

Notice to provide financial and business records

Notice: 1/2021

To: The Proper Officer
Port of Melbourne Operations Pty Ltd as Trustee for the Port of Melbourne Unit Trust
ACN 610 925 178
Level 19, 839 Collins Street, Docklands VIC 3008

By email to: michael.black@portofmelbourne.com

Port Management Act 1995 (Vic) section 56 notice

1. This notice is dated 1 July 2021.
2. The Essential Services Commission (commission) is established under the Essential Services Commission Act 2001 (Vic) (**the ESC Act**).
3. The commission has determined that it is necessary for the purpose of performing its functions or exercising its powers to issue this notice to Port of Melbourne Operations Pty Ltd ACN 610 925 178 as Trustee for the Port of Melbourne Unit Trust (**the Port of Melbourne**). Specifically, these functions include conducting and completing an inquiry under the ESC Act and reporting to the Minister administering the ESC Act pursuant to section 49I of the Port Management Act 1995 (Vic) (**the PM Act**):
 - a. as to whether the Port of Melbourne has complied with a Pricing Order¹ during the period 1 July 2016 to 30 June 2021; and
 - b. if there was non-compliance with the Pricing Order, whether that non-compliance was, in the Commission's view, non-compliance in a significant and sustained manner.

¹ Order in Council made under section 49A of the Port Management Act 1995 (Vic) and published in the Victorian Government Gazette No. S 201 Friday 24 June 2016. An amendment was ordered in the Victorian Government Gazette No. S 247 Wednesday 20 May 2020.

4. The Port of Melbourne holds financial and business records which are relevant to the commission's inquiry, including the financial and business records as set out in Schedules 1 to 5.
5. In issuing this notice, the commission has had regard to the relevance of the information and documents.
6. The commission requires the Port of Melbourne to provide the financial and business records outlined in Schedules 1 to 5 of this notice to the commission, pursuant to sections 56 and 57 of the PM Act.

Submission of information and documents

7. The Port of Melbourne must comply with the requirement by providing the information and documents in Schedules 1 to 5 by **5pm on 15 July 2021**.
8. The Port of Melbourne is required to provide the information and documents to the Commission in soft copy in a readily accessible format.
9. The Port of Melbourne is required to give the information and documents by any one of the following means:
 - a. by email to transport@esc.vic.gov.au, or
 - b. by way of electronic transfer in a manner agreed to by the Commission.
10. A copy of sections 56 and 57 of the PM Act are included in Schedule 6 of this notice.



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Kate Symons
Chairperson
Essential Services Commission



Schedule 7 – Glossary

The following terms have the following meanings for the purpose of Schedules 1, 2, 3, 4 and 5.

'**asset class**' has the same meaning as in the Port of Melbourne Regulatory Model;

'**bundled services**' has the same meaning as in the Pricing Order;

'**capex**' means capital expenditure;

'**cost contributions**' has the same meaning as in the Port of Melbourne Regulatory Model;

'**dedicated channels**' has the same meaning as in the Pricing Order;

'**dedicated channel services**' has the same meaning as in the Pricing Order;

'**designated areas**' has the same meaning as in the Pricing Order;

'**designated lease**' has the same meaning as in the Pricing Order;

'**designated port tenants**' has the same meaning as in the Pricing Order;

'**designated tenant**' has the same meaning as in the Pricing Order;

'**export pricing decision**' has the same meaning as in the Pricing Order;

'**lease costs**' has the same meaning as in the Port of Melbourne Regulatory Model;

'**form of engagement**' means the method used to engage with stakeholder(s), such as a meeting, workshop, survey or consultation paper etc.;

'**key strategic project**' means a project (for operations or corporate function) where the Port of Melbourne has developed a strategy for how it will engage with port users and other stakeholders to inform its decision-making during the review period. For example, in the 2019-20 tariff compliance statement, the Port of Melbourne refers to specific projects (such as the Port Development Strategy and the Rail Project), along with its broad business engagement. This is different to planning communications and communication channels that provide status updates to port users and other stakeholders on a project's progress, such as status of works;

'**major projects**' means discrete capital investment projects where the actual or expected cost of design, development and construction is greater than \$10 million (may be completed within a regulatory period, or may span more than one regulatory period);

'**opex**' means operating expenditure;

'**opex category**' has the same meaning as in the Port of Melbourne Regulatory Model;

'**port user**' has the same meaning as in the Pricing Order;

'**prescribed services**' has the same meaning as the Pricing Order;

'**prescribed service tariffs**' has the same meaning as in the Pricing Order;

'**Pricing Order**' means the Order in Council made under section 49A of the Port Management Act 1995 (Vic) and published in the Victorian Government Gazette No. S 201 on Friday 24 June 2016, and subsequently amended by a further Order in Council made under this section and published in the Victorian Government Gazette No. S 247 on Wednesday 20 May 2020;

'**rail asset costs**' has the same meaning as in the Pricing Order;

'review period' means the five-year period under review in this inquiry, being 1 July 2016 to 30 June 2021;

'shared channels' has the same meaning as in the Pricing Order;

'shared channel services' has the same meaning as in the Pricing Order;

'tariffs adjustment limit' has the same meaning as in the Pricing Order;

'tariffs adjustment limit period' means the period in which clause 3 of the Pricing Order applies;

'tariff compliance statement' has the same meaning as in the Pricing Order;

'WATI' means Weighted Average Tariff Increase, which has the same meaning as in the Pricing Order.

