

NORTHERN TERRITORY OF AUSTRALIA

PORTS MANAGEMENT AMENDMENT REGULATIONS 2020

Subordinate Legislation No. 23 of 2020

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Subordinate Legislation No. 23 of 2020*

Ports Management Amendment Regulations 2020

I, Vicki Susan O'Halloran, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Ports Management Act 2015*.

Dated 29 July 2020

V. S. O' Halloran
Administrator

By Her Honour's Command

E. D. Lawler
Minister for Infrastructure, Planning and Logistics

* Notified in the *Northern Territory Government Gazette* on 30 July 2020.

1 Title

These Regulations may be cited as the *Ports Management Amendment Regulations 2020*.

2 Commencement

These Regulations commence on the commencement of the *Ports Legislation Amendment Act 2020*.

3 Regulations amended

These Regulations amend the *Ports Management Regulations 2015*.

4 Regulation 12 amended (Prescribed services)

(1) Regulation 12(1)
omit

all words from "The" to "applies:"

insert

For section 3 of the Act, definition ***prescribed services***, paragraph (a), the following services provided by a private port operator are prescribed:

(2) Regulation 12(3)
omit

services to which Part 11 of the Act applies:

insert

prescribed services:

5 Regulation 13 amended (Requirements in relation to access policies)

(1) Regulation 13(1)
omit

a draft

insert

its initial draft

(2) After regulation 13(2)(a)

insert

- (ab) contain a commitment that the operator will, on request by a port user, give the user information about the following if it is reasonably required by the user to make an access request:
- (i) the availability of a prescribed service;
 - (ii) the terms and conditions of access to a prescribed service; and
- (ac) set out the process for making an access request including stating:
- (i) whether or not an access request needs to be accompanied by a fee; and
 - (ii) if a fee is payable – that the amount of the fee will be a reasonable amount to meet the operator's costs of assessing the request and will be disclosed to the port user before, or at the time, the access request is made; and
- (ad) state the information that is required to be set out in an access request, which:
- (i) may include the following:
 - (A) the approximate date on which access to the prescribed service is sought;
 - (B) the period for which access to the prescribed service is sought;
 - (C) the reason for which access to the prescribed service is sought; but
 - (ii) must not include information that is:
 - (A) not relevant to the provision of access to the prescribed service to the port user; or
 - (B) not within the reasonable capacity of the port user to provide; and

(ae) state the operator's preferred form of access request but contain a commitment that the operator will accept an access request in an alternative written form if it contains the information required; and

(3) After regulation 13(2)(e)

insert

(ea) set out a process for negotiating access to a prescribed service that is the subject of an access request made by a port user that:

(i) requires the operator to undertake genuine negotiations with the port user with a view to agreeing on reasonable terms of access to the prescribed service; and

(ii) requires the operator and the port user to negotiate in good faith; and

(iii) requires the operator to accommodate, as far as practicable, the port user's reasonable requirements and proposals, including a proposal that the operator alter or add to port facilities to enable the prescribed service to be provided to the port user; and

(iv) allows the operator to recover from the port user the reasonable costs associated with carrying out any alterations or additions to the port facilities proposed by the port user; and

(v) provides that if, after negotiating, the operator and port user cannot agree on terms of access to the prescribed service, then an access dispute arises and must be resolved in accordance with the relevant provisions in the access policy; and

(4) Regulation 13(2)(f)(vii) (*second reference*)

renumber as subparagraph (viii)

(5) Regulation 13(2)(f)(vii)

omit, insert

(vii) sets out the powers and duties of the arbitrator in conducting the arbitration, including the following:

- (A) a power for the arbitrator 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;
- (B) a power for the arbitrator to make an order mentioned in subparagraph (A) subject to any conditions regarding the use and disclosure of the information that the arbitrator considers necessary to protect any confidential information that may be disclosed;
- (C) for an arbitration of an access dispute that relates to the price of a prescribed service – a duty to make a decision that is consistent with any price determination made by the Regulator that is in force and applies to the operator; and

(viiia) requires the arbitrator, in conducting the arbitration, to take into account the following:

- (A) the object of Part 11 of the Act;
- (B) the access and pricing principles set out in section 133 of the Act;
- (C) the operator's legitimate business interests and investment in the designated port and port facilities;
- (D) the cost to the operator of providing access to the relevant prescribed service, including the cost of any required alterations or additions to port facilities, but not costs associated with losses arising from increased competition in upstream or downstream markets;
- (E) firm and binding contractual obligations of the operator and of other persons already using any relevant port facility;
- (F) the operational and technical requirements necessary for the safe and reliable provision of access to the relevant prescribed service;

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- (G) the economically efficient operation of any relevant port facility;
- (H) the benefit to the public from having competitive markets; and
- (6) After regulation 13(2)(f)(ix)
- insert*
- (ixa) requires the operator to give the Regulator a copy of the decision of the arbitrator, subject to any orders made by the arbitrator regarding the protection of confidential information contained in the decision; and
- (7) Regulation 13(2)(f)(x)
- omit*
- parties; and
- insert*
- parties, unless the disclosure is to the party's insurers or legal or financial advisers or required by subparagraph (ixa) or any other law; and

6 Regulation 15 repealed

Regulation 15

repeal

7 Regulation 16 amended (Price determinations)

- (1) Regulation 16(2)(c), (e) and (f), after "private port operator"
- insert*
- and private pilotage provider
- (2) Regulation 16(2)(c)(i) and (ii)(A) and (C), after "operator's"
- insert*
- or provider's
- (3) Regulation 16(2)(c)(ii)(B)
- omit*

-
- (4) After regulation 16(2)(c)
insert
(ca) must require each private port operator to whom the determination applies to publish in a prominent position on its website the standard rate of charges charged by the operator for, or in respect of, the use of port facilities of the designated port; and
- (5) Regulation 16(2)(d), after "operator"
insert
or private pilotage provider
- (6) Regulation 16(2)(e)(i) and (ii) and (f), after "the operator"
insert
or provider
- (7) Regulation 16(2)(f)
omit
(d)
insert
(e)
- (8) Regulation 16(4), after "operator's"
insert
or private pilotage provider's

8 Regulation 17 amended (Procedure on making a price determination)

- (1) Regulation 17(1)(b), after "operator"
insert
and private pilotage provider

(2) Regulation 17(3)

omit

all words after "determination"

insert

for a private port operator or private pilotage provider no later than 3 months after the operator or provider becomes a private port operator or private pilotage provider.

9 Regulation 18 amended (Power to negotiate charges)

Regulation 18, after "operator"

insert

or private pilotage provider

10 Schedule amended (Infringement notice offences and prescribed amounts)

(1) Schedule

omit

41(3), 42(3), 43(3), 44(3)

insert

40A(3), 40B(3), 41(6), 42(6), 43(6)

(2) Schedule

omit

50(3), 51(4),

insert

50(3) and (8), 51(4) and (9),

11 Repeal of Regulations

These Regulations are repealed on the day after they commence.