

Port of Melbourne Market Rent Inquiry 2025

Public report

30 April 2025



Acknowledgement

We acknowledge the Traditional Owners of the lands and waterways on which we work and live.

We acknowledge all Aboriginal and Torres Strait Islander communities, and pay our respects to Elders past and present.

As the First Peoples of this land, belonging to the world's oldest living cultures, we recognise and value their knowledge, and ongoing role in shaping and enriching the story of Victoria.

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Summary

We have completed our second inquiry into land rents at the Port of Melbourne

This report sets out the Essential Services Commission's findings from our inquiry into port rents and associated payments under section 53 of the *Port Management Act 1995*. Our inquiry covers activities over the period from 1 November 2019 to 31 October 2024 (second inquiry period).

The Port Management Act¹ sets out the steps for our inquiry:

1. Whether the Port of Melbourne has power in the market for access to leased Port of Melbourne land that it may exercise in relation to the process for the setting or reviewing of rents or associated payments payable by its tenants.



2. If we find the Port of Melbourne has power, whether the Port of Melbourne has exercised that power in a way that has the effect of causing material detriment to the long-term interests of Victorian consumers.



3. Subject to a finding of power causing material detriment, formulate recommendations to the Minister for Finance about whether the provision of access to port land by means of an applicable lease should be subject to economic regulation and, if so, the form of the economic regulation.

The Port of Melbourne has power in the setting and reviewing of land rents, but it has not exercised this power to the material detriment of Victorian consumers

To assist us in our inquiry, we issued the Port of Melbourne a notice to provide information and documents under section 36 of the *Essential Services Commission Act 2001*. Following the Port of Melbourne's response to our notice, we reviewed 20 leases and associated payments and examined the port's decision-making processes on rental negotiations.²

¹ *Port Management Act 1995*, s53(1).

² During the second inquiry period the Port of Melbourne has established 24 new leases with new and existing tenants and finalised 27 market rent reviews. Source: Port of Melbourne, submission to the '2025 Port Market Rent Inquiry Scope and Process Paper', November 2024.

We also held confidential one-on-one sessions with tenants and received several stakeholder submissions on our scope and process paper. The commission has engaged with the Port of Melbourne regularly throughout the inquiry. These interactions involved meetings to discuss the inquiry and relevant information, as well as email communication to provide and clarify details.

A summary of key findings is set out below.

Key findings

The Port of Melbourne has power in the process for setting or reviewing rents

- For the purpose of our inquiry 'power' has its natural meaning, that is, the ability to do something in a particular way.
- The Port of Melbourne is the only possible supplier of land in the relevant market, which the Port Management Act defines as the market for access to leased port of Melbourne land by means of an applicable lease.
- This provides the underlying source of the Port of Melbourne's power in relation to the process for setting or reviewing rents and associated payments.

The Port of Melbourne's power has not been effectively constrained by the market

- The Port of Melbourne has significant control over setting and reviewing rents, despite market conditions imposing some constraints.
- Most tenants have little choice but to stay due to high relocation costs and long lead times.

The Tenancy Customer Charter and Clauses 18 and 19 of the Port Concession Deed have improved the rent setting process

- The Tenancy Customer Charter, developed in response to a recommendation from the first market rent inquiry, released on 4 November 2021, improved the transparency and predictability in the rent negotiation process by setting out key steps in the process.
- The simultaneous release of clauses 18 and 19 of the port deed, following our recommendation from the first market rent inquiry, better balances the negotiation power between the Port of Melbourne and port tenants, and ultimately ensures alignment with the intent of the port deed.
- Public release of these documents has improved the rent setting processes, and has in the latter half of the second inquiry period, proved largely effective in constraining the Port of Melbourne's power in rent negotiations.

The Port of Melbourne's behaviour provides evidence that it has exercised its power

- We consider that there is evidence during the second inquiry period that the Port of Melbourne has exercised its power in relation to the process for setting or reviewing rents and associated payments at the port.
- Information asymmetry between the Port of Melbourne and its tenants appears to be the main source of power imbalance that reduces the efficiency of the rent setting processes.
- The precedent lease offered by the Port of Melbourne when commencing negotiations is 'landlord friendly' and generally provides the Port of Melbourne with a favourable starting position.
- However, the Tenancy Customer Charter and the publication of clauses 18 and 19 of the Port Concession Deed improved the balance of power in negotiations for tenants.

We do not consider that the Port of Melbourne's exercise of power has caused material detriment to the long-term interests of Victorian consumers

- We consider the lease negotiation process is clear, the Port of Melbourne is open to rent negotiations, and that rents generally aligned with market rates. There has been minimal feedback from tenants about delays or foregone investments due to negotiation inefficiencies.
- Because we have not found material detriment, we are not making recommendations to the Victorian Government on further economic regulation.
- We have made some observations for the Port of Melbourne to consider, which could improve the efficiency of lease negotiation processes. These are summarised below. The Port of Melbourne has indicated it is open to further consideration of these observations (see Appendix C).

The commission's findings are supported by the following:

- The Tenancy Customer Charter³ has established a clear framework for negotiating new leases and market rents at the port. The framework has been applied from 2022.
- The negotiation period for most leases has been reduced to around six months, which appears reasonable.
- Year-on-year increases in rent revenue at the port have not escalated at the same rates as year-on-year increases in commercial rents at Melbourne industrial and logistics sites (discussed further below).
- The Port of Melbourne has demonstrated a willingness to negotiate on key commercial terms for new leases.

Increases in port rents have remained relatively stable over the second inquiry period

Rents in the second inquiry period have not escalated at the same rate as occurred immediately after the privatisation of the Port of Melbourne. The average increase in annual land revenue was 36.4 per cent in the first inquiry period, down to 7.3 per cent in the second inquiry period.⁴

Further, the general range of rental outcomes we observed (year-on-year increases in total revenue and per square metre) during the second inquiry period does not seem excessive compared to outcomes achieved in competitive markets for commercial industrial land in Melbourne.

Information we analysed from Colliers indicates that industrial and logistics land rents in Melbourne – based on square metre values – increased at rates between approximately 58 per cent to 78 per cent across the inquiry period.⁵ The average land rents per square metre in the port

³ Port of Melbourne, Tenancy Customer Charter, <https://www.portofmelbourne.com/wp-content/uploads/Tenancy-Customer-Charter.pdf>

⁴ 7.3 per cent is a simple average of the annual percentage changes in land revenue, across the inquiry period. We adopted a simple average as it is a common and well-understood measure and given the short length of the inquiry period.

The Port of Melbourne calculated a compound annual growth rate in land revenue of 6.8 per cent. A compound annual growth rate accounts for the compounding nature of each annual increase and smooths out volatility over a given time frame, therefore producing a different figure compared to the simple average.

⁵ We procured historical land rent data from the real estate and investment management firm Colliers to assist in verifying the publicly available data on Melbourne industrial and logistic land rents across the inquiry period. We found that this data was consistent with the publicly available information on Melbourne industrial and logistics land rents. It was also consistent with data from CBRE Research, which was commissioned and relied upon by the Port of Melbourne in performing its own confidential analysis.

CBRE Research indicates average net face rents for prime industrial and logistics land have increased between approximately 5 per cent and 25 per cent a year across 2022 and 2024.

CBRE Research, Figures Melbourne Industrial and Logistics 4Q24, 16 January 2025, https://mktgdocs.cbre.com/2299/14ca2360-dd85-470d-89be-3117f2119fdb-25321084/Figures_Melbourne_Industrial_a.pdf, accessed 12 February 2025.

precinct increased by approximately 37 per cent over the inquiry period.⁶ In reviewing market data, we acknowledge that inherent differences in the data available on industrial and logistics land rents in Melbourne, and the Port of Melbourne's data provided under our section 36 notice, make direct 'like for like' comparisons difficult. Differences arise from the port precinct's unique location, size and subsequent economies of scale, lack of direct competitors (that is, a lack of comparable ports in Victoria), and operational synergies for prospective port tenants. We utilise the market data as a general reference point in our inquiry.

We have observed the Port of Melbourne processes and behaviour are more conciliatory, and open to negotiation and engagement than in the first inquiry period

Our inquiry into the Port of Melbourne's conduct during the second inquiry period and feedback from tenants found that the Port of Melbourne is more conciliatory, and open to negotiation and engagement in lease negotiations with tenants.

In its submission, the Port of Melbourne highlighted the changes it has implemented in relation to the rent setting and review process and its compliance with this process. These initiatives include introducing the Tenancy Customer Charter—supported by a compliance monitoring and reporting framework—and enhancing culture, governance and systems. The goal is to build collaborative relationships with tenants and achieve commercially acceptable outcomes for both parties. Some tenants commented that they have observed a positive cultural shift in the Port of Melbourne's behaviour during the second inquiry period, in particular, a noticeable improvement in its approach to engagement.

We consider that these initiatives, along with the release of clauses 18 and 19 of the Port Concession Deed, have had a positive impact on the rent setting and review process. They have improved the overall outcomes for tenants by providing greater clarity about each party's rights, obligations, and applicable processes, offering opportunities to influence lease terms and conditions, and enhancing negotiation arrangements and timeframes.

We have made observations about actions that the Port of Melbourne may consider adopting in its rent setting processes to improve efficiency and transparency

Following our review of the information provided by the Port of Melbourne and feedback from stakeholders, we made some observations about how the efficiency of the rent setting processes can be improved through actions that the Port of Melbourne may want to consider incorporating into its current processes.

These actions include disclosing new rent information (on an anonymised basis), improving transparency of the market rent review negotiation process, only including one form of rental

⁶ Excludes pipelines, utilities and services leases.

escalation (for example in the Precedent Lease Agreement), and making clearer the types of outgoings payable in a lease agreement. These observations are detailed in Chapter 6 in this report. The Port of Melbourne has indicated it is open to further consideration of these observations.

Inquiry timeline and next steps

Activity	Indicative timeline
Scope and process paper released	1 October 2024
Section 36 notice issued to Port of Melbourne	1 November 2024
Public forum	7 November 2024
Stakeholder drop-in sessions	12 – 14 November 2024
Deadline for submissions to the scope and process paper	14 November 2024
Preliminary findings provided to Port of Melbourne, Minister for Finance and Minister for Ports and Freight	28 February 2025
Response from Port of Melbourne on preliminary findings	21 March 2025
Final report provided to the Minister for Finance*	30 April 2025

* As per section 45(5) and 45(6) of the Essential Services Commission Act, after receiving the final report the minister must lay it before each House of the Parliament within 7 sitting days and make the report publicly available within 30 days.

As per section 45(7) of the Essential Services Commission Act, the commission must make the final report publicly available after the minister has received and made the final report publicly available.

