

Investigation of complaints under section 49Q Port Management Act 1995 (Vic)

Allegations of non-compliance by Port of Melbourne with Pricing Order

The commission has received two complaints from port users about the Port of Melbourne's (**the Port**) compliance with the Pricing Order in relation to the provision of access to, or allowing the use of, places or infrastructure (including wharves, slipways, gangways, roads and rail infrastructure) on Port of Melbourne land for the provision of prescribed services to port users.

These complaints have been lodged under section 49Q of the Port Management Act 1995 (Vic) and we have commenced investigating.

Given the nature of the complaints are substantially similar, the commission will investigate them concurrently (but respond to each complainant separately about their complaint).

The complaints allege non-compliances by the Port with the Pricing Order, in particular its approach to port development planning and investment, and related stakeholder consultation.

Specifically, it is alleged that:

- the forecast capital expenditure that the Port indicated it will incur with respect to the Webb Dock East Expansion Project (**WDE Expansion**) is not prudent and efficient capital expenditure
- the Port's forecasts and estimates of capital expenditure were not arrived at on a reasonable basis, nor are they the best possible in the circumstances
- there was a failure by the Port to genuinely consult with relevant stakeholders about the need for and timing of the WDE Expansion, in relation to its inclusion and mention in the Port Development Strategy process, December 2020 Tariff Rebalancing Application or the 2021-22 Tariff Compliance Statement.

The complainants allege non-compliance with Pricing Order clauses

Clauses	Issue
4.2.1 and by implication 2.1.1(a)	The requirement for actual and forecast capital expenditure added to the capital base to be prudent and efficient and that prescribed service tariffs only reflect those.
3.2.5 and 7.1.2(d)	The requirement for effective consultation with and having regard to comments provided by port users.
3.2.7	The requirement to provide sufficient supporting information to the commission as part of a Rebalancing Application, to verify compliance of prescribe service tariffs with various other clauses.
7.1.2(e)	The requirement to explain how prescribed services tariff comply with the Pricing Order.
8.2.1 and 8.2.2	The requirements for various information on estimates and forecasts, including that estimates and forecasts be reasonable and represent the best possible in the circumstances.
8.3	The requirement for inferred or derived information to be supported by evidence.

Investigation timing

We expect the investigation of the complaints to take between three and six months from the date of this notice.

Investigation outcome

The commission will inform the complainants of the findings with reasons regarding its investigation.

We will engage with the Port to provide them with procedural fairness in making final findings.

We will provide our findings with reasons to the Port.

We will also publish a statement at the conclusion of our investigation on our website setting out the substance of our decision and reasons.

We intend to provide the outcome of the investigation to the Assistant Treasurer and the Minister for Ports.

21 October 2021

Attach:

Pricing Order, No. S 201 Friday 24 June 2016



Victoria Government Gazette

No. S 201 Friday 24 June 2016
By Authority of Victorian Government Printer

Port Management Act 1995 (Vic.)

PRICING ORDER

The Governor in Council, under section 49A of the **Port Management Act 1995** (Vic.), makes the following Order:

1. COMMENCEMENT AND APPLICATION

1.1.1 This Order takes effect on 1 July 2016 (**Commencement Date**).

1.1.2 Pursuant to section 49A(2) of the Act it is declared that:

- (a) Divisions 2A and 2B of Part 3 of the Act together with the provisions of this Order apply to the provision of Prescribed Services; and
- (b) Division 3 of Part 3 of the Act does not apply to the provision of Prescribed Services.

2. PRICING PRINCIPLES: GENERAL

2.1 Prescribed Service Tariffs Pricing Principles

2.1.1 Prescribed Service Tariffs must be set so as:

- (a) to allow the Port Licence Holder a reasonable opportunity to recover the efficient cost of providing all Prescribed Services determined by application of an accrual building block methodology of the type described in clause 4 (**Aggregate Revenue Requirement**); and
- (b) subject to clauses 2.1.1(a), 2.2, 2.3.1 and 3, to allow the Port Licence Holder a reasonable opportunity to recover, for each Prescribed Service Bundle, revenue that:
 - (i) does not exceed an upper bound representing the stand alone cost of providing the Prescribed Service Bundle; and
 - (ii) does not fall below a lower bound representing the avoidable cost of not providing the Prescribed Service Bundle.

2.1.2 The Port Licence Holder may set different Prescribed Service Tariffs for different users of the same or similar Prescribed Service, provided that such differences are consistent with the objectives set out in section 48 of the Act and clauses 2.1.3, 2.2.1 and 2.3.1.

2.1.3 The Port Licence Holder must set the level and structure of Prescribed Service Tariffs having regard to:

- (a) the efficient costs caused by Port Users of the relevant Prescribed Service;
- (b) transaction costs; and
- (c) the extent to which Port Users are able or likely to respond to price signals.

2.1.4 The principle in clause 2.1.1(b) does not apply to the extent that the Port Licence Holder expects to derive revenue from:

- (a) any applicable Initial Prescribed Service Tariff; or
- (b) during the period in which clause 3.1.1 applies, any subsequent increase to any Initial Prescribed Service Tariff (as may be varied from time to time due to the acceptance of a Final Rebalancing Application under clause 3.2.18) that does not exceed the Tariffs Adjustment Limit; or
- (c) in any period in which clause 3.1.1 no longer applies, any subsequent increase to any Initial Prescribed Service Tariff that does not exceed the rate of change in the Aggregate Revenue Requirement over a corresponding period,

that would exceed the stand alone cost of providing the Prescribed Service Bundle.

2.1.5 For the avoidance of doubt, other than as provided in clause 2.1.1(b), or as may be required to comply with the principles in clauses 2.1.2 and 2.1.3, this Order establishes maximum tariffs for Prescribed Services and a Port Licence Holder will not be in breach of this Order if it sets actual tariffs for Prescribed Services at a level that is lower than permitted under clause 2.1.1(a) in any relevant period.

