# Maritime Union of Australia

## Submission to the Victorian Essential Services Commission

## Port of Melbourne compliance with the Pricing Order: First 5 yearly review

## 3 September 2021

**Authorised by:**

**Paddy Crumlin, National Secretary**
**Maritime Union of Australia**
**A Division of the Construction, Forestry, Maritime, Mining and Energy Union**
**365 Sussex St, Level 2,**
**Sydney, NSW, 2000**

**Inquiries:**

**For inquiries contact** [redacted]

### Introduction

1. This submission has been prepared by Maritime Union of Australia (MUA). The MUA is a Division of the 120,000-member Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) and an affiliate of the 20-million-member International Transport Workers' Federation (ITF).

2. The MUA represents approximately 14,000 workers in the stevedoring, port services, shipping, offshore oil and gas, aquaculture, marine tourism and commercial diving sectors of the Australian maritime industry.

3. MUA members at the Port of Melbourne work in the following occupations:

3.1 Stevedoring – Stevedoring workers in container terminals including lashing workers, refrigerated cargo (reefer) handling, maintenance including electricians and mechanics as well as bulk and general stevedoring workers;
3.2 Ships - Seafarers in harbour towage, mooring lines boats, bunker vessels, Australian coastal ships using the Port of Melbourne;
3.3 Wharf Repair - Qualified trades, shipwrights etc.;
3.4 Divers;
3.5 In port workers – Clerical, security, cleaners, First Aid;
3.6 Ship services – Painters and dockers; and
3.7 Receiving and delivery services – e.g. at AAT.

## Executive summary

4. The MUA submits that the Port of Melbourne (PoM) has not complied with the Pricing Order nor complied with the *Port Management Act 1995* (Vic) (PMA). Compliance with the Pricing Order must be examined in the context of compliance with the PMA.

5. It is our submission that the PoM has not complied with the Pricing Order because the proposed capital expenditure on the Webb Dock East 4/5 Extension (the "**Webb Dock Project**") is not "efficient capital expenditure" within the meaning of clause 4.2.1(c) of the Pricing Order and therefore the inclusion of that project within the capital base for the purpose of setting the aggregate revenue requirement is in contravention of the Pricing Order.

6. It is the view of the MUA and its members who work at the PoM that the Webb Dock Project is inefficient capital expenditure because:

6.1 It will skew stevedoring market share to favour the Webb Dock East (WDE) tenant and commercially damage the Swanson Dock stevedoring tenants, consequentially leading to under investment in landside equipment and new technologies by those two tenants, needed to maintain and improve port container stevedoring productivity levels; and will also lead to mass workforce redundancies by the Swanson Dock tenants. This is an inefficient use of human capital and a loss of sunk investment in skills and workforce capabilities;

6.2 Allocating the expenditure now will lead to overcapacity when there is no current capacity constraint at the port, resulting in the PoM holding under-productive capital assets in advance of requirements, that requires servicing and maintenance, and induces depreciation costs earlier than necessary, and lowers return on investment;

6.3 The windfall gain in capacity by the WDE tenant will result in lower overall port container productivity given the significantly lower crane rates achieved by the VICT fully automated landside equipment relative to the manually operated landside equipment utilised by the Swanson Dock stevedoring tenants. This outcome is detrimental to the PoM growth and capacity objectives;

6.4. It will result in severe underutilisation of the on-dock rail assets arising from the Port Rail Transformation Project at Swanson Dock and could undermine State Government objectives to shift containers off road to rail, necessary to ensure the viability and efficiency of the Port Rail Shuttle project for which $58 million has been allocated over 2021 and 2022, $20 million of which is from Victorian taxpayers, and undermine the Mode Shift Incentive Scheme;

6.5 It will induce additional truck movements from WDE from 2023 on completion of the Webb Dock Project over the following ten years before the Webb Dock Freight Link project is due for completion in 2033, resulting in increased road congestion and diminished amenity for Victorian citizens in the port vicinity;

6.6 It is the first step leading to an adverse impact on Bass Strait shipping operations given the Webb Dock Project will inevitably lead to commencement of the Webb Dock North (WDN) project, resulting in relocation of the current Bass Strait Australian shipping operators to Victoria/Appleton Dock, significantly increasing the costs of Bass Strait freight movement to the detriment of Tasmanian producers and manufacturers and ultimately Victorian consumers; and

6.7 There are less costly, and more efficient, fairer, and less harmful options to address the PoM alleged "operational inefficiencies" at WDE.

7. We submit that this is an inefficient use of revenue raised and that the expenditure of that revenue for Webb Dock East (WDE) capex is not prudent. We note that to conform with section 48 of the PMA, the PoM is required, under s48(1)(a) and (b), to:

7.1 Promote efficient use of, and investment in, the provision of prescribed services for the long-term interests of port users and Victorian consumers; and

7.2 Protect the interests of users of prescribed services by ensuring that prescribed prices are fair and reasonable whilst having regard to the level of competition in, and efficiency of, the regulated industry.

8. We also submit that the PoM has not complied with section 48(1)(d)(iii) of the PMA, which requires it to facilitate and promote competition between other persons (in addition to between ports; and between shippers) conducting other commercial activities in ports, which includes stevedoring service providers.

9. Finally, we submit that the PoM has not consulted the MUA or the majority of the workforce at the port about its 2050 Port Development Strategy (PDS); about its PDS Delivery Program; nor in preparation of its annual Tariff Compliance Statements, contrary to its detailed submissions to the ESC about the quality, depth and breadth of its consultation processes.

10. Overall we submit that this ill-conceived decision by the PoM to proceed with the Webb Dock Project is not in the best interests of the long term functionality, productivity and efficiency of the port, does not conform with the fair competition requirements under the PMA and will have a very adverse and uneven market share impact on stevedoring companies providing services at the port.

11. The result will be a skewing of market share to one stevedoring terminal operator, resulting in not only mass workforce redundancy, but lower overall landside container productivity, and lower investment in landside infrastructure by stevedoring operators at Swanson Dock, which currently accounts for some 60 per cent of port container throughput.

