

Port of Melbourne – 2025 Port Market Rent Inquiry Scope and Process Paper

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1 October 2024



Acknowledgement

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

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

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

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Background

The Essential Services Commission is required to conduct periodic inquiries into the setting and reviewing of land rents and associated payments at the port of Melbourne (referred to as a market rent inquiry or inquiry in this paper).

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

We are conducting our second market rent enquiry. This inquiry will cover the period of 5 years from 1 November 2019 to 31 October 2024 (the inquiry period). This paper sets out the scope and process for conducting this inquiry.

We plan to schedule some confidential drop-in sessions for stakeholders to meet with us and provide feedback directly, including on a confidential basis.

Should you wish to discuss your views in person, **please feel free to contact us by e-mail at transport@esc.vic.gov.au, or by phone on (+61 3) 9032 1300 or 1300 664 969.**

Scope of this inquiry

The Port Management Act 1995 (Port Management Act) sets out how the commission must conduct a market rent inquiry. Section 53 of the Port Management Act requires us to conduct and complete an inquiry, (for the inquiry period) into the following matters:

- a) whether the Port of Melbourne has power in the relevant market that it may exercise in relation to the processes for the setting or reviewing of land rents or associated payments (however described) payable by a tenant under an applicable lease;^{1 2}

¹ We note that the port lessee and the port of Melbourne operator are the private sector entities that each hold leasehold interests in port of Melbourne land and are therefore able to provide access to port of Melbourne land through the grant of an applicable lease. These parties are collectively referred to in this paper as the 'Port of Melbourne'.

² Port lessee or port of Melbourne operator refers to the company that was declared the operator of the port of Melbourne with effect from 1 July 2016 by way of a Ministerial Order made pursuant to s 4A of the Port Management Act 1994. This company is identified in the Order as being 'Port of Melbourne Operations Pty Limited' and refers to Lonsdale Asset Property Pty Limited.

b) whether the Port of Melbourne has exercised that power in a way that has the effect of causing material detriment to the long term interests of Victorian consumers (a misuse of market power).³

If, and only if we find that there has been a misuse of market power, we must make recommendations to the ESC Minister about whether access to port of Melbourne land by means of an applicable lease should be subject to economic regulation, and if so, the form of the economic regulation.⁴

What is the 'relevant market'?

The 'relevant market' is the market for access to land in the port of Melbourne by means of an 'applicable lease'. An 'applicable lease' means a lease for land in the port of Melbourne granted by either the port lessee or the port of Melbourne operator (i.e. the Port of Melbourne).⁵

What is meant by the term 'power'?

Power is the ability to do something in a particular way. In this context, we are examining the power of the Port of Melbourne in relation to the process for setting and reviewing rents payable for land at the port of Melbourne under an applicable lease. In examining this we will look at:

- the Port of Melbourne's power over the setting or reviewing of rents and associated payments
- setting of terms and conditions of leases
- the processes for negotiating new leases or changes in rent, associated payments or terms and conditions
- the information available and to be made available to existing and prospective tenants for establishing or reviewing rents.

For clarity, this inquiry is conducted in accordance with the Port Management Act and does not extend to consideration of matters in sections 46 or 46A of the Competition and Consumer Act 2010.

What we will have regard to in undertaking our inquiry

In undertaking this rent inquiry, we must have regard to the following matters specified in section 53(3) of the Port Management Act:

³ Port Management Act 1995, s 53(1)(a)(i) and (ii).

⁴ Port Management Act 1995, s 53(1)(b).

⁵ Port Management Act 1995, s 53(5).

The processes used by the Port of Melbourne to set and review rents

We are required to have regard to the Port of Melbourne's processes used to establish and review rents or associated payments (however described) payable by a tenant under an applicable lease.⁶

The processes we will have regard to include but are not limited to:

- the Port of Melbourne's internal processes and governance arrangements
- the Port of Melbourne's external processes for engaging with existing or prospective tenants
- any processes provided in existing leases
- any processes referred to in the Port of Melbourne Tenancy Customer Charter November 2021 (Tenancy Customer Charter).⁷

The Tenancy Customer Charter is a voluntary framework that applies to leases entered into after 4 November 2021.⁸ The introduction of the Charter was informed by, and aligned with one of our recommendations made following our first market rent Inquiry, completed and conducted in 2020.

