Serial 78
Marine Facilities (Access and Pricing) Bill 2026
Mr Yan

A Bill for an Act to regulate access to, and pricing of, services at certain marine facilities

NORTHERN TERRITORY OF AUSTRALIA

MARINE FACILITIES (ACCESS AND PRICING) ACT 2026

Act No. [   ] of 2026

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [ ] of 2026

An Act to regulate access to, and pricing of, services at certain marine facilities

[*Assented to [ ] 2026*]
[*Introduced [ ] 2026*]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Marine Facilities (Access and Pricing) Act 2026*.

2 Commencement

(1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.

(2) If a provision of this Act does not commence before 24 August 2027, it commences on that day.

3 Object of Act

The object of this Act is to promote the economically efficient operation of, use of and investment in major marine facilities by which regulated services are provided, so as to promote effective competition in upstream and downstream markets.

4 Definitions

In this Act:

access agreement means an agreement between a facility operator and a service user setting out the terms and conditions of access to a regulated service at a designated facility.

access application means a standard application or non-standard application.

access dispute means a dispute between a facility operator and a service user initiated under section 22.

access requirements means the requirements of Part 3, Division 1.

Darwin ship lift facility means any government owned ship lift and associated marine industry infrastructure located at East Arm in the Northern Territory.

designated facility means a marine facility designated under section 47 to be a designated facility.

dispute notice means a notice initiating an access dispute given under section 22(1).

facility operator means:

(a) in relation to a designated facility – the person who operates that facility; or

(b) otherwise – a person who operates a designated facility.

marine facility means a facility, building or structure that is used:

(a) to take a vessel into or out of a body of water; or

(b) to moor, berth or store a vessel; or

(c) to maintain or service a vessel.

modification, to a designated facility, means:

(a) a modification to any facilities at the facility; or

(b) the establishment of additional facilities at the facility.

modification proposal, see section 14(2).

negotiation period, see section 17(2)(b).

non-standard application, see section 11(2).

offer letter, see section 13.

protected contractual right means a right or obligation under a contract between the Territory government and a person or Agency that:

(a) relates to access to a designated facility; and

(b) was entered into before the commencement of this Act.

queuing policy, for a designated facility, see section 20(1).

regulated service, see section 8(1).

Regulator means the Utilities Commission of the Northern Territory established by Part 2 of the *Utilities Commission Act 2000*.

related body corporate, see section 9 of the *Corporations Act 2001* (Cth).

ring-fencing requirements means the requirements of Part 5, Division 1 and the guidelines made under section 46.

service user means any of the following:

(a) a user of a regulated service;

(b) an applicant for access to a regulated service;

(c) a potential user of a regulated service.

standard application, see section 11(3).

standard terms of access means the standard terms of access to regulated services at a designated facility developed under section 10(3) by the facility operator.

valid, in relation to an access agreement, see section 11(7).

Note for section 4

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

5 Act binds Crown

This Act binds the Crown in the right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

6 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 6

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Regulation of facility operators

7 Application of Act

(1) This Act applies in relation to:

(a) the provision of regulated services at the Darwin ship lift facility by the facility operator; and

(b) the provision of regulated services at any other designated facility by the facility operator.

(2) Despite subsection (1), this Act does not apply in relation to the provision of regulated services at a designated facility if the facility operator is a public sector entity.

(3) For this Act, the facility operator of a designated facility is taken to provide all regulated services provided at the facility, regardless of whether the facility operator has subcontracted out the provision of some or all of those services.

(4) In this section:

public sector entity means any of the following:

(a) the Territory (including the Crown in right of the Territory);

(b) a minister of the Territory;

(c) an Agency;

(d) a Government owned corporation as defined in section 3 of the *Government Owned Corporations Act 2001*;

(e) a public authority of the Territory;

(f) a person holding or occupying an office established by a law of the Territory;

(g) a transaction company all of the issued shares in which are held by, or on behalf of, a public sector entity mentioned in any other paragraph;

(h) an entity that is wholly owned by an entity that is a public sector entity mentioned in any other paragraph.

8 Regulated services

(1) A ***regulated service*** is any of the following services provided at a designated facility:

(a) providing berths for vessels that are to use other services at the facility;

(b) providing for the lifting of vessels;

(c) providing for the dry berthing of vessels;

(d) providing access to infrastructure and areas within the facility for related services;

(e) any other service prescribed by regulation.

(2) To avoid doubt, a regulation may prescribe a service to be a regulated service for a specified designated facility or for all designated facilities.

9 Declaration of regulated industry and application of *Utilities Commission Act 2000*

(1) Each of the following is declared to be a regulated industry for the *Utilities Commission Act 2000*:

(a) the provision of regulated services at the Darwin ship lift facility by the facility operator;

(b) if regulated services are provided at another designated facility – the provision of regulated services at that facility by the facility operator.