Unless specified otherwise, references to documents or document names are according to the general meanings or names used by the Port of Melbourne. Port of Melbourne is to provide the required information or business and financial records, including public and/or confidential documents, even if these have been previously provided to the commission (for example in tariff compliance statements, voluntarily or through other requests or initiatives).

Schedule 1 - Demand Forecasts

Data requested: quantitative data and models

2017-18 container and non-container trade demand forecasts

Background: In correspondence with the Port of Melbourne prior to the publication of the commission's 2017 interim commentary, we were informed by the Port of Melbourne that its 2017-18 trade forecasts were internally derived.

Provide financial and business records that contain or relate to the following:

- 1.1 SAS/Excel models and timeseries dataset used in the statistical trend analysis to prepare the Port of Melbourne's base-case trade forecasts for 2017-18. This includes SAS coding, historical trade data from the Port of Melbourne's MATIS system and explanatory documentation regarding the methodology and data used;
- 1.2 Information on adjustments made by the Port of Melbourne's Trade Development Group to the base case forecasts during the review period;
- 1.3 BIS Oxford Economics' trade forecasts and methodology for 2017-18 (prepared for the Lonsdale Consortium's acquisition in 2016) as well as updated forecasts commissioned by the Port of Melbourne in 2017. Please provide information on those internal forecasts which were reconciled to BIS Oxford Economics' forecasts and any explanation for the adjustments; and
- 1.4 Information on whether any further adjustments were made to the forecasts after the Management Review and Board endorsement during the review period.
- 1.5 The BIS Oxford Economics report: 'Long Term Forecasts – Australia – 2016-2031' that has previously been sent to the Commission.
- 1.6 Please explain how demand forecasts are consistent with the extent and nature of capital and operating expenditure forecasts
- 1.7 An account of the 'market intelligence, including known risks and opportunities based on discussions with Port Users' that is used to adjust the base-case trade forecasts

2018-19 container and non-container (wharfage) demand forecasts

Provide financial and business records that contain or relate to the following:

- 1.8 BIS Oxford Economics' Trade forecasting (excel) model that combined disaggregate commodities categories with their respective driver indices, including the forecast mechanics document similar to the ones submitted in 2019-20 and 2020-21 provided to the Port of Melbourne during the review period;
- 1.9 Information on BIS Oxford Economics' propriety economic models and specific data (ABARES, ABS consumption and trade data) used to derive the commodity drivers;
- 1.10 Information on how the qualitative factors outlined in the BIS Oxford Economics' report (Appendix H of the 2018-19 tariff compliance statement) have been incorporated in the drivers; and
- 1.11 Information on how the \$/TEU adjustment used to derive container trade forecasts from the relevant BIS Oxford Economics indices is both calculated and forecasted.

2018-19, 2019-20 and 2020-21 demand forecasts based on BISOE economic model

Provide financial and business records that contain or relate to the following:

- 1.12 Information about specific ABARES, ABS consumption and trade data BIS Oxford Economics used in the economic model for each commodity driver during the review period. For example, in the Port of Melbourne's 2019-20 tariff compliance statement, please provide more information on Table 8: Input assumptions for BIS Oxford Economics' forecasting model for each of the input sheets;

- 1.13 The frequency of the underlying economic data (especially population, production, exchange rate and import/export data) in the BIS Oxford Economics model are refreshed to reflect actual numbers (e.g. ABS/ABARE) in the economic model underlying the demand forecasts during the review period;
- 1.14 Quality control processes BIS Oxford Economics undertakes on its economic forecasts during the review period;
- 1.15 Processes that were undertaken to validate the BIS Oxford Economics model to observe economic data during the review period;
- 1.16 The frequency the BIS Oxford Economics economic model underpinning demand forecasts is calibrated to actual economic data during the review period and the extent to which this calibration affects underlying parameters or rebase forecasts;
- 1.17 Information in relation to the forecasting accuracy of the underlying BIS Oxford Economics economic forecasts, for example mean squared forecast error on key outputs such as annual gross state product, state population, and industry outputs used as demand drivers;
- 1.18 Information in relation to the nature of adjustments made to the raw data to produce the custom variables during the review period;
- 1.19 For each commodity/wharfage/trade demand, information on the model specification on their macroeconomic drivers or industry drivers and the rationale for using those drivers;
- 1.20 Information on how the qualitative factors outlined in the BIS Oxford Economics' report (Appendix H of 2018-19, Appendix K of 2019-20 and 2020-21 tariff compliance statement) have been incorporated in the drivers;
- 1.21 Specific details on how the \$/TEU adjustment used to derive container trade forecasts from the relevant BISOE indices is both calculated and forecasted during the review period; and
- 1.22 In relation to the Data Notes of Appendix L of the BIS Oxford Economics trade volumes forecasts of 2019-20 and 2020-21 tariff compliance statements, information on the process BIS Oxford Economics used to account for factors that are difficult to explicitly model, and the forecasts where manual adjustments were made.
- 1.23 Appendix H of the relevant Tariff Compliance Statement(s), BISOE Trade Forecasts (2018/19)
- 1.24 Appendix K of the relevant Tariff Compliance Statement(s), PoM Trade Forecasts (2019-20, 2020-21)
- 1.25 Appendix L of the relevant Tariff Compliance Statement(s), BIS Oxford Economics Trade Volume Forecasting (2019-20, 2020-21)
- 1.26 Appendix M of the relevant Tariff Compliance Statement(s), BIS Oxford Economics – PoM Forecast Mechanics (2019-20, 2020-21)

For Long-term trade demand forecasts used in PDS 2050

Background: The 2050 Port Development Strategy makes several references to growth in the demand for container and non-container trade driving future investments in the Port of Melbourne's infrastructure for the next 30 years.

