

NORTHERN TERRITORY OF AUSTRALIA

PORTS MANAGEMENT REGULATIONS

Subordinate Legislation No. 13 of 2015

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 13 of 2015*

Ports Management Regulations

I, John Laurence Hardy, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Ports Management Act*.

Dated 30 June 2015

J. L. HARDY
Administrator

By His Honour's Command

D. W. TOLLNER
Treasurer
acting for
Minister for Transport

* Notified in the *Northern Territory Government Gazette* on 30 June 2015.

Part 1 Preliminary matters

1 Citation

These Regulations may be cited as the *Ports Management Regulations*.

2 Commencement

These Regulations commence on 1 July 2015.

3 Definitions

In these Regulations:

access dispute means a dispute between a private port operator and a port user relating to access by the port user to a prescribed service at the designated port of the operator, including a dispute as to the price at which, or other terms on which, access will be provided.

access request means a written request by a port user made in accordance with a private port operator's access policy for access to any prescribed service at the designated port of the operator, including a request to alter or add to port facilities.

aid, see section 93 of the Act.

infringement notice, see regulation 20.

infringement notice offence, see regulation 19(1).

prescribed amount, see regulation 19(2).

price determination, see section 132(1) of the Act.

vessel, see section 63 of the Act.

Part 2 Pilotage

Division 1 Duties of master

4 Taking pilot on board

(1) This regulation applies if:

(a) the master of a vessel approaching a compulsory pilotage area intends that the vessel will enter that area; or

- (b) a vessel is at a boarding ground.
- (2) The master of the vessel commits an offence if a licensed pilot is approaching the vessel and the master fails to ensure the vessel is made ready to take the licensed pilot on board by:
 - (a) creating a lee; and
 - (b) providing on the lee side, adequately lit at night, a pilot ladder, mechanical hoist or other safe means of access; and
 - (c) arranging for all scuppers, sanitary and other refuse outlets in the vicinity of the means of access to be closed.

Maximum penalty: 50 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subregulation (2) if the defendant has a reasonable excuse.

Division 2 Pilotage licences and pilotage exemption certificates

5 Issue and renewal of pilotage licence or exemption certificate

For section 76(1) of the Act:

- (a) the matters of which the port operator for a pilotage area within the Port of Darwin must be satisfied are:
 - (i) for an application for the issue or renewal of a pilotage licence – the matters set out in Parts 7 to 10 of the Technical and Safety Standards for Pilotage and the Provision of Pilotage Services – Port of Darwin version 2.3 published as at 31 March 2015; and
 - (ii) for an application for the issue or renewal of a pilotage exemption certificate – the matters set out in Parts 11 to 15 of the document mentioned in subparagraph (i); and
- (b) the matters of which the port operator, for a pilotage area within any other designated port, or the pilotage authority for any other pilotage area, must be satisfied are:
 - (i) the physical and mental fitness of the applicant to carry out pilotage duties; and

- (ii) the competence of the applicant to navigate a vessel, of the relevant size or kind, through the pilotage area.

6 Variation of conditions

- (1) The holder of a pilotage licence or pilotage exemption certificate may apply in writing to the pilotage authority that issued the licence for the variation of a condition to which the licence or certificate is subject.
- (2) The pilotage authority may, on an application under subregulation (1):
 - (a) approve the application by varying the condition; or
 - (b) refuse the application.

7 Fees

- (1) An application for the issue of a pilotage exemption certificate must be accompanied by a fee, payable to the Territory, of \$1070.
- (2) An application for the renewal of a pilotage exemption certificate must be accompanied by a fee, payable to the Territory, of \$475.
- (3) An application for the variation of a condition to which a pilotage exemption certificate is subject must be accompanied by a fee, payable to the Territory, of:
 - (a) if the condition relates to the vessel or vessels to which the certificate applies – \$475; or
 - (b) if the condition relates to the part of the pilotage area to which the certificate applies – \$545; or
 - (c) if the application relates to a condition of a kind mentioned in paragraphs (a) and (b) – \$780.

Division 3 Licensed pilots

8 Medical fitness of licensed pilot

A pilotage authority may, at any time, require a licensed pilot to undergo a medical examination in order that the licensed pilot's fitness to discharge the pilot's duties may be determined.

9 Tugs under pilot's orders

A vessel employed in towing, or in any way moving or assisting, another vessel that is in pilotage charge of a licensed pilot is under the orders of the pilot in all matters connected with navigation.

10 Offences relating to additional rewards or remuneration

(1) A licensed pilot commits an offence if:

- (a) the pilot demands, or receives, any reward or remuneration in respect of pilotage services provided in respect of a vessel; and
- (b) the demand is made to, or the reward or remuneration is received from, a person associated with the operation or navigation of the vessel.

