



# Victoria Government Gazette

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## Port Management Act 1995 (Vic)

### AMENDMENT OF PRICING ORDER DATED 21 JUNE 2016

#### Order in Council

The Governor in Council, under section 49A of the **Port Management Act 1995** (Vic), amends the Order in Council dated 21 June 2016 and published in the Government Gazette on 24 June 2016 as follows:

- (a) After clause 2.1.5, insert the following clause –  
‘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.’
- (b) In clause 3.1.1, after ‘In addition to complying with clause 2’, insert ‘, but subject to clause 3.1.2’.
- (c) After clause 3.1.1, insert the following clauses –  
‘3.1.2 Clauses 3.1.1 and 3.2.1 do not apply to an amendment to the Prescribed Service Tariff for ‘Full – inward’ Wharfage Fees under clause 6.3.3 or clause 6.3.4.  
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’.
- (d) In clause 4.2.1, after ‘Subject to clause 4.2.2’ insert ‘and the increase to the capital base under clause 4.2.9’.
- (e) After clause 4.2.6, insert the following clauses –  
‘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,  
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.’
- (f) After clause 4.5.2, insert the following clauses –  
‘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).

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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.’

(g) After clause 6.3.2, insert the following clauses –

‘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.’
- (h) In clause 7.1.1(b), after ‘a new Prescribed Service Tariff is to be introduced’ insert ‘(except for the amendment to the Prescribed Service Tariff for ‘Full – inward’ Wharfage Fees under clause 6.3.3 or clause 6.3.4)’.
- (i) After clause 11.1.3, insert the following clause –  
‘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.’
- (j) 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 4.4.1 (Depreciation Period);  
(f) clause 4.5.1 (Port Licence Fee);  
(g) clause 4.5.3 to 4.5.6 (inclusive) (prudent operating expenses);  
(h) clause 4.7 (initial capital asset values).’
- (k) In clause 14 –  
(i) following the definition of Depreciation Period, insert the following –  
‘**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.’  
(ii) following the definition of Port Capacity Project, insert the following –  
‘**Project** has the same meaning as in clause 1 of the Port Rail Transformation Agreement.’  
(iii) following the definition of Port of Melbourne Waters, insert the following –  
‘**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.’  
(iv) following the definition of Public Sector Entity, insert the following –  
‘**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.’

- (v) following the definition of Regulatory Period, insert the following –  
‘**ROL** has the same meaning as in clause 1 of the Port Rail Transformation Agreement.’.
- (vi) following the definition of Transaction Arrangement, insert the following –  
‘**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.’.

The amendments have effect from the date this Order is published in the Government Gazette.

Dated 19 May 2020

Responsible Minister

HON ROBIN SCOTT MP

Assistant Treasurer

CLAIRE CHISHOLM  
Clerk of the Executive Council

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