Provide financial and business records that contain or relate to the following:

- 1.27 Unconstrained container and non-container forecasts² (generated in 2019 and any updates);
- 1.28 Information on the methodology/model specification, including the growth drivers, and how the demand forecasts have informed the long-term capital investments outlined in the PDS;

² Port of Melbourne, 2050 Port Development Strategy, pages 23-24.

- 1.29 Information in relation to the reasons to any difference in forecasting methods between the tariff compliance statement demand forecasts and the long-term planning demand forecasts during the review period;
- 1.30 Long term demand forecasts to the end of the Port of Melbourne's lease, which are used in support of the capital investment plans;
- 1.31 Information in relation to calculations and methodology in support of the long-term demand forecasts; and
- 1.32 Reasons for any deviation of methods between the tariff compliance statement demand forecasts and the long-term planning demand forecasts during the review period.

Forecast demand for channel services

Provide financial and business records that contain or relate to the following:

For 2017-18, 2018-19, 2019-20 and 2020-21 tariff compliance statements, please provide the year-on-year modelling files, explanation of the forecasting methodology³ and relevant datasets for each of the channel services volume forecasts listed below:

1.33	Shared channels (excl Geelong) – up to and incl 12.10m
1.34	Dedicated channels (excl Geelong) – up to and incl 12.10m
1.35	Shared channels (excl Geelong) > 12.10m
1.36	Dedicated channels (excl Geelong) > 12.10m
1.37	Shared channels Geelong – up to and incl 12.10m
1.38	Shared channels Geelong > 12.10m
1.39	Pure car carrier reduction - Shared channels – up to and incl 12.10m
1.40	Pure car carrier reduction - Dedicated channels – up to and incl 12.10m
1.41	Pure car carrier reduction - Shared channels > 12.10m
1.42	Pure car carrier reduction - Dedicated channels > 12.10m
1.43	Coastal liner vessel - Shared channels – up to and incl 12.10m
1.44	Coastal liner vessel - Dedicated channels – up to and incl 12.10m
1.45	Coastal liner vessel - Shared channels (Station Pier) – up to and incl 12.10m
1.46	Coastal liner vessel - Dedicated channels (Station Pier) – up to and incl 12.10m
1.47	Passenger cruise vessel - Shared channels – up to and incl 12.10m
1.48	Passenger cruise vessel - Dedicated channels – up to and incl 12.10m

If there is any variation between the input to the channel services modelling forecasts and the inputs used in the Port of Melbourne's regulatory model in any particular year, please provide information for the discrepancy and any adjustments made.

³ The Port of Melbourne explained in its 2018-19 tariff compliance statement that channel fee volumes were forecasted by applying historical correlations between ship tonnage and trade volumes to BISOE's forecast trade volumes.

Forecast demand for berth hire, wharf access and prescribed services contracts

Provide financial and business records that contain or relate to the following:

For 2017-18, 2018-19, 2019-20 and 2020-21 tariff compliance statements, the year-on-year modelling files, information in relation to the forecasting methodology and relevant datasets used to derive the forecast volumes for the berth hires, cargo wharf access, slipway and other prescribed services contracts listed below:

1.49	Berth hire - Full charge - Maribyrnong No.1
1.50	Berth hire - Full charge - Holden Dock
1.51	Berth hire - Passenger cruise ships at a berth other than Station Pier
1.52	Berth hire - Lay-up charge (24 Victoria Dock; Holden Dock; Maribyrnong No. 1; 24, 27, 28, 29 & 33 South Wharf; 6 Yarraville and F Appleton Dock)
1.53	Wharf access - Cargo
1.54	Area hire - Standard rate - 6 Yarraville
1.55	Area hire - Standard rate - F Appleton Dock
1.56	Slipway - Victoria Dock
1.57	Flagfall
1.58	Slipway hire
1.59	Wharf Edge Access
1.60	Other prescribed services (Contract)

Schedule 2 - Pricing and Cost Allocation Assessment

Revenue for prescribed and non-prescribed services

Provide financial and business records that contain or relate to the following:

- 2.1. For each financial year during the review period, please provide:
- Evidence of the total revenue for non-prescribed services (or a forecast where actuals are not yet available).
- 2.2. In relation to prescribed services revenue under clause 3.1 of the Pricing Order:
- a) For the 2017-18 tariff compliance statement, provide evidence of audited 2015-16 prescribed services revenue (not total revenue) and audited 2015-16 volumes for each prescribed service tariff used for calculating the WATI in Appendix B tab 'Revenue_C';
 - b) For the 2018-19 tariff compliance statement, provide evidence of audited 2016-17 actual volumes for each prescribed service tariff used for calculating the WATI in Appendix B tab 'Revenue';
 - c) For the 2019-20 tariff compliance statement, provide evidence of audited 2017-18 actual volumes for each prescribed service tariff (sourced from MATIS Trade Statistic Reports) used in the calculation of the prescribed services revenues in Appendix H;
 - d) For the 2020-21 tariff compliance statement, provide evidence of audited 2018-19 actual volumes for each prescribed service tariff (sourced from MATIS Trade Statistic Reports) used in the calculation of the prescribed services revenues in Appendix H; and
 - e) For the 2021-22 tariff compliance statement, provide evidence of audited 2019-20 actual volumes for each prescribed service tariff (sourced from MATIS Trade Statistic Reports) used in the calculation of the prescribed services revenues in Appendix H.

