alternative written form provided it contains the required information
- providing the terms on which access will be provided
- setting out the approach and factors considered in scheduling of vessels accessing the port
- providing information on how the private port operator will determine access when demand exceeds capacity (priority or queuing principles).

Question 10: Are there any information barriers that impede successful negotiation of access arrangements between port users and the private port operator? If so, what information would be needed to address the imbalance?

Effectiveness of dispute resolution mechanisms

3.8 The recourse to independent binding arbitration needs to be a realistic and credible threat capable of constraining the market power of a private port operator and encouraging the parties to negotitate in good faith. Equally, if there are weaknesses in the model, it may allow the private port operator to refuse to negotiate reasonable terms and proceed through a lengthy dispute resolution process as a means of delaying the provision of access on reasonable terms and conditions. In this case, access seekers would face increased uncertainty, risk and costs.

3.9 Regulation 13(f) of the PM Regulations requires an access policy to set out a process for the resolution of access disputes. It provides for the process to include:

- for a port user to give written notice of a dispute within a specified period
- the private port operator to commit to undertake genuine and good faith negotiations with a view to resolving the dispute as quickly as possible

- referral to mediation or conciliation to resolve the dispute
- referal to arbitration when mediation or conciliation is not successful
- the method by which an arbitrator will be appointed and costs apportioned.

3.10 Regulation 13(f) also requires the access policy to set out the powers and duties of the arbitrator, matters which the arbitrator must take into account and disclosure limitations relating to arbitration outcomes. The access policy must include an obligation on the private port operator to provide a copy of the arbitrator's decision to the Commission. The access policy must also provide for the decision of the arbitrator to be treated as an award under the *Commercial Arbitration (National Uniform Leglisation) Act 2011* (CA Act), making the decision binding on the private port operator and the port user.

3.11 The requirement to provide a copy of the arbitrator's decision to the Commission was added to Regulation 13(f) in July 2020 and subsequently included by DPO in its new access policy, which came into effect in April 2022. To date, the Commission has not received any arbitrator decisions.

3.12 Beyond the requirement to provide a copy of an arbitrator's decision, there are no reporting requirements that give the Commission visibility on negotiations that have gone to either mediation/conciliation or arbitration. This means there is no information on disagreements between DPO and port users and whether the regime's dispute resolution provisions are facilitating negotiations or resolution where disputes do arise.

Question 11: Has the negotiate/arbitrate framework proven successful and timely in resolving access disputes? Please provide evidence or examples in support of your response.

Question 12: What variations could be made to the negotiate/arbitrate model to better address access disputes?

4 | Form of regulatory oversight - pricing

4.1 The port price regulation framework is implemented through section 132 of the PM Act, which authorises the Commission to make a price determination at least every three years, and regulation 16 of the PM Regulations, which specifies the price determination must use price monitoring as the form of regulation. Price monitoring means there is no ability for the Commission to apply incentives to reduce costs or improve productivity.

4.2 Regulation 16 also requires that the price determination specifies the basis or standard that the Commission will use to monitor price levels. The Commission monitors the change in DPO's prices for prescribed services at the Port of Darwin using the annual change in the national consumer price index (CPI) for the benchmark.[24]

4.3 The content of the price determination is further prescribed, requiring it to contain obligations on private port operators and private pilotage providers to:

- notify the Commission of changes in standard charges for prescribed services including providing reasoning for the change and in the case of new charges, further explanatory information
- publish standard charges and changes in those charges and
- annual reporting which may include the requirement to provide information on any fixed charge or other agreements[25] negotiated during the reporting year.

4.4 This chapter begins with observations about application of the access and pricing principles in section 133 of the PM Act to pricing by DPO. The chapter then summarises information obtained through the Commission's monitoring of DPO's prices and revenue. Finally, the chapter discusses options for more prescriptive forms of price regulation that have been raised by stakeholders.

Access and pricing principles

4.5 The access and pricing principles in section 133 of the PM Act provide for the prices for prescribed services to be set to generate expected revenue at least sufficient to meet the efficient costs of providing access and to include a return on investment commensurate with the regulatory and commercial risks involved. The principles also state price structures should allow multi-part pricing and price discrimination when it aids efficiency and the access pricing regime should provide incentives to reduce costs or otherwise improve productivity.

4.6 For simplicity, the Commission takes the position that by specifying price monitoring as the form of price regulation, the Northern Territory Government was satisfied that, at the commencement of the port access and pricing regime, pricing for prescribed services at the Port of Darwin was consistent with the access and pricing principles.

4.7 Further, the following insights regarding DPO's pricing were gained during the 2018 Review:

- in advance of the lease transaction with Landbridge, the Northern Territory Government and the Darwin Port Corporation undertook a detailed pricing review with prices based on an efficient capital structure (which establishes a value for the regulatory asset base at that time), an appropriate weighted average cost of capital and demand assumptions reflective of known and anticipated through-put.
- the port lease requires Landbridge to at all times use reasonable endeavours to contribute to the ongoing improvement of productivity and efficiency at the Port of Darwin and port related supply chains.

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[24] Refer the Commission's 2022-25 Prescribed Port Service Price Determination Port of Darwin, clause 6. Available at https://utilicom.nt.gov.au/ports/price-regulation/price-determination.

[25] As allowed for under section 110 of the PM Act and regulation 18 of the PM Regulations

- the Commission engaged GHD Advisory to conduct a price benchmarking study comparing the prices charged at the Port of Darwin with those for comparable interstate ports. The study found that in 2017, total port call costs by cargo sector at the Port of Darwin were not the most expensive among the comparator ports except for motor vehicle imports and cruise ship visits (in part due to relatively high pilotage costs for large vessels). Further, the relative position of total port call costs for the Port of Darwin had improved over the period from 2014 to 2017 due to a lower rate of increase in port charges compared with other comparator ports.[26]

4.8 The Commission cautions that this does not mean that prices at the Port of Darwin are efficient; however, an efficiency review of DPO's prices is beyond the Commission's powers. Further, it would require strong evidence that DPO is acting in a manner inconsistent with the access and pricing principles to warrant such an undertaking, which would be resource intensive and costly. The Commission does not propose to undertake a full price benchmarking study in this review, noting there is now more information on DPO's pricing patterns and these can be compared to price increases at other ports.

Price changes

4.9 Each year since 2019, the Commission has published an annual price monitoring report[27], which draws on information provided by DPO in its annual reports prices for and revenue earned from the provision of prescribed services. The following paragraphs provide key information drawn from these reports.

4.10 Table 2 compares the annual change in DPO's prices compared with the Commission's nominated benchmark in the years following privatisation of the Port of Darwin in 2015-16. For five out of the seven years in the assessment period, DPO's price increases were the same or less than CPI. It is noted, however, that caution is needed in assessing difference over the period from 2019 to 2022 due to the economic impact of the COVID-19 pandemic on national CPI.

