

Port Management Act 1995
AMENDMENT OF PRICING ORDER

Order in Council

The Governor in Council under section 49A of the **Port Management Act 1995**, amends the Order in Council made by the Governor in Council dated 21 June 2016 and published in the Government Gazette on 24 June 2016, as amended by Order dated 19 May 2020 and published in the Government Gazette on 20 May 2020, as follows in Part 1 and a copy of the amended Pricing Order is at Part 2:

Part 1

- (a) In clause 2.1.4(b), after ‘Tariff Adjustment Limit’, insert ‘(after excluding any component of any Prescribed Services Tariff which is attributable to the recovery of Notified PCEP Costs)’.
- (b) For clause 3.1.2, substitute the following:
- ‘3.1.2 Clauses 3.1.1 and 3.2.1 do not apply to:
- (a) an amendment to the Prescribed Service Tariff for ‘Full – inward’ Wharfage Fees under clause 6.3.3 or clause 6.3.4; or
- (b) any component of a Prescribed Service Tariff which is attributable to the recovery of Notified PCEP Costs.’.
- (c) After clause 3.2.4, insert the following clause –
- ‘3.2.4A For the avoidance of doubt, the Port Licence Holder may submit a Rebalancing Application in respect of Prescribed Service Tariffs that incorporate expenditure for a relevant Strategic Project.’.
- (d) In the subheading after clause 3.2.7, after ‘*Interim*’ insert ‘*Rebalancing*’.
- (e) In clause 3.2.8, in the brackets after ‘**Interim**’, insert ‘**Rebalancing**’.
- (f) In clause 3.2.12, after ‘Interim’, insert ‘Rebalancing’.
- (g) For clause 4.2.7, substitute the following:
- ‘4.2.7 Actions by the Port Licence Holder to:
- (a) acquire the Existing Rail Assets; or
- (b) undertake capital expenditure reasonably necessary to achieve the Rail Asset Deliverables; or
- (c) undertake capital expenditure (that is accepted by the Commission as Approved Strategic Project Capital Expenditure) to deliver a Strategic Project, provided the Port Licence Holder has incurred capital expenditure for that Strategic Project within 2 years of the relevant Final Strategic Project Decision,
- are taken to be prudent acts for the purposes of clause 4.2.1.’.
- (h) After clause 4.2.10, insert the following clauses –
- ‘4.2.11 To the extent that:
- (a) capital expenditure incurred or to be incurred to deliver a Strategic Project does not exceed the Approved Strategic Project Capital Expenditure; and
- (b) the Port Licence Holder undertakes the Strategic Project to the scope and standard described in the Strategic Project Application accepted by the Commission in relation to that Strategic Project, subject to minor variations to scope and standard having regard to the nature of the Strategic Project,
- that capital expenditure is deemed to be efficient capital expenditure for the purposes of clause 4.2.1(c), provided the Port Licence Holder has incurred capital expenditure for that Strategic Project within 2 years of the relevant Final Strategic Project Decision.

- 4.2.12 For the avoidance of doubt:
- (a) capital expenditure that either:
 - (i) exceeds the Approved Strategic Project Capital Expenditure for a Strategic Project; or
 - (ii) results in a Strategic Project that is not undertaken to the scope and standard described in the Strategic Project Application accepted by the Commission in relation to that Strategic Project, may be added to the capital base, provided the capital expenditure satisfies the requirements of clause 4.2.1(c); and
 - (b) clause 4.2.7(c) and 4.2.11 do not preclude any such capital expenditure being included in the capital base in accordance with clause 4.2.1(c).
- 4.2.13 If the capital expenditure incurred to deliver a Strategic Project (or part of it) is less than the Approved Strategic Project Capital Expenditure, then:
- (a) Until the end of the review period (as determined by section 49I of the **Port Management Act 1995** (Vic)) in which the capital expenditure was incurred, the Approved Strategic Project Capital Expenditure is deemed to be efficient capital expenditure for the purposes of clause 4.2.1(c); but
 - (b) From the start of the next review period, the actual capital expenditure will be the efficient capital expenditure for the purposes of clause 4.2.1(c).’.
- (i) After clause 4.5.6, insert the following clauses –
- 4.5.7 Actions by the Port Licence Holder to incur operating expenses (that are accepted by the Commission as Approved Strategic Project Operating Expenses) to deliver a Strategic Project, provided the Port Licence Holder has incurred capital expenditure for that Strategic Project within 2 years of the relevant Final Strategic Project Decision, are taken to be prudent acts for the purposes of clause 4.1.1(c).
- 4.5.8 To the extent that:
- (a) operating expenses incurred or to be incurred to deliver the Strategic Project do not exceed the Approved Strategic Project Operating Expenses;
 - (b) operating expenses incurred or to be incurred to deliver the Strategic Project do not include expenses associated with maintaining or operating port infrastructure that are unrelated to the Strategic Project; and
 - (c) operating expenses incurred or to be incurred relate to the Port Licence Holder undertaking the Strategic Project to the scope and standard described in the Strategic Project Application accepted by the Commission in relation to that Strategic Project, subject to minor variations to scope and standard having regard to the nature of the Strategic Project,
- those operating expenses are deemed to be efficient operating expenses for the purposes of clause 4.1.1(c), provided the Port Licence Holder has incurred capital expenditure for a Strategic Project within 2 years of the relevant Final Strategic Project Decision.

- 4.5.9 For the avoidance of doubt, clauses 4.5.7 and 4.5.8 do not preclude any operating expenses which:
- (a) exceed the Approved Strategic Project Operating Expenses for a particular Strategic Project; or
 - (b) results in a particular Strategic Project not undertaken to the scope and standard described in the Strategic Project Application accepted by the Commission in relation to that Strategic Project,
being included in the Aggregate Revenue Requirement in accordance with clause 4.1.1(c).’

(j) After clause 6.3.5, insert the following clauses –

‘6A **STRATEGIC PROJECTS – EX ANTE REVIEW**

6A.1 **Function of the Commission**

6A.1.1 The Commission must, in accordance with this clause 6A, consider if a Strategic Project, as described in a Strategic Project Application, satisfies the Strategic Project Principles and either:

- (a) accept a Strategic Project Application if it is satisfied the project satisfies the Strategic Project Principles; or
- (b) not accept a Strategic Project Application if it is not satisfied the project satisfies the Strategic Project Principles.

6A.1.2 The principles the Commission applies in its consideration of a Strategic Project must, to the extent possible having regard to the requirements of this clause 6A, be consistent with the principles the Commission applies in any other consideration it may undertake in respect of this Pricing Order.

6A.2 **Strategic Project Applications**

6A.2.1 The Port Licence Holder may, at any time, provide to the Commission a Strategic Project Application and:

- (a) must not provide to the Commission more than two (2) Strategic Project Applications within any twelve (12) month period; and
- (b) must pay a fee to the Commission in the amount published by the Commission from time to time at the time the relevant Strategic Project Application is provided to the Commission.

6A.2.2 The Port Licence Holder may submit further Strategic Project Applications in respect of a particular Strategic Project, including for example (and without limitation):

- (a) to respond to a decision of the Commission under this clause 6A;
- (b) if it considers circumstances have changed since the date the Commission accepted the Strategic Project Application in respect of that Strategic Project and those circumstances justify termination of, slow down to or variation of the Strategic Project, save that capital expenditure that forms part of the capital base at the date of the termination of, slow down to or variation of the Strategic Project will continue to be deemed to be efficient capital expenditure incurred by the Port Licence Holder, acting prudently, for the purposes of clause 4.2.1(c); or
- (c) if it is able to provide more detailed or certain costs for portions of the Strategic Project than that provided in its previous Strategic Project Application for that Strategic Project.

