

THIS MEMORANDUM is made on the 17th day of April 2007

PARTIES:

ESSENTIAL SERVICES COMMISSION (the "Commission")

and

PORT OF MELBOURNE CORPORATION ("PoMC")

BACKGROUND:

- A. PoMC is established by the PS Act. As a designated Channel Operator PoMC employs the Harbour Master for the Port of Melbourne. The Harbour Master is licensed by the Director of Marine Safety who is the regulatory authority for marine safety in the Port of Melbourne.
- B. The parties have entered into this memorandum of understanding in order to provide for consultation and co-operation between them and the integration and co-ordination of their activities in regard to the Harbour Master's directions.
- C. This memorandum is not intended to deal with the Commission's role in regulating PoMC, particularly in relation to licensing or price and access regulation for prescribed services pursuant to the PS Act.
- D. This memorandum is also not intended to be used to interpret any legislative responsibilities of PoMC, the Director of Marine Safety or the Commission.

OPERATIVE PROVISIONS:

1. Definitions

In this memorandum, including the background:

"**ESC Act**" means the *Essential Services Commission Act 2001* (Vic)

"**MA**"; means the *Marine Act 1988* (Vic);

"**PS Act**" means the *Port Services Act 1995* (Vic);

"**port waters**" means the port waters of Melbourne as declared by Order in Council made under section 5(2) of the PS Act;

"**prescribed agency**" has the same meaning as in the ESC Act;

"**regulated industry**":

- (a) in clause 3 - has the same meaning as in the ESC Act;

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- (b) otherwise - means the port industry in the Port of Melbourne in so far as it is concerned with channel access and marine safety.

2. Objectives and purpose of this memorandum

This memorandum seeks to:

- (a) ensure that the regulatory and decision making processes of the parties in relation to the regulated industry are closely integrated and better informed;
- (b) avoid overlap or conflict between regulatory schemes (either existing or proposed) affecting the regulated industry;
- (c) provide for sharing information between the parties in the context of their respective roles in relation to the regulated industry; and
- (d) promote the adoption of a best practice approach to regulation.

3. The role of the Commission

3.1 The Commission currently has functions relating to the economic regulation of the electricity, gas, ports, grain handling, freight rail, taxi, hire car, tow truck, statutory insurance and water industries. Its specific functions are:

- (a) to perform such functions as are conferred by the ESC Act and the relevant legislation under which a regulated industry operates;
- (b) to advise the relevant Minister on matters relating to the economic regulation of regulated industries, including reliability issues;
- (c) when requested by the Minister to do so, to conduct an inquiry into any systemic reliability of supply issues related to a regulated industry or other essential service specified by the Minister in the request;
- (d) to conduct inquiries and report under the ESC Act on matters relating to regulated industries;
- (e) to make determinations in accordance with the ESC Act;
- (f) to make recommendations to the Minister as to whether an industry which provides an essential service should become a regulated industry or whether a regulated industry should continue to be a regulated industry;
- (g) to conduct public education programs for the purpose of promoting its objectives under the ESC Act and the relevant legislation and in relation to significant changes in the regulation of a regulated industry;

- (h) to advise the Minister in relation to any other matter referred to the Commission by the Minister; and
- (i) to administer the ESC Act.

3.2 The Commission's primary objective in performing those functions is to protect the long-term interests of Victorian consumers with regard to the price, quality and reliability of essential services. In seeking to achieve that primary objective, the Commission must have regard to the following facilitating objectives:

- a. to facilitate efficiency in regulated industries and the incentive for efficient long-term investment;
- b. to facilitate the financial viability of regulated industries;
- c. to ensure that the misuse of monopoly or non-transitory market power is prevented;
- d. to facilitate effective competition and promote competitive market conduct;
- e. to ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry;
- f. to ensure that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency; and
- g. to promote consistency in regulation between States and on a national basis.

3.3 The Commission must also perform its functions and exercise its powers in such a manner as the Commission considers best achieves any objectives specified in the relevant legislation under which a regulated industry operates.

3.4 The Commission has specific statutory functions under Part 3, Division 4 of the PS Act to make access determinations about declared channels.

4. The role of PoMC

4.1 PoMC is a body corporate with perpetual succession.

4.2 The objectives of PoMC are:

- (a) to manage and develop the port of Melbourne in an economically, socially and environmentally sustainable manner;
- (b) to ensure that essential port services of the port of Melbourne are available and cost effective;

- (c) to ensure, in co-operation with other relevant responsible bodies, that the port of Melbourne is effectively integrated with other systems of infrastructure in the State;
 - (d) to facilitate, in co-operation with other relevant responsible bodies, the sustainable growth of trade through the port of Melbourne; and
 - (e) to establish and manage channels in port of Melbourne waters for use on a fair and reasonable basis.
- 4.3 For the purposes of coordinating regulatory functions, the relevant functions of PoMC are:
- (a) to manage and, in accordance with standards developed by the Director of Marine Safety, to dredge and maintain channels in port of Melbourne waters;
 - (b) to provide and maintain, in accordance with the standards developed by the Director of Marine Safety, navigation aids in connection with navigation in port of Melbourne waters; and
 - (c) generally, to direct and control, in accordance with the Marine Act 1988, the movement of vessels in port of Melbourne waters.
- 4.4 PoMC must carry out its functions, including those identified under 4.3, in a manner that:
- (a) is safe and secure;
 - (b) is environmentally sustainable;
 - (c) is effective and efficient;
 - (c) is commercially sound; and
 - (e) has regard for the persons living or working in the immediate neighbourhood of the Port of Melbourne.
- 4.5 PoMC has specific statutory obligations under Part 3A of the MA to engage a harbour master.
- 4.6 A harbour master has, in relation to the port waters for which he or she is the harbour master, such functions as are conferred on a harbour master by the MA.
- 4.7 The functions of a harbour master may be limited by a condition imposed by the Director of Marine Safety on his or her licence.