Table 2 Change in DPO's prices for prescribed services and national CPI, 2016-17 to 2022-23

Year	DPO price increase	National CPI increase	Difference
	%	%	ppts[1]
2016-17	Unchanged	1.3	-1.3
2017-18	1.1	2.1	-1.0
2018-19	1.9	1.9	0.0
2019-20	2.0	1.3	0.7
2020-21	1.6	2.2	-0.6
2021-22	2.0	1.1	0.9
2022-23	5.0	5.1	-0.1

[1] ppts – percentage points

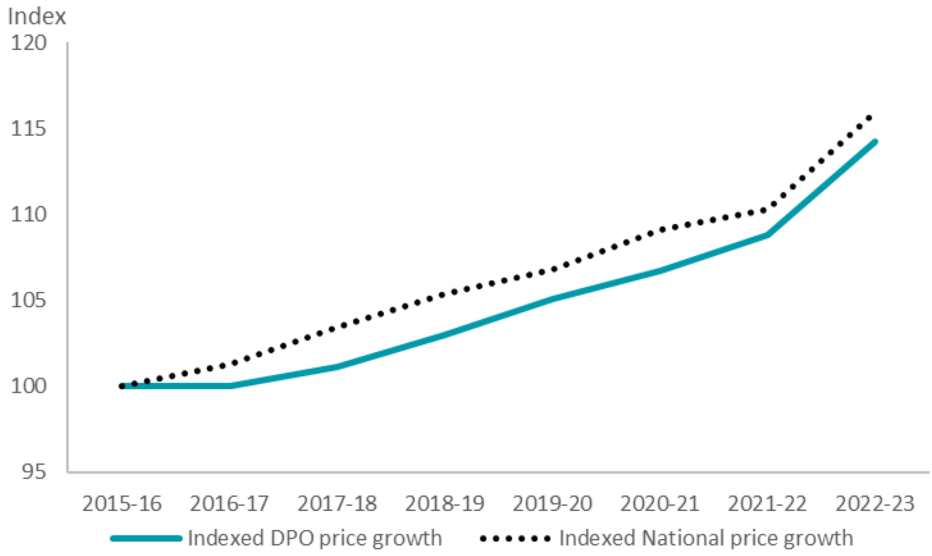
4.11 Apart from the absence of a price increase in 2016-17, DPO's price increases have generally been within a similar band as CPI (1.1 to 2.2%) except in 2022-23 when inflationary pressures have risen to around 5%. Between 2016-17 and 2022-23, DPO's prices increased by 14.3% compared with a 15.9% increase in national CPI resulting in DPO's prices following a similar

[26] The 2017 Darwin Port Price Benchmarking Study completed by GHD Advisory is at Appendix B of the Issues Paper for the 2018 Review (available at https://utilicom.nt.gov.au/__data/assets/pdf_file/0008/742436/UC-IP-PR-22FEB2018.pdf).

[27] Available at https://utilicom.nt.gov.au/ports/price-regulation/price-monitoring

trajectory as CPI, but from a lower base due to the absence of a change in prices between 2015-16 and 2016-17 (**Figure 2**).

Figure 2 Indexed growth in DPO prices compared with national price growth



4.12 In setting its prices, DPO has advised that increases are calculated after a review of its operating costs, taking into account the increase in labour costs (in accordance with its enterprise agreement[28]) as well as applying the national CPI to other costs on a weighted average basis.

Price movements at interstate ports

4.13 **Table 3** shows that the increase in prices at the Port of Darwin falls within the range of price increases at other interstate ports. This suggests that if a benchmarking exercise were to be conducted, the results would be largely similar. That is, total port call costs at the Port of Darwin would not be the most expensive among comparator ports.

Table 3 Price increases at Port of Darwin and interstate ports

Port	Price increase 2016-17 to 2022-23
	%
Port of Darwin	14.3
Flinders Port (South Australia)	16.7 – 29.3
Fremantle Port (Western Australia)	13.2 – 17.1
Townsville Port (Queensland)	13.0
Port of Melbourne (Victoria)	Limited to CPI – 14.5

Source: Commission staff calculations based on published tariffs

4.14 The Commission cautions that while DPO's price changes may be consistent with CPI and price movements at other ports, this does not mean that DPO's prices are efficient. A monopoly provider has the power to pass on cost increases rather than seek to minimise them as a

[28] Fair Work Commission. Darwin Port Operations Enterprise Agreement 2018. Accessed on 24 May 2022 at https://www.fwc.gov.au/documents/documents/agreements/fwa/ae502363.pdf.

business operating in a competitive market is incentivised to do. Further, while it is necessary to forecast future cost movements (for example, DPO's application of national CPI to other costs), this is not reflective of actual cost increases (which may be higher or lower) and without differences between forecast and actual cost increases being identified and significant variations corrected for, this can lead to less efficient pricing over time.

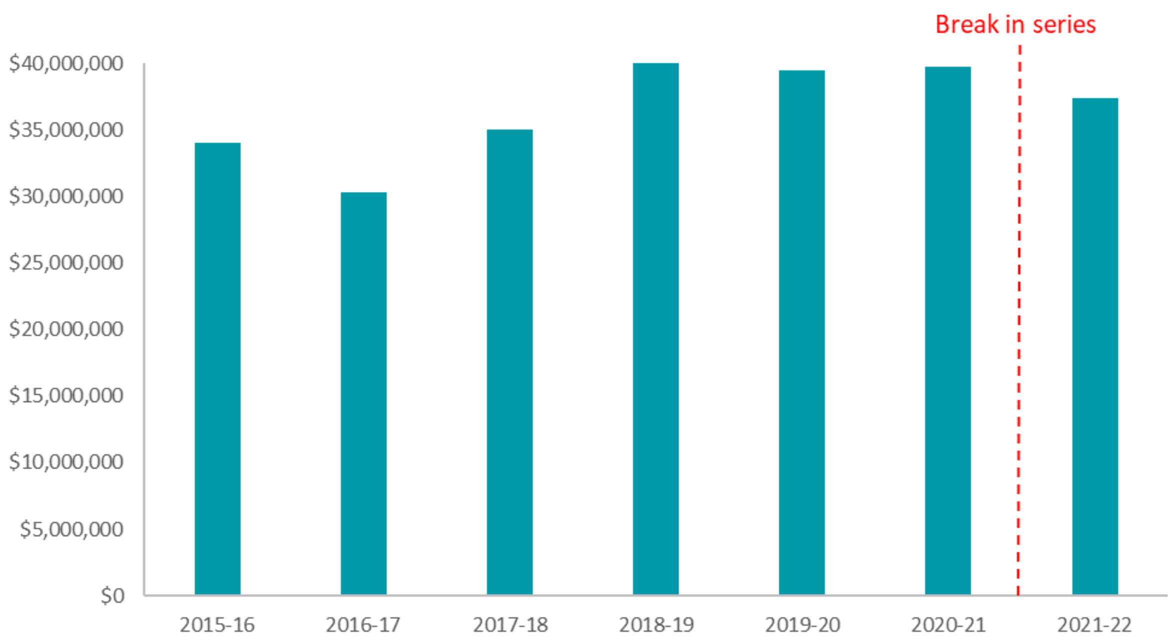
Negotiated agreements

4.15 DPO negotiates agreements for 'non-standard' services which include prescribed services where non-standard terms and conditions and pricing are not applicable and non-prescribed services. The Commission notes that the number of negotiated agreements varies from year to year and there are no discernible trends in their number or the type of agreements to suggest that deficiencies in DPO's standard terms and conditions or published tariffs for standard services necessitate a need for port users to negotiate agreements with DPO. Rather, the agreements negotiated with DPO appear specific to the requirements of relevant port users.