Contracts and contract revenue

Provide financial and business records that contain or relate to the following:

- 2.3. Information which contain policy and/or procedure (or equivalent) to establish contracts for the supply of prescribed services in accordance with clauses 6.1.6 and 6.2.1 of the Pricing Order during the review period. If there is no information to which this applies, please provide at least three financial or business records (for example correspondence or meeting notes) demonstrating the Port of Melbourne has first offered to provide port users with prescribed services;

2.4. [Redacted]

2.5. [Redacted]

[Redacted]	[Redacted]

- 2.6. For each of the contracts outlined in the table below, please provide information on how the prescribed service tariffs during the review period, are:
- determined by a building block methodology;
 - consistent with the objectives in section 48 of the Port Management Act 1995;
 - consistent with clauses 2.1.3, 2.2.1 and 2.3.1 of the Pricing Order;

- set so that the level and structure of the prescribed service tariffs have regard to:
 - the efficient costs caused by port users of the relevant prescribed service;
 - transaction costs; and
 - the extent to which port users are able or likely to respond to price signals (clause 2.1.3 of the Pricing Order); and
- compliant with the export pricing decision, and

2.7. For each prescribed service bundle of contracts which include tariffs that differ from the reference tariff schedule, information in relation to whether:

- revenue exceeds or does not exceed the stand alone cost of providing the prescribed services bundle during the review period; and
- revenue falls or does not fall below the avoidable cost of not providing the prescribed services bundle (in accordance with 2.1.1(b) of the Pricing Order) during the review period.

Cost allocation

Provide financial and business records that contain or relate to the following:

2.8. Information in relation to the framework governing how the Port of Melbourne has allocated opex categories and asset classes to prescribed service tariffs and prescribed service tariff bundles during the review period, including:

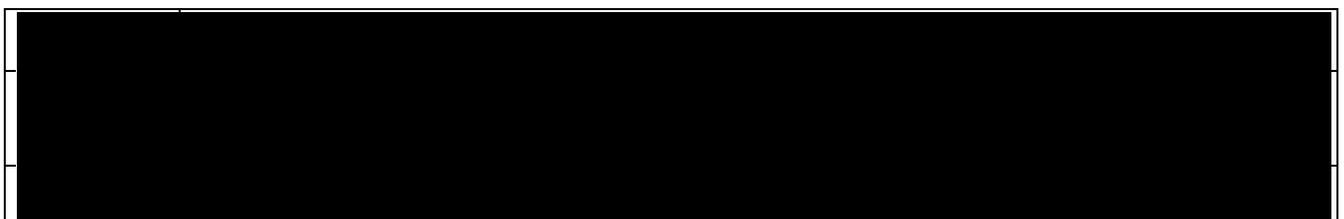
- all Board approved policies addressing the identification, attribution and allocation of costs for complying with clauses 5.1 and 5.2 of the Pricing Order;
- internal manuals, guidelines, or equivalent, addressing the identification, attribution and allocation of costs, including the allocators applied to specific cost categories and how this complies with clauses 5.1 and 5.2 of the Pricing Order;
- evidence supporting the application of those policies and manuals or guidelines and how compliance is monitored over time;
- any changes in the Port of Melbourne's cost allocation methodology over time.

2.9. Information demonstrating the Port of Melbourne's application of its cost allocation framework during the review period, including:

- for each opex category (see TCS 2020-21 Appendix D, tab 'Allocators', column B, rows 21-67) and for each asset class (see TCS 2020-21 Appendix D, tab 'Allocators', column B, rows 75-93), provide a breakdown of costs and information on the role of the costs in providing the prescribed, non-prescribed or shared service(s) they are allocated to;
- for capex, information in relation to why any costs were re-allocated to new or different asset classes during the review period; and
- how the Port of Melbourne is recovering rail asset costs in accordance with clause 2.1.6 of the Pricing Order.

2.10. Information in relation to the types of opex and capex activities that comprise non-prescribed services.

Contracts





Schedule 3 - Weighted Average Cost of Capital (WACC)

Weighted Average Cost of Capital (WACC)

Provide financial and business records that contain or relate to the following:

3.1. Evidence of the board minutes discussion on WACC for the review period.

Return on Equity (RoE)

Provide financial and business records that contain or relate to the following:

3.2. Financial models (including source data) and other materials used to derive the following estimates from Synergy's WACC reports over the period 1 July 2017 to 30 June 2020:

- Zero beta premium (input for Black CAPM model); and
- Fama-French Model (FFM) equity betas and risk factor premiums:
 - market excess returns beta;
 - high-minus-low (HML) factor beta;
 - small-minus-big (SMB) factor beta;
 - expected HML premium; and
 - expected SMB premium.

Market Risk Premium (MRP)

Provide financial and business records that contain or relate to the following:

Financial models

3.3. Synergies' calculations to derive the historical excess returns estimates for the Ibbotson and Wright approaches in:

- Table 13 (Page 66) of Synergies 2017 report;
- Table 17 (Page 105) of Synergies 2018 report;
- Table 21 (Page 145) of Synergies 2019 report; and
- Table 22 (Page 148) of Synergies 2020 report.

3.4. Synergies' calculations to derive the forward-looking estimates based on the three approaches (Damodaran (2013), Bank of England (2010), Bank of England (2002)) to estimate MRP using Dividend Discount Models in:

- Table 12 (Page 63) of Synergies 2017 report;
- Table 16 (Page 103) of Synergies 2018 report;
- Table 20 (Page 144) of Synergies 2019 report; and.
- Table 21 (Page 147) of Synergies 2020 report.