- 6A.2.3 A Strategic Project Application must:
- (a) contain sufficient supporting information to enable the Commission to verify that the proposed project complies with the Strategic Project Principles;
 - (b) comply with the requirements in clause 8.
 - (c) set out the process by which the Port Licence Holder has effectively consulted and had regard to the comments provided by Port Users; and
 - (d) contain any other sufficient supporting information determined by the Commission under clause 9.
- 6A.2.4 For the avoidance of doubt, if the Port Licence Holder submits a revised Strategic Project Application that responds to:
- (a) an Interim Strategic Project Decision, and the revisions are limited to addressing matters identified by the Commission in the Interim Strategic Project Decision, clause 6A.3 does not apply to that revised Strategic Project Application; and
 - (b) any decision of the Commission under clause 6A.1 to 6A.4, clause 6A2.1(a) and (b) does not apply to that revised Strategic Project Application except if the Strategic Project Application is submitted after the Commission's Final Strategic Project Decision in respect of that project.
- 6A.3 **Strategic Project Threshold**
- 6A.3.1 The Commission must consider if the proposed project meets the Strategic Project Threshold and notify in writing the Port Licence Holder of its decision within thirty (30) Business Days of receipt of the Strategic Project Application.
- 6A.3.2 If the Commission considers the proposed project meets the Strategic Project Threshold, it must notify in writing the Port Licence Holder of its proposed timing (subject to clauses 6A.4.2 and 6A.5.6) to complete its assessment of whether the Strategic Project Application satisfies the Strategic Project Principles, including its proposed timing of an Interim Strategic Project Decision and Final Strategic Project Decision. Subject to clause 6A.5.6, the Commission may extend these proposed timings by notice to the Port Licence Holder.
- 6A.3.3 A notification under clause 6A.3.1 and, if applicable, clause 6A.3.2 must be published on the Commission's website.
- 6A.3.4 If the Commission considers the proposed project does not meet the Strategic Project Threshold, it is not required to consider the Strategic Project Application further.
- 6A.4 **Interim Strategic Project Decision**
- 6A.4.1 Subject to the Port Licence Holder's compliance with clause 6A.2 and the Commission deciding that the proposed project meets the Strategic Project Threshold, the Commission must notify in writing the Port Licence Holder of either its:
- (a) interim acceptance of the Strategic Project Application on the basis that it is satisfied the project satisfies the Strategic Project Principles; or
 - (b) intention to not accept the Strategic Project Application on the basis that it is not satisfied the project satisfies the Strategic Project Principles,
- (Interim Strategic Project Decision)** within the timeframe notified by the Commission under clause 6A.3.2 (as varied by clause 6A.4.2). If notification has not been given within that timeframe, the Commission shall be deemed to have given its interim acceptance to the Strategic Project Application.

- 6A.4.2 Where the Commission has not received sufficient supporting documentation from the Port Licence Holder in accordance with any relevant determination made under clause 9, the timeframe specified in clause 6A.3.2 may be extended at the Commission's discretion (subject to clause 6A.5.6) by the period starting on the day the Commission requests further information from the Port Licence Holder and ending on the day that the Port Licence Holder complies with that request.
- 6A.4.3 The Commission must grant interim acceptance of a Strategic Project Application if it is satisfied that the proposed Strategic Project complies with the Strategic Project Principles.
- 6A.4.4 If the Commission notifies the Port Licence Holder under clause 6A.4.1 of the Commission's intention to not accept the Strategic Project Application, the Commission must provide in that notification:
- (a) reasons for its intended non-acceptance; and
 - (b) a proposed timeframe for the Port Licence Holder to submit a revised Strategic Project Application responding to the Commission's decision under clause 6A.4.1.
- 6A.4.5 The timeframe proposed by the Commission under clause 6A.4.4(b):
- (a) must be reasonable, having regard to the nature of the Commission's decision under clause 6A.4.1;
 - (b) must be no less than ten (10) Business Days; and
 - (c) does not restrict the Port Licence Holder from submitting a revised Strategic Project Application up to 3 months later than the proposed timeframe under clause 6A.4.4(b) (and for the avoidance of doubt, the Commission is not required to accept a revised Strategic Project Application that is submitted more than 3 months later than proposed by the Commission).
- 6A.4.6 An Interim Strategic Project Decision and, if applicable, the reasons and timeframe notified under clause 6A.4.4 must be published on the Commission's website.
- 6A.5 **Final Strategic Project Decision**
- 6A.5.1 The Commission must give the Port Licence Holder an opportunity to make a written submission (and to submit a revised Strategic Project Application, responding to the Commission's decision under clause 6A.4.1(b)) to the Commission on the Interim Strategic Project Decision before the Commission makes its final decision.
- 6A.5.2 The Commission may, in the Commission's absolute discretion, consult with Port Users or other third parties on the Strategic Project Application.
- 6A.5.3 Subject to clause 6A.5.6, the Commission must notify the Port Licence Holder in writing of either its:
- (a) acceptance of the Strategic Project Application (or revised Strategic Project Application, if applicable); or
 - (b) non-acceptance of the Strategic Project Application (or revised Strategic Project Application, if applicable),
- (Final Strategic Project Decision)** within the timeframe notified by the Commission under clause 6A.3.2 (as varied by clause 6A.4.2). If notification has not been given within that timeframe, the Commission shall be deemed to have given its acceptance to the Strategic Project Application.

- 6A.5.4 If the Commission notifies the Port Licence Holder under clause 6A.5.3 of the Commission's non-acceptance of the Strategic Project Application, the Commission must provide reasons in that notification.
- 6A.5.5 A Final Strategic Project Decision and, if applicable, the reasons notified under clause 6A.5.4 must be published on the Commission's website.
- 6A.5.6 Unless the Port Licence Holder otherwise consents, the maximum time period for the Commission's consideration of a Strategic Project Application under this clause 6A is:
- (a) 9 months from the date of the Commission's receipt of that Strategic Project Application; plus
 - (b) if the Port Licence Holder submits a revised Strategic Project Application after the timeframe proposed by the Commission under clause 6A.4.4(b), the same number of Business Days as the number of Business Days that fall from the end of that timeframe until the date of the submission.
- 6A.5.7 Where the Commission accepts a Strategic Project Application in respect of PCEP in a Final Strategic Project Decision, the Port Licence Holder may vary its Aggregate Revenue Requirement (for the current Regulatory Period) and its capital base to reflect:
- (a) capital expenditure incurred or to be incurred (that is accepted by the Commission as Approved Strategic Project Capital Expenditure); and
 - (b) operating expenses incurred or to be incurred (that are accepted by the Commission as Approved Strategic Project Operating Expenses),
- to the extent that:
- (c) the capital expenditure or operating expenses are not already reflected in the Aggregate Revenue Requirement or capital base; and
 - (d) the variation does not include any capital expenditure or operating expenses incurred prior to the commencement of this clause 6A.5.7 and not reflected in the Aggregate Revenue Requirement or capital base at the date of commencement of this clause.
- 6A.6 **Compliance**
- 6A.6.1 The Port Licence Holder must, prior to the start of each Regulatory Period, amend its capital base to ensure it reflects the requirements of clauses 4.2.11, 4.2.12 and 4.2.13 (including by removing forecast capital expenditure for a Strategic Project otherwise permitted to be included in the capital base by operation of clause 4.2.1 and including actual capital expenditure to the extent it is deemed efficient under clauses 4.2.11, 4.2.12 and 4.2.13).
- 6A.6.2 If the Commission considers the Port Licence Holder has not complied with clause 6A.6.1, it may request the Port Licence Holder to comply with 6A.6.1.
- 6A.6.3 A decision under clause 6A.6.2 must be published on the Commission's website.'
- (k) After clause 7.1.2, insert the following clause
- '7.1.3 For the avoidance of doubt, the Port Licence Holder must comply with clause 7.1.1 and 7.1.2 if it intends to vary a Prescribed Service Tariff after a variation of the Aggregate Revenue Requirement or the capital base under clause 6A.5.7.'
- (l) In clause 9.1.1, after '3.3.2', insert ', 6A.2.3 and'.