SPECIAL

2.2 Specific Shared Channel Tariffs Pricing Principles

2.2.1 In addition to complying with the principles set out in clauses 2.1, 2.3.1 and 3.1.1, the Port Licence Holder must set Prescribed Service Tariffs for the use of the Shared Channels:

- (a) by application of the same accrual building block methodology and parameters that are utilised in determining Prescribed Service Tariffs for the Dedicated Channels, including without limitation in relation to establishing:
 - (i) an allowance to recover return on the applicable capital base;
 - (ii) an allowance to recover return of the applicable capital base; and
 - (iii) an allowance to recover its forecast of applicable operating expenses, (see clause 4); and
- (b) so as not to otherwise discriminate between Port Users on the basis of port or berth.

2.3 Port of Melbourne Corporation container export pricing decision

2.3.1 Notwithstanding any other provision of this Order, the Port Licence Holder must maintain and comply with the Export Pricing Decision when setting Prescribed Service tariffs for full outbound container wharfrage services.

3. PRICING PRINCIPLES: PRICE SMOOTHING MECHANISM

3.1 Tariffs Adjustment Limit

3.1.1 In addition to complying with clause 2, the Weighted Average Tariff Increase implied by the Prescribed Service Tariffs set by the Port Licence Holder in respect of any Financial Year commencing on or after 1 July 2017 must not exceed the Tariffs Adjustment Limit.

3.2 Rebalancing

3.2.1 Subject to the Commission's acceptance of a Final Rebalancing Application under clause 3.2.18 (or pursuant to an appeal under Part 7 of the **Essential Services Commission Act 2001** (Vic)), the Port Licence Holder may only revise each Prescribed Service Tariff (other than, in the period prior to the start of the 2020 Financial Year, Prescribed Service Tariffs that are subject to the Export Pricing Decision) in respect of a Financial Year by the same percentage adjustment.

3.2.2 The Commission must accept a Final Rebalancing Application under clause 3.2.18 if it is satisfied that the proposed Prescribed Service Tariffs the subject of the Final Rebalancing Application comply with clauses 2, 3.1.1, 4 and 5.

3.2.3 The Port Licence Holder may not introduce a new Prescribed Service Tariff unless the proposed new Prescribed Service Tariff is the subject of a Final Rebalancing Application accepted by the Commission under clause 3.2.18.

Making a Rebalancing Application

3.2.4 Except in relation to Prescribed Service Tariffs that are subject to the Export Pricing Decision, prior to 1 January of any Financial Year commencing on or after 1 July 2017, the Port Licence Holder may make a written application to the Commission which proposes that, subject to compliance with clauses 2, 3.1.1, 4 and 5:

- (a) certain Prescribed Service Tariffs for the upcoming Financial Year be revised by different percentage adjustments;
- (b) that a new Prescribed Service Tariff be introduced; and/or
- (c) that an existing Prescribed Service Tariff be discontinued,

(Rebalancing Application).

3.2.5 Prior to making a Rebalancing Application, the Port Licence Holder must consult Port Users about its proposal to do so and provide a reasonable opportunity for Port Users to express their views to the Port Licence Holder.

- 3.2.6 The Port Licence Holder must utilise a reasonable estimate of the upcoming March CPI for the purpose of calculating the Tariffs Adjustment Limit in a Rebalancing Application submitted prior to the March CPI Release Date.
- 3.2.7 The Rebalancing Application must contain sufficient supporting information to enable the Commission to verify that the proposed Prescribed Service Tariffs comply with clauses 2, 3.1.1, 4 and 5.

Interim Decision by the Commission

- 3.2.8 Subject to compliance with clause 3.2.7, the Commission must notify the Port Licence Holder in writing of either its:
- (a) interim acceptance of the Rebalancing Application; or
 - (b) intention to reject the Rebalancing Application,
- before 1 March of the Financial Year preceding the Financial Year to which the Rebalancing Application relates (**Interim Decision**). If notification has not been given within that timeframe, the Commission shall be deemed to have given its interim acceptance to the Rebalancing Application.
- 3.2.9 Where the Commission has not received sufficient supporting documentation from the Port Licence Holder in accordance with any relevant determination made under clause 9, the timeframe specified in clause 3.2.8 may be extended at the Commission's discretion by any period starting on the day the Commission requests further information from the Port Licence Holder and ending on the day that the Port Licence Holder complies with that request.
- 3.2.10 The Commission must grant interim acceptance to a Rebalancing Application under clause 3.2.8 if it is satisfied that the proposed Prescribed Service Tariffs the subject of the Rebalancing Application comply with clauses 2, 3.1.1, 4 and 5.
- 3.2.11 Where the Commission notifies the Port Licence Holder under clause 3.2.8 of the Commission's intention to reject the Rebalancing Application, the Commission must provide in that notification reasons for its intended rejection.
- 3.2.12 Where the Commission is required to utilise the upcoming March CPI prior to the March CPI Release Date as part of making its Interim Decision, the Commission must adopt a reasonable estimate of the March CPI.

Amended Rebalancing Application

- 3.2.13 Where the Commission notifies the Port Licence Holder under clause 3.2.8 of the Commission's intention to reject the Rebalancing Application, the Port Licence Holder may submit to the Commission an amended Rebalancing Application (**Amended Rebalancing Application**) within thirty (30) days of receipt of that notification.
- 3.2.14 An Amended Rebalancing Application submitted to the Commission under clause 3.2.13 must comply with clause 3.2.7.

Final Rebalancing Application

- 3.2.15 The Port Licence Holder must submit to the Commission an updated version of its Rebalancing Application or Amended Rebalancing Application (as applicable), utilising the actual March CPI released on the March CPI Release Date (**Final Rebalancing Application**), within seven days after the March CPI Release Date.
- 3.2.16 Subject to clause 3.2.17, where the Commission has not received the Final Rebalancing Application within the timeframe specified in clause 3.2.15, the Commission shall be deemed to have finally rejected the Rebalancing Application or Amended Rebalancing Application (as applicable).
- 3.2.17 The deadline in clause 3.2.15 may be extended at the Commission's discretion.

