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14 November 2024

2025 Market Rent Inquiry

Port of Melbourne Submission to
Scope and Process Paper

Port of Melbourne

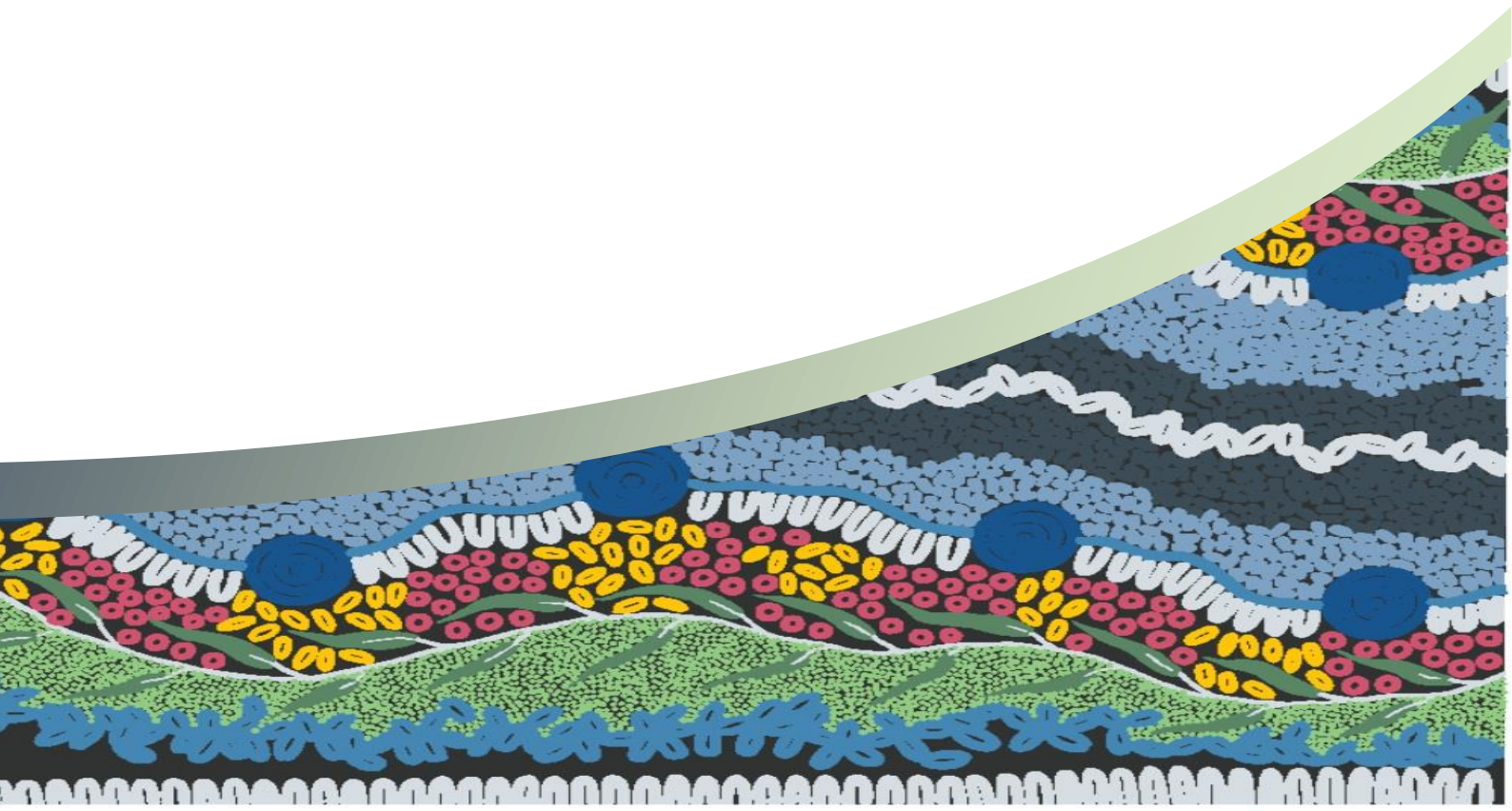


Acknowledgement of Country

Port of Melbourne acknowledges Bunurong, Wadawurrung, and Wurundjeri Peoples of the Kulin Nation as the Traditional Custodians of the land and waters on which our business operates.

We recognise and value their unique cultural heritage, customs, spiritual beliefs and relationship with the land. We pay our respects to their Elders past, present and emerging, and to all Aboriginal and Torres Strait Islander peoples across the communities in which we work.

We acknowledge that we work on the unceded land of Aboriginal and Torres Strait Islander peoples. We recognise the past wrongdoings and injustices against Aboriginal and Torres Strait Islanders and the ongoing inequalities that continue today.



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CEO foreword

This is the second Market Rent Inquiry (the Inquiry) that the Essential Services Commission has undertaken since the Port of Melbourne entered into the long-term lease of the asset in 2016.

This Inquiry covers a five-year period, commencing on 1 November 2019 and concluding on 31 October 2024.

We've undertaken a great deal of work both culturally and practically in the last five years, and I'm pleased to have the opportunity to provide this submission to the Essential Services Commission as part of the Market Rent Inquiry process as outlined in their Scope and Process Paper, published 1 October 2024.



In November 2021 we implemented the Tenancy Customer Charter. Since then, we have also published two Tenancy Customer Charter Annual Reports which have allowed us to demonstrate how we have performed against Key Performance Indicators.

While we recognise the importance of the Tenancy Customer Charter, we also recognise that each of our tenants' needs vary and when we collaborate, we can achieve an even better outcome for both parties. We are committed to working with Port tenants with the aim of achieving commercially acceptable market-based outcomes for our tenants, in accordance with our obligations to the Victorian Government.

Internally we have worked towards building customer-centric tenant relationships, while operating as a multi-property landlord port manager in line with other commercial and industrial sector leaders.

The Inquiry process which continues to the end of April next year, is an opportunity for us to demonstrate compliance and cultural uplift, and how we delivered in line with the Tenancy Customer Charter.

Saul Cannon

Chief Executive Officer

Port of Melbourne

Executive summary

Introduction

Port of Melbourne Operations Pty Ltd (**PoM**) is pleased to present this submission to the Essential Services Commission (**ESC**) in response to the ESC's 2025 Market Rent Inquiry Scope and Process Paper.

We have undertaken a great deal of work both culturally and practically in the last five years. At the start of the five-year Inquiry period, we were focused on resolving recommendations made by the ESC from the first Market Rent Inquiry, with the development and implementation of our Tenancy Customer Charter (the **Charter**) published in November 2021. Since then, we have also published two Tenancy Customer Charter Annual Reports which have allowed us to demonstrate how we have performed against the Key Performance Indicators in the Charter.