(m) For clause 12.1.1, substitute the following:

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

- (a) Clause 4.2.3 (Port Capacity Project);
- (b) clause 4.2.4 (prudent capital expenditure);
- (c) clause 4.2.7 (prudent capital expenditure);
- (d) clause 4.2.9 (Existing Rail Assets capital value);
- (e) clause 4.2.11 to 4.2.13 (inclusive) (efficient capital expenditure);
- (f) clause 4.4.1 (Depreciation Period);
- (g) clause 4.5.1 (Port Licence Fee);
- (h) clause 4.5.3 to 4.5.9 (inclusive) (prudent operating expenses);
- (i) clause 4.7 (initial capital asset values); and
- (j) clause 6A (Strategic Projects).’.

(n) In clause 14 –

(a) following the definition of **Annual Licence Fee**, insert the following –

‘**Approved Strategic Project Capital Expenditure** means, in respect of a Strategic Project, the amount of capital expenditure detailed in a Strategic Project Application accepted by the Commission in a Final Strategic Project Decision as satisfying the Strategic Project Principles (and which, for the avoidance of doubt, may be varied by a further Strategic Project Application in respect of that project, if accepted by the Commission in a Final Strategic Project Decision as satisfying the Strategic Project Principles).

Approved Strategic Project Operating Expenses means, in respect of a Strategic Project, the amount of operating expenses detailed in a Strategic Project Application accepted by the Commission in a Final Strategic Project Decision as satisfying the Strategic Project Principles (and which, for the avoidance of doubt, may be varied by a further Strategic Project Application in respect of that project, if accepted by the Commission in a Final Strategic Project Decision as satisfying the Strategic Project Principles).’.

(b) following the definition of **Bundled Services**, insert the following –

‘**Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in Melbourne, Victoria.’.

(c) following the definition of **Final Rebalancing Application**, insert the following –

‘**Final Strategic Project Decision** has the meaning given in clause 6A.5.3.’.

(d) substitute the definition for **Interim Decision**, with

‘**Interim Rebalancing Decision** has the meaning given in clause 3.2.8.’.

(e) following the definition of **Interim Rebalancing Decision**, insert the following –

‘**Interim Strategic Project Decision** has the meaning given in clause 6A.4.1.’.

(f) following the definition of **March CPI Release Date**, insert the following –

‘**Notified PCEP Costs** means that part of any Aggregate Revenue Requirement attributable to PCEP which, unless relief from the Tariffs Adjustment Limit was provided to the Port Licence Holder, would not be recoverable despite utilising an alternative to the straight-line methodology for depreciation under clause 4.4.2.

PCEP means the Strategic Project as accepted by the Commission and known as the Port Capacity Enhancement Program which includes the development of infrastructure, relocation of trades and undertaking other activities that the Commission accepts are reasonably required to deliver a Webb Dock North container terminal.’.

- (g) following the definition of **Shared Channel Tariffs**, insert the following –
- ‘**Strategic Project** means a project accepted by the Commission, in accordance with clause 6A of this Order, as satisfying the Strategic Project Principles.
- Strategic Project Application** means an application made by the Port Licence Holder for the Commission to determine if a proposed project, as described in a Strategic Project Application, satisfies the Strategic Project Principles.’
- Strategic Project Principles** means each of the following principles:
- (a) the project meets the Strategic Project Threshold;
 - (b) the project has a program of works which:
 - (i) is sufficiently identified to enable the Commission to assess the project separately from the Port Licence Holder’s program of works that is unrelated to the project; and
 - (ii) does not include works or expenses associated with maintaining or operating port infrastructure that are unrelated to the project;
 - (c) the capital expenditure and operating expenses incurred for the project were efficient expenditure when incurred or will be efficient expenditure when incurred; and
 - (d) by undertaking the project, the Port Licence Holder has acted prudently or will be acting prudently.
- Strategic Project Threshold** means the Strategic Project Application:
- (a) relates to a proposed project with expected capital expenditure of at least A\$500,000,000 as at 1 July 2026, as adjusted annually on and from 1 July 2027 by the percentage change in the CPI from the previous 1 July; and
 - (b) Satisfies the requirements of clauses 6A.2.3(c) and 6A.2.3(d)’.

Part 2

1. COMMENCEMENT AND APPLICATION

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

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

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

2. PRICING PRINCIPLES: GENERAL

2.1 Prescribed Service Tariffs Pricing Principles

2.1.1 Prescribed Service Tariffs must be set so as:

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

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

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

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

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

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

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

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

2.1.6 The Port Licence Holder must not recover Rail Asset Costs other than by a Prescribed Service Tariff for 'Full – inward' Wharfage Fees.

2.2 Specific Shared Channel Tariffs Pricing Principles

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

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

2.3 Port of Melbourne Corporation container export pricing decision

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

3. PRICING PRINCIPLES: PRICE SMOOTHING MECHANISM

3.1 Tariffs Adjustment Limit

3.1.1 In addition to complying with clause 2, but subject to clause 3.1.2, the Weighted Average Tariff Increase implied by the Prescribed Service Tariffs set by the Port Licence Holder in respect of any Financial Year commencing on or after 1 July 2017 must not exceed the Tariffs Adjustment Limit.

3.1.2 Clauses 3.1.1 and 3.2.1 do not apply to:

- (a) an amendment to the Prescribed Service Tariff for 'Full – inward' Wharfage Fees under clause 6.3.3 or clause 6.3.4; or
- (b) any component of a Prescribed Service Tariff which is attributable to the recovery of Notified PCEP Costs.

3.1.3 For the avoidance of doubt, following an amendment to the Prescribed Service Tariff for 'Full – inward' Wharfage Fees under clause 6.3.3 or clause 6.3.4, clause 3.1.1 will apply to the Weighted Average Tariff Increase implied by the Prescribed Service Tariffs set by the Port Licence Holder and clause 3.2 will apply to the Prescribed Service Tariff for 'Full – inward' Wharfage Fees.