The commission is restricted from disclosing certain confidential and commercially sensitive documents or information given or made available to it. Redactions are included throughout this report where reference is made to such documents or information.

1. Introduction and our inquiry framework

About the Inquiry

Scope of this inquiry

The Port of Melbourne market rent inquiry (inquiry) has been conducted in accordance with section 53 of the Port Management Act.

This is our second inquiry, covering a period of five years commencing on 1 November 2019 and ending on 31 October 2024 (the second inquiry period).⁷ We conducted our first inquiry (covering the period 1 November 2016 to 31 October 2019) in 2020.

The Port Management Act requires us to conduct and complete the inquiry into the following matters:

- (a) Whether the port lessee or the Port of Melbourne operator has power in the relevant market that it may exercise in relation to the processes for setting or reviewing of land rents or associated payments (however described) payable by a tenant under an applicable lease.
- (b) Whether the port lessee or the Port of Melbourne operator has exercised that power in a way that has the effect of causing material detriment to the long-term interests of Victorian consumers (a misuse of market power).

If, and only if, we find that there has been a misuse of market power, we must make recommendations to the Minister for Finance about whether access to Port of Melbourne land by means of an applicable lease should be subject to economic regulation, and if so, the form of the economic regulation.⁸

How does land rental at the Port of Melbourne work?

Each tenant has a lease with the Port of Melbourne that specifies the rent to be paid and the terms under which the land is to be accessed and used. These rents are set and reviewed according to a process in which both parties either negotiate or are referred to an independent party for determination (should they not be able to negotiate an agreement). The terms and structures of

⁷ *Port Management Act 1995*, s53(5)(b). The first inquiry can be found at www.esc.vic.gov.au/transport/port-melbourne/port-melbourne-reviews/port-melbourne-market-rent-inquiry-2020

⁸ We note that the port lessee and the Port of Melbourne referred to in (a) and (b) above, are the private sector entities that each hold leasehold interests in port of Melbourne land and are therefore able to provide access to port of Melbourne land through the grant of an applicable lease. These parties are collectively referred to in this paper as the 'Port of Melbourne'.

tenants' leases can vary significantly according to when the lease was entered into, the activities carried out on the relevant leased land during the lease and the type of land accessed.

During the second inquiry period the Port of Melbourne administered around 80 leases with an average term of around 15.4 years. While some leases are short-term, others extend to terms of over 45 years.⁹

Land rents constitute a significant share of the Port of Melbourne's total revenue. This share has increased since the Lonsdale Consortium was granted a 50-year lease in 2016.

In 2015–16, rents and licence fees comprised 14 per cent of the Port of Melbourne's total revenue.¹⁰ By 2018–19, 'property revenue' was almost 29 per cent of the Port of Melbourne's total income.¹¹ As of 2023–24, 'property revenue' remained at 29 per cent of the Port of Melbourne's total income.¹²

Our approach to the inquiry

The commission's inquiry has provided the Port of Melbourne, tenants, and other interested parties opportunities to participate. Our engagement approach was shaped by our obligations under Part 5 of the Essential Services Commission Act. All stakeholder submissions were carefully considered in forming our findings.

Our inquiry and findings have been informed by our assessment of the information we gathered via the processes outlined above. We issued the Port of Melbourne a notice to provide information and documents pursuant to section 36 of the Essential Services Commission Act. We assessed a sample of 20 leases, relevant communications held by the Port of Melbourne (for example, with the tenant or property valuers) and rental outcomes across the port precinct. We selected the chosen sample based on their relevance to our task (that is, whether it was a new lease agreed or market rent review conducted in the second inquiry period, or whether the Tenancy Customer Charter applied, or if it was a post Port Lease Transaction lease agreement).

The lease sample comprised 14 out of the 24 new leases (58 per cent) and 7 out of 27 market rent reviews (26 per cent) completed by the Port of Melbourne during the second inquiry period. The

⁹ Source: Data provided to the commission by the Port of Melbourne. A significant number of mostly small tenants are in overholding arrangements, with their leases effectively continuing on a monthly basis.

¹⁰ Port of Melbourne Corporation 2016, *Annual Report 2015–16*, State Government of Victoria, Melbourne.

¹¹ Port of Melbourne 2020, *Consolidated Financial Statements for the year ended 30 June 2020*, Singapore Exchange Limited, Singapore.

¹² Port of Melbourne 2024, *Consolidated Financial Statements for the year ended 30 June 2024*, Singapore Exchange Limited, Singapore.

total land-related revenue of the reviewed leases in the most recent completed financial year (2023-24) was \$89.5 million, 43.7 per cent of the total rental revenue in that year.

We also reviewed comments made by stakeholders via written submissions and confidential ‘drop-in’ sessions and, where necessary, sought further information from stakeholders, including the Port of Melbourne, throughout our inquiry.

Our inquiry was also informed by expert advice covering:

- how the Port of Melbourne has approached setting and reviewing rents
- whether the Port of Melbourne has exercised power in these processes
- whether the Port of Melbourne has complied with its obligations, including contractual arrangements, while engaging in these processes
- how the Port of Melbourne’s leasing processes considered the requirements for setting and reviewing rents for leased port land specified in the Port Concession Deed and the Tenancy Customer Charter.

Key steps in our process

Activity	Timeline
Consultation on our scope and process paper <ul style="list-style-type: none">• The scope and process paper sets out the scope of, and proposed approach to the inquiry and key matters for consideration by stakeholders.• We received six submissions in response to the paper.• All submissions, except those provided on a confidential basis, are available on our website.¹³	1 October 2024
Request for information from the Port of Melbourne <ul style="list-style-type: none">• We issued the Port of Melbourne with a compulsory information gathering notice.• The notice sought confidential information on the rent setting and review process undertaken in relation to a sample of 20 leases including associated payments.	1 November 2024
Stakeholder consultation	November 2024

¹³ See: <https://www.esc.vic.gov.au/port-melbourne-market-rent-inquiry-2025>

- We held a public forum on 7 November 2024 which was attended by over 50 stakeholders including port tenants, representatives from government departments, the Port of Melbourne and the Port Lessor.
- We provided opportunities for interested stakeholders to attend one-on-one meetings with us to raise key issues and discuss their submissions to our consultation process.
- Four stakeholder drop-in sessions were conducted between 12–14 November 2024 on a confidential basis.

Our review

November 2024 to February 2025

- Our review and analysis of the information we received in relation to the second inquiry period informed the findings of this report.
- We selected and assessed 20 leases, relevant communications held by the Port of Melbourne (for example, with the tenant or property valuers) and rental outcomes across the port precinct.
- We also reviewed comments made by stakeholders via written submissions and confidential ‘drop-in’ sessions and where necessary, we sought further information from stakeholders, including the Port of Melbourne.

Ongoing consultation with the Port of Melbourne

October 2024 to February 2025

- We met regularly with the Port of Melbourne throughout our assessment of the information gathered via information notices and from stakeholders.
- We made some observations regarding how the efficiency of the rent setting process implemented during the second inquiry period could be improved and met with the Port of Melbourne to discuss these observations. The Port of Melbourne has indicated it is open to further consideration of these observations.

Preliminary report

28 February 2025

We prepared a preliminary report which sets out the key processes we followed, and our consideration of the matters we must have regard to in conducting this inquiry. The report also sets out our preliminary findings on whether Port of Melbourne, in the second inquiry period, has power it may exercise in the process for setting or reviewing rents for land at the port, and if so, has exercised that power in a way that has the effect of causing material detriment to the long-term interests of Victorian consumers.

1. Introduction and our inquiry framework

We provided the preliminary report to the Port of Melbourne and gave it three weeks to respond to the report.

Port of Melbourne's response to our preliminary report

21 March 2025

The Port of Melbourne provided us with a confidential response to the preliminary report. This largely accepted our preliminary findings and provided several comments for us to consider prior to finalising our report.

We have considered the Port of Melbourne's response, and our full reply is set out in Appendix C, and where relevant, in the body of this report.

2. Our review

Our inquiry framework

Does the Port of Melbourne have power?

Section 53(5) of the Port Management Act defines the relevant market for our inquiry as ‘the market for access to leased port of Melbourne land by means of an applicable lease’. An applicable lease means a lease of land at the port of Melbourne granted by a port lessee or the Port of Melbourne operator.

Accordingly, our assessment of power is confined to the land rental market in which the Port of Melbourne is the only possible supplier and is a natural monopoly.¹⁴

Defining power

In the absence of a defined statutory meaning for ‘power’, we turn to its natural interpretation: power is the ability to do something in a particular way.¹⁵ In this context, it is the power that the Port of Melbourne may exercise in relation to the process for setting or reviewing rents or associated payments payable for land at the port of Melbourne by its tenants under an applicable lease.¹⁶

The Port of Melbourne may have power over the following elements:

- setting or reviewing of rents and associated payments
- setting of the terms and conditions of leases
- the processes for negotiating new leases or changes in rents, associated payments or terms and conditions
- the information available and to be made available to existing and prospective tenants for establishing or reviewing rents.¹⁷

¹⁴ However, we acknowledge that decisions in related markets which the Port of Melbourne or tenants may operate in could have an impact on the land rental market.

¹⁵ The *Macquarie Dictionary* defines power as the ability to do or act; capability of doing or affecting something.

¹⁶ *Port Management Act 1995*, s53(1)(a)(i).

¹⁷ Aspects such as the location and area of the land, condition of the land, nature of the permitted use, term of the lease and termination rights, and rents for comparable land will all directly influence the rent and associated payments payable under an applicable lease.

For clarity, it is neither within our inquiry scope nor do we have the legislative authority to consider sections 46 or 46A of the *Competition and Consumer Act 2010* (Cth). Those provisions concern the substantial lessening of competition that a misuse of market power can cause.¹⁸

What is the 'relevant market'?

The 'relevant market' is the market for access to land in the port of Melbourne by means of an 'applicable lease'. An 'applicable lease' means a lease for land in the port of Melbourne granted by either the port lessee or the Port of Melbourne.¹⁹

A map of the Port of Melbourne land precinct relevant to our inquiry is provided in Appendix A.

Has the Port exercised power that has resulted in material detriment to Victorian consumers?

If we find the Port of Melbourne:

- has power in the market, and
- it has exercised that power in relation to the process for setting or reviewing land rents or associated payments payable by a tenant under an applicable lease

we then determine whether it has exercised that power in a way that has the effect of causing material detriment to the long-term interests of Victorian consumers.²⁰

Defining *material detriment* and the *long-term interests* of Victorian consumers

These concepts are not defined in the Port Management Act, so our interpretation is guided by the purposes and statutory objectives of that Act and the Essential Services Commission Act. Material detriment is detriment that is not trivial or transitory; an outcome that we judge to be material.