We see this Inquiry as an opportunity to demonstrate the advancements we have made in our processes for agreeing and reviewing of land rents payable by tenants, and to reflect on the collaborative work we have done with Port tenants with the aim of achieving commercially acceptable market-based outcomes for our tenants, in accordance with our obligations to the Victorian Government.

Scope and approach

We consider that our ability to exercise power during the Inquiry period was substantially limited due to the constraints that operate on it in its activity of providing access to leased Port land in relation to the process for the setting or reviewing of relevant rents or associated payments with our tenants, including:

- where tenants do not require wharf access, we do not have the ability to exercise power, since off-port land provides an effective substitute (regardless of the presence of sunk costs)
- where tenants do require wharf access, a different set of constraints apply, including the size and sophistication of tenants, our reliance on tenants to meet our stewardship obligations in terms of operating and developing the Port, and competition between supply chains.

We consider that there is no basis for a finding that during the Inquiry period any exercise of market power had (or could have) the effect of causing material detriment to the long term interests of Victorian consumers during the Inquiry period because:

- we did not charge excessive rents during the Inquiry period;
- even if we were considered to have charged excessive rents, the ultimate markets we serve are competitive, which makes it highly unlikely that any material pass through of any such putative excessive rents could occur to affect downstream users or ultimately Victorian consumers; and
- even if there were such pass-through, the quantum of any detriment to Victorian consumers relating to activity that was undertaken during the Inquiry period would be so small as to not be able to be characterised as material – our rents (in their entirety) comprise between 0.04% and 0.1% of the cost of imports faced by Victorian consumers.¹

Processes for setting and reviewing rents

The processes for setting and reviewing rents or associated payments, including terms and conditions to apply under such leases are set out in:

- the Charter, which sets out the processes and timeframes for lease negotiations that reflect both mandatory requirements imposed by the Victorian Government and additional, voluntary processes

¹ See Chapter 4 of this submission for calculations

designed to assist us, existing tenants and prospective tenants to negotiate commercially acceptable outcomes; and

- our Precedent Lease Agreement and accompanying Precedent Lease Guide, which provide explanations for prospective tenants on lease terms and conditions, including those needed to enable us to comply with our obligations at law and to the Victorian Government under the Port Lease.

These enhancements apply in addition to the model in existence at the time of (and prior to) the Port Lease, under which tenants and PoM negotiate an agreed outcome on rents, or if no agreement can be made, refer the matter to an independent third party valuer, being a person nominated by the President of the Australian Property Institute to determine the Reasonable Market Rent (**Independent Valuer**).

The Charter was developed in consultation with the Department of Treasury and Finance (**DTF**) to address the ESC's findings and recommendations from the first inquiry by establishing principles and processes we follow when setting and reviewing rents with our tenants. In October 2021, DTF accepted the Charter noting that it satisfactorily addressed the ESC's findings and matters raised by DTF.

We have worked hard during the Inquiry period to ensure tenants and other stakeholders have a sound knowledge of the processes we use and are required to use when setting and reviewing rents or associated payments with our tenants.

Compliance with processes for setting and reviewing rents

Throughout the two years from 2019 to 2021 before the Charter was finalised with DTF, we undertook a number of initiatives to increase transparency and streamline lease negotiations with Port tenants. The previous Inquiry outcome was a key driver in actively pursuing positive cultural change, including:

- our restructure of the Property team has been designed to better align with the needs of tenants and prospective tenants;
- our internal teams and their interactions with tenants and stakeholders are reflective of our Stakeholder Engagement Framework principles; and
- we have tested tenant attitudes and actively gathered feedback and continue to work towards responding to their needs.

Our best steps have been taken since implementing the Charter and its supporting processes. For leases negotiated after the commencement of the Port Lease, we will be contractually bound by the updated Market Rent Review (**MRR**) process and rent pause mechanism (unless tenants elect to opt out).

The Charter also includes annual public performance reporting and an enhanced dispute resolution process where tenants can raise disputes with PoM about compliance with the Charter and then with the ESC to act as an independent expert.

Outcomes during the Inquiry period

Over the Inquiry period, average rents at the port increased by 37%, equivalent to a compound annual growth rate of 6.5%. In contrast, over the same period industrial rents in the broader Melbourne market have increased by around 60%-75%, equivalent to a compound annual growth rate of 10%-12%, due to limited supply and tightening vacancy rates.

While vacancy rates at the port have been similar to the broader industry over the last two years (below 2%) lower growth in rental rates is likely due to the prevalence of long-term contracts, which are necessary to enable tenants to amortise their investments, but have the result that 'open market' transactions where current conditions can be reflected in rents are rare. Under these conditions it takes longer for market conditions to affect port rents. Therefore, we expect rental rates at the port to adjust more slowly to tightening vacancy rates than would be the case in the broader Melbourne industrial market.

1 Scope and approach

This section of our submission provides feedback on the scope of, and approach to, the Inquiry, including:

- the relevant market;
- our ability to exercise power in the relevant market;
- consideration of whether market power was exercised during the Inquiry period; and
- assessing impacts on Victorian Consumers (i.e. the extent of pass through) and whether there was a material detriment.

Our submission on these matters is supported by expert advice from Incenta Economic Consulting (Incenta), which accompanies our submission.

1.1 Legislated requirements

When establishing the regulatory framework for the Port Lease, the Government elected to exclude land and improvements from the Pricing Order that applies to the provision of Prescribed Services under the PMA² on the basis that:

- leases are bespoke commercial arrangements struck between willing parties and/or in competitive tender processes to meet the needs of both the landlord and tenant at the time (compared to uniform services provided by wharves and channels); and
- leases provide for an Independent Valuer to determine a market rent should the landlord and tenant fail to agree a commercial outcome.³

As such, leasing of land and facilities is not regulated. However, under s.53(1) of the PMA, the ESC must, not later than six months after the end of an Inquiry period, conduct and complete an inquiry into whether:

- PoM has market power in relation to the process for the setting or reviewing of rents or associated payments (however described) payable by a tenant; and
- PoM has exercised that power in a way that has the effect of causing material detriment to the long term interests of Victorian consumers (a misuse of market power).

If (and only if) the ESC finds that there has been a misuse of market power, it is required to make recommendations to the ESC Minister about whether leasing activity should be subject to economic regulation, and, if so, the form of the economic regulation.

Under s.53(3) of the PMA, in conducting the Inquiry described above, the ESC must have regard to:

- the processes used to establish or review rents or associated payments;
- PoM's compliance with any of these processes; and
- the extent to which any rents or associated payments may ultimately be passed through to Victorian consumers.

