

# Public engagement summary: 2021 inquiry into Port of Melbourne compliance with the pricing order

## Version history

Version	Date	Summary of changes
1.0	16 September 2021	Initial release, including all submissions up to 16 September 2021.
2.0	4 January 2022	Updated for latest submissions and further information on our inquiry process.

## Project background

We are required by the *Port Management Act 1995 (Vic)* to conduct an inquiry into the Port's compliance with the [pricing order](#) every five years. This inquiry will consider if there was any non-compliance, and if so, whether that was, in our view, non-compliance in a significant and sustained manner.<sup>1</sup>

A number of persons request or receive prescribed services from the port of Melbourne.<sup>2</sup> These persons are defined in the pricing order as 'port users'.<sup>3</sup> They include international and domestic shipping lines carrying containerised and general cargo to and from Melbourne through Port Phillip Bay, stevedores that access and use wharf infrastructure to handle containerised and other cargo for shipping lines and transport providers, cargo owners and freight forwarders.

The Port charges port users tariffs for prescribed services it provides as set out in its Reference Tariff Schedule.<sup>4</sup> These tariffs are set by the Port in accordance with the pricing order which sets out the requirements for the Port when setting prices for prescribed services, such as:

- the approach and principles to be applied to calculate and set prices
- the extent prices can change between regulatory years

---

<sup>1</sup> Port Management Act 1995 (Vic), s 49I(1).

<sup>2</sup> Defined in clause 14 of the pricing order as being having the same meaning as in the *Port Management Act 1995 (Vic)*. 'Prescribed services' are defined in section 49(1)(a)(c) of the *Port Management Act 1995 (Vic)*.

<sup>3</sup> Pricing order, clause 14.

<sup>4</sup> To be prepared and published by the Port of Melbourne in accordance with clauses 6, 7 and 8 of the pricing order.

- when the Port needs to apply to us for new or variations to existing tariffs or to discontinue existing tariffs.

The Port may also enter into contracts with port users for the supply of prescribed services on terms and conditions that differ from those specified in the Reference Tariff Schedule, but only if certain conditions are met.<sup>5</sup>

We ran a public engagement process to seek the views of interested stakeholders. Engaging during the coronavirus pandemic meant adapting our approach to ensure stakeholders could still provide feedback. To achieve this, we:

- promoted discussion in our virtual public forum event
- invited written submissions to our inquiry
- held one-on-one stakeholder engagement sessions.

We provided our draft inquiry report, with stakeholders' confidential and commercially sensitive information redacted, to the Port and we invited the Port to make a written submission in response.<sup>6</sup>

In preparing the final inquiry report, we have had regard to:

- the Port's tariff compliance statements for the 2017-18 to 2020-21 financial years with supporting information and relevant aspects of the tariff compliance statement for the 2021-22 financial year<sup>7</sup>
- over 2300 documents provided by the Port under a compulsory information production notice<sup>8</sup>
- all written submissions provided by stakeholders, including the Port's written submission on the draft inquiry report
- advice received by the commission from expert consultants engaged on key matters relevant for the inquiry<sup>9</sup>
- all relevant provisions under the:
  - pricing order
  - Port Management Act 1995 (Vic)
  - Essential Services Commission Act 2001 (Vic).

---

<sup>5</sup> See clause 6.2 of the pricing order.

<sup>6</sup> Sections 49J(a) and (b) of the *Port Management Act 1995* (Vic) oblige the commission to provide a draft of the report to the Port of Melbourne to give it an opportunity to make a written submission on the draft report before the commission prepares its final report on the inquiry.

<sup>7</sup> Refer to the memorandum of Queen's Counsel advice provided to the commission by Peter Hanks QC and Catherine Dermody, which is available on our website.

<sup>8</sup> Issued under section 56 of the *Port Management Act 1995* (Vic).

<sup>9</sup> Not all matters raised by stakeholders were within the scope of this inquiry. Please refer to the memorandum of Queen's Counsel advice provided to the commission by Peter Hanks QC and Catherine Dermody.