We consider that the long-term interests of Victorian consumers are served by the optimisation of dynamic, productive and allocative efficiency and the optimisation of the price, quality and reliability of goods and services. The long-term interests of Victorian consumers extend to

¹⁸ Section 53(1)(a)(ii) of the *Port Management Act 1995* uses the label 'misuse of market power' for the material detriment test set out there, even though section 53(1)(a)(i) refers only to 'power'. Accordingly, we generally refer to 'power' in this report, rather than 'market power' (which has a specific meaning in competition law). We use the label 'misuse of market power' sparingly, and then only with the meaning in section 53(1)(a)(ii).

¹⁹ *Port Management Act 1995*, s53(5).

²⁰ Section 53(1)(a)(ii) of the *Port Management Act 1995* provides that a misuse of market power is the exercise of power by the Port of Melbourne 'in a way that has the effect of causing material detriment to the long-term interests of Victorian consumers'.

consequential economic effects beyond the immediate market dynamics of the market for port land.

We determine whether Victorian consumers have suffered material detriment by examining how the Port of Melbourne's power to set and review rents influences the price, quality, reliability, and efficiency of accessing leased port land. We also consider whether any rents or payments made by tenants are passed on to service users, their customers, and ultimately Victorian consumers.²¹ Lastly, we evaluate whether the Port of Melbourne's exercise of power could lead to higher prices, reduced competition or lower investment, ultimately harming outcomes for consumers.

The focus of our assessment is on whether the exercise of power by the Port of Melbourne has:

- resulted in tenants paying rents that are above competitive market rates (higher prices)
- prevented prospective tenants from accessing port land (reduced access)
- been harmful to the efficiency of tenants' operations (reduced efficiency).

Assessing whether tenants have paid rents above competitive market rates

We obtained a sample of the rents set and reviewed during the inquiry period and examined how they may differ from independent market valuations of respective port land commissioned by the Port of Melbourne and tenants.²²

We accept that market valuation is not exact and that there may be legitimate differences in valuations made for a particular parcel of land. Therefore, we do not expect to be able to precisely quantify the differences between a market valuation and the actual rent that is paid.

However, if we find market valuations to be generally lower than the amounts paid by tenants, then it may at least indicate that the Port of Melbourne has exercised its power.

We also undertook external benchmarking of the rental increases in the port precinct over the second inquiry period by comparing those increases to competitive commercial rents of comparative sites. We consider that if the rental increases at the port precinct are greater than the increases in competitive markets for commercial industrial land then it may indicate that the Port of Melbourne has exercised its power.

²¹ *Port Management Act 1995*, s 53(3)(c).

²² The sample of current rents and the valuations we use will be for indicative purposes only. We will neither single out the rental rate and valuations of any one lease nor will we comment on the level of rent that should have been set for any single lease.

2. Our review

Assessing reduced access

A reasonable lease negotiation process balances the Port of Melbourne's commercial and other interests with the port's tenants' interests, including need for certainty and value for money. Such negotiation processes should be guided by principles that foster collaboration and fairness.

A typical negotiation process between parties is structured and involves undertaking a preliminary assessment. The assessment may include understanding current market conditions, exchanging information and negotiating on key terms, negotiating the lease agreement and undertaking due diligence. Such processes involve back and forth adjustments until an agreement is reached. This can be a time-intensive process that can take weeks or months depending on the complexity of the lease and may require professional assistance to understand the market.

We take into consideration the characteristics of a typical negotiation process in our review. We recognise that two negotiation processes involving different tenants may differ, but that difference may not necessarily reflect the Port of Melbourne exercising power in the market for negotiating leases and related payments.

We examined a sample of contracts offered by the Port of Melbourne during the second inquiry period, how their terms and conditions may differ and the tenants' approach to negotiating and securing these leases. We also sought to gauge whether the Port of Melbourne was genuinely open to negotiating the rent and contract terms and conditions with tenants, or whether it simply presented a 'take it or leave it' position, thereby restricting access to port land.

Assessing reduced efficiency

In our assessment of whether an exercise of power has the effect of causing material detriment we considered whether the exercise of power has been harmful to efficiency of tenants' operations (including productive, allocative and dynamic efficiency). Identifying the cost impact of any misuse of power will provide the basis for further investigation and recommendations for redress.

We considered the ways, and the extent to which, this cost impact may be passed through by tenants to users of their services, to those users' customers and ultimately, in the longer term, to Victorian consumers. To do this, we examined the ability, if any, of each party to pass any detriment they experience down the port supply chain. Stakeholder input has been important to gauge the above.

Pass-through of land rents paid by tenants to Victorian consumers

Under section 53(3)(c) of the Port Management Act, we must have regard to how land rents and associated payments may affect the port value chain and ultimately Victorian consumers.

Since land rent can be a relatively small, fixed cost for tenants, its immediate pass-through effect is complex making short-term impacts less evident. The possible extent of cost pass-through

2. Our review

depends on industry competition, market structure, whether rent increases apply broadly and whether tenants operate in domestic or international markets.

In competitive industries with uniform cost increases (for example, stevedoring), cost pass-throughs are likely to affect importers. However, where a tenant's competitors do not face a similar change in costs, or it operates in downstream markets that are competitive, any detriment would likely occur in the longer term. This is because with little ability to directly pass costs on, the tenant may substitute to other (low cost and less efficient) factors of production or may eventually exit the market. This might be relevant to exporters operating at the Port of Melbourne.

Although only the Port of Melbourne's conduct and related behaviours of port supply chain during the inquiry period fall within our scope, there is no limitation on when material detriment may occur. At the time of making a finding as part of our inquiry, the material detriment must have occurred and be continuing, must be currently occurring, or must necessarily arise. Therefore, it is possible for material detriment to occur outside the inquiry period. For example, a tenant might absorb higher rents in the short-term but change its investment decisions that are contingent on rents payable in the longer term.

3. What stakeholders have told us

We received stakeholder views and information from the Port of Melbourne and several port tenants.

In the Port of Melbourne's view, there are constraints on its power, and it did not exercise power in setting and reviewing rents during the inquiry period.

Tenants raised concerns in relation to several matters including:

- the amount of information available to tenants during lease negotiations and market rent reviews
- the length of negotiations, delays and tight turnaround timelines imposed by the Port of Melbourne
- the Port of Melbourne's approach to annual rent escalation and its use of ratchet clauses.

However, in general, tenants acknowledged that the Port of Melbourne has improved its behaviour, and our assessment of tenant submissions indicates that, overall, the level of concern was considerably lower than in our last inquiry.

We assessed all stakeholder feedback and concerns raised against the sample of information gathered from the Port of Melbourne regarding its engagement and communications with tenants in relation to the leasing activity conducted during the second inquiry period.

Matters that are out of scope for this inquiry

Several tenants raised concerns about the impact of capital works (including delays to capital works) undertaken by the Port of Melbourne on tenants' operations, and the prudence and efficiency of these capital works. This is out of scope for this inquiry.

Confidentiality

Most of the feedback provided by tenants in written submissions and drop-in sessions was commercially sensitive and confidential. We have aggregated the feedback into several themes which are summarised below.

Summarising what we heard from stakeholders

Whether the Port of Melbourne has power

The Port of Melbourne's view

Constraints on power

In its submission to our scope and process paper, the Port of Melbourne submitted that its ability to exercise power during the inquiry period was substantially constrained by:

- the availability of substitute, non-port land for tenants who do not require wharf access (such as warehousing, storage and transport)
- the negotiating strength of tenants who do require wharf access (such as stevedores) due to their large size, commercial sophistication and the nature of their businesses.

The Port of Melbourne further noted that all tenants and prospective tenants have access to a determination process, and it considers this process makes it unlikely that rents could exceed a reasonable market rent.

Tenants' views

Other potential sources of power

Control of development of land

Some tenants noted that the Port of Melbourne controls development of port land (including improvements to port land) and the amount of land available for lease.

Information asymmetry

Several tenants raised concerns about the lack of information available to them during lease negotiations, which limited their ability to negotiate effectively. These concerns included:

- the Port of Melbourne controls information and limits access to rental information
- lease negotiations are constrained by confidentiality agreements
- lease arrangements are not transparent.

[Continued next page](#)

Whether the Port of Melbourne has power

Tenants' views (continued)

Control of negotiation timelines

Tenants' views on negotiation timelines were mixed. Some tenants noted that negotiations were timely, and the Port of Melbourne complied with the timelines set out in the Tenancy Customer Charter. Other tenants raised concerns, such as:

- tenants felt pressured by tight turnaround timelines imposed by the Port of Melbourne
- tenants' operations were impacted by delays and extended negotiations.

Imposition of management or other fees

Some tenants indicated that the Port of Melbourne has imposed new or increasing fees such as management fees and security charges in addition to the rent charged.

Sequencing of lease negotiations and market rent reviews

Several tenants noted that the Port of Melbourne strategically sequences market rent reviews to maximise rents. For example, the Port of Melbourne uses the rent increase for one tenant to negotiate higher rent increases for other tenants.

Rent dispute resolution process

Some tenants consider that the rent dispute resolution process is flawed and raised concerns that it is binding without a right of appeal. Other tenants noted that the rent dispute resolution process would cost more than the amounts disputed (particularly for smaller tenants).

Other terms and conditions

Tenants noted concerns in relation to a range of other terms and conditions, such as that the Port of Melbourne:

- restricts permitted uses of land
- controls the length of leases which makes it difficult to maintain continuity and have future access to improvements made to the land by the tenant
- controls exit arrangements, particularly in relation to tenants' works.

[Continued next page](#)

Whether the Port of Melbourne has exercised power

The Port of Melbourne's views

No exercise of power

The Port of Melbourne considered that an exercise of power would involve rents materially higher than reasonable market rent. It contended that it did not exercise power during the inquiry period having regard to the processes for setting and reviewing rents, its compliance with those processes, and the rental outcomes during the inquiry period.

The Port of Melbourne noted the processes for setting and reviewing rents are set out in the Tenancy Customer Charter, the Precedent Lease Agreement and the Precedent Lease Guide. The Port of Melbourne further noted that it had taken steps to ensure tenants and stakeholders had sound knowledge of those processes.

In the Port of Melbourne's view, it complied with the processes for setting and reviewing rents during the inquiry period. The Port of Melbourne described its implementation of the Tenancy Customer Charter, its compliance monitoring and performance reporting framework, and its cultural, governance and systems uplift.

The Port of Melbourne stated that, over the inquiry period, average rents at the Port of Melbourne increased by 37 per cent (equivalent to a compound annual growth rate of 6.5 per cent) compared to 60 to 75 per cent (equivalent to a compound annual growth rate of 10 to 12 per cent) for industrial rents in the Melbourne industrial market.

