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Dear Mr Zalai

Release of the Discussion Paper for the Independent Review of the Victorian Ports System

Please find enclosed for your consideration and comment a Discussion Paper prepared for the Independent Review of the Victorian Ports System.

You may recall that I launched the Review at my Ports Round Table event on 30 January 2020.

The Review is being conducted by Independent Reviewer and former ports and freight executive, Mark Curry (Reviewer).

The need for the review arose from a recognition that significant changes in the governance and institutional architecture of the port system have occurred since the last comprehensive review was conducted by Professor Bill Russell in 2001.

In that time there have also been significant changes in the internal and external operating environments of the ports system and new challenges and opportunities have emerged.

The release of this Discussion Paper for public comment is an important step in the conduct of the Review.

The Discussion Paper examines the current legislative framework and relevant instruments and the ports operating environment in other jurisdictions to set out a range of themes, issues and options for consideration and comment by interested parties. In doing so, it incorporates information, ideas and views generated by a significant program of direct stakeholder engagement already undertaken during the review process to date.

The Discussion Paper does not arrive at any final positions or conclusions. Rather, it is intended to stimulate further thought and commentary to assist in the development of useful findings and recommendations for the Government's consideration.

I would like to acknowledge and thank those stakeholders who have taken the time to contribute to the Review process to date and to urge those who have not yet contributed to take advantage of the opportunity which remains open to do so over the next month or so.

In doing so I acknowledge the difficulties and competing priorities created by the coronavirus (COVID-19) pandemic, which has overlapped significantly with the Review process.

The COVID-19 pandemic has served to highlight the central role played by the ports system in the freight and logistics supply chain and in ensuring that critical imports and exports continue to flow in and out of the State to meet the needs of Victorian businesses and consumers.

The current review represents a clear recognition of this central role played by the ports and the importance of ensuring that the ports system is set up to function at the highest possible levels of efficiency and effectiveness in the interests of all Victorians.

I commend the Discussion Paper to you and believe it provides a useful platform to further develop and focus thinking on the issues, challenges and opportunities facing the Victorian Ports System.

An online survey is also available as an option for you to provide feedback. The Discussion Paper and information about how to provide feedback can be found via <https://getinvolved.transport.vic.gov.au>.

I invite you to take the time to respond to some or all of the issues raised in the Paper and look forward to your contributions.

If you have any questions about the review process or would like to provide comment at any time, please contact the Review Secretariat at portsreview@transport.vic.gov.au

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Melissa Horne', written in a cursive style.

Hon Melissa Horne MP
Minister for Ports and Freight
Minister for Fishing and Boating

08/07/2020

Independent review of the Victorian Ports System

DISCUSSION PAPER JULY 2020



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Contents

Minister's Foreword	4	6. Safe operation of the port system	40
Preface	5	6.1. Introduction	40
Abbreviations	6	6.2. Issues and options	42
1. Introduction	7	6.2.1. Harbour Masters	42
1.1. The purpose of the review	7	6.2.2. Pilotage	43
1.2. The review approach	7	6.2.3. Towage	46
1.3. Review process and timing	8	6.2.4. Safety and Environment Management Plans	47
2. The Victorian Ports System	10	6.2.5. A port safety licensing system	49
2.1. The recent evolution of the system	10	7. Port strategic planning	53
2.2. The system today	12	7.1. Introduction	53
2.2.1. Commercial ports	14	7.2. Issues and options	54
2.2.2. Local ports	15	7.2.1. Port Development Strategies	54
3. A Vision for the Victorian Ports System	19	7.2.2. A Victorian ports strategy	55
3.1. Why are the ports important for Victoria?	18	8. Other matters	56
3.2. What does the State want to achieve through the ports system?	18	8.1. Introduction	56
3.3. Who are the stakeholders in the ports system?	18	8.2. Themes and issues	56
3.4. What is the State's role in the ports system?	19	8.2.1. Port planning protections	56
3.5. A suggested vision for the ports system	19	8.2.2. Coastal shipping	56
4. Governance and Institutional Arrangements	21	8.2.3. Port sector engagement	58
4.1. Introduction	21	9. Conclusion and Next Steps	60
4.2. Issues and options	21	9.1. Conclusion	60
4.2.1. Scope of the system	21	9.2. How to respond	60
Commercial ports	22	9.3. Next steps	60
Local ports	23	Appendices	61
4.2.2. Organisational Structure	26	Appendix A – Terms of Reference	61
State-owned commercial port entities	26	Appendix B – Summary of direct stakeholder consultations	64
Local port managers	30		
5. Economic Regulation	34		
5.1. Introduction	34		
5.2. Issues and options	35		
5.2.1. Landside pricing and access at the Port of Melbourne	35		
5.2.2. ESC review of land rents at the Port of Melbourne	38		
5.2.3. Part X liner shipping exemption review	38		

Minister's Foreword

Victoria is the nation's biggest exporter of agricultural commodities and manufactured goods, as well as its freight and logistics hub.

That makes Victoria's four commercial trading ports engines for economic growth. They provide critical transfer points in Victoria's transport network and connect the state to international markets.

The Port of Melbourne is the largest port for containerised and general cargo in Australia.

The Port of Geelong is the sixth-largest Australian port by tonnage.

The Port of Portland is the largest sustainable hardwood woodchip port in the world.

And the Port of Hastings is a key entry point for bulk liquid imports.

This discussion paper is the precursor to a comprehensive Victorian ports strategy that will outline how to best handle growth in Victoria's future exports and imports.

There has not been a comprehensive review of Victoria's ports since 2002. In that time, there have been significant changes to the sector, most recently with the lease of the Port of Melbourne in 2016.

We want to explore what has changed in nearly two decades and whether the arrangements put in place at the turn of the century are still sufficient for the efficient operation of these key state assets.

The state has responsibility for channel infrastructure management and commercial navigation for all Victorian port waters. Victorian Ports Corporation (Melbourne), Victorian Regional Channels Authority and Port of Hasting Development Authority are wholly owned by the state.

Victoria's gross product is set to grow by \$40 billion over the next three decades and freight volumes expected to triple, so getting our ports operating in the most efficient way will become even more critical.

This discussion paper and the review it informs will be one of the steps along the way to achieving that.

As well as looking at how to manage the projected freight task growth, the review will examine the governance arrangements for state-owned commercial and local port entities; the functions of the state-owned commercial port and local port entities beyond channel management and safe navigation; how we can improve port safety and environmental outcomes; and opportunities to use technology in the functions of the three entities.

The Victorian Government welcomes your contribution to this process.

The Hon Melissa Horne MP
Minister for Ports and Freight

Preface

The Independent Review of the Victorian Ports System was formally launched by the Minister for Ports and Freight, the Hon. Melissa Horne, at a Ports Round Table event on 30 January 2020.

The need for the review arose from a recognition that significant changes in the governance and institutional architecture of the port system have occurred since the last comprehensive review was conducted by Professor Bill Russell in 2001.

In that time there have also been significant changes in the internal and external operating environments of the ports system and new challenges and opportunities have emerged.

A major recent milestone was the 50-year lease of the Port of Melbourne to a private operator in 2016. This event was associated with a significant reorganisation of roles and responsibilities of port bodies.

The release of this Discussion Paper for public comment is an important step in the conduct of the review.

The Discussion Paper sets out a range of themes, issues and options for consideration and comment by interested parties. In doing so, it incorporates information, ideas and views generated by a significant program of direct stakeholder engagement already undertaken during the review process to date.

The Discussion Paper does not arrive at any final positions or conclusions. Rather, it is intended to stimulate further thought and commentary to assist me in developing useful findings and recommendations for the Minister's ultimate consideration.

It is understood that because of the nature of the review – at the heart of which is the current organisational structure of the Government-owned port entities in Victoria – there may be some concern about structural changes that could potentially be proposed.

These concerns may be exacerbated by the unfortunate coincidence of the review process with the COVID-19 crisis and the associated difficulties and restrictions which have made life more challenging for all Victorians, including port system employees.

In response to these concerns, firstly, it is worth noting that the review is not primarily about the performance of different actors in the system. Rather, it is about the design of the system itself and how fit for purpose or otherwise it is in the context of current and emerging challenges.

Secondly, if anything, the COVID-19 crisis has served to highlight the central role played by the ports system in the freight and logistics supply chain and in ensuring that critical imports and exports continue to flow in and out of the State to meet the needs of Victorian businesses and consumers.

Underlying the current review is a clear recognition of how important the ports system is to the long-term prosperity of Victoria and, as a corollary, how important it is to make sure it is set up to function at the highest possible levels of safety, efficiency and effectiveness in the interests of all Victorians.

Mark Curry
Independent Reviewer
July 2020

Abbreviations

ACCC	Australian Competition and Consumer Commission
APG	Australian Pilotage Group
CCA	<i>Competition and Consumer Act 2010 (Cth)</i>
CDP	Channel Deepening Project
DAE	Deloitte Access Economics
DoT	Department of Transport
DUKC	Dynamic Under Keel Clearance system
ESC	Essential Services Commission
FV	Freight Victoria
GORCC	Great Ocean Road Coastal Committee Inc.
Gippsland Ports	Gippsland Ports Committee of Management Inc.
HP(H)C	Hastings Port (Holding) Corporation
MSA	<i>Marine Safety Act 2010</i>
MPC	Melbourne Port Corporation
MPL	Melbourne Port Lessor Pty. Ltd.
PDS	<i>Port Development Strategy</i>
PGA	Port of Geelong Authority
PMA	Port of Melbourne Authority
PMA	<i>Port Management Act 1995</i>
PoHC	Port of Hastings Corporation
PoHDA	Port of Hastings Development Authority
PoMC	Port of Melbourne Corporation
PoMO	Port of Melbourne Operator (also Port of Melbourne Operations Pty. Ltd.)
PoPL	Port of Portland Pty. Ltd.
PPA	Port of Portland Authority
PPAR	Port Pricing and Access Review
PPSP	Port Phillip Sea Pilots
PV	Parks Victoria
SEMPs	Safety and Environment Management Plans
TfV	Transport for Victoria
TIA	<i>Transport Integration Act 2010</i>
TSV	Transport Safety Victoria
VCA	Victorian Channels Authority
VPCM	Victorian Ports Corporation (Melbourne)
VPSF	<i>Victorian Ports Strategic Framework (2004)</i>
VRCA	Victorian Regional Channels Authority
VTS	Vessel Tracking System

Introduction

1.1. The purpose of the review

The purpose of the review is to assess the functioning and performance of the Victorian Ports System, particularly as it is impacted by the overarching policy, institutional and governance settings that fall within the remit of the State Government. Where appropriate, reforms are to be recommended. The Terms of Reference can be found at Appendix A.

The overarching policy and legislative settings for both commercial and local ports have not been substantially reviewed since the Russell Review (The Next Wave of Port Reform in Victoria) was completed in 2001.

Since then there have been substantial changes in both the internal and external operating environments of the port sector, culminating in the long-term lease of the Port of Melbourne to a private operator in 2016.

For the 14 local ports, reformed management arrangements that separated them from the old port authorities and centralised program administration within the relevant state government department - currently the Department of Transport - have remained largely unchanged since 1996.

The Victorian Freight Plan (Delivering the Goods, 2018) committed to the preparation of a new ports strategy to include a long-term plan for handling future exports and imports through Victoria's current (and future) commercial ports.

The findings of the current review should provide a contemporary, fit-for-purpose policy and governance framework to support the delivery of the new ports strategy and enable the effective integration of the outputs of other recent port policy review projects.

1.2. Review approach

The Review will take a strong lead from port stakeholders in assessing how well the ports system is performing and identifying key issues, challenges and opportunities for the system.

It will also take the perspective of the State Government in identifying aspects of the system over which the State has a level of control or influence that would enable the construction of a meaningful reform agenda. Typically, this agenda will focus on reforms and adjustments to current policy, legislative, governance, regulatory, planning and related settings.

Consideration of the evolution of the Victorian Ports System, particularly over the last 30 years, will also assist the Review in understanding the historical context of the system and where it currently sits in the reform cycle.

The evolution process shows a rapid transition from public ownership and control of the land-based assets of the ports to greater private ownership and control, with step changes in this direction occurring in the 1990s. This transition process was substantively completed with the long-term leasing of the management of the Port of Melbourne to a private operator in 2016.

In the fifteen-year period after the first round of privatisations and corporatisations, largely flowing from the Russell Review, some rebalancing of legislative, institutional and regulatory arrangements occurred.

This involved a shift back from a focus on purely commercial objectives to a more explicit accommodation of strategic state policy and regulatory objectives. However, the fundamental reform trajectory remained intact.



The current Review will be cognisant of this recent history and trajectory and will not be seeking to 'turn back the tide'.

Rather, it will be attempting to address the challenge of how best to combine the benefits of competition within the port system, with the benefits of collaboration and coordination of effort amongst the components of the system and with broader State policy and strategy objectives.

1.3. Review process and timing

The Minister for Ports and Freight has approved the engagement of an Independent Reviewer, through Freight Victoria within the Department of Transport, to lead the Review.

The formal consultation phase of the Review commenced in early February 2020, following an announcement at a Ports Round Table event convened by the Minister on 30 January 2020.

A series of one-on-one interviews with key stakeholders was subsequently commenced and these are ongoing at the time of publication of this Discussion Paper (noting that most interviews have been occurring via teleconference since the advent of COVID-19). Key stakeholders will continue to be consulted during the period that this Discussion Paper is open for feedback.

Appendix B contains summary details of around forty individual consultation sessions undertaken by early June 2020.

The feedback provided by stakeholders to date has formed an important input for this Discussion Paper.

A range of other sources have also been drawn upon, including those documenting the recent history of the ports system in Victoria; current legislation and regulatory materials; documented approaches in other jurisdictions; a range of port related reports and discussion papers; and the outputs of some specific policy review projects already underway through Freight Victoria prior to the commencement

of this Review (e.g. the Port Pricing and Access Review and the Victorian Coastal Shipping Review).

This Discussion Paper is being made publicly available and circulated to all identified stakeholders, with an invitation to provide written submissions in response by 31 July 2020. It is structured with a series of questions throughout designed to focus commentary around the key issues and concerns raised to date.

Responses to the Discussion Paper will be collated and reviewed and will form a primary input to the preparation of a Final Report to the Minister, setting out the Review process, findings and recommendations, to be submitted in mid-2020.

2. The Victorian Ports System

2.1. The recent evolution of the System

The Victorian ports system has been continually growing and evolving in response to the State's growth and economic development since John Pascoe Fawkner landed two cows, two calves and two horses from the Enterprize on the banks of the Yarra River near William Street in 1835.

Public ownership and control (pre -1990s)

The Melbourne Harbour Trust was formed in 1877 to manage and coordinate the development of the Port of Melbourne.

The Harbour Trust managed the Port through until 1978, when the legislative framework was reviewed and the Trust was reformed under the *Port of Melbourne Authority Act 1958*. The Trust was renamed the Port of Melbourne Authority (PMA) and provided with the powers of a statutory authority.

Subsequently, the Port of Geelong Authority (PGA) and the Port of Portland Authority (PPA) were established and the PMA's responsibility was extended to include the Port of Hastings.

Responsibility for Victoria's 'outer ports' (or regional ports) and associated coastal areas and foreshore assets - until then managed through the Department of Public Works, Ports and Harbours Division - was progressively allocated to the new port authorities during this period.

Privatisation and corporatisation (1990s)

The trajectory of the port system's evolution changed radically from the late 1980s onwards, with the withdrawal of the port authorities - through contracting out or divestment - from various 'non-core' operating and service provision activities.

By the mid-1990s, the role of the port authorities had become less operational and more strategic. A complementary role of port operation by private terminal and transport managers had become established.

In January 1995, the Victorian Government announced its new port reform policy to *"improve the efficiency and effectiveness of port services in Victoria, thereby enhancing the competitiveness of Victoria and providing an improved return to taxpayers for their investment"*.

The policy was driven by 'competition policy' reform prescriptions. The delivery strategy was a mix of privatisation and separation of commercial from non-commercial activities of port bodies.