Revenue

4.16 Figure 3 shows total revenue reported by DPO over the period from 2015-16 to 2021-22. Total revenue for prescribed services was $37.4 million in 2021-22. While this appears lower than revenue in the three preceding years, the data is not directly comparable. In 2021-22, DPO reclassified and removed revenue generated from the sublease of port land as this is not a prescribed service. Revenue in prior years includes revenue from this source (where received).

Figure 3 Total revenue for prescribed services, 2015-16 to 2021-22



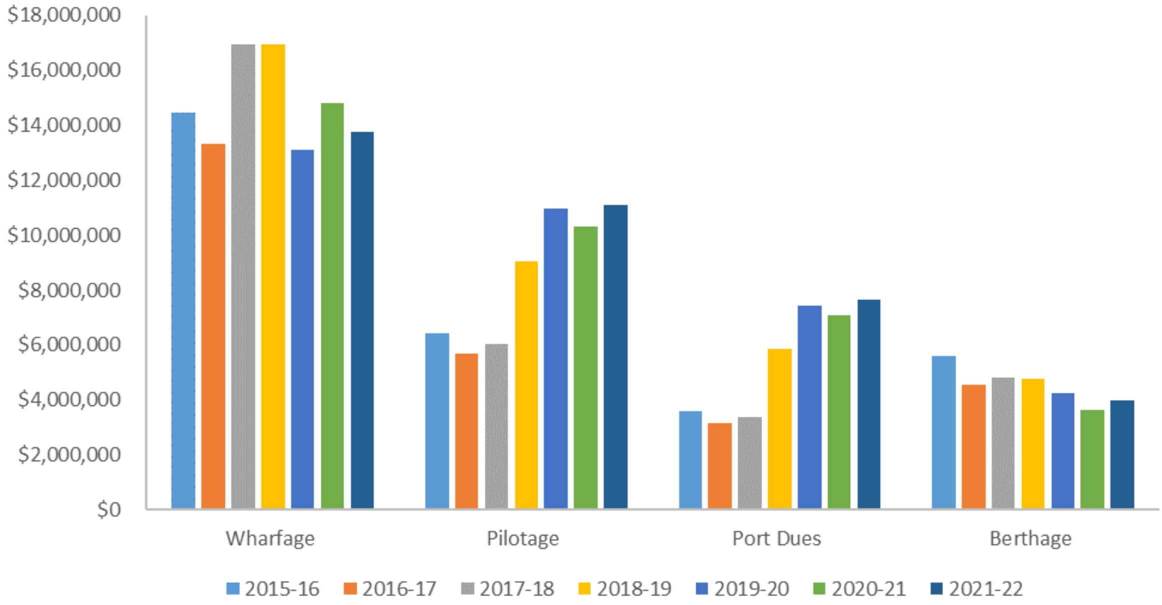
Note: Revenue in 2021-22 is not directly comparable with prior years due to removal of revenue from the sublease of port land, which is not a prescribed service.

4.17 Figure 4 shows trends in revenue from major prescribed service sources: wharfage, pilotage, port dues and berthage. Wharfage remains the leading source of revenue generating $13.8 million in 2021-22; however consistent with the increase in LNG vessels and gross registered tonnage (as discussed in Chapter 2), there has been a shift in DPO's key sources of revenue with pilotage and port dues[29] now making a greater contribution to total revenue. Revenue relating to access

[29] Port dues are a fee for the provision and maintenance of shipping channels, harbor control services and navigational aids.

to port land and the occupation and use of port land (not shown in Figure 4) is minor at less than $1 million in 2021-22.

Figure 4 Revenue by prescribed service, 2015-16 to 2021-22



4.18 Information on costs is not provided (or required under price monitoring); however, the Commission notes DPO published information on its financial performance in its initial Year in Review publications (reports for 2017-18 and 2018-19).[30] DPO's 2017-18 report showed that earnings before interest, tax, depreciation and amortisation was $10.3 million in 2016-17 and increased to $21.5 million in 2017-18. Net profit after tax was a loss of $31.0 million in 2016-17, which reduced to a loss of $19.3 million in 2017-18. DPO's 2018-19 report advised that earnings before interest, tax, depreciation and amortisation in 2018-19 had risen to $25.2 million, but net profit after tax was not provided. DPO's more recent Year in Review publications (2019-20 and 2020-21) do not provide any financial information.

4.19 As in the 2018 Review, the Commission has requested financial statements from DPO to inform its view on the need for change in the form of price regulation. The Commission notes that DPO does not keep separate accounts for prescribed services and non-prescribed services and while the Commission recommended amendments to the PM Act and PM Regulations to require a private port operator to maintain separate financial accounts, this has not been effected (this issue is discussed in the next chapter). This means the Commission will only be able to draw conclusions based on the whole of DPO's operations rather solely in relation to prescribed services.

Other forms of price regulation

4.20 The Association of Mining and Exploration Companies (AMEC) has raised concerns to the Commission on the transparency and efficiency of prices at the Port of Darwin in the 2018 Review and again as part of the Commission's consultation on the 2022-25 Prescribed Port Services Price Determination Port of Darwin and DPO's draft access policy 2022.[31] The AMEC represents mineral explorers, emerging miners, producers and other businesses, with 34 member companies actively working in the Northern Territory in 2022. The AMEC advises

[30] Available at https://www.darwinport.com.au/about/publications.

[31] The AMEC's submissions are published on the webpages for these projects available at https://utilicom.nt.gov.au/projects

that as mining companies move to the production and export stage, access and pricing for mineral exports is critical.

4.21 The AMEC suggests that the Commission needs greater line of sight of DPO's financial statements, in particular, it recommends the weighted average cost of capital (WACC) be documented in the Commission's annual price monitoring reports. The AMEC considers the WACC can assist in identifying whether excessive pricing is occurring.

4.22 The AMEC has also advocated for the introduction of an efficiency dividend model. An efficiency dividend is an annual funding reduction used by governments including the Northern Territory Government[32], to reduce agency budgets in anticipation of efficiencies being found. According to the Commonwealth Department of Finance, an efficiency dividend provides a financial incentive to continually seek new or more efficient ways of undertaking ongoing government business and demonstrates public service efficiencies resulting from improvements in management and administrative practices.[33] The AMEC considers the efficiency dividend to be a simple, predictable and administratively effective tool, which would incentivise DPO to pursue more efficient operations.