Tenants' views

Rent levels

Some tenants noted that the rent increases negotiated during the inquiry period were acceptable and reasonable. Other tenants raised a range of concerns in relation to rent levels.

Lack of supporting evidence for proposed rent levels

Several tenants indicated that the Port of Melbourne did not provide supporting evidence (such as valuation reports) to justify the proposed rent level or market rent review outcome to tenants during negotiations.

[Continued next page](#)

Whether the Port of Melbourne has exercised power

Tenants' views (continued)

Lack of regard to some relevant factors

Some tenants considered that the Port of Melbourne did not have regard to some of the relevant factors in setting and reviewing rents, such as:

- rents that are available for Melbourne industrial and logistics non-port sites
- variations in the quality of infrastructure and revenue potential of different sites.

Annual rent escalation

In the view of some tenants, the Port of Melbourne's approach to annual rent escalation is not clearly reasoned and explained. Some tenants commented that the annual rent escalation (generally 4 per cent or the greater of 4 per cent or CPI + 1.5 per cent) was above inflation and the Reserve Bank of Australia's inflation target.

Ratchet clauses

Many tenants expressed concerns about the use of ratchet clauses, with one tenant regarding them as 'unfair'. Tenants noted that ratchet clauses result in escalating rents and prevent a true assessment of market conditions in determining reasonable market rent.

Some tenants suggested that rent increases should be capped or that rent levels should be able to increase or decrease under market rent reviews.²³

[Continued next page](#)

²³ We note that the port deed expressly permits the Port of Melbourne to include 'ratchet' clauses in subleases for port land, which do not allow the rent determined by a market rent review be less than the rent payable immediately before the date of the market rent review.

Whether the Port of Melbourne has exercised power

Tenants' views (continued)

The Port of Melbourne's negotiation approach

Tenants' views on the Port of Melbourne's negotiation approach were mixed. A number of tenants commented that the negotiation approach improved since the previous market rent inquiry and the introduction of the Tenancy Customer Charter, with better engagement from the Port of Melbourne. However, some tenants noted that, despite these improvements, negotiations with the Port of Melbourne were still unbalanced.

In the view of some tenants, the Port of Melbourne's negotiation approach was acceptable, and the Port of Melbourne complied with the process set out in the Tenancy Customer Charter. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Claims of detriment

The Port of Melbourne's views

No material detriment

The Port of Melbourne contended that, even if the commission were to conclude that the Port of Melbourne did exercise power, there would not be material detriment because:

- competition in downstream markets would limit pass-through to downstream users
- any pass-through that could have occurred would not be material as rents comprise only a small proportion of the total price paid by Victorian consumers for goods imported by the Port of Melbourne.

Tenants' views

Limited ability to pass through rent increases to consumers

Some tenants noted that they are unable to pass through rent increases to consumers, which constrains their growth and economic viability.

4. Does the Port of Melbourne have power in setting and reviewing land rents?

We consider the Port of Melbourne has power in the relevant market that it may exercise in relation to the processes for the setting or reviewing of land rents or associated payments payable by a tenant under an applicable lease. We consider this is primarily due to its monopoly position, having the sole licence to operate and lease land at the port precinct. We also consider it has power in some aspects of the negotiation process due to information asymmetry.

The source of the Port of Melbourne's power

The relevant market, as defined by the Port Management Act, is limited to leased land within the port precinct.²⁴ As the exclusive provider with the sole licence to operate and lease land at the port precinct, the Port of Melbourne's monopoly status is the primary source of its power.

Barrier to entry

Since the Port of Melbourne holds the exclusive licence to operate and lease land at the port, no other businesses can compete for access to this market. This lack of competition is a barrier to entry, leaving tenants with no alternative than to lease land from the Port of Melbourne. As a result, the Port of Melbourne has sole power in the market, including control over rent setting and negotiations for the port precinct in its entirety.

The effectiveness of constraints on the Port of Melbourne's power

Constraints limit the Port of Melbourne's power and can balance the negotiation power between the Port of Melbourne and port tenants. As part of this inquiry, we assessed the effectiveness of these constraints on the Port of Melbourne's power in rent negotiations, including potential sources of power that were not countervailed by these constraints.

Market constraints

We consider there are weak market constraints on the Port of Melbourne's power. This is because most tenants rely on port land for their business operations and have limited scope to switch, or

²⁴ *Port Management Act 1995*, s53(5).

threaten to switch, to non-port land. This gives them limited countervailing power. Only a small number of existing port tenants could realistically operate on land outside the port precinct.

Regulatory and legislative constraints

We consider that existing port-related and competition legislation provides only minimal constraints on the Port of Melbourne's power. However, for the second inquiry period, we find that the current economic regulatory framework – including the five-yearly market rent review requirement – combined with the recommendations implemented from the 2020 Market Rent Inquiry (including the release of clauses 18 and 19 of the Port Concession Deed and the Tenancy Customer Charter), is largely effective in constraining the Port of Melbourne's exercise of power.

Contractual constraints

We consider some contractual constraints are materially constraining the Port of Melbourne's power in this second inquiry period.

The Port Concession Deed

The Port Concession Deed (port deed) is the confidential and legally enforceable contract between the Victorian Government (administered by the Port Lessor) and the Port of Melbourne. It was entered into in 2016 as part of the Port Head Lease and sets out the rights and obligations of each party to one another and to tenants, on a range of matters concerning the private operation of the port.

Following the recommendations we made to the Victorian Government at the first market rent inquiry, the Port of Melbourne made publicly available clauses 18 and 19 of the port deed as they relate specifically to tenants' rights.²⁵

We consider that making these clauses publicly available further constrained the Port of Melbourne's power during this second inquiry period. The visibility of these clauses allowed tenants to negotiate more effectively, as they were aware of their legally enforceable rights under the port deed, including the right to appoint an independent valuer. Submissions to our second market rent inquiry referenced these clauses, indicating that the transparency of these clauses enabled tenants to challenge the Port of Melbourne during rent negotiations. It also allowed tenants to make informed submissions to this inquiry.

The release of clauses 18 and 19 of the port deed better balances the negotiation power between the Port of Melbourne and port tenants.

²⁵ Port of Melbourne, Port Concession Deed extract of clauses 18 & 19 and relevant definitions, <https://www.portofmelbourne.com/wp-content/uploads/Port-Concession-Deed-extract-of-Clause-18-19-and-relevant-definitions.pdf>

The Port Tenancy Customer Charter

The Tenancy Customer Charter was introduced in November 2021 in response to one of our recommendations from the first market rent inquiry and was developed in consultation with the Department of Treasury and Finance.²⁶ It serves as a constraint on the Port of Melbourne's power by providing clear guidelines for lease negotiations and rent review processes that reflect both mandatory requirements imposed on the Port of Melbourne by the Victorian Government and a voluntary framework that tenants may elect to opt out of. It is applicable to market rent reviews under post Port Lease Transaction leases and leases established following its implementation.

The Tenancy Customer Charter:

- outlines a staged process for agreeing new leases and conducting market rent reviews
- sets timeframes for document issuance and responses
- includes an escalation process when agreements are not reached
- includes a formal dispute resolution for competitive tenders where the commission acts as an independent expert
- sets out a dispute resolution process if a tenant considers the Port of Melbourne has not complied with the Charter
- imposes a commitment on the Port of Melbourne to publicly report on its compliance with Key Performance Indicators on an annual basis.

We consider that the Tenancy Customer Charter has provided greater certainty to tenants regarding the processes for negotiating leases and agreeing or determining market rents at the port. We consider it is largely constraining the Port of Melbourne's power by providing a clear framework for lease negotiations and market rent reviews.

While non-binding, the Tenancy Customer Charter has been largely followed by the Port of Melbourne in the second inquiry period.

However, the introduction of the Tenancy Customer Charter has not fully constrained the Port of Melbourne's power. The Tenancy Customer Charter does not require the Port of Melbourne to provide evidence to justify its rent proposals and whether proposed rents reflect true market conditions. Tenants are not provided with the Port of Melbourne's valuation reports, and disclosure of information on valuation advice or evidence to support a valuation is not a requirement under the

²⁶ The Port Lessor and Port of Melbourne have confirmed that changes from version 1 to version 3 of the Charter in March 2022 are not material.

Tenancy Customer Charter. We note that valuation reports and other tenants' rents are subject to confidentiality requirements.

While tenants can request an independent valuer to determine market rent if they believe the proposed rent is unreasonable, this process involves additional time and cost. Tenants may consider that the outcome is uncertain or that the cost of hiring an independent valuer could outweigh the potential benefits of challenging the Port of Melbourne's rent proposal. This can make tenants more likely to accept the Port of Melbourne's initial rent offer.

Conclusion – the Port of Melbourne has power to set and review land rents and associated payments

We consider the Port of Melbourne has power in the relevant market that it may exercise in relation to the processes for the setting or reviewing of land rents or associated payments payable by a tenant under an applicable lease. We consider this is primarily due to its monopoly position, having the sole licence to operate and lease land at the port precinct. No competitors can access the market, and most port tenants have no alternative but to lease land from the Port of Melbourne.

We consider the Port of Melbourne also has power in the negotiation process due to information asymmetry. However, the introduction of the Tenancy Customer Charter and the release of clauses 18 and 19 of the port deed appears to have largely constrained the Port of Melbourne's exercise of power.

5. Has the Port of Melbourne exercised power that has resulted in material detriment to the long-term interests of Victorian consumers?

While our finding is that the Port of Melbourne has power that it has exercised in the second inquiry period, we have not found that the Port of Melbourne has exercised that power in a way that has the effect of causing material detriment to the long-term interests of Victorian consumers.

We consider that the lease negotiation process has been conducted reasonably, with the Port of Melbourne demonstrating openness to discussing rent levels. We have received minimal feedback from tenants that investments had been foregone or delayed due to an inefficient or unreasonable negotiation process and rent levels appear reasonable against observed rates at Melbourne industrial and logistics sites.

The introduction of the Tenancy Customer Charter and the Port of Melbourne's general compliance with it, has had the intended effect of assisting tenants in negotiating leases with the Port of Melbourne and aiding a fair negotiation process.

This chapter sets out the information that supports our finding that the Port of Melbourne's exercise of power has not had the effect of causing material detriment to the long-term interests of Victorian consumers in relation to:

- the processes for reviewing or setting rents under new leases or market rent reviews in the second inquiry period, and
- rent outcomes negotiated in the second inquiry period.

It also considers the arrangements that govern these processes, and the approach taken by the Port of Melbourne in exercising its power.

Increases in rent during the second inquiry period

For the purpose of our inquiry, efficient rents are rents which would be consistent with those that would be found in workably competitive land rental markets. Rents that are higher than their efficient level can be one indicator of material detriment.