Maximum penalty: 80 penalty units.

(2) A person associated with the operation or navigation of a vessel commits an offence if:

- (a) the person offers, or provides, any reward or remuneration in respect of pilotage services provided in respect of the vessel; and
- (b) the offer is made, or the reward or remuneration is provided, to a licensed pilot.

Maximum penalty: 80 penalty units.

(3) This section does not apply to any reward or remuneration to which the licensed pilot is entitled under the terms of the pilot's employment or engagement by a pilotage services provider.

11 Complaints against licensed pilots

The master of a vessel may make a complaint against a licensed pilot by giving written notice of the complaint to the pilotage authority that licensed the pilot.

Part 3 Port access and price monitoring

12 Prescribed services

- (1) The following are the services provided by a private port operator to which Part 11 of the Act applies:
 - (a) providing, or allowing for, access for vessels to the designated port;
 - (b) providing facilities for loading or unloading vessels at the designated port;
 - (c) providing berths for vessels at the designated port;
 - (d) providing, or facilitating the provision of, pilotage services in a pilotage area within the designated port;
 - (e) allowing entry of persons and vehicles to any land on which port facilities of the designated port are located.
- (2) However, a service mentioned in subregulation (1) does not include any service provided under a lease granted by the private port operator.
- (3) To avoid doubt, the following services provided by a private port operator are not services to which Part 11 of the Act applies:
 - (a) a towage service for facilitating access to the designated port;
 - (b) a bunkering service at the designated port;
 - (c) a service for the provisioning of vessels (including the supply of electricity and water) at the designated port;
 - (d) a service for the removal of waste from vessels at the designated port.

13 Requirements in relation to access policies

- (1) For section 127(1)(b) of the Act, a private port operator must give a draft access policy to the Regulator no later than 4 months after the operator becomes a private port operator.

- (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
 - (vii) 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.
- (3) A private port operator commits an offence if it does not publish a copy of its access policy on its website within 5 days after it is approved under section 127(4) of the Act.
- Maximum penalty: 50 penalty units.
- (4) An offence against subregulation (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subregulation (3) if the defendant has a reasonable excuse.

14 Guidelines on reporting in relation to access policies

For section 128(1) of the Act, the following are the matters about which guidelines must be issued in relation to annual reports under section 130(1) of the Act relating to access policies:

- (a) the form of the report and how it must be made;
- (b) what information must be included in the report about any material instance of non-compliance with an access policy including specified kinds of records, statistics, information and explanations.

15 Review of access policy

- (1) A private port operator must review its access policy no later than the end of the period of 5 years after it was approved.
- (2) In reviewing its access policy a private port operator must seek submissions from port users and the Regulator.
- (3) Following a review, a private port operator must decide whether or not it wishes to amend its access policy.

Note for subregulation (3)

Section 127(10) of the Act sets out the process to be followed if a private port operator wishes to amend its access policy.

16 Price determinations

- (1) In making a price determination, without limiting section 21(2) of the *Utilities Commission Act*, the Regulator must have regard to:
 - (a) the cyclical nature of the economy of the Territory, including the volatility of demand for prescribed services and, where appropriate, the need to assess returns over a period longer than 1 year; and
 - (b) the desirability of price stability and the need to avoid price shocks.
- (2) For section 132(2)(a) of the Act, a price determination:
 - (a) must use monitoring of the price levels of a prescribed service as the form of price regulation for the service; and
 - (b) must specify the basis on which, or the standard against which, the Regulator intends to monitor price levels; and

- (c) must require each private port operator to whom the determination applies:
 - (i) to give the Regulator in the specified manner written notice, that complies with subregulation (3), of a proposed change in the operator's charges for the prescribed services at least 20 days before the change is proposed to be made; and
 - (ii) to publish in a prominent position on its website:
 - (A) the operator's standard charges for prescribed services; and
 - (B) the standard rate of other charges charged by the operator for, or in respect of, the use of port facilities of the designated port; and
 - (C) notice of a proposed change in the operator's standard charges for prescribed services at least 10 days before the change is proposed to be made; and
- (d) must not require a private port operator to whom the determination applies to publish on its website a negotiated charge for a prescribed service; and
- (e) must require each private port operator to whom the determination applies to make an annual report to the Regulator containing the following information in respect of the year to which the report relates:
 - (i) a list of the types of charges for prescribed services charged by the operator;
 - (ii) the amount of revenue received by the operator from charges for prescribed services (showing the amount of revenue for each separate charge);
 - (iii) for a charge for a prescribed service payable on a unit basis (such as a unit of vessel cargo capacity or vessel gross tonnage) – the total number of units charged for, or in respect of, each separate charge;
 - (iv) if there was a change in the charge for a prescribed service – the amount of the change and the reason for it; and