The reform package, outlined in *Reforming Victoria's Ports: A Competitive Future*, extensively restructured the institutional arrangements for the ports, resulting in:

- the creation of a new publicly owned landlord agency to manage the landside assets of the Port of Melbourne - the Melbourne Port Corporation (MPC);
- the creation of a new statutory authority responsible for channels, navigation aids and harbour control - the Victorian Channels Authority (VCA);
- the sale of the regional ports of Portland and Geelong to private operators;
- the creation of the Hastings Port (Holding) Corporation and leasing of the management of the port to a private operator; and
- the transfer of responsibility for local ports (and other non-commercial foreshore assets) to the Department of Natural Resources and Environment (DNRE).

Victoria's port reforms were considered to be amongst the most extensive of any jurisdiction, both nationally and internationally.

The reforms were only limited by the retention of the ports of Hastings and Melbourne in public ownership.

The latter was mainly due to pressure from the Victorian ports industry, opposing privatisation of the State's largest port on the grounds of its strategic importance to the wellbeing of the State.

Rebalancing responsibilities (2001-2009)

In 2000, the then Minister for Ports announced a *Review of Victorian Port Reforms* and appointed an independent chairperson, Professor Bill Russell, to lead the work.

The purpose of the review was to assess the outcomes of the port reform process of the mid-1990s and to recommend measures for improving the effectiveness and efficiency of the ports in servicing the Victorian economy.

Importantly, the Government's stated intent was not to reverse the broad direction of the competition reforms implemented some five years previously. Rather, it was to look objectively at the results to date and to identify any necessary adjustments to legislative, institutional and regulatory settings to ensure the continued effectiveness of the ports sector in servicing the needs of importers, exporters and other users.

The report of the review, *The Next Wave of Port Reform in Victoria*, was delivered to the Government in late 2001 and contained 42 recommendations.

The report identified the need to address clear inadequacies in institutional and administrative arrangements and in the economic, safety and environmental regulation of the Victorian ports system.

At a high level, the report noted the absence of any overarching strategy or policy framework for ports following the reforms of the mid-1990s.

It argued that, whilst competition and cost reduction should remain a key focus, the ports system would operate more effectively in the State's interests within a strategic environment that provided greater clarity of purpose, more certainty for industry investment and improved integration with other key government sectoral strategies.

The Government supported the broad thrust of the Report and adopted most of its recommendations, in full or in part.

As a result of the Review, the Government implemented, inter alia, the following further initiatives and reforms:

- the development and publication of a state-wide strategic framework for ports (the *Victorian Ports Strategic Framework, 2004*);
- the creation of the Port of Melbourne Corporation (PoMC), to replace the MPC and VCA for the Port of Melbourne, with a broader charter to integrate management of the land and water and contribute to the achievement of the objectives of the state-wide strategic framework;
- the creation of the *Victorian Regional Channels Authority* (VRCA) - responsible for the channels, navigation aids and harbour control in the regional ports of Portland, Geelong and Hastings - to replace the role of VCA;
- the creation of the Port of Hastings Corporation (PoHC), replacing the HP(H)C, to plan and provide for the potential future role of the Port of Hastings in the Victorian ports, freight and logistics system; and
- revisions to port legislation to explicitly require ports to be operated safely and in an environmentally responsible manner and to prepare Safety and Environment Management Plans (SEMPs)

Although the Russell Review considered the role and situation of the local ports and made a number of recommendations relating to them, it is fair to say that not much changed for them, in terms of institutional management arrangements, as a result of the Review process.

The GFC, channel deepening and a third stevedore (2008-2015)

A number of further significant developments for the ports system occurred during this period, including:

- the Global Financial Crisis in 2008, reducing rates of trade growth, particularly containerised trade;
- completion of the Channel Deepening Project (CDP) in the Port of Melbourne in 2010, the largest port infrastructure project in Australia to that time;
- the integration of the management of the Port of Hastings within the PoMC in 2009, followed by its separation soon after under the new Port of Hastings Development Authority (PoHDA), tasked with the development of that port as Victoria's viable alternative container port, in 2010;
- transfer of responsibility for Local Ports from the Department of Sustainability and Environment (DSE) to the Department of Transport (DoT) in 2010; and
- the entry of a third stevedore to the Port of Melbourne in 2014.

In May 2015, the PoHDA was directed by the Minister to discontinue planning for container port development and to focus on the development of Hastings for bulk and break-bulk trades.

Hastings was, however, still to be preserved as a long-term option for containers.

The last piece of the puzzle (2016 - present)

In 2016, the Government implemented a 50-year lease agreement for the operation of the Port of Melbourne.

Under the agreement:

- the Port of Melbourne Operator (PoMO) was established as the operator of the Port on behalf of the private lessee, the Lonsdale Consortium; and
- the PoMC was replaced by the Victorian Port Corporation Melbourne (VPCM), tasked with providing navigational control, marine safety and pollution response services for the Port of Melbourne and managing Station Pier.

The Port of Melbourne is by far the largest and most significant asset in the Victorian port system.

Although the Port of Hastings remains under the control of a public entity, the privatisation of the management of the Port of Melbourne represents, to a substantive degree, the completion of the competition policy reform processes commenced in the mid-1990s.

In 2017, further work to assess the options for a second container port for Victoria was completed by Infrastructure Victoria (IV), identifying Bay West as the preferred location ahead of the Port of Hastings.

In July 2018, the Victorian Government released the *Victorian Freight Plan, Delivering the Goods*, which committed to "Plan for Bay West as Victoria's second container port whilst retaining the Port of Hastings as an option in reserve".

2.2. The System today

The figure opposite illustrates the Victorian ports system as it exists today in terms of geographical distribution and management responsibilities.

Commercial trading ports

There are currently four commercial trading ports in Victoria, declared under the *Port Management Act 1995*. These are the ports of Melbourne, Hastings, Geelong and Portland.

In terms of trade function, the Port of Melbourne is the State's only container port and is, in fact, the largest container and general cargo port in Australia.

The other three ports handle a range of dry, liquid and break-bulk import and export commodities.

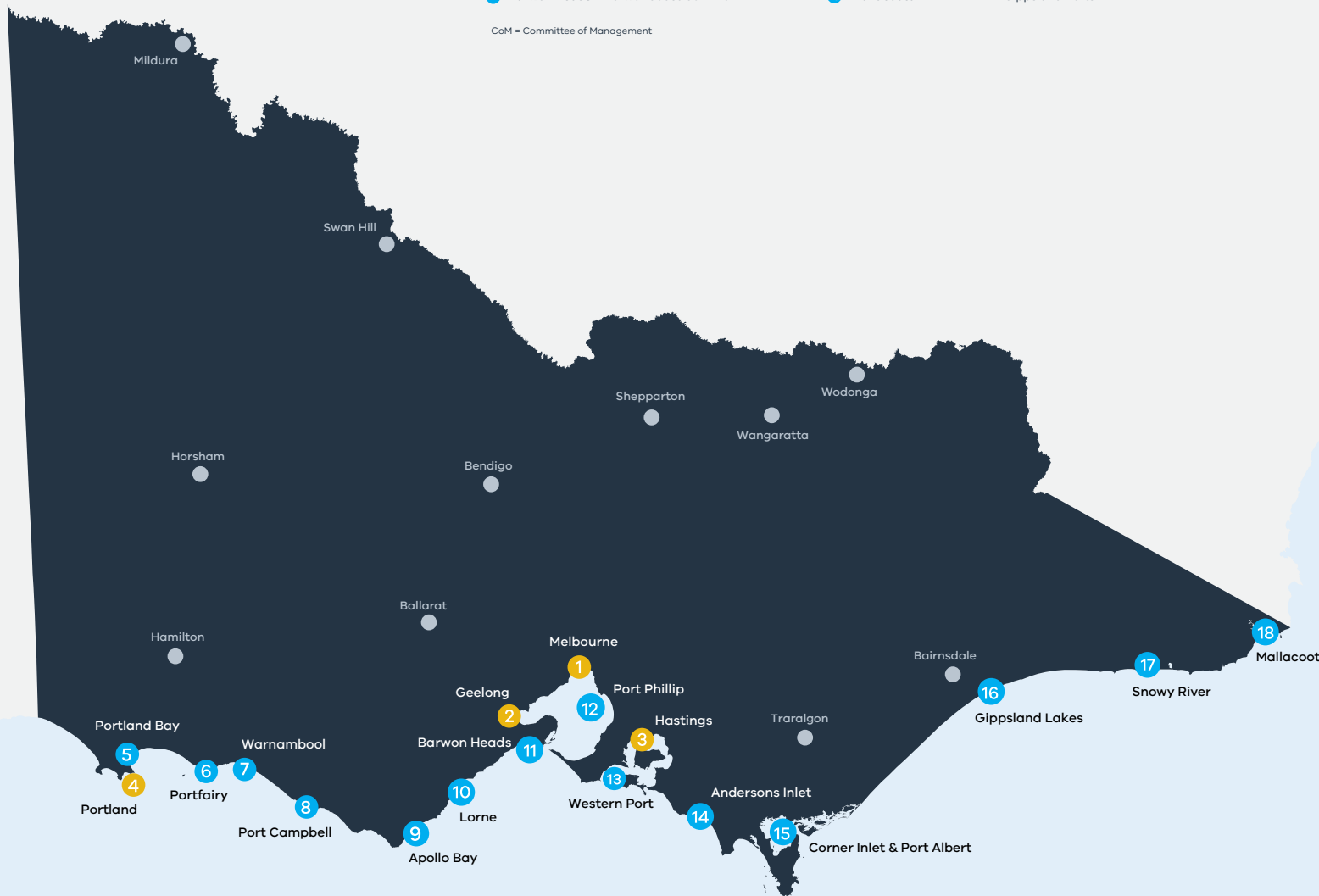
Ownership and management arrangements for the commercial ports involve a mix of private and public sector entities. Specific arrangements are different for each port, being a product of the different privatisation/corporatisation pathways taken for each.

Victorian Commercial and Local Ports

Commercial Ports: Port Management Authority		Commercial Ports: Port Management Authority	
1 Melbourne	PoMO/VPC(M)	3 Hastings	PoHDA/VRCA/Bluescope Steel Ltd
2 Geelong	Geelong Port/Graincorp/VRCA	4 Portland	Port of Portland Pty Ltd

Local Ports: Port Management Authority		Local Ports: Port Management Authority	
5 Portland Bay	Genelg Shire Council	12 Port Phillip	Parks Victoria
6 Port Fairy	Moynce Shire Council	13 Western Port	Parks Victoria
7 Warnambool	Warnambool City Council	14 Andersons Inlet	Gippsland Ports
8 Port Campbell	Parks Victoria	15 Corner Inlet & Port Albert	Gippsland Ports
9 Apollo Bay	Colac-Otway Shire Council	16 Gippsland Lakes	Gippsland Ports
10 Lorne	GORCC	17 Snowy River	Gippsland Ports
11 Barwon Heads	BarwonCoast CoM Inc	18 Mallacoota	Gippsland Ports

CoM = Committee of Management



Port of Melbourne

Since October 2016, the 'commercial' operations of the Port of Melbourne have been managed by a private company, the Port of Melbourne Operator (PoMO) - owned by the Lonsdale Consortium - under a fifty-year lease with the State. The actual lessee is the Lonsdale Consortium, with PoMO as the designated 'port manager'.

The lease is managed on behalf of the State by a newly created state-owned entity, the Melbourne Port Lessor (MPL).

MPL's responsibilities include contract management and ensuring compliance by the Port Manager with the Port Lease, Port Concession Deed and various sub-leases.

The 'non-commercial' operations of the port are managed by the Victorian Ports Corporation Melbourne (VPCM), which is in effect the restructured successor of the Port of Melbourne Corporation (PoMC).

The VPCM is responsible for harbour control, navigational services, the management of Station Pier and some regulatory functions (e.g. making towage requirements determinations).

In accordance with the Marine (*Drug, Alcohol and Pollution Control*) Act 1988, VPCM is responsible for marine pollution preparedness and response on the coastline from Cape Schanck to Cape Otway.

Although the head lease for the channel seabed sits with VPCM, PoMO owns and is responsible for the maintenance of navigation aids in port waters and, through a series of sub-leases, is responsible for maintaining and dredging the channels.

PoMO generates the bulk of its revenue through wharfage charges, channel use fees and land rents.

Under the Concession Deed, PoMO pays a prescribed fee to VPCM for provision of services. From 2023, this fee will be set at 20 per cent of channel fees collected by PoMO.

VPCM also generates revenue from anchorage fees; wharfage and berth hire fees from TT Line at Station Pier; and per passenger charges associated with cruise ships docking at Station Pier.

In conjunction with the fifty-year lease of the port, a new licensing and economic regulatory regime was established to be administered by the Essential Services Commission (ESC) and applied to the Port Manager (i.e. PoMO).

Under this regime a 'Pricing Order' is in place covering a range of 'prescribed services' delivered by PoMO.

Under Part 6B of the *Port Management Act 2010*, PoMO is responsible for preparing the Port Development Strategy (PDS) for the Port of Melbourne.

Port of Hastings

The landside infrastructure and operations of the Port of Hastings are directly owned and managed by a state-owned entity, the Port of Hastings Development Authority (PoHDA). An exception to this is the Steel Wharf, which is owned and operated by Bluescope Steel.

The waterside operations of the port (channels and navigational control) are managed by another state-owned entity, the Victorian Regional Channels Authority (VRCA). VRCA employs the harbour master for the port, but sub-contracts the maintenance of navigation aids back to PoHDA.

Until 30 June 2017, the management of the port was leased to a private operator, which was also responsible for waterside management through a channel operating agreement with the VRCA. The private operator also employed the harbour master. These arrangements were discontinued with the expiry of the port management agreement.

PoHDA is responsible for marine pollution preparedness and response on the coastline from Wilson's Promontory to Cape Schanck and is responsible for preparing the PDS for the port of Hastings.

Port of Geelong

The landside infrastructure and operations of the Port of Geelong are owned and managed by two private sector companies, GeelongPort Pty. Ltd. (Geelong Port) and GrainCorp Limited (GrainCorp).

GeelongPort controls the berths in the Corio Quay and Lascelles precincts and leases the Refinery Pier precinct to major port tenants, Viva Energy Pty. Ltd. and Terminals Pty. Ltd.

GrainCorp controls the Grain Berth and back up facilities.

The waterside operations of the port (channels and navigational control) are managed by the VRCA.

Whilst VRCA does not manage landside assets, it is responsible for preparing the PDS for the port of Geelong.

Port of Portland

Both the landside and waterside infrastructure and operations of the Port of Portland are controlled by a private sector company, the Port of Portland Pty. Ltd. (PoPL).

The landside infrastructure of the port was sold to the private sector under the reforms of the mid-1990s. Responsibility for the channels and navigation aids in the port is by way of a channel operating agreement with VRCA.

Unlike the three other commercial ports, the harbour master is employed directly by the private sector port manager.

The Port of Portland is also unique in having a fully integrated set of waterside services. As well as employing the harbour master, PoPL employs its own pilots and owns and operates its own tugs.

PoPL is responsible for marine pollution preparedness and response on the coastline from Cape Otway to the South Australian border and is responsible for preparing the PDS for the port of Portland.

Local ports

Local ports are legacy assets/operators of the three predecessor port authorities, which had responsibility for such facilities along the entire Victorian coastline.

Under the port reforms of the mid-1990s, these assets were considered non-commercial and were transferred to the State Government to manage through Crown Land committees of management, appointed as local port managers under the *Port Management Act 1995*.

Local ports typically have a mix of minor commercial functions (e.g. commercial fishing, boat repairs, charter and ferry services) and recreational boating functions, including public access.

They generally do not support trade, other than some servicing of the Bass Strait Islands and oil and gas industry.

There are 14 local ports managed by eight different port managers along the Victorian coastline.