3.5. Synergies' calculations to derive the forward-looking estimates based on the five approaches (Damodaran (2013), Bank of England (2010), Bank of England (2002), ERA two-stage DDM, QCA Cornell DDM) to estimate MRP using a Dividend Discount Model approach in Table 21 (Page 147) of Synergies 2020 report.

Data and other inputs

3.6. All relevant original datasets used in the implementation of the financial models, along with their descriptions (time period, source etc.) during the review period;

3.7. Where applicable, all adjusted datasets used in the implementation of the financial models, along with their descriptions (adjustments, time period etc.) during the review period; and

- 3.8. All assumptions (franking credits proportion, terminal growth rate etc.) which underpin the financial models during the review period.

Beta- Systematic Risk

Provide financial and business records that contain or relate to the following:

- 3.9. Consultants' reports to estimate the Port of Melbourne's systematic risk for the review period, including both Synergies and INCENTA's reports;
- 3.10. Any independent reviewer's advice on the Port of Melbourne's estimate of systematic risk for the review period;
- 3.11. Selection of comparators included in Beta calculation and the relevant details including location, company description, year and information as to reasoning during the review period;
- 3.12. List of comparators that are excluded from the final sample and information as to reasoning during the review period;
- 3.13. Calculation spreadsheets during the review period;
- 3.14. Supporting data from Bloomberg in relation to estimating Beta and Gearing ratio;
- 3.15. Average Gearing of comparators for 5-year and 10-year average gearing across the selection of comparators; and
- 3.16. Information in relation to the change of the approach in selection of the comparators over the review period.

Schedule 4 - Engagement Documents

General

Provide financial and business records that contain or relate to the following:

- 4.1. Board papers and minutes (including but not limited to Item for Decision and Matter for Decision papers) on the Port of Melbourne engagement strategy and engagement with port users;
- 4.2. Information and evidence from port users provided to the Port of Melbourne regarding or arising from the Port of Melbourne's engagement with port users;
- 4.3. Information in relation to how the Port of Melbourne has interpreted "port user" under clause 14 of the Pricing Order; and
- 4.4. A copy of the Port of Melbourne's overall stakeholder engagement approach or equivalent(s) during the review period.

Form of engagement

Provide financial and business records that contain or relate to the following:

- 4.5. Evidence of the Port of Melbourne's form of engagement was tailored to suit the topics it engaged on during the review period;
- 4.6. Evidence of the Port of Melbourne's stakeholder mapping where it has taken steps to understand port users and other stakeholders in each year of the review period. This may cover their:
 - needs;
 - interests; and
 - preferred form of engagement; and
- 4.7. Information in relation to how the Port of Melbourne adapted any engagement activities as a result of feedback from port users or its findings each year during the review period.

Appropriateness of information

Provide financial and business records that contain or relate to the following:

- 4.8. Information in relation to how the Port of Melbourne provided port users with appropriate information in relation to a form of engagement such as the purpose, form and the content prior to its engagement activities during the review period;
- 4.9. Copies of the information materials provided to port users (e.g. slides/ presentations/ surveys/ informational emails) during all forms of engagement (whether in person or virtually) during the review period;
- 4.10. All copies of the customer engagement plans, engagement strategies or equivalent(s) created by the Port of Melbourne during the review period;
- 4.11. Information in relation to how the Port of Melbourne explained to port users and stakeholders the scope and extent they can influence the topic under engagement for each key strategic project during the review period;
- 4.12. Engagement timelines for each key strategic project during the review period, including information in relation to:
 - the duration or consultation window(s) when port users could provide comment or responses to the Port of Melbourne's proposal(s); and
 - when the Port of Melbourne's decisions were made; and
- 4.13. Information in relation to how the Port of Melbourne provided port users with appropriate information during the review period in regard to its depreciation methodology and impact on future prices following the end of tariffs adjustment limit period.

Reasonable opportunity to participate

Provide financial and business records that contain or relate to the following:

- 4.14. Information in relation to how the Port of Melbourne provided port users with a reasonable opportunity to participate in its engagement activities, including lines of communication made available to port users and stakeholders to ask questions and seek clarification during the review period; and
- 4.15. Information in relation to how the Port of Melbourne has taken into account vested interests or highly polarised views during the review period.

Priority to matters of significant impact

Provide financial and business records that contain or relate to the following:

- 4.16. Information in relation to how the Port of Melbourne's engagement approach during the review period has given priority to matters that could have a significant impact on port users each financial year, including how the Port of Melbourne identified priority matters and significant impact for port users.

Regard to port users' input

Provide financial and business records that contain or relate to the following:

- 4.17. Evidence on how the Port of Melbourne had regard to port users' input in its decision-making during the review period;
- 4.18. Evidence of how the Port of Melbourne informed relevant port users and stakeholders how their input influenced its decision-making and the Port of Melbourne's engagement findings during the review period; and
- 4.19. Evidence of how the Port of Melbourne addressed feedback it did not incorporate into its decision-making on its proposals under consultation during the review period.

Schedule 5 - Expenditure

For this Schedule 5, 'port user' means a user of the port of Melbourne, which is different to 'port user' as defined in the Pricing Order.