Final decision by the Commission

- 3.2.18 Subject to compliance with clause 3.2.7, the Commission must notify the Port Licence Holder in writing of its final acceptance or rejection of the Final Rebalancing Application within seven days after receiving the Final Rebalancing Application. If notification has not been given within that timeframe, the Commission shall be deemed to have accepted the Final Rebalancing Application.
- 3.2.19 Where the Commission has not received sufficient supporting documentation from the Port Licence Holder in accordance with any relevant determination made under clause 9, the timeframe specified in clause 3.2.18 may be extended at the Commission's discretion by any period starting on the day the Commission requests further information from the Port Licence Holder and ending on the day that the Port Licence Holder complies with that request.
- 3.2.20 Where the Commission notifies the Port Licence Holder under clause 3.2.18 of the Commission's rejection of the Final Rebalancing Application, the Commission must provide in that notification reasons for its rejection.

3.3 Duration of application of clause 3

- 3.3.1 The Port Licence Holder may, no earlier than 30 June in the Financial Year in which the fifteenth anniversary of the Commencement Date falls, make an application to the Commission for a determination that clause 3 ceases to apply.
- 3.3.2 An application under clause 3.3.1 must contain sufficient supporting information to enable the Commission to be satisfied of the matters specified in clause 3.3.3.
- 3.3.3 The Commission must issue a determination that clause 3 ceases to apply if satisfied that the application of the principles in clause 2.1.1 would result in Prescribed Service Tariffs for the Financial Year in which the application is made and the two Financial Years immediately following that are likely to be lower than would be permitted under clause 3.1.1.
- 3.3.4 The Commission must in writing notify the Port Licence Holder of the outcome of an application under clause 3.3.1 within ninety (90) days of receipt of the application.
- 3.3.5 In the absence of a determination by the Commission under clause 3.3.3, clause 3 ceases to apply at the end of the Financial Year in which the twentieth anniversary of the Commencement Date falls.

3.4 Specification of Pricing Order transition period

- 3.4.1 For the purposes of the Act, the 'Pricing order transition period' is the period commencing on the Commencement Date and ending on the date on which, pursuant to clause 3.3, clause 3 ceases to apply.

4. PRICING PRINCIPLES: COST BASE FOR SETTING PRESCRIBED SERVICE TARIFFS**4.1 General – Accrual Building Block Methodology**

- 4.1.1 For the purposes of determining its Aggregate Revenue Requirement, the Port Licence Holder must apply an accrual building block methodology over the Regulatory Period comprising:
- (a) an allowance to recover a return on its capital base, commensurate with that which would be required by a benchmark efficient entity providing services with a similar degree of risk as that which applies to the Port Licence Holder in respect of the provision of the Prescribed Services (see clauses 4.2 and 4.3);
 - (b) an allowance to recover the return of its capital base (see clause 4.4); and
 - (c) an allowance to recover its forecast operating expenses, commensurate with that which would be required by a prudent service provider acting efficiently (see clause 4.5); less
 - (d) an indexation allowance (see clause 4.6).

4.2 Capital Base

- 4.2.1 Subject to clause 4.2.2, the capital base applied for the purposes of clause 4.1.1(a) and 4.1.1(b) must be defined, at any particular time, on a roll forward basis, by:
- (a) taking the value at the commencement of any Financial Year;
 - (b) adding an indexation allowance for that Financial Year in accordance with clause 4.6.1(a);
 - (c) adding efficient capital expenditure when incurred, or to be incurred during that Financial Year, by the Port Licence Holder, acting prudently, in the provision of the Prescribed Services (in each instance, deemed to be incurred as at the mid-point of that Financial Year and adjusted by an indexation allowance in accordance with clause 4.6.1(b) for that Financial Year); and
 - (d) deducting an allowance for the return of capital.
- 4.2.2 The initial capital base is to be determined by applying the asset values specified in clause 4.7.
- 4.2.3 PCP Capital Expenditure is to be added to the capital base in accordance with the principles in clause 4.2.1.
- 4.2.4 The act of completing the Port Capacity Project and the act of undertaking capital works so as to comply with a term of the Port Lease or any other obligation arising under a Transaction Arrangement are to be taken to be prudent acts for the purposes of clause 4.2.1.
- 4.2.5 For the avoidance of doubt, clause 4.2.4 does not preclude an assessment as to whether capital expenditure undertaken so as to comply with a term of the Port Lease or any other obligation under a Transaction Arrangement has been incurred efficiently.
- 4.2.6 For the avoidance of doubt, the capital base of the Port Licence Holder must not include any value attributable to capital contributions made by a Public Sector Entity to assets used to provide Prescribed Services after the date of the completion of the first Authorised Transaction.

4.3 Return on Capital

- 4.3.1 Subject to clause 4.3.2, in determining a rate of return on capital for the purposes of clause 4.1.1(a) the Port Licence Holder must use one or a combination of well accepted approaches that distinguish the cost of equity and debt, and so derive a weighted average cost of capital.
- 4.3.2 The rate of return to be calculated for the purposes of clause 4.1.1(a) must be determined on a pre tax, nominal basis.