## How we engaged



### Key dates

- 10 June 2021: inquiry started and submissions opened
- 5 July to 5 August 2021: one-on-one information sessions
- 15 July 2021: virtual public forum
- 3 September 2021: submissions closed
- 26 October 2021: draft inquiry report provided to the Port of Melbourne
- 26 November 2021: Port of Melbourne's response to our draft inquiry report submitted to us
- By 31 December 2021: final inquiry report (public and confidential versions) to be provided to Assistant Treasurer<sup>10</sup>
- Early 2022: public version of final inquiry report to be made available for public inspection by the Assistant Treasurer and thereafter made publicly available by the commission<sup>11</sup>



### Methodology

- We sought written submissions via Engage Victoria.
- We held a virtual public forum on 15 July 2021 to inform interested parties of our inquiry process.
- We conducted one-on-one information sessions from 5 July to 5 August 2021. These sessions were held on a confidential basis to assist stakeholders with making written submissions. These sessions enabled stakeholders to ask questions and raise any matters related to the inquiry.
- We had an online public forum open in Engage Victoria for the duration of the review. This forum invited interested parties to publicly submit written questions to the team for answers within 3-5 business days.
- We provided all stakeholders who made a written submission to our inquiry the opportunity to meet with commissioners and present on their submission.

---

<sup>10</sup> Section 49I(1) of the *Port Management Act 1995 (Vic)* requires the commission to provide the final inquiry report to the Assistant Treasurer by no later than 31 December 2021.

<sup>11</sup> Section 45(6) of the *Essential Services Commission Act 2001 (Vic)* requires the Minister, after receiving the final report, to cause a copy of the public version of this report to be laid before each House of the Parliament within seven sitting days of the House. The Minister must, after the public version of the final report has been laid before each House of the Parliament, or if the Parliament is not sitting, within 30 days after receiving this, ensure that a copy is available for public inspection. After the Minister has made the public version of the final report publicly available, the commission must ensure that copies are made publicly available (section 45(7) of the *Essential Services Commission Act 2001 (Vic)*).

- We invited the Port of Melbourne to make a written submission on our draft inquiry report.



#### **Number of participants**

- 293 visitors to our Engage Victoria consultation page viewed it collectively 650 times between 10 June 2021 to 3 September 2021.
- 44 attendees at our online public forum including:
  - port users and other interested or affected stakeholders
  - Victorian government representatives.



#### **Number of submissions received (written, verbal)**

- 18 written submissions (15 public submissions from the stakeholders listed below, and 3 confidential submissions):
  - ANL Container Line Pty Ltd
  - Anonymous (two submitters)
  - Butler Freight Services Pty Ltd
  - Freight & Trade Alliance
  - Maritime Union of Australia
  - Patrick Terminals (three submissions)
  - Port of Melbourne (two submissions)
  - Port of Melbourne Shareholder Group
  - Quantem
  - Shipping Australia Limited
  - Victorian International Container Terminal

# Summary of issues raised by stakeholders

We asked	You said
<p>We invited views on the Port’s compliance with the pricing order during the five-year review period from 1 July 2016 to 30 June 2021. Submissions were open from 10 June to 3 September 2021.</p> <p>On Engage Victoria, we asked for general feedback and more specifically:</p> <ul style="list-style-type: none"> <li>• whether you thought the Port of Melbourne has complied with the pricing order during the review period</li> <li>• whether the Port of Melbourne charged you prices in accordance with its reference tariff schedule since July 2016</li> <li>• whether you thought the Port of Melbourne has made prudent and efficient investments in its port infrastructure over the last five years</li> <li>• what you thought of the Port of Melbourne’s rate of return on its investments over the last five years</li> <li>• whether the Port of Melbourne consulted with you in the development of its prices and/or services between July 2016 and June 2021.</li> </ul>	<p>We received 16 written submissions by 3 September 2021 which covered topics including:</p> <p><b>The Port’s stakeholder engagement</b></p> <ul style="list-style-type: none"> <li>• Four submissions are supportive of the Port’s approach to stakeholder engagement. Seven submissions are concerned with the Port’s approach to stakeholder engagement.</li> </ul> <p><b>Wharfage fees and prices</b></p> <ul style="list-style-type: none"> <li>• A number of submissions raised concerns with future increases to wharfage fees and price shocks.</li> </ul> <p><b>The Port’s Weighted Average Cost of Capital (WACC)</b></p> <ul style="list-style-type: none"> <li>• Three submissions outlined concerns with the Port’s approach to estimating its WACC. There was one supportive submission.</li> </ul> <p><b>The Port’s approach to depreciation</b></p> <ul style="list-style-type: none"> <li>• Six submissions outlined concerns on the Port’s deferred depreciation approach and its potential for price shock.</li> </ul> <p><b>Prudency and efficiency of capital expenditure</b></p> <ul style="list-style-type: none"> <li>• A number of submissions were concerned with the prudency and efficiency of capital expenditure on the Webb Dock East Expansion project.</li> </ul> <p><b>Demand forecasting by the Port</b></p> <ul style="list-style-type: none"> <li>• A number of submissions considered the long-term demand forecasted by the Port was overstated.</li> </ul> <p>A number of submissions commented on the Webb Dock East Expansion project, and various aspects of the Port’s 2021-2022 Tariff Compliance Statement, and whether these are relevant matters that should be considered in this inquiry. The Webb Dock East Expansion project delivery is considered out of scope and will fall within the scope of the next 5 yearly inquiry. (Please refer to Queen’s Counsel advice published on <a href="#">our inquiry webpage</a>.)</p>
<p>We received and accepted two public written submissions after 3 September 2021. These letters were published on our website.</p>	<p>We received a written submission from Patrick Terminals on 11 October 2021 regarding the scope of the inquiry.</p> <p>We received a written submission from the Port of Melbourne on 14 October 2021 concerning matters raised in a number of stakeholder submissions.</p>