APOLLO BAY

Local port	Manager	No. of local ports	No. of waterways (incl. local ports) (1)	Total Port Area
Portland Bay	Glenelg Shire Council	1	0	< 1 km ²
Port Fairy	Moyne Shire Council	1	1	< 1 km ²
Warrnambool	Warrnambool City Council	1	3	< 1 km ²
Apollo Bay	Colac-Otway Shire Council	1	1	< 1 km ²
Lorne	Great Ocean Road Coast Committee Inc.	1	0	< 1 km ²
Barwon Heads	Barwon Coast Committee of Management Inc.	1	1	< 1 km ²
Port Campbell Port Phillip Western Port	Parks Victoria	3	10	2,610 km ²
Anderson Inlet Corner Inlet and Port Albert Gippsland Lakes Snowy River Mallacoota	Gippsland Ports	5	7	> 978km ²

(1) A waterway is a navigable body of water. All local port managers are declared as waterway managers under s6 of the Marine Safety Act 2010. The exception is the local port of Lorne, where there is no boating activity.

Broadly, the management of Victoria's local ports can be said to fall under three geographically contiguous models:

- a single specialised local port manager (Gippsland Ports) responsible for the local ports to the east of the State;
- a single multi-purpose service delivery agency (Parks Victoria) responsible for the local ports constituted by Port Phillip and Western Port Bays; and
- individual local councils and committees of management responsible for the local ports to the west of the State.

The exception to the above is the local port of Port Campbell which was transferred to the management of Parks Victoria after the local council withdrew some ten years ago.

The local port managers have all of the functions set out in s44A(3) of the *Port Management Act 1995* (except Parks Victoria which has some functions removed for the port of Port Phillip to avoid potential duplication of responsibilities with the commercial port).

All of the entities acting as local port managers are established under other legislation and, except for Gippsland Ports, have other primary functions (e.g. local government, national park management, foreshore management, etc.).

All local port managers (except the manager of Lorne, which has no waterway responsibilities) are also declared waterway managers under s6 of the *Marine Safety Act 2010*, with functions and powers set out in s216 of that Act.

Only Gippsland Ports is required to appoint a harbour master, in accordance with s220 of the *Marine Safety Act 2010*, responsible for the port waters of Gippsland Lakes, and Corner Inlet and Port Albert.

Gippsland Ports is also responsible for marine pollution preparedness and response for the coastline from Wilsons Promontory to the NSW border.

The Department of Transport (DoT) has entered into management agreements with all port managers, except Parks Victoria, for management of the local ports.

In the case of Parks Victoria, letters are exchanged between the parties annually.

The operating funding associated with these agreements provides revenue supporting port operations and maintenance for recreational and commercial users.

Funding is limited to operating, maintenance and administrative expenses and thus impacts the financial performance and delivery capability of the port managers from year to year.

Key revenue streams (other than funding administered by DoT) vary between local ports, but include:

- wharfage, harbour, berth and mooring fees;
- boatyard and slipping fees and services; and
- fuel sales.

The management agreements provide for additional funding for emergency works and projects from DoT or others, subject to availability.

None of the local ports' operations are sustainable without the funding administered by DoT.

Despite the operating and maintenance funds that have been allocated over time, it is generally acknowledged that many of the assets being managed in local ports are now rated 'end of life' and are at, or near, closure.

As port managers under the *Port Management Act 1995*, all local port managers are required to prepare a Safety and Environment Management Plan (SEMP) in accordance with the s91C and prepare an annual report in accordance with the *Ministerial Guidelines* (2002).

Like commercial trading port managers, local port managers are also 'port management bodies' with broad safety duties set out under s24 of the *Marine Safety Act 2010*.

3. A vision for the Victorian Ports system

3.1. Why are the ports important for Victoria?

Victoria's commercial trading ports are our gateways to world commodity markets. The great majority of Victoria's imports and exports are carried by sea through our ports.

As a result, Victoria's economy and the high standard of living enjoyed by its citizens depends on the accessibility and efficiency of the ports for farmers, manufacturers, retailers and other import/export businesses.

Victoria's local ports provide safe, convenient access to coastal resources for commercial and recreational users, including commercial fishing, recreational boaters and tourists.

The commercial ports and, increasingly, local ports also play a critical role in facilitating cruise ship visits to Victoria, expanding its tourism offering and further supporting the economy.

3.2. What does the State want to achieve through the ports system?

From the State's perspective, the primary purpose of the ports is to serve the needs of Victorian citizens, businesses and the economy by providing convenient, efficient access to international and interstate shipping services and coastal resources.

3.3. Who are the key stakeholders in the ports system?

There are many and varied parties with an interest in the operation of the Victorian ports system.

These range from the owners and operators of the ports, to the cargo owners who ship their goods through the ports, and all of the service providers in between who contribute to the process.

The end users of the ports – the importers/exporters, cargo owners, ferry/cruise passengers, fishers, tourists, recreational boaters – could be considered the primary customers of the system and are clearly key stakeholders.

The whole purpose of the system is to produce a satisfactory service offering for them.

The shipping lines and land transport operators (road and rail) connect the system to other ports and to landside catchments and could be considered intermediate customers of the system.

These parties are key stakeholders as they are reliant on convenient and efficient access to the ports to provide cost effective services to the primary customers.

The port owners, managers and service providers (e.g. stevedores, pilots and towage services) are also key stakeholders, as these parties are responsible for the primary inputs to the service offering inside the ports.

These parties will necessarily be involved in identifying and implementing any reforms required to improve outcomes for end users.

Finally, the State Government, representing the interests of Victorian citizens, businesses and the economy, is also a key stakeholder.

3.4. What is the State's role in the ports system?

As discussed earlier, the State's role in the Victorian ports system has changed substantially over the past 30 years, moving from a comprehensive owner and operator ('doing') role to a more hands-off ('steering') role.

The competition policy driven reforms, which commenced in the 1990s, have led to the progressive outsourcing of the 'commercial' components of the system to the private sector.

Where service provision was already provided by private sector parties, increased competition has been injected (e.g. in stevedoring).

Nevertheless, the State has retained key roles in the 'non-commercial' components of the system which involve strategic and/or public interest considerations.

For example, primary ownership of the channel approaches to the ports remains vested in the State and state-owned entities are generally responsible for harbour control and safety regulation.

The entire local port sub-system remains in the public domain and is reliant on government subsidy to survive.

Moreover, the State provides and manages the legislative and regulatory frameworks and sets the broad policy and strategic directions within which the port system must operate.

3.5. A suggested vision for the system

In the box below is a suggested vision for the Victorian ports system for consideration.

The Victorian ports system will be:

A national leader in the provision of convenient, efficient, cost-effective port services to the State's importers and exporters and other commercial and recreational users;

Innovative, progressively adopting state-of-the-art practices and technologies to drive continuous improvement in the performance of its functions;

Safe and environmentally responsible, utilising best practice risk prevention and management systems and with capacity to respond quickly and effectively to marine incidents;

Well planned and integrated with transport and logistics supply chains, ensuring the efficient and seamless delivery of capacity to meet the State's growing and changing trade demands as and when required;

Collaborative and constructive in the approach it adopts to coexistence with neighbouring communities; and

Understood and supported by the broader community for the critical role it plays in supporting the economic performance of the State.

Question 1

a) Do you think the suggested vision statement above captures the key desirable attributes of the Victorian ports system?

b) How would you change or improve it?

4. Governance and Institutional Arrangements

4.1. Introduction

Prior to 1995 governance arrangements for Victoria's ports were relatively simple. There were three state-owned port authorities responsible for managing the whole system.

The implementation of competition reforms since that time has resulted in a complex, mixed system of private and public sector ownership and/or control.

Where port assets have been sold or leased to the private sector, the terms and conditions have been contractually set and, subject to meeting their regulatory obligations, the private sector entities are free to determine how to structure themselves organisationally within these parameters.

In the case of the public sector entities, the State is able to determine how these should best be structured to meet the State's goals and objectives for the ports system.

In all, there are currently twelve (12) public sector entities involved in the management of the ports system, as follows:

Commercial trading ports

- Melbourne Port Lessor Pty. Ltd. (MPL)
- Victorian Ports Corporation Melbourne (VPCM)
- Victorian Regional Channels Authority (VRCA)
- Port of Hastings Development Authority (PoHDA)

Local ports

- Gippsland Ports Committee of Management Inc. (Gippsland Ports)
- Parks Victoria
- Glenelg Shire Council
- Moyne Shire Council
- Warrnambool City Council
- Colac Otway Shire Council
- Great Ocean Road Coast Committee Inc. (GORCC)
- Barwon Coast Committee of Management Inc.

4.2. Issues and options

4.2.1. Scope of the system

As currently defined, the ports system is comprised of two subsystems – the four commercial ports and the fourteen local ports.

Under the *Port Management Act 1995*, "a commercial trading port means the port of Melbourne, the port of Geelong, the port of Portland, the port of Hastings and any other port declared to be a commercial trading port . . ."

Similarly, "a local port means a port declared to be a local port . . ."

Behind these somewhat circular definitions are some implicit criteria that differentiate the two sub-systems.

Commercial trading ports are large scale facilities that handle significant volumes of import and/or export cargo and are able to operate on a self-sustaining, commercial basis.

Local ports, on the other hand, are smaller scale facilities that service more localised commercial and recreational activities, such as commercial fishing, offshore oil and gas operations, boat repair and maintenance, charter operations, tourism, recreational boating and fishing.

These ports generally deliver a mix of commercial and non-commercial functions but are not commercially viable in their own right and require government subsidy to support their operations and maintain their infrastructure.

Commercial trading ports

In relation to the commercial ports, there appear to be no immediate candidates for inclusion or exclusion from this category.

However, some shipping operations in Corner Inlet (currently part of the local port of Corner Inlet and Port Albert under the management of Gippsland Ports) bear a close resemblance to commercial port operations (e.g. supply ships servicing the oil and gas industry utilising private berths at Barry Beach and Port Anthony and Ro-Ro operations servicing the Bass Strait islands at Port Welshpool).

It is noted that the port waters of Corner Inlet are already subject to the control of a harbour master under the *Marine Safety Act 2010* (MSA) and that channel access fees are collected by Gippsland Ports.

If these operations were to escalate substantially with new trades or project-related tasks (e.g. a major off-shore wind farm development) there may be a stronger case for incorporating Corner Inlet within the commercial port system.

The box below sets out some options for consideration should trade levels grow significantly.

Option 1: Declare a new commercial trading port of Corner Inlet and appoint Gippsland Ports as the Port Manager

Under this option Corner Inlet would be declared as a commercial trading port but would remain under the management of Gippsland Ports.

This approach would enable retention of local knowledge, continuity of management and proximate geographic location.

A concern with this approach may be that Gippsland Ports lacks the depth of commercial and port development skills and experience needed to fully exploit the trade potential of the new port.

Option 2: Declare a new commercial trading port of Corner Inlet and appoint PoHDA as the Port Manager

Under this option Corner Inlet would be declared as a commercial trading port but would be placed under the management of PoHDA.

The key advantage of this approach relative to Option 1 would be the ability of the new manager to apply its commercial expertise and port infrastructure management skills and experience to the task of developing the trade potential of the new port.

Disadvantages would be significant loss of revenue for Gippsland Ports; potential loss of local and corporate knowledge; and a port location separate and some distance from the main port operations in Western Port.

Question 2

- a) Do you think Corner Inlet should be considered for declaration as a commercial trading port? Why?
- b) If yes, should this occur now or later when trade or project related activity has increased?
- c) If yes, do you prefer Option 1 or Option 2 above, or another approach? Please explain?

Local ports

Focusing on the declared local ports, it is noteworthy that some offer virtually no commercial services, do not facilitate trade and are so small in scale that they are arguably not ports at all.

There appears to be a case for excluding some of these ports from the scope of the ports system and placing them under a separate recreational boating, fishing or tourism programmatic umbrella.

Possible candidates include Port Campbell, Lorne, Barwon Heads, Anderson Inlet, Mallacoota and Snowy River.

The advantage of tightening the scope of the local port system in this way would be to reduce diffusion of purpose and effort and better focus investment and operational expertise on the core ports system and the important functions it provides for the State.

There is also another definitional oddity in the local ports system in the form of the local ports of Port Phillip and Western Port.

These local ports are, in effect, large embayments containing a significant number of piers, jetties, moorings and navigation aids. However, these facilities are generally widely dispersed geographically around the Bays and don't constitute what would normally be thought of as ports.

Predominant use of the piers and jetties in these local ports is public access rather than boating – over 40 million visits per annum. Recreational boat launching occurs from facilities managed by councils and others, but the piers aren't generally boating destinations.

Apart from some exceptions that could be declared local ports in their own right, such as Portarlington and San Remo (due to their commercial fishing operations) and possibly Sorrento and Queenscliff (due to the commercial ferry operation), there appears to be an argument for also excluding both Port Phillip and Western Port Bays from the scope of the local ports system.

A pragmatic reason for retaining the local port designation for the two Bays is the access provided for the local port manager (Parks Victoria) – through declaration under the *Port Management Act 1995* – to the *Port Management (Local Ports) Regulations 2015*.

These regulations provide a suite of powers necessary to effectively manage recreational and light commercial activities in these large bodies of water (for example, the management of berths and swing moorings).

If the local port declaration was revoked, Parks Victoria would still retain its designation as a Waterway Manager under s6 of the *Marine Safety Act 2010*, however there are no comparable regulatory powers available under this legislation. Furthermore, unlike the situation for local port managers, no public funding is available for Waterway Managers.

The situation of Parks Victoria in relation to the two Bays is in many ways similar to the situation of Gippsland Ports in relation to the management of the local ports of Gippsland Lakes, and Corner Inlet and Port Albert.

The Gippsland Lakes constitute a large body of water which, like the Bays, doesn't have the characteristics of a port. However, the recreational and light commercial activities carried out on this popular waterway require access to the types of powers only currently available under the local ports regulations.

To address this long-standing confusion of functions in the management of the State's marine environment, a more fundamental proposal, involving significant reform of the relevant legislative frameworks, was raised during the course of consultations to date.

Under this approach, 'waterway management' would be more clearly separated from 'port management' through amendments to the *Marine Safety Act 2010* and regulations or, potentially, the creation of a standalone '*Waterway Management Act*', with appropriate supporting regulations.

This would help to reduce the overlap between the functions of waterway management and port management and provide waterway managers with all the powers necessary to manage the range of recreational and light commercial activities carried out on 'non-port' waterways.

Creation of a new '*Waterway Management Act*' would further allow the *Port Management Act 1995* and regulations to be more clearly focussed on the management of port waters and the *Marine Safety Act 2010* to be refocussed on 'waterway safety', with 'waterway management' provisions removed.

An extension of this approach, beyond the context of the two Bays and the Gippsland Lakes, could, in effect, be the abolition of local ports as a category altogether.

These facilities could be managed by waterway managers declared under an amended *Marine Safety Act 2010* or new '*Waterway Management Act*', with access to effective regulations for the purpose. Existing local port program funding could then be reallocated to waterway managers as appropriate.

Under this restructured, simplified framework, there would only be one category of ports – commercial trading ports – and two categories of managers of State waters – 'commercial trading port managers' and 'waterway managers'.

A variant of this approach could involve further categorisation of waterway managers according to the level of assessed safety risk on the waterways for which they are responsible.

Such an approach was outlined in "*Safe and Accessible Victorian Waterways - Discussion Paper*", released by the State Government in November 2016. 69 per cent of respondents gave in principle support to this scaled management approach, subject to further information about how it might impact in specific situations/locations.

The box below sets out some options for reforming the scope of the local ports system for consideration and comment.

Option 1: Tighten the definition of a local port by excluding some of the smaller local ports from the system

Under this option the local port declaration would be revoked for some of the smaller local ports which are used almost exclusively for recreation or tourism purposes and perform few or no commercial functions.

Possible candidates could be Port Campbell, Lorne, Barwon Heads, Anderson Inlet, Snowy River and Mallacoota.

The management of the infrastructure assets of these small local ports would revert to the original committee of management appointed under the Crown Land Reserves Act. The waters would be managed by the same entity, which would retain its declaration as a Waterway Manager under the Marine Safety Act 2010.

The major advantage of this option would be to sharpen the focus of the local port program on facilities which perform true port functions and remove some of the overlap between port management and waterway management functions which create a degree of policy and operational confusion in the State.

The removal of the obligation to prepare a SEMP could be seen as another advantage by some managers.

Disadvantages may be lack of access to appropriate regulations to manage the facilities for the waterway manager and loss of program funding.