3.2 Rebalancing

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

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

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

Making a Rebalancing Application

- 3.2.4 Except in relation to Prescribed Service Tariffs that are subject to the Export Pricing Decision, prior to 1 January of any Financial Year commencing on or after 1 July 2017, the Port Licence Holder may make a written application to the Commission which proposes that, subject to compliance with clauses 2, 3.1.1, 4 and 5:
- (a) certain Prescribed Service Tariffs for the upcoming Financial Year be revised by different percentage adjustments;
 - (b) that a new Prescribed Service Tariff be introduced; and/or
 - (c) that an existing Prescribed Service Tariff be discontinued, (**Rebalancing Application**).
- 3.2.4A For the avoidance of doubt, the Port Licence Holder may submit a Rebalancing Application in respect of Prescribed Service Tariffs that incorporate expenditure for a relevant Strategic Project.
- 3.2.5 Prior to making a Rebalancing Application, the Port Licence Holder must consult Port Users about its proposal to do so and provide a reasonable opportunity for Port Users to express their views to the Port Licence Holder.
- 3.2.6 The Port Licence Holder must utilise a reasonable estimate of the upcoming March CPI for the purpose of calculating the Tariffs Adjustment Limit in a Rebalancing Application submitted prior to the March CPI Release Date.
- 3.2.7 The Rebalancing Application must contain sufficient supporting information to enable the Commission to verify that the proposed Prescribed Service Tariffs comply with clauses 2, 3.1.1, 4 and 5.

Interim Rebalancing Decision by the Commission

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

Amended Rebalancing Application

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

- 3.2.14 An Amended Rebalancing Application submitted to the Commission under clause 3.2.13 must comply with clause 3.2.7.

Final Rebalancing Application

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

Final decision by the Commission

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

3.3 Duration of application of clause 3

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

3.4 Specification of Pricing Order transition period

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

4. PRICING PRINCIPLES: COST BASE FOR SETTING PRESCRIBED SERVICE TARIFFS

4.1 General – Accrual Building Block Methodology

4.1.1 For the purposes of determining its Aggregate Revenue Requirement, the Port Licence Holder must apply an accrual building block methodology over the Regulatory Period comprising:

- (a) an allowance to recover a return on its capital base, commensurate with that which would be required by a benchmark efficient entity providing services with a similar degree of risk as that which applies to the Port Licence Holder in respect of the provision of the Prescribed Services (see clauses 4.2 and 4.3);
- (b) an allowance to recover the return of its capital base (see clause 4.4); and
- (c) an allowance to recover its forecast operating expenses, commensurate with that which would be required by a prudent service provider acting efficiently (see clause 4.5); less
- (d) an indexation allowance (see clause 4.6).

4.2 Capital Base

4.2.1 Subject to clause 4.2.2 and the increase to the capital base under clause 4.2.9, the capital base applied for the purposes of clause 4.1.1(a) and 4.1.1(b) must be defined, at any particular time, on a roll forward basis, by:

- (a) taking the value at the commencement of any Financial Year;
- (b) adding an indexation allowance for that Financial Year in accordance with clause 4.6.1(a);
- (c) adding efficient capital expenditure when incurred, or to be incurred during that Financial Year, by the Port Licence Holder, acting prudently, in the provision of the Prescribed Services (in each instance, deemed to be incurred as at the mid-point of that Financial Year and adjusted by an indexation allowance in accordance with clause 4.6.1(b) for that Financial Year); and
- (d) deducting an allowance for the return of capital.

4.2.2 The initial capital base is to be determined by applying the asset values specified in clause 4.7.

4.2.3 PCP Capital Expenditure is to be added to the capital base in accordance with the principles in clause 4.2.1.

4.2.4 The act of completing the Port Capacity Project and the act of undertaking capital works so as to comply with a term of the Port Lease or any other obligation arising under a Transaction Arrangement are to be taken to be prudent acts for the purposes of clause 4.2.1.

4.2.5 For the avoidance of doubt, clause 4.2.4 does not preclude an assessment as to whether capital expenditure undertaken so as to comply with a term of the Port Lease or any other obligation under a Transaction Arrangement has been incurred efficiently.

4.2.6 For the avoidance of doubt, the capital base of the Port Licence Holder must not include any value attributable to capital contributions made by a Public Sector Entity to assets used to provide Prescribed Services after the date of the completion of the first Authorised Transaction.

4.2.7 Actions by the Port Licence Holder to:

- (a) acquire the Existing Rail Assets; or
- (b) undertake capital expenditure reasonably necessary to achieve the Rail Asset Deliverables; or
- (c) undertake capital expenditure (that is accepted by the Commission as Approved Strategic Project Capital Expenditure) to deliver a Strategic Project, provided the Port Licence Holder has incurred capital expenditure for that Strategic Project within 2 years of the relevant Final Strategic Project Decision,

are taken to be prudent acts for the purposes of clause 4.2.1.

- 4.2.8 For the avoidance of doubt, clause 4.2.7 does not preclude an assessment as to whether capital expenditure undertaken in accordance with clause 4.2.7(b) has been incurred efficiently.
- 4.2.9 Capital expenditure incurred to acquire the Existing Rail Assets will be deemed for the purposes of this Order to be valued as at 1 January 2020 at A\$21,400,000 and that amount must be added to the capital base at the commencement of the Financial Year following completion of the relevant acquisition without application of the principles in clause 4.2.1(c) to the Existing Rail Assets added to the capital base.
- 4.2.10 Capital expenditure incurred in accordance with clause 4.2.7(b) is to be added to the capital base in accordance with the principles in clause 4.2.1.
- 4.2.11 To the extent that:
- (a) capital expenditure incurred or to be incurred to deliver a Strategic Project does not exceed the Approved Strategic Project Capital Expenditure; and
 - (b) the Port Licence Holder undertakes the Strategic Project to the scope and standard described in the Strategic Project Application accepted by the Commission in relation to that Strategic Project, subject to minor variations to scope and standard having regard to the nature of the Strategic Project,
- that capital expenditure is deemed to be efficient capital expenditure for the purposes of clause 4.2.1(c), provided the Port Licence Holder has incurred capital expenditure for that Strategic Project within 2 years of the relevant Final Strategic Project Decision.
- 4.2.12 For the avoidance of doubt:
- (a) capital expenditure that either:
 - (i) exceeds the Approved Strategic Project Capital Expenditure for a Strategic Project; or
 - (ii) results in a Strategic Project that is not undertaken to the scope and standard described in the Strategic Project Application accepted by the Commission in relation to that Strategic Project,may be added to the capital base, provided the capital expenditure satisfies the requirements of clause 4.2.1(c); and
 - (b) clause 4.2.7(c) and 4.2.11 do not preclude any such capital expenditure being included in the capital base in accordance with clause 4.2.1(c).
- 4.2.13 If the capital expenditure incurred to deliver a Strategic Project (or part of it) is less than the Approved Strategic Project Capital Expenditure, then:
- (a) until the end of the review period (as determined by section 49I of the **Port Management Act 1995** (Vic)) in which the capital expenditure was incurred, the Approved Strategic Project Capital Expenditure is deemed to be efficient capital expenditure for the purposes of clause 4.2.1(c); but
 - (b) from the start of the next review period, the actual capital expenditure will be the efficient capital expenditure for the purposes of clause 4.2.1(c).