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

The below sections outline the rent outcomes of lease negotiations in the second inquiry period, our views on these outcomes and which outcomes demonstrate the impacts of the Port of Melbourne's exercise of power in the setting or review of rents.

Rent increases were relatively stable across the port precinct in the second inquiry period

Each year in the second inquiry period, annual increases in rental revenue and per square metre rents were far lower than the years immediately after the port was privatised in 2016. We note that the substantial gains in rents to the Port of Melbourne which occurred in the first inquiry period are embedded in the rents in the second inquiry period and ongoing, due to the ratchet clauses preventing rent decreases.

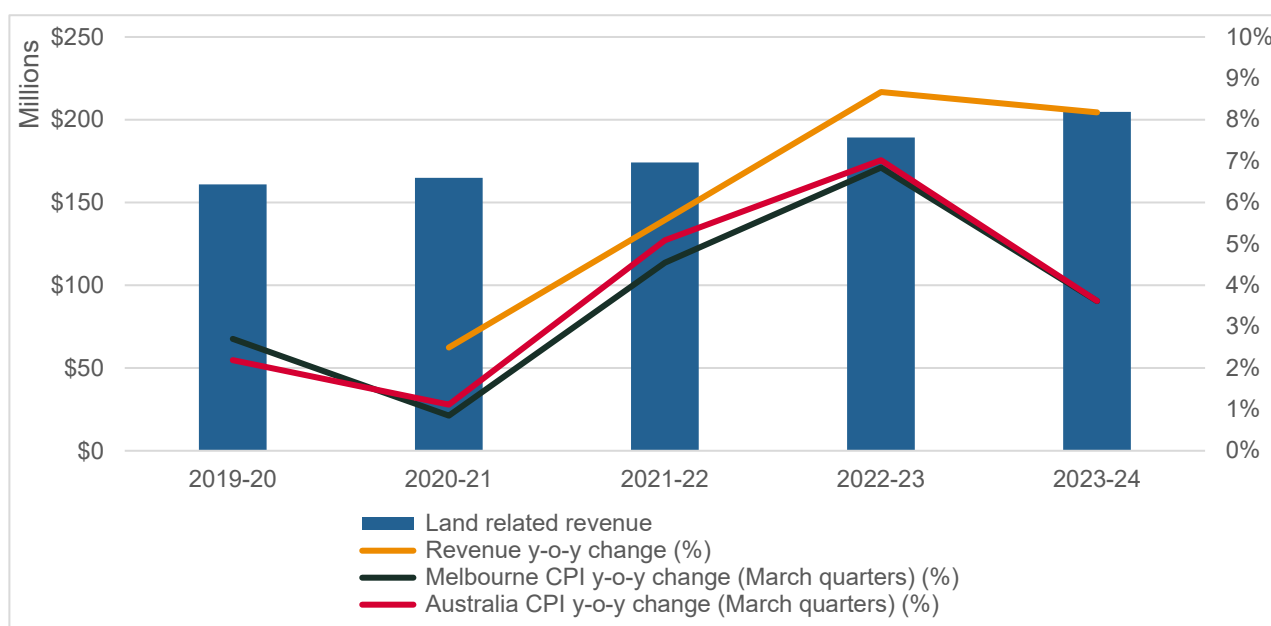
However, we observed that in the second inquiry period, annual rental revenue (including all related and associated payments)²⁷ has moved consistently at some level between 2.5 per cent and 8.7 per cent. This is likely due to the Port of Melbourne's preferred annual rent increase mechanism of CPI plus 1.5 per cent. A general relationship between the consumer price index and the increases in the Port of Melbourne's rent-related revenue can be observed below in Figure 1.

We note, however, that when CPI growth decreased in the final year of the second inquiry period, rental growth did not fall to the same extent. We observe that the 2023-24 rental outcomes are generally higher than the CPI trend.

²⁷ These include minimum throughput guarantees, minimum trade guarantees, management costs and fees, license fees, and other associated payments. Excludes outgoings other than management fees.

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

Figure 1. Changes in rent-related revenue and the consumer price index, \$ nominal



Source: Port of Melbourne response to section 36 data request. Australian Bureau of Statistics (January 2025) release, 'TABLES 3 and 4. CPI: Groups, Weighted Average of Eight Capital Cities, Index Numbers and Percentage Changes', [time series spreadsheet], [Consumer Price Index, Australia](#). Australian Bureau of Statistics (January 2025) release, 'TABLE 5. CPI: Groups, Index Numbers by Capital City', [time series spreadsheet], [Consumer Price Index, Australia](#).

Further, the general range of rental outcomes we observed (total revenue and per square metre) in the second inquiry period does not seem excessive compared to outcomes achieved in more competitive markets for commercial industrial land in Melbourne.

Our observation is supported by Collier's data and publicly released data by CBRE Research. Both data sets indicate that rent costs (per square metre values, and annual increases) for industrial and logistics land leases in Melbourne outside the port precinct have largely increased at rates comparable or greater than what we observed in the port precinct (see Figure 2).²⁸

²⁸ We purchased historical land rent data from the real estate and investment management firm Colliers to assist in verifying the publicly available data on Melbourne industrial and logistic land rents across the inquiry period. We found that this data was consistent with the publicly available information on Melbourne industrial and logistics land rents. This data was also consistent with confidential data from CBRE, which was commissioned and relied upon by the Port of Melbourne in performing its own analysis.

Colliers, 'Australian Industrial & Logistics (I&L) Market Q3 2024', https://www.colliers.com.au/-/media/files/anz/australia/research/2024/quarterly-snapshots/q3/colliers-australian-industrial-and-logistics-snapshot-q3-2024.ashx?sc_lang=en-au, accessed 21 February 2025.

CBRE Research, Figures Melbourne Industrial and Logistics 4Q24, 16 January 2025, https://mktgdocs.cbre.com/2299/14ca2360-dd85-470d-89be-3117f2119fdb-25321084/Figures_Melbourne_Industrial_a.pdf, accessed 12 February 2025.

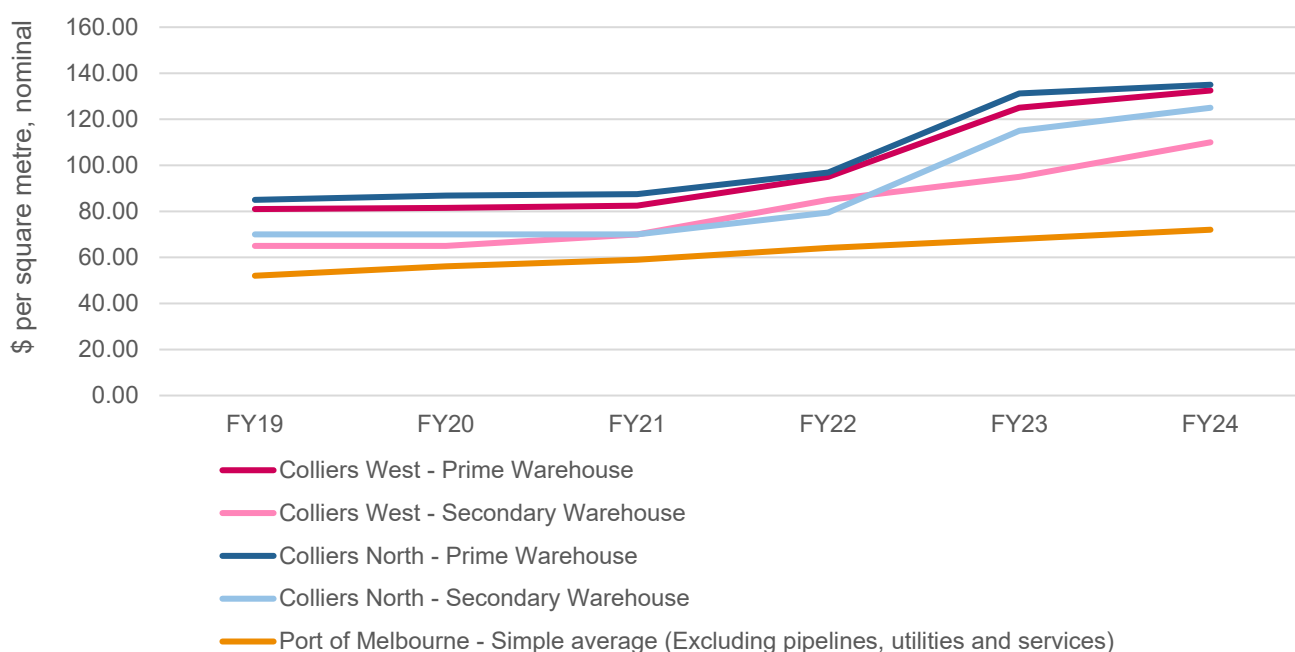
5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

It is difficult to make direct ‘like for like’ comparisons when reviewing market data. This is due to the inherent differences in the data available on industrial and logistics land rents in Melbourne outside the port precinct, and the Port of Melbourne’s data provided under our section 36 notice on land rents within the port precinct. Differences stem from:

- the port precinct’s unique location, size and subsequent economies of scale
- a lack of direct competitors (comparable ports in Victoria) that can be used for comparison
- operational synergies that prospective port tenants may value.

We have therefore utilised market data as a general reference point in our inquiry.

Figure 2. Port of Melbourne average rents (excluding outgoings) and Colliers’ Melbourne net logistics rents, by grade and location, nominal



Source: Colliers, Port of Melbourne response to section 36 notice. The calculation of the Port of Melbourne’s average rents excludes outgoings and other associated costs outside of rent. It also excludes leases for pipelines, utilities and services.

CBRE Research indicates average net face rents for prime industrial and logistics land have increased between approximately 5 per cent and 25 per cent per year across 2022 and 2024. Net face rents for secondary land have increased approximately 5 per cent to 20 per cent per year.

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

Figure 3. Annual increases in Melbourne industrial and logistic rents, by grade

FIGURE 6: Melbourne Average Net Face Rent Growth Year-on-Year by Grade



Source: CBRE Research, Figures Melbourne Industrial and Logistics 4Q24, 16 January 2025.