(2) The charges fixed by a facility operator in relation to the provision of regulated services provided by the operator are prices for goods or services for the *Utilities Commission Act 2000*.

(3) A facility operator is taken to be a licensed entity for the purpose of the application of the *Utilities Commission Act 2000*, as affected by this Act, to the operator.

Part 3 Access to regulated services

Division 1 Access requirements

Subdivision 1 Basis of access and access applications

10 Basis of access and standard terms

(1) A facility operator must offer to provide regulated services to service users:

(a) on a 'first come, first served' principle, except to the extent:

(i) access is provided to fulfil a protected contractual right; or

(ii) the principle is modified by the queuing policy for the relevant designated facility; or

(iii) a user agrees to be provided access in accordance with the flexible booking principles set out in:

(A) if there is a queuing policy for the facility – the queuing policy; or

(B) otherwise – the standard terms of access for the facility; and

(b) on terms and conditions that are:

(i) agreed with service users in accordance with these access requirements; or

(ii) if an agreement cannot be reached and an access dispute is initiated – determined under the dispute resolution procedure mentioned in section 23.

(2) A facility operator must accommodate, as far as practicable and subject to any protected contractual right, a service user's reasonable requirements and requests, including any request that the operator make a modification to the designated facility to enable a regulated service to be provided to the user.

(3) The facility operator of a designated facility must:

(a) develop standard terms of access to regulated services at the facility; and

(b) ensure the standard terms of access:

(i) contain flexible booking principles that promote efficient service provision at the facility; and

(ii) are otherwise consistent with the requirements of this Division.

11 Applying for access to regulated services

(1) A person may apply to the facility operator of a designated facility for access to one or more regulated services at the facility.

(2) An application that includes a request that the facility operator make the modifications to the designated facility that are necessary to enable one or more of the regulated services to be provided to the applicant is a ***non-standard application***.

(3) An application that does not include a request mentioned in subsection (2) is a ***standard application***.

(4) An access application must be made in writing and set out the information prescribed by regulation.

(5) A facility operator may require that an access application be accompanied by a reasonable fee to cover the costs of assessing the application.

(6) The amount of the fee must be published on a publicly accessible part of the facility operator's website.

(7) An access application is ***valid*** if:

(a) it meets the requirements of subsection (4) or, if it does not meet those requirements, any information omitted from the application is immaterial; and

(b) the operational and technical requirements necessary for the safe and reliable provision of the regulated service or services to which the application relates are met or can be complied with by the applicant; and

(c) it is accompanied by any fee required by the facility operator under subsection (5).

(8) To avoid doubt, a person may apply for access to a regulated service at a designated facility even if the person is party to an access agreement in relation to the designated facility.

12 Requests for information

(1) A service user may request information about any of the following from a facility operator for the purpose of completing an access application:

(a) the extent to which the designated facility operated by the operator is being utilised at the date of the request or is expected to be utilised at a later date specified in the request;

(b) the operational and technical requirements that have to be met or complied with by service users.

(2) Within a reasonable time after receiving a request from a service user under subsection (1), a facility operator must give the user the information requested together with any other reasonably available preliminary information that is relevant to the user's access application.

Subdivision 2 Responses to access applications and negotiations

13 Response to standard application

If a facility operator receives a standard application that the operator considers is valid, within 10 business days after receiving the application the operator must give the applicant a letter of offer (an ***offer letter***) that:

(a) sets out information about the negotiation process; and

(b) attaches each of the following:

(i) a copy of the operator's standard terms of access, as published on its website at the time the application was received;

(ii) a proposed access agreement;

(iii) a document that lists the differences, if any, between the proposed access agreement and the operator's standard terms of access.

14 Response to non-standard application

(1) If a facility operator receives a non-standard application that the operator considers is valid, within 20 business days of receiving the application the operator must:

(a) assess whether the modifications to the designated facility requested in the application could be undertaken; and

(b) if applicable, consider the steps and cost involved in determining what work would need to be done to undertake the modifications; and

(c) respond to the applicant in accordance with subsection (2) or (3).

(2) If the facility operator considers that the modifications could be undertaken, the operator must give the applicant a written proposal (a ***modification proposal***):

(a) stating that the modifications could be undertaken; and

(b) setting out details of the following:

(i) the steps involved in determining what work would need to be done to undertake the modifications;

(ii) how the cost of the modifications would be apportioned between the operator and the applicant;

(iii) the estimated time and associated costs required to progress the application.

(3) If the facility operator considers that the modifications cannot be undertaken, the operator must give the applicant written notice stating the following:

(a) that the modifications cannot be undertaken;

(b) the grounds for the operator's view.