4.3 Return on Capital

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

4.4 Return of Capital

- 4.4.1 Subject to clauses 4.4.2 and 4.4.3, for the purposes of clauses 4.1.1(b), depreciation must be determined so that each asset or group of assets used to provide the Prescribed Services is depreciated using a straight-line methodology over a period that is:
- (a) no shorter than the reasonable economic life of the relevant asset or the remaining term of the Port Lease (whichever is shorter); and

- (b) no longer than the remaining term of the Port Lease, (**Depreciation Period**); and
 - (c) only once, meaning that the amount by which the asset or group of assets is depreciated over the Depreciation Period does not exceed the value of the asset or group of assets at the time of its or their inclusion in the capital base.
- 4.4.2 The Port Licence Holder may only use an alternative to the straight-line methodology to be applied under clause 4.4.1 if:
- (a) the application of clause 3.1.1 means that the return of capital derived using a straight-line depreciation methodology is not capable of being recovered in the applicable Financial Year; or
 - (b) the alternative depreciation methodology is reasonably likely to reduce the variance in the expected annual percentage changes in the level of Prescribed Services Tariffs through to the end of the Port Lease.
- 4.4.3 The return of capital allowance in any Financial Year must not be below zero.
- 4.5 Operating Expenses**
- 4.5.1 For the avoidance of doubt, the allowance referred to in clause 4.1.1(c) is to include an amount equal to the Port Licence Fee and any Cost Contribution Amount payable under the Port Concession Deed in respect of the relevant Financial Year in which those expenses are incurred and such amounts are deemed to be commensurate with that which would be required by a prudent service provider acting efficiently.
- 4.5.2 Actions reasonably required to comply with the obligations of the Port Licence Holder under the Port Concession Deed are taken to be prudent acts for the purposes of clause 4.1.1(c).
- 4.5.3 Subject to clause 4.5.6, actions taken by the Port Licence Holder to agree with a Designated Port Tenant(s) to excise a Designated Area from a Designated Lease (such that the Designated Areas revert to exclusive possession of the Port Licence Holder) and to utilise those Designated Areas for the purposes of the Project (including without limitation by the entry into an ROL(s) permitting third party use of those Designated Areas) are taken to be prudent acts for the purposes of clause 4.1.1(c).
- 4.5.4 Subject to clauses 4.5.5 and 4.5.6, the allowance referred to in clause 4.1.1(c) is, on and from 1 June 2020, to include an amount equal in any Financial Year to the sum of the following amounts:
- (a) the area (in square metres) of each Designated Area multiplied by the prevailing annual rent per square metre (exclusive of outgoings) under the corresponding Designated Lease from which the Designated Area was excised; and
 - (b) actual third party outgoings (including without limitation land tax and council rates) incurred by the Port Licence Holder in respect of the Designated Area in relation to a relevant Financial Year that, but for the excision of the Designated Area from the corresponding Designated Lease (pursuant to an act described in clause 4.5.3), would have been recoverable by the Port Licence Holder from the Designated Tenant,
- and such sum is deemed to be commensurate with that which would be required by a prudent service provider acting efficiently.
- 4.5.5 If a Designated Lease is amended, expires or is terminated (and is not renewed, extended or replaced on substantially similar terms) such that it no longer operates as an appropriate benchmark for calculating the amount in clause 4.5.4, then in place of the prevailing annual rent per square metre (exclusive of outgoings) under that Designated Lease, the amount in clause 4.5.4(a) must be calculated for that Designated Area using the weighted average annual rent payable (exclusive of outgoings) per square metre for Unimproved Port Land that is the subject of leases of other Designated Areas between the Port Licence Holder and the remaining Designated Port Tenants in the relevant Financial Year.

- 4.5.6 If, and to the extent that any part of a Designated Area:
- (a) ceases to be reserved for use, or is not used, for the purpose of the Project or is used for any alternative use by the Port Licence Holder; or
 - (b) relates to land on which rail use has been adversely impacted due to a change in use of the surrounding Leased Area (as defined in the Port Lease),
- the Designated Area will be reduced to that extent and no allowance referable to that part of a Designated Area must be included in the allowance calculated under clause 4.5.4 or otherwise be deemed to be an amount commensurate with that which would be required by a prudent service provider acting efficiently.
- 4.5.7 Actions by the Port Licence Holder to incur operating expenses (that are accepted by the Commission as Approved Strategic Project Operating Expenses) to deliver a Strategic Project, provided the Port Licence Holder has incurred capital expenditure for that Strategic Project within 2 years of the relevant Final Strategic Project Decision, are taken to be prudent acts for the purposes of clause 4.1.1(c).
- 4.5.8 To the extent that:
- (a) operating expenses incurred or to be incurred to deliver a Strategic Project do not exceed the Approved Strategic Project Operating Expenses;
 - (b) operating expenses incurred or to be incurred to deliver a Strategic Project do not include expenses associated with maintaining or operating port infrastructure that are unrelated to the Strategic Project; and
 - (c) operating expenses incurred or to be incurred relate to the Port Licence Holder undertaking a Strategic Project to the scope and standard described in the Strategic Project Application accepted by the Commission in relation to that Strategic Project, subject to minor variations to scope and standard having regard to the nature of the Strategic Project,
- those operating expenses are deemed to be efficient operating expenses for the purposes of clause 4.1.1(c), provided the Port Licence Holder has incurred capital expenditure for a Strategic Project within 2 years of the relevant Final Strategic Project Decision.
- 4.5.9 For the avoidance of doubt, clauses 4.5.7 and 4.5.8 do not preclude any operating expenses which:
- (a) exceed the Approved Strategic Project Operating Expenses for a particular Strategic Project; or
 - (b) results in a particular Strategic Project not undertaken to the scope and standard described in the Strategic Project Application accepted by the Commission in relation to that Strategic Project,
- being included in the Aggregate Revenue Requirement in accordance with clause 4.1.1(c).

4.6 Indexation Allowance

- 4.6.1 For each relevant Financial Year, the indexation allowance referred to in clause 4.1.1(d) is an amount equal to the sum of:
- (a) for the purposes of clause 4.2.1(b), the percentage change, or forecast percentage change, in the CPI for the relevant Financial Year, multiplied by the value of the capital base at the commencement of the relevant Financial Year; and
 - (b) for the purposes of clause 4.2.1(c), one half of the percentage change, or forecast percentage change, in the CPI for the relevant Financial Year, multiplied by the efficient capital expenditure when incurred, or to be incurred during that Financial Year.

4.7 Initial Capital Asset Values

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

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

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

5. COST ALLOCATION PRINCIPLES

5.1 Cost Allocation Principles Objectives

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

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

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

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

(Cost Allocation Principles).