4.23 The Commission notes that the form of price regulation would need to be changed by the Northern Territory Government in order to implement the AMEC's suggestions. The Commission invites comments on the benefits and costs of the AMEC's proposals.

Question 13: How effective is price monitoring as a means of ascertaining whether DPO's pricing practices comply with the access and pricing principles?

Question 14: Is there additional evidence or information (e.g., the WACC) that should be available to the Commission to enable evaluation of whether the form of price monitoring needs to change? What would be the benefits and costs of requiring such information?

Question 15: What would be the benefits and costs of applying an efficiency dividend or other tools to incentivise DPO to undertake efficient investments and operation of prescribed services?

[32] Department of Treasury and Finance. Program review: root and branch review. Accessed on 31 May 2022 at https://treasury.nt.gov.au/__data/assets/pdf_file/0005/683834/Root-and-branch-review-for-web-new.pdf

[33] Department of Finance. Efficiency dividend webpage accessed on 31 May 2022 at https://www.finance.gov.au/about-us/glossary/pgpa/term-efficiency-dividend.

5 | Outcomes from 2018 Review – recommendations for changes to regulatory regime

5.1 In the Final Report for the 2018 Review, the Commission recommended a number of changes to improve the operation of the ports access and pricing regime. The Northern Territory Government subsequently made amendments to the PM Act and PM Regulations in 2020, which partially addressed the Commission's recommendations. Table 4 provides a summary of the Commission's recommended changes to the regime and associated outcomes in terms of implementation. The sections that follow discuss the issues that remain outstanding to determine their continued relevance and the benefits and costs of change.

Table 4 Recommended changes and outcomes from the 2018 Review

Issue and associated recommendations	Outcome
Prescribed services provided under lease 6h. The Commission recommends amending the PM Regulations to clarify regulation 12(2) does not apply to services provided by a private port operator under a lease. 6i. The Commission recommends amendments to: • the PM Act to require the Commission's approval of any lease granted by a private port operator resulting in services that would otherwise be prescribed services being provided by a person who is not a private port operator • the PM Regulations to set out the approval framework and to allow approval to be subject to conditions determined by the Commission.	No amendments to PM Act or PM Regulations address these matters
Private pilotage provider 6j. The Commission recommends applying sections 124 and 125 of the PM Act and the price monitoring regime to prescribed services provided by a private pilotage service provider. This should cover: • the application of the UC Act in the same manner it applies to a private port operator • section 123 reviews by the Commission and the powers of the minister to change the form of price regulation under the regime • the making of a price determination by the Commission and the obligations to provide information about charges to the Commission in accordance with the price determination • obligations to maintain separate financial accounts • related provisions dealing with audit and information to be provided to the Commission.	Implemented through changes to the PM Act and PM Regulations, noting the recommendation to require separate financial accounts for prescribed services (7f) has not been implemented
Carve outs under sections 124 and 125 of PM Act 7d. The Commission recommends sections 124 and 125 of the PM Act be amended to prevent carve outs through a port operator's access policy that reduce the protections offered by these sections unless approved by the Commission in the access policy approval process. An alternative is to provide for the Commission to have regard to sections 124 and 125 when approving a draft access policy of a private port operator.	No amendments to PM Act or PM Regulations address this matter

Separate financial accounts 7f. The Commission recommends amending the regime to allow the Commission to require a private port operator to maintain and provide to the Commission separate financial accounts for prescribed services as a whole in accordance with guidelines published by the Commission. The PM Act should include the head of power and the PM Regulations should provide guidance about the nature of the accounts and supporting information that can be required by the guidelines. The accounts should be limited to balance sheet, income or profit and loss statements and cash flow statements prepared in accordance with Australian accounting standards and for the prescribed services as a whole, with supporting information to address issues arising from the trust and related arrangements. The accounts should be required to give a true and fair view of the financial position and performance of the private port operator or private pilotage service provider in the provision of prescribed services. A private port operator and private pilotage service provider should be permitted to prepare a single set of accounts when they are within the group of entities.	No amendments to PM Act or PM Regulations address this matter
Oversight of the classification of services 7h. The Commission recommends amending the regime to give the Commission regulatory oversight, through the access policy approval process, of the classification of services as standard services. 7j. The Commission recommends amending the regime to allow the Commission to determine non-standard services for which a private port operator must publish indicative terms in its access policy, and where feasible for the service, indicative charges. This would be achieved by requiring an access policy to classify services as standard, non-standard or reference, requiring indicative terms for reference services to be published as part of the access policy, and indicative prices where required by the price determination.	No amendments to PM Act or PM Regulations address these matters
Improvements to negotiate/arbitrate framework 7l. The Commission recommends the regime be amended to include provisions designed to ensure the private port operator and a port user have an obligation to engage in good faith negotiations prior to an access dispute being raised and to include provisions to promote effective and well-informed negotiations. This could be achieved with prescriptive provisions or with appropriate changes to regulation 13(2) coupled with broad discretion for the Commission when approving an access policy to ensure the provisions in the access policy are appropriate and fit for purpose. 7m. The Commission recommends amending the PM Act and PM Regulations to include provisions under which a port user engaged in access negotiations is given financial information that will enable the port user to assess whether prices are consistent with the access and pricing principles, to support effective and well-informed negotiations. 7r The Commission recommends amending the PM Act to provide for reference of access disputes to arbitration under the CA Act, supplemented by provisions in the PM Act or PM Regulations including provisions for:	Negotiate/arbitrate framework remains in PM Regulations (not transferred to the PM Act) and continues to be defined by private port operator in an access policy. Amendments to PM Regulations give effect to 7l. No amendments address 7m. Broader application of the CA Act not adopted and no amendments address further requirements outlined in 7r. 7s mostly implemented through access policy requirements in PM Regulations 7u implemented through access policy requirements in PM Regulations

• the arbitrator to be given financial information required to assess whether prices are consistent with the access and pricing principles • the right of a prospective port user not to enter into a contract on the terms of the access determination subject to being precluded for a 12 month period from making the same request for access unless it obtains the Commission's consent • parties to bear their own costs, and other costs of the arbitration to be shared or apportioned as determined by the arbitrator • matters that may be provided for in an access determination • enforcement of an access determination 7s. The Commission recommends amending the PM Act to specify the following matters to be taken into account by the arbitrator in the dispute resolution process: • the object of part 11 • the access and pricing principles in section 133 • the operator's legitimate business interest and investment in the port or port facilities • the costs to the operator of providing the service (including the costs of any necessary modification to, or extension of, a port facility) but not costs associated with losses arising from increased competition in upstream or downstream markets • the interests of all persons holding contracts for use of any relevant port facility • firm and binding contractual obligations of the operator or other persons (or both) already using any relevant port facility • the operational and technical requirements necessary for the safe and reliable provision of the service • the economically efficient operation of any relevant port facility • the benefit to the public from having competitive markets 7u. The Commission recommends amending the PM Act to include an obligation to provide arbitration decisions to the Commission.	
Port lease and access policy	
7t. The Commission recommends amending the PM Act to provide for the Commission to take into account the port lease when approving an access policy	No amendments to PM Act or PM Regulations address this matter
Improvements to compliance framework	
7w. The Commission recommends amending the regime to include: • guidance on the definition of 'material instance of non-compliance' that provides for matters to be taking into account including the provision breached, the effect of the breach, where there is a series of breaches, the effect on port users and the timeliness of steps taken to remedy the breach • an express provision for other parties to be able to report to the Commission on material instances of non-compliance with an access policy	No amendments to PM Act or PM Regulations address these matters except the requirement for CEO certification