4.4 Return of Capital

- 4.4.1 Subject to clauses 4.4.2 and 4.4.3, for the purposes of clauses 4.1.1(b), depreciation must be determined so that each asset or group of assets used to provide the Prescribed Services is depreciated using a straight-line methodology over a period that is:
- (a) no shorter than the reasonable economic life of the relevant asset or the remaining term of the Port Lease (whichever is shorter); and
 - (b) no longer than the remaining term of the Port Lease,
(Depreciation Period); and
 - (c) only once, meaning that the amount by which the asset or group of assets is depreciated over the Depreciation Period does not exceed the value of the asset or group of assets at the time of its or their inclusion in the capital base.
- 4.4.2 The Port Licence Holder may only use an alternative to the straight-line methodology to be applied under clause 4.4.1 if:
- (a) the application of clause 3.1.1 means that the return of capital derived using a straight-line depreciation methodology is not capable of being recovered in the applicable Financial Year; or

- (b) the alternative depreciation methodology is reasonably likely to reduce the variance in the expected annual percentage changes in the level of Prescribed Services Tariffs through to the end of the Port Lease.

4.4.3 The return of capital allowance in any Financial Year must not be below zero.

4.5 Operating Expenses

4.5.1 For the avoidance of doubt, the allowance referred to in clause 4.1.1(c) is to include an amount equal to the Port Licence Fee and any Cost Contribution Amount payable under the Port Concession Deed in respect of the relevant Financial Year in which those expenses are incurred and such amounts are deemed to be commensurate with that which would be required by a prudent service provider acting efficiently.

4.5.2 Actions reasonably required to comply with the obligations of the Port Licence Holder under the Port Concession Deed are taken to be prudent acts for the purposes of clause 4.1.1(c).

4.6 Indexation Allowance

4.6.1 For each relevant Financial Year, the indexation allowance referred to in clause 4.1.1(d) is an amount equal to the sum of:

- (a) for the purposes of clause 4.2.1(b), the percentage change, or forecast percentage change, in the CPI for the relevant Financial Year, multiplied by the value of the capital base at the commencement of the relevant Financial Year; and
- (b) for the purposes of clause 4.2.1(c), one half of the percentage change, or forecast percentage change, in the CPI for the relevant Financial Year, multiplied by the efficient capital expenditure when incurred, or to be incurred during that Financial Year.

4.7 Initial Capital Asset Values

4.7.1 Despite any other clause of this Order, the initial capital asset values to be utilised to provide the Shared Channel Services and the Bundled Services are deemed to be as set out in the table below:

Service	Asset Value (A\$000,000's)	Date
Shared Channel Services	592	1 July 2016
Bundled Services	2,913	1 July 2016
Total	3,505	1 July 2016

4.7.2 For the avoidance of doubt, the initial capital asset values in the table in clause 4.7.1 exclude PCP Capital Expenditure, which is to be added to the capital base in accordance with the principles in clause 4.2.3.

5. COST ALLOCATION PRINCIPLES

5.1 Cost Allocation Principles Objectives

5.1.1 The objective of the Cost Allocation Principles is to provide a transparent and consistent methodology for allocating and monitoring costs for the purpose of setting Prescribed Service Tariffs.

5.2 Principles for allocating costs for the purpose of setting Prescribed Service Tariffs

5.2.1 Costs of the Port Licence Holder must be allocated between Prescribed Services and all other services provided by the Port Licence Holder in a manner consistent with the following cost allocation principles:

- (a) costs that are directly attributable to the provision of the Prescribed Service must be attributed to that Prescribed Service; and

- (b) costs that are not directly attributable to the provision of the Prescribed Service but which are incurred in the course of providing both one or more Prescribed Services and other services must be allocated to the Prescribed Service on the basis of its share of total revenue from all services provided by the Port Licence Holder,

(Cost Allocation Principles).

6. REFERENCE TARIFF SCHEDULE

6.1 Provision/Publication of Reference Tariff Schedule

6.1.1 No later than 31 May in each Financial Year, the Port Licence Holder must:

- (a) publish its Reference Tariff Schedule for the following Financial Year;
- (b) provide the Commission with a copy of its Reference Tariff Schedule for the following Financial Year; and
- (c) provide the Commission with a copy of any contracts with Port Users of the kind described in clause 6.2.1 under which Prescribed Services are to be supplied in the following Financial Year.

6.1.2 The Port Licence Holder will satisfy the publication obligation in clause 6.1.1(a) if it publishes its Reference Tariff Schedule on its website.

6.1.3 The Port Licence Holder must provide its Reference Tariff Schedule, as published under clause 6.1.1(a), in writing to any Port User who requests it, within five (5) Business Days of receiving the request.

6.1.4 The Reference Tariff Schedule must specify:

- (a) the Prescribed Service Tariff for each Prescribed Service offered by the Port Licence Holder; and
- (b) a description of the Prescribed Service to which the Prescribed Service Tariff applies.

6.1.5 Prescribed Service Tariffs that are specified in the Reference Tariff Schedule must:

- (a) not include charges or fees for services that are not Prescribed Services; and
- (b) separately identify the Prescribed Service Tariffs for Shared Channel Services.

6.1.6 The Port Licence Holder must offer to provide Port Users with Prescribed Services in accordance with the Reference Tariff Schedule.

6.1.7 The Port Licence Holder must not require a Port User to acquire services that are not Prescribed Services in order for that Port User to be supplied with Prescribed Services.

6.2 Contracts for Prescribed Services

6.2.1 The Port Licence Holder may enter into a contract with a Port User for the supply of Prescribed Services on terms and conditions that:

- (a) differ from those specified in the Reference Tariff Schedule; or
- (b) do not satisfy the requirements in clause 6.1.5,

but only if:

- (c) the Port Licence Holder has first offered to provide those Prescribed Services to that Port User in accordance with the Reference Tariff Schedule (as required by clause 6.1.6); and
- (d) the contracted terms and conditions comply with the principles set out in clauses 2.1.1, 2.1.2, 2.1.3 and 2.3.1.

6.2.2 For the avoidance of doubt, despite the entry into a contract with a Port User as contemplated by clause 6.2.1:

- (a) the services provided under the contract remain Prescribed Services; and
- (b) revenue from the Prescribed Services provided under all such contracts must be included in the Port Licence Holder's calculation of its Aggregate Revenue Requirement under clause 2.1.1.