² Prescribed Services are defined in Section 49(1)(c) of the PMA and include the provision of channels, berths, short-term storage and access to wharves, roads and rail.

³ DTF, *Select Committee Inquiry Submission*, September 2015, p.43

1.2 The relevant market

Section 53(1)(a)(i) of the PMA requires the ESC to inquire into whether PoM “has power in the relevant market that it may exercise in relation to the process for the setting or reviewing of rents or associated payments (however described) payable by a tenant under an applicable lease”.

As noted in the ESC’s Scope and Process paper, the “relevant market” in which the ESC must consider whether PoM had an ability to exercise power is defined in the PMA as “the market for access to leased Port of Melbourne land by means of an applicable lease”.

1.3 PoM’s ability to exercise power in the relevant market

The requirement for the ESC to inquire into whether PoM “has power in the relevant market that it may exercise” involves an assessment of whether PoM has the ability to exercise such market power. This requires a factual and economic analysis, and must necessarily include consideration of any external constraints that affect PoM’s ability to exercise power within the activity, or “relevant market”, defined in section 53(5) of the PMA, such as any inter-port competition, countervailing power, or buy-side substitutability options for tenants (i.e., alternative off-port tenure options).⁴

We consider that our ability to exercise power during the Inquiry period was substantially limited due to the constraints as outlined in this section.

The presence of constraints will differ by circumstance and tenant, but can be broadly grouped as follows:

- tenants who do not require wharf access, such as warehousing, storage and transport; and
- tenants that require wharf access, such as stevedores.

Tenants who do not require wharf access

We do not have the ability to exercise power in respect of general tenants who do not require wharf access, due to the effective constraint imposed by the range of alternative off-port options open to these tenants.

As set out in Appendix A, of the 58 active leases at the Port, 16 involve land uses that require no access to wharves (equivalent to around 18% of the total Port land taken up).

The ESC has previously accepted that substitute land may be a relevant constraint.⁵ If we were to increase rents or seek unfavourable terms in respect of leases for activities that could occur outside of the Port (e.g., warehousing, vehicle inspection), these tenants could relocate elsewhere, outside of the Port.

The availability of non-port land is an effective constraint on the exercise of power, as tenants do in fact have viable alternatives available to them to switch or credibly threaten to switch to non-port land. For example:

- the Victorian Government’s Melbourne industrial and commercial land use plan demonstrates that there is industrial land both in close proximity to the Port and along key freight corridors;⁶

⁴ In the first inquiry, the ESC considered that PoM’s role as the monopoly provider of leased land at the Port “creates a strong presumption that it will have power with respect to many or all tenants” and “provides the underlying source” of this power (2020 Final Inquiry Report, pages 19 and 13). We submit, however, that this could lead to a failure to take account of the relevant consideration of external constraints for the reasons explained above. It is noted that the ESC also accepted that certain constraints may limit the exercise of this power, and in fact did so in that inquiry, a finding which the ESC said reflected “a mix of market characteristics and legislative and contractual arrangements” (2020 Final Inquiry Report, page 13).

⁵ 2020 Final Inquiry Report, page 14.

⁶ Department of Environment, Land, Water and Planning, (2020), *Melbourne Industrial and Commercial Land Use Plan*, Map 2, p.23, available here [Melbourne industrial and commercial land use plan](#)

- we are aware of at least one instance of off-port substitution occurring during the Inquiry period, with Autocare closing down its on-port operations while remaining active in their off-port location in Laverton (as well as operating from off-port locations in other states);⁷
- while some pre-delivery inspection (PDI) service providers prefer an on-port presence (Prixcar), the other major PDI market participant (CEVA) chooses not to be on-port.

The fact that some lessees incur sunk investments does not mean that locating operations off-port is not (or was not) a viable option.⁸ As noted by Incenta, where competition exists at the time the lease was entered into, the effect of that competition in disciplining the terms and conditions of the lease (including in relation to the treatment of tenant investments) would endure for the duration of the lease agreement.

The issue of sunk investments is not a port-specific issue, and in fact is a feature generally of commercial leasing - and long-term commercial lease contracts exist precisely to address the issue of sunk investment.

Tenants that require wharf access

The constraints on our ability to exercise power in relation to tenants who require wharf access differs as tenants do not generally have the option of leasing off-port land, they do nonetheless have significant negotiating strength due to the nature of their business.

Many wharf access tenants at the Port are part of large, sophisticated and geographically diversified businesses with extensive knowledge of rental markets throughout Australia and the world. The ESC has previously recognised that parties acting across from us may hold countervailing power if they are “a large firm” and/or if they have “the ability and/or incentive to use alternative port services or influence [their] own customers to do so”.⁹

In addition to the stevedore tenants’ size and commercial sophistication, the very nature of their business at the Port is such as to constrain our ability to exercise its power. Just as the stevedores are reliant on us to allow them to conduct business at the Port, we are reliant on the stevedores to support our operation and development of the Port. It would be contrary to our own interests to refuse to deal with or offer unreasonable terms to stevedores, given the crucial role they play in port operations.

All tenants and prospective tenants have access to independent third party determination of rents

Common to both types of tenants described above, the Charter establishes a staged process for agreeing the terms and conditions, rents and associated payments for new leases, and for the conduct and resolution of MRRs. Neither PoM nor tenants are able to unilaterally set rents – the model in place provides for commercial negotiations to agree on rents and if an agreement cannot be reached, then there is a determination process where rents are set by an Independent Valuer.

The Charter provides mechanisms that enable the parties to try and resolve disputes in the first instance before referring rental disputes to an Independent Valuer or before referring disputes regarding non-compliance with the Charter to the ESC.

The MRR process includes:

- a negotiation process between PoM and the tenant. PoM will, upon request from the tenant, provide a Relevant Rental Band (if available) for comparable leases at the port;
- a mediation meeting to assist negotiations where PoM, the tenant and their respective Valuers will consult to reach an agreement on the rent;

⁷ See [Depot Locations | Autocare Services](#)

⁸ As the ESC contended in its 2020 inquiry.

⁹ Essential Services Commission Victoria, *Review of Victorian Ports Regulation* (Final Report, June 2014), page xvii.

- if the mediation meeting is not successful, PoM may organise a CEO meeting between PoM’s CEO and a senior executive of the tenant and the tenant may request that the Port Lessor attends as an observer at the Mediation Meeting and/or CEO meeting; and
- a process for the rent to be determined by an Independent Valuer with a right for each party to make submissions to the Independent Valuer and a requirement for PoM’s valuer to provide the Independent Valuer with information about rents applicable to port land and comparable land and premises.