• a power for the Commission to investigate third-party reports of material instances of non-compliance with an access policy • a power in section 126 of the PM Act for a court to make enforcement orders for failure to comply with an access policy and failure to negotiate in good faith • a requirement on the chief executive officer (CEO) of a private port operator or other officer approved by the Commission to certify the information it submits to the Commission is accurate • a power for the Commission to initiate an independent audit of a port operator's compliance with the regime	
Measures of service 7y. The Commission recommends amending the regime to include a process for a private port operator to propose, and have approved by the Commission, measures of service and to require a private port operator to report to the Commission on performance against those measures of service. 7z. The Commission recommends the regime should require it to publish an annual report on a port operator's performance against the measures of service.	No amendments to PM Act or PM Regulations address these matters
Improvements to access policy approval process 8b. The Commission recommends amending section 127(2) of the PM Act to include an obligation on a port operator to consult with port users on an initial access policy. 8d. The Commission recommends amending the PM Act to allow the Commission to take the following matters into consideration when approving a draft access policy: • the matters in section 6(2) of the UC Act • the object of part 11 • the principle that access to prescribed services should be on reasonable terms • the access and pricing principles specified in section 133 • provisions in a port lease applicable to access to prescribed services • any other matters the Commission considers relevant 8f. The Commission recommends amending section 127 of the PM Act to allow the Commission to determine the approval time for the draft access policy. 8j. The Commission recommends amending regulation 15 to include an obligation for a port operator to publish and provide to the Commission, the findings of a review of its access policy. 8k. The Commission recommends amending the PM Act and the PM Regulations to require a private port operator to submit a revised draft access policy for approval by a date specified in the access policy (and each approved revised policy). 8l. The Commission recommends amending section 127 to provide an approved access policy remains in place until it is replaced with an approved revised access policy.	Amendments to PM Act give effect to 8b No amendments to PM Act or PM Regulations address 8d Amendments to PM Act address 8f by allowing for a 60 day extension of the approval time for a draft access policy No amendments to PM Act or PM Regulations address 8j Amendments to PM Act address 8k by requiring submission of new draft access policy before expiry of current access policy Amendments to PM Act give effect to 8l

5.2 The Commission acknowledges amendments to the PM Act and PM Regulations to extend coverage to include a private pilotage provider. This provides for future circumstances where the private port operator and a private pilotage provider may be different entities (noting that this issue is not relevant to current arrangements for the Port of Darwin). Among other issues, some matters have been addressed, but the majority of the Commission's recommendations remain outstanding and are the focus of the following sections.

Services under lease

5.3 Part 11 of the PM Act applies to prescribed services, which are defined in regulation 12(1) of the PM Regulations. Regulation 12 also clarifies services that are not prescribed services. These exclusions include "any service provided under a lease granted by the private port operator" (regulation 12(2)). As noted in the final report for the 2018 Review, the Commission understands that the purpose of this exclusion was to ensure the Marine Supply Base (a dedicated oil and gas support facility) was excluded from regulatory oversight when the Port of Darwin was leased in 2015. The Commission notes that this exclusion does not apply to services provided by a private port operator under a lease, that is, it does not apply to DPO's provision of prescribed services (as the lessee of the Port of Darwin).

5.4 The exclusion would, however, apply to any prescribed service provided under lease granted by a private port operator or a private pilotage provider (that is, when the service is no longer provided directly by the private port operator or private pilotage provider). This creates an avenue for a private port operator or private pilotage provider to circumvent the port access and pricing regime by leasing out the provision of prescribed services. Further, the exclusion of services provided under lease would also cover circumstances where the private port operator enters into a sublease over a facility or berth where the lessee supplies port users with what would otherwise be prescribed services (but for the sublease). The port lease imposes obligations on DPO with respect to ongoing access where a sublease is granted, but the Commission notes that these provisions are not as extensive as the port access and pricing regime nor are they directly enforceable by an access seeker or the Commission as regulator.

5.5 The Commission notes that it is not aware of DPO using the exclusion to circumvent the regulatory regime nor have there been any complaints in relation to services provided under lease arrangements. Notwithstanding this, the potential for a lessee of a private port operator to provide prescribed services outside the reach of the regulatory regime remains a weakness in of the current port access and pricing regime.

Carve outs under sections 124 and 125 of PM Act

5.6 Section 124 of the PM Act is intended to prevent a private port operator or private pilotage provider from engaging in conduct that prevents or hinders access to a prescribed service. Section 125 of the PM Act is intended to prevent a private port operator or private pilotage provider from unfairly differentiating between port users in a way that has a material adverse effect on their ability to compete with other port users.

5.7 These restrictions are particularly important where a vertically integrated provider (e.g., a port operator who also has businesses in up or downstream markets) may provide access to its own businesses or associated businesses on more favourable terms. The Commission notes that the lease for the Port of Darwin contains a restriction on DPO from becoming an integrated operator without the consent of government. This provides an additional constraint and thus protection for port users. The Commission notes conditions in the port lease are outside the regime regulated by the Commission and are matters for the Northern Territory Government to enforce.

5.8 Sections 124 and 125 allow for the exemption of certain conduct that might otherwise be considered to be preventing or hindering access or unfairly differentiating between port users. In the case of hindering access, the restriction would not apply where an act was done in accordance with the private port operator's access policy. Similarly, the restriction regarding differential treatment does not apply where different treatment is expressly required or permitted by the private port operator's access policy. This opportunity to 'carve out' particular acts or behaviours through the access policy has no oversight attached as the Commission is not required to take into account the provisions relating to hindering access and unfairly differentiating (i.e., sections 124(1) and 125(1)) when approving an access policy.

5.9 The Commission notes that DPO has included a clause in its access policy (clause 1.3) that expressly states nothing in the access policy is intended to require or permit DPO to engage in conduct in breach of sections 124(1) or 125(1) of the PM Act. This means the issue is not presently a problem in relation to DPO's access policy, but the vulnerability remains in the absence of modifications to the port access and pricing regime to ensure there is an appropriate level of regulatory oversight before carve outs can be included in an access policy.