12. In summary we are asking the ESC to find that the PoM has not complied with the Pricing Order, and that the Webb Dock Project will:

12.1 Cause material harm to port users and consumers as a consequence of its non-compliance; and
12.2 Undermine stakeholder confidence in the integrity of the regulatory framework.

13. We also request that the ESC propose a remediation of identified PoM non-compliance by recommending that the PoM:

13.1 Agree to defer the Webb Dock Project for a period of no longer than 6 months; and
13.2 Consult futher with port users, Ports Victoria, Infrastructure Victoria, Freight Victoria/Department of Transport and the main port workforce (including its representative the MUA) aimed at reaching a planning agreement that establishes parameters around the Webb Dock Project to minimise harm, provide fair market share opportunities for all stevedoring terminal operators, integrates rail projects to reduce road congestion and mitigates the impact on Bass Strait shipping.

## Detailed submission

### Background

14. On 12 August 2021, the PoM announced that it is going to proceed with the Webb Dock Project. The Webb Dock Project has significant flaws and will adversely affect the port, the people who work at the port, and the Victorian public who rely on the port.

### The Pricing Order

15. At clause 4, the Pricing Order states:

***4.1 General – Accrual Building Block Methodology***

*4.1.1 For the purposes of determining its Aggregate Revenue Requirement, the Port Licence Holder must apply an accrual building block methodology over the Regulatory Period comprising:*

*(a) an allowance to recover a return on its capital base, commensurate with that which would be required by a benchmark efficient entity providing services with a similar degree*

*of risk as that which applies to the Port Licence Holder in respect of the provision of the Prescribed Services (see clauses 4.2 and 4.3);*

*(b) an allowance to recover the return of its capital base (see clause 4.4); and*

*(c) an allowance to recover its forecast operating expenses, commensurate with that which would be required by a prudent service provider acting efficiently (see clause 4.5); less*

*(d) an indexation allowance (see clause 4.6).*

***4.2 Capital Base***

*4.2.1 Subject to clause 4.2.2, the capital base applied for the purposes of clause 4.1.1(a) and 4.1.1(b) must be defined, at any particular time, on a roll forward basis, by:*

*(a) taking the value at the commencement of any Financial Year;*

*(b) adding an indexation allowance for that Financial Year in accordance with clause 4.6.1(a);*

*(c) adding efficient capital expenditure when incurred, or to be incurred during that Financial Year, by the Port Licence Holder, acting prudently, in the provision of the Prescribed Services (in each instance, deemed to be incurred as at the mid-point of that Financial Year and adjusted by an indexation allowance in accordance with clause 4.6.1(b) for that Financial Year); and*

*(d) deducting an allowance for the return of capital.*

*4.2.2 The initial capital base is to be determined by applying the asset values specified in clause 4.7.*

*4.2.3 PCP Capital Expenditure is to be added to the capital base in accordance with the principles in clause 4.2.1.*

*4.2.4 The act of completing the Port Capacity Project and the act of undertaking capital works so as to comply with a term of the Port Lease or any other obligation arising under a Transaction Arrangement are to be taken to be prudent acts for the purposes of clause 4.2.1.*

*4.2.5 For the avoidance of doubt, clause 4.2.4 does not preclude an assessment as to whether capital expenditure undertaken so as to comply with a term of the Port Lease or any other obligation under a Transaction Arrangement has been incurred efficiently.*

*4.2.6 For the avoidance of doubt, the capital base of the Port Licence Holder must not include any value attributable to capital contributions made by a Public Sector Entity to assets used to provide Prescribed Services after the date of the completion of the first Authorised Transaction.*

16. In summary form, the MUA and its members believe, for the reasons set out below, that the proposed capital expenditure on the Webb Dock Project is not “efficient capital expenditure” within the meaning of cl 4.2.1(c) of the Pricing Order and therefore the inclusion of that project within capital base for the purpose of setting the aggregate revenue requirement is in contravention of the Pricing Order.

17. At this point in time, we are not apprised of whether the Webb Dock Project is a prudent act as defined by cl 4.2.4. We request that the VESC investigate whether the Webb Dock Project does in fact comply with a term of the Port Lease.

18. Further, we note that cl 4.2.5 states that whether a capital expenditure is prudent or not in accordance with cl 4.2.4, that does not preclude an assessment as to whether capital expenditure such as the Webb Dock Project has been incurred efficiently.

**Webb Dock East is an inefficient project**

*Skewing stevedoring market share has detrimental impacts*

19. It is inefficient and imprudent for the PoM to apply expenditure to the Webb Dock Project in a manner that rescues the WDE stevedoring tenant from its well published commercial difficulties and its landside equipment investment decisions, and in so doing delivers it a windfall uncapped market share advantage relative to the Swanson Dock stevedoring tenants.

20. In an Australian Financial Review article published in March 2021, the CEO of Victoria International Container Terminal (VICT) acknowledged that the Webb Dock Project would "*increase the terminal's capacity from 860,000 20-foot containers to around 1.5 million a year*"[1] in contradiction of the PoM claim that the project will only "restore" WDE capacity to the 1.2 million TEU pa design capacity arising from completion of the $1.6 billion Port Capacity Project in 2017.

21. All stakeholders accept that VICT should be able to secure 1.2 million TEUs per annum. However, the PoM haste to now proceed to remove the" knuckle" and deliver an extra 71 metres of quay line and 2 per cent additional yard space to VICT is not only unnecessary for VICTs 1.2 million TEU ambitions, but it will actually increase VICT capacity to around 1.8 to 1.9 million TEUs pa, in excess of the modest claim of the CEO of VICT in March 2021 of a 1.5 m TEU pa increase. There is no published evidence for the PoM claim that the Webb Dock Project will do no more than restore VICTs capacity to 1.2 million TEUs pa and nothing beyond, and its lack of preparedness to guarantee that cap to ensure stability in stevedoring market share is worrying and it is inefficient. Expenditure of the Webb Dock project that has negative financial, competition and productivity consequences right across the port cannot be efficient. This should be fully investigated by the ESC.