When agreeing new leases with existing or prospective port tenants:

- PoM and the tenant are to engage in good faith negotiations regarding Key Commercial Terms¹⁰ in the non-binding term sheet;
- if the non-binding term sheet is not agreed within 6 months, PoM may request a CEO Meeting and the tenant may request that the Port Lessor attend the CEO Meeting as an observer; and
- if agreement is not reached on the commencing rent at the conclusion of the CEO Meeting, there is a process that enables the tenant to request that the commencing rent be determined by an Independent Valuer.

The Charter specifies the principles that the Independent Valuer must have regard to in determining the Reasonable Market Rent¹¹, including, among other things:

- in relation to an MRR: terms of any existing lease agreement to which the Reasonable Market Rent will be applied; and
- in relation to a new lease: Key Commercial Terms included in any proposed detailed non-binding term sheet, such as, among other things, area, term, permitted use, commencing Reasonable Market Rent, rent free periods and escalations, MRR process including applicability of any ratchet mechanism (and the rent pause mechanism) and outgoings, and a copy of the Precedent Lease Agreement (as well as any material departures from or additions to the Precedent Lease Agreement).

The result is that all significant negotiations will have access to a determination process. We consider that this process makes it unlikely that rents could exceed a Reasonable Market Rent.

1.4 Exercise of market power

The PMA requires the ESC to consider whether PoM exercised any relevant power during the inquiry period

If the ESC finds that PoM had the ability to exercise market power pursuant to section 53(1)(a)(i) of the PMA, it must then consider, pursuant to section 53(1)(a)(ii) of the PMA, whether PoM “has exercised that power in a way that has the effect of causing material detriment to the long term interests of Victorian consumers (a misuse of market power)”.

Section 53(1)(a)(ii) of the PMA is a conduct provision, which requires the ESC to identify particular conduct (i.e., specific acts or omissions) that took place during the inquiry period which can be characterised as an actual exercise of the power of the type found pursuant to section 53(1)(a)(i) of the PMA.

¹⁰ Key Commercial Terms are defined in the section 8.3 of the Charter, and include (among other things), area, term, permitted use, commencing Reasonable Market Rent, MRR process, and proposed variations to the Precedent Lease.

¹¹ As defined in the Charter and Port Concession Deed, Clause 18.1(c), available on our website [Tenancy Customer Charter - Port of Melbourne](#)

An exercise of market power in this context would involve rents materially higher than Reasonable Market Rent

We consider that we did not exercise market power during the Inquiry period, having regard to:

- the process for the setting or reviewing of rents or associated payments applied during the Inquiry period, including access to independent determination (Section 2);
- our compliance with those processes (Section 3); and
- the rental outcomes during the inquiry period (Section 4).

The type of “market power” referred to in section 53(1)(a) of the PMA is power “in relation to the process for the setting or reviewing of rents or associated payments ... payable by a tenant”. To demonstrate that such power had been exercised during the inquiry period would require evidence that rents and associated payments were materially higher than the Reasonable Market Rent taking account of any locational premium over an extended period.

The Port Concession Deed (**PCD**) requires PoM to levy Reasonable Market Rent which is defined to take account of the location of the land, which is important in the case of a port due to the presence of a “locational premium” (that is also observed e.g., at airports and in proximity to other transport corridors such as freeways). Rent valuations in any commercial market necessarily must take account of the location of the land in question, and the presence of a locational premium is not evidence of an exercise of market power.

1.5 Extent of pass through to Victorian Consumers

The PMA requires the ESC to consider whether any actual exercise of market power caused material detriment to the long term interests of Victorian consumers

If the ESC finds that PoM exercised market power pursuant to section 53(1)(a)(ii) of the PMA, that section further provides that the ESC must consider whether that exercise of power had “the effect of causing material detriment to the long term interests of Victorian consumers”.

In other words, to reach an affirmative conclusion to the inquiry question in section 53(1)(a)(ii), the ESC must establish a causal relationship between any finding of the exercise of market power (which necessarily relates to PoM’s conduct in relation to tenants during the inquiry period) and material detriment to the long term interests of Victorian consumers.

No material detriment to the long term interests of Victorian consumers

As noted above, we are of the view that, during the Inquiry period, we did not exercise any market power within the meaning of section 53(1)(a) of the PMA.

For the reasons below, even if, contrary to the above, the ESC considers that we have exercised such market power, we consider that there would be no basis for a finding that such exercise had (or could have) the effect of causing material detriment to the long term interests of Victorian consumers.

If the ESC were to conclude (erroneously) that there was a relevant exercise of market power in respect of tenants who did not have the benefit of being able to select an off-port site or leverage other forms of countervailing power, at the time the lease was entered into, this would only apply in respect of a limited number of tenants. Even if any detriment in this regard were ultimately passed through to Victorian consumers (which would not be the case, as explained below), this would be extremely limited given the small number of relevant leases and, accordingly, could not be material within the meaning of section 53(1)(a)(ii) of the PMA. A finding that there was a relevant exercise of market power in respect of other types of tenants (i.e., who were able to select an off-port site or exercise other countervailing power) would be even less plausible.

Competition in downstream markets limits the scope for changes in rents to flow-through and have any detriment to Victorian consumers

If (contrary to the above) there was a finding of detriment in respect of any particular tenants (in the form of higher rents or costs), as a matter of causality, this could not have led to a material detriment to those tenants' customers and, in turn, to those tenants' customers, downstream users, and ultimately, a material detriment to Victorian consumers including households and businesses, because the economic conditions would not involve detriment to tenants ultimately being passed through to Victorian consumers.

In the accompanying report, Incenta concludes that "it is highly unlikely that there would be a reasonable expectation that changes in PoM's rents would be passed through to the prices to the final products consumed by Victorian consumers."¹² This is because the ultimate markets for the products that transit the Port are served by competing supply chains, as follows:

- the competition in the transport of commodities takes place between alternative logistics chains;
- those logistics chains are structured based on minimising the total transport cost, including warehousing and related activities; and
- in Australia, those chains overlap substantially, so that some products that are substitutes may have entered via the Port of Melbourne, whereas others may have entered via another port, or been produced locally.¹³

Any detriment that could have flowed through to Victorian consumers is not material

We consider that even if it could be shown that some pass through occurred, any resultant increase in downstream consumer prices would not be sufficient to be characterised as a material detriment due to the extremely low contribution that port charges make to the overall cost of transport.