6.3 Changes to Prescribed Service Tariffs

- 6.3.1 During a Financial Year and in addition to the requirements in clause 2.3.1, if the Port Licence Holder seeks to amend its Reference Tariff Schedule in order to charge for a new or additional service as part of a Prescribed Service, or for any other reason, it must:
- (a) notify Port Users and the Commission of its intention to do so by providing its proposed amendments to the Reference Tariff Schedule sixty (60) days prior to its earliest date of effect; and
 - (b) provide Port Users and the Commission with thirty (30) days notice of the final version of the amended Reference Tariff Schedule.
- 6.3.2 For the avoidance of doubt, if the Port Licence Holder amends its Reference Tariff Schedule in accordance with clause 6.3.1, from the date the amendments come into effect:
- (a) the new Reference Tariff Schedule will replace the previous Reference Tariff Schedule; and
 - (b) the obligations in clauses 6.1.3 to 6.1.7 and in clause 6.2 will apply in respect of the new Reference Tariff Schedule.

7. TARIFF COMPLIANCE STATEMENT

- 7.1.1 The Port Licence Holder must provide to the Commission a Tariff Compliance Statement:
- (a) no later than 31 May in each Financial Year; and
 - (b) where Prescribed Service Tariffs are to be varied or a new Prescribed Service Tariff is to be introduced, at the same time as it notifies Port Users and the Commission under clause 6.3.1(b).
- 7.1.2 The Tariff Compliance Statement must:
- (a) set out the Prescribed Service Tariffs for the forthcoming Financial Year (where clause 7.1.1(a) applies) or for the remainder of the Financial Year (where clauses 7.1.1(b) applies);
 - (b) provide information detailing the basis by which adjustments to, or introduction of new, Prescribed Service Tariffs have been made, including the cost building blocks that have been applied and the basis on which the rate of return has been determined;
 - (c) provide information on all contracts with Port Users of the kind described in clause 6.2.1 and the basis on which they comply with clause 6.2.1;
 - (d) set out the process by which the Port Licence Holder has effectively consulted and had regard to the comments provided by Port Users;
 - (e) explain how the Prescribed Service Tariffs comply with this Order, including the Pricing Principles and Cost Allocation Principles;
 - (f) contain any other sufficient supporting information determined by the Commission under clause 9; and
 - (g) comply with the requirements in clause 8.

8. INFORMATION REQUIREMENTS**8.1 Basis on which financial information is to be provided**

- 8.1.1 Subject to requirements for application of the accrual building block methodology in clause 4, any financial information provided in a Tariff Compliance Statement must specify whether it is denominated in constant or current price terms.

8.2 Forecasts and estimates

- 8.2.1 Information in the nature of an estimate or forecast must be supported by a statement of the basis of the forecast or estimate.

8.2.2 A forecast or estimate:

- (a) must be arrived at on a reasonable basis; and
- (b) must represent the best forecast or estimate possible in the circumstances.

8.3 Inferred or derivative information

8.3.1 Information in the nature of an extrapolation or inference must be supported by the primary information on which the extrapolation or inference is based.

9. COMMISSION MAY DETERMINE FORM AND CONTENT OF SUPPORTING DOCUMENTATION

9.1.1 The Commission may, from time to time, determine what constitutes ‘sufficient supporting information’ for the purposes of clauses 3.2.7, 3.3.2 and 7.1.2(f).

9.1.2 A determination under clause 9.1.1 may specify the form and content of information to be provided.

9.1.3 A determination under clause 9.1.1 must be published on the Commission’s website.

10. COMMISSION MAY DETERMINE INDICES TO BE USED

10.1.1 If any index or other externally published statistic or set of statistics referred to in this Order ceases to be published, changes in title or is otherwise amended in a material respect, the Commission may determine the appropriate replacement to be used.

11. INITIAL PRESCRIBED SERVICE TARIFFS

11.1.1 The Prescribed Service Tariffs that apply on and from the Commencement Date are those set out in the Schedule to this Order (**Initial Prescribed Service Tariffs**).

11.1.2 In the Initial Financial Year, the Port Licence Holder must not charge an amount for any Prescribed Service other than in accordance with the Schedule to this Order.

11.1.3 Despite any other provision of this Order, the Initial Prescribed Service Tariffs established under clause 11.1.1 are deemed to comply with the Pricing Principles and Cost Allocation Principles in the Initial Financial Year.

12. PROTECTED PROVISIONS

12.1.1 The following clauses of this Order are ‘protected provisions’ for the purposes of the Act:

- (a) clause 4.2.3 (Port Capacity Project);
- (b) clause 4.2.4 (efficient capital expenditure);
- (c) clause 4.4.1 (Depreciation Period);
- (d) clause 4.5.1 (Port Licence Fee); and
- (e) clause 4.7 (initial capital asset values).

13. REGULATORY PERIOD

13.1.1 The Port Licence Holder may determine the period of time over which to apply the Pricing Principles and Cost Allocation Principles (**Regulatory Period**). For the avoidance of doubt, the Port Licence Holder may adopt Regulatory Periods of different lengths over the term of the Port Lease.

14. DEFINITIONS

In this Order:

Act means the **Port Management Act 1995** (Vic.).

Aggregate Revenue Requirement has the meaning set out in clause 2.1.1(a).

Amended Rebalancing Application has the meaning set out in clause 3.2.13.

Annual Licence Fee has the same meaning as in the Act.

Authorised Transaction has the same meaning as in the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016** (Vic.).

Bundled Services means the Prescribed Services other than the Shared Channel Services.

Commencement Date has the meaning set out in clause 1.1.1.

Commission means the Essential Services Commission of Victoria established under Part 2 of the **Essential Services Commission Act 2001** (Vic.).