22. As stevedoring terminal operators cannot influence the demand for container stevedoring services, but only compete for market share among economy wide induced demand for containerised freight, the two Swanson Dock tenants must by logic be disadvantaged by the windfall additional WDE capacity.

23. It is our assessment that the Webb Dock Project will have the immediate effect, orchestrated by the monopoly market power of the major shipping lines, of facilitating the transfer of shipping line contracts from the Swanson Dock tenants to VICT, thus significantly upsetting the current

[1] Australian Financial Review, *Down $300m, Filipino port operator calls time on MUA*, 1 March 2021, https://www.afr.com/companies/transport/down-300m-filipino-port-operator-calls-time-on-mua-20210224-p575dp

(approximate) 35% market share to each of DPW and Patrick Terminals and 25% VICT to something like 60-65% to VICT and around 20% or less for each of DPW and Patrick.

24. That market share transfer will have two significant and inefficient consequences. First it will cripple investment by Swanson Dock tenants in productivity enhancing landside equipment and technologies. No company that has its revenue base stripped by around 50% can be expected to maintain a previous investment trajectory. This will severely impact port productivity. Second, the Swanson Dock tenants will be forced to make redundant around 50% of their stevedoring workforce. This will inevitably result a loss of irreplaceable skills and workforce capabilities, a major loss of investment in the workforce, and lead to labour relations instability at the port. The stevedoring companies will face massive redundancy payouts which will further impact on their revenue and profitability.

25. Furthermore, we submit that the advantage to VICT or any future terminal operator at WDE will only escalate as ship sizes grow given the current air draught constraint for transiting the West Gate Bridge.

26. The pursuit of capacity heavily focused on one part of the port ahead of demand commits considerable capital to a capex plan about which the PoM has not provided an adequate justification or rationale for its development plans nor for the timing of its development projects, nor of the levels of PoM expenditure required, in the context of port capacity and impact on competition and productivity.

27 We submit that the impacts of the Webb Dock Project outlined in this section are contrary to the PoM obligations under s48(1)(d)(iii) in that rather than facilitating and promoting competition "between other persons conducting other commercial activities in ports: i.e. stevedoring terminal operators, it is undermining and strangling competition, to the point of commercial harm to the Swanson Dock stevedores..

*Over capacity results in under productive capital assets in advance of requirements*

28. There is no current capacity constraint at the port. There remains ample excess capacity in the port for at least the next ten years on current projections and on the basis of technological advances such as improvements in landside equipment for stevedoring of ships, and the use of larger ships resulting in less port calls by container lines to deliver demand led growth in container freight. The MUA assessment is that the port currently has excess capacity of approximately 30%-40%.

29. The PoM forecasts that total container trade volumes will grow over the long term by 3.5% per annum, from 3 million TEU in 2019 to around 8.9 million TEU by 2050.[2] There are several important points to note about PoM forecasted container growth. First, it quotes the BIS Oxford Economics report on *Port of Melbourne Trade Forecasts: Forecasts to FY19*, of April 2018 as the source for its forecasts, but the BIS Oxford Economics report did not provide container forecasts, only trade forecasts and then only to 2019. The PoM has not revealed its methodology for translating trade forecasts into container growth forecasts. Secondly, it does

---

[2] PoM, *2050 Port Development Strategy, 20th Edition*, October 2020, P23, https://www.portofmelbourne.com/wp-content/uploads/PoM-PDS-2020-Edition-For-Publication.pdf

not seem to have relied on its own historical trade data, which shows modest growth over the 10 years to FY 2019.[3] A linear projection based on PoM historical trade data would show container volumes increasing to around 4.2 million in 2029, 5.2 million in 2039 and 6.2 million in 2049, not the nearly 9 million projected by the PoM in its 2050 PDS.[4]

30. We note that the Infrastructure Victoria's Infrastructure strategy 2021–2051, presented to the Victorian Parliament on 19 August 2021 stated that "*trade volumes increased by 2.1% a year over the decade to 2018–1922 and will continue to grow. We anticipate demand of 4.2 to 5.5 million TEU by 2031, and 6.2 million to 8.8 million TEU by 2051*."[5] These projections are considerably lower than the PoM forecasts.

31. In March 2014, the KPMG *Project Blue Scoping Study* (which was examining when the PoM would reach full capacity so a decision could be made as to when a second or alternative container port would need to be built in Victoria) estimated that the port's capacity, based on completion of the $1.6 billion Port Capacity Project in 2017, would be 5.3 million TEUs, providing an additional 1 million TEU capacity at Webb Dock.[6] At that time it was thought that capacity would be reached by 2035.

32. However, according to a report from Deakin University's Centre for Supply Chain and Logistics in March 2017 (just after the port was leased), "*Ministers of the Victorian Government and the Chief Executive Officer of the Port of Melbourne promote the view that the Port of Melbourne will not reach capacity until the 50-year lease expires* (in 2066)."[7]

33. The PoM claims in its *2050 Port Development Strategy* (October 2020) that on completion of the Port Capacity Project, the port's container handling capacity was expanded to 4.5 million TEUs.[8]

34. Deakin University's assessment (in 2017) is that the Port of Melbourne's current capacity is about five million TEU per year split between about three to four million TEUs at Swanson Dock East and West and 1.4 million TEUs per year at the new Webb Dock terminal.[9]

---

[3] PoM, Historical trade data, *Historical trends for containers (TEUs) for the past 10 financial years*, https://www.portofmelbourne.com/about-us/trade-statistics/historical-trade-data/

[4] PoM, *2050 Port Development Strategy, 20th Edition*, October 2020, see the Figure on P23, https://www.portofmelbourne.com/wp-content/uploads/PoM-PDS-2020-Edition-For-Publication.pdf

[5] Infrastructure Victoria, Infrastructure strategy 2021–2051, 19 August 2021, https://www.infrastructurevictoria.com.au/wp-content/uploads/2021/08/1.-Victorias-infrastructure-strategy-2021-2051-Vol-1.pdf

[6] KPMG, *Project Blue Scoping Study*, March 2014, https://parliament.vic.gov.au/file_uploads/Documents_Received_in_Response_Part_1_2FY62dr8.pdf