Incenta has prepared an empirical analysis to assess the proportion of the total price paid by Victorian consumers for goods imported by PoM. That analysis shows:

- PoM's total rental charges as a proportion of the total price paid by Victorian consumers for goods imported by PoM is just one-twenty fourth of one per cent (i.e., 0.04%) and
- if some percentage of rental charges was found to be excessive, and assumed to pass through to Victorian consumers, this would represent a fraction of one-twentieth of one percent. For example, if the 'excessive' component of rent were 10% and this amount was fully passed through, then the impact would be one two-hundredth of one percent (i.e., 0.004%).¹⁴

As explained above, we consider that no component of our rental charges could be considered to be excessive and, in any event, any excessive amount would not be passed through to Victorian consumers. But even if such a situation were to occur, Incenta's analysis demonstrates that any pass-through would constitute such a minuscule proportion of end prices that they would not be noticeable to final consumers and, accordingly, there could be no basis for a finding of a "material detriment to Victorian consumers".

Similar conclusions can be drawn from a recent assessment of the contribution of stevedore costs to the cost of imported goods. Analysis by Synergies Economic Consulting on behalf of Patrick Terminals has found:

¹² Incenta Economic Consulting, *Constraints on PoM's exercise of market power in land rentals, and estimates of potential impacts on Victorian consumers*, November 2024, p.14

¹³ Incenta Economic Consulting, *Constraints on PoM's exercise of market power in land rentals, and estimates of potential impacts on Victorian consumers*, November 2024, p.8

¹⁴ Incenta Economic Consulting, *Constraints on PoM's exercise of market power in land rentals, and estimates of potential impacts on Victorian consumers*, November 2024, p.17

- Import supply chain costs represent approximately 7% of the total cost of goods imported into Australia;
- of that 7%, container terminal fees (quayside and landside) account for around 8%; and
- therefore total container terminal fees account for less than 1% (0.56%) of the total cost of imported goods.¹⁵

According to the ACCC's analysis, in 2022-23 property costs comprised around 17% of the costs of the stevedoring industry.¹⁶ This implies that property costs contribute around 0.095% of the total cost of imported goods.

¹⁵ Patrick Terminals, *Synergies Analysis Confirms Container Terminal Charges are not a driver of cost of living pressures*, media release 19 August 2024

¹⁶ ACCC, *Container stevedoring monitoring report 2022–23*, December 2023, p.58

2 Processes for setting and reviewing rents

This section of our submission addresses the following matters from the ESC Scope and Process Paper:

- processes for setting and reviewing rents or associated payments payable by a tenant under an applicable lease for land at the Port of Melbourne, including terms and conditions to apply under such leases; and
- tenant and other stakeholder knowledge of the processes the Port of Melbourne uses and is required to use when setting and reviewing rents or associated payments.

2.1 Processes for setting and reviewing rents

The processes for setting and reviewing rents or associated payments payable by a tenant under an applicable lease for land at the Port of Melbourne, including terms and conditions to apply under such leases are set out in:

- the Charter, which sets out the processes and timeframes for lease negotiations that reflect both mandatory requirements imposed by the Victorian Government and additional, voluntary processes designed to assist us, existing tenants and prospective tenants to negotiate commercially acceptable outcomes; and¹⁷
- our Precedent Lease Agreement and accompanying Precedent Lease Guide provide explanations for prospective tenants on the terms and conditions that apply under leases for land at the Port of Melbourne, including those provisions that are needed to enable us to comply with our obligations at law and to the Victorian Government under the Port Lease, and our responsibilities as a prudent and efficient port operator.

2.1.1 Tenancy Customer Charter

In the first inquiry, covering the period 1 November 2016 to 30 October 2020, the ESC made an adverse finding (misuse of market power) and recommended introduction of a mandatory port leasing code of conduct to be effected through amendment to the PMA.

In response we developed the Charter – an enhanced voluntary negotiation framework that sets out the processes that apply to different types of lease negotiations.

The Charter is designed to:

- provide transparency and predictability of negotiating processes, by explaining the steps and the timeframes involved in each process;
- assist existing tenants, prospective tenants and us in negotiating terms and conditions of leases;
- explain the mediation and dispute resolution processes; and
- explain the compliance monitoring and disclosure regime.

¹⁷ Tenancy Customer Charter, section 1.3, p.8

Development and approval of the Charter

The Charter was developed in consultation with DTF to address the ESC's findings and recommendations from the first inquiry by establishing principles and processes PoM will follow when setting and reviewing rents with our tenants.

Following the release of the ESC's final inquiry report in October 2020, at the request of DTF long-term leasing activity was put on hold until the Charter was signed off by Government. Among other reasons, this was done to ensure that tenants who were currently in (or about to enter) negotiations for long-term leases would have the contractual benefit of the rent review processes (including the rent pause mechanism) in the Charter.

In October 2021, DTF wrote to us to provide formal acceptance of the Charter having engaged with tenants as part of their process, that it satisfactorily addressed the ESC's findings and matters raised by DTF, noting that:

- the Government is confident the Charter will address the ESC's concerns to the long-term benefit of the PoM, tenants, and Victorian consumers by establishing principles and processes that PoM will follow when setting and reviewing rents;
- the Charter will apply to new leases and existing leases that were negotiated after PoM entered into the long-term lease of the asset;
- if there is a dispute about whether PoM has complied with the Charter, those disputes can be raised with the ESC; and
- the ESC will retain its five-yearly role in reviewing land rents at the Port and will consider the effectiveness of the Charter in addressing the issues it identified in its 2020 report as part of the next review in 2025.

2.1.2 Precedent Lease Agreement and Lease Guide

In addition to the Charter, during the current Inquiry period, including prior to the implementation of the Charter, we undertook a number of initiatives to increase transparency and streamline the lease negotiation process, including:

- from September 2019, Legal Services commenced insourcing legal property work to build our internal capacity and knowledge of the requirements of tenants and their operations;
- in early 2020, we commenced an internal review of the Precedent Lease Agreement and amendments were made to reflect current commercial leasing practices, changes in law, and current operations and practices at PoM;
- as part of the above process to streamline the lease negotiation process, we commenced development of a Precedent Lease Guide in 2020 that would be provided to tenants when reviewing the Precedent Lease Agreement. The Precedent Lease Guide includes an explanation (for prospective tenants) of the key provisions in the Precedent Lease Agreement, including provisions that are needed to enable us to comply with our obligations at law and to the Victorian Government under the Port Lease. The Precedent Lease Guide was prepared in November 2020 and was amended as required to reflect changes to the Precedent Lease Agreement; and
- the development of the Precedent Lease Agreement and the Precedent Lease Guide were paused during consultation with DTF on the Charter. The current version of the Precedent Lease Guide was finalised in December 2021 to incorporate an explanation on the Charter.

In February 2022, we formally adopted the current Precedent Lease Agreement and Lease Guide for use in negotiating New Leases incorporating the cumulative changes discussed below.