15 Response to invalid access application

(1) If a facility operator receives an access application that the operator considers, on reasonable grounds, is not valid, within 10 business days after receiving it the operator must give the applicant written notice stating the following:

(a) that the application is not considered to be valid;

(b) the grounds for the operator's view;

(c) the steps that the applicant needs to take to make the application valid;

(d) the period within which the applicant must take those steps.

(2) If the applicant takes the steps stated in the notice within the period stated in the notice, the facility operator must consider the access application to be valid and section 13 or 14 applies to the operator (as appropriate) as if the application had been received on the date the applicant completed the steps.

(3) If the applicant fails to take the steps stated in the notice within the period stated in the notice, the access application is taken to have been withdrawn.

16 Applicant response to modification proposal

(1) This section applies in relation to a modification proposal given to an applicant by a facility operator under section 14(2).

(2) The applicant may accept the modification proposal by giving written notice to the facility operator within 10 business days of receiving the proposal.

(3) Within 10 business days of receiving written notice that the applicant has accepted the modification proposal, the facility operator must give the applicant an offer letter.

(4) If the applicant declines the modification proposal, or fails to respond to it within 10 business days of receiving it, the applicant's non-standard application is taken to have been withdrawn.

17 Negotiations

(1) This section applies to a facility operator and an applicant if the operator gives the applicant an offer letter under section 13 or 16(3).

(2) The facility operator must take all reasonable steps to:

(a) progress the applicant's access application in a timely manner; and

(b) develop an access agreement with the applicant within the following period (the ***negotiation period***):

(i) the period of 30 business days starting on the day on which the operator gives the applicant the offer letter;

(ii) any longer period agreed between the operator and the applicant.

(3) The facility operator must negotiate with the applicant in good faith and in accordance with this Part.

(4) If, 10 business days after the negotiation period ends, the parties have not entered into an access agreement and a dispute notice has not been given, the applicant is taken to have withdrawn the applicant's access application in relation to which the negotiations were occurring.

18 Terms of access agreement

(1) A facility operator must ensure that an access agreement that the operator enters into specifies the following:

(a) the price of access to each regulated service to be provided;

(b) the timing and term of access to each service;

(c) the purpose or purposes for which each service can be used under the agreement;

(d) whether demand for each service is greater than available capacity for the service at the designated facility;

(e) whether or not the user has agreed to be provided access in accordance with flexible booking principles and, if so, the applicable flexible booking principles;

(f) if there is a queuing policy for the facility – details of where a copy of the queuing policy can be viewed or obtained;

(g) the obligation on the operator to maintain the facility and any obligations on the service user to maintain any other facilities necessary for it to access each service;

(h) the performance criteria to apply to the operator's provision of each service to the service user;

(i) a mechanism for resolving disputes between the parties which is consistent with the dispute resolution procedure mentioned in section 23, unless otherwise agreed by the parties;

(j) the environmental and safety obligations applicable to each party including any requirement to obtain any third party accreditation or authorisation.

(2) A facility operator must also ensure that an access agreement that provides for the operator to make modifications to a designated facility specifies the responsibility of each party to the agreement to pay for the modifications.

(3) To avoid doubt, an access agreement mentioned in subsection (2) may provide for the facility operator to recover from the service user the reasonable costs associated with carrying out any modifications requested by the service user.

Subdivision 3 Queuing

19 Minister may declare queuing policy applies

(1) The Minister may prepare a proposed queuing policy to apply in relation to a designated facility if the Minister is satisfied that:

(a) it is necessary or appropriate for a queuing policy to apply in relation to the facility; or

(b) if there is already a queuing policy for the facility – it is necessary or appropriate for a new queuing policy to apply in relation to the facility.

(2) After preparing the proposed queuing policy, the Minister must:

(a) give the facility operator:

(i) a copy of the proposed queuing policy; and

(ii) a written notice inviting the operator to make a written submission to the Minister on the policy within the period of not less than 15 business days specified in the notice; and

(b) publish the proposed queuing policy on the Agency website; and

(c) publish in the *Gazette* a notice inviting members of the public to make written submissions on the policy within the period of not less than 15 business days specified in the notice.

(3) After considering any submissions received, the Minister may:

(a) make any amendments to the proposed queuing policy that the Minister considers necessary; and

(b) publish the queuing policy as amended on the Agency website; and

(c) by *Gazette* notice, declare that the queuing policy published under paragraph (b) applies in relation to the designated facility with effect from the date specified in the notice.

(4) The Minister may at any time, by *Gazette* notice, revoke a declaration made under subsection (3)(c).

20 Facility operator must comply with queuing policy

(1) The ***queuing policy*** for a designated facility is the queuing policy declared under section 19(3)(c) to apply to the facility, while the declaration is in effect.