[7] Deakin University, Centre for Supply Chain and Logistics, March 2017, *A second container port for Melbourne? Build it in the west for 2036,* https://www.deakin.edu.au/__data/assets/pdf_file/0004/1174729/melbourne_container_port.pdf

[8] PoM, *2050 Port Development Strategy, 20th Edition*, October 2020, P18, https://www.portofmelbourne.com/wp-content/uploads/PoM-PDS-2020-Edition-For-Publication.pdf

[9] Infrastructure Victoria, *Advice on Securing Victoria's Ports Capacity*, May 2017, P58, https://www.infrastructurevictoria.com.au/wp-content/uploads/2019/04/Securing_Victorias_Ports_Capacity_WEB-1.pdf

35. In May 2017 Infrastructure Victoria provided advice to the Victorian Government that the Port of Melbourne should be developed to a capacity of approximately 8 million TEU.[10]

36. Infrastructure Victoria appointed GHD, a consulting firm, to provide advice on the Container Handling Capacity of the Port of Melbourne. The GHD advice on options for incrementally improving capacity at both the Webb Dock Precinct and Swanson Dock Precinct included in its *Second Container Port Advice: Estimated Capacity of the Port of Melbourne* of May 2017 provides the options, pathways and indicative costs to achieve increased capacity.[11] It is our submission that these options and pathways should be re-examined before the Webb Dock Project proceeds.

37. GHD estimates that Swanson Dock West (SDW) operated by DPW can handle around 1.85 million TEUs per annum while Swanson Dock East operated by Patricks can handle around 1.62 million TEUs per annum, for a total of 3.47 million TEUs per annum at Swanson Dock (it was upgraded in 2006 for a 30-year design life, to 2036). The PoM says that Webb Dock, on completion of the Port Capacity Project in 2017 has a 1.2 million TEU per annum capacity, for an overall port capacity of 4.67 million TEUs per annum (noting that VICT has publicly stated its capacity is 1.4 million TEUs per annum[12]).

38. The Infrastructure Victoria's *Infrastructure strategy 2021–2051* estimates the port's capacity is currently 4.4 million TEU per annum.[13]

39. In summary, the data seems to show that the port's current capacity is around 4.5 to 5.0 million TEUs annually, and that it could be increased to around 8 million TEUs annually. Its current throughput (2019) is 3.02 million TEUs. That is, it is operating at about 71 per cent of current capacity (assuming 4.5 million TEUs per annually as its current capacity) or 64 per cent capacity (assuming 5.0 million TEUs as its current capacity), hence our conclusion that the port has excess capacity of approximately 30%-40%.

40. On the PoM analysis that Webb Dock is delivering around 840,000 TEUs pa and our assessment that the Webb Dock Project will deliver around 1.8-1.9 million TEU pa, the Webb Dock project will increase capacity by close to 1.0 million TEUs pa at a time when there is already over 30% excess capacity. The PoM Webb Dock Project will therefore result in the PoM holding under-utilised and under-productive capital assets well in advance of requirements. It is our submission therefore that the return on invested capital in the Webb Dock Project will not exceed the PoM weighted average cost of capital (WACC) - 8.93% - by more than 2%, when taking into account the consequential reduced investment at Swanson Dock, lower overall port productivity and loss of human resources. The conclusion can only be that such expenditure is a grossly inefficient use of capital.

---

[10] Ibid

[11] GHD, *Second Container Port Advice: Estimated Capacity of the Port of Melbourne*, May 2017, https://www.infrastructurevictoria.com.au/wp-content/uploads/2019/04/GHD_Infrastructure_Victoria_second_container_port_advice__Estimated_capacity_of_the_Port_of_Melbourne_FINAL.pdf

[12] Ibid GHD, P51,

[13] Infrastructure Victoria, *Infrastructure strategy 2021–2051*, 19 August 2021, https://www.infrastructurevictoria.com.au/wp-content/uploads/2021/08/1.-Victorias-infrastructure-strategy-2021-2051-Vol-1.pdf

*Shifting rationale for the PDS delivery program*

41. The Port of Melbourne 2050 PDS rationale for a forward schedule of capex of October 2020 was based on gradually improving overall port capacity to meet expected container growth, with the growth in ship size a secondary rationale.

42. As recently as the PoM tariff rebalancing application to the ESC, in December 2020, the PoM stated that the PDS was created to deal with the issues of growing trade, increasing ship size, industry changes and a city growing around the port. The PDS provides a roadmap for how PoM will grow to support increasing trade volumes. A key part of the plan is sweating the asset and timing investment to provide capacity when required.[14]

43. There has clearly been a subtle shift in the PoM messaging which has shifted from the explanation provided in October 2020 to now being a need to address perceived operational inefficiencies, revolving around the apparent acceptance by the PoM that VICT is only able to achieve a TEU throughput of around 840,000 TEUs annually, not the 1.2 million that WDE was designed to deliver.

44. It is interesting that VICT reported to the Australian Financial Review in March 2021 that in November 2020, almost immediately after the PoM released its PDS in October 2020, the board of International Container Terminal Services (ICTSI), the parent company to VICT, controlled by Filipino billionaire Enrique Razon jnr, approved a $240 million expansion of its Melbourne terminal. It must have already known about the PoM timetable for the Webb Dock expansion, even though it was not formally announced until August 2021. ICTSI/VICT believed that under the Webb Dock Project plan, WDE would be extended to allow two large ships to dock at once, which would increase the terminal's capacity from 860,000 20-foot containers to around 1.5 million TEUs pa.[15]

45. PoM now claims it is the trend to bigger ships which is the cause of that operational inefficiency. It should be noted that applicants for the third stevedoring concession at the port in 2016-17 bid on the basis that they would secure quay line that would deliver annual TEU design capacity of 1.2 million TEUs pa. We note that the PoM has not released the independent expert advice allegedly demonstrating why WDE is apparently constrained at around 840,000 TEUs pa.

46. If validated, that means that WDE can deliver just 70 per cent of its design capacity following an investment of $1.6 billion, according to the PoM, for no other reason than because an additional number of larger ships have commenced arriving at the port. That is incomprehensible.

