

Extract of Ports Management Regulations (as in force at 16 March 2016)

Section 13(2)

For section 127(2)(a) of the Act, an access policy of a private port operator must:

- (a) state the approach to be taken by the operator to providing, or allowing for, access for vessels to the designated port, including the factors that it takes into account in carrying out vessel scheduling; and
- (b) contain a commitment that the operator will respond to an access request within a specified period (which must be reasonable); and
- (c) contain a commitment that the operator will provide access to a port user to any prescribed service on reasonable terms; and
- (d) set out the basis on which the port operator will determine access to a prescribed service that is the subject of an access request if the demand for access from port users exceeds the capacity to provide access; and
- (e) set out the terms on which access to a prescribed service will be provided; and
- (f) set out a process for the resolution of access disputes that are not frivolous or vexatious that:
 - (i) provides for a port user to give written notice of a dispute to the operator within a specified period; and
 - (ii) requires the operator to undertake genuine and good faith negotiations through discussion with the port user with a view to resolving the dispute as quickly as possible; and
 - (iii) if the dispute is not resolved through discussion – provides for the operator to arrange mediation or conciliation to resolve the dispute; and
 - (iv) if the dispute is not resolved through mediation or conciliation – provides for it to be referred to arbitration by an independent arbitrator appointed by the parties to the dispute; and
 - (v) specifies the method by which the independent arbitrator is to be appointed which may be, but is not required to be, requesting the Regulator to nominate a person for appointment as an independent arbitrator; and
 - (vi) requires that the arbitration be conducted in accordance with Part 5 of the *Commercial Arbitration (National Uniform Legislation) Act*; and
 - (vii) sets out the powers and duties of the arbitrator in conducting the arbitration, including a requirement to take into account the access and pricing principles set out in section 133 of the Act; and
 - (viii) provides a mechanism for the apportionment of the costs of an arbitration; and
 - (ix) provides for the decision of the arbitrator to be treated as an award under the *Commercial Arbitration (National Uniform Legislation) Act*; and
 - (x) requires the parties to an arbitration not to disclose its outcome to third parties; and
- (g) require the parties to an access dispute to keep confidential information provided during any access request negotiations or access dispute resolution process; and
- (h) provide for the right of each party to an access dispute to request from the other party, within a specified period, information specified by the requesting party that, in the opinion of the requesting party, is reasonably necessary for the resolution of the dispute; and
- (i) require a party to comply with a request of a kind mentioned in paragraph (h) within a specified period; and
- (j) require the operator to give reasons for any decision made by the operator that affects a port user.

As at 16 March 2016, no matters had been specified by the Minister for inclusion in an access policy under section 129 of the *Ports Management Act*.