Separate financial accounts

5.10 As noted previously, the port access and pricing regime does not provide for the Commission to receive financial records specifically relating to prescribed services. Instead, the Commission must rely on general information gathering powers under the UC Act.[34] What the Commission receives in response to its request will depend on how DPO structures its financial accounting arrangements. As noted in the 2018 Review, this contrasts with comparable regulatory regimes elsewhere in Australia, which require the keeping of separate accounts for regulated services and the provision of these to the regulator.

5.11 Without regular access to relevant financial information, it is difficult for the Commission to make any form of assessment as to whether a private port operator or private pilotage provider is pricing in accordance with the access and principles set out in the PM Act. Noting, however, that the establishment and provision of separate financial accounts for each prescribed service could be costly for a private port operator, the Commission's recommendation in the 2018 Review was for the keeping of separate financial accounts for prescribed services as a whole with the following to be provided to the Commission each year:

- balance sheets (showing assets/liabilities/financial position)
- income statements or profit and loss statements (showing revenue, expenses and profit)
- cash flow statements.

5.12 These would be prepared using normal and accepted Australian accounting standards. The private port operator or private pilotage provider would be required to identify which accounting standard(s) it relied on in preparing the accounts and the accounts would ideally be audited, or alternatively, could include a responsibility statement signed by the CEO. If a port operator and pilotage provider are within the same group of entities (as is the case with DPO), only a single set of accounts would need to be kept and provided to the Commission. As trust arrangements are in place with regards to the provision of prescribed services at the Port of Darwin, the accounts would need to extend to all of the entities (including trusts) providing or relevant to the provision of prescribed services.

5.13 To clarify, the Commission did not intend for the accounts to calculate regulatory asset values for the assets used to provide prescribed services, nor would costs be required to be allocated to each separate prescribed service. The Commission notes that DPO already provides revenue by prescribed service as part of its obligations under the 2022-25 Prescribed Port Services Price Determination Port of Darwin.

5.14 Presently, the Commission's annual price monitoring reports enhance transparency by reporting trends in prices (relative to general price increases) and revenue. While informative for port users, it provides no visibility on trends in the cost or profits associated with providing

[34] UC Act, section 25.

prescribed services to better inform negotiations with the service provider. Similarly, the Commission is unable to assess the risk of potential misuse of market power.

5.15 The Commission notes that the weaknesses in the price regulation model identified in its 2018 Review have also been identified with the South Australian ports access regime. Consistent with the Commission's recommendation, the Essential Services Commission of South Australia's final report for stage one of its review of the ports access regime and price determination has recommended that the current price monitoring scheme be complemented by a financial performance monitoring scheme.[35]

Oversight of the classification of services

5.16 Under the current port access and pricing regime, DPO determines what constitutes a standard prescribed service, and the terms and standard charges applying to those services. Where a port user requires a non-standard service including prescribed services to which standard terms do not apply or where a variation to the standard terms or pricing for a prescribed service is required, DPO and the port user negotiate the terms and price for those services and enter into a negotiated agreement.

5.17 In the 2018 Review, the Commission found it was a weakness of the current regime that there was no regulatory oversight of what services were the subject to standard terms and conditions. Under DPO's access policy, the process for accessing standard services is more straight-forward with terms and conditions and pricing known and changes in these transparent. The Commission proposed it be given regulatory oversight, through the access policy approval process, of the classification of services as standard services.

5.18 The Commission also proposed that it be given the ability to determine a third category of services, termed reference services, which are a sub-set of non-standard services where indicative terms would be published in the access policy. The price determination could also require indicative prices (reference tariffs) to be published for those services. This recommendation stemmed from a lack of clarity and certainty about prices and terms of access for exporting dry bulk minerals from the Port of Darwin. Instead, prospective users must request indicative pricing from DPO (and this is still the case under DPO's current Schedule of Port Charges[36]).

5.19 The mining industry accounted for 19.9% of Northern Territory's Gross State Product in 2020-21 with mineral production likely to be boosted by a number of new projects.[37] Given the importance of the industry, there would be benefits in providing mineral producers with more certainty about access and pricing for port services, where feasible. Advice from stakeholders in the 2018 Review indicated mining companies needed to be able to demonstrate certainty of pricing to secure finance for project development so such information would be valued by specific users.

5.20 The publication of reference tariffs for bulk dry minerals is not unique with other ports issuing such tariffs (the final report for the 2018 Review points to reference tariffs provided by the Port of Townsville). The Commission's recommendation was for the regime to give the Commission the power to determine reference services; however, an alternative to this would be for DPO to consider voluntarily publishing more information for port users about the terms and prices for exporting dry bulk minerals.

[35] Essential Services Commission of South Australia. 2022 Ports Access Regime and Price Determination Review: Stage one Final Report August 2022. Accessed on 17 October 2022 at https://www.escosa.sa.gov.au/projects-and-publications/projects/ports/pricing-and-access-review-2022.

[36] Available at https://www.darwinport.com.au/trade/access-policy-tariffs.

[37] Northern Territory Government. Budget 2022 Industry Outlook, Mining and manufacturing. Accessed 10 June 2022 at https://budget.nt.gov.au/industry-outlook/mining-and-manufacturing.

Improvements to the negotiate/arbitrate framework

5.21 In the 2018 Review, the Commission made a number of recommendations aimed at strengthening the negotiate/arbitrate framework. Of these, the following matters were addressed through changes to the PM Regulations in 2020:

- an obligation for the private port operator and port user to engage in good faith negotiations prior to an access dispute being raised
- a more extensive list of matters to be taken into account by the arbitrator in the dispute resolution process and
- an obligation to provide arbitration decisions to the Commission.

5.22 The following recommendations (in brief) were not adopted:

- the provision of financial information to enable an access seeker to assess whether prices are consistent with the access and pricing principles
- broader application of the CA Act rather than just Part 5, plus provisions for
  - an arbitrator to assess financial information
  - a 12 month preclusion on a repeat request for access if an access seeker declines to contract on the terms of the access determination unless approved by the Commission
  - parties to arbitration to bear their own costs and the share of other costs to be determined by the arbitrator
  - matters allowable in an access determination and
  - enforcement of an access determination.

5.23 Parties to negotiations and arbitration need to have confidence in the processes and the ability of those processes to produce outcomes that are commercially viable, consistent and fair. The Commission notes that the amendments adopted have strengthened the regime's negotiate/arbitration model even though there has not been broader application of the CA Act in relation to arbitration as the Commission recommended. Despite the improvements, the information advantage remains skewed toward the private port operator with no specific requirements to provide financial information to access seekers or arbitrators.

5.24 The Commission notes that regulation 13 was amended to include the requirement for an access policy to contain a commitment that the operator will (on request) give information on the availability of a prescribed service and the terms and conditions of access if that information is reasonably required by the access seeker to make an access request (regulation 13(2)(ab)). The amendment does not refer to the provision of information on costs or the calculation of prices.

5.25 Amendments to regulation 13(2)(f) require an access policy to set out the powers and duties of the arbitrator including the power to order a party to the arbitration to produce information that is requested by the other party and reasonably necessary for the resolution of the dispute. It is not clear that this would extend to the provision of financial information noting the restriction on information that can be requested by an access seeker in preparing an access request.