Cost Allocation Principles has the meaning set out in clause 5.2.1.

Cost Contribution Amount means the amounts payable by the Port Licence Holder under clause 27.1 of the Port Concession Deed.

CPI means the Consumer Price Index: All Groups Index Number, weighted average of eight capital cities published by the Australian Bureau of Statistics.

Dedicated Channels has the same meaning as in the Act.

Dedicated Channel Services means the provision of the Dedicated Channels.

Depreciation Period has the meaning set out in clause 4.4.1.

Export Pricing Decision means the decision of the Port of Melbourne Corporation to enhance competitiveness with the Port of Botany and other Australian container ports by:

- (a) reducing Prescribed Service Tariffs for full outbound container wharfage services by 2.5% from the price applicable at the start of the preceding Financial Year, at the start of each of the 2017, 2018, 2019 and 2020 Financial Years; and
- (b) from the start of the 2021 Financial Year and thereafter, setting prices for Prescribed Service Tariffs for full outbound container wharfage services at a percentage discount to the equivalent Prescribed Service Tariffs for full inbound container wharfage services that, expressed as a percentage, is the same or a greater percentage discount than was applicable in the 2020 Financial Year.

Final Rebalancing Application has the meaning given in clause 3.2.15.

Financial Year means a year commencing on 1 July in any calendar year and ending on 30 June of the immediately following calendar year.

Initial Financial Year means the Financial Year in which the Commencement Date occurs.

Initial Prescribed Service Tariffs has the meaning given in clause 11.1.1.

Interim Decision has the meaning given in clause 3.2.8.

March CPI means the CPI for the March quarter.

March CPI Release Date means the date the Australian Bureau of Statistics publishes the March CPI that enables the actual Tariff Adjustment Limit relevant to the Rebalancing Application, Amended Rebalancing Application or Final Rebalancing Application (as applicable) to be calculated.

PCP Capital Expenditure means:

- (a) as at 30 June 2016, A\$637 million; plus
- (b) expenditure on assets and services related to the Port Capacity Project incurred by either the Port of Melbourne Corporation or the Port Licence Holder after 30 June 2016.

PCP Completion means the date on which a final certificate of practical completion has been received by the Port Licence Holder in relation to both the roads and services package and the maritime works package for the Port Capacity Project.

Port Capacity Project means the development declared in the nomination order under the **Project Development and Construction Management Act 1994** (Vic.) dated 4 September 2012 and published in the Government Gazette on 7 September 2012.

Port Concession Deed means the Transaction Arrangement bearing that name.

Port Lease means the document of that name entered into pursuant to authorisation under the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016** (Vic.).

Port Licence Fee means the Annual Licence Fee.

Port Licence Holder has the same meaning as in the Act.

Port of Melbourne Waters means any waters which by Order in Council made under section 5(2) of the Act are declared to be port waters of the port of Melbourne.

Port User means a person who requests or receives Prescribed Services.

Prescribed Services has the same meaning as in the Act.

Prescribed Service Bundle means each of the following:

- (a) wharfage services for containerised cargo;
- (b) wharfage services for non-containerised/general cargo;
- (c) wharfage services for motor vehicle cargo;
- (d) wharfage services for liquid bulk cargo;
- (e) wharfage services for dry bulk cargo;
- (f) Shared Channel Services;
- (g) Dedicated Channel Services; and
- (h) any other Prescribed Services, or component or combination thereof, in respect of which the Port Licence Holder introduces new Prescribed Service Tariffs after the Commencement Date and which the Commission determines to be a Prescribed Service Bundle by notice in writing to the Port Licence Holder.

For the avoidance of doubt, each of items (a)–(g) above is a Prescribed Service Bundle. By way of example, ‘wharfage services for containerised cargo’ is a Prescribed Service Bundle and ‘Shared Channel Services’ is another Prescribed Services Bundle.

Prescribed Service Tariffs means the prices charged for the provision of, or in connection with, Prescribed Services.

Pricing Principles means the principles and requirements contained in clauses 2, 2.3.1 and 4.

Public Sector Entity has the same meaning as in the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016** (Vic.).

Rebalancing Application has the meaning set out in clause 3.2.4.

Reference Tariff Schedule means a schedule of Prescribed Service Tariffs that contains the information specified in clause 6.1.4.

Regulatory Period has the meaning set out in clause 13.1.1.

Shared Channels has the same meaning as in the Act.

Shared Channel Services means the provision of the Shared Channels.

Shared Channel Tariffs means the prices charged for the provision of Shared Channel Services.

Tariffs Adjustment Limit means the percentage change in CPI between the March quarter immediately preceding the relevant Financial Year and the March quarter in the Financial Year two years preceding the relevant Financial Year.

Tariff Compliance Statement means the statement required to be provided by the Port Licence Holder to the Commission in accordance with clause 7 of this Order.

Transaction Arrangement has the same meaning as in the **Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016**.

Weighted Average Tariff Increase means, in respect of a Financial Year, the expected weighted average rate of increase in the Prescribed Service Tariffs using weightings based on historical revenues derived from the Prescribed Service Tariffs in the most recent Financial Year for which audited data are available or, if there is no historic audited data upon which to calculate the expected weighted average rate of increase on this basis, an alternative estimate of revenue for the purpose of calculating weightings on a basis determined by the Commission.

Dated 21 June 2016

Responsible Minister:
ROBIN SCOTT MP
Minister for Finance

ANDREW ROBINSON
Clerk of the Executive Council

SCHEDULE – INITIAL PRESCRIBED SERVICE TARIFFS#

#Applicable from the Commencement Date

WHARFAGE FEES

Wharfage fees are charged per unit of quantity, volume or weight of cargo for all cargoes, including empty containers, loaded on or discharged from vessels or between vessels in the Port of Melbourne. Transhipment port fee rates are applicable in respect of cargo which is transhipped from the Port within 90 days of being discharged. The appropriate transhipment port fee rate is separately charged on both the inward and outward movements. Beyond 90 days, normal rates apply for both inward and outward cargo movements. Goods must be transhipped in the same cargo carrying unit for the transhipment port fee rates to apply.