6. REFERENCE TARIFF SCHEDULE

6.1 Provision/Publication of Reference Tariff Schedule

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

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

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

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

6.1.4 The Reference Tariff Schedule must specify:

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

- 6.1.5 Prescribed Service Tariffs that are specified in the Reference Tariff Schedule must:
- (a) not include charges or fees for services that are not Prescribed Services; and
 - (b) separately identify the Prescribed Service Tariffs for Shared Channel Services.
- 6.1.6 The Port Licence Holder must offer to provide Port Users with Prescribed Services in accordance with the Reference Tariff Schedule.
- 6.1.7 The Port Licence Holder must not require a Port User to acquire services that are not Prescribed Services in order for that Port User to be supplied with Prescribed Services.
- 6.2 Contracts for Prescribed Services**
- 6.2.1 The Port Licence Holder may enter into a contract with a Port User for the supply of Prescribed Services on terms and conditions that:
- (a) differ from those specified in the Reference Tariff Schedule; or
 - (b) do not satisfy the requirements in clause 6.1.5, but only if:
 - (c) the Port Licence Holder has first offered to provide those Prescribed Services to that Port User in accordance with the Reference Tariff Schedule (as required by clause 6.1.6); and
 - (d) the contracted terms and conditions comply with the principles set out in clauses 2.1.1, 2.1.2, 2.1.3 and 2.3.1.
- 6.2.2 For the avoidance of doubt, despite the entry into a contract with a Port User as contemplated by clause 6.2.1:
- (a) the services provided under the contract remain Prescribed Services; and
 - (b) revenue from the Prescribed Services provided under all such contracts must be included in the Port Licence Holder's calculation of its Aggregate Revenue Requirement under clause 2.1.1.
- 6.3 Changes to Prescribed Service Tariffs**
- 6.3.1 During a Financial Year and in addition to the requirements in clause 2.3.1, if the Port Licence Holder seeks to amend its Reference Tariff Schedule in order to charge for a new or additional service as part of a Prescribed Service, or for any other reason, it must:
- (a) notify Port Users and the Commission of its intention to do so by providing its proposed amendments to the Reference Tariff Schedule sixty (60) days prior to its earliest date of effect; and
 - (b) provide Port Users and the Commission with thirty (30) days notice of the final version of the amended Reference Tariff Schedule.
- 6.3.2 For the avoidance of doubt, if the Port Licence Holder amends its Reference Tariff Schedule in accordance with clause 6.3.1, from the date the amendments come into effect:
- (a) the new Reference Tariff Schedule will replace the previous Reference Tariff Schedule; and
 - (b) the obligations in clauses 6.1.3 to 6.1.7 and in clause 6.2 will apply in respect of the new Reference Tariff Schedule.
- 6.3.3 Subject to clause 6.3.4, the Reference Tariff Schedule for the Financial Year commencing 1 July 2019 is amended to increase the Prescribed Service Tariff for 'Full – inward' Wharfage Fees from \$110.77 (GST-exclusive) to \$120.52 (GST-exclusive) on and from the later of 1 June 2020 and the date of gazettal of the amendments to this Order introducing this clause 6.3.3.

- 6.3.4 If the date of gazettal of the amendments to this Order introducing clause 6.3.3 is on or after 1 July 2020, then clause 6.3.3 will not apply and instead the Reference Tariff Schedule for the Financial Year in which that date of gazettal occurs will be amended on and from the date of gazettal to increase the Prescribed Service Tariff for 'Full – inward' Wharfage Fees (as otherwise applying) by an amount equal to \$9.75 (GST-exclusive) increased by the percentage change in CPI (if any) between the March CPI published for 2019 and the March CPI published most recently prior to that date of gazettal of the amendments to this Order.
- 6.3.5 For the avoidance of doubt, clauses 6.3.1 and 6.3.2 apply to the Reference Tariff Schedule as amended by clause 6.3.3 or 6.3.4.

6A STRATEGIC PROJECTS – EX ANTE REVIEW

6A.1 Function of the Commission

6A.1.1 The Commission must, in accordance with this clause 6A, consider if a Strategic Project, as described in a Strategic Project Application, satisfies the Strategic Project Principles and either:

- (a) accept a Strategic Project Application if it is satisfied the project satisfies the Strategic Project Principles; or
- (b) not accept a Strategic Project Application if it is not satisfied the project satisfies the Strategic Project Principles.

6A.1.2 The principles the Commission applies in its consideration of a Strategic Project must, to the extent possible having regard to the requirements of this clause 6A, be consistent with the principles the Commission applies in any other consideration it may undertake in respect of this Pricing Order.

6A.2 Strategic Project Applications

6A.2.1 The Port Licence Holder may, at any time, provide to the Commission a Strategic Project Application and:

- (a) must not provide to the Commission more than two (2) Strategic Project Applications within any twelve (12) month period; and
- (b) must pay a fee to the Commission in the amount published by the Commission from time to time at the time the relevant Strategic Project Application is provided to the Commission.

6A.2.2 The Port Licence Holder may submit further Strategic Project Applications in respect of a particular Strategic Project, including for example (and without limitation):

- (a) to respond to a decision of the Commission under this clause 6A;
- (b) if it considers circumstances have changed since the date the Commission accepted the Strategic Project Application in respect of that Strategic Project and those circumstances justify termination of, slow down to or variation of the Strategic Project, save that capital expenditure that forms part of the capital base at the date of the termination of, slow down to or variation of the Strategic Project will continue to be deemed to be efficient capital expenditure incurred by the Port Licence Holder, acting prudently, for the purposes of clause 4.2.1(c); or
- (c) if it is able to provide more detailed or certain costs for portions of the Strategic Project than that provided in its previous Strategic Project Application for that Strategic Project.

6A.2.3 A Strategic Project Application must:

- (a) contain sufficient supporting information to enable the Commission to verify that the proposed project complies with the Strategic Project Principles;
- (b) comply with the requirements in clause 8.
- (c) set out the process by which the Port Licence Holder has effectively consulted and had regard to the comments provided by Port Users; and
- (d) contain any other sufficient supporting information determined by the Commission under clause 9.

6A.2.4 For the avoidance of doubt, if the Port Licence Holder submits a revised Strategic Project Application that responds to:

- (a) an Interim Strategic Project Decision, and the revisions are limited to addressing matters identified by the Commission in the Interim Strategic Project Decision, clause 6A.3 does not apply to that revised Strategic Project Application; and
- (b) any decision of the Commission under clause 6A.1 to 6A.4, clause 6A.2.1(a) and (b) does not apply to that revised Strategic Project Application except if the Strategic Project Application is submitted after the Commission's Final Strategic Project Decision in respect of that project.

6A.3 Strategic Project Threshold

6A.3.1 The Commission must consider if the proposed project meets the Strategic Project Threshold and notify in writing the Port Licence Holder of its decision within thirty (30) Business Days of receipt of the Strategic Project Application.

6A.3.2 If the Commission considers the proposed project meets the Strategic Project Threshold, it must notify in writing the Port Licence Holder of its proposed timing (subject to clauses 6A.4.2 and 6A.5.6) to complete its assessment of whether the Strategic Project Application satisfies the Strategic Project Principles, including its proposed timing of an Interim Strategic Project Decision and Final Strategic Project Decision. Subject to clause 6A.5.6, the Commission may extend these proposed timings by notice to the Port Licence Holder.

6A.3.3 A notification under clause 6A.3.1 and, if applicable, clause 6A.3.2 must be published on the Commission's website.

6A.3.4 If the Commission considers the proposed project does not meet the Strategic Project Threshold, it is not required to consider the Strategic Project Application further.

6A.4 Interim Strategic Project Decision

6A.4.1 Subject to the Port Licence Holder's compliance with clause 6A.2 and the Commission deciding that the proposed project meets the Strategic Project Threshold, the Commission must notify in writing the Port Licence Holder of either its:

- (a) interim acceptance of the Strategic Project Application on the basis that it is satisfied the project satisfies the Strategic Project Principles; or
- (a) intention to not accept the Strategic Project Application on the basis that it is not satisfied the project satisfies the Strategic Project Principles,

(Interim Strategic Project Decision) within the timeframe notified by the Commission under clause 6A.3.2 (as varied by clause 6A.4.2). If notification has not been given within that timeframe, the Commission shall be deemed to have given its interim acceptance to the Strategic Project Application.

6A.4.2 Where the Commission has not received sufficient supporting documentation from the Port Licence Holder in accordance with any relevant determination made under clause 9, the timeframe specified in clause 6A.3.2 may be extended at the Commission's discretion (subject to clause 6A.5.6) by the period starting on the day the Commission requests further information from the Port Licence Holder and ending on the day that the Port Licence Holder complies with that request.