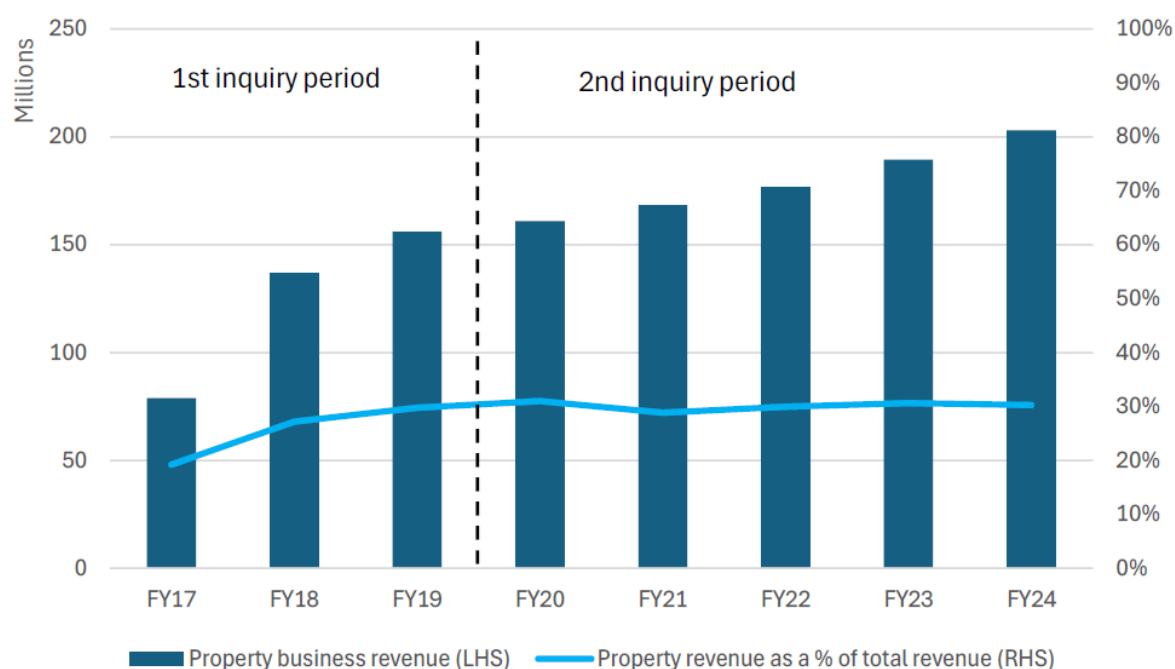
The Port of Melbourne also stated in its submission to our scope and process paper that over the second inquiry period average rents in the port precinct have increased 37 per cent, at a compound rate of 6.5 per cent annually.²⁹ We sought and reviewed information from the Port of Melbourne to verify its claim on rental outcomes in the port precinct.³⁰ Additionally, property-related revenue as a proportion of total Port of Melbourne revenue has remained relatively stable across the second inquiry period at approximately 30 per cent, as shown in Figure 3.

²⁹ We have verified the Port of Melbourne’s claim using data the Port of Melbourne provided in response to our section 36 information gathering notice.

³⁰ Port of Melbourne, Port of Melbourne submission to scope and process paper, 14 November 2024, pp. 22-23. Port of Melbourne’s submission relies upon analysis it commissioned from CBRE.

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

Figure 4. Port of Melbourne property revenue as a percentage of total revenue, \$ nominal



Source: Port of Melbourne accompanying memo and response to our voluntary request for information.

General stability in annual rental increases is a positive outcome in the port precinct for Port of Melbourne’s tenants, in that it avoids price shocks and provides some certainty around costs and future expectations of costs. However, we did observe instances where individual rents increased far above the consumer price index level as an outcome of a market rent review.³¹ Some tenants at the port received increases in rent of approximately 15 to 25 per cent of their pre-market rent review rent, while one tenant received an increase of 84.1 per cent.

Our review of 20 leases held at the Port of Melbourne included seven leases and their relevant market rent review processes. The increase in rent following a market rent review for these seven leases ranged from zero per cent (for a waived review) to just under 18 per cent. Based on this information, we found some exercises of power that reduce the efficiency of the market rent review process. However, we did not find evidence in these rent review processes that would indicate material detriment to the long-term interests of Victorian consumers.

As noted in chapter 3, we received several confidential submissions from tenants that raised some issues regarding the market rent review process.

³¹ We have referred to the consumer price index in this context as a simple point of reference to price increases in the broader Australian economy in each year. We are not inferring that a change in rent matching the change in the consumer price index is or should be the only outcome of a market rent review.

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

We undertook analysis of rental outcomes that appeared material. We found that the increases were limited to a small number of tenants. For example, a rental increase of 84.1 per cent was limited to only one tenant and was phased in over several years. We considered the level of agreed rent and found it to be reasonable, and the increase, if passed onto consumers would not lead to material detriment to Victorian consumers. We consider that, overall, the average outcomes from market rent reviews appear reasonable (see Table 1). The rent outcomes of market rent reviews are covered in detail below.

Market rent reviews resulted in a range of rent outcomes for tenants

Twenty-seven market rent reviews were finalised during the second inquiry period. The average increase in rent following a market rent review was 11.35 per cent. The lowest change in rent due to a market rent review was 0.0 per cent, while the highest was 84.1 per cent.

Table 1: Range of market rent review outcomes

Range of percentage increases in total rent following market rent review	Number of occurrences
0 to 5%	12
5.01 to 10%	4
10.01 to 15%	3
15.01 to 20%	3
20.01 to 25%	1
25.01 to 30%	0
30.01 to 80%	0
80.01 to 90%	1
Notice waived or not issued by Port of Melbourne	3
Total	27

Source: Port of Melbourne response to section 36 notice. Note: Five market rent reviews resulted in the phased implementation of an increased rent over several years. Where market rent review outcomes included a phased implementation of the market rent outcome, we used the agreed market rent before phased implementation is applied.

Of the 27 market rent reviews finalised during the second inquiry period:

- 12 proposals were accepted by the tenant (including two which were objected to by the tenant, before subsequently withdrawing its objection and accepting the rent review notice)
- nine were objected to by the tenant, and subsequently negotiated and agreed between the parties

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

- three were objected to by the tenant, and resolved via the independent determination process³²
- three market rent reviews were not issued or were waived by the Port of Melbourne.

The following table outlines the range of results in tenant rent following a market rent review.

Table 2: Tenant responses to market rent reviews

Tenant response to rent review notice	Count	Average increase in rent compared to the rent payable immediately prior (%)	Average decrease in rent achieved by tenant compared to Port of Melbourne proposed rent (%)
Accepted	12	6.81	NA
Objected and subsequently negotiated and agreed between the parties	9	16.53	- 2.20
Resolved via the independent determination process	3	13.97	- 14.38
Notice not issued or waived by the Port of Melbourne	3	NA	NA
Total	27	11.35	NA

Source: Port of Melbourne response to section 36 notice and Port of Melbourne submission to Scope and Process Paper. ^aExcludes notices not issued or waived. Where market rent review outcomes included a phased implementation of the market rent outcome, we used the agreed market rent before phased implementation is applied, to calculate the average.

It is notable that tenants who objected to their rent review notice were subject to larger proposed increases in rent than those who accepted.

³² During a market rent review, tenants and the Port of Melbourne have the right to access an independent determination of rent via a third-party independent valuer, if they are unable to agree on the rent within the time frames outlined in the relevant lease document and/or Tenancy Customer Charter.

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

The tenants who objected and subsequently negotiated and agreed a rent with the Port of Melbourne, were largely able to achieve modest reductions in the proposed rent and/or a phased implementation of the increase in rent across several years.

[REDACTED]

In contrast, the three tenants who continued through to an independent determination received greater reductions in proposed rent (an average decrease of 14.4 per cent) when compared to the tenants who objected and subsequently negotiated and agreed to a rent with the Port of Melbourne (an average decrease of 2.2 per cent).

We consider this demonstrates that the independent determination mechanism works as intended, and allows a reasonable market rent to be determined when a dispute arises.

Rents payable under short-term leases are higher than under long-term leases

In the sample of leases we reviewed, we observed that rents payable under short-term leases (two years or less) were considerably higher than the rents payable under leases with longer terms. While notable, we acknowledge this is not unusual in commercial leasing markets, as tenants are often willing to pay a premium in return for shorter tenures which often serve a commercial purpose for the tenant.

The type and level of outgoings charged by the Port of Melbourne to tenants do not appear unusual

Outgoings are costs or expenses a landlord incurs related to a property it is leasing to a third party. Outgoings are broadly defined within the Port of Melbourne's Precedent Lease Agreement. Additionally, some tenants raised concern regarding the inclusion of management fees and other increasing fees during our consultations.

Given this, we asked for and reviewed additional information from the Port of Melbourne on the outgoings it charges to tenants. We observed that the total level of outgoings charged by the Port of Melbourne fell within a range of 2.5 per cent to 4.5 per cent of rental revenue (rent only) each year of the second inquiry period, while the types of outgoings were limited to:

- land tax
- management fees

[REDACTED]

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

- property outgoings
- water and electricity charges
- council rates
- congestion levy.

Land tax was the largest-value outgoing recovered each year of the inquiry period.

Noting this, we consider that the range and type of outgoings charged by the Port of Melbourne are not unusual compared to commercial markets and are satisfied that these charges are reasonable.

While we do not consider that the charging of outgoings has had the effect of causing material detriment to the long-term interests of Victorian consumers, given the concerns raised by some tenants, there may be opportunity for the Port of Melbourne to improve transparency around the charging of outgoings.

The Port of Melbourne's rent setting process

We observed that the new leases negotiated during the second inquiry period did not contain options for further terms. While a landlord is not required by law to include an option term in a tenant's lease, the absence of an option term may place the Port of Melbourne in a greater negotiating position in respect to negotiating new leases with existing tenants. However, despite feedback from some tenants (that their lease did not include an options term), we found little evidence that this has led to reduced access to port land for tenants nor had the effect of causing material detriment to the long-term interests of Victorian consumers.

[REDACTED]

[REDACTED]

The Port of Melbourne has told us it prefers fixed term lease agreements as it provides tenants with certainty to plan and execute their business strategies, and allows the Port of Melbourne to manage, operate, maintain and develop the port precinct with regard to its stewardship obligations contained within the Port Lease. In making a lease offer to a potential or existing tenant, the Port of Melbourne also has regard to, and makes tenants aware of, the applicable Port Development Strategy.³⁵

³⁵ Port of Melbourne, Port Development Strategy, <https://www.portofmelbourne.com/facilities-development/port-development-strategy/>

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

The absence of option terms could benefit the Port of Melbourne in negotiations for future leases, particularly where a long-term tenant has made significant capital investment in their leased site. We consider that providing the option to extend a lease agreement would not make it more difficult for the Port of Melbourne to meet its stewardship obligations. The Port of Melbourne stated it would give consideration to option proposals from tenants in negotiations.

We also note that the terms of new leases were in many instances greater than ten years and often more than 20 years, which is significantly longer than most commercial leases in Victoria where common lease terms are between five and ten years.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

Additionally, combined with our findings on the efficiency of the rental process discussed below, we could not find that there was materially reduced access to port land by tenants arising due to these inefficiencies.

Inefficiencies identified in the rental negotiation process

While we identified inefficiencies in the Port of Melbourne's rental negotiation process, we do not consider that these inefficiencies have caused material detriment to the long-term interests of Victorian consumers.

