



Ports

South Australian Ports Regulatory Framework – Information Sheet



The purpose of this information sheet is to provide an overview of the legislative and regulatory framework that applies to proclaimed ports in South Australia.

Under the Maritime Services (Access) Act 2000 (**MSA Act**), price regulation applies to Essential Maritime Services (**EMS**).

In addition, the MSA Act establishes a separate price monitoring regime for Pilotage Services, to be administered by the Essential Services Commission (**Commission**).

Finally, access regulation applies to a set of services known as 'Regulated Services'.

This information sheet provides:

- ▶ a description of the ports regulatory framework in South Australia
- ▶ a description of the ports services that are subject to regulation and the form of that regulation, and
- ▶ an overview of how the Commission monitors ports charges.

About the Commission

The Commission is a statutory authority established as an independent economic regulator and advisory body under the Essential Services Commission Act 2002 (**ESC Act**).

The Commission performs a range of regulatory functions across different industries. These functions include pricing, licensing, performance monitoring and reporting, compliance and scheme administration. For each industry, the relevant industry regulation Act specifies the scope of the Commission's role.

Ports regulatory framework

Under the MSA Act, the Commission is responsible for the regulation of pricing and access at proclaimed ports. The Minister has proclaimed the pricing and access regime to cover six ports in South Australia, all of which are currently operated by Flinders Ports Pty Ltd (**Flinders Ports**).

Those ports are: Port Adelaide, Port Giles, Wallaroo, Port Pirie, Port Lincoln and Thevenard.

The MSA Act establishes three categories of economic regulation over proclaimed ports (summarised in Figure 1):

- ▶ Essential Maritime Services
- ▶ Pilotage Services, and
- ▶ Regulated Services.

Following its review into the continuation of the South Australian ports access and pricing regimes, the Commission has released a Price Determination enabling the existing ports price monitoring arrangements to continue from 31 October 2017 up to and including 30 October 2022.

The Minister for Transport and Infrastructure has accepted the Commission's recommendation to continue the Access Regime through until 30 October 2022 and a regulation was made on 17 October 2017 to extend the Regime for a further five years.

Essential Maritime Services

Price regulation applies to certain infrastructure services, referred to as EMS, defined as:

- ▶ vessel access to a proclaimed port
- ▶ port facilities for loading or unloading vessels at a proclaimed port, or

- ▶ vessel berthing at a proclaimed port.

Three categories of charges, in aggregate, cover the suite of EMS:

- ▶ **Navigation Service charges** – levied to recover costs associated with the provision of navigational aids, maritime access channels and port traffic control. The charges are levied on a ship upon entry to the port and generally include a base fee, as well as a charge based on ship size.
- ▶ **Harbour Service and Mooring charges** – levied to recover costs associated with the general operations of the port. These charges are levied against a ship, based on its size and duration of berth occupancy.
- ▶ **Cargo Service charges** – also levied to recover costs associated with the general operations of the port. These charges are generally levied based on the volume of cargo loaded or discharged at the port, as well as fees charged to stevedores for the temporary occupancy of the land behind the berth.

There are varying terms that apply to the same services in ports around Australia. The range of ports services covered by EMS include services relating to the provision of: navigational aids, harbour control (but not pilotage or towage), channels, berths, wharves, cargo loading and unloading (marshalling) areas (but not loading or unloading itself), jetties, berth pockets, fenders, mooring structures, mooring and unmooring and provisioning connections (but not provisioning).

The Commission regulates EMS prices through annual price monitoring and five-yearly pricing reviews.

Pilotage Services

Pilotage Services are subject to price monitoring. These services involve piloting a ship through the waterways leading to a port, to protect port infrastructure and ensure the safety of the vessels. Flinders Ports is presently the only supplier of Pilotage Services at proclaimed ports.

In terms of its price monitoring role, the Commission requires the operator of a proclaimed port to maintain a schedule of Pilotage Service charges and provide the Commission with an updated schedule of charges each year and a notice of any proposed changes to prices.

Regulated Services

The ports access regime is established under Part 3 of the MSA Act. It provides a framework for the negotiation of access to Regulated Services and dispute resolution options when access disputes arise and cannot be otherwise resolved between parties. Under the MSA Act, Regulated Services are not subject to any form of price regulation.

Access regulation applies to channels, common user berths, land providing access to maritime services (all provided by Flinders Ports) and bulk loader services, currently provided by Viterra Limited at the six proclaimed ports.