Option 2: Further tighten the definition of a local port by also excluding the local ports of Port Phillip, Western Port and Gippsland Lakes from the system

This would go further than Option 1 by also revoking the local port declarations for Port Phillip, Western Port and Gippsland Lakes. In their place new declarations could be made for more specific local port locations such as Portarlington, Queenscliff, San Remo, and Lakes Entrance.

This would have the effect of focussing the local port program on more port-like facilities and removing large waterway areas with no particular port function from the local port system.

The advantages and disadvantages would be broadly similar to Option 1. However, it could be argued that the overall impact would be to create greater complexity and more confusion than already exists in the management of these facilities and waterways.

By their nature these waterways are relatively protected from open ocean conditions and therefore popular for recreational use. It is difficult to separate local port from general waterway activity and, from a practical perspective, it makes most sense to have a single management authority applying a common regulatory framework to the entire area.

Option 3: Fundamentally restructure the legislative framework to strengthen waterway management provisions and move all local ports under this umbrella

This option would represent a more sweeping reform aimed at resolving the significant and longstanding overlap between the port system and the general recreational/light commercial boating system.

It would involve creating new, stronger waterway management provisions to effectively cover the operations of all smaller vessels on State waters, leaving the management of larger ports servicing commercial trading vessels only to fall under the Port Management Act 1995 and regulations.

The Marine Safety Act 2010 would continue to provide the basis for the safety regulatory framework across all State waters.

The key distinction made under the new framework would be between the management of small vessels (e.g. private pleasure craft, charter boats and commercial fishing vessels) and large vessels (e.g. container ships, general cargo vessels and larger specific purpose vessels).

All local port declarations under the Port Management Act 1995 would be revoked and management of these waters would revert to the declared Waterway Managers under the new legislative provisions (i.e. generally the same entity).

New waterway management regulations would be developed to provide waterway managers with all the necessary powers to effectively manage the waterways and landside interfaces used by smaller vessels. Current funding under the local ports program would be redirected to waterway managers as appropriate.

The key advantage of this approach would be its potential to reduce unnecessary complexity and waterway management confusion caused by the existing unhelpful distinction between 'recreational' and 'commercial' vessel operations and to replace it with the more functional distinction between 'small' and 'large' vessel operations.

A disadvantage may be the loss of 'port status' for some of the more significant local ports which provide important 'safe haven' and 'search and rescue' functionality for the State, particularly to the west (e.g. Portland Bay, Port Fairy, Warrnambool and Apollo Bay).

Question 3

a) Do you think the current scope of the local ports system is sufficiently clear, or is there a case for tightening or clarification? Please explain?

b) If you think there is a case for change, do you favour any of the three options set out above? Which one and why? Is there another approach you would like to suggest?

4.2.2. Organisational Structure

As described earlier, the current governance structure of the Victorian ports system is characterised by a complex mix of private and public sector entities.

The key private sector entities are the owners of landside assets in the ports of Portland (the Port of Portland Pty Ltd), Geelong (GeelongPort Pty Ltd and GrainCorp), Hastings (Bluescope Steel) and the lessee of the Port of Melbourne (the Lonsdale Consortium represented by Port of Melbourne Operations Pty Ltd).

There are twelve (12) public sector entities involved in the governance of the ports system, four (4) commercial port entities and eight (8) local port entities.

State-owned commercial port entities

Looking at the state-owned commercial port entities, it is difficult to discern any overarching design in the allocation of functions.

For example, ownership of public land is vested in three different entities – MPL for the Port of Melbourne (leased to PoMO); the VPCM for Station Pier; and the PoHDA for the Port of Hastings.

State ownership of channels is vested in two different entities – VPCM for the Port of Melbourne (subleased to MPL and sub-subleased to PoMO) and the VRCA for the ports of Portland, Geelong and Hastings.

Operating rights for channels are spread across both private and public sector entities – the PoPL for the Port of Portland (under a channel operating agreement with VRCA); PoMO for the Port of Melbourne (under a sub-sublease from MPL); and VRCA for the ports of Geelong and Hastings.

In terms of navigational control in the ports, largely exercised through the agency of harbour masters, VRCA directly controls the port waters of Geelong and Hastings, but delegates this responsibility to the private port owner in Portland.

VPCM controls the port waters of Melbourne, including the shared channels at the entrance to Port Phillip Bay, which service both Melbourne and Geelong

Questions arise as to whether this complex, seemingly ad hoc set of structural arrangements provide the best value to the State in terms of efficient, effective and safe delivery of required functions.

During the course of the consultations to date, some stakeholders suggested that it would be simpler and more efficient to have a single entity responsible for all of the State's commercial trading port related responsibilities.

A single State port authority would reduce the number of governance boards from four to one and create scope for a range of other corporate efficiencies.

It would also create a one-stop-shop for all commercial port matters and would consolidate the State's in-house ports expertise in one body.

This in turn would help to address concerns that too much ports expertise has been outsourced to the private sector over the past few decades, reducing the State's technical, regulatory and policy development capacity and weakening its ability to engage effectively with private sector interests.

Although most stakeholders consulted to date could see benefits in some rationalisation of the current arrangements, some cautioned against taking this approach too far without being clear about the benefits and possible downsides.

It was noted, for instance, that the waterside (navigational control and channel management) functions of a VRCA are quite different to the landside (business and infrastructure development) functions of a PoHDA, requiring different skillsets and underlying culture.

The MPL also has a specialised contract management and compliance function as 'landlord' for the Port of Melbourne lease. These functions would need to be carefully safeguarded in any broader rationalisation of the system.

Taking such factors into consideration, another approach was canvassed during the consultations, involving an integration primarily of the waterside functions carried out by two state-owned entities, VRCA and VPC(M).

A number of stakeholders noted that, under current arrangements, two different bodies are responsible for navigational control of vessels after they enter the Heads of Port Phillip Bay, with VPCM needing to pass control of Geelong-bound vessels to VRCA as they pass from Port of Melbourne waters to Port of Geelong waters.

The fact that VPCM and VRCA operate different Vessel Tracking systems (VTSs) and separately operate the same Dynamic Under Keel Clearance (DUKC) system does not mean that this arrangement is unworkable.

In fact, the feedback is that it is being made to work through the professionalism and goodwill of the officers of the two organisations.

However, it does create some boundary tensions and does beg the question: "would one integrated harbour control system for the whole of Port Phillip Bay be better than two separate systems?"

Some stakeholders with a knowledge of discussions which occurred at the time of the restructuring of port entities to facilitate the lease of the Port of Melbourne recalled that a single Victorian Port Corporation (VPC) covering the whole of Phillip Bay had been considered at the time.

This approach had not proceeded, apparently due to concerns that the interests of Geelong may not be adequately represented under such an arrangement.

The work of the review to date would indicate that integration of the State's waterside functions for commercial ports may have some merit.

Under such an approach, a new Victorian port authority would have primary ownership of the channels (on behalf of the State) and be responsible for harbour control (and therefore navigational safety) in each of the commercial ports.

Depending on the capability and appetite of the landside port manager(s), the new authority could delegate (through lease or licensing agreements) channel and/or navigation aid management (maintenance, capital upgrade, etc.) to the port manager(s).

This is already effectively the case for the Port of Melbourne and the Port of Portland.

However, it is suggested that the harbour control function should remain 'in-house' within the new authority.

This would facilitate more direct, consistent State control of navigational safety standards and operations and create the conditions for the development of a single, integrated VTS for the whole of the State.

Broadly speaking, this approach creates a system design which appropriately places responsibility for commercial port management and development (trade and infrastructure) with the relevant private sector port manager (or PoHDA in the case of Hastings) and retains control of the State's strategic interests in underlying channel ownership and safety of navigation within a single state-owned entity.

It is also noted that a new State port authority could be mandated to provide technical support and expertise to the local port system where required.

For example, the new authority could have a position of 'harbour master for local ports' to provide support on navigational safety issues in local ports.

It would also have significant expertise in hydrographic survey, dredging program design and procurement and marine asset management, which could be shared with the local ports.

The box below summarises two of the possible alternative structural options for consideration.

Option 1: A new Victorian port authority responsible for all of the State's port management functions

Under this option all of the State's existing port management responsibilities – currently delivered through MPL, VPCM, VRCA and PoHDA – would be consolidated into a single new State-owned port corporation or authority.

The new body would have a single board and would have broad ranging responsibilities, from contract managing the fifty-year lease agreement with PoMO; to managing Station Pier and landside operations at the Port of Hastings; and managing or overseeing management of channels and navigational safety at the four commercial ports.

Consistent with the State Government's policy of locating significant public sector service agencies in regional cities, the new integrated port corporation could be headquartered in Geelong with out-posted operations at the other ports as required.

To further address potential stakeholder concerns, the legislative charter of the new integrated entity could be constructed to ensure it took a balanced approach to servicing the needs of each of the ports and did not unfairly focus on the needs of the larger Port of Melbourne at the expense of Geelong, Portland and Hastings.

The new body would also be mandated to provide technical support to the local port system through the sharing of its expertise in navigational safety, hydrographic survey, dredging and asset management.

Some advantages of this approach would be the creation of a one-stop shop for all commercial trading port matters in Victoria for which the State is responsible; cost reductions and improved efficiency through creation of a single board and amalgamation of corporate functions; consolidation of the State's expertise in port management in a single entity; and creation of a clear mechanism for provision of technical support to local ports.

A disadvantage could be reduced effectiveness as a result of attempting to combine too many different specialised functions within a single entity.

Option 2: A new Victorian port authority responsible for channels and navigational safety in all commercial port waters

This option is a more limited variant of Option 1, which would create a new Victorian port authority responsible for the channels and navigational control in all of the commercial ports. This would effectively involve the integration of the operations of the VRCA and the VPC(M).

The new authority could delegate management responsibility for the channels and/or navigation aids to landside port managers as appropriate but would retain direct control of the harbour master function in all of the ports.

As for Option 1, the new authority would:

- be headquartered in Geelong with out-posted operations at the other ports as required;
- have a legislative charter which ensured it took a balanced approach to servicing the needs of each of the ports and did not unfairly focus on the needs of the larger Port of Melbourne; and
- be mandated to provide technical support to the local port system through the sharing of its expertise in navigational safety, hydrographic survey, dredging and asset management.

The advantages of this option are similar to those for Option 1, although the potential for cost savings would be somewhat less.

However, some further advantages of this option include a more appropriate and consistent division of roles and responsibilities between private sector and public sector entities in the ports system and a stronger focus on improved control and consistency of navigational safety in the ports.

Question 4

- a) Do you think there is a case for rationalising the current organisational arrangements for state-owned entities with responsibilities for the commercial trading ports? Please explain?
- b) If you think there is a case for change, do you favour either of the options set out above? Which one and why? Is there another approach you would like to suggest?

Local port managers

As noted earlier, the management of Victoria's local ports falls broadly under three different models:

- a single specialised local port manager (Gippsland Ports) responsible for the local ports to the east of the State;
- a single multi-purpose service delivery agency (Parks Victoria) responsible for the local ports constituted by the two Bays; and
- individual local councils and committees of management (and Parks Victoria) responsible for the local ports to the west of the State.

Examination of these arrangements and consultation with relevant local port stakeholders to date indicates that, despite the apparent complexity and inconsistency, these arrangements are broadly suited to the different historical and geographical contexts of the local ports system.

Gippsland Ports was established to assume responsibility for the former PMA's operations to the east of the State, after the reforms of the mid-1990s.

It is by far the largest dedicated local port manager, covering five individual local ports. It is also the only local port manager required to engage a harbour master to control designated port waters under s220(4) of the MSA.

As discussed in the consideration of system scope, as well as local port facilities at Bullock Island and Paynesville, Gippsland Ports is the responsible manager for a large body of water in the form of the Gippsland Lakes.

Although the Lakes have the characteristics of an extended waterway rather than a local port, for the pragmatic reasons outlined earlier, it makes sense to have a single, integrated manager with consistent regulatory powers responsible for the entire complex of local port facilities and waterways.

The interim observation of the current review is that Gippsland Ports is a capable and viable (subject to government subsidy) local port manager with the requisite technical expertise and resources to manage its operations effectively.

The Gippsland Ports model appears to be an appropriate management solution for local ports in the eastern half of the State.

On the central Victorian coast, Parks Victoria (PV) is the port manager for the local ports of Port Phillip and Western Port (the two Bays).

In some ways this management model is similar to the Gippsland Ports arrangement in that it involves a single agency responsible for a large body (or bodies) of water, interspersed with some local port-like facilities and other dispersed infrastructure (piers, jetties, etc.).

However, unlike Gippsland Ports, PV is not a dedicated local port manager. Rather, it is a statutory authority acting in accordance with the *Parks Victoria Act 2018*, responsible for managing a diverse estate of more than 4 million hectares.

This includes 3,000 land and marine parks and reserves making up 18 per cent of Victoria's landmass, 75 per cent of Victoria's wetlands and 70 per cent of Victoria's coastline.

Consequently, the local port management role represents a relatively minor part of PV's portfolio of responsibilities and is subordinate to the broader objectives of PV under its legislation.

Key performance indicators directly relevant to the local ports role in PV's Corporate Plan (2019-22) are limited to "*visits to piers and jetties*" and "*condition of bay assets*".

To the west of the State, a third type of management model has developed for the seven local ports in that sector.

This is a disaggregated model involving the appointment, primarily, of local councils as managers of the local port in their municipality.

Hence, Glenelg Shire for the local port of Portland Bay, Moyne Shire for Port Fairy, Warrnambool City Council for Warrnambool and Colac-Otway Shire for Apollo Bay.

The exceptions are Port Campbell, currently managed by PV (due to the withdrawal of Corangamite Shire some years ago); Lorne and Barwon Heads, managed by foreshore committees of management.

Unlike the larger local ports on the central and eastern Victorian coasts, which are characterised by extensive semi-protected waterways interspersed with local port-like facilities, the local ports to the west are quite site-specific and contained in both land and water area.

This configuration is more amenable to management by a local authority, such as a council.

Discussions with the local port managers in the west during the consultation to date emphasised the strong sense of identity with, and ownership of, the port by the local community.

The local port was often seen as an important economic asset of the community (particularly in terms of tourism attraction) and integral to the future development of the area.

Despite concerns about the deteriorating state of key marine infrastructure and inadequate funding levels to properly resource asset maintenance/renewal and port operations, the local council port managers were generally positive about their role and expressed an intent to stay involved in the program.

In the discussions with the port managers, there was no particular appetite for a management model similar to that in the east, involving the creation of a single, dedicated port manager (analogous to Gippsland Ports) responsible for all or most of the local ports in the west.

The main deficit in this disaggregated management model in the west appears to be the lack of access to technical expertise and resources to manage specialised port tasks and operations effectively and consistently.

For instance, the local ports are separately responsible for designing and procuring regular dredging programs to keep their ports fully functional and accessible for users. This will often also require the procurement of hydrographic survey and/or diving services to ascertain the state of channels and other underwater assets.

There is also a lack of ready access to harbour master expertise which may be required to deal with unusual situations, such as the visit of a cruise ship, and a variable and inconsistent approach to marine asset management across the different local ports.

If a mechanism could be developed to address this need for greater technical support, it seems there would be a good case for maintaining the current management model in the west.

Based on the above discussion, in the box below are some options for the future management of Victoria's local ports for consideration.

Option 1: Retain the status quo for the eastern and central Victorian coasts, but establish a new single, dedicated manager for the local ports to the west of the State

This option would involve bundling up the management of all or most of the western local ports under a newly established, dedicated port manager, similar to Gippsland Ports in the east of the State.

The existing port manager status of the councils and committees of management would be revoked and a new specific purpose committee of management would be formed and appointed to manage the ports under s44A of the PMA.

Advantages of this option would be the creation of a larger, better resourced, more capable body to manage the local ports in the west on a more effective, consistent basis.

Local councils would also be relieved of the financial burden and risks associated with managing these facilities, which from time to time has created some uncertainty of commitment.



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Disadvantages would be the disenfranchisement of the existing council managers who, for the most part, are keen to continue in their current roles and retain a close connection with the operation of their local port.

Additional Government funding would also likely be required to establish and appropriately staff and resource the new port management entity.