In accordance with section 53(3)(a) of the Port Management Act, the commission must have regard to the processes used to establish or review rents or associated payments. This will include consideration of the processes outlined in the Tenancy Customer Charter to the extent the Port of Melbourne uses these processes.

The Port of Melbourne's compliance with its established processes for setting and reviewing rents

In conducting our review, we are also required to have regard to the Port of Melbourne's compliance with:

- any processes for setting and reviewing rents
- associated payments payable by tenants under an applicable lease required under a port of Melbourne lease
- any agreement or arrangement entered into by the Port of Melbourne in connection with a port of Melbourne lease.⁹

⁶ Port Management Act 1995, s 53(3)(a).

⁷ Port of Melbourne Tenancy Customer Charter November 2021, section 3, p.12.

⁸ Port of Melbourne Tenancy Customer Charter November 2021, section 1.5, p.9.

⁹ Port Management Act 1995, s 53(3)(b).

As part of the port of Melbourne lease, the Victorian Government and the Port of Melbourne agreed a number of obligations in relation to the applicable leases, which were formalised in the Port Concession Deed (port deed) entered into between the Port of Melbourne and the Victorian Government.¹⁰ These obligations are primarily set out in clauses 18 and 19 of the port deed. Extracts of clauses 18 and 19 of the port deed are provided on the Port of Melbourne's [website](#).

In summary, the port deed (amongst other things) sets out the Port of Melbourne's responsibilities in conducting market rent reviews.

Clause 18 of the port deed outlines the requirements of the Port of Melbourne when reviewing rents payable by Port Tenants and the terms that govern these requirements. This includes requirements about rent review opportunity, and the provision of information about sublessees to an independent valuer.

Clause 19 of the port deed provides some key protections for Coode Island Tenants. It outlines requirements about notifications to tenants, mechanisms to make renewal offers and outlines the terms of granting alternative subleases and deadlines for making offers.

These obligations are directly relevant for the processes the Port of Melbourne is required to use, and the matters it must have regard to when setting and reviewing rents. The Port of Melbourne has made a copy of these clauses publicly available.¹¹ Similarly, in accordance with section 53(3)(a) of the Port Management Act, the commission must have regard to the processes used to establish or review rents or associated payments. This will include consideration of the processes outlined in the Port Concession Deed to the extent the Port of Melbourne uses these processes.

We will also establish whether there are any other relevant agreements or arrangements entered into by the Port of Melbourne in connection with a port of Melbourne lease that are relevant for this inquiry.

¹⁰ Port of Melbourne Tenancy Customer Charter November 2021, section 1.2, p.7.

¹¹ 'PORT CONCESSION DEED - EXTRACT OF CLAUSE 18 & 19 AND RELEVANT DEFINITIONS', Port of Melbourne, accessed 1 September 2024, <https://www.portofmelbourne.com/wp-content/uploads/Port-Concession-Deed-extract-of-Clause-18-19-and-relevant-definitions.pdf>

The extent to which the land rents paid by tenants are ultimately passed through to Victorian consumers

We are also required to have regard to the extent to which rents or associated payments paid by a tenant under an applicable lease may be passed through by the tenant to users of services provided by the tenant, to those users' customers, and ultimately to Victorian consumers.¹²

This information will be relevant for assessing whether any exercise of power by the Port of Melbourne in its processes for setting and reviewing rents has been exercised in a way that has the effect of causing material detriment to the long term interests of consumers as well as, where relevant, other elements of section 53(3).

Other factors that may also be relevant include whether and how an act of the Port of Melbourne in exercising any power it has in the process for setting and reviewing rents, affects the price, quality, reliability and efficiency of the provision of the service of granting access to leased land in the port.

This is our second inquiry

Our detailed findings from the first inquiry are outlined in the [Port of Melbourne market rent inquiry 2020: public report](#).