(2) The facility operator of a designated facility must comply with the queuing policy for the facility, except to the extent that doing so would be contrary to an access agreement that was entered into before the queuing policy became the queuing policy for the facility.

Subdivision 4 Access disputes

21 Grounds

Each of the following is a ground for an access dispute:

(a) a facility operator gives an applicant a notice under section 14(3) but the applicant believes on reasonable grounds that the facility operator should be able to undertake the modifications requested;

(b) a facility operator gives an applicant a notice under section 15 but the applicant believes that their access application is valid;

(c) a facility operator and a service user cannot agree on the terms and conditions of an access agreement within the negotiation period;

(d) a service user believes on reasonable grounds that the user has not been given appropriate access to a regulated service in accordance with section 10(1) or the correct priority in a queue for regulated services at a designated facility in accordance with the queuing policy for the facility.

22 Initiation

(1) Subject to subsection (3), if a ground for an access dispute exists between a service user and a facility operator, the user may initiate an access dispute by giving written notice to the operator.

(2) The dispute notice must contain the information prescribed by regulation.

(3) An access dispute may be initiated on a ground mentioned in section 21(c) only within 10 business days after the negotiation period has ended.

23 Resolution

An access dispute is to be resolved in accordance with the dispute resolution procedure prescribed by regulation.

Division 2 General obligations

24 Preventing or hindering access

(1) A facility operator must not engage in conduct for the purpose of, or that has the effect of, preventing or hindering the access of a service user to any regulated service provided at the designated facility operated by the operator.

(2) A facility operator is taken to be engaging in conduct of a kind mentioned in subsection (1) if, having regard to the relevant criterion, the operator provides, or proposes to provide, access to the regulated service to itself, or a related body corporate of itself, on more favourable terms than the terms on which it provides, or proposes to provide, access to the service to a competitor of the operator.

(3) For subsection (2), the relevant criterion is the terms, taken as a whole, on which the facility operator provides, or proposes to provide, access to the regulated service to itself, or a related body corporate of itself, and the competitor, having regard particularly to the nature and quality of the service provided or proposed to be provided.

(4) A facility operator does not contravene subsection (1) if the conduct is constituted by:

(a) a refusal to carry out a modification to the designated facility if, in the reasonable opinion of the operator, the modification is not required for the provision of the requested regulated service; or

(b) an act expressly required or permitted to be done under the access requirements provided the act would not result in the operator, under subsection (2), being taken to be engaging in conduct of a kind mentioned in subsection (1); or

(c) an act that is done in the fulfilment of a protected contractual right; or

(d) a reasonable act done:

(i) in, and for, an emergency; or

(ii) in order to avert or minimise an imminent threat of:

(A) death, or serious injury, to any person; or

(B) loss of, or serious damage to, property; or

(C) material harm to the environment.

(5) In this section:

competitor, of a facility operator, means an entity that has, or seeks to have, access to the regulated service to compete in a market with the operator or a related body corporate of the operator.

25 Unfairly differentiating

(1) This section applies to a facility operator in negotiating arrangements to provide access to any regulated service or a change to any such arrangement.

(2) The facility operator must not unfairly differentiate between service users in a way that has a material adverse effect on the ability of one or more of the service users to compete with other service users, but may treat service users differently to the extent the different treatment is:

(a) due to a refusal of a kind mentioned in section 24(4)(a); or

(b) expressly required or permitted by the access requirements; or

(c) due to the exercise or fulfilment of a protected contractual right.

(3) To avoid doubt, subsection (2):

(a) does not prevent a facility operator from applying a different charge to different service users for the provision of the same regulated service; and

(b) does not authorise a facility operator to engage in conduct for the purpose of, or that has the effect of, preventing or hindering a service user's access to the regulated service in contravention of section 24(1).

26 Enforcement of obligations

(1) A court of competent jurisdiction may make an order mentioned in subsection (2) if, on the application of a person, the court is satisfied that a facility operator has engaged, is engaging, or proposes to engage in conduct constituting a contravention of section 24(1) or 25(2).

(2) The court may make one or more of the following orders:

(a) an order granting an injunction, on terms the court considers appropriate:

(i) restraining the facility operator from engaging in the conduct; or

(ii) if the conduct involves failing to do something – requiring the operator to do the thing;

(b) an order directing the operator to compensate a person for loss or damage suffered by the person because of the contravention;

(c) another order the court considers appropriate.

(3) If the court has power to make an order under subsection (2)(a) against a facility operator, it may make any other order (including granting an injunction) it considers appropriate against any other person involved in the contravention concerned.

27 Contraventions reported to Minister

If the Regulator believes, on reasonable grounds, that a facility operator has contravened this Division in any respect, the Regulator must, as soon as practicable after forming the belief:

(a) prepare a report on the matter; and

(b) give it to the Minister and the operator.