Updates to the Commercial Terms Sheet

Key Commercial Terms Sheet as required by the Charter included the area and location of the premises, term of the lease and any option periods, permitted use, commencing Reasonable Market Rent and rent escalation and market rent reviews were included.

In addition to the Key Commercial Terms, the Commercial Terms Sheet were updated to include a detailed description of material terms and conditions of the Precedent Lease Agreement (for example a detailed list of Outgoings, the tenant's environmental obligations, make-good and remediation obligations at the end of the lease and circumstances in which we may be required to relocate the tenant and require an early surrender of all or part of the premises if the premises are required for the purposes of any planning or development strategy).

These amendments were intended to:

- increase transparency and enable tenants to consider these provisions as part of the broader commercial arrangements when agreeing Key Commercial Terms; and
- address upfront any key concerns that tenants may have to reduce lease negotiations timeframes and costs to both parties.

2.2 Tenant and other stakeholder knowledge of PoM processes

We have worked hard during the Inquiry period to ensure tenants and other stakeholders have a sound knowledge of the processes we use and are required to use when setting and reviewing rents or associated payments with our tenants.

On 4 November 2021, the Assistant Treasurer published a media release announcing the publication of the Charter, outlining its purpose, application and the role of the ESC in assessing the impact of the Charter.¹⁸

Shortly after the media release, the Deputy Secretary of DTF emailed tenants to:

- inform them that the Government had accepted the Charter;
- outline the improvements provided by the Charter to processes, information disclosure, dispute resolution and the ratchet mechanism;
- note the application of the Charter to new leases and existing leases that were negotiated after the privatisation of the Port (defined as New Leases and Post PLT Leases in the Charter, respectively); and
- note that the ESC will consider the effectiveness of the Charter in addressing the issues it identified in its 2020 report as part of the next review in 2025.

Following communication from DTF, on 5 November 2021, we emailed all tenants with a copy of the Charter and a letter, which:

- provided an overview of the Charter and its key functions;
- noted the application of the Charter, both in general and the specific relevance to the tenant, in accordance with whether the tenant had a pre-PLT lease, post-PLT lease, or was currently in negotiation (as noted above, long-term leasing activity was put on hold until the Charter was signed off by the Government). In summary:
- for tenants in negotiations, noted that the Charter applies to new and existing leases that were negotiated and entered into after 31 October 2016 (defined as New Leases and Post PLT Leases in the

¹⁸ See media release [New Tenancy Customer Charter For The Port Of Melbourne | Premier](#)

Charter, respectively) and invited the tenant to meet to address any questions, explain the contents of the Charter and how it may be applied to the negotiations and resulting lease;

- for tenants with Post PLT leases, noted that the Charter applies to new and existing leases that were negotiated and entered into after 31 October 2016 and invited the tenant to meet to address any questions, explain the contents of the Charter and how it may be applied to their lease; and
- for tenants with Pre PLT leases, noted that on the basis that their lease was negotiated prior to 31 October 2016, the Charter will not apply to the current lease. However, in the event that we enter into negotiations with the tenant for a new lease for the premises after the expiration of the current lease, the relevant provisions of the Charter may apply; and
- provided contact details to enable the tenant to arrange a meeting with our Head of Property.

Following the letter, we made follow-up calls to all tenants to confirm they had received the Charter, to discuss any questions and arrange follow up meetings where desired.

3 Compliance with processes for setting and reviewing rents

This section of our submission addresses our compliance with the processes for setting and reviewing rents or associated payments. It describes:

- how we have implemented the Charter;
- cultural, governance and systems enhancements we have made during the inquiry period; and
- the compliance monitoring and reporting framework under the Charter.

3.1 Implementation of the Charter

Throughout the two years from 2019 to 2021 before the Charter was finalised with DTF, we undertook a number of initiatives to increase transparency and streamline lease negotiations with Port tenants. The previous Inquiry outcome was a key driver in actively pursuing positive cultural change.

Our best steps have been taken since implementing the Charter and its supporting processes. At the start of the five-year Inquiry period, we were focused on resolving recommendations made by the ESC from the first Market Rent Inquiry, with the development and implementation of the Charter.

Following the notification process outlined above, the Charter has been implemented as follows:

- we offered all Post PLT Lease tenants a deed of variation in line with section 1.5 of the Charter to include the Charter's rent review processes. The form of the deed of variation was approved by DTF. A number of tenants with Post PLT Leases have executed such deeds of variations;
- we delayed completion of the Coode Island leases (which had entered into negotiations) until the Charter was finalised to give those the tenants the contractual benefit of the rent review processes and the rent pause mechanism in the Charter; and
- all new leases are based on our updated Precedent Lease Agreement which includes the market rent review (MRR) process and rent pause mechanism in the Charter.

The result of this approach is that for leases negotiated after the commencement of the Port Lease, we will be contractually bound by the MRR process and rent pause mechanism in the Charter unless tenants elect to opt out of the Charter by providing written notice to us.

3.2 Cultural, governance and systems uplift

Cultural uplift

While we recognise the importance of the Charter, we also recognise that each of our tenants' needs vary and when we collaborate, we can achieve an even better outcome for both parties.

We have actively pursued positive cultural change and evolved how we conduct ourselves, including several new appointments. This included bringing executive experience and acumen into our operations across multiple functions including the Commercial and Corporate Relations functions.

This has flowed through with the establishment of senior leader roles in property management, legal and stakeholder engagement. Our restructure of the property team has been designed to better align the capabilities of the team with the needs of tenants and prospective tenants. Our internal teams and their

interactions with tenants and stakeholders are reflective of our Stakeholder Engagement Framework principles.

We have tested tenant attitudes and actively gathered feedback in recent years of the Inquiry Period. We commenced annual surveys in mid-2022 with our stakeholders and have included tenant specific questions as part of this research. Tenant stakeholders interviewed were asked questions about their engagement with us, and sentiment among these stakeholders was largely positive.

In addition, more regular interactions have fostered a strong sense that we are developing a better understanding of tenants' needs and is providing a platform for meaningful discussions about opportunities to pursue mutually beneficial goals.

We have heard some tenants would like more direct engagement, especially at a senior level, and outside of standalone projects. Key focus areas included Port of Melbourne's long-term planning, including the 2055 Port Development Strategy, decarbonisation and security.

We will continue to undertake annual research to gain feedback and measure our success, based on our tenants' experience in interacting with our team.

Governance and systems uplift

Since evaluating ourselves against the inaugural Inquiry findings, in addition to our cultural improvements, we have implemented enhanced governance and supporting systems.

