



PORTS INDUSTRY GUIDELINE NO. 1

ACCESS PRICE INFORMATION

May 2010



Enquiries concerning the currency of this Guideline should be addressed to:

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AMENDMENT RECORD

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1. INTRODUCTION

- 1.1.1. The **Ports Access Regime** requires a **Regulated Operator** to provide certain information, including certain price information, to an **Intending Proponent**.
- 1.1.2. The purpose of having a **Regulated Operator** provide price information about **Regulated Services** to an **Intending Proponent** is to:
- ▲ allow the **Intending Proponent** to determine whether to seek access or not; and
 - ▲ avoid the risk that a **Regulated Operator** might disrupt or curtail access by not supplying or delaying the supply of information, or seek to influence price outcomes above fair commercial levels by supplying incomplete or misleading price information.
- 1.1.3. The existing legal framework already obliges a **Regulated Operator** to supply the following type of information about **Regulated Services** to an **Intending Proponent**:
- ▲ the extent to which the **Regulated Operator's** port facilities subject to the **Ports Access Regime** are currently being utilised; and
 - ▲ technical requirements that have to be complied with by persons for whom the operator provides **Regulated Services**; and
 - ▲ the rules with which the **Intending Proponent** would be required to comply.
- 1.1.4. The obligations in this Guideline operate in addition to the obligations outlined in 1.1.3 above.

2. NATURE OF THIS GUIDELINE

2.1. Authority and Purpose

- 2.1.1. This Guideline is published by the **Commission** for the purposes of the **Ports Access Regime** under Part 3 of the **MSA Act**.
- 2.1.2. Section 12 of the **MSA Act** requires a **Regulated Operator** to provide preliminary information about **Regulated Services** to an **Intending Proponent**.
- 2.1.3. Section 12(1)(b) of the **MSA Act** requires a **Regulated Operator** to provide information about the price of **Regulated Services** provided by the **Regulated Operator** that is required to be provided under guidelines issued by the **Commission**.
- 2.1.4. This Guideline sets out the **Commission's** requirements for the price information that a **Regulated Operator** is to provide.

2.2. Interpretation

- 2.2.1. In this Guideline:
- (a) words and phrases presented in a bold italic font **such as this**, are defined for the purposes of interpreting this Guideline in the Glossary. The Glossary seeks to provide clarity and reduce the risk of ambiguity in the interpretation of the Guideline's requirements; and
 - (b) the words "*shall*" and "*must*" indicate mandatory requirements, unless the overall meaning of the phrase in which one of these words appears is otherwise.
- 2.2.2. This Guideline seeks to provide definitions consistent with those given in the **MSA Act** and the **ESC Act**. Where words and phrases are not defined in the Glossary, they shall have the meaning given to them by these Acts or any other relevant Statutory Instrument.
- 2.2.3. Explanations in this Guideline as to why certain information is required are for guidance only. They do not limit in any way the **Commission's** objectives, functions or powers.



2.3. Scope

2.3.1. This Guideline applies to **Regulated Operators**.

2.3.2. This Guideline does not in any way reduce the obligations placed on a **Regulated Operator** by any other regulatory Code or instrument.

2.4. Processes for Revision

2.4.1. The **Commission** may amend this Guideline from time to time where necessary to meet the needs of the **Ports Access Regime**.

2.5. Input from Interested Parties

2.5.1. The **Commission** welcomes comments, discussion or suggestions for amendments to this Guideline from any interested party. Any contribution in this regard should be addressed to:

Essential Services Commission of South Australia
GPO Box 2605
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2.6. Version History and Effective Date

2.6.1. An issue or version number and date of issue will identify every version of this Guideline.

2.6.2. This Guideline becomes effective as at 3 May 2010.

3. OBLIGATIONS

3.1. Principles

3.1.1. The **Commission** has designed this Guideline to oblige a **Regulated Operator** to provide price information to an **Intending Proponent** that:

- ▲ facilitates the negotiation of access on fair commercial terms;
- ▲ informs **Intending Proponents** of their right to price information under the **Ports Access Regime**;
- ▲ is available in a timely manner; and
- ▲ is detailed, to a practical degree.