4.8 A harbour master's licence may contain a condition that makes the exercise of his or her functions subject to any directions given from time to time to the harbour master by the Director of Marine Safety.

4.9 PoMC may, having first consulted with the harbour master engaged by PoMC for the port waters and obtained the approval of the Director of Marine Safety, authorise a person to act as assistant harbour master for the port waters to exercise the harbour master's functions under the MA. An authorisation may be general or may apply only to the exercise of such functions as are specified in the instrument of authorisation."

5 How the parties will consult

5.1 Where relevant, the Commission will, as early as practicable, consult with PoMC:

- (a) in the making of a determination;
- (b) in the conduct of an inquiry or investigation, after first consulting with the Minister; and
- (c) in preparing and reviewing the Commission's Charter of Consultation and Regulatory Practice.

5.2 PoMC will, if requested in writing by the Commission to do so, consult with the Commission:

- (b) in relation to any matter specified by the Commission which is relevant to its objectives or functions; and
- (c) in respect of a matter specified by the Commission which may impact on the regulated industry.

5.3 Each party having regard to their respective roles in relation to the regulated industry will:

- (a) consult with and involve the other in the performance of any function relevant to harbour management or channels that has or is likely to have material implications for the other;
- (b) ensure that such consultation occurs as early as practicable in the parties' regulatory, advisory or decision making processes;
- (c) on request, provide the other with timely advice on regulatory matters for which it is responsible;
- (d) provide the other with timely relevant information on industry issues for which both parties have some responsibility;
- (e) promptly inform the other of any material changes to its role or to the regulatory arrangements it administers;

- (f) exchange details of annual work programs to the extent that they are relevant to the role of the other;
- (g) provide the other with advance notice of its intention to undertake a major review or activity that will or may have material implications for the other;
- (h) identify opportunities to coordinate strategic planning and undertake knowledge sharing initiatives to optimise mutual understanding of roles and strategic directions;
- (i) identify relevant project officers to allow for the coordination of particular regulatory projects; and
- (j) publish this memorandum on its website.

6. How the parties will manage their relationship and resolve disputes

- 6.1 Each party will ensure that, at all times while this memorandum is in force, one of its staff members is designated and known to the other as its contact officer for the purposes of this memorandum.
- 6.2 At the date of this memorandum, the contact officer for the Commission is Mr Andrew Chow, and the contact officer for PoMC is Ms Gladys Hu. Each party will give notice of any change to its contact officer to the other in writing, promptly after the change is made.
- 6.3 Each party will ensure that its contact officer:
 - (a) makes themselves (or an alternate) available at all relevant times to address any questions, concerns or disputes arising out of the operation of this memorandum which are raised by either party;
 - (b) instigates periodic (and in any event not less than three-yearly) reviews of this memorandum directed, in particular, to the potential for improvement in its terms or operation and to the effect (if any) of regulatory change on its terms, operation or utility; and
 - (c) arranges (in conjunction with the other's contact officer) such meetings of appropriate staff of the parties as and when necessary or desirable to facilitate the efficient and effective operation of this memorandum and including, in any event, a meeting of respective Chairpersons of the parties no less frequently than annually.
- 6.4 If there is a dispute between the parties as to the terms or operation of this memorandum, each party will ensure that its contact officer endeavours in good faith to resolve that dispute with the other's contact officer. If, however, a contact officer gives notice to the other party's contact officer of the view that the dispute is unlikely to be resolved by discussions between the contact officers, then each party's contact officer must promptly:

- (a) brief the party's Chairperson (or a nominee of the party's Chairperson) of details of the relevant dispute; and
- (b) arrange with the other's contact officer for a meeting of the Chairpersons of the parties (or their respective nominees), with the objective of settling the dispute amicably.

7. Use and disclosure of information

7.1 The capacity of a party to use or disclose information, or take information into account, is or may be (depending on the nature or source of the information) restricted by law.

7.2 If a party discloses information to the other party under this memorandum, the disclosing party may place restrictions on the recipient's use or disclosure of that information, being restrictions it believes in good faith are necessary for compliance with binding restrictions on disclosure. A party receiving information will observe any such restriction noting, however, that this requirement does not limit:

- (a) any other legal obligation of a party relating to the disclosure or use of information; and
- (b) any right of a party concerning information obtained otherwise than under this memorandum.

EXECUTED AS A MEMORANDUM BY:

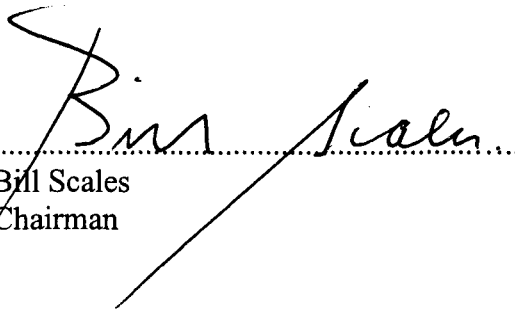
THE COMMON SEAL of the ESSENTIAL SERVICES)
COMMISSION was affixed pursuant to the authority of)
the Commission on the 17th day of April 2007)
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Greg Wilson
Chairperson



THE COMMON SEAL of the PORT OF MELBOURNE)
CORPORATION was duly affixed by the Chairman on the)
30th day of May 2007)
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Bill Scales
Chairman