47. The unexpected ship size trend explanation for so called operational inefficiency does not stand up to scrutiny because it does not account for what appear to be the implications of VICTs

---

[14] Port of Melbourne, *Tariff Rebalancing Application*, December 2020, Table 5, P34, https://www.esc.vic.gov.au/sites/default/files/documents/port-of-melbourne-tariff-rebalancing-application-2021-2021-22-tariff-rebalancing-application-202012_0.PDF

[15] Australian Financial Review, *Down $300m, Filipino port operator calls time on MUA*, 1 March 2021, https://www.afr.com/companies/transport/down-300m-filipino-port-operator-calls-time-on-mua-20210224-p575dp

decision to invest in fully automated land side infrastructure that has not been able to deliver crane rates comparable to the Swanson Dock stevedores, which is the largest single contributor to the inability of WDE to achieve its design capacity of 1.2 million TEU pa.

48. When combined with its inflated bid in order to win the tender as the third stevedoring operator in 2016 when it had zero market share (the addition of a third stevedore brings no new business with it), and its agreement to pay its first three years rent in advance which then meant that from 2020 it had to start paying high rents, the commerciality of VICT is understandable.

*Lower overall port container productivity is detrimental to the PoM growth and capacity objectives*

49. The VICT terminal fully automated terminal delivers a much lower crane rate than the DPW and Patrick manual terminals at Swanson Dock (18-20 lifts per hour at Webb Dock compared to 26-30 lifts per hour at Swanson Dock i.e. a 32% higher productivity rate).

50. Given that the Webb Dock Project will deliver a windfall increase of approximately 1.0 million TEUs pa to the VICT terminal, which will reduce the throughput at Swanson Dock by a similar figure, that translates to a lowering of productivity on around 1.0 million TEUs by around 30%, a very significant reduction in overall PoM container productivity.

51. The effect will be cumulative, because as container volumes grow and as VICT market share grows, a larger proportion of container movements will be handled at the lower VICT productivity rate, thereby reducing overall container throughput, or container productivity, at the port.

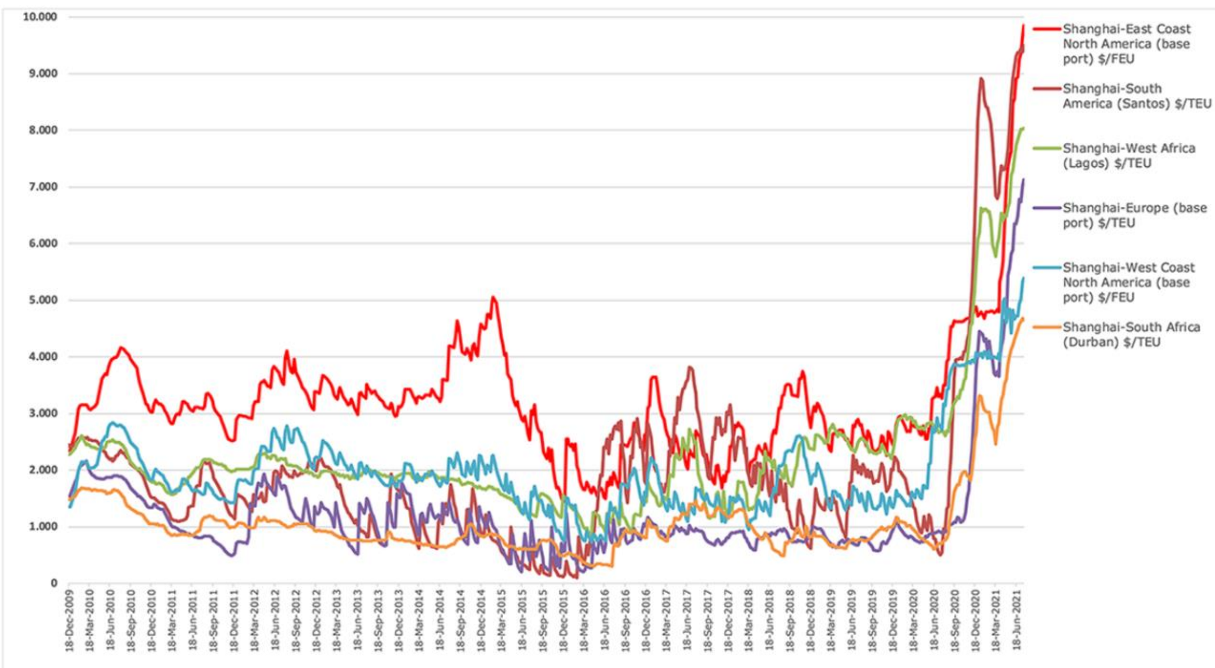
52. This will hasten the onset of the port reaching its capacity, requiring unscheduled investment towards the end of the 50 year lease when the PoM has little time to recoup the cost of that investment. This outcome is detrimental to the PoM growth and capacity objectives, and again highlights the inefficiency and imprudence of the Webb Dock Project.

53. We submit that the Swanson Dock stevedores will be unable to compete their way out of this consequence being imposed by the premature expenditure on the Webb Dock Project. This is because of the use of the market power of the international shipping lines which can dictate the allocation of contracts to stevedoring companies.

54. Those international shipping lines are using their strengthened market power, arising from recent liner shipping corporate and conference agreement consolidation, facilitated by the protection of anti-cartel behaviour provided by Part X of the Competition and Consumer Act 2010 (Cth), to contrive a large ship strategy aimed at forcing the Swanson Dock stevedores, both of which operate nationally, and who face constraints on accessing some large ships imposed by the PoM Harbour Master West Gate Bridge air draught restrictions, to further drive down their contract prices with shipping lines on a national basis. The lack of profitability of VICT has already eroded its market power vis a vis the shipping lines, who will be keen to secure reduced priced contracts with VICT to help it take advantage of the windfall gain in capacity to put further pressure on the commercially weakened Swanson Dock stevedoring companies should the Webb Dock Project proceed in its current form.