5.26 Accordingly, there continues to appear to be a gap with access seekers and arbitrators unable to obtain information on how prices were calculated or how prices compare to costs and as a result, whether the prices offered are reasonable and consistent with the access and pricing principles. This is despite the requirement for an arbitrator to take into account the access and pricing principles in conducting an arbitration.

5.27 The Commission also notes that there is the possibility that access seekers may be deterred from proceeding to arbitration if at its end there is the risk of an adverse result that could see them forced into a contract that is not commercially viable or acceptable. The impact from this would be disproportionately high for the access seeker. In the 2018 Review, the Commission was of the view that the regime should provide the access seeker with the ability to choose not to proceed on the basis of the arbitral award, but there should also be balancing measures to protect the private port operator in such circumstances too, for example, preclusions on repeat access requests from the declining party or the declining party incurs a greater share of arbitration costs.

Port lease and other binding obligations

5.28 No amendments have been made in response to the Commission's recommendation that the PM Act be changed to provide for the Commission to take into account the port lease when approving an access policy. This means uncertainty remains as to how conflicts between the access policy and DPO's obligations under other agreements to which it is bound including the lease with the Northern Territory Government should be resolved.

5.29 The Commission notes that no conflicts arose as part of the approval process for DPO's 2022 access policy although this was not unexpected as the changes between the new and previously approved access policy largely related to incorporating additional requirements following changes to the PM Regulations in 2020. Further, in approving an access policy, the Commission is not necessarily aware of other contractual obligations on a private port operator and whether these could have consequences for the operator's ability to comply with its access policy.

5.30 The Commission notes, however, that as part of changes to the PM Regulations in 2020, an arbitrator must now take into account the firm and binding contractual obligations of the private port operator and of other persons already using the relevant port facility in conducting arbitration (regulation 13(2)(f)(viia)(E)). This is consistent with the approach taken in other jurisdictions.

Enforcement and independent audits

5.31 Issues relating to the definition of 'material instance of non-compliance' and reporting of non-compliance to the Commission have been raised in Chapter 3. The focus of this section is the Commission's recommendations relating to enforcement mechanisms for breaches of an approved access policy and the power for the Commission to initiate an independent audit when there are concerns about compliance with the regime.

5.32 Section 126(2) of the PM Act provides the power for a court of competent jurisdiction to enforce compliance with sections 124(1) and 125(1), which prohibit a private port operator or private pilotage provider from engaging in conduct to prevent or hinder access to a prescribed service or to unfairly differentiate between users. The court can make orders granting injunctions, orders for compensation or any other order the court considers appropriate.

5.33 The Commission was of the view that these powers should be extended to specifically cover the failure to comply with an access policy and failure to comply with the obligation to negotiate in good faith with an access seeker. While it might be argued that such failures could be linked back to a non-compliance against sections 124(1) and 125(1), this creates uncertainty and seems overly circuitous. Instead, there may be merit in clearly and unequivocally setting out in the PM Act that penalties apply for non-compliance with the access policy (which is now required to include obligations to negotiate in good faith).

5.34 The current port access and pricing regime provides the Commission with no powers to initiate an independent audit. An independent audit is an important tool available to the Commission for its role in regulating other industries. While the intent is that such audits verify compliance, from the Commission's experience, independent audits have been useful for detecting weaknesses in record keeping, compliance monitoring and reporting processes and misalignment between business practices and legislated requirements. Regulated entities are able to use the findings from independent audits to reduce the risk of non-compliance and improve the quality and reliability of information provided to the Commission.

5.35 The Commission notes that where the Commission is satisfied that the risk of non-compliance is low, it is unlikely to have a reason to exercise an audit power. The Commission is also cognisant of the additional cost that such audits may impose and therefore the need to have a clear purpose or defined time interval for such audits. For example, the Commission's Electricity Industry Performance Code requires relevant licensees to every three years audit the integrity and accuracy of the performance data they collect and report on.

5.36 The Commission notes that the PM Act was amended to require information and documents provided to the Commission to be certified as correct by the CEO (or another specified officer) or the private port operator or private pilotage provider. While this is expected to promote compliance, it does not provide an avenue for the Commission to obtain independent verification of compliance or accuracy if it has concerns.

5.37 The Commission notes that it considers the current risk of non-compliance by DPO to be low and therefore, at the moment, the Commission is unlikely to have any reason to request DPO to undertake an independent audit. However, without such a power, the Commission considers there is a major deficiency in the compliance provisions of the port access and pricing regime.

Measures of service

5.38 There remains a gap in the port access and pricing regime with no requirements for the private port operator (or private pilotage provider) to report on standards of services or performance levels for prescribed services. This is of concern as a monopoly provider can reduce service quality (through cost reductions) while maintaining prices thereby increasing profits. As exampled in the Commission's final report for the 2018 Review, this issue has been addressed in other jurisdictions through performance reporting requirements such as service quality indicators reported to the Essential Services Commission of Victoria by the Port of Melbourne Corporation and regulated operators under the Wheat Terminal Code being required to publish performance indicators which are monitored by the Australian Competition and Consumer Commission.

5.39 The Commission recommended a private port operator (or private pilotage provider) propose and report on measures of service, approved by the Commission. The Commission would publish an annual report on performance against those measures of service. Allowing the private port operator to propose measures of service would allow DPO to leverage off existing performance indicators or other tools used to improve business performance and minimise the additional cost and obligations.

5.40 An alternative would be for DPO to voluntarily report on an agreed set of performance indicators, with such a model being implemented in 2020 in Victoria in relation to the landside container supply chain at the Port of Melbourne[38]. The Commission notes that DPO publishes trade and port statistics on its website and an annual A Year in Review report, but the statistics provided are focussed on volumetric throughput rather than service performance. The website and publication could, however, provide an avenue for providing information on customer satisfaction and performance related measures. This would provide transparency without the need for additional regulation.

Improvements to the access policy approval process

5.41 A number of amendments were made to clarify and improve the access policy approval process. These include setting a nominal expiry date for an access policy, clarifying that the private port operator must continue to comply with its access policy until it is replaced by a new approved access policy and allowing for the Commission to give notice that an extension (of a further 60 days) is required to consider a draft access policy.

[38] Voluntary Port of Melbourne Performance Model – refer (refer https://transport.vic.gov.au/ports-and-freight/commercial-ports/voluntary-port-performance-model/performance-indicator-dashboard.

5.42 While these address key concerns, the following matters were not adopted:

- for the Commission to take further matters into account in approving a draft access policy including section 6(2) of the UC Act, the objects of Part 11 of the PM Act, the principle that access to prescribed services should be on reasonable terms, the access and pricing principles, applicable provisions in the port lease and any other matter the Commission considers relevant.
- an obligation for the private port operator to publish the findings of a review of its access policy and provide a copy to the Commission.