Port of Melbourne's annual rent increase mechanism, market rent review mechanism and ratchet clauses combine to prohibit 'true' market rent reviews

The Port Concession Deed allows the use of ratchet clauses (that is, clauses that prevent rent from decreasing when it is reviewed), and the Precedent Lease Agreement includes this clause. In Victoria, as in many other jurisdictions, ratchet provisions are prohibited in retail leases and we are aware that ratchet provisions are now less common in commercial leases, with tenants increasingly advocating for 'true' market rent reviews, where rents can rise or fall in line with market conditions.

The Port of Melbourne's use of the ratchet provision in addition to an annual rent increase mechanism optimises rents in its favour.

As noted previously, some tenants expressed concerns to us about the use of ratchet clauses, including their fairness, and their impact on a true assessment of market conditions in determining reasonable market rent.

Port of Melbourne leases also include a range of annual rent increase mechanisms, including 'greater than' increase mechanisms.

An annual rent increase mechanism is a clause which stipulates that the annual rent agreed by the Port of Melbourne and a tenant will increase by some amount on a specified date, each year the lease is in effect.

[REDACTED]

[REDACTED]

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

There are currently 20 unique types of annual rent increase mechanisms in use by the Port of Melbourne. They include the application of:

- the consumer price index (CPI) each year
- a fixed amount each year, ranging from 2.2 per cent to 5.0 per cent
- the greater of CPI plus 1.5 per cent or some other fixed amount (most commonly 4.0 per cent) each year.

Some annual rent increase mechanisms only apply in years where a market rent review does not occur, while others apply every year, including in years a market rent review occurs.

Following the Port of Melbourne taking control of the port precinct in 2016, it adopted CPI plus 1.5 per cent as its preferred annual rent increase mechanism. The Port of Melbourne's Precedent Lease Agreement includes this mechanism.

While the use of 'greater than' annual rent increase mechanisms is not prohibited (except in cases where the Retail Lease Act applies), we understand that the use of a single annual increase mechanism is now a more standard practice in Victorian commercial leases, with a fixed annual percentage increase being most common. An annual fixed increase mechanism also provides greater certainty to the Port of Melbourne and its tenants on future revenue streams and costs, respectively.

The two mechanisms discussed above (annual rent increase mechanisms and ratchet clauses, respectively) may combine to optimise rental outcomes in favour of the Port of Melbourne given:

- the prevalence of 'greater than' annual increase mechanisms
- ratchet clauses which do not allow rent to decrease below what was previously payable at a market rent review.

Port of Melbourne does not provide information on valuation advice it has received when negotiating new leases with existing tenants, or during market rent reviews

Under the Tenancy Customer Charter, when conducting a market rent review, the Port of Melbourne must notify the tenant of its valuation of reasonable market rent.³⁷ As per the Charter, this valuation must be based on advice from an expert property valuer.

Our assessment found that in the beginning of the inquiry period, the Port of Melbourne usually adopts the highest value from the range of values provided by its expert property valuer as its

³⁷ Reasonable market rent is a defined term in the Port Concession Deed as 'the rent that would reasonably be expected to be realised if the relevant land was offered for lease in the open market by a willing but not anxious lessor to a willing but not anxious lessee and assuming the land will be used for the use permitted under the Sublease'.

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

proposed reasonable market rent. However, since the beginning of 2022, the Port of Melbourne's expert property valuer provided a single value as the reasonable market rent. The Port of Melbourne used this value as its proposed reasonable market rent when it issued a rent review notice.

Prior to 2022, when providing this notification, the Port of Melbourne did not communicate the basis or process by which it arrived at its valuation of reasonable market rent, or that the value reflected the highest value in the band provided by its expert valuer. We have also observed some instances where the Port of Melbourne has not provided further detail on its valuation advice when requested by a tenant.

Some port tenants also expressed concerns with the quality of the evidence and justification the Port of Melbourne provided for its proposed market rent. [REDACTED]

Disclosure of information on valuation advice or evidence to support a valuation is not a requirement under the Tenancy Customer Charter, and we note that valuation reports and other tenants' rents are often subject to confidentiality requirements.

However, we consider the Port of Melbourne's approach to communicating its proposed reasonable market rent in some negotiations demonstrates an information asymmetry between the Port of Melbourne and tenants during market rent review negotiations.

This asymmetry may negatively impact negotiations, and the determination of reasonable market rent, at least by extending timeframes or in its potential to increase costs of negotiation for both parties. We consider this an example of reduced efficiency in the processes for negotiating and agreeing leases and rents.

Market Rent Review processes which advantage the Port of Melbourne

Lease agreements between the Port of Melbourne and a tenant which are longer than eight years include a market rent review mechanism.³⁹ The market rent review process, and the rights and obligations of both parties under the market rent review, are outlined in clauses of the lease agreement. Market rent reviews are also covered in the Tenancy Customer Charter.

³⁹ A market rent review is a process that applies to Port of Melbourne leases longer than eight years, where rents are reviewed to ensure that they continue to reflect reasonable market rent. Usually, a market rent review is conducted once every five years.

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The Port of Melbourne's Precedent Lease Agreement contains several standard market rent review clauses which impact a tenant's ability to initiate a challenge of a market rent review outcome or have asymmetrical outcomes. These are:

- When objecting to a market rent review notice, tenants have only 14 days to nominate an expert valuer. This may impact a tenant's decision to challenge a market rent review outcome, if they do not consider they will be able to procure an expert valuer in this timeframe. We consider that the Port of Melbourne would not suffer detriment if this timeframe was extended to a period of 28 or 30 days.
- If a tenant fails to appoint a valuer within the specified time, the market rent is deemed to be the amount specified by the Port of Melbourne in its initial rent review notice to the tenant. However, if the Port of Melbourne fails to appoint a valuer, then the tenant can ask the president of the Australian Property Institute to nominate a valuer for the landlord. There is no symmetry in the outcomes between the Port of Melbourne and tenants, for the same shortcoming.
- While a market rent review process is ongoing, the tenant is required to pay 80 per cent of the proposed increase in rent. This includes where a tenant has objected. Given that there is an adjustment payment to include any uplift in the rent once the new rent is agreed or determined, this provision appears unnecessary.

[REDACTED]

We consider the above clauses unnecessarily advantage or favour the Port of Melbourne during the market rent review process and reduce the fairness and efficiency of the process for negotiating and agreeing leases. Additionally, the Port of Melbourne would not be disadvantaged by the amendment of these clauses as described above.

The Port of Melbourne's precedent lease agreement is favourable to itself as landlord

The Port of Melbourne's Precedent Lease Agreement is a document that is used as a basis for leases negotiated with tenants in the port precinct. It is 'landlord friendly', in that it generally provides a favourable position to the Port of Melbourne to begin negotiations.

This is a standard approach taken by sophisticated landlords in commercial settings. Landlords often adopt this approach given they anticipate sophisticated tenants will seek to negotiate the terms of the lease to make it a more balanced agreement. This approach, while not an unusual

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

strategy, may lead to inefficiencies in the negotiation process, as it increases time and costs where tenants seek to address the ‘landlord friendly’ nature of the document, particularly for smaller tenants.

The exercise of power by the Port of Melbourne and material detriment

We consider that the Port of Melbourne’s use of power in the rent setting and review process has led to increased costs for some tenants, reduced transparency and reduced the efficiency of the process than could have occurred in a workably competitive land rental market. However, in aggregate, we did not find the exercise of that power had the effect of causing material detriment to the long-term interests of Victorian consumers.

We have found that the Port of Melbourne does not disclose valuation advice during lease negotiations or market rent reviews, which may increase inefficiencies and raise negotiation costs. While this process appears to favour the Port of Melbourne, there is no consistent evidence that it has caused material detriment to Victorian consumers through excessive rents, reduced service quality or decreased competition.

Clauses such as the annual rent increase mechanism and ratchet clauses limit true market rent reviews. The absence of further lease term options and the Port of Melbourne’s favourable lease terms reflect an exercise of power, yet there is no clear indication that these factors have led to reduced efficiency in port operations. Additionally, some tenants provided feedback that they are unable to fully pass through rent increases to consumers. This means that increases in rent charges at the port are not recovered from Victorian consumers in the downstream markets each respective tenant is operating within (where that tenant is an importer of goods into Victoria).⁴¹

Conclusion

The commission’s view is that the Port of Melbourne has power in the relevant market but has not exercised that power in a way that has the effect of causing material detriment to the long-term interests of consumers during the second inquiry period. Accordingly, the commission has not made recommendations to the Minister for Finance about further economic regulation being imposed on the Port of Melbourne.

In summary, this view is supported by the following matters:

- a) Rental outcomes

⁴¹ Reasons that tenants may not be able to pass through increased rental costs in the port precinct include price competition from other firms in downstream markets for goods or services, existing fixed prices in contracts with customers, or price constraints imposed by regulatory interventions.

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

The Port of Melbourne is open to rent negotiations. Based on data we have cited, year-on-year increases in rent revenue for land in the port precinct have not escalated at the same rates as year-on-year increases in Melbourne industrial and logistics sites.

b) Access to the port precinct

We have had little feedback from tenants that investments had been foregone or delayed due to an inefficient negotiation process.

The Port of Melbourne has demonstrated a greater willingness to negotiate on key commercial terms for new leases during the second inquiry period.

c) Efficiency in the lease negotiation process

We consider that the Tenancy Customer Charter has established a clear framework for negotiating new leases and market rents at the port. The negotiation period for most leases we reviewed has reduced to around six months, which appears reasonable.

We did however find that, for some tenants, the Port of Melbourne exercised its power in the negotiation of leases during the second inquiry period. Additionally, given the concerns raised in stakeholder submissions on the transparency of the negotiation process and information asymmetry between the Port of Melbourne and tenants, we make observations in the next chapter that provide for low-cost opportunities to improve efficiency in the current negotiation process.

5. Has the port exercised power that has resulted in material detriment to Victorian consumers?

6. Observations that could improve efficiency in the rent setting process

As outlined in the report, we found that while the Port of Melbourne exercised its power in the rent-setting process during the second inquiry period, it did not misuse its power to the material detriment of the long-term interests of Victorian consumers. However, after considering stakeholder feedback, we have made some observations that could improve efficiency in the rent setting and review process, to the benefit of the long-term interests of Victorian consumers.

Improving the efficiency of rent setting and review processes means greater transparency and reduced information asymmetry between the Port of Melbourne and tenants. We consider that clear and accessible disclosure of valuation methodologies, market rent data, and key assumptions enables tenants and the Port of Melbourne to make informed decisions, minimising disputes and delays. Providing regular market updates enhances trust and predictability in rent assessments.