55. We note that the top five shipping lines calling at the PoM hold a significant percentage of the market (the top container shipping company holding nearly 12 per cent of the shipping capacity visiting the PoM) and are able to exert enormous market power.[16] They use that market power to dictate the investment strategies of port owners/landlords, a global phenomenon. The implication is that port operators, terminal operators, and other actors in the container supply chain have fully or partially absorbed the potential diseconomies of scale linked to larger vessels, thereby enabling shipping companies to pursue consecutive rounds of scale increases in vessel size. [17] This market power behaviour is revealed in other ways as well which are detrimental to the consumers of Victoria e.g. the imposition of unwarranted and unregulated congestion charges during the COVID pandemic, additional blank sailings, port bypasses and escalating freight rate charges that are not reflective of container volume changes. The scale of these freight rate changes is shown in Figure 1.

**Figure 1: Shanghai Containerized Freight Index (SCFI), weekly spot rates. 18 December 2009 to 23 July 2021, selected routes**




**Source:** UNCTAD, *How to cushion consumers from high maritime freight rates,* 27 July 2021, https://unctad.org/news/how-cushion-consumers-high-maritime-freight-rates

56. It is noted that these behaviours are subject to a US Federal Maritime Commission (FMC) audit announced in July 2021 that will examine container shipping line compliance with the FMC rule

[16] Alphaliner, Snapshot of PoM vessel callings, accessed 31 August 2021. The top shipping lines by market share are ANL/CMA-CGM (France/Australia), OOCL (Hong Kong/China), Maersk (Denmark), COSCO (China), MSC (Switzerland), Hapag-Lloyd (Germany).

[17] See *Port Economics, Management and Policy, Section 3. Scale Enlargement in Vessel Size* 2021 https://porteconomicsmanagement.org/pemp/contents/part1/ports-and-container-shipping/ and Journal of Commerce Online, *The new oligopoly of container shipping,* 4 July 2019, https://www.joc.com/maritime-news/container-lines/new-oligopoly-container-shipping_20190704.html

on detention and demurrage as well as the practices of companies related to billing, appeals procedures, penalties assessed by the lines, and any other restrictive practices.[18]

*Underutilisation of Swanson Dock rail assets damages the Port Rail Shuttle Project and undermines the Mode Shift Incentive Scheme*

57. The Webb Dock Project will substantially shift container movements to Webb Dock and away from Swanson Dock, resulting in a severe underutilisation of the on-dock rail assets arising from PoM investment in the Port Rail Transformation Project at Swanson Dock for which nearly $120 million is earmarked for expenditure in the next two years.

58. Not only will the Webb Dock Project devalue the Port Rail Transformation Project it will also undermine State Government objectives to shift containers off road to rail, necessary to ensure the viability and efficiency of the Port Rail Shuttle Network project for which $58 million has been allocated over 2021 and 2022, $20 million of which is from Victorian taxpayers[19], and the Mode Shift Incentive Scheme for which over $30 million of taxpayer funds have already been invested.

59. This is a further reason why the Webb Dock Project is inefficient and imprudent.

*Additional truck movements result in increased road congestion ore urban noise and diminished amenity for Victorian citizens in the port vicinity*

60. The Webb Dock Project will induce additional truck movements from WDE from 2023 on completion of the Webb Dock Project over the following ten years before the Webb Dock Freight Link project is due for completion in 2033.

61. The PoM PDS predicted in 2020 that daily truck movements will increase from the current 2,400 per day to 9,300 per day by 2050, but this prediction did not take into account the likelihood of up to an additional 1.0 million TEUs pa requiring road transportation from Webb Dock onto the Melbourne road network until this can be reduced by the Webb Dock Freight Link. An additional 1.0 million TEUs equates to approximately 330,000 to 500,000 additional truck movements per annum (depending on truck productivity) or somewhere between 900 and 1,400 additional truck movements each day.

62. The net result is increased road congestion, vehicle noise, increased risk of road accidents and road trauma, increased costs for road maintenance and diminished amenity for Victorian citizens in the port vicinity. These impacts and their costs also contribute to the inefficiency and imprudence of the Webb Dock Project expenditure.

*Adverse impact on Bass Strait shipping results in increased costs for Victorian consumers*

---

[18] US Federal Maritime Commission (FMC), Media release, *FMC Establishes Ocean Carriers Audit Program*, 20 July 2021, https://www.fmc.gov/fmc-establishes-ocean-carriers-audit-program/

[19] Department of Infrastructure, Transport, Regional Development and Communications (Cth), Port *Rail Shuttle Network* https://investment.infrastructure.gov.au/projects/ProjectDetails.aspx?Project_id=051616-13VIC-NP

63. Commencement of the Webb Dock Project is the first step leading to an adverse impact on Bass Strait shipping operations given that the Webb Dock North (WDN) project is sequentially scheduled to commence after the Webb Dock Project.

64. Commencement of the Webb Dock North Project must be preceded by the relocation of the current Bass Strait Australian shipping operators located at Webb Dock, Searoad, and Toll Global Express, to Victoria/Appleton Dock.

65. The relocation of the Bass Strait shipping operators has significant implications for the cost, reliability and scheduling of Bass Strait freight transport because it adds about 45-50 extra minutes in sailing time each way i.e. 90+ minutes for each inbound and outbound voyage, which:

65.1 Reduces the in-port time and therefore the pressure to meet sailing schedules, noting that reliability and punctuality are the hallmark of the Bass Strait shipping operations to service the just-in-time supply chain requirements of Tasmanian fresh food producers;
65.2 Increases the risk of not meeting berth slot times, which can cause delays in berthing, given that berthing relies on availability of towage and mooring services;
65.3 Adds to operational costs, especially bunker (fuel); and
65.4 Increases navigation risks due to congestion in the smaller basin in the Victoria/Appleton Dock area of the port.

66. Additionally, both shipping operators have considerable sunk costs in Webb Dock, and relocation will result in losses on that investment, which raises depreciation issues and adds to costs for redeveloping the wharf and lay down area at Victoria/Appleton Dock.

67. The relocation has also resulted in one shipping operator with a new ship on order having to commission an engine upgrade to meet the faster sailing speed necessary to meet the daily service schedule, at a cost of around ten million Euro.