3.1.2. The price information shall be provided in the form of a price information kit.

3.2. Price Information Kit

3.2.1. A **Regulated Operator** must develop a price information kit, covering all **Regulated Services** that it provides in any **Proclaimed Port**.

3.2.2. A price information kit must contain:

- ▲ a statement of the **Regulated Services** that the **Regulated Operator** provides in each **Proclaimed Port**;
- ▲ the then current price list (as required under the **2007 Ports Price Determination**) for those **Regulated Services** that are also **Essential Maritime Services**;
- ▲ the then current schedule of pilotage charges if the **Regulated Operator** supplies pilotage services;
- ▲ a statement as to the **Regulated Operator's** general pricing policies for any other **Regulated Services**, including indicative price ranges where appropriate; and
- ▲ a statement informing **Intending Proponents** that if their requests involve new capital investments then the price information provided may require adjustment to reflect those additional capital costs, and noting that both parties will need to discuss such requests further in good faith.

3.2.3. The price information kit must also contain:

- ▲ appropriate contact points within the **Regulated Operator**;



- ▲ a statement of the existence of the **Ports Access Regime**, including:
 - a reference to the relevant legislation; and
 - explanation of the role of the price information kit in that regime;
- ▲ a reference to the **2007 Ports Price Determination** as the source of some of the price list;
- ▲ a reference to the **Commission** as the regulator under the **Ports Access Regime**; and
- ▲ a statement explaining that if the **Intending Proponent** believes that the information provided does not comply with this Guideline, they should contact the **Regulated Operator** in the first instance, or failing that, the **Commission** (and include contact details).

3.2.4. This Guideline does not limit the right of a **Regulated Operator** to provide an **Intending Proponent** with any other information, so long as that information is not inconsistent with the price information kit.

3.3. Delivery

3.3.1. Section 12 of the **MSA Act** requires that price information must be provided to any **Intending Proponent**. A company or person becomes an **Intending Proponent** merely by making a request to a **Regulated Operator** about a **Regulated Service**. The **Intending Proponent** need not know that the service requested is a **Regulated Service**, nor need they know about the **Ports Access Regime**.

3.3.2. A **Regulated Operator** must publish its price information kit on a readily accessible part of its website, and have in place operating procedures that ensure that an **Intending Proponent** is directed to the website.

3.3.3. A **Regulated Operator** may, for reasons of practicality, combine the delivery of its price information kit requirements herein with the price list obligations arising under the **2007 Ports Price Determination**.

3.4. Compliance

3.4.1. A **Regulated Operator** must inform the **Commission** of any changes to its price information kit by providing a copy of the changed price information kit to the **Commission** within 10 business days of the changed price information kit being published.

- 3.4.2. A **Regulated Operator** need not inform the Commission of changes to its price information kit if those changes are immaterial (such as a change to a colour scheme or to fonts).
- 3.4.3. This Guideline does not diminish a **Regulated Operator's** obligation to otherwise report on, or respond to, its compliance with any obligation arising under the **Ports Access Regime**.

4. GLOSSARY

This Guideline utilises the following definitions:

“2007 Ports Price Determination” means the price determination made by the Commission in relation to Essential Maritime Services on 26 October 2007, pursuant to Part 3 of the ESC Act.

“Commission” means the Essential Services Commission, a body corporate established pursuant to section 4 of the *Essential Services Commission Act 2002*.

“Essential Maritime Services” has the same meaning as given to it in section 4 of the MSA Act.

“ESC Act” means the *Essential Services Commission Act 2002* (SA).

“Intending Proponent” has the same meaning as given to it in section 12 of the MSA Act.

“MSA Act” means the *Maritime Services (Access) Act 2000* (SA).

“Ports Access Regime” means the access regime contained in Part 3 of the MSA Act.

“Proclaimed Port” has the same meaning as given to it in section 4 of the MSA Act.

“Regulated Operator” has the same meaning as given to it in section 4 of the MSA Act.

“Regulated Services” has the same meaning as given to it in section 4 of the MSA Act.