Opex

Unless specified otherwise, for the review period and years to 30 June 2035 under the 2050 Port Development Strategy, provide financial and business records that contain or relate to the following:

- 5.1. Forecast opex for each financial year from 1 July 2021 to 30 June 2035 as per Section 5.06 of tab 'Data' in the Port of Melbourne Regulatory Model;
- 5.2. Information on the main cost drivers of opex, excluding lease costs and cost contributions;
- 5.3. Information which demonstrates that costs associated with new or revised regulatory obligations and policy requirements are prudent and efficient;
- 5.4. Information which demonstrates how cost changes relate to more efficient delivery of prescribed services. Specifically:
 - information in relation to operating expenditure savings or new operating expenditure arising from capital expenditure; and
 - information in relation to any cost items that are having an upward or downward influence on operating expenditure compared with historic operating expenditure.
- 5.5. For each financial year of the review period, provide:
 - copies of invoices for lease costs;
 - copies of invoices for cost contributions; and
 - a split of opex categories and costs incurred by shared channels and dedicated channels,
- 5.6. The details of any designated areas excised from a designated lease in the review period under clauses 4.5.3 to 4.5.6 of the Pricing Order, including for each impacted designated lease:
 - designated port tenant;
 - lease location(s); and
 - for any applicable financial year:
 - information in relation to the opex amount calculated under clause 4.5.4 of the Pricing Order, the opex category and the cost allocation;
 - the area (in square metres) of the designated area;
 - the prevailing annual rent per square metre (exclusive of outgoings) under the corresponding designated lease from which the designated area was excised and supporting evidence;
 - actual third party outgoings (including without limitation land tax and council rates) incurred by the Port of Melbourne in respect of the designated area, but for the excision of the designated area from the corresponding designated lease (pursuant to an act described in clause 4.5.3 of the Pricing Order), which would have been recoverable by the Port of Melbourne from the designated tenant; and
 - supporting evidence for the calculation under clause 4.5.4 of the Pricing Order, and
- 5.7. If clauses 4.5.5 or 4.5.6 of the Pricing Order apply for any applicable financial year during the review period:

- information in relation to the opex amount calculated under clause 4.5.4, 4.5.5 or 4.5.6 of the Pricing Order, the opex category and the cost allocation;
- the area (in square metres) of the designated area; and
- information in relation to the Port of Melbourne calculation of the opex amount and provide supporting evidence.

Major capital projects

This section excludes capex on the Port Rail Transformation Project and the Port Capacity Project.

For each major project that forms part of the capital base between 1 July 2016 to 30 June 2035, provide financial and business records that contain or relate to the following:

- 5.8. Conception or initial business case documents (including but not limited to Preliminary Concept Justification Forms) outlining justification for the project, project objectives and intended service outcome, and delivery approach (including if external contractors will be used), according to the general meanings used by the Port of Melbourne;
- 5.9. Business case documents explaining the options considered to achieve the project objectives and the analysis method (including any internal or external supplementary legal advice and consultant reports);
- 5.10. Board and/or Investment Review Committee papers (including but not limited to Item for Decision and Matter for Decision papers), according to the general meanings used by Port of Melbourne;
- 5.11. Reports and Minutes for the Project Review Group, Project Control Group and Project Working Group;
- 5.12. Practical Completion Report and Final Report, or equivalents, that demonstrate construction or commissioning completion;
- 5.13. Project progress update documents outlining work since last business case or decision paper, or progress against design and/or construction milestones; and
- 5.14. For each major project (where not addressed by the above documents) provide information regarding:
 - the project name and scope, and relevant asset class(es);
 - start and completion dates;
 - total capital cost (itemising any government or port user contributions), and actual and forecast expenditure by financial year and information in relation to any difference;
 - cost estimation basis and analysis (such as Monte Carlo simulation);
 - any impact (in terms of project need, cost or timing) on forecast major projects or programs and whether any steps are needed to manage the impact; and
 - the procurement approach, including information to identify whether the project has (or will be) the subject of competitive tendering and evidence of compliance with the Port of Melbourne's procurement process.

Risk analysis

For each major project with a business case, where cost allowances are required to manage risk, provide financial and business records that contain or relate to the following:

- 5.15. Categorisation of risk (for example, operational, legal or financial risk);
- 5.16. Information in relation to measurement of the risk including:
 - the nature and rating of the risk and the basis for the rating;

- the probability of the risk event occurring and the basis for the likelihood;
- factors influencing the probability of the risk event occurring and the risk mitigation plan; and
- the financial value or service impact of the risk if it occurs; and

5.17. Contingency allowance allocated.

Special capex projects – Port Rail Transformation and Port Capacity Projects

Provide financial and business records that contain or relate to the following:

5.18. A copy of the Rail Operating Framework;

5.19. A copy of the Rail Access Strategy;

5.20. A copy of “Our Plan for Rail”;

5.21. A copy of the ‘Rail’ capex as set out in row 102 of the ‘Data’ tab of the port’s Regulatory Model, for each financial year in the review period split by:

- capital expenditure incurred on the Port Rail Transformation Project; and
- other capital expenditure under the ‘Rail’ asset class.

5.22. For both the Port Rail Transformation Project and the Port Capacity Project:

- provide evidence of project monitoring and stewardship, including documentation such as status reports or other project updates, procurement milestone signoffs and decision papers for scope/cost variations during the review period; and
- provide copies of business cases or other design documents for capital expenditure demonstrating cost efficiency (under clause 4.2.4 or 4.2.7 of the Pricing Order), including options, risk, impact and cost analyses and approvals for scope and/or cost variations during the review period.

Capital planning and asset management

Provide financial and business records that contain or relate to the following:

5.23. A copy of:

- the latest Big Ships Strategy;
- all Port Development Implementation Plans;
- Strategic Asset Management Plan, Asset Management Plans and Condition Assessment Reports for the assets.