Encouraging independent reviews and fostering open communication further ensure that rental determinations are fair, consistent, and aligned with market conditions. By addressing information gaps and promoting transparency, our view is that the rent setting and review process becomes more efficient, equitable, and less prone to contention.

We consider that the following would further reduce the information asymmetry and improve transparency in the lease negotiation processes if adopted by the Port of Melbourne:

1. New rent information

The Port of Melbourne could publish new rents agreed upon or determined in the past 12 months on its website (on an anonymised basis), along with comparisons to the consumer price index and other benchmarks. The Port of Melbourne could consider disclosing additional information to assist with efficient rent negotiations. The port precinct is a unique site with a small number of lease comparators. We consider that releasing this information will reduce the information asymmetry between the Port of Melbourne and tenants, especially for smaller, less sophisticated tenants.

We however recognise that in some instances, the Port of Melbourne's ability to disclose this information may be constrained by confidentiality provisions contained in lease agreements concluded by the Port of Melbourne with tenants or in other relevant agreements. We consider that the provision of this information is a logical extension to the types of information which the Port of Melbourne agrees to disclose under part 7.6 of the Tenancy Customer Charter.

2. Market rent reviews – supporting information

To facilitate efficiency in market rent negotiations, when providing a market rent review notice, the Port of Melbourne could disclose its valuer's details to tenants, date of valuation, key information used to determine the proposed market rent for comparable premises over the past 12 months and whether all comparable rents relied upon by its valuer are rents for premises leased at the port. For the reasons outlined above, releasing this information to tenants will reduce information asymmetry by providing relevant information to assist tenants with lease negotiations.

3. Market rent reviews – process

The Port of Melbourne could consider providing tenants at least 28 days to appoint a valuer after the end of the 'Rent Agreement Period'. Providing tenants a reasonable amount of time to appoint a valuer should help tenants assess the reasonableness of the Port of Melbourne's market rent proposal and promote informed negotiations between the tenant and Port of Melbourne.

The Port of Melbourne could consider removing the standard provision in its Precedent Lease Agreement that requires tenants to pay 80 per cent of any proposed rent increase until the market rent is agreed or determined. We do not consider that removing this provision will result in a material financial loss to the Port of Melbourne as once the lease agreement is finalised, these moneys will eventually be paid by the tenant. We consider that this standard provision is 'landlord' friendly, and its removal will assist lease negotiations especially for less sophisticated tenants.

4. Annual rent increases during lease terms

The Port of Melbourne could reconsider its annual rent increase mechanisms and have only one form of rent escalation in its Precedent Lease Agreement. We consider that moving to one form of rent escalation assists in moving towards 'true market' rent levels, given that we observed that the 2023-24 rental outcomes are generally higher than the CPI trend.

5. Associated payments

The Port of Melbourne could clearly set out the types of outgoings payable by tenants under leases at the port. We consider that the outgoings are broadly defined in the Precedent Lease Agreement and do not constitute an exhaustive list. Clearly setting out the types of outgoings will provide greater certainty to tenants regarding the outgoings payable from one year to the next.

6. Observations that could improve efficiency in the rent setting process

Glossary

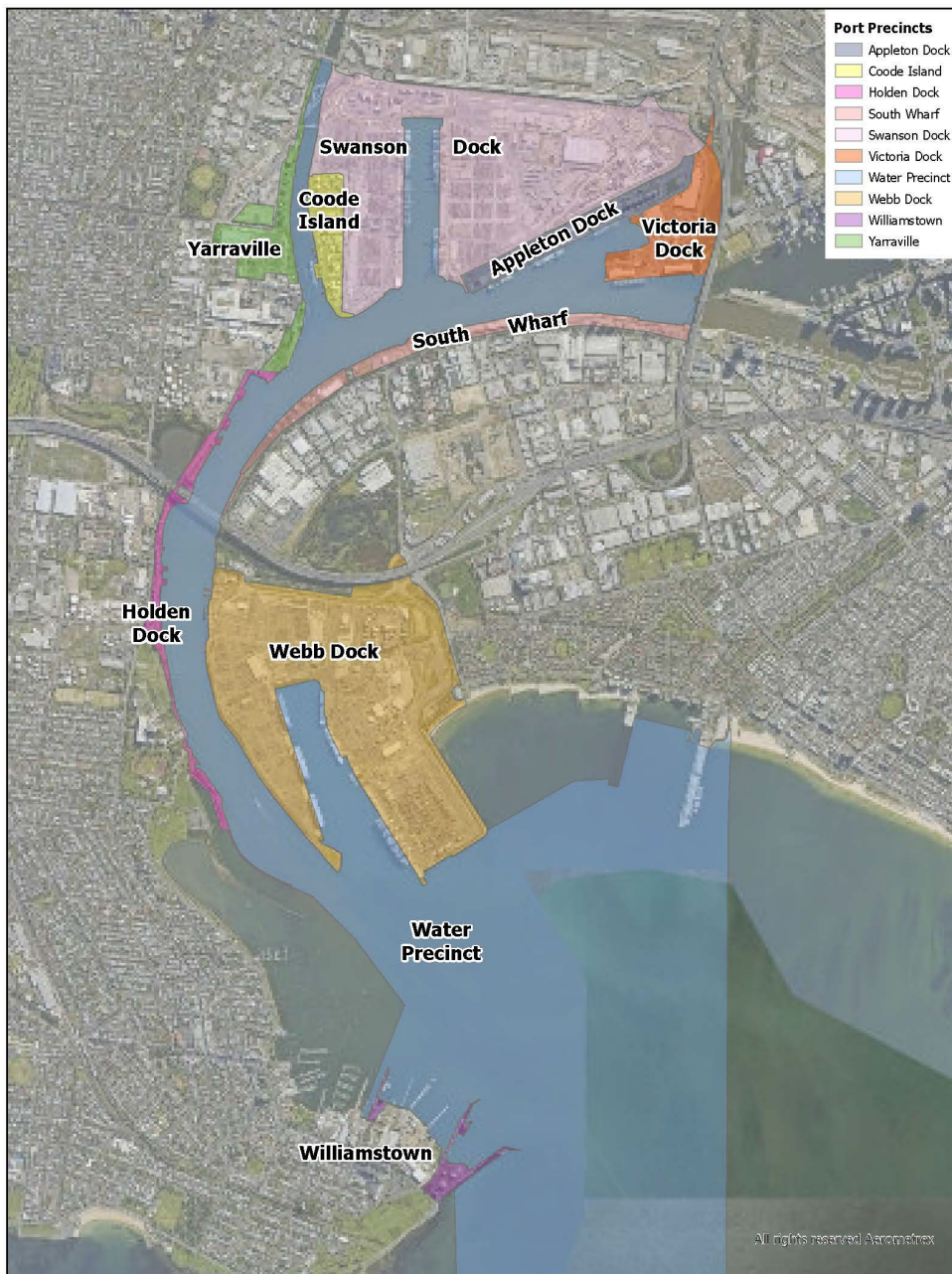
Term	Definition
Port Development Strategy	The Port of Melbourne's 30-year roadmap for the future development of the port was published on its website.
ACCC	Australian Competition and Consumer Commission.
Applicable Lease	A sublease, or a sublease of a sublease, of leased Port of Melbourne land granted by a Port lessee (other than to the Port of Melbourne operator) or by the Port of Melbourne operator.
Associated payments	<p>Payments, in addition to rent, included in leases for port land that are payable by tenants to the Port of Melbourne, including:</p> <ul style="list-style-type: none"> • management fees • minimum trade or throughput guarantees • land taxes • council rates • congestion levy • property outgoings recovery • water and electricity charges.
Bona fide competitive tender process	A process where prospective tenants for a particular parcel of port land are invited to tender a proposal for lease in accordance with Appendix D of the Charter.
CPI	Consumer Price Index (inflation indicator).
Charter	Port of Melbourne Tenancy Customer Charter.
Commission	Essential Services Commission.
Essential Services Commission Act	<i>Essential Services Commission Act 2001.</i>
First inquiry period	The three-year period from 1 November 2016 to 31 October 2019.
Heads of Agreement/Term Sheet	A non-binding document which sets out the key terms of a proposed agreement between parties.
Independent determination	Determination of the Reasonable Market Rent by a valuer (independent of Port Lessor and Port of Melbourne) having regard to the Key Commercial Terms as contained in the detailed non-binding term sheet and the Precedent Lease Agreement.

Lease options	Options for a tenant to renew or extend a lease upon its expiry.
Management fee	An associated payment included in the Port of Melbourne's standard lease document. The rate imposed on tenants ranges from one per cent to 2.5 per cent of the rent revenue.
Market Rent Review	Review of the rent payable under a lease, undertaken during the term of the lease to ensure it reflects a Reasonable Market Rent.
Overholding	A tenant remaining in occupancy of the leased premises with the landlord continuing to accept rent, despite the term of the lease having expired.
Port Deed	Port Concession Deed.
Port Head Lease	The 50-year lease contract made between the Port Lessor and the Port Lessee during the transfer of the port of Melbourne for private operation.
Port land	Land at the port of Melbourne.
Port Lessor	Melbourne Port Lessor Pty Ltd, the state entity from which the Lonsdale Consortium leased the commercial operations of the Port of Melbourne for 50 years commencing on 1 November 2016.
Port Management Act	<i>Port Management Act 1995.</i>
Port of Melbourne	Entities that hold the functions of the 'Port Licence Holder', the 'Port Lessee' and the 'Port of Melbourne operator'.
Port Sublease	The lease arrangement in respect of the port of Melbourne made between the Lonsdale Asset Property Pty Ltd and the Port of Melbourne.
Post-PLT lease	A lease entered into after the finalisation of the port of Melbourne lease transaction (PLT) in respect of its privatisation on 31 October 2016.
Pre-PLT lease	A lease entered into prior to 31 October 2016 or substantially negotiated by the Port of Melbourne prior to 31 October 2016 but entered into following that date.
Precedent Lease Agreement	The Port of Melbourne's standard lease agreement, including the standard terms and conditions required by the Port as a prudent port operator and as required under the Port Concession Deed and Port Lease.
Reasonable Market Rent	As defined in section 2.2 of the Tenancy Customer Charter.
Relevant Market	The market for access to leased Port of Melbourne land by means of an applicable lease.
Second inquiry period	The five-year period from 1 November 2019 to 31 October 2024.

Appendix A – The port licence holder

The port licence holder and its operators

The Port of Melbourne is the port licence holder, it has customers that directly operate in the port. These customers include shipping line, vessel handling and terminal operators. It also has users that transact business through the port. The Port of Melbourne charges port customers and users to use port land.



Source: Port of Melbourne

Appendix B – Leases reviewed

Appendix C – Port of Melbourne’s response to the preliminary report and our actions