Option 2: Retain the status quo for all local port management arrangements, but establish a mechanism for providing access to technical support and expertise for all local ports, particularly those to the west of the State

This option would leave the current management arrangements for the local ports essentially unaltered, but would add access to another layer of technical expertise and support to supplement the capabilities of individual port managers where required and to improve overall port management performance and consistency.

This could be achieved under the current legislative framework through a direction or directions from the Minister to the VPCM and/or the VRCA, requiring staff expertise and resources to be allocated for the purpose of supporting the operation of the local ports.

Sections 141H and 141P of the Transport Integration Act 2010 allow the Minister, with the approval of the Treasurer, to direct the VPCM and VRCA respectively to perform functions that “the Minister considers to be in the public interest that may cause [the Corporation/Authority] to suffer financial detriment”.

These ‘public interest functions’ provisions applying to the state-owned port entities have existed in the Act since the outset, but have never been used. It is open to the Treasurer, on application from the relevant body, to determine whether and to what extent costs may be reimbursed.

Under the reform options for state-owned commercial port entities discussed earlier, responsibility for this function would fall to

one of the newly formed, integrated port authorities. This responsibility could be instigated through a Ministerial direction, as per the current mechanism, or could form an integral part of the charter of the new entity (i.e. it could be a legislated function).

The key advantage of this option would be the ready access it would provide for local port managers to technical expertise and support not currently available or affordable.

This could include support on key functions, such as dredging program design and procurement, navigational control/safety and the implementation of consistent, fit for purpose asset management systems.

Another broader systemic advantage of the option would be the bridge it would create between the two port subsystems - commercial trading ports and local ports - which would further assist to consolidate the State’s efforts in relation to ports and improve the effectiveness of its policies and programs.

A disadvantage of this option would be the additional costs incurred by the state-owned entity or entities providing the support.

Question 5

- a) Do you think there is a case for changing the current management arrangements for all local ports in Victoria, or for local ports in the eastern, central or western sectors of the Victorian coastline? Please explain?
- b) If you think there is a case for change, do you favour either of the options set out above? Which one and why? Is there another approach you would like to suggest?

5. Economic Regulation

5.1. Introduction

In general, the rationale for economic regulation is to address situations of market failure where the market is not allocating resources efficiently or is unfairly disadvantaging consumers, or situations where the market is not producing policy outcomes required by government.

At a national level, Australia's competition law is set out in the *Competition and Consumer Act 2010* (Cth) (the CCA) which proscribes a range of anti-competitive behaviours and practices which lead to inefficiencies in the economy and/or unfairly disadvantage consumers.

In addition to the provisions of the CCA, state governments typically apply additional layers of economic regulation to particular sectors of the economy for which they have significant responsibility and/or defined policy objectives.

The ports system in Victoria is one such sector and economic regulation, in addition to the requirements of the CCA, is applied through the *Port Management Act 1995* (PMA), operating in conjunction with the *Essential Services Commission Act 2001*.

Currently, the primary instrument of economic regulation in the Victorian Ports system is a Pricing Order applied to 'prescribed services' provided by the Port of Melbourne Operator (PoMO) under the PMA.

In the early years after the reforms of the mid 1990s, a stricter form of price regulation was applied to the Port of Melbourne and to the new, private port operators in Portland and Geelong. This more heavy-handed form of regulation was progressively relaxed to a more light-handed approach and then removed altogether from the regional ports.

The implicit rationale for price regulation applying only to the Port of Melbourne is the effective monopoly position held by that port in the handling of containerised trade in Victoria.

The Port of Melbourne is Australia's largest container port and most Victorian importers and exporters of containerised products have little or no choice but to use its facilities.

There is arguably a more competitive market for non-containerised (dry bulk, liquid bulk, break bulk) trades handled by the regional ports, which affords a degree of choice to cargo owners.

The commercial rent of port land by the PoMO to port tenants (e.g. the stevedores) is not included as a 'prescribed service' and is therefore not currently regulated.

However, the PMA requires that the ESC conduct a review of port land rent charges three years after the commencement of the lease, and then every five years thereafter, to determine whether increases have been reasonable or whether some form of regulation is warranted.

Apart from the operators of the ports, it is notable that two of the key categories of service providers within the ports system - the stevedores and the shipping lines - are not currently subject to state-based economic regulation.

The stevedores are, however, subject to a monitoring regime (of prices, costs and profits) administered by the ACCC under a 1999 direction from the Treasurer. The ACCC reports to the Treasurer annually and publishes the report.

The ACCC monitoring has traditionally focussed mainly on quayside performance (efficiency, costs and revenues associated with lifting containers on and off ships), but in recent years rapid increases in landside 'infrastructure charges' levied by stevedores have been a matter of concern raised with the ACCC and state governments by a range of port stakeholders.

In response to these concerns, in May 2019, the Victorian Minister for Ports and Freight approved terms of reference for a review of pricing and access at the Port of Melbourne to determine whether there is a need for further monitoring and/or regulation of this area and what form this might take.

The shipping lines are not only free of state-based regulation, but are also currently exempt from key provisions of the CCA under Part X of that Act.

Part X allows Liners with registered agreements to:

- fix prices;
- pool or apportion earnings, losses or traffic;
- regulate capacity; and
- coordinate schedules

The ACCC is currently conducting a review of Part X with a view to replacing it with a more limited form of “class exemption” under the CCA.

5.2. Issues and options

5.2.1. Landside pricing and access at the Port of Melbourne

The Port Pricing and Access Review (PPAR), commissioned by the Victorian Minister for Ports and Freight, is the first state-based review of port infrastructure charges being levied by stevedores at all east coast capital city ports.

The review was to consider the impact of the imposition and rapid escalation of infrastructure charges on the Port of Melbourne container supply chain and to investigate options for the future role of government in regulating landside charges and access at the Port of Melbourne.

The terms of reference for the review can be found on the Freight Victoria (FV) website.

Consultancy firm Deloitte Access Economics (DAE) was engaged to undertake the Review under the auspices of a Review Advisory Board (RAB) chaired by FV. The work was completed in early 2020.

Whilst industry concerns had related primarily to the infrastructure charge, the scope of the review included a range of other relevant matters. This recognised the reality that the supply chain consists of multiple parties and complex interactions which impact on costs.

For the purposes of the review, the Port of Melbourne container supply chain was defined as the movement of import and export containers ‘from the wharf to the port gate’, not from origin to final destination.

However, information provided by stakeholders pertaining to costs beyond the ‘wharf to the port gate’ was taken into consideration in DAE’s analysis.

The review process involved consultation with a number of relevant stakeholders and identified several key themes and issues for consideration:

- the effects of shipping line concentration;
- vertical integration of parts of the land transport side of operations;
- the impact of the third stevedore;
- developments post privatisation;
- the practice of “marking-up” charges along the supply chain;
- variations in market power;
- varying levels of commercial sophistication of players in the supply chain, from small owner-driver transport operators, to nationally significant service providers and cargo owners, to global organisations;
- the presence of both price setters and price takers in the supply chain, in some cases in the same market segment;
- complexity of the container supply chain, including service activities, contracts, charges, money flows, data flows and issues of transparency;
- the global nature of the market and the fact that Australia/Victoria is a minor player in the global shipping industry; and
- the greater impact on export competitiveness than for importers.

The review confirmed that current market conditions afford stevedores full autonomy over the prices charged and access conditions imposed on land transport operators. This has facilitated their ability to levy higher prices, including infrastructure charges.

However, the key finding of the Review was that there is not a compelling case for economic regulation of stevedore charges at the Port of Melbourne (PoM) at this time.

The Review found that, whilst costs have risen as a result of the increases in stevedore charges, costs being levied by other participants in the supply chain, particularly shipping lines, are arguably having a greater impact.

Of the participants in the Port of Melbourne supply chain, the only evidence of exploitation of excess market power appears to relate to the rapid growth in “unexplained” costs levied by the shipping lines.

The Review found that action by government is warranted to improve transparency of pricing and coordination of access in the port supply chain.

This action is needed to address market failures resulting from ineffective working relationships and information exchange between supply chain participants. Without action, these factors are likely to continue to create additional costs for the sector.

Based on the analysis and consultation with affected stakeholders, the Review recommended the following actions be considered for implementation by Government:

1. The setting of standards to increase transparency, cooperation and accountability between supply chain participants and inform their decision making.
2. Incorporation of measures in the standards to improve pricing transparency, including notification of the way in which price changes are made, the timing of price changes and the underlying rationale for cost increases.

3. Incorporation of measures in the standards to improve landside access and performance, including container turnaround time, road carrier service levels, rail operator service levels and on-time performance metrics for both stevedores and land transport operators.
4. Taking a phased approach to monitoring port supply chain costs. Should voluntary standards fail to deliver improved pricing transparency or operational efficiency then progression to mandatory standards through regulation may be warranted.
5. A phased approach recognises that the factors leading to increased costs across the Victorian port supply chain are national challenges impacting all ports, so any consideration of economic regulation should be informed by the findings of the current ACCC review of Part X of the CCA.

Question 6

- a) *Do you have any comments on the findings of the PPAR? Do you strongly agree or disagree with any of the findings? Are there key issues you think are not adequately addressed?*
- b) *Do you have any comments on the recommendations of the PPAR? Do you strongly agree or disagree with any of the recommendations?*

In response to the PPAR findings and recommendations, FV in the Department of Transport (DoT) has developed the outline of a potential Voluntary *Port of Melbourne Performance Model* (VPPM), intended to deliver the action needed by Government to address cost increases in the sector by improving pricing transparency and access coordination.

The potential VPPM would have two key components:

- firstly, to improve the transparency and predictability of **prices** levied by stevedores for all landside charges; and
- secondly, to establish **access** indicators for the Port of Melbourne which both industry and government agree are consistent, measurable and meaningful.

The potential VPPM would be administered by or on behalf of FV and would be resourced by the State Government and/or port industry participants on an agreed shared basis.

The box below sets out the key elements of the potential VPPM for consideration.

A. Improve transparency and predictability of prices

A protocol would be developed and agreed with the stevedores to ensure that:

- 1. Stevedore terminal access charges will only be changed once per annum;*
- 2. Stevedores will issue a notice of intention to the Secretary, Department of Transport and the industry 90 days prior to the proposed date of the increase of an existing charge or introduction of a new charge;*
- 3. The notice of intention to change prices or introduce a new charge to the Department of Transport must be accompanied by detailed reasons for the increase or introduction of a new charge, including all supporting information or data.*
- 4. The notice of intention to change prices or introduce a new charge to industry must outline in sufficient detail the rationale of the price increase or introduction of a new charge*
- 5. Stevedores will receive feedback from the Department of Transport and industry on the proposed increase or introduction of a new charge;*
- 6. Stevedores must issue a final notice of changed prices 60 days prior to the date of the proposed increase. The final notice should incorporate a statement of engagement summarising issues raised by affected stakeholders and the response of the terminal operator.*

B. Improve access and coordination

Access indicators for the Port of Melbourne would be developed and agreed with industry which are consistent, meaningful and measurable.

Possible indicators would be similar to those used in other jurisdictions and could include:

- 1. Container turnaround time;*
- 2. Average time to service trucks;*
- 3. Truck on time running;*
- 4. On-time truck servicing;*
- 5. Slot availability; and*
- 6. Cancellations.*

Question 7

a) *In relation to component A of the VPM, do you think:*

- *this protocol will improve the transparency and predictability of price increases?*
- *there are other notification provisions that should be considered?*
- *stakeholders would be willing to comply with this protocol?*

b) *In relation to component B, do you think:*

- *these are the right performance indicators to measure performance at the Port of Melbourne?*
- *there are additional performance indicators which should also be considered?*
- *the data is available to support the reporting of these indicators?*
- *stakeholders would be willing to provide this data?*

c) *In addition to stevedore charges and landside operations, do you think any other port related interface services/charges should be included in a monitoring/coordination arrangement (e.g. shipping line charges)?*

Consultation with stakeholders for the current review has revealed quite divergent views on the matter of stevedore infrastructure charges.

These have ranged from broad agreement with the PPAR recommended approach to a more aggressive view, particularly from shipper interests, that formal price regulation should be implemented without further delay to curtail apparently unconstrained stevedore price increases on the landside.

The greatest concern was expressed for exporters of relatively high volume/low value agricultural commodities operating on low margins in competitive international markets.

The PMA, in s49(1)(c), specifies the 'prescribed services' that are already subject to price regulation in the Port of Melbourne.

However, it also allows for "any other service that is prescribed by the regulations".

Therefore, it appears that regulations could be made, subject to a regulatory impact statement (RIS) process, to provide for price regulation of stevedore infrastructure services and related charges.

A consideration for the Victorian Government could be the desirability of coordinating its approach with that of other states to achieve the greatest possible effect.

5.2.2. Part X shipping exemption review

The 2015 Competition Policy Review (the Harper Review) noted that protections enjoyed by Liners under Part X of the CCA are unique and no other industry enjoys legislative exemption from Australia's competition laws.

The Harper Review recommended that:

- Part X of the CCA be repealed;
- a block (class) exemption granted by the ACCC be available for Liner shipping agreements that meet a minimum standard of pro-competitive features.

The ACCC published a Discussion Paper on 3 December 2019 entitled "Proposed Class Exemption for Ocean Liner Shipping".

The ACCC is considering making the kind of class exemption for Liner shipping agreements contemplated by the Harper Review and the paper seeks information on relevant matters, including:

- which aspects of Part X are in the public interest and could be included in a class exemption and why; and
- which aspects of Part X are detrimental to competition and should not be included in a class exemption and why.

Importantly, the paper notes that *"the ACCC's preliminary view is that any class exemption should not cover agreements or coordination on price because such agreements carry significant risk of lessening competition and generally do not benefit the public"*.

This preliminary view appears to support the position put by the Australian Peak Shippers Association Inc. (APSA) in their submission to the Harper Review in 2015, which argued that:

"The setting of prices of freight surcharges by shipping lines, consortia and alliances should no longer be exempt from scrutiny under the current legislation. These surcharges, of which there are many . . . are randomly instituted or increased by shipping lines with little or no justification. They are essentially a clandestine method of increasing sea freight rates . . ."

It seems probable that the 'freight surcharges' referred to by APSA are the same 'unexplained costs' identified in the PPAR as being the primary contributor to increased interface costs faced by shippers over the past 10 years.

This reinforces the linkage between the PPAR and the Part X review and the finding of the former that economic regulation of stevedore infrastructure charges is not warranted at this time.

Rather, if anything, it points to the need to consider closer monitoring or possibly regulation of some shipping line charges (or at least removal of current exemptions).

5.2.3. ESC land rent review

Under s53 of the PMA, the ESC is to consider whether the PoMO has:

- market power in relation to the process for setting and reviewing land rents; and
- exercised market power in a way that causes material detriment to Victorian consumers (a misuse of market power).

If the ESC finds there has been a misuse of market power, it is to make recommendations on possible economic regulation to the Assistant Treasurer.

A common theme raised by the stevedores in the PPAR was the impact of rapid recent increases in land rentals on their cost base and the need to increase landside charges, at least in part, to recover these costs.

The ESC commenced the first land rent review on 1 November 2019 and it is expected that a final report will be released by June 2020.

Interestingly, in its Interim Report (20 March 2020), the ESC noted:

"Our interim view is ...that the Port of Melbourne has power in setting and reviewing rents and that there is currently limited countervailing market, contractual or legislative power available to tenants to constrain this power"

Again, there is an obvious link between this review and the PPAR which reinforces the logic of proceeding cautiously and not moving to implement new monitoring or regulatory arrangements ahead of the outcomes being known.

6. Safe operation of the ports system

6.1. Introduction

In order for Victoria's ports to be given the 'social licence to operate' necessary to play their critical role in contributing to the State's economy, it is also necessary that they demonstrate their ability to operate safely and in an environmentally responsible manner.

A regulatory regime and specific regulatory instruments have been established over time to provide assurance to the Victorian community of performance of relevant obligations.

