



Ports



Price Determination

Ports price determination: 2022-2027

To apply from 31 October 2022

Enquiries concerning this price determination should be addressed to:

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1 General

1.1 Authority

- 1.1.1 This price determination is made by the Commission pursuant to Part 3 of the *Essential Services Commission Act 2002*, as authorised by section 6(2) of the *Maritime Services (Access) Act 2000*.

1.2 Purpose and application

- 1.2.1 This price determination applies to a regulated service provider operating at a proclaimed port and regulates conditions relating to:
- (a) the publishing of prices by a regulated service provider for essential maritime services provided by the regulated service provider, and the reporting of prices and related information to the Commission
 - (b) the monitoring and reporting by the Commission of price levels and related matters for the essential maritime services provided by a regulated service provider, and
 - (c) the monitoring and reporting by the Commission of a regulated service provider's revenues, costs and profits/losses and financial returns for essential maritime services.

1.3 Term and commencement

- 1.3.1 This price determination takes effect on and from 31 October 2022 until 30 October 2027 (or until such other time as it ceases to have effect).

1.4 Revocation of previous price determinations

- 1.4.1 Pursuant to section 26(8) of the *Essential Services Commission Act 2002*, and on and from 31 October 2022, this price determination revokes all previous price determinations made by the Commission under section 6(2) of the *Maritime Services (Access) Act 2000*.
- 1.4.2 Nothing in this price determination affects anything done or omitted to be done or rights or obligations accrued under the previous determination made by the Commission under section 6(2) of the *Maritime Services (Access) Act 2000* and section 25 of the *Essential Services Commission Act 2002*.

1.5 Definitions and interpretation

- 1.5.1 Unless otherwise defined below, where a term used in this price determination is defined in the *Maritime Services (Access) Act 2000*, it has the meaning given in that Act.
- 1.5.2 Subject to clause 1.5.1, in this price determination, unless the contrary intention appears:
- business day** means a day in South Australia, other than a Saturday, Sunday or public holiday

Commission means the Essential Services Commission, a statutory body established under the *Essential Services Commission Act 2002*

customer means a person who seeks the provision of a maritime service(s) either by itself or as part of a bundled agreement

essential maritime service means a maritime service as defined in the *Maritime Services (Access) Act 2000*, from time to time

guideline means a guideline made by the Commission under section 12(1)(b) and 42(3) of the *Maritime Services (Access) Act 2000*

published prices means a price for an essential maritime service set for each financial year, prior to the commencement of that year

proclaimed port means a port declared by proclamation to be subject to the *Maritime Services (Access) Act 2000*, from time to time

regulated service provider means a person who carries on a business of providing essential maritime services at a proclaimed port

related body corporate has the same meaning as used in the *Corporations Act 2001* (Cth), from time to time

1.5.3 This price determination must be interpreted according to the following principles:

- (a) words denoting persons include corporations, unincorporated associations, firms, governments and governmental agencies
- (b) a reference to a person includes that person's agents, successors and permitted assigns, persons who have control over any assets of a person and receivers, managers, trustees, administrators and liquidators and similar persons appointed over:
 - (i) a person, or
 - (ii) any assets of a person
- (c) headings are only included for convenience and do not affect interpretation
- (d) unless specified otherwise, a reference to a clause, Chapter, Part or Schedule is to a clause, Chapter or Part of or Schedule to this price determination
- (e) a reference to an agreement, document, regulatory instrument or part thereof is a reference to that agreement, document, regulatory instrument or part thereof as varied, replaced or substituted from time to time and includes any Schedules or attachments to the agreement, document or regulatory instrument, and
- (f) a reference to legislation or regulatory instrument, or to a provision of the legislation or regulatory instrument, includes a modification, re-enactment or re-making of it, a provision substituted for it and a regulation or other statutory instrument issued under it.

1.6 Collection and use of information

1.6.1 The Commission may request any information from a regulated service provider to determine its compliance with the requirements of this price determination or in

relation to the provision of essential maritime services provided by a regulated service provider.

- 1.6.2 Any information required to be provided by a regulated service provider under, or in accordance with, this price determination may alternatively be required (and utilised) by the Commission in accordance with Part 5 of the *Essential Services Commission Act 2002*.

2 Price Determination

2.1 Published prices

- 2.1.1 For the term of this price determination, a regulated service provider must set and publish on its website, in a prominent and readily accessible position, a comprehensive list of its published prices for the provision of essential maritime services for each financial year, prior to the commencement of that year.
- 2.1.2 A regulated service provider must publish on its website any changes to its list of published prices set in accordance with clause 2.1.1 within two business days of those prices being changed.
- 2.1.3 A regulated service provider and a customer may reach agreement for the provision of essential maritime services at a price that differs from the published prices set or published in accordance with clauses 2.1.1 or 2.1.2.

2.2 Monitoring of published prices

- 2.2.1 The Commission may, during the period of this price determination:
- (a) monitor the published prices charged for the provision of essential maritime services by a regulated service provider
 - (b) publish reports on the published prices charged for essential maritime services by a regulated service provider, and
 - (c) monitor and publish reports on matters relating to published prices for essential maritime services by a regulated service provider.

2.3 Reporting requirements for the monitoring of actual and published prices

- 2.3.1 A regulated service provider must provide the Commission with a copy of its list of published prices, as set and/or published in accordance with clauses 2.1.1 or 2.1.2, within 10 business days of that list being set and/or published.
- 2.3.2 A regulated service provider must inform and give relevant details to the Commission of any agreements reached under clause 2.1.3 during each financial year of the period, no later than three months after the end of that financial year.
- 2.3.3 A regulated service provider must make available to the Commission any information relating to actual and published prices that is reasonably requested by the Commission at such time and in such format as determined by the Commission.
- 2.3.4 A regulated service provider must provide to the Commission, at the Commission's request, reasons for any changes in the level of actual and published prices, at such time and in such format as determined by the Commission.

2.4 Monitoring of financial performance

- 2.4.1 The Commission may, during the period of this price determination, monitor and publish reports on a regulated service provider's:
- (a) revenue and costs for the provision of essential maritime services, and
 - (b) profits/losses and financial returns from the provision of essential maritime services.
- 2.4.2 Reports published by the Commission in respect of the matters specified in clauses 2.4.1(a) and 2.4.1(b) will be based on information submitted by a regulated service provider in accordance with any guideline made by the Commission and/or any information request issued to a regulated service provider by the Commission.

2.5 Commission monitoring of the maritime industry

- 2.5.1 In addition to the matters addressed in this price determination, the Commission intends to explore further the issue of bundled agreements. Bundled agreements occur when a regulated service provider provides essential maritime services to a customer and that customer has been charged prices, and is subject to terms and conditions, that are bundled with (or specifically tied to) other services that are provided by a related body corporate of the regulated service provider. The Commission may issue written notices under section 29 of the *Essential Services Commission Act 2002* to obtain information about these matters.

This price determination was made by the Commission on XX October 2022 pursuant to Part 3 of the *Essential Services Commission Act 2002*, as authorised by section 6(2) of the *Maritime Services (Access) Act 2000*.

The **COMMON SEAL** of)
the **ESSENTIAL SERVICES**)
COMMISSION was hereunto affixed)
by authority of the **ESSENTIAL**)
SERVICES COMMISSION and)
in the presence of:)



Light
Commissioner

23 Sept 2022
Date



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