



## Media statement

20 May 2022

### Victorian Government accepts Port of Melbourne Undertaking in response to ESC findings

The Victorian Government has accepted an Undertaking prepared by Port of Melbourne (PoM) in response to the Essential Services Commission's (ESC) review of PoM's compliance with its Pricing Order. The Pricing Order forms part of the regulatory framework that governs the Port's operations. The Undertaking and associated response outlines actions the Port has taken to remedy the non-compliance identified by the ESC and also our commitment to ensure compliance going forward.

PoM's Undertaking has been accepted by the ESC Minister and is legally binding until 30 June 2027, in line with the ESC's next review.

The undertaking responds to matters on which the ESC found significant and sustained non-compliance by PoM. The undertaking:

- Commits to the approaches that will be applied by PoM to calculate the Weighted Average Cost of Capital (WACC), which addresses the ESC's findings on Return on Capital and Aggregate Revenue Requirement.
- Outlines PoM's commitment to develop and publish a Pricing Order Engagement Protocol which will, among other internal process initiatives, improve PoM's engagement practices under the Pricing Order.

PoM considers that this Undertaking will provide the appropriate degree of certainty to PoM and to port users for the next five years until the ESC completes its next review of PoM's compliance with the Pricing Order.

The Undertaking can be found in the Public Summary of the PoM Response to the ESC Review Findings, available on the [PoM website](#). In addition, PoM has implemented a range of measures that respond to matters that were raised by the ESC which were considered sustained but not significant. A summary of these measures can also be found in the Public Summary.

As recognised by the ESC there were no price impacts on port users during the review period as a result of the findings of non-compliance.

"Port of Melbourne has great respect for the regulatory framework the Government put in place at the time of the port lease in 2016 and we strongly believe the framework is working as intended," PoM CEO Saul Cannon said.



“The intent of the framework was to provide price certainty for users of the port while also creating certainty and facilitating investment that is critical to the Victorian economy. This is being achieved.

“Over the five-year review period the Port has reduced controllable operating costs by more than 40 percent from pre-lease levels and resolved issues on WACC through considering and responding to feedback provided by the ESC in its interim commentaries.”

PoM is committed to the integrity of the regulatory regime as originally intended which will enable it to continue to invest in and operate the port in the long-term interest of all Victorians.

-ENDS-

### **Background information on the regulatory framework under which PoM operates**

*The Pricing Order is a regulatory instrument issued by the Governor in Council under section 49A of the Port Management Act 1995 (PMA) to regulate the setting of tariffs for prescribed services. The Pricing Order came into effect on 1 July 2016 and regulates the setting of tariffs for prescribed services, which relate to the provision of services by investing in wharves, berths and channels for shipping.*

*In June 2021 the Essential Services Commission (ESC) commenced an inquiry into PoM's compliance with the Pricing Order as required by section 49I of the Port Management Act 1995 (Vic) (PMA) in relation to the review period 1 July 2016 to 30 June 2021. On 28 January 2022, the ESC released the final report of the inquiry in accordance with s 49I(4) of the PMA and identified non-compliance with the Pricing Order that was, in the ESC's view, non-compliance in a significant and sustained manner (Adverse Compliance Report).*

*Under section 49M(1) of the PMA, the ESC Minister may accept a written undertaking given by a provider of prescribed services who is the subject of an Adverse Compliance Report in relation to the provider's non-compliance with a Pricing Order if the ESC Minister is satisfied that:*

- a) the terms of the undertaking offered by the provider are appropriate to adequately address the provider's non-compliance with a Pricing Order; and*
- b) the provider is reasonably likely to comply with the terms of the undertaking.*

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