68. These factors have implications for Tasmanian producers and manufacturers who rely on Bass Strait shipping, including:

68.1 Increased freight costs;
68.2 Reduced reliability of ship scheduling i.e. reduced service standards; and
68.3 Increased risk of product damage due to reduced port times and the need to speed up loading and unloading operations, potentially increasing insurance costs.

69. In the longer term, the increased cost of Bass Strait sea freight may encourage Tasmanian shippers who use PoM as a transshipment port for international exports, to seek out an international shipping line which would be prepared to make direct ports calls to Tasmania. Such an outcome would seriously damage the business model of Bass Strait Australian shipping operators, and reduce container throughput at the PoM.

70. Additionally, there could be implications for both Tasmanian and Victorian shippers who are supported by the Tasmanian Freight Equalisation Scheme (TFES) given that the assistance payable for goods shipped to mainland Australia and for goods transhipped through the PoM is capped. Should the likely increase in Bass Strait sea freight costs exceed the maximum amount

of assistance available shippers, will receive no benefit from the TFES and will be required to meet the full increased TEU freight costs.

71. Increasing the costs of Bass Strait freight movement is uneconomic and will be to the detriment of Tasmanian producers and manufacturers and ultimately Victorian consumers.

*More efficient options are available to address the PoM alleged "operational inefficiencies" at WDE*

72. The MUA accepts that VICT should be able to secure 1.2 million TEUs per annum from its WDE facility. The PoM describes the Webb Dock Project as a solution to an "operational inefficiency" at WDE driven by an increase in large ships visiting the port. We request the ESC to rigorously test the efficiency of the Webb Dock Project given our submission that it is an inefficient expenditure. We do not believe that solving one alleged inefficiency with another more detrimental inefficiency is a solution that is in the best interests of the port, port tenants and other stakeholders, nor the citizens of Victoria, and is contrary to PoM obligations under the Pricing Order.

73. One of the most concerning features of the Webb Dock Project is the stated rationale by PoM. It is described as a berth extension to "restore" operating capacity and efficiency at the port (read WDE) in response to the impact of an increasing number of large vessels coming into the port.

74. In its 2021-2022 Tariff Rebalancing Application to the ESC of December 2020, the PoM submitted that "*As at 1 January 2020, there were no vessels on order in the range of 7,500 to 9,999 TEU, and only two vessels in the 5,100-7,499 TEU range. This indicates that going forward, vessels below 8,000 TEU (a reasonable proxy for the design vessel at the port of 300m LOA and 40m beam) will make up for a lower proportion of vessel visits – noting that there is likely to be ongoing use of vessels of 3,000 TEU and under servicing regional trade routes.*"[20] This evidence is flimsy at best and misleading, as the global vessel order book bears no correlation to the intentions or operational practices of container shipping lines which service the Australian market and the PoM.

75. Similarly, the PoM conclusion reached in its 2020 Tariff Rebalancing application which is that "*The potential for significant and rapid change (in vessel size visits to Melbourne) is clear in the dramatic changes seen over the last five years*", notwithstanding it also said that that "… *vessels in the 8,000+ TEU range have only recently begun to visit the port*".[21] The assertion being made lacks robustness.

76. No documented evidence of the frequency nor the relative frequency (in the context of overall ship visits) of ships missing vessel slots, nor of the invoking of demurrage or associated costs to shipping lines has been provided.

---

[20] Port of Melbourne, *Tariff Rebalancing Application*, December 2020, P8, https://www.esc.vic.gov.au/sites/default/files/documents/port-of-melbourne-tariff-rebalancing-application-2021-2021-22-tariff-rebalancing-application-202012_0.PDF
[21] Ibid P8

77. Notwithstanding the evidence provided by the PoM in its 2021-22 Tariff Compliance Statement[22] that in 2019-20 there were 54 visits from vessels in the 8,000-8,500 TEU range, and 56 visits from vessels >8,500 TEU, no analysis has been provided on the reasons why the apparent trend to larger ships has occurred over the period 2020 to the present which is an atypical period given the COVID-19 pandemic and the fluctuations it has caused in container throughput trends – see the PoM analysis of these fluctuations in its 2021-22 Tariff Compliance Statement.[23] One matter the PoM did not address in that section is the impact these COVID-19 induced market fluctuations had on empty container backlogs and consequential container repositioning challenges requiring larger ships to clear to backlog of empty containers. That was a short term impact in 2020, not likely to be repeated.

78. We submit that the PoM has not provided robust data on past or forecast ship size trends that makes the case for commencement of the Webb Dock Project now. We submit that available ship size data does not justify the Webb Dock Project expenditure now. Neither has PoM provided documented evidence of the frequency (nor the relative frequency in the context of overall ship visits) of ships missing vessel slots, off berth dwell time nor of the invoking of demurrage or associated costs.

79. Furthermore PoM has not articulated the relative impact. Its data shows there were 949 ship visits to the PoM in 2019-20[24], 110 which were of 8,000 TEU and above or just 11.6 per cent, though of those there is no indication of how many of those exceeded the design vessel parameters of 300 metres length overall x 40 metres beam with a maximum under keel draught of 14 metres, and therefore would be constrained from simultaneous berthing at WDE, or able to access Swanson Dock. No vessel size arrival pattern has been presented to show the frequency of two large ships arriving at the same or similar times requiring one to anchor while awaiting a WDE berth.