How the Commission monitors ports prices

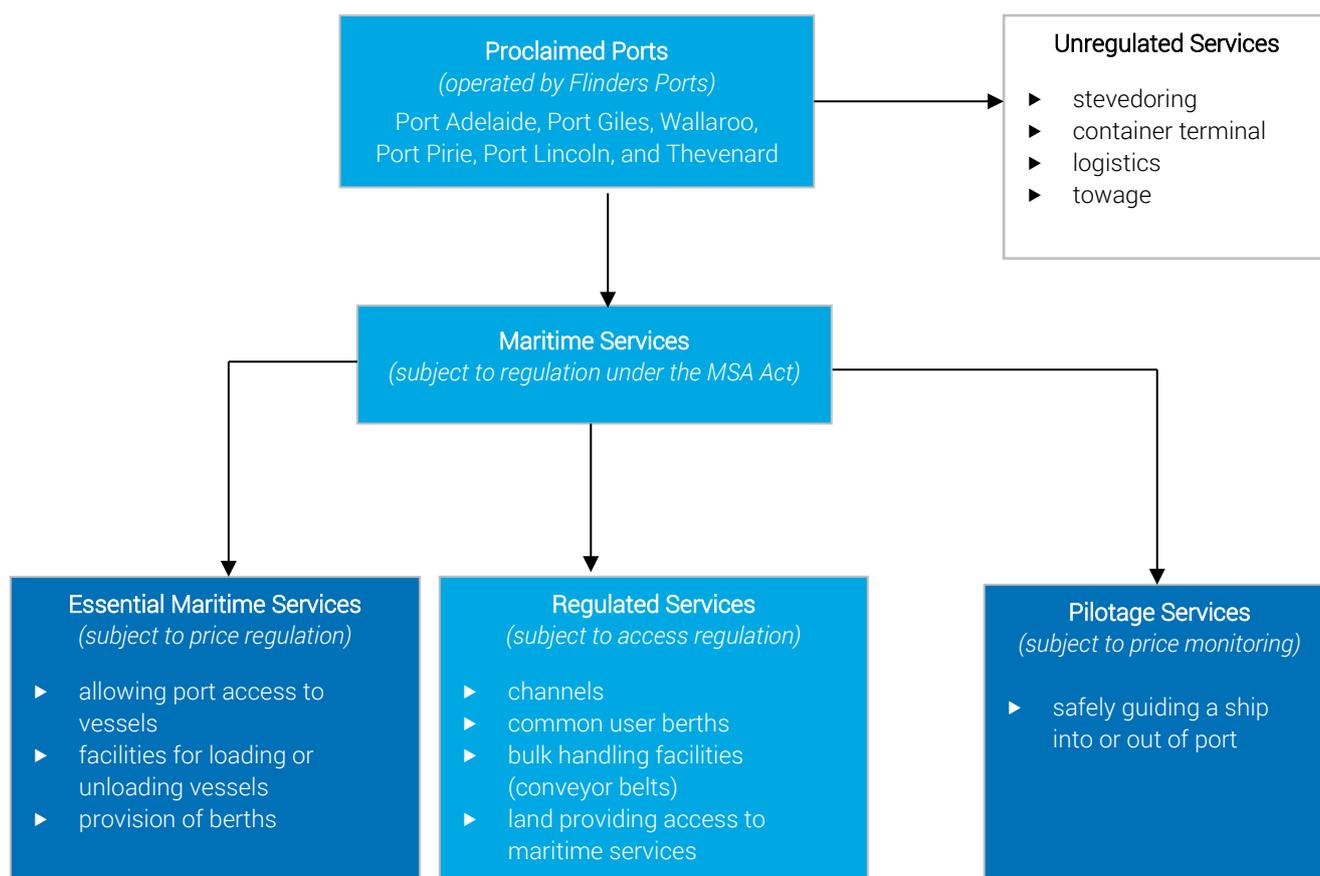
The regulatory framework under the MSA Act allows port operators to set prices for EMS, but it does so in the context of having the Commission monitor those prices and publicly report on them.

Under the pricing regime, an operator of a proclaimed port must maintain a schedule of prices for EMS and Pilotage Services, and provide the Commission with a current schedule of prices and notify it of any proposed changes to those prices.

While Flinders Ports is allowed to adjust its prices for services that are subject to price regulation, it may also negotiate with ports users to reach agreement for the provision of EMS and/or Pilotage Services based on prices that differ from those published in its price schedule.

The annual price monitoring reports prepared by the Commission provide a summary of any price movements during a regulatory year and comment on factors that are underpinning those price movements. They also form part of the evidence base for the five-yearly ports pricing reviews undertaken by the Commission which contemplate whether price regulation should continue and, if so, what form that regulation should take.

Figure 1: Economic regulation of proclaimed ports (operated by Flinders Ports)



The Essential Services Commission is an independent statutory authority with functions in a range of essential services including water, sewerage, electricity, gas, rail and maritime services, and also has a general advisory function on economic matters. For more information, visit www.escosa.sa.gov.au.

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