5.24. All accreditation reports (such as ISO) or evidence if Port of Melbourne is working towards an accreditation;

5.25. A copy of any other infrastructure or master planning strategies including medium-long term investment plans and strategies for the Victorian government (other than the 2050 Port Development Strategy and Rail Access Strategy);

5.26. Information in relation to the methodology used to estimate forecast capital expenditure for the review period and the 2050 Port Development Strategy, including the key assumptions and taking into account:

- forecast demand; addressed in lines 1.20 to 1.25 of Schedule 1
- any relevant industry or economy-wide benchmarks of expenditure; and
- the substitution possibilities between forecast operating expenditure and forecast capital expenditure.

5.27. Forecast capital expenditure for each financial year from 1 July 2021 to 30 June 2050 as per Section 5.05 of tab ‘Data’ in the Port of Melbourne Regulatory Model;

5.28. Information in relation to the reasons for the trend or any major annual variations in forecast capital expenditure (including identifying cost items that are having an upward

- or downward influence on capital expenditure), compared with historic capital expenditure and accounting for the impacts of the coronavirus pandemic;
- 5.29. Information which justifies the timeframe for delivering the proposed new capital expenditure during the review period given the Port of Melbourne's capabilities and past experience;
- 5.30. Information and supporting evidence on how the Port of Melbourne has addressed significant capex risks, considered the allocation of risk between itself and port users, and evidence its asset management approach, and systems and procurement support efficiency during the review period. This could include material on the Port of Melbourne's risk identification and management framework or processes;
- 5.31. Information in relation to how the Port of Melbourne prioritises the delivery of its capital projects over the short and long term, including any decision-making policies or equivalent
- 5.32. Documents that demonstrate how the Port of Melbourne prudently and efficiently maintains its infrastructure and service levels during the review period;
- 5.33. Information in relation to how the Port of Melbourne has sought to understand port users' service needs and interests over the short to long term during the review period, including evidence of:
- submissions, meeting minutes and feedback received in Phase 2 of the 2050 Port Development Strategy consultation, as set out on page 6 of the port's 2050 Port Development Strategy Consultation Summary Report released October 2020;
 - data requests to, meetings with and/or correspondence with port users to inform options considered for major projects, including service needs and timing;
 - the Port of Melbourne's engagement program for its Port Development Implementation Plan(s); and
 - how the Port of Melbourne has used port users' needs and feedback to inform its capital planning over the review period, while taking into account the longer-term context.

Procurement

Provide financial and business records that contain or relate to the following:

- 5.34. The latest copies of:
- Procurement and Contract Management Policy; and
 - Procurement Guidelines;
- 5.35. Copies of procurement processes, procedures and/or checklists or equivalent (not addressed by above documents); and
- 5.36. Procurement forms used for capex projects (such as initiation, assessment, negotiation, variation, engagement, conflict and interest, review and outcome documents).

Governance

Provide financial and business records that contain or relate to the following:

- 5.37. A copy of the Board approval policy, including threshold needed for board approval;
- 5.38. A copy of:
- the latest Delegations of Authority Policy: Tier 1, Tier 2 and Tier 3;
 - Capitalisation Guideline or equivalent; and
 - Quality Management Policy;
- 5.39. The contractual, compliance and regulatory obligations or equivalent for channels and wharfage;

- 5.40. A final copy of the performance standards for the review period (as per section 4 of Appendix F of the 2018-19 tariff compliance statement), and information in relation to any revisions over the review period;
- 5.41. Information regarding the Port of Melbourne's performance against the 'performance standards' for the review period;
- 5.42. Information and evidence of how the Port of Melbourne evaluate whether infrastructure is delivering the expected service.

Depreciation

Provide financial and business records that contain or relate to the following:

- 5.43. For the capital base represented by the Initial Capital Asset Value as at 1 July 2016, a breakdown by asset class, for each of shared channel services and bundled services assets, identifying depreciation rates used for major assets in each asset class, including (as relevant):
 - details on the depreciation methodology applied in accordance with relevant Australian Accounting Standards;
 - details on how the relevant depreciable amount of a depreciable asset are allocated on a systematic basis over its useful life; and
 - copies of relevant accounting policies;
- 5.44. For capital expenditure in each subsequent financial year after 1 July 2016, a breakdown identifying depreciation rates used for major assets in each asset class;
- 5.45. For the capital base as at 30 June 2021, a breakdown by asset class, for each of shared channel services and bundled services assets, showing carrying values and remaining useful lives and/or depreciation rates for major assets in each asset class;
- 5.46. Information in relation to the extent to which demand forecasts have been informed by expectations of future pricing under the Port of Melbourne alternative depreciation methodology; and
- 5.47. Evidence to suggest that the Port of Melbourne consideration of its alternative depreciation methodology has been informed by an analysis of expected future percentage changes in the level of prescribed service tariffs.

Schedule 6

Sections 56 and 57 of the *Port Management Act 1995* (Vic)

Pt 3 Div. 3B
(Heading)
inserted by
No. 10/2016
s. 115.

Division 3B—Information requirements and information disclosure restrictions

56 Financial and business records

S. 56(1)
substituted by
No. 85/2003
s. 14.

- (1) A provider of prescribed services must keep financial and business records—
 - (a) in respect of the provision of channels for use by shipping that are separate from financial and business records for other prescribed services; and
 - (b) in respect of prescribed services that are separate from any financial and business records for other aspects of any business conducted by the provider of prescribed services.