## Our engagement events

### Online public forum

Our virtual public forum was on 15 July 2021 via Zoom. A recording is available at the commission's [YouTube channel](#).



### LinkedIn and Twitter

We posted eight Tweets and five LinkedIn posts to promote the engagement process.




**Essential Services Commission**  
 4,127 followers  
 2mo

**#HaveYourSay:** We want to hear your thoughts on the Port of Melbourne's compliance with the Victorian Government's pricing order over the past 5 years.

We're welcoming feedback from direct and indirect port users, including Victorian consumers who buy imported goods.

Let us know what you think by 3 September > <https://lnkd.in/gqcxDZF>

**#PortofMelbourne #Port #Victoria #EssentialServices #EngageVictoria**



**Inquiry into Port of Melbourne compliance with the pricing order 2021**  
[engage.vic.gov.au](https://engage.vic.gov.au)

11

Like Comment Share


**Essential Services Commission**  
 4,127 followers  
 2mo

We want to hear your thoughts on the Port of Melbourne's compliance with the Victorian Government's pricing order over the past 5 years.

We're holding one-on-one information sessions from 6 July – 5 August for organisations and individuals to ask questions and provide evidence of the port's compliance or non-compliance. Register for a two-hour timeslot: [bit.ly/3jqpXcl](https://bit.ly/3jqpXcl)

You can also register for our 15 July virtual public forum to have your say and learn about our inquiry process: [bit.ly/2UcBXDM](https://bit.ly/2UcBXDM)

**Kate Symons, Simon Corden, Sitesh Bhojani, Rebecca Billings, John Hamill**



**Inquiry into Port of Melbourne compliance: information sessions**  
[eventbrite.com.au](https://eventbrite.com.au)

11

## Engage Victoria

We used Engage Victoria to inform stakeholders about the project and provide a number of opportunities to provide feedback and input. See link to Engage Victoria [consultation page](#).

The screenshot shows the Engage Victoria website interface. At the top, there is a navigation bar with links for Home, About Us, Consultations, Contact us, Sign In, Register, and a search icon. Below the navigation bar, a breadcrumb trail reads 'Home > Inquiry into Port of Melbourne compliance with the pricing order 2021'. The main content area features the title 'Inquiry into Port of Melbourne compliance with the pricing order 2021' and a sub-header 'Essential Services Commission'. A brief description states: 'The Essential Services Commission is undertaking its first five-yearly inquiry into the Port of Melbourne's compliance with the Victorian Government's pricing order.' A 'Follow' button is visible. To the right, there is a large image of a cargo ship at a port. Below the main content, there are two columns: 'Overview' and 'Timeline'. The 'Overview' section explains that every five years, the Essential Services Commission must complete an inquiry into whether the Port of Melbourne has complied with the Victorian Government's pricing order. It specifies the period from 1 July 2016 to 30 June 2021, with a deadline of 31 December 2021. The 'Timeline' section lists three key events: 'Inquiry announced' on Thursday, 13 June 2020; 'Consultation opens' on Thursday, 10 June 2021; and 'Virtual public forum' on 6 July 2021, with a note that documents and slides are available.