Part 4 Price regulation for regulated services

28 Making price determinations

(1) For each regulated industry declared under section 9(1), the Regulator is authorised to make a determination (a ***price determination***) under section 20(1)(a) of the *Utilities Commission Act 2000* relating to the charges fixed by the facility operator in relation to the provision of regulated services.

(2) The Regulator must make a price determination:

(a) for the regulated industry mentioned in section 9(1)(a) – no later than 3 months after the Darwin ship lift facility start date; and

(b) for a regulated industry mentioned in section 9(1)(b) – no later than 6 months after the relevant marine facility is designated to be a designated facility.

(3) Before making a price determination, the Regulator must undertake the consultations, if any, prescribed by regulation.

(4) In this section:

Darwin ship lift facility start date means the date on which the Darwin ship lift facility starts operations:

(a) as notified to the Regulator by the facility operator under section 48(1); or

(b) if the operator fails to comply with section 48(1) – as determined by the Regulator under section 48(2).

29 Content of price determination

(1) A price determination must be consistent with:

(a) the regulations; and

(b) the pricing principles specified in section 30.

(2) A price determination must require a facility operator to whom it applies:

(a) to publish information relating to prices in accordance with the requirements prescribed by regulation; and

(b) to give the Regulator notice of any proposed change in the operator's charges for regulated services in accordance with the requirements prescribed by regulation; and

(c) to take any other action prescribed by regulation.

Example for subsection (2)(b)

A change may be the variation of an existing charge, the imposition of a new charge or the removal of an existing charge.

(3) A price determination may also require a facility operator to whom it applies to publish at a specified time other information of a specified kind relating to specified prices.

(4) A price determination must specify when it expires and cannot have effect for:

(a) a period of more than 5 years; or

(b) if a shorter period is prescribed by regulation – the shorter period.

30 Pricing principles

(1) The pricing principles are as follows:

(a) subject to subsection (2), the price of access to a regulated service should be set so as to:

(i) generate expected revenue from the service that is at least sufficient to meet the efficient costs of providing access to it; and

(ii) include a return commensurate with the regulatory and commercial risks involved;

(b) price structures should:

(i) allow multi-part pricing and price discrimination when it aids efficiency; and

(ii) not allow a vertically integrated provider of access to regulated services to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to others is higher;

(c) access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.

(2) In relation to the Darwin ship lift facility:

(a) in calculating the efficient costs of providing access to a regulated service for subsection (1)(a)(i), regard must not be had to any contributions funded by a party other than the facility operator; and

(b) in determining the return on investment for subsection (1)(a)(ii) and, for that purpose, calculating the asset base referable to the facility, regard must not be had to contributions to capital expenditure made by a party other than the facility operator for assets used to provide designated services, regardless of when the contributions were made.

31 Regulations may specify form of price regulation

(1) The regulations may:

(a) specify a form of price regulation for regulated services; and

(b) require the Regulator to obtain the approval of the Minister before varying, revoking or substituting a price determination that uses the specified form of price regulation.

(2) Without limiting subsection (1)(a), the form of price regulation specified may include any, or a combination, of the following:

(a) monitoring the price levels of a specified regulated service;

(b) requiring facility operators to comply with pricing policies or principles;

(c) fixing the price of a regulated service or the rate of increase or decrease in such a price;

(d) fixing a maximum price for a specified regulated service;

(e) fixing a maximum revenue in relation to a specified regulated service;

(f) applying an average price cap to a basket of regulated services;

(g) revenue yield control;

(h) any other form of economic regulation used by an independent regulatory body.

(3) A regulation made under this section must not be inconsistent with the pricing principles specified in section 30.

(4) In this section:

independent regulatory body means a body established under an Act of the Territory, the Commonwealth, a State or another Territory that:

(a) is not subject to direction or control by a Minister of that jurisdiction; and

(b) has a function relating to the regulation of access to a service, or the economic regulation of services, provided by an entity.

32 Relationship with *Utilities Commission Act 2000*

If there is an inconsistency between a provision of this Part and a provision of the *Utilities Commission Act 2000*, the provision of this Part prevails to the extent of the inconsistency.

33 Regulator to notify Minister if charges inconsistent with price determination

The Regulator must give written notice to the Minister and a facility operator as soon as practicable after the Regulator forms the belief, on reasonable grounds, that the operator has acted inconsistently with a price determination.

Part 5 Other obligations on facility operators

Division 1 Ring-fencing requirements

34 Accounts to be kept separately

(1) A facility operator of a designated facility must keep accounts and records relating to the provision of regulated services at the facility separately from accounts and records related to other parts of the business or businesses carried on by the operator and its related entities.

(2) If the facility operator provides regulated services at more than one designated facility, separate accounts must be kept for each facility.