- (f) may require each private port operator to whom the determination applies to include in an annual report under paragraph (d) information on whether, during the year to which the report relates, the operator entered into an agreement of a kind mentioned in section 110 of the Act or regulation 18 and, if so, the number of those agreements and their terms.
- (3) A notice under subregulation (2)(c)(i) about a proposed change must:
- (a) identify each separate charge to which the change relates; and
 - (b) provide the following information about each charge:
 - (i) the basis on which the amount of the charge is calculated including, for a charge payable on a unit basis (such as a unit of vessel cargo capacity or vessel gross tonnage), the unit on which the charge is imposed;
 - (ii) for a change in an existing charge or the removal of an existing charge, the reason for the change in the charge or removal;
 - (iii) if the charge is being fixed for the first time:
 - (A) the purpose and function of the charge; and
 - (B) the basis on which the amount of the charge is calculated; and
 - (C) the persons who will be required to pay the charge.
- (4) A reference in subregulation (2) or (3) to a proposed change in a private port operator's charges for prescribed services includes a change in an existing charge, the fixing for the first time of a charge and the removal of an existing charge.

17 Procedure on making a price determination

- (1) For section 132(2A) of the Act, at least 30 days before making a price determination, the Regulator must send a copy of a draft of the determination to, and invite a submission on it by a specified date from:
- (a) the Minister; and
 - (b) each private port operator to which the determination would apply; and

- (c) any other person the Regulator reasonably considers would likely be affected by the determination.
- (2) The Regulator must consider each submission received by the specified date before making a price determination.
- (3) The Regulator must make a price determination for a private port operator no later than 3 months after the operator becomes a private port operator.
- (4) As soon as practicable after making a price determination, the Regulator must:
 - (a) send a copy of the determination to any person to whom a draft was sent under subregulation (1); and
 - (b) publish the determination on the Regulator's website.

18 Power to negotiate charges

A private port operator may enter into an agreement with a person (including an agreement of a kind covered by section 110 of the Act) that fixes the charge payable by the person for a prescribed service to be provided to the person at an amount that is different to the standard charge for that service.

Part 4 Infringement notice offences

19 Infringement notice offence and prescribed amount payable

- (1) An ***infringement notice offence*** is an offence against a provision of the Act specified in the Schedule.
- (2) The ***prescribed amount*** for an infringement notice offence is the amount equal to the monetary value of the number of penalty units specified for the offence in the Schedule.

20 When infringement notice may be given

If the regional harbourmaster or a port enforcement officer reasonably believes that a person has committed an infringement notice offence, the regional harbourmaster or port enforcement officer may give a notice (an ***infringement notice***) to the person.

21 Contents of infringement notice

- (1) The infringement notice must specify the following:
 - (a) the name and address of the person, if known;

- (b) the date the infringement notice is given to the person;
 - (c) the date, time and place of the infringement notice offence;
 - (d) a description of the offence;
 - (e) the prescribed amount payable for the offence;
 - (f) the enforcement agency, as defined in the *Fines and Penalties (Recovery) Act*, to whom the prescribed amount is payable.
- (2) The infringement notice must include a statement to the effect of the following:
- (a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount to the specified enforcement agency within 28 days after the notice is given;
 - (b) the person may elect under section 21 of the *Fines and Penalties (Recovery) Act* to have the matter dealt with by a court instead of under that Act by completing a statement of election and giving it to the specified enforcement agency;
 - (c) if the person does nothing in response to the notice, enforcement action may be taken under the *Fines and Penalties (Recovery) Act*, including (but not limited to) action for the following:
 - (i) suspending the person's licence to drive;
 - (ii) seizing personal property of the person;
 - (iii) deducting an amount from the person's wages or salary;
 - (iv) registering a statutory charge on land owned by the person;
 - (v) making a community work order for the person and imprisonment of the person if the person breaches the order.
- (3) Also, the infringement notice must include an appropriate form for making the statement of election mentioned in subregulation (2)(b).

22 Payment by cheque

If the person tenders a cheque in payment of the prescribed amount, the amount is not taken to have been paid unless the cheque is cleared on first presentation.

23 Withdrawal of infringement notice

- (1) The regional harbourmaster may withdraw an infringement notice given by the regional harbourmaster or a port enforcement officer to a person by written notice given to the person.
- (2) The notice must be given:
 - (a) within 28 days after the infringement notice is given to the person; and
 - (b) before payment of the prescribed amount.