The commissions' approach in conducting this inquiry

In conducting this inquiry, we will take the following steps:

- publish this scope and process paper in October 2024, setting out key issues and our proposed approach to the inquiry
- obtain and review relevant data and documents from the Port of Melbourne including sample tenant rental contracts, and assess any trends in rents and associated documents
- meet with stakeholders via confidential drop-in sessions and at our public forum
- receive and consider written submissions provided by stakeholders
- prepare and release a preliminary report to the Port of Melbourne
- finalise and submit the report to the Assistant Treasurer by 30 April 2025.

¹² Port Management Act 1995, s 53(3)(c).

Milestones and timeline of this review

This scope and process paper provides the first of several opportunities for stakeholders to engage with us during our inquiry including providing written submissions and meeting with us.

Table 1.1 gives an indicative timeline for the inquiry.

Table 1.1: Indicative timeline

Activity	Indicative timeline
Release of scope and process paper	1 October 2024
Public forum	7 November 2024
Submissions on scope and process paper due	14 November 2024
Confidential drop-in sessions	November 2024
Release of preliminary report to the Port of Melbourne only	Mid-February 2025
The Port of Melbourne's response to our preliminary findings due	End March 2025
Release of final public report *	30 April 2025

* As per section 45(5) and 45(6) of the Essential Services Commission Act 2001, after receiving the final report the Minister must make the report publicly available, within 7 days if the Parliament is sitting, or within 30 days if the Parliament is not sitting.

As per section 45(7) of the Essential Services Commission Act 2001, the commission must make the final report publicly available after the Minister has received and made the final report publicly available.

Matters for stakeholders to consider

We invite stakeholders to discuss the following matters with us:

- stakeholder experiences with and views on the Port of Melbourne's processes for setting and reviewing rents or associated payments payable by a tenant under an applicable lease for land at the port of Melbourne, including terms and conditions to apply under such leases
- stakeholder experiences of and views on rents or associated payments payable, and terms and conditions that apply, under an applicable lease for land at the port of Melbourne
- tenant and other stakeholder knowledge of the processes the Port of Melbourne uses and is required to use when setting and reviewing rents or associated payments
- tenant and other stakeholder experiences of and views on compliance with these processes
- tenant experiences of and views on the impacts of these processes and their outcomes on tenant business and operations

- the extent to which tenants pass rents and associated payments payable under an applicable lease for land at the port of Melbourne, through to users of services provided by tenants, to those users' customers, and ultimately to Victorian consumers
- any other matter stakeholders consider we should have regard to in this inquiry.

How can stakeholders participate in this inquiry

Confidential drop-in sessions

We plan to schedule some confidential drop-in sessions for stakeholders to meet with us and provide any feedback directly, including on a confidential basis.

Should you wish to discuss your views in person, **please feel free to contact us by e-mail at transport@esc.vic.gov.au, or by phone on (+61 3) 9032 1300 or 1300 664 969.**

Send us your feedback by 14 November 2024

We want to hear your views on the land rental market at the port of Melbourne.

We encourage you to provide submissions addressing the matters outlined in this paper and any other information you consider relevant to the inquiry.

While all information is welcome, submissions need only address those questions or issues you feel is relevant to your experience in the land rental market at the port of Melbourne.

Engage Victoria

We invite submissions on this paper up until **14 November 2024** through Engage Victoria. To view our Engage Victoria consultation page and information on how to make a submission, please visit <https://engage.vic.gov.au/>.