35 Disclosure and use of protected information

(1) ***Protected information*** is information that is disclosed to a facility operator by a service user under this Act, or otherwise through the operation of a designated facility that, if disclosed, could affect the competitive position of the service user.

(2) A facility operator must not require a service user to give the operator information that, if disclosed, could affect the competitive position of the service user unless provision of the information is:

(a) reasonably necessary for the proper operation of the designated facility; or

(b) reasonably necessary for the assessment of an applicant's suitability to use the facility; or

(c) required by law or by an Agency or statutory corporation; or

(d) consented to by the service user.

(3) A facility operator must take all reasonable steps to prevent the disclosure of protected information unless the disclosure is authorised by this section.

(4) The disclosure of protected information is authorised if the disclosure is:

(a) made to a member of the operator's personnel or the Regulator; or

(b) reasonably necessary for the operator to fulfil an obligation under this Act; or

(c) required or authorised under any other law of the Territory; or

(d) required by a court; or

(e) made with the consent of the service user who gave the information; or

(f) made in prescribed circumstances.

(5) A facility operator, or member of the operator's personnel, must not use protected information given by a service user for a purpose other than:

(a) assessing the suitability of the user to be a user of the designated facility; or

(b) providing regulated services to the user; or

(c) resolving an access dispute with the user; or

(d) enabling the operator to fulfil an obligation under this Act; or

(e) a purpose for which the user has given written consent.

(6) A facility operator commits an offence of strict liability if the operator contravenes subsection (2), (3) or (5).

Maximum penalty: 100 penalty units.

(7) A facility operator must develop and implement a policy to ensure that protected information obtained by the operator is not disclosed or used except as authorised by this section.

(8) The facility operator must, on request, give a copy of the policy developed under subsection (7) to the Regulator and any service user who requests it.

(9) In this section:

personnel, of a facility operator, means the operator's directors and other officers, employees, agents and contractors.

36 Compliance with guidelines

A facility operator must comply with guidelines issued by the Regulator under section 46 while they are in effect.

Division 2 Giving reports and information

37 Annual report on non-compliance

(1) This section applies to the facility operator of a designated facility after the facility starts operations.

(2) The facility operator must, no later than 30 September in each year, give an annual report to the Regulator.

(3) The report must set out details of the following:

(a) each material instance of non-compliance with the access requirements that occurred during the previous financial year, including the information prescribed by regulation in relation to each of those instances;

(b) each material instance of non-compliance with a policy developed by the facility operator under section 35(7) that occurred during the previous financial year;

(c) any other matter prescribed by regulation.

38 Regulator may require information relating to charges or compliance report

(1) Subject to subsection (3), the Regulator may, by written notice, require a facility operator to give the Regulator:

(a) information or documents relating to a particular charge fixed by the operator; or

(b) a report relating to the operator's compliance with the access requirements or any access disputes that arise.

(2) The notice must:

(a) specify the information or documents, or kind of information or documents, to which it applies or the report that is required; and

(b) state that the information, documents or report provided must be certified as accurate by the chief executive officer, or another specified officer, of the facility operator; and

(c) state the time and manner (which must be reasonable) for the provision of the information, documents or report.

(3) The Regulator may give a notice under subsection (1) only if satisfied that:

(a) the provision of the information, documents or report is reasonably necessary for achieving the object of this Act; and

(b) the likely cost to the facility operator of complying with the requirement is not disproportionate to the benefit that provision of the information or documents will provide for achieving that object.

39 Regulator may require other information or inspection

(1) The Regulator may, by written notice, require a facility operator to give information of a kind specified in the notice about any of the following:

(a) the operator's compliance with section 24(1) or 25(2);

(b) any matter arising out of a report given under section 37 or 38;

(c) its internal accounting procedures.

(2) The notice must state the time and manner (which must be reasonable) for the provision of the information.

(3) The Regulator may, by written notice, require a facility operator to make available for inspection the operator's accounts and records within the period specified in the notice (which must be reasonable).

40 Offence not to comply with requirement

(1) A person commits an offence of strict liability if the person:

(a) is a facility operator; and

(b) is required:

(i) by notice given under section 38(1) to give information, documents or a report; or

(ii) by notice given under section 39(1) to give information; or

(iii) by notice given under section 39(3) to make accounts or records available for inspection; and

(c) fails to do so within the time and in the manner stated in the notice.

Maximum penalty: 100 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

(3) It is not a reasonable excuse that complying with the requirement would breach a duty of confidentiality.

41 Providing confidential information

(1) A facility operator may, when giving information in response to a notice under section 38(1) or 39(1), claim that the information is confidential.

(2) A claim that information is confidential must be accompanied by a detailed statement of the reasons in support of the claim and is not duly made unless accompanied by such a statement.

(3) The Regulator must take all reasonable steps to prevent the disclosure of information that is claimed to be confidential unless the disclosure is permitted by this section.