Arrangements for safety regulation in the Victorian ports system are complex. There are at least seven (7) pieces of legislation and subordinate regulations involved in the creation of the current regime, including:

- *Transport Integration Act 2010*
- *Transport (Compliance and Miscellaneous) Act 1983*
- *Transport (Safety Schemes Compliance and Enforcement) Act 2014*
- *Port Management Act 1995*
- *Marine Safety Act 2010*
- *Marine (Drug, Alcohol and Pollution Control) Act 1988*
- *Marine (Domestic Commercial Vessel National Law Application) Act 2013*

Of these, the *Transport Integration Act 2010* (TIA), *Port Management Act 1995* (PMA) and the *Marine Safety Act 2010* (MSA) are the primary sources of the regulatory architecture for port safety and will be the focus of the current review.

Key provisions are distributed as follows:

Transport Integration Act 2010 (TIA)

Part 2, Division 2 of the TIA sets out a series of transport system objectives, one of which is 'safety and health and wellbeing'.

S13(2) requires that "the transport system should (a) seek to continually improve the safety performance of the transport system . . . [and] (b) avoid and minimise the risk of harm to persons arising from the transport system".

The TIA establishes 'transport corporations', including the VPCM, VRCA and PoHDA, as 'transport bodies' which, under s24(1), "must have regard to the transport system objectives in exercising . . . powers and performing . . . functions under any transport legislation"

Local ports are also established as 'transport bodies' in their capacity as declared waterway managers under s6 of the Maritime Safety Act 2010.

Part 7, Division 1 of the TIA establishes 'transport safety agencies', including the Director, Transport Safety as "the successor in law of the Director, Public Transport Safety and the Director of Marine Safety".

S172(2) specifies that the primary object of the Director, Transport Safety includes "the specific objects or purposes specified in . . . Section 14 of the Marine Safety Act 2010".

Port Management Act 1995 (PMA)

The PMA contains a mix of provisions relevant to port safety. These include provisions dealing with:

- *Regulation of towage services (Part 4A);*
- *Restricting access to areas (Part 5A);*
- *Hazardous or polluting activities (Part 5B);*
- *Regulation of activities in the port of Melbourne (Part 5C);*
- *Harbour Masters (Part 6); and*
- *Port Management Plans (Part 6A).*

Marine Safety Act 2010 (MSA)

Chapter 1, Division 2 of the MSA sets out a series of 'principles of marine safety', all of which are generally relevant to the operation of ports.

Chapter 2, Parts 2.2 and 2.2A go on to set out more specifically the 'safety duties of port management bodies' (including both commercial trading and local port managers) and the 'safety duty of port of Melbourne operator' respectively.

The other parts of the MSA most relevant to port safety are;

- *Operation of vessels (Chapter 3)*
- *Management of waters, including standards for navigation aids and dredging (Chapter 5);*
- *Harbour Masters (Chapter 6); and*
- *Pilotage (Chapter 7).*

In stakeholder consultations to date, there was general consensus that the safe operation of the large commercial ports, in particular, was highly dependent on the effective implementation of, and interactions between, three key roles:

- harbour masters;
- pilotage services; and
- towage services.

A number of stakeholders raised concerns about inconsistent arrangements for delivery of these services across the four commercial trading ports and lack of clarity about roles, standards and accountabilities.

Concerns were also raised about the general complexity and fragmentation of the regulatory framework and the capacity of the Safety Director to effectively administer port safety regulation under the current structural and resourcing arrangements.

It was noted, for example, that Transport Safety Victoria (TSV) has no in-house harbour master or pilotage expertise and that the Safety Director is heavily reliant on external advice (e.g. from harbour masters engaged by port management bodies) to develop appropriate regulatory responses to port safety issues.

6.2 Issues and options

6.2.1. Harbour masters

The role of the harbour master is arguably the most critical in ensuring the day to day safe operation of commercial ports.

Harbour masters are highly experienced mariners (usually ex-ship masters) licensed by the Safety Director under the MSA to ensure safe waterside operations in designated ports.

There are currently five (5) licensed Harbour Masters operating across the Victorian port system, engaged by four (4) different port managers. The ports covered and the respective port managers are:

- the Port of Melbourne (VPCM);
- the Port of Geelong (VRCA);
- the Port of Hastings (VRCA);
- the Port of Portland (PoPL); and
- the Ports of Gippsland Lakes and Corner Inlet and Port Albert (Gippsland Ports).

Harbour masters have a key role not only in controlling and directing vessel operations, but also in the operations of key service providers, such as pilots, tugs and line boats.

Harbour masters create a local regulatory framework for their ports through the development and publication of 'Harbour Master's Directions', which set out the rules for vessel and related service provider operations in the port.

It is an offence under s237 of the MSA to obstruct or fail to comply with a Harbour Master's Direction.

A longstanding issue in relation to the role of harbour masters has been the need to provide them with clear lines of accountability and to, as far as reasonably practicable, remove any potential for conflicts of interest in carrying out their duties.

Tensions in the role can arise between the public interest imperative to manage risk and ensure safe operations and the narrower commercial imperative to at all times pursue the most cost-efficient port operations.

Under the legislative and licensing framework, safety is clearly the pre-eminent requirement.

In particular, s230(2) of the MSA states that: "A harbour master must carry out his or her functions . . . in a manner . . . that ensures the safety of persons and the safe operation of vessels . . ."

There is no equivalent prescription relating to efficiency, apart from the need to have regard to the general TIA transport system objectives.

Difficulties in this regard can be exacerbated where the harbour master is directly employed by a port manager/operator who has a direct commercial incentive to drive efficiency in operations.

The employment situation in Victoria is mixed, with four of the five harbour masters employed by state-owned port managers (VPCM, VRCA and Gippsland Ports). The fifth, at the Port of Portland, is employed by the private port manager.

The cleanest resolution of this problem is to have all harbour masters employed by a state-owned entity with a clear safety charter, or directly by the safety regulator. The latter is the case in Queensland, for instance.

Other concerns raised in the consultation process related to the adequacy of functions and powers of harbour masters.

For example, it was argued that harbour masters should have access to clearer powers to investigate safety incidents occurring in their ports. This might include requirements for vessel masters, pilots, towage providers, etc. to provide immediate information to the harbour master about an incident.

This in turn would allow the harbour master to take timely action, if required, to mitigate safety risks in the port, rather than having to await the outcome of a more lengthy investigation by the relevant transport safety agency.

It was also argued by some stakeholders that, given their ultimate responsibility for safety outcomes, harbour masters should have a greater role in the registration of pilotage services and the licensing of pilots in their ports.

This could range from the institution of more formal consultation requirements between the Safety Director and harbour masters in the registration/licensing processes, to the full delegation of the function to the harbour master.

Analogous arguments were raised in relation to the provision of towage and line boat services in the ports.

Potential reform options range from a relatively minor adjustment to require the harbour master for the Port of Portland to be employed by the VRCA (to avoid any potential conflict with the commercial imperatives of the private port owner) to a more major change to require all harbour masters to be employed by TSV, the transport safety regulator.

Consideration could also be given to widening the functions and powers of harbour masters in relation to the engagement of pilots and other key service providers in ports and the investigation of safety incidents.

Question 8

- a) Are employment arrangements for harbour masters in Victoria's ports appropriate? Is there any potential for conflict between safety and commercial imperatives within their roles?*
- b) If you favour reform to employment arrangements, do you prefer a requirement for employment by a state-owned port entity (or entities), or employment by TSV?*
- c) Are the current functions of harbour masters in Victoria's ports broad enough and do they have access to sufficient powers to implement their safety roles effectively? Please explain?*

6.2.2. Pilotage

Pilotage services are required to support and facilitate the safe passage of ships within the port waters of Victoria.

With some permitted exemptions, it is an offence to navigate a vessel greater than 35 metres in length in declared port waters without a licensed pilot.

Under the MSA, 'Pilotage Service Providers' are required to be registered and persons employed by them to act as pilots are required to be licensed. These registration and licensing requirements are administered by the Safety Director.

Since 1839, Port Phillip Sea Pilots (PPSP) have been providing pilotage services for Port Phillip Bay. PPSP also provide pilotage services in Western Port.

In February 2018, a second Pilotage Service Provider, Australian Pilotage Group (APG), was registered and entered the market for pilotage services in Port Phillip Bay.

Following the introduction of competition in the pilotage market, questions were raised by some stakeholders about the adequacy of the regulatory framework for pilotage in Victoria.

The regulatory arrangements inherited had arisen in the context of a single monopolistic service provider, rather than a competitive market situation.



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Although permitting competition in the market does not, in and of itself, dilute safety outcomes, there is an argument that the regulatory framework may need to be tightened to ensure that minimum standards and performance levels are clarified and achieved.

As a result of the concerns expressed, a review of the regulatory arrangements for pilotage in Victoria was undertaken in 2018, led by Transport for Victoria (TfV). This review considered formal submissions by PPSP, TSV and VPCM.

Following the review, a series of actions were endorsed by the Government and are being progressed as follows:

- establishment of a TSV led Pilotage Co-ordination Advisory Group (implemented);
- identification and progression of legislative amendments to improve the regulatory framework (implemented via the *Marine and Fisheries Legislation Amendment Bill 2019* and effective early 2020)
- review and revision of the pilotage training and licensing standard by TSV (new determination issued October 2019); and
- development of a pilotage Code of Practice by TSV (draft currently being finalised)

During the TfV review, other issues were raised, including whether the level of expertise and resourcing in TSV was adequate to enable the effective regulation of pilotage and, as a corollary, whether there was sufficient involvement by harbour masters in the regulatory framework.

Lack of a performance framework and key performance indicators for pilotage service providers and the absence of a formal system of reporting between service providers and harbour masters were other pertinent matters raised.

It is noteworthy that a different model applies in the port of Portland. As well as directly employing the harbour master, the private port owner (PoPL) directly employs its own pilots and owns and operates its own tugs.

Different models of pilotage also apply in other jurisdictions.

In NSW, for example, pilotage services for all of the commercial ports are provided by the Port Authority of NSW. Under the *Marine Safety Act 1998*, the power to issue Marine Pilotage Licences may also be delegated to the Port Authority from Transport for NSW.

Reform options for pilotage in Victorian ports could range from monitoring the outcomes of the recent reforms to delegating responsibility for registering pilotage service providers and/or licensing individual pilots to state-owned port managers.

Question 9

a) Has the establishment of the Pilotage Co-ordination Advisory Group and other recent reforms to the regulatory framework been a sufficient response to the deficiencies identified following the introduction of competition? If not, what further changes are needed?

b) What should be the appropriate relationship between pilotage services and the harbour master? Should the harbour master have clearer powers in relation to the engagement and conduct of pilotage services?

c) Is there a case for a more fundamental reform of arrangements for pilotage in Victorian ports (for example, more along the lines of the NSW model)? Please explain.

6.2.3. Towage

S73A of the PMA defines towage as the service of supplying one or more towage vessels to assist in the navigation of other vessels by towing or pushing these vessels into, within or out of port waters.

Under s202A of the MSA, the Safety Director may make standards for emergency response capability of towage vessels, which apply across the State. However, to date no such standards have been made or promulgated.

The only port in Victoria at which towage service provision is regulated is the Port of Melbourne.

The regulatory framework for towage in the Port of Melbourne is established under Part 4A of the PMA.

This regulatory framework arose from a perceived need to ensure the provision of towage services of a particular standard to support the growth of trade and commercial shipping vessels following the Port Phillip Channel Deepening Project, which was completed in 2009.

S73B of the PMA specifies that VPCM may make a Towage Requirements Determination (TRD). It sets out the matters which may be dealt with in the determination and the process for its making.

S73E of the PMA states that a person cannot provide a towage service in the Port of Melbourne unless the person is a notified towage services provider.

The current TRD specifies compliance requirements for towage providers in relation to the standard of vessels, equipment and crewing that they are required to provide.

The requirements in the TRD are set out in respect to three 'tiers' or classes of towage vessels. They include:

- the minimum number and capacity of towage vessels that providers are required to provide;
- the minimum requirements for towage vessels, in relation to size, systems and propulsion, and crew competency;
- the requirement to comply with all relevant legislative requirements;
- specific requirements for firefighting vessels; and
- the level of availability required of towage vessels.

There are four tugs based in the Port of Melbourne operated by private towage service provider, *Svitzer – Svitzer Maryville, Svitzer Otway, Svitzer Eureka* and *SL Daintree*.

A limited form of competition has also recently emerged in the Port of Melbourne via a 'code-sharing' type agreement between *Switzer* and *Smit Lamnalco*, with the latter utilising the *Svitzer* tugs via a service level agreement.

The three other commercial ports in Victoria (i.e. Hastings, Geelong and Portland) have no formal towage service provision regime, with service standards governed by a mixture of Harbour Master Directions, contract and other open market arrangements.

PoHDA reported that it was in the process of negotiating what would amount to a non-exclusive licence agreement for towage services in the Port of Hastings.

As there is no regulatory framework for licensing of towage services, the agreement would be leveraged off the commercial berthing agreement for tugs in the port.

There are three *Svitzer* tugs in operation at the Port of Hastings – *Svitzer Edwina, Svitzer Olivia* and *Tom Tough*.

In the Port of Geelong, no specific arrangements are in place. Shipping lines engage towage service providers directly with limited involvement from the VRCA, other than through the role of the harbour master.

Concern has been expressed that this situation does not provide sufficient certainty of service delivery standards and continuity.

There are two Svitzer tugs in operation at the Port of Geelong – *Hastings* and *Cooma* – and two tugs operated by Engage Towage.

Towage services in the Port of Portland are owned and operated by the private port operator.

During the consultations to date, some stakeholders expressed the view that the current TRD regime in Melbourne is unnecessarily cumbersome and complex and does not achieve the desired outcomes.

For example, it lacks a number of requirements which are a part of other regimes, such as KPI's, audit provisions and accident and incident notification.

Support was expressed by a number of stakeholders for the introduction of provisions in the regulatory framework for a standard system of non-exclusive licensing of towage service providers to apply across all of Victoria's commercial trading ports.

Question 10

- a) *What is your view of the current towage regulatory regime in the Port of Melbourne? Are service levels and standards adequate under the regime? Is the regime effective in underpinning safe port operations? Please explain?*
- b) *Do you think the current port by port arrangements for towage are appropriate or should there be a consistent approach across the four commercial ports?*
- c) *If you think there is a case for fundamental reform of arrangements for towage in Victorian ports, what form should new arrangements take? Please explain?*

6.2.4. Safety and Environment Management Plans (SEMPs)

Following the Russell Review in 2001, the PMA was amended in 2003 to require all ports to have in place a Safety Management Plan and an Environment Management Plan (under Part 6A of the Act), collectively known as Safety and Environment Management Plans (or SEMPs).

The requirement for SEMPs was intended to address concerns raised in the Russell Review about a fragmented approach to land and marine based safety and environment management and accountability.

SEMPs were intended to facilitate the systematic examination of whole of port activities by port managers to ensure that hazards and risks are identified and controlled either by the port manager, or by other responsible parties.

SEMPs were to identify the roles and responsibilities of the various parties involved and assist port managers to identify, assess and respond to hazards and risks in a coordinated, effective and practical way.

In addition to supporting a comprehensive, risk-based approach to safety and environment management by port managers, SEMPs were intended to facilitate integration of the different safety and environmental regimes that already apply, and to address any overlaps or gaps.

The requirement for SEMP in the PMA does not replace or override general safety and environment regulation. Rather, the intent is to complement existing laws by bringing a whole-of-port perspective to the management of safety and environment in Victorian ports.

The key agencies with responsibility for administration of underlying safety and environment regulation in ports are EPA, WorkSafe and TSV.

The obligation to prepare SEMP falls on 'port managers', as defined in the PMA.

Where multiple port managers co-exist within the one port, it is expected that all port managers will cooperate to achieve effective coordination and, in developing their SEMP, will examine opportunities to work together to more effectively control or minimise hazards and risks.

This may be achieved with a single SEMP or multiple SEMP for the one port and may involve:

- one port manager taking the lead in the development of the plans for each of the port managers or port managers working together to develop an integrated SEMP;
- identifying and actioning SEMP tasks which are best done on a whole-of-port basis (for example, agreeing a common hazard identification and risk assessment methodology);
- jointly commissioning and funding projects which support SEMP development or implementation; and
- establishing ongoing arrangements for sharing information, maintaining and revising the SEMP or coordinating communications with stakeholders.