E-mail and mail

You may also email your submission to transport@esc.vic.gov.au or send submissions by mail marked:

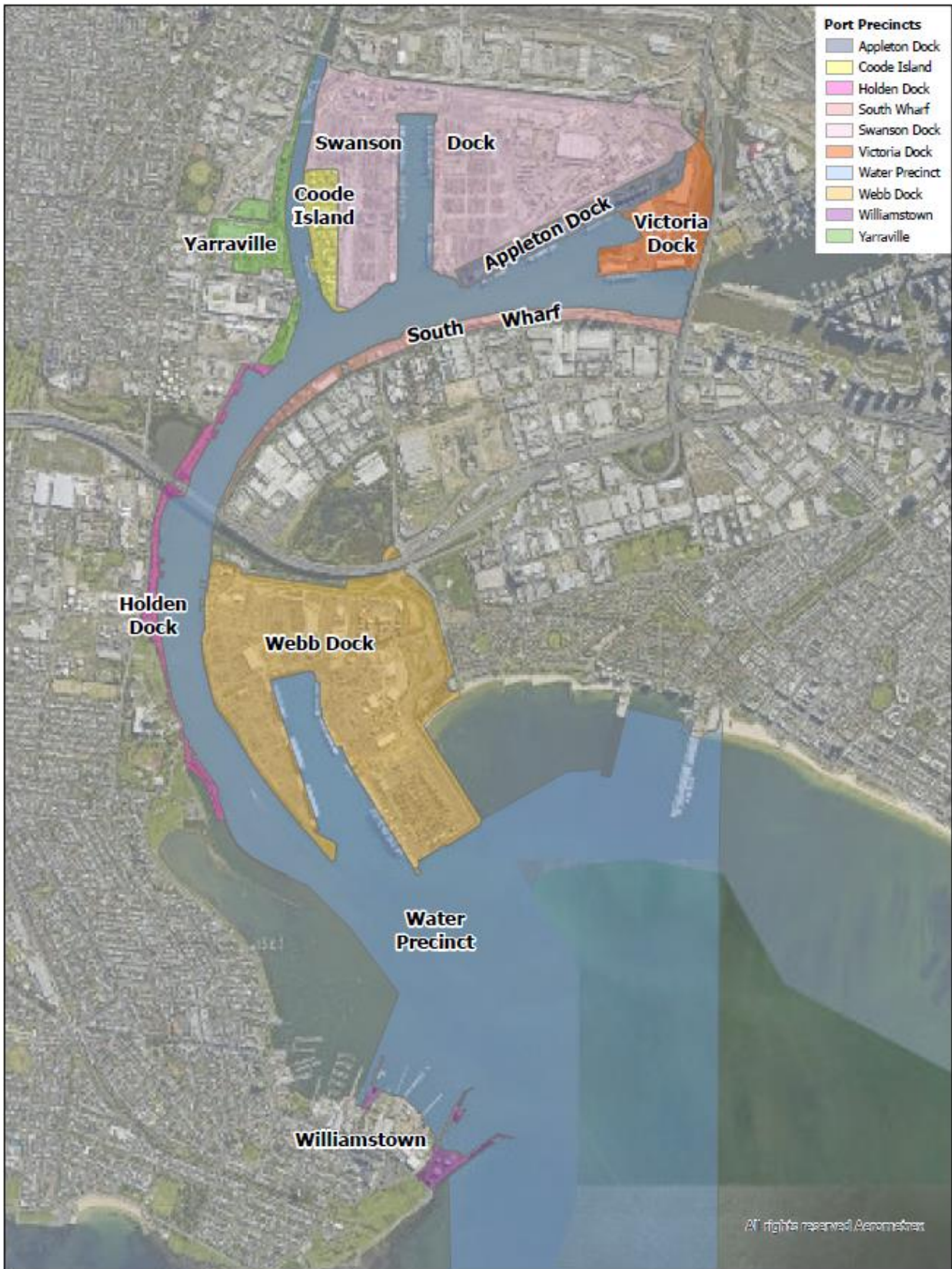
Attention: Price Monitoring and Regulation Division – Transport
Essential Services Commission
Level 8, 570 Bourke Street
Melbourne VIC 3000

Publication of submissions and our privacy statement

We encourage transparency in our review processes. It is our policy to publish all submissions on the Essential Services Commission website unless the submitter has requested confidentiality.

When we publish a submission, we will also include some details about the submitter (your name, not your address) unless the submitter has requested anonymity (does not want to be identified).

Map of the Port of Melbourne land



Source: Port of Melbourne