(4) Information that is claimed to be confidential under this section may be disclosed by the Regulator if:

(a) the disclosure is for the purposes of the administration of this Act and to a person engaged in that administration; or

(b) the disclosure is made with the consent of the person who gave the information and, if disclosure could adversely affect the competitive position of another person, that other person; or

(c) the disclosure is authorised or required under any other law of the Territory; or

(d) the disclosure is authorised or required by a court; or

(e) the Regulator:

(i) is of the opinion that:

(A) the disclosure is in the public interest; and

(B) the public benefit in disclosing the information outweighs any detriment that might be suffered by a person as a result of the disclosure; and

(ii) provides written notice of, and reasons for, the proposed disclosure to the person who gave the information and, if disclosure could adversely affect the competitive position of another person, that other person.

(5) Subject to subsection (6), information that is claimed to be confidential may also be disclosed if the Regulator is of the opinion that there are insufficient grounds for the claim.

(6) Before disclosing information as mentioned in subsection (5), the Regulator must give written notice of, and reasons for, the proposed disclosure to the person who gave the information and, if disclosure could adversely affect the competitive position of another person, that other person.

(7) A disclosure of information permitted by this section does not constitute a breach of any duty of confidentiality (either by the person making the disclosure or by the facility operator).

Division 3 Independent compliance audit

42 Requirement to engage independent auditor

(1) Subject to subsection (2), the Regulator may, by written notice given to a facility operator, require the operator to engage a person as an independent auditor to audit the operator's compliance with this Act and the *Utilities Commission Act 2000*.

(2) The Regulator may require a facility operator to appoint a person as an independent auditor to conduct an audit only if:

(a) the conduct of an audit is reasonably necessary to ascertain whether the object of this Act is being achieved; and

(b) the likely cost of the audit is not disproportionate to the benefit that the conduct of the audit would achieve in respect of the object of this Act and ensuring the operator is complying with this Act; and

(c) the Regulator has not required the facility operator to do so within the previous 12 months.

(3) A facility operator who is required by the Regulator to engage a person as an independent auditor must:

(a) engage the person at the operator's expense and in accordance with the procedure and requirements prescribed by regulation; and

(b) ensure the person is engaged on terms that include the terms prescribed by regulation; and

(c) comply with the procedures prescribed by regulation for the conduct of the audit.

Part 6 Regulator investigations, reports and guidelines

43 Complaints about facility operators

(1) A service user may make a complaint to the Regulator if the user considers that a facility operator:

(a) has acted in contravention of:

(i) section 24(1) or 25(2); or

(ii) the ring-fencing requirements; or

(b) has not complied with a price determination that applies to the operator.

(2) The complaint must:

(a) be in writing; and

(b) contain details of the grounds of the complaint; and

(c) include details of:

(i) how the complainant is, or may be, adversely affected by the alleged contravention or non-compliance; and

(ii) how the complainant has made a genuine attempt to resolve the subject matter of the complaint with the facility operator.

(3) The Regulator must investigate a complaint it receives under this section unless it believes, on reasonable grounds, that:

(a) the complainant is not, or is unlikely to be, adversely affected by the contravention or non-compliance alleged in the complaint; or

(b) the complainant has not shown that the complainant has made a genuine attempt to resolve the subject matter of the complaint with the facility operator; or

(c) the complaint is frivolous or vexatious.

(4) If the Regulator decides not to investigate a complaint, the Regulator must, within 10 business days after making the decision, give the complainant a written notice stating its decision and the reason for its decision.

(5) If the Regulator investigates a complaint:

(a) it may exercise any of its powers under the *Utilities Commission Act 2000* in conducting the investigation; and

(b) it must inform the complainant of the outcome of the investigation.

44 Annual report to Minister on material non-compliance

(1) Subject to subsection (2), the Regulator must make an annual report to the Minister, by 1 December in each year, on each of the following:

(a) if the Regulator has received a report under section 37 from a facility operator on a material instance of non-compliance with the access requirements that occurred during the previous financial year – the contents of the report;

(b) if the Regulator has received a report under section 38 from a facility operator relating to an access dispute that arose during the previous financial year – the contents of the report;

(c) if the Regulator forms the view that there were one or more material instances, during the previous financial year, of non-compliance by a facility operator with this Act – the instance or instances;

(d) if the Regulator is of the opinion that a queuing policy should apply in relation to a particular designated facility – the reasons for that opinion.

(2) The Regulator is not required to make a report if there were no designated facilities operating during the previous financial year.

(3) The Minister must table a copy of the report in the Legislative Assembly within 7 sitting days after receiving it.

45 Reports and statements by Regulator

(1) The Regulator may, from time to time, publish reports and statements, based on information given or obtained under this Act, about the provision of access to regulated services or charges fixed in relation to the provision of regulated services.