In these situations, port managers are to pay particular attention to carefully defining and allocating responsibilities for preparing and implementing the SEMP, as each individual port manager remains ultimately accountable for compliance with the requirements of the PMA as they apply to the area of the port that the port manager manages, superintends or controls.

During the consultations to date, a range of views have been expressed about the efficacy of SEMP.

Most port managers of the large commercial ports accepted the requirement to prepare and maintain SEMP as a reasonable and useful obligation under the port legislative framework.

The larger local port managers were also positive about the value of the SEMP process, noting that it provided a useful framework and discipline for managing risk in their ports and their organisations more generally.

On the other hand, some port managers felt that SEMP didn't add much value and simply duplicated existing asset/risk management systems already in place in their organisations.

Other criticisms included the significant call on resources required to produce SEMP, particularly for small local port managers, and the lack of scalability of the requirement, which was essentially the same for a large trading port and a small recreational port.

There was also some concern expressed about the quality of the audit process, with the lack of maritime expertise of some auditors limiting the value of outcomes produced.

Under the PMA, Ministerial Guidelines are published to assist port managers in the preparation of SEMP.

Freight Victoria is currently leading a review of these Guidelines, which have not been revised since 2012.

Question 11

- a) What is your view of the current SEMP requirements under the PMA? Do you think SEMPs add value beyond the generic safety and environmental legislation which already applies to ports?
- b) Should SEMP requirements be reduced or even removed for the smaller local ports?
- c) Should the current SEMP requirements be significantly revised or replaced by an alternative system? Please explain.

6.2.5. A safety licensing model

One of the recommendations of the 2001 Russell Review that was not adopted was that *"the Minister take responsibility for instituting a Port Operating Licence required by all ports in the State"*.

This proposal was part of a package of port safety recommendations that included an explicit legislative requirement for all ports to operate in a safe manner and the production of a Port Safety Code.

The Review noted that a Port Safety Operating Licence model had been adopted in NSW and argued that:

"A licensing regime has the benefit over voluntary standards or regulations, of establishing a direct relationship between the Minister responsible for the State's performance in ports and those individual ports".

In the *Government Response to the Next Wave of Port Reform* (July 2002), it was noted that:

"Discussions with stakeholders confirm that an additional layer of licensing applying to the port operator would add little value to current arrangements".

Rather, the Government Response proposed the alternative of a legislated requirement for port managers to put in place comprehensive safety and environment management plans (SEMPs) that will:

"bring together all the different port activities and players and provide a framework in which safety and environment issues can be systematically and effectively addressed".

Rather than a Port Safety Code, guidance material on how to comply with port specific safety and environment requirements would be developed.

Given the persistent criticisms of the complex and fragmented nature of the safety regulatory regime for Victorian ports - reiterated in the consultation process for this review - it is perhaps timely to revisit the licensing model.

There appear to be two related problems that a licensing approach could potentially address:

- lack of clear, unambiguous accountability and authority to ensure safe operations at the port level; and
- lack of appropriate expertise and resourcing at the State (safety regulator) level to ensure compliance with safe operating requirements and best practice at the port level.



PORTLAND

In NSW the Minister responsible for ports is empowered, under s12(2) of the *Ports and Maritime Administration Act 1995*, to issue a Port Safety Operating Licence to a port management body.

The purpose of the licence is to further detail the:

- a) Port Safety Functions exercisable by the Licensee;
- b) Terms and conditions applicable to the exercise of the Port Safety Functions; and
- c) Performance standards and quality assurance programs applicable to the provision of services associated with the discharge of the Port Safety Functions.

Port Safety Operating licences in NSW are currently issued to the Port Authority of NSW in respect of the ports of Newcastle, Sydney Harbour, Botany Bay, Port Kembla, Eden and Yamba.

The scope of the NSW port licensing system is somewhat narrower than that envisaged under the Russell Review, focussing primarily on safety from a port waterside perspective.

The key obligations of the licensee specified under the licence include responsibilities for:

- channel and berthing box depths;
- dangerous goods;
- emergency response;
- aids to navigation;
- pilotage;
- port communications;
- vessel arrival system;
- reporting of accidents/incidents;
- investigations of oil and chemical spills; and
- towage.

In relation to pilotage, for instance, the Licensee *"must ensure that there are pilotage services in the Ports that comply with Part 6 of the Marine Safety Act 1998"*.

Under the same Act, the Licensee may also be delegated the power to issue Marine Pilotage Licences.

In relation to towage, the Licensee:

"is to promote the provision of safe and efficient towage services by third parties within the Ports . . . and must maintain a Towage Licence System for each Towage Port".

The licensing provisions also include a strong emphasis on quality assurance programs for the services that the Licensee is required to deliver under the licence and auditability of these programs and supporting systems.

An annual audit process is required and the reports of the Licensee's auditors are reviewed by Transport for NSW, which may have an observer involved in the audit process.

In addition to any audit required for quality assurance certification, the Minister may:

"require an audit to be conducted of the Licensee's performance of any or all of the Port Safety Functions by an auditor nominated by the Minister".

If such a licensing system, covering a similar range of port safety functions, was to be applied to the current Victorian situation, the following port management entities would need to be included:

- VPCM (port of Melbourne);
- PoMO (port of Melbourne);
- VRCA (ports of Geelong, Hastings and Portland);
- PoPL (port of Portland); and
- Gippsland Ports (port of Corner Inlet and Port Albert)

This complexity is symptomatic of the current inconsistent dispersion of waterside safety and navigational control functions across a mixed range of public and private port bodies in Victoria.

If, on the other hand, a Port Safety Licensing System was to be applied to a structurally reformed Victorian port system, involving a new Victorian port authority, similar to one of the options outlined earlier in this Discussion Paper (and/or similar to the Port Authority of NSW), there would be only one licensee holding separate licences for each of the relevant ports.

The key advantage of this combination of structural reform and safety regulatory reform would be to radically rationalise and crystallize responsibilities and lines of accountability for port waterside safety, thus substantially addressing the two key problems raised earlier.

A possible disadvantage of this approach may be seen in terms of an additional regulatory impost in the form of a new licensing system applying across the port system and the costs that come with it.

Reformed arrangements could look as described in the box below. *A new model – Combined structural reform with safety licensing*

- *A new Victorian port authority, directly accountable to the Minister for the port safety performance of each of the commercial ports (and Corner Inlet) through a Port Safety Licensing System;*
- *The new authority responsible for, amongst other key safety functions, employing the harbour master, overseeing and/or licensing pilotage services and licensing towage services for each port;*
- *The port safety regulator (TSV) responsible for overseeing and auditing the new authority's compliance with the requirements of the MSA and other relevant safety frameworks; and*
- *TSV responsible for licensing of Harbour Masters and pilots (although the latter could be delegated to the new authority).*

Question 12

- a) *What is your view of the potential for a Port Safety Licensing System, similar to that in NSW, to improve port safety management performance in Victoria's ports? What do you see as the main advantages and disadvantages?*
- b) *What do you think of the 'new model' described in the box above? What do you see as the main advantages and disadvantages? Could it be implemented in Victoria? What would be the main barriers to it?*

7. Port Strategic Planning

7.1. Introduction

In order for individual ports to effectively play their role in meeting the needs of Victorian importers and exporters, they must plan ahead to anticipate future trade and capacity demands and develop investment strategies and infrastructure delivery programs to meet these demands in a timely manner.

But ports don't operate in isolation, they are key hubs in the broader transport and logistics network of the State. They are connected to other ports to seaward by channel infrastructure and to freight catchments and facilities on the landside by road and rail infrastructure.

For this reason, ports need to take into account and attempt to influence the planning and investment strategies of the State in order to optimise their own planning outcomes.

Conversely, given the acknowledged importance of the ports in supporting the economy, the State needs to take into account the planning and investment strategies of the ports, both individually and collectively, to promote complementary investment in transport and logistics infrastructure and systems.

In other words, there needs to be an effective dialogue between individual port and State-level strategic planning to achieve balanced, optimal outcomes for the ports and the State.

To address the State's responsibilities in this regard, the Russell Review in 2001 recommended that:

"the Minister for Ports develop through the [Department] a Statewide Port Strategy, closely dovetailing with the Government's other related strategies such as the Freight and Logistics Strategy and the Metropolitan Strategy".

This recommendation was accepted by the Government at that time and the strategy document – the *Victorian Ports Strategic Framework* – was subsequently released in 2004.

The first Victorian freight strategy – *Freight Futures* – was not released until 2009. This was followed shortly after by *Port Futures*, which set out some adjustments to pre-existing port policy and strategy settings.

In 2009, in conjunction with *Port Futures*, amendments were made to the PMA requiring the preparation at five yearly intervals of a Port Development Strategy (PDS) for each by commercial trading port by the "relevant port authority".

A further significant initiative at the time was to have PDSs formally recognised in the State Planning Policy Framework (SPPF).

According to the *Port Development Strategy Ministerial Guidelines (July 2017)*:

"A port development strategy (PDS) is largely concerned with capacity planning for trade throughput at the port... [and]... Articulating a medium and long term 'port development vision' to the port's stakeholders".

The relevant port authorities as currently defined in the PMA are:

- PoMO (for the port of Melbourne);
- PoHDA (for the port of Hastings);
- PoPL (for the port of Portland); and
- VRCA (for the port of Geelong).

In 2017, further work to assess the options for a second container port for Victoria was completed by Infrastructure Victoria (IV), identifying Bay West as the preferred location ahead of the Port of Hastings.

Previously, the 2004 *Victorian Ports Strategic Framework* (subsequently reconfirmed by *Port Futures* in 2009) had nominated the Port of Hastings as the preferred site for planning purposes (although, as already noted, PoHDA had been directed to discontinue planning for a container port in 2015).

In July 2018, the Victorian Government released the *Victorian Freight Plan, Delivering the Goods*, which committed to *"Plan for Bay West as Victoria's second container port whilst retaining the Port of Hastings as an option in reserve"*.

Despite this significant change in a key long-term strategic setting for the ports system, there has been no comprehensive update to the State's port strategy since 2004.

At least partially in recognition of this problem, *Delivering the Goods (2018)* also committed to the preparation of a new state-wide ports strategy, to include a long term plan for handling future exports and imports through Victoria's current (and future) commercial ports.

7.2. Issues and options

7.2.1. Port Development Strategies (PDSs)

PDSs have the potential to provide an important mechanism within Victoria's ports system for aligning individual and system-wide ports agendas with broader state-level strategic agendas for transport and logistics infrastructure development; metropolitan planning; and regional economic development.

In the case of the Port of Melbourne, the PDS and the complementary Port Development Implementation Plan (PDIP) play a particularly significant role in ensuring that the private port operator (PoMO) continues to invest in enhancements to the port's physical and systems infrastructure in a timely manner to promote efficiencies and meet growing trade requirements.

Although the consultation process for the review to date has confirmed general acceptance of the PDS requirement and its value, some more specific issues have been raised.

In s91J the PMA establishes the relevant port authorities to whom the obligation to prepare PDSs applies. In most cases this is the "port land owner".

The exception is the Port of Geelong, where the relevant authority is nominated as the VRCA, which manages the port waters and channels of Geelong.

It is understood that this arrangement has arisen from the historical need for an 'honest broker' to balance the interests of a range of land-based stakeholders across the port.

However, during the consultation process to date, some Geelong stakeholders queried whether this is the most effective approach for producing a strong, practical PDS for Geelong.

One alternative approach canvassed was for the PDS to be prepared by the Geelong port "land owner".

There are two owners of land in the port of Geelong – GeelongPort and GrainCorp.

As the “owner of the land that comprises the largest single area of land” (PMA, s91J), GeelongPort would therefore be responsible for preparing the PDS.

Under this scenario, GeelongPort would be required to consult with GrainCorp in preparing the PDS (PMA, s91L) and, under the Ministerial Guidelines, with all other port-related land holders, port tenants, licencees, service providers, municipalities and community interest groups.

A further alternative raised was for all PDSs to be prepared by the Department of Transport (DoT) on behalf of the individual ports.

The argument for this approach was that it would avoid the current perceived need for the individual ports to attempt to ‘second guess’ the State’s strategic intent in relation to each port.

Each PDS would then effectively form a subordinate strategy, directly linked to the State’s broader strategy or strategies.

Question 13

- a) *What is your view of the value of the requirement for commercial ports to prepare PDSs? Do you think the current process for preparing PDSs is effective? What changes/improvements would you make, if any?*
- b) *Who do you think should be responsible for preparing PDSs, given that there are usually multiple bodies involved in the management of the port land and waters? Would you make any changes to current responsibilities? Please explain?*

7.2.2. A Victorian ports strategy

Consultation with stakeholders for the current review has confirmed the need to provide refreshed guidance about the State’s strategic thinking for the ports system, and its implications for individual ports, to aid those ports in their own planning.

A particular concern is to understand the implications for individual ports (particularly Melbourne and Geelong) of the State’s acceptance of the IV finding that Bay West should be the preferred option for a second container port in Victoria.

In this regard the State’s commitment, through *Delivering the Goods (2018)*, to produce a new Victorian Ports Strategy is welcomed by stakeholders and keenly awaited.

Question 14

- a) *Would you like to comment on the need for and role of a new Victorian Ports Strategy? What key content areas should it cover?*
- b) *If you had to nominate the three most pressing strategic issues that a new strategy should address, what would they be?*

8. Other matters

8.1. Introduction

There are some other matters relevant to this review that have not been covered at all or in any depth in this Discussion Paper.

These matters require further exploration and consultation with stakeholders before they can be fully detailed.

At this stage of the review process it is proposed to simply outline these further themes and seek high level views and input on their importance and key issues to be addressed.

8.2. Further themes and issues

8.2.1. Port planning protections

Ports tend to be land constrained to various extents and often experience encroachment from adjoining land uses.

Port managers may want to engage in planning processes when inappropriate land uses are proposed within the port environs.

Addressing interface issues is a shared responsibility between the port manager, community and relevant Government planning agencies.

The issue of residential encroachment near ports and available planning tools is addressed in *Planning Advisory Note 56, Planning for Ports and their Environs*.

Some stakeholders expressed the view that the current statutory planning regime still provides inadequate protection of ports from encroachment on their activities.

Question 15

- a) *Do you think the current planning system in Victoria and associated port-related tools provide sufficient protection for ports from encroachment by adjacent land uses?*
- b) *If not, what are the main weaknesses in the system and what would you change?*

8.2.2. Coastal shipping

The Victorian Government made an election commitment to undertake a Victorian Coastal Shipping Review as part of the development of a Victorian Ports Strategy.

The commitment was to identify options for policy reform and to strengthen Victoria's coastal shipping industry, acknowledging its potential to support regional economic growth and grow employment for Victorian seafarers.

An increased role for coastal shipping could also contribute to managing future freight demand and reducing road and rail congestion. It has the potential to reduce transport costs for certain regional markets and for some major energy and mining projects.

In 2018 coastal container movements represented around 15 per cent of the Port of Melbourne's total (full and empty) container trade. The majority represented Bass Strait trade, which is supported by the Tasmanian Freight Equalisation Scheme.

There are also a number of bulk commodities that are serviced by coastal shipping through Victorian ports, such as gypsum, sugar, cars, project cargo, equipment and liquid bulk products.

There is no legislative framework in Victoria for coastal shipping. The applicable legislative framework is the Commonwealth Coastal Trading (*Revitalising Australian Shipping*) Act 2012.

The Senate Rural and Regional Affairs and Transport Reference Committee is also currently conducting an inquiry into the *"policy, regulatory, taxation, administrative and funding priorities for Australian shipping"*.

The Committee is due to report back in June 2020. Additional work being undertaken by the Commonwealth Department of Transport, Infrastructure, Regional Development and Communications to reform the Coastal Trading Framework has been put on hold due to the COVID-19 issue.

Fourteen submissions were received to the Victorian review. These have been published and can be viewed on the Freight Victoria website. The issues and suggestions raised include:

- current national regulatory regime and uncertainty regarding this regime;
- subsidisation of road transport through infrastructure funding;
- operating costs associated with the coastal shipping task;
- need for landside capacity to support coastal shipping activity;
- port planning requirements that facilitate coastal shipping;
- reduction in the availability of skilled maritime labour; and
- identification of markets where coastal shipping can be competitive.