5.43 The Commission considers the second of these matters is now largely redundant. A private port operator is required to provide a new draft access policy at least every five years and in developing a draft access policy, the private port operator must consult with port users and provide a summary of the comments received during consultation to the Commission. Along with the Commission's own consultation on a draft access policy (conducted in accordance with best practice regulation), this means there are several avenues by which the Commission can be informed of port users' views and potential issues on a draft access policy.

5.44 Section 127(4) of the PM Act requires the Commission to approve a draft access policy if it meets the requirements of section 127(2). That is, the access policy meets the requirements in regulation 13(2) of the PM Regulations and any matter required by the Minister under section 129 of the PM Act (currently there are no matters specified under section 129). While there are now additional requirements under regulation 13(2), these relate to the inclusion of obligations to provide information to port users, clarifications regarding content of an access application and improvements to the negotiate/arbitrate framework.

5.45 The matters specified in regulation 13(2) are functional in nature, for example, that the access policy must state the approach to providing vessel access, contain a commitment to give certain information and set out a process for resolving disputes. This lends itself to a checklist approach to approving an access policy, but gives the Commission little discretion to take other matters into account. Notably, it means there is no requirement for the Commission to consider, for example, implications for economic efficiency and effective competition (as per the objects of Part 11), the access and pricing principles or more broadly matters under section 6(2) of the UC Act including fair market conduct and reliability and quality of services.

Question 16: Do stakeholders have further feedback and comments on the above issues and associated recommendations for amendments from the 2018 Review? How would your comments affect the Commission's previous recommendations for change to the regulatory regime?

6 | New issues

6.1 As noted previously, the Commission is not aware of any instances of non-compliance by DPO with its access policy or the price determination. The Commission also notes that the approval process for DPO's 2022 access policy and issuance of the 2022-2025 Prescribed Port Services Price Determination Port of Darwin proceeded in accordance with required processes and timeframes. In undertaking these tasks, the only new issue identified related to the duration of price determinations.

Maximum duration of price determinations

6.2 Section 134(4) of the PM Act states that a price determination cannot have effect for a period of more than three (3) years. The Commission notes that this timeframe is now out of step with the renewal timeframe for access policies, which can be in place for a maximum of five (5) years and the 5-yearly cycle for review of the regime. As the form of price regulation is price monitoring and much of the content of price determinations is prescribed under regulation 16 of the PM Regulations, there is unlikely to be major change between one price determination and the next unless the form of price regulation were to change.

6.3 Extending the period for which a price determination can be in effect to five years would reduce the administrative burden on the Commission and give greater certainty to DPO. The discretion would still remain with the Commission to put a price determination in place for a shorter period, if needed. Furthermore, if the Northern Territory Government were to decide to change the form of price regulation, this would require amendment to the PM Regulations and at that time, the maximum timeframe for a price determination to be in effect could also be reconsidered.

Question 17: What would be the benefits and risks associated with extending the maximum timeframe a price determination can be in effect from three to five years?

Other issues

6.4 The Commission welcomes stakeholder input on whether there are any other matters relating to the operation of the port access and pricing regime that require consideration as part of the 2023 Review.

Question 18: What other matters require consideration as part of the 2023 Review of the port access and pricing regime?

Appendix A: Summary of consultation questions

Q1	What changes (recent or future) in the ports sector may substantially affect competition or alter the market power of DPO?
Q2	What prescribed services (or services that are currently not prescribed) may be affected by these changes and how would it potentially change the need for regulatory oversight?
Q3	Do current reporting requirements give sufficient reassurance and visibility of compliance with the access and pricing regime? If not, how could they be enhanced?
Q4	What changes (recent or future) in the ports sector could mitigate DPO's ability to exercise market power in setting prices for prescribed services?
Q5	What major changes (recent or future) in the ports sector may alter the balance between the benefits and costs of the port access and pricing regime?
Q6	How effective is the current access and pricing regime at ensuring DPO complies with its access policy and reports appropriately to the Commission if there is a material breach? If not effective, what changes are required?
Q7	What uncertainty and consequences arise, if any, from the absence of a legislative definition of 'materiality' and 'non-compliance'?
Q8	Are there any barriers faced by port users in notifying the Commission of instances of non-compliance? If yes, what are they?
Q9	Are stakeholders aware of any material instances of non-compliance by DPO with its access policy? If yes, what are they?
Q10	Are there any information barriers that impede successful negotiation of access arrangements between port users and the private port operator? If so, what information would be needed to address the imbalance?
Q11	Has the negotiate/arbitrate framework proven successful and timely in resolving access disputes? Please provide evidence or examples in support of your response.
Q12	What variations could be made to the negotiate/arbitrate model to better address access disputes?
Q13	How effective is price monitoring as a means of ascertaining whether DPO's pricing practices comply with the access and pricing principles?
Q14	Is there additional evidence or information (e.g., the WACC) that should be available to the Commission to enable evaluation of whether the form of price monitoring needs to change? What would be the benefits and costs of requiring such information?
Q15	What would be the benefits and costs of applying an efficiency dividend or other tools to incentivise DPO to undertake efficient investments and operation of prescribed services?
Q16	Do stakeholders have further feedback and comments on the above issues and associated recommendations for amendments from the 2018 Review? How would your comments affect the Commission's previous recommendations for change to the regulatory regime?
Q17	What would be the benefits and risks associated with extending the maximum timeframe a price determination can be in effect from three to five years?
Q18	What other matters require consideration as part of the 2023 Review of the port access and pricing regime?

Appendix B: About the Port of Darwin

The Port of Darwin is a multi-use, mixed cargo and marine services port. It services various markets, including livestock, dry bulk products, petroleum and other bulk liquids, container cargo, general cargo, cruise vessels, naval vessels, offshore and gas rig servicing and is an offshore industry support hub for most cargoes used in the oil and gas industry in the Arafura and Timor seas as well as waters off Western Australia.

The Port of Darwin is linked to Adelaide by the Tarcoola-Darwin Railway, connected by major road transport highways to other capital cities and Australia's closest shipping port to Asia.

The Port of Darwin is composed of several distinct areas including East Arm Wharf, Fort Hill Wharf, the Marine Supply Base, Stokes Hill Wharf, Fisherman's Wharf, Hornibrook Wharf and the Frances Bay Mooring Basin (see **Figure 5** below). Not all areas of the port were leased to Landbridge Port Operations Pty Ltd in 2015 with Stokes Hill Wharf, Fisherman's and Raptis wharves, Hornibrooks pontoon and the Frances Bay Mooring Basin continuing to be owned and operated by the Northern Territory Government. The Marine Supply Base is leased and operated by ASCO Australia Pty Ltd. The lease for the Marine Supply Base was established prior to DPO commencing as private port operator and the facility is excluded from the port access and pricing regime under regulation 12(2) of the PM Regulations. Jetties at Bladin and Wickham Points are private facilities servicing the two large-scale gas liquefaction terminals based within the port.

Figure 5 Port of Darwin

Source: Department of Infrastructure, Planning and Logistics, Geospatial Services, Land Information, 2022

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