6A.4.3 The Commission must grant interim acceptance of a Strategic Project Application if it is satisfied that the proposed Strategic Project complies with the Strategic Project Principles.

6A.4.4 If the Commission notifies the Port Licence Holder under clause 6A.4.1 of the Commission's intention to not accept the Strategic Project Application, the Commission must provide in that notification:

- (a) reasons for its intended non-acceptance; and
- (b) a proposed timeframe for the Port Licence Holder to submit a revised Strategic Project Application responding to the Commission's decision under clause 6A.4.1.

6A.4.5 The timeframe proposed by the Commission under clause 6A.4.4(b):

- (a) must be reasonable, having regard to the nature of the Commission's decision under clause 6A.4.1;
- (b) must be no less than ten (10) Business Days; and
- (c) does not restrict the Port Licence Holder from submitting a revised Strategic Project Application up to 3 months later than the proposed timeframe under clause 6A.4.4(b) (and for the avoidance of doubt, the Commission is not required to accept a revised Strategic Project Application that is submitted more than 3 months later than proposed by the Commission).

6A.4.6 An Interim Strategic Project Decision and, if applicable, the reasons and timeframe notified under clause 6A.4.4 must be published on the Commission's website.

6A.5 Final Strategic Project Decision

6A.5.1 The Commission must give the Port Licence Holder an opportunity to make a written submission (and to submit a revised Strategic Project Application, responding to the Commission's decision under clause 6A.4.1(b)) to the Commission on the Interim Strategic Project Decision before the Commission makes its final decision.

6A.5.2 The Commission may, in the Commission's absolute discretion, consult with Port Users or other third parties on the Strategic Project Application.

6A.5.3 Subject to clause 6A.5.6, the Commission must notify the Port Licence Holder in writing of either its:

- (a) acceptance of the Strategic Project Application (or revised Strategic Project Application, if applicable); or
- (b) non-acceptance of the Strategic Project Application (or revised Strategic Project Application, if applicable),

(Final Strategic Project Decision) within the timeframe notified by the Commission under clause 6A.3.2 (as varied by clause 6A.4.2). If notification has not been given within that timeframe, the Commission shall be deemed to have given its acceptance to the Strategic Project Application.

6A.5.4 If the Commission notifies the Port Licence Holder under clause 6A.5.3 of the Commission's non-acceptance of the Strategic Project Application, the Commission must provide reasons in that notification.

6A.5.5 A Final Strategic Project Decision and, if applicable, the reasons notified under clause 6A.5.4 must be published on the Commission's website.

6A.5.6 Unless the Port Licence Holder otherwise consents, the maximum time period for the Commission's consideration of a Strategic Project Application under this clause 6A is:

- (a) 9 months from the date of the Commission's receipt of that Strategic Project Application; plus
- (b) if the Port Licence Holder submits a revised Strategic Project Application after the timeframe proposed by the Commission under clause 6A.4.4(b), the same number of Business Days as the number of Business Days that fall from the end of that timeframe until the date of the submission.

6A.5.7 Where the Commission accepts a Strategic Project Application in respect of PCEP in a Final Strategic Project Decision, the Port Licence Holder may vary its Aggregate Revenue Requirement (for the current Regulatory Period) and its capital base to reflect:

- (a) capital expenditure incurred or to be incurred (that is accepted by the Commission as Approved Strategic Project Capital Expenditure); and
- (b) operating expenses incurred or to be incurred (that are accepted by the Commission as Approved Strategic Project Operating Expenses),

to the extent that:

- (c) the capital expenditure or operating expenses are not already reflected in the Aggregate Revenue Requirement or capital base; and
- (d) the variation does not include any capital expenditure or operating expenses incurred prior to the commencement of this clause 6A.5.7 and not reflected in the Aggregate Revenue Requirement or capital base at the date of commencement of this clause.

6A.6 Compliance

6A.6.1 The Port Licence Holder must, prior to the start of each Regulatory Period, amend its capital base to ensure it reflects the requirements of clauses 4.2.11, 4.2.12 and 4.2.13 (including by removing forecast capital expenditure for a Strategic Project otherwise permitted to be included in the capital base by operation of clause 4.2.1 and including actual capital expenditure to the extent it is deemed efficient under clauses 4.2.11, 4.2.12 and 4.2.13).

6A.6.2 If the Commission considers the Port Licence Holder has not complied with clause 6A.6.1, it may request the Port Licence Holder to comply with 6A.6.1.

6A.6.3 A decision under clause 6A.6.2 must be published on the Commission's website.

7. TARIFF COMPLIANCE STATEMENT

7.1.1 The Port Licence Holder must provide to the Commission a Tariff Compliance Statement:

- (a) no later than 31 May in each Financial Year; and
- (b) where Prescribed Service Tariffs are to be varied or a new Prescribed Service Tariff is to be introduced (except for the amendment to the Prescribed Service Tariff for 'Full – inward' Wharfage Fees under clause 6.3.3 or clause 6.3.4), at the same time as it notifies Port Users and the Commission under clause 6.3.1(b).

7.1.2 The Tariff Compliance Statement must:

- (a) set out the Prescribed Service Tariffs for the forthcoming Financial Year (where clause 7.1.1(a) applies) or for the remainder of the Financial Year (where clauses 7.1.1(b) applies);
- (b) provide information detailing the basis by which adjustments to, or introduction of new, Prescribed Service Tariffs have been made, including the cost building blocks that have been applied and the basis on which the rate of return has been determined;
- (c) provide information on all contracts with Port Users of the kind described in clause 6.2.1 and the basis on which they comply with clause 6.2.1;
- (d) set out the process by which the Port Licence Holder has effectively consulted and had regard to the comments provided by Port Users;
- (e) explain how the Prescribed Service Tariffs comply with this Order, including the Pricing Principles and Cost Allocation Principles;
- (f) contain any other sufficient supporting information determined by the Commission under clause 9; and
- (g) comply with the requirements in clause 8.

7.1.3 For the avoidance of doubt, the Port Licence Holder must comply with clause 7.1.1 and 7.1.2 if it intends to vary a Prescribed Service Tariff after a variation of the Aggregate Revenue Requirement or the capital base under clause 6A.5.7.

8. INFORMATION REQUIREMENTS

8.1 Basis on which financial information is to be provided

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

8.2 Forecasts and estimates

- 8.2.1 Information in the nature of an estimate or forecast must be supported by a statement of the basis of the forecast or estimate.
- 8.2.2 A forecast or estimate:
- (a) must be arrived at on a reasonable basis; and
 - (b) must represent the best forecast or estimate possible in the circumstances.

8.3 Inferred or derivative information

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

9. COMMISSION MAY DETERMINE FORM AND CONTENT OF SUPPORTING DOCUMENTATION

- 9.1.1 The Commission may, from time to time, determine what constitutes ‘sufficient supporting information’ for the purposes of clauses 3.2.7, 3.3.2, 6A.2.3 and 7.1.2(f).
- 9.1.2 A determination under clause 9.1.1 may specify the form and content of information to be provided.
- 9.1.3 A determination under clause 9.1.1 must be published on the Commission’s website.