	Until 30 June 2017 (inclusive)			From 1 July 2017 ¹		
	GST exclusive	GST	GST inclusive	GST exclusive	GST	GST inclusive
Containerised² – \$ per TEU³						
Full – outward	63.28	6.33	69.61	98.26	9.83	108.09
Full – inward	67.54	6.75	74.29	105.04	10.50	115.54
Full Bass Strait ⁴	70.14	7.01	77.15	70.14	7.01	77.15
Empty (including nested units) ⁵	16.76	1.68	18.44	16.76	1.68	18.44
Empty returns ^{5,6}	33.50	3.35	36.85	33.50	3.35	36.85
Infrastructure Fee⁷ – \$ per TEU³						
Full – outward and inward	37.50	3.75	41.25	–	–	–
Full Bass Strait ⁴	0.00	0.00	0.00	–	–	–
Non-containerised/general – \$ per tonne or cubic metre⁸	2.71	0.27	2.98	2.71	0.27	2.98
Accompanied passenger vehicles – \$ per tonne or cubic metre⁸	1.81	0.18	1.99	1.81	0.18	1.99
Motor vehicles⁹ – \$ per tonne or cubic metre⁸	3.06	0.31	3.37	3.06	0.31	3.37

¹ These prices are subject to escalation in accordance with clause 3 of this Order.

² Tautliners, Tassieliners and Straightliners up to and including 2.9 m in height are charged as containerised. Cargo carrying units in excess of 2.9 m in height are charged as non-containerised cargo.

³ TEU = Twenty-foot equivalent unit (6.1 m). Non-standard length containers are calculated on a pro rata basis.

⁴ Bass Strait cargo is defined as cargo that is loaded/unloaded from a port in Tasmania.

⁵ Except those on dedicated Bass Strait services.

⁶ Cargo carrying unit that only contains reusable packaging or dunnage.

⁷ The infrastructure fee is levied to recover the costs of the Channel Deepening Project.

⁸ Charges are based on the greater of weight or volume of the cargo.

⁹ Motor vehicles include all vehicles new and second-hand primarily designed for the transportation of passengers or goods. It includes special purpose vehicles such as ambulances, fire fighting, police and breakdown vehicles, mobile cranes, road sweepers and concrete mixers.

Motor vehicles exclude:

- (i) all agricultural, earthmoving and construction machinery including tractors, cultivators, harvesters, balers, mowers, rollers, bulldozers, scrapers, excavators and shovel loaders; and
- (ii) accompanied passenger vehicles.

WHARFAGE FEES						
Liquid bulk – \$ per tonne or cubic metre	4.07	0.41	4.48	4.07	0.41	4.48
Dry bulk – \$ per tonne						
Inwards – overseas and coastal ¹⁰	3.25	0.33	3.58	3.25	0.33	3.58
Outwards – overseas and coastal ¹⁰	2.35	0.24	2.59	2.35	0.24	2.59
Transhipment¹¹						
Standard charge	35% of the published rate			–		
<i>Full – outward – \$ per TEU¹²</i>		–		39.87	3.99	43.86
<i>Full – inward – \$ per TEU¹²</i>		–		42.39	4.24	46.63
<i>Other</i>		–		35% of the published rate		
Infrastructure Fee ⁷	For the infrastructure fee the following specific transhipment rule applies:(i) transhipment cargo is charged at 50% of the standard infrastructure rate except where a transhipment includes a Bass Strait movement, then the full infrastructure fee will be charged on the non-Bass Strait movement.				–	

CHANNEL FEES

Channel fees are charged for the provision of channels for use by vessels in Port of Melbourne waters and the provision of associated services. Channel fees are levied once per ship visit on the gross tons (GT) of vessels using the channels or in other manners specified for the provision of channel related services.

	GST exclusive	GST	GST inclusive
Vessels up to and including maximum summer draught¹³ of 12.10 m			
Shared channels – \$ per GT	0.1814	0.0181	0.1995
Dedicated channels – \$ per GT	0.3546	0.0355	0.3901
Vessels exceeding maximum summer draught¹³ of 12.10 m			
Shared channels – \$ per GT	0.1935	0.0194	0.2129
Dedicated channels – \$ per GT	0.4140	0.0414	0.4554
Reduced channel fees are applicable to the following (percentage of full charge)			
Pure car carrier ¹⁴			75%

¹⁰ Coastal cargo is defined as cargo that is loaded/unloaded from an Australian port (including Bass Strait).

¹¹ Transhipment cargo is defined as cargo that is unloaded from one vessel in the port and reloaded for export on another vessel.

¹² This rate is based on the infrastructure fee-inclusive transhipment price that applied until 30 June 2017.

¹³ The maximum summer draught is the vertical distance in metres measured from the lowest point of a ship's hull to the summer load line. The maximum summer draught is as detailed in Lloyds Register or similar.

¹⁴ Applies only to vessels with GT: Dead weight tonnage ratio equal to or greater than 2:1 and which are carrying not less than 70% motor vehicles. Motor vehicles include all vehicles new and second-hand primarily designed for the transportation of passengers or goods. It includes special purpose vehicles such as ambulances, fire fighting, police and breakdown vehicles, mobile cranes, road sweepers and concrete mixers.

Passenger cruise vessel	90%
Coastal liner vessel ¹⁵	60%
Vessels using Dedicated and Geelong channels on the same entry to Port Phillip Bay ¹⁶	75%
Exempt vessels (no channel fee)	
<i>Tugs and barges based in Melbourne</i>	
<i>Tugs and barges based in Geelong are exempt from shared channel fees</i>	
<i>Vessels less than 200 GT</i>	
<i>Royal Australian Navy (RAN) and the approved guests of the RAN, cadet and training vessels</i>	
<i>Other vessels under special circumstances¹⁷</i>	

BERTH HIRE FEES

Berth hire is a time based fee charged for the provision of berths for the purpose of loading or discharging specialised cargo and lay-up or other approved purpose.