At an operational level, we've restructured the property team with the purpose of improving tenant experiences when engaging with us. We have undertaken independent internal audits, and we've adopted the use of fit-for-purpose software.

Following the introduction of the Charter the processes set out in the Charter were incorporated into our framework for the management of leases and tenants to ensure that our obligations under the Charter would be met. This framework comprises the following key components:

- Governing procedural documents, work instructions and process flows which provide guidance on expectations on processes to align with the requirements of the Charter;
- Training and familiarisation sessions provided to the Legal and Property teams on the requirements and interpretation of the principles of the Charter; and
- Use of systems such as ProGenesis for lease management and Protecht for managing compliance with Charter obligations.

In the period of implementing the Charter, it was identified that there was a need to enhance the lease management software system to support compliance. This led to an uplift project to enhance our existing property management system, ProGenesis, with the implementation of Petra – a workflow tool designed to simplify the management of complex lease processes, reduce manual effort and centralise information capture.

3.3 Compliance monitoring and performance reporting

Overarching compliance approach

Property leases are bespoke arrangements that will often not align to a one-size-fits all approach. Accordingly, the Charter is flexible to adapt to the bespoke needs of individual tenants, or changes in circumstances.

Nevertheless, as noted above, for leases negotiated after the commencement of the Port Lease we will be contractually bound by the MRR process and rent pause mechanism requirements in the Charter unless tenants elect to opt out of the Charter by providing written notice to us.

The Charter sets out for current and future tenants, the ESC and DTF certain processes which apply to different types of lease negotiations for Port land.

There is oversight of our compliance with the Charter, including:

- we report annually on our performance under the Charter as required by section 7.6 of the Charter;
- tenants can raise disputes with us about compliance with the Charter and then with the ESC to act as an independent expert to determine whether the relevant processes (including the mechanics of the rent pause mechanism) and the timing (as applicable) as set out in the Charter have been complied with; and
- DTF has set out its expectation, and the ESC has identified in its Scope and Process Paper, that the current Inquiry will include our compliance with the processes outlined in the Charter.

Annual compliance reporting

Section 7 of the Charter outlines monitoring and reporting compliance with the Charter including an annual report on our website detailing how we have performed against the key performance indicators (**KPIs**) that demonstrate our compliance with, and performance against the Charter. The Annual Performance Reports comprise information on:

- activity under the Charter in relation to MRRs and new leases, including the number of activities undertaken and compliance with the relevant timeframes, and explanations of the key results;
- complaints and dispute resolution;
- Bona Fide Competitive Tender processes undertaken;
- current rental band information (where such rental band information will not identify any particular lease or breach our confidentiality obligations under a lease), plus a comparison to the rental bands from period years; and
- a summary of compliance reporting to the Port Lessor.

This enhanced transparency is designed to assist tenants, while remaining mindful of commercial confidentiality in individual leases.

Following the introduction of the Charter in November 2021, two Annual Performance Reports have been published:

- in April 2024, covering the period 1 January 2023 to 31 December 2023; and
- in May 2023, covering the period January to 31 December.

As well as being made available on our website¹⁹, Annual Performance Reports are directly distributed to tenants and other key stakeholders.

¹⁹ [Tenancy Customer Charter - Port of Melbourne](#)

4 Outcomes during the inquiry period

This section of our submission provides commentary on rents or associated payments payable, and terms and conditions that apply, under an applicable lease for land at the Port of Melbourne. It provides:

- a summary of leasing activity during the Inquiry period;
- an overview of rental outcomes; and
- Confidential Appendix B also provides a summary of outcomes from MRRs conducted during the Inquiry period.

4.1 Summary of leasing activity

During the Inquiry period we have worked collaboratively with tenants with the aim of achieving commercially acceptable market-based outcomes for our tenants, in accordance with our obligations to the Victorian Government.

As part of our lease management processes, we regularly engage with our tenants to better understand their operational needs and requirements for land within the Port. In many instances this has resulted in negotiation processes that had regard to tenants' required timeframes and the complexity of agreeing commercial terms acceptable to both parties.

During the current Inquiry period:

- 24 new leases were established; and
- 26 MRRs were finalised.

Three MRRs under existing leases went to independent determination, and the commencing rents for new leases were all agreed with the tenants without the requirement for independent determination. A summary of MRR outcomes is provided in Appendix B (confidential).

This compares with the first Inquiry period of 3 years where:

- 10 new leases were executed; and
- 23 MRRs were finalised, including 4 MRRs that were referred to independent determination.

The context for leasing activity for the second Inquiry differs from the first inquiry period. During the two year process for the Port Lease Transaction (**PLT**), no MRRs were undertaken with all deferred until after the PLT. Therefore, at the beginning of the first inquiry period there were a large number of MRRs to be undertaken in a short period of time, with 12 carried over from the PLT period more than doubling the usual MRR workload. Combined with the general consensus that rents prior to privatisation were below Reasonable Market Rent and would need to increase over time, this resulted in a high-volume of complex leasing negotiations.

Table 4-1 Summary of leasing activity during the first and second inquiry periods

	First inquiry period (3 years)	Second inquiry period (5 years)
New leases established	10	26
Rent for new leases determined	0 ^a	0 ^a

Market Rent Reviews	23 ^b	26
Market Rent Reviews determined	4	3

Notes: a) Determination for commencing rent for new leases was only available for new leases since the introduction of the Charter in November 2021.

b) Some tenants had two MRRs during the first inquiry period, which were typically undertaken concurrently.

4.2 Summary of rental outcomes

Figure 4-1 below provides a comparison of the change in average rental rates at the Port of Melbourne to the Melbourne industrial market and CPI. The data shown in the figure includes:

- average rents per square metre, inclusive of all leases during the Inquiry period that were active or in overholding, including leases that were terminated. The data excludes pipelines, utilities and services and improvement rents on the basis that they are not typically representative of average per square metre rates, and can skew the data when entering or exiting the sample;
- prime rents for West and North Melbourne – ‘Prime’ refers to sites constructed 2015-2025, of 5 hectares and above, with a minimum clearance height of 10m; and
- the annual change in Australian CPI from June quarter to June quarter over the period.