10. COMMISSION MAY DETERMINE INDICES TO BE USED

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

11. INITIAL PRESCRIBED SERVICE TARIFFS

- 11.1.1 The Prescribed Service Tariffs that apply on and from the Commencement Date are those set out in the Schedule to this Order (**Initial Prescribed Service Tariffs**).
- 11.1.2 In the Initial Financial Year, the Port Licence Holder must not charge an amount for any Prescribed Service other than in accordance with the Schedule to this Order.
- 11.1.3 Despite any other provision of this Order, the Initial Prescribed Service Tariffs established under clause 11.1.1 are deemed to comply with the Pricing Principles and Cost Allocation Principles in the Initial Financial Year.
- 11.1.4 Despite any other provision of this Order, the Prescribed Service Tariff for ‘Full – inward’ Wharfage Fees applying immediately after the amendment effected by clause 6.3.3 or clause 6.3.4 is deemed to comply with the Pricing Principles and the Cost Allocation Principles in the Financial Year in which that amendment takes effect.

12. PROTECTED PROVISIONS

- 12.1.1 The following clauses of this Order are ‘protected provisions’ for the purposes of the Act:
- (a) clause 4.2.3 (Port Capacity Project);
 - (b) clause 4.2.4 (prudent capital expenditure);
 - (c) clause 4.2.7 (prudent capital expenditure);
 - (d) clause 4.2.9 (Existing Rail Assets capital value);
 - (e) clause 4.2.11 to 4.2.13 (inclusive) (efficient capital expenditure);
 - (f) clause 4.4.1 (Depreciation Period);
 - (g) clause 4.5.1 (Port Licence Fee);
 - (h) clause 4.5.3 to 4.5.9 (inclusive) (prudent operating expenses);
 - (i) clause 4.7 (initial capital asset values); and
 - (j) clause 6A (Strategic Projects).

13. REGULATORY PERIOD

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

14. DEFINITIONS

In this Order:

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

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

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

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

Approved Strategic Project Capital Expenditure means, in respect of a Strategic Project, the amount of capital expenditure detailed in a Strategic Project Application accepted by the Commission in a Final Strategic Project Decision as satisfying the Strategic Project Principles (and which, for the avoidance of doubt, may be varied by a further Strategic Project Application in respect of that project, if accepted by the Commission in a Final Strategic Project Decision as satisfying the Strategic Project Principles).

Approved Strategic Project Operating Expenses means, in respect of a Strategic Project, the amount of operating expenses detailed in a Strategic Project Application accepted by the Commission in a Final Strategic Project Decision as satisfying the Strategic Project Principles (and which, for the avoidance of doubt, may be varied by a further Strategic Project Application in respect of that project, if accepted by the Commission in a Final Strategic Project Decision as satisfying the Strategic Project Principles).

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

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

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in Melbourne, Victoria.

Commencement Date has the meaning set out in clause 1.1.1.

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

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

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

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

Dedicated Channels has the same meaning as in the Act.

Dedicated Channel Services means the provision of the Dedicated Channels.

Depreciation Period has the meaning set out in clause 4.4.1.

Designated Areas has the same meaning as in clause 1 of the Port Rail Transformation Agreement.

Designated Lease has the same meaning as in clause 1 of the Port Rail Transformation Agreement.

Designated Port Tenants has the same meaning as in clause 1 of the Port Rail Transformation Agreement.

Existing Rail Assets has the same meaning as in clause 1 of the Port Rail Transformation Agreement.

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

- (a) reducing Prescribed Service Tariffs for full outbound container wharfage services by 2.5% from the price applicable at the start of the preceding Financial Year, at the start of each of the 2017, 2018, 2019 and 2020 Financial Years; and

- (b) from the start of the 2021 Financial Year and thereafter, setting prices for Prescribed Service Tariffs for full outbound container wharfage services at a percentage discount to the equivalent Prescribed Service Tariffs for full inbound container wharfage services that, expressed as a percentage, is the same or a greater percentage discount than was applicable in the 2020 Financial Year.

Final Rebalancing Application has the meaning given in clause 3.2.15.

Final Strategic Project Decision has the meaning given in clause 6A.5.3.

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

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

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

Interim Rebalancing Decision has the meaning given in clause 3.2.8.

Interim Strategic Project Decision has the meaning given in clause 6A.4.1.

March CPI means the CPI for the March quarter.

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

Notified PCEP Costs means that part of any Aggregate Revenue Requirement attributable to PCEP which, unless relief from the Tariffs Adjustment Limit was provided to the Port Licence Holder, would not be recoverable despite utilising an alternative to the straight-line methodology for depreciation under clause 4.4.2.

PCEP means the Strategic Project as accepted by the Commission and known as the Port Capacity Enhancement Program which includes the development of infrastructure, relocation of trades and undertaking other activities that the Commission accepts are reasonably required to deliver a Webb Dock North container terminal.

PCP Capital Expenditure means:

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

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

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

Project has the same meaning as in clause 1 of the Port Rail Transformation Agreement.

Port Concession Deed means the Transaction Arrangement bearing that name.

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

Port Licence Fee means the Annual Licence Fee.

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

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

Port Rail Transformation Agreement means the document of that name entered into between The Crown in right of the State of Victoria and the Port Licence Holder amongst others on or about 30 January 2020.

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

Prescribed Services has the same meaning as in the Act.

Prescribed Service Bundle means each of the following:

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

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

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

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

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

Rail Asset Costs has the same meaning as in clause 1 of the Port Rail Transformation Agreement.

Rail Asset Deliverables has the same meaning as in clause 1 of the Port Rail Transformation Agreement.

Rebalancing Application has the meaning set out in clause 3.2.4.

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

Regulatory Period has the meaning set out in clause 13.1.1.

ROL has the same meaning as in clause 1 of the Port Rail Transformation Agreement.

Shared Channels has the same meaning as in the Act.

Shared Channel Services means the provision of the Shared Channels.

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

Strategic Project means a project accepted by the Commission, in accordance with clause 6A of this Order, as satisfying the Strategic Project Principles.

Strategic Project Application means an application made by the Port Licence Holder for the Commission to determine if a proposed project, as described in a Strategic Project Application, satisfies the Strategic Project Principles.

Strategic Project Principles means each of the following principles:

- (a) the project meets the Strategic Project Threshold;
- (b) the project has a program of works which:
 - (i) is sufficiently identified to enable the Commission to assess the project separately from the Port Licence Holder’s program of works that is unrelated to the project; and

- (ii) does not include works or expenses associated with maintaining or operating port infrastructure that are unrelated to the project;
- (c) the capital expenditure and operating expenses incurred for the project were efficient expenditure when incurred or will be efficient expenditure when incurred;
- (d) by undertaking the project, the Port Licence Holder has acted prudently or will be acting prudently.

Strategic Project Threshold means the Strategic Project Application:

- (a) relates to a proposed project with expected capital expenditure of at least A\$500,000,000 as at 1 July 2026, as adjusted annually on and from 1 July 2027 by the percentage change in the CPI from the previous 1 July; and
- (b) satisfies the requirements of clauses 6A.2.3(c) and 6A.2.3(d).

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

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

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

Unimproved Port Land means land of an equivalent use that is leased to a Designated Port Tenant by the Port Licence Holder, as at the date of calculation, excluding any rental for:

- (a) buildings or similar structures intended for occupation, hardstand or aprons that are owned or were constructed by or for the Port Licence Holder and leased for use by a Designated Port Tenant on the Designated Area; or
- (b) any structures or improvements owned by the Designated Port Tenant on the Designated Area.’.

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

Dated: 16 June 2026

Responsible Minister:

THE HON. SONYA KILKENNY MP

Minister for Finance

SHELBY RAE
Clerk of the Executive Council