Berth hire does not apply to the Royal Australian Navy (RAN) and approved guests of the RAN.

Full charge

The full charge is calculated on total time of the vessel at berth from the first line ashore to last line cast-off. Cost is calculated to the nearest one-tenth of an hour, rounded upwards.

Lay-up charge

Lay-up use includes:

- mooring at a berth for a period greater than four hours before cargo operations;
- mooring at a berth for a period greater than two hours after completion of cargo operations; and
- mooring at a berth by vessels not intending to transfer cargoes.

Use of a berth for lay-up is solely at the discretion of the Port Licence Holder.

Any berth use designated by the Port Licence Holder for lay-up use will be charged at the hourly rate calculated on total time of the vessel at berth from the first line ashore to last line cast-off. Cost will be calculated to the nearest one-tenth of an hour, rounded upwards.

Motor vehicles exclude: (i) all agricultural, earthmoving and construction machinery including tractors, cultivators, harvesters, balers, mowers, rollers, bulldozers, scrapers, excavators and shovel loaders; and (ii) accompanied passenger vehicles.

¹⁵ Applies only to vessels operating as a 'common carrier' with a fixed schedule of greater than two visits per week between Melbourne and at least one fixed interstate destination that is published in advance.

¹⁶ Applies only to Dedicated channel charges.

¹⁷ Subject to the specific approval of the Port Licence Holder in advance.

¹⁸ Cargo operations is defined as the time taken for actual cargo transfer only, at all applicable lay-up berths (excluding Maribyrnong No.1 and Holden Dock).

Concessions

The Port Licence Holder is to consider applications for concessions to these charges in the event that vessels are delayed in unmooring or required to moor early at the request of the Harbour Master.

The Port Licence Holder is also to consider applications to waive full charge berth hire for the time cargo operations did not occur on the gazetted Victorian public holidays of Good Friday, ANZAC Day and Christmas Day.

Concessions are to be calculated to the nearest one-tenth of an hour, rounded upwards.

	GST exclusive	GST	GST inclusive
Full charge – \$ per hour			
Maribyrnong No. 1	351.80	35.18	386.98
Holden Dock	466.20	46.62	512.82
Passenger cruise ships at a berth other than Station Pier ¹⁹	580.00	58.00	638.00
Lay-up charge²⁰ – \$ per hour	123.00	12.30	135.30

WHARF ACCESS FEES

Wharf access is a fee for the provision of facilities at common user areas within the Port of Melbourne for the purpose of loading/unloading dry bulk and breakbulk cargo directly to or from a vehicle. This charge is in lieu of an area hire charge.

Wharf access is charged:

- at 6 Yarraville and F Appleton Dock;
- when breakbulk and/or dry bulk cargo is loaded directly to or from a vehicle; and
- when no area hire charge is applicable.

	GST exclusive	GST	GST inclusive
Cargo – \$ per tonne	0.93	0.09	1.02

¹⁹ To apply only when vessels can not be accommodated at Station Pier.

²⁰ Lay-up charges are applicable at the following berths: 24 Victoria Dock; Holden Dock; Maribyrnong No. 1; 24, 27, 28, 29 & 33 South Wharf; 6 Yarraville and F Appleton Dock.

AREA HIRE FEES

Area hire is a fee charged for the provision of a common user area within the Port of Melbourne for the purpose of storage of cargo discharged from, or to be loaded on to, a vessel.

The area hire charge is calculated on total time from the earlier of the start of storage of export cargo before the arrival of the vessel, or start of storage of import cargo, until the later of the finish of storage of import and/or export cargo.

Area hire charges do not apply on the gazetted Victorian public holidays of Good Friday, ANZAC Day and Christmas Day.

Area hire is charged at double rate for periods of use earlier than three days (72 chargeable hours) before vessel arrival and for periods of use later than three days (72 chargeable hours) after finish of vessel discharge. Cost is calculated to the nearest one-tenth of an hour, rounded upwards.

	GST exclusive	GST	GST inclusive
Area hire – \$ per hour			
Standard rate – 6 Yarraville	69.40	6.94	76.34
Standard rate – F Appleton Dock	45.10	4.51	49.61

TANKER INSPECTION FEES

Tanker inspection charges are fees charged for the necessary or mandatory safety and compliance inspection of tankers berthing at the following facilities:

- Holden Dock;
- Maribyrnong No. 1 (hazardous tankers only); and
- 6 Yarraville (hazardous tankers only).

	GST exclusive	GST	GST inclusive
Inspection – \$ per inspection	700.13	70.01	770.14

OTHER GANGWAY HIRE FEES

Other gangway hire is a charge for the provision of non-passenger gangways to ships.

Hirers are responsible for the transfer of gangways to/from the wharf (if applicable) and the placement of the gangway on and off the vessel. The Master of the vessel is responsible for the proper placement of a gangway, including the installation of a gangway net and all other Australian Maritime Safety Authority requirements. Other gangway hire is applicable at all wharves (special arrangements apply at Maribyrnong No. 1 and 33 South Wharf).

	GST exclusive	GST	GST inclusive
Other gangway hire – \$ per day or part thereof (minimum charge 24 hours)	211.20	21.12	232.32

WHARF INSPECTION FEES

Wharf inspection (if required) is a fee to inspect the wharf before the vessel arrives and after the vessel departs.

	GST exclusive	GST	GST inclusive
Pre-vessel arrival inspection – \$ per each inspection	934.10	93.41	1027.51
Post-vessel departure inspection – \$ per each inspection	934.10	93.41	1027.51

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