Nearly all of the submissions received acknowledged, at least implicitly, that action at a national level through reform of the Commonwealth legislation and regulatory regime, would be required to stem the further decline of coastal shipping in Australia and Victoria.

It is noted that Victorian port entities (public and private) do not own large vessel fleets and therefore cannot be direct participants in the coastal shipping industry, nor can they provide significant training opportunities for Australian seafarers.

Suggestions for further extending differential pricing favouring coastal shipping have also been made, noting that discounted pricing already applies to Bass Strait trades through the Port of Melbourne.

Further measures of this type may be difficult to implement, given that the State no longer has control of the majority of the commercial port facilities, including the approach channels in some of the ports.

However, there are some areas of potential action to support coastal shipping that could be considered to be within the remit of the Victorian Government and could involve the participation of the ports.

These include:

- identification of potential markets where coastal shipping could be competitive; and
- development of port planning requirements and landside capacity orientated to coastal shipping activity.

The Victorian Minister for Ports and Freight wrote to the Federal Minister for Infrastructure, Transport and Regional Development in January 2020 outlining the Victorian position and advising that these latter areas would be given further consideration as part of the development of a Victorian ports strategy during 2020.

This consideration could involve analysis of supply chains that could be competitive from a coastal shipping perspective, including those raised by stakeholders.



Such analysis could, in turn, result in identification of specific investment initiatives, planning or other policies to support these supply chains.

Question 16

- d) *What role do you think Victorian ports or the ports system as a whole could play in strengthening the coastal shipping industry?*
- e) *Do you agree that this matter is best progressed through the development of a Victorian ports strategy later in 2020? If not, please explain.*
- f) *Are there any initiatives you think could/ should be pursued in Victoria separate to, or ahead of, work on the ports strategy? Please explain.*

8.2.3. Port sector engagement

As already illustrated, the Victorian ports system is composed of a diverse range of port managers, operators and service providers - both public and private - and other key stakeholders who are either customers of the ports or interface with them in providing intermediate services.

In the past there have been various formalised structures to enable the Government to communicate and consult with key sector interests and stakeholders, to promote better alignment of objectives and a joint problem-solving approach.

At the time of the *Russell Review* in 2001 there was a formal, high level advisory body in operation known as the *Victorian Sea Freight Advisory Council*.

A Ports Agenda briefing breakfast was also conducted annually, designed to provide a platform for the Minister of the day to detail the Government's directions and initiatives for the ports system to a broad range of stakeholders.

With the advent of *Freight Futures* and a broader government focus on the freight and logistics system (of which ports are but one critical component), the *Sea Freight Advisory Council* was eventually disbanded and replaced by the *Victorian Freight and Logistics Council*.

Currently, no such forum for structured engagement with the ports sector (or for the broader freight and logistics sector) exists, although the Ports Round Table event in January of this year was reminiscent of the *Ports Agenda* process.

Views about the need for such a structured approach have varied amongst stakeholders consulted in the current review.

Some have felt that they already have sufficient access to state government agencies and representatives to meet their needs and are satisfied with occasional ad hoc forums and working groups on specific matters as required.

Others have expressed concern about a degree of disconnection of relevant government agencies and representatives from the day to day realities of port system operations, coupled with a progressive erosion of industry knowledge and expertise within government as the private sector has assumed a greater role.

One senior industry stakeholder bemoaned the lack of a 'champion' within government with sufficient industry knowledge and bureaucratic influence to prosecute the ports system's priorities and issues.

The constructive engagement between the Government and the port sector during the current COVID-19 crisis perhaps provides a platform that could be built on in considering the design of future consultative/advisory arrangements.

Question 17

- a) *Do you think there is a need for a formal, standing industry consultative body to provide the Minister and/or relevant government agencies with advice on ports system issues and priorities?*
- b) *If yes, what form should this body take in terms of role, membership, operation, etc.?*
- c) *Would it be better to incorporate ports system issues within a broader freight and logistics industry consultative body?*

9. Conclusion and next steps

9.1. Conclusion

This Discussion Paper examines a range of matters central to the Terms of Reference for the Independent *Review of the Victorian Ports System* and the performance of that system.

The Paper attempts to describe existing arrangements for various aspect of the system; to identify problems and issues where they exist; and to propose alternative approaches for consideration.

The Paper has been prepared based on information gathering and research by the Independent Reviewer, further informed by a significant program of direct consultation with a wide range of stakeholders in the system.

The Paper focuses on the evolution of the ports system to the present day; the importance of the system to the Victorian economy; the State's role and vision for the system; and the core institutional parameters of the system – its scope, its organisational structures and roles, the legislative and regulatory frameworks which govern its operations.

Some additional matters relevant to the Review are covered in less detail towards the end of the Paper for general comment.

Throughout the Paper are a series of questions designed to elicit responses from readers to the issues and options put forward.

These questions are intended to prompt, but not constrain, responses – they need only be used if they are useful to the reader.

Readers are welcome to respond to some or all of the questions and/or to provide general commentary on the Paper and the review process.

There may also be relevant issues not referenced in the Paper which the reader may wish to raise for consideration.

9.2. How to respond

Written responses to the Discussion Paper should be emailed to portsreview@transport.vic.gov.au by COB 31 July 2020. A survey can be found via <https://getinvolved.transport.vic.gov.au> with feedback open until COB 31 July 2020.

9.3. Next steps

Responses to the Discussion Paper will be reviewed and drawn upon to assist in the preparation of a final report and recommendations to the Minister.

It is proposed that the responses will be made publicly available on the FV website, unless a specific request for confidentiality is made.

In some cases the Reviewer may wish to follow up directly with respondents to clarify issues or seek further information.

In the meantime, consultation sessions will continue with stakeholders who have not yet been directly engaged. It is expected that the final report will be provided to the Minister by the end of this year.

Appendix A

Terms of reference

Purpose

Conduct a high level review of the Victorian Ports System to support the development of a strategic policy and governance framework to guide the long term development of the sector and to identify specific reforms to improve system efficiency and effectiveness in the short to medium term.

Background

Port assets in Victoria are managed through a mixture of private and public sector entities. There are four commercial ports along the coast - at Hastings, Melbourne, Geelong and Portland - which handle a range of containerised, bulk and break bulk trades.

Following the Port of Melbourne Lease Transaction in 2016 only the Port of Hastings and Station Pier remain as directly state-managed landside port asset. The landside facilities of the Ports of Geelong and Portland were privatised in the 1990s. Channel infrastructure at all four Victorian ports remains in state ownership with port waters in the Ports of Melbourne, Hastings and Geelong managed directly by a state-owned entity, whilst the private Port of Portland manages its own port waters under an agreement with the State.

In addition to the four commercial trading ports, there are 14 local ports along Victoria's coast which are managed by 8 different local port managers. These ports include a range of different facilities which accommodate some minor commercial and recreational assets.

Since the conclusion of the Port of Melbourne Lease Transaction a range of policy and planning issues have emerged to which Freight Victoria is responding through a number of targeted policy review projects.

The specific policy matters currently being examined include:

- Governance arrangements for state-owned port entities
- Regulation of key port services (pilotage and towage)
- Pricing and access arrangements at the Port of Melbourne
- Development of coastal shipping

The work to date has highlighted the more general need for a consistent overarching strategic policy and governance framework for the Victorian ports sector to ensure that the outcomes of these more targeted review projects can be properly contextualised and aligned.

Whilst a range of port related matters were outlined in the Victorian Freight Plan released in July 2018, the Plan did not propose any substantive changes to strategic direction or governance settings for Victorian ports. The legislative settings for both local and commercial ports have not been substantially reviewed since the Russell Review completed in 2002.

The Freight Plan did, however, commit to the preparation of a comprehensive Victorian Ports Strategy in the short term (Priority 4 - Plan for Victoria's future port capacity) which will include a long term plan for handling future exports and imports across Victoria's current (and future) commercial ports.

In order to provide a strategic context for the development of the Ports Strategy and to enable integration of the outputs of the various pieces of work now underway into one consistent narrative, it is now proposed to undertake an Independent Review of Victoria's ports system. The Review will assess the functioning and performance of the system and consider the policy and governance directions necessary to ensure it is best equipped to meet the State's trade requirements effectively, efficiently and sustainably into the future.



PORTARLINGTON

Following completion of the Independent Review there will be a report back to the Economic Policy Committee detailing the outcomes and recommendations of completed work and proposing next steps in the development of a Government response, both through the proposed Ports Strategy and other relevant policy reform initiatives.

Objectives

1. To consult with key port stakeholders, including port users (importers, exporters, freight forwarders), port service providers (including transport), port owners/operators, port regulators and port-impacted communities, to assist in assessing the current functioning and performance of the Victorian port system
2. To incorporate the findings of a number of specific policy reviews currently underway (e.g. governance and pricing reviews) into the above assessment
3. Based on the above, to identify current strengths and weaknesses of the ports system and key emerging issues and challenges and to assess the efficacy of possible future policy and strategy directions and settings
4. To develop and consult on a strategic vision, goals and objectives for the ports system to inform the development of the Victorian Ports Strategy and the broader port policy reform agenda and to clarify the appropriate role for government and other key stakeholders in achieving these outcomes
5. In this context, to make specific recommendations regarding improvements to, or reform of, the ports system in the short to medium term to ensure it is able to operate efficiently and effectively in the interests of all Victorians into the future

Approach

An Independent Reviewer will be appointed to coordinate and oversight the review process, including a program of consultation with key port stakeholders. The work of the Independent Reviewer will be resourced and supported by Freight Victoria within the Department of Transport.

Timelines

The review process will run for approximately six (6) months, with formal stakeholder consultation commencing from February 2020. The Independent Reviewer will provide a report on the review process and findings to the Government by mid-2020.

Appendix B

Summary of direct stakeholder consultations

Date	Stakeholder	Representative/s	Title	Interview Style
27/11/19	Essential Services Commission	Marcus Crudden	Director, Price Monitoring and Regulation	Face to Face
27/11/19	Department of Treasury and Finance	Anthony Rossitor	Senior Economist Service Delivery and Reform Group	Face to Face
		Fotos Andreou	Director	
		Craig Tarling	Senior Analyst	
29/11/19	Department of Premier and Cabinet	Miriam Slattery	Director	Face to Face
		William Fairweather	Policy Officer	
		Elizabeth Brant	Manager	
3/12/19	Melbourne Port Lessor Pty. Ltd.	Brett McKenzie	General Manager - Port Lessor	Face to Face
		Steve Rundin	Commercial Manager - Port Lessor	
5/12/19	Marine Pollution (DoT)	Michael Holloway	Manager Marine Pollution	Face to Face
18/12/19	Victorian Regional Channels Authority	Peter Mannion	CEO	Face to Face
		David Shennan	Harbour Master	
		Stuart Christie	Development Manager	
		Ian Clydesdale	Commercial Manager	
9/1/20	Parks Victoria	Kylie Trott	Director, Melbourne Division	Face to Face
		Jo Richards	Regional Director, Marine and Maritime	
16/1/20	Australian Competition and Consumer Commission	David Cranston	Director, Airports, Post, Ports and Road Reform Section	Face to Face
		Deric Flores	Senior Analyst	
4/2/20	Better Boating Victoria	Gary Gaffney	CEO	Face to Face
4/2/20	Transport Safety Victoria	Cameron Toy	Director, Maritime Safety	Face to Face
12/2/20	Victorian Ports Corporation (Melbourne)	Rachel Johnson	CEO	Face to Face
		Kell Dillon	EGM Marine and Navigation and Harbour Master	
		Jeff Bazelmans	EGM Business, Information and Strategy	
14/2/20	Victorian Regional Channels Authority	Peter Mannion	CEO	Face to Face
17/2/20	Victorian Ports Corporation (Melbourne)	James Cain	Chair	Face to Face

17/2/20	Victorian International Container Terminals	Tim Vancampen Patrick Chan	CEO General Manager - Commercial	Face to Face
17/2/20	Freight Trade Alliance/ Australian Peak Shippers Association	Paul Zalai	Director	Face to Face
19/2/20	Port of Hastings Development Authority	Malcolm Geier	CEO	Face to Face
18/2/20	Victorian Transport Association	Peter Anderson Greg Cain	CEO Industry Services Manager	Face to Face
24/2/20	Customs Brokers and Forwarders Council of Australia	Zoran Kostadinovski	Regional Manager VIC/TAS/SA	Face to Face
25/2/20	Warrnambool City Council	Ben Storey	Manager Facilities & Projects	Face to Face
25/2/20	Glenelg Shire Council (Port of Portland Bay)	Scott Easson	Port Manager	Face to Face
25/2/20	Port of Portland Pty. Ltd.	Greg Tremewen	CEO	Face to Face
25/2/20	Moyne Shire (Port Fairy)	Paula Tovey David Mattner	Team Leader Environmental Sciences Port Manager	Face to Face
26/2/20	Barwon South West Local Ports Forum*	See Footnote Below	See Footnote Below	Face to Face
26/2/20	Colac Otway Shire (Apollo Bay)	Peter Brown Simon McBeth	CEO Port Coordinator	Face to Face
3/3/20	Port of Melbourne Operations Pty. Ltd.	Brendan Bourke Caryn Anderson	CEO Executive General Manager	Face to Face
3/3/20	Shipping Australia	Rod Nairn Melwyn Noronha	CEO General Manager - Technical Services & Industry Policy	Teleconference

16/3/20	Gippsland Ports	Chris Waites Robin Buckham Joanne Butterworth-Gray Ralph Kenyon David Holding Bevis Hayward Stephen Martin	CEO Chair Board Member Board Member Executive Manager Marine Operations Harbour Master Executive Manager Corporate Services	Face to Face
18/3/20	Victorian Regional Channels Authority	Kate Roffey	Chair	Teleconference
18/3/20	Container Transport Alliance Australia	Neil Chambers	Director	Face to Face
23/3/20	Qube	Maurice James	Managing Director	Teleconference
24/3/20	Linx Cargo Care	Anthony Jones	CEO	Teleconference
25/3/20	GeelongPort	Brett Winter	CEO	Teleconference
25/3/20	DoT	Kathryn Grech	Principle Strategist	Teleconference
27/3/20	Parks Victoria	David Ritman Graham Davies Victor Teoh	Team Leader Maritime Planning District Manager Port Phillip Western Port Senior Manager Local Ports and Waterways	Teleconference
27/3/20	Victorian Regional Channels Authority	Peter Mannion David Shennan Stuart Christie Ian Clydesdale	CEO Harbour Master Development Manager Commercial Manager	Teleconference
30/3/20	Victorian Farmers Federation	Simon McNair	Grains Manager	Teleconference
1/4/20	Port of Hastings Development Authority	Jennifer Acton	Chair	Teleconference
1/4/20	Committee for Geelong	Jennifer Cromarty Kirsten Kilpatrick	CEO Board Member	Teleconference
8/5/20	Maritime Union of Australia	Ian Bray Rod Pickette Shane Stevens David Ball	Assistant National Secretary Consultant Policy Adviser Victorian Branch Secretary Victorian Deputy Branch Secretary	Videoconference

28/5/20	Patrick Terminals	Michael Jovicic Victoria Moore Nikki Santry	CEO General Counsel and Company Secretary Business Development Manager	Teleconference
1/6/20	Ports Australia	Michael Gallacher Ash Sinha Margaret Barbottis	CEO Policy Director Policy and Operations Director	Teleconference
3/6/20	Svitzer	James Mather Peter Cream	GM East Coast Port Manager (Vic)	Teleconference

* Attended by port managers from local ports as well as representatives from DoT, DJPR and TSV"

Scott Easson (Glenelg Shire), Paula Tovey, David Mattner (Moyne Shire); Benjamin Storey, Don Allen (Warrnambool City), Natasha Johnson, Rhianna Burns (Parks Victoria), Simon McBeth, Marcus Pola (Colac Otway Shire), Caleb Hurrell (GORCC), Warren Chapman (BCCoM), Michael Holloway, Linda Palmer (DoT), Richard Stafford-Bell (DJPR), Geoffrey Swanton (TSV)