(2) No liability (including liability in defamation) is incurred for publishing in good faith a report or statement under this section or a fair report or summary of such a report or statement.

46 Ring-fencing guidelines

(1) Subject to subsection (2), the Regulator may issue guidelines that are consistent with the object of this Act in relation to:

(a) the manner in which accounts and records are prepared and maintained by a facility operator; and

(b) other requirements relating to ring-fencing to apply to the provision of regulated services by a facility operator.

(2) The Regulator may issue the guidelines only if:

(a) the Regulator has consulted with each facility operator about the proposed guidelines; and

(b) following the consultation, the Regulator believes, on reasonable grounds, that the proposed guidelines are necessary.

(3) If the Regulator issues guidelines:

(a) a copy of the guidelines must be given to each facility operator within 2 business days of being issued; and

(b) the guidelines take effect on the day they are published on the Regulator's website or on any later day specified in the guidelines.

(4) The Minister may, by written notice, request the Regulator to consider and report to the Minister within a specified period on whether guidelines or amended guidelines should be issued under subsection (1).

Part 7 Miscellaneous matters

47 Designation of marine facilities

(1) The Darwin ship lift facility is designated to be a designated facility.

(2) The Minister may, by *Gazette* notice, designate any other marine facility in the Territory to be a designated facility.

48 Start of operations at designated facility

(1) The facility operator of a designated facility must give the Regulator written notice of the date on which the facility starts operations no later than 5 business days after that date.

(2) If the facility operator of a designated facility fails to comply with subsection (1), the Regulator may determine the date on which the facility started operations.

49 Review of Act

(1) Within the last year of each review period, the Regulator must:

(a) carry out a review of the operation of this Act and the regulations as each applies to regulated services provided by the facility operator of each designated facility; and

(b) prepare a report on the review that includes the Regulator's recommendations; and

(c) give a copy of the report to the Minister.

(2) The purpose of a review is to determine the following:

(a) whether there is an ongoing need for regulatory oversight of access to, and pricing of, regulated services provided by the facility operator of each designated facility;

(b) whether there is a need to change the form of regulatory oversight of access and, if so, what changes should be made and why;

(c) whether the pricing principles are suitable for each designated facility;

(d) whether there is a need to change the form of regulatory oversight of prices and, if so, what changes should be made and why;

(e) whether a queuing policy should apply in relation to any designated facility;

(f) whether amendments should be made to this Act or the regulations and, if so, what amendments should be made and why.

(3) The Regulator must consult with the facility operator of each designated facility during a review.

(4) The Minister must table a copy of a report on a review in the Legislative Assembly within 7 sitting days after receiving it.

(5) To avoid doubt, this section does not prevent this Act or the regulations being amended or repealed at any time.

(6) In this section:

review period means:

(a) the 4 year period starting on the commencement of this section; and

(b) each successive 5 year period after the period mentioned in paragraph (a).

50 Misleading information

(1) A person commits an offence if:

(a) the person intentionally gives information to another person; and

(b) the other person is authorised by this Act to require the information to be given; and

(c) the information is misleading and the person has knowledge of that circumstance; and

(d) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person intentionally gives a document to another person; and

(b) the other person is authorised by this Act to require the document to be given; and

(c) the document contains misleading information and the person has knowledge of that circumstance; and

(d) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(3) Strict liability applies to subsections (1)(b) and (2)(b).

(4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant, when giving the information or document:

(a) draws the misleading aspect of the information or document to the other person's attention; and

(b) to the extent to which the defendant can reasonably do so – gives the other person the information necessary to remedy the misleading aspect of the information or document.

(5) In this section:

acting in an official capacity, in relation to a person, means the person is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

51 Offence to disclose certain information

(1) A person commits an offence if:

(a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and

(b) the information is confidential and the person is reckless in relation to that circumstance; and

(c) the person intentionally engages in conduct; and

(d) the conduct results in the disclosure of the information and the disclosure is not:

(i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or

(ii) to a person who is otherwise entitled to the information; and

(e) the person is reckless in relation to the result and circumstance referred to in paragraph (d).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(a).

(3) If the information referred to in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

Note for subsection (3)

In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

52 Regulations

(1) The Administrator may make regulations under this Act.

Note for subsection (1)

See section 65 of the Interpretation Act 1978.

(2) A regulation may do any of the following:

(a) require facility operators to publish information relating to access to regulated services at designated facilities;

(b) provide for any matter in connection with the dispute resolution procedure mentioned in section 23;

(c) provide for the Regulator to conduct reviews into the form of price regulation that should be imposed in relation to a regulated industry;

(d) provide for any matter in connection with an audit under section 42;

(e) provide for an offence against a regulation to be an offence of strict or absolute liability.