24 Application of this Part

- (1) This Part does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice has been given unless the offence is expiated.
- (2) Also, this Part does not:
 - (a) require an infringement notice to be given; or
 - (b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been given; or
 - (c) prevent more than one infringement notice for the same offence being given to a person.
- (3) If more than one infringement notice for the same offence has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

Part 5 Miscellaneous matters**25 Reportable incidents**

- (1) For the definition of **reportable incident** in section 3 of the Act, subject to subregulation (2), events of the following kind are prescribed:
 - (a) a collision of a vessel with another vessel;
 - (b) a collision by a vessel with an object;
 - (c) the grounding, sinking, flooding or capsizing of a vessel;
 - (d) a fire on board a vessel;

- (e) a loss of stability of a vessel that affects the safety of the vessel;
 - (f) the structural failure of a vessel;
 - (g) a situation in which vessels pass each other, or a vessel passes another vessel, a person or an object, in such proximity that a reasonable person would conclude that in all the circumstances there was a risk of an imminent collision;
 - (h) an event that results in, or could have resulted in, a vessel becoming disabled and requiring assistance;
 - (i) the fouling or damaging by a vessel of:
 - (i) any pipeline or submarine cable; or
 - (ii) an aid;
 - (j) any other event that:
 - (i) is a reportable incident under section 50 of the *Marine Pollution Act*; or
 - (ii) must be notified under section 14 of the *Waste Management and Pollution Control Act* to the Northern Territory Environment Protection Authority.
- (2) An event of a kind mentioned in subregulation (1) that only involves actual or potential loss of, or damage to, property is an event of a prescribed kind only if the value of the loss or damage is greater than \$20 000.

26 Record-keeping and reporting obligations

- (1) For sections 18(1) and (3) and 87(1) and (3) of the Act, the prescribed particulars of a reportable incident that are required to be kept or reported are details that are sufficient to describe the following:
- (a) the nature of the incident and the circumstances surrounding it;
 - (b) the time and location of the incident;
 - (c) the persons involved in the incident;
 - (d) the vessels (if any) involved in the incident;
 - (e) the response of the port operator or pilotage services provider to the incident;

- (f) for an event that involves actual or potential harm to the environment:
 - (i) how that harm occurred, is occurring or may occur; and
 - (ii) action taken to prevent, reduce, control or remove that harm.
- (2) For sections 18(1) and 87(1) of the Act, records are kept in the prescribed manner if they are kept in writing.
- (3) It is sufficient compliance with a reporting obligation under section 18(3) or 87(3) of the Act if the port operator or pilotage services provider (as the case requires) gives to the regional harbourmaster a copy of a report of a reportable incident made under another Act that contains the prescribed particulars mentioned in subregulation (1).
- (4) For sections 18(3) and 87(3) of the Act, the prescribed period after the occurrence of a reportable incident is:
 - (a) 1 hour – if the reportable incident involves:
 - (i) the death of a person; or
 - (ii) an injury to a person that requires or results in immediate treatment for:
 - (A) the amputation of any part of the person's body; or
 - (B) a serious head injury; or
 - (C) a serious eye injury; or
 - (D) a serious burn; or
 - (E) the separation of the person's skin from an underlying tissue (such as degloving or scalping); or
 - (F) a spinal injury; or
 - (G) the loss of a bodily function; or
 - (H) serious lacerations; or
 - (iii) the loss of a vessel; or
 - (iv) the loss of a person from a vessel; or

- (v) the loss of, or damage to, property to the value of \$20 000 or more; or
 - (vi) actual or potential harm to the environment; or
- (b) in any other case – 12 hours or, if the reportable incident is also required to be reported by the port operator or pilotage services provider under another Act within a shorter period, the shorter period.

27 Port management officers

For section 22(7) of the Act:

- (a) the prescribed circumstances are where the port operator of the designated port is a public sector entity; and
- (b) the entity by which a person is employed or engaged is a public sector entity.

28 Pilotage services provider

For section 85(2)(b)(ii) of the Act:

- (a) the prescribed circumstances are where the pilotage area is within a designated port of which the port operator is a public sector entity; and
- (b) the entity by which a person is employed or engaged is a public sector entity.

Schedule Infringement notice offences and prescribed amounts

regulation 19(1) and (2)

Provision

Prescribed amount in penalty units

Ports Management Act

sections 38(2), 41(3), 42(3), 43(3), 44(3), 50(4), 51(5), 53(1), 79(1), 96(1), 97(3), 101(4) and 102(2) and (3)

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sections 33(4), 50(3), 51(4), 100(1), 102(4) and 103(1)

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