Over the review period, average rents at the Port of Melbourne increased by 37%, equivalent to a compound annual growth rate of 6.5%.²⁰ In contrast, over the same period industrial rents in the broader Melbourne industrial market have increased by around 60%-75%, equivalent to a compound annual growth rate of 10%-12%.²¹

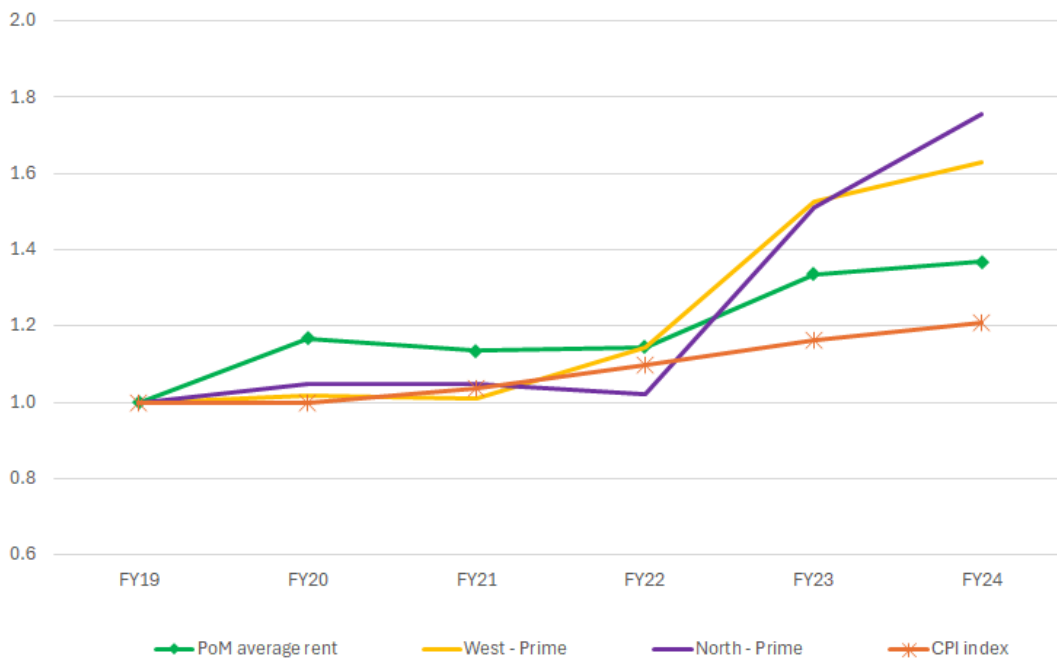
Increases in the broader Melbourne industrial market have been concentrated in the last few years, with the market characterised by low vacancy, high demand and constraints on the supply side. In the two years from FY22 to FY24, industrial rents increased by 30-40% due to limited supply and tightening vacancy rates, with the vacancy rate in recent years falling below 2% compared to a long-term average of around 5%.

This is in contrast to our experiences at the Port, where average rent increases have been moderate over the Inquiry period, despite vacancy rates at the Port having similarly been under 2% over the last two years. Lower growth in rental rates at the Port of Melbourne are likely due to the prevalence of long-term contracts, which are necessary to enable tenants to amortise their investments, but have the result that ‘open market’ transactions where current conditions can be reflected in rents are rare. Under these conditions it takes longer for market conditions to affect Port rents. As such, we expect rental rates at the Port of Melbourne to adjust more slowly to tightening vacancy rates than would be the case in the broader Melbourne industrial market.

²⁰ Calculation of movement in average annual rents per square metre excludes improvement rents and pipelines, utilities and services.

²¹ Based on prime industrial rents in the North and West metropolitan areas.

Figure 4-1 Comparison of rents at the Port of Melbourne to Melbourne industrial rents, \$/m², indexed, nominal



Sources: PoM, CBRE, ABS

Appendix A – Background on land use and leases

Current land uses

The Port precinct has a total land area of approximately 505 hectares, around 330 ha of which area is lettable (non-lettable areas might include, for example, roads, rail, services, public spaces etc.).

Figure provides a map of the main precincts at the Port, as follows:

- Appleton dock – consists of five berths (B to F) comprising four general cargo berths (B to E) which mainly handles break bulk and one common user berth (F) along with rail siding which mainly handles dry bulk (grains)
- Coode Island – the bulk liquid precinct for hazardous bulk liquid operations. It includes liquid bulk berthing and storage facilities
- Holden Dock – a common user facility used for imports of bulk liquids (petroleum products)
- South Wharf – various uses including bulk cement imports, general cargo, tug boat mooring and dry bulk
- Swanson Dock – includes two international container terminals (Swanson Dock East and Swanson Dock West), which are leased to existing stevedores, Patrick Stevedores (Patrick) and DP World (DPW), respectively, including rail terminals and warehousing facilities
- Victoria Dock – includes a single berth used for break bulk and a rail siding
- Webb Dock - the second largest precinct at the Port, includes the international container terminal operated by Victoria International Container Terminal Ltd (VICT), RoRo and automotive terminal, motor vehicle pre-delivery and inspection operations, Bass Strait trades and port-related functions
- Williamstown – includes the ExxonMobil bulk liquid (petroleum product) importation and storage facilities at Gellibrand, Ann St pier and breakwater pier
- Yarraville – land uses include dry bulk, container storage along with warehousing and distribution facilities.

Figure A-1 Port precincts



Summary of current leases

Leases by type

There are 58 leases in existence within the Port precinct.

As per the definitions in the Charter:

- A Pre PLT Lease is a lease which was entered into prior to 31 October 2016 or substantially negotiated by the Port of Melbourne Corporation (PoMC) and the tenant prior to the conclusion of the Port Lease Transaction (PLT) on 31 October 2016 but entered into following that date
- A Post PLT Lease is a lease which was negotiated and entered into by PoM and the tenant after 31 October 2016 up to and including the date of the Charter
- A New Lease is a lease which was negotiated by PoM and the tenant and entered into after the date of the Charter (November 2021).

Table A-1 Current leases by type, as at October 2024

	Number of leases	% of total leases
Pre PLT Leases	32	55%
Post PLT Leases	12	21%
New Leases	14	24%

Leases by land use

Table A-2 below provides a summary of leases by land use at the Port, including the area in hectares allocated to each use.

As shown in the table, around 18% of the leased area is allocated to non-stevedoring or non-port related activities (i.e. vehicle pre-delivery and inspection services; logistics and non-port related services).

Table A-2 Current leases and principal land uses at the Port, as at October 2024

Land use	Area (ha)	% of total area	Number of leases
International Container terminal	136.4	45%	5
Tasmanian terminal	34.1	11%	4
Automotive and RO/RO terminal	35.3	12%	2
Pre-delivery and inspection services	13.4	4%	4
Liquid bulk	12.7	4%	6
Dry bulk	11.4	4%	7
General cargo	14.0	5%	1
Logistics – warehousing, storage and transport	40.3	13%	13
Services – port related	3.8	1%	4
Services – non-port related	2.8	1%	1
Pipelines and utilities	0.4	0%	11
Total	304.6	100%	58

Appendix B – Market Rent Review outcomes (confidential)