Port Management Act 1995
No. 82 of 1995
Part 3—Regulation of port services

- (2) The financial and business records must be prepared and maintained in accordance with guidelines made by the Commission. S. 56(2) amended by No. 62/2001 s. 86(1)(d).
- (3) The provider of prescribed services must make the financial and business records available to the Commission when required to do so by notice in writing given by the Commission. S. 56(3) amended by No. 62/2001 s. 86(1)(d).
- (4) A requirement under subsection (3) must identify the information or document required and must specify—
- (a) by when the requirement must be complied with; and
 - (b) in what form the information or copy of the document is to be given to the Commission; and S. 56(4)(b) amended by No. 62/2001 s. 86(1)(d).
 - (c) that the requirement is made under this section and must include a copy of this section and section 57.
- (5) A person who without lawful excuse fails to comply with any requirement made under this section is guilty of an offence. S. 56(5) amended by No. 62/2001 s. 86(3)(a).
Penalty: 120 penalty units.
- (6) It is a lawful excuse for the purposes of subsection (5) that compliance may tend to incriminate the person or make the person liable to a penalty for any other offence.
- (7) A person must not, in purported compliance with a requirement, knowingly give the Commission information that is false or misleading. S. 56(7) amended by No. 62/2001 s. 86(1)(d) (3)(b).
Penalty: 120 penalty units or imprisonment for 6 months.

Port Management Act 1995
No. 82 of 1995
Part 3—Regulation of port services

S. 56(8)
amended by
No. 62/2001
s. 86(3)(c).

- (8) A person must not—
- (a) threaten, intimidate or coerce another person;
or
 - (b) take, threaten to take, incite or be involved in
any action that causes another person to
suffer any loss, injury or disadvantage—

because that other person complied, or intends to
comply, with a requirement made under this
section.

Penalty: 120 penalty units.

S. 56(9)
amended by
No. 62/2001
s. 86(1)(d).

- (9) A person is not liable in any way for any loss,
damage or injury suffered by another person
because of the giving in good faith of a document
or information to the Commission under this
section.

S. 56(10)
amended by
No. 62/2001
s. 86(1)(h).

- (10) Part 4 of the **Essential Services Commission Act
2001** does not apply to financial and business
records kept by a provider of prescribed services.

57 Restriction on disclosure of confidential information

S. 57(1)
amended by
No. 62/2001
s. 86(1)(d).

- (1) This section applies if information or a document
is given to the Commission under section 56 and,
at the time it is given, the person giving it states
that it is of a confidential or commercially
sensitive nature.

S. 57(2)
amended by
No. 62/2001
s. 86(1)(d)
(3)(d).

- (2) The Commission must not disclose the
information or the contents of the document to
any person unless—
- (a) it is of the opinion—
 - (i) that the disclosure of the information or
document would not cause detriment to
the person supplying it; or
 - (ii) that although the disclosure of the
information or document would cause
detriment to the person supplying it, the

disclosure would assist in achieving the objectives of this Part and the benefit of achieving those objectives would outweigh any detriment caused by the disclosure; and

- (b) it is of the opinion, in relation to any other person who is aware of the information or the contents of the document and who might be detrimentally affected by the disclosure—
 - (i) that the disclosure of the information or document would not cause detriment to that person; or
 - (ii) that although the disclosure of the information or document would cause detriment to that person, the disclosure would assist in achieving the objectives of this Part and the benefit of achieving those objectives would outweigh any detriment caused by the disclosure; and
- (c) it gives the person who supplied the information or document a written notice—
 - (i) stating that the Commission wishes to disclose the information or contents of the document, specifying the nature of the intended disclosure and setting out detailed reasons why the Commission wishes to make the disclosure; and
 - (ii) stating that the Commission is of the opinion required by paragraph (a) and setting out detailed reasons why it is of that opinion; and
- (d) if it is aware that the person who supplied the information or document in turn received the information or document from another person and is aware of that other person's

S. 57(2)(c)(i)
amended by
No. 62/2001
s. 86(1)(d).

S. 57(2)(c)(ii)
amended by
No. 62/2001
s. 86(1)(d).

identity and address, it gives that other person a written notice—

- (i) containing the details required by paragraph (c); and
- (ii) stating that the Commission is of the opinion required by paragraph (b) in relation to him, her or it and setting out detailed reasons why it is of that opinion.

Penalty: 120 penalty units.

S. 57(2)(d)(ii)
amended by
No. 62/2001
s. 86(1)(d).

(3) Subsection (2) does not prevent the Commission—

S. 57(3)
amended by
No. 62/2001
s. 86(1)(d).

- (a) from disclosing information or the contents of a document to—
 - (i) an employee employed under section 24(1) of the **Essential Services Commission Act 2001**; or
 - (ii) a member of staff referred to in section 24(2) of that Act; or
 - (iii) a consultant engaged under section 25 of that Act; or
 - (iv) a member of a Division, committee or panel acting under a delegation under section 26 of that Act; or

S. 57(3)(a)
substituted by
No. 62/2001
s. 86(1)(i).

(b) from using information or a document for the purposes of an inquiry; or

S. 57(3)(c)
amended by
No. 62/2001
s. 86(1)(j).

(c) from disclosing information or the contents of a document to the Minister in a report prepared in the form required by section 45(2) of the **Essential Services Commission Act 2001**.

Port Management Act 1995
No. 82 of 1995
Part 3—Regulation of port services

- (4) For the purposes of this section, the disclosure of anything that is already in the public domain at the time the Commission wishes to disclose it cannot cause detriment to any person referred to in subsection (2)(a) or (b).

S. 57(4)
amended by
No. 62/2001
s. 86(1)(d).