80. In a presentation to the ESC on 15 July 2021, the CEO of DPW made the following pertinent comments: *In 2020, only 6 or 2.5% of over 240 vessels were not able to navigate the river restrictions, including Westgate Bridge* and *we are not seeing major or sudden changes in the vessel fleet that services Melbourne and the East Coast. In fact, we are seeing recent services operating with much smaller vessels of 5,000 TEU.*[25]

81. Furthermore, PoM has not revealed the impact of the new berthing dolphin at WDE which adds another 15 metres to effective WDE quay line, providing an overall quay line of 746 metres at WDE. Such quay line dimensions would permit a ship with an LOA of 320 to simultaneously berth with a ship with an LOA of 282 (the average LOA of container ships in the range 5,000-

[22] Port of Melbourne, *2021-22 Tariff Compliance Statement*, P65, https://www.esc.vic.gov.au/transport/port-melbourne/port-melbourne-compliance-pricing-regulations#tabs-container2
[23] Ibid, Section 6.1: *Overview COVID-19 impacts* P27/28
[24] Port of Melbourne, *Tariff Rebalancing Application*, December 2020, Figure 4, P12, https://www.esc.vic.gov.au/sites/default/files/documents/port-of-melbourne-tariff-rebalancing-application-2021-2021-22-tariff-rebalancing-application-202012_0.PDF
[25] Victorian Essential Services Commission, *Virtual Public Forum: Inquiry into Port of Melbourne compliance*, 15 July 2021

6000 TEU range) and noting that ships in the 4,000-6,000 TEU range still make up around 60 per cent of the port calls to PoM according to data provided by the PoM.[26]

82. Additionally, no evidence has been provided on whether the current Harbour Master requirement of a 30 metre vessel separation between docked ships as set out in the Harbour Master Directions[27] could be waived under specified circumstances and whether the PoM has sought a review of that requirement. It is noted that in some circumstances ship separation is 20 metres at Port Botany under its Harbour Master requirements, so it appears flexibility or discretion is available.[28]

83. The decision to proceed with the Webb Dock Project is not in the long term interests of Victorian consumers, and should therefore be of grave concern to the ESC in fulfilling its statutory functions. Furthermore, the expenditure is unnecessary and avoidable. There are far more efficient and prudent alternatives that will maintain a fair market share between all stevedoring companies, allow those companies to deliver a reasonable return on capital necessary to maintain their landside infrastructure investment programs, will deliver enhanced port container productivity, and maintain labour stability which the workforce has delivered to date, including through the pandemic and through technological disruptions.

84. We maintain that with better landside infrastructure productivity, through for example more suitable cranes to place over ships, and better utilisation of available berth length through better ship scheduling (and noting the $20 million WDE mooring dolphin has only recently been completed), VICT can lift capacity at its WDE terminal to the original design capacity of 1.2 million TEUs per annum without the need for a $63+ million extension, with all its inefficiency ramifications. This is also the view of Infrastructure Victoria provided in a report to the Victorian Government in 2017 titled "*Advice on Securing Victoria's Ports Capacity*". In that report at Recommendation 3 it states:

> *"When undertaking future port and freight infrastructure planning the Victorian Government should, in consultation with the Port of Melbourne Lessee, take into consideration the following key factors that will influence capacity: a. Increasing capacity at Webb Dock to accept ships larger than around 7,500 TEU could make it difficult for Swanson Dock's capacity to be fully utilised due to its vessel size restrictions. This may prematurely compromise the viability of Swanson Dock, unnecessarily bringing forward the need to invest in additional capacity. This can be managed through deliberate staging of infrastructure investments at Webb Dock as well as upgrades to navigation infrastructure (channels and swing basins) and changes to regulation of navigation."*[29]

[26] Port of Melbourne, *Tariff Rebalancing Application*, December 2020, Figure 4, P12, https://www.esc.vic.gov.au/sites/default/files/documents/port-of-melbourne-tariff-rebalancing-application-2021-2021-22-tariff-rebalancing-application-202012_0.PDF

[27] Victorian Ports Corporation (Melbourne), *Harbour Master's Directions 11th Edition*, May 2019, https://www.vicports.vic.gov.au/publications/Documents/hm-directions-11th-edition.pdf

[28] Port Authority of NSW, *Harbour Master Directions, Sydney Harbour and Port Botany*, 15 February 2021, P20, https://www.portauthoritynsw.com.au/media/4851/harbour-master-directions-sydney-harbour-and-port-botany-in-force-from-15-february-2021.pdf

[29] Infrastructure Victoria, *Advice on Securing Victoria's Ports Capacity*, May 2017, https://www.infrastructurevictoria.com.au/wp-content/uploads/2019/04/Securing_Victorias_Ports_Capacity_WEB-1.pdf

85. Regrettably the PoM has not heeded this advice and is now compromising the viability of Swanson Dock through its ill-conceived and inefficient Webb Dock Project.

86. Additionally, we see no reason why the PoM in conjunction with the newly created Ports Victoria and port users could not work with the shipping lines to influence ship size and ship scheduling to ensure that larger ships can enter the port but in a manner and sequence consistent with the best interests of all port users.

**Conclusion**

87. In conclusion, the MUA and its members request that the ESC fully investigate our evidence that that the Webb Dock Project is inefficient and therefore should not be included in the Capital Base for the purpose of setting the aggregate revenue requirement in accordance with the Pricing Order, and that the PoM has not complied with the Pricing Order.

88. We also request that the ESC find that the Webb Dock Project will:

88.1 Cause material harm to port users and consumers as a consequence of its non-compliance; and
88.2 Undermine stakeholder confidence in the integrity of the regulatory framework.

89. We also request that the ESC propose a remediation of identified PoM non-compliance by recommending that the PoM:

89.1 Agree to defer the Webb Dock Project for a period of no longer than 6 months; and
89.2 Consult further with port users, Ports Victoria, Infrastructure Victoria, Freight Victoria/Department of Transport and the main port workforce (including its representative the MUA) aimed at reaching a planning agreement that establishes parameters around the Webb Dock Project to minimise harm, provide fair market share opportunities for all stevedoring terminal operators i.e. fair competition, integrates rail projects to reduce road congestion and mitigates the impact on Bass Strait shipping.

90. The MUA also wishes to alert the ESC to advice provided by the Victorian Minister for Ports and Freight, the Hon Melissa Horne MLA on 12 August 2021 , that she is still seeking to determine the degree to which (if any) the ESC will consider the Webb Dock Project in its current review of Port of Melbourne compliance with the Pricing Order. The non-compliance issue is so serious that it cannot be deferred until the next review in 2026 to be addressed by the ESC. We hope that the ESC will publicly confirm that the current review will be examining the Webb Dock Project announced on 12 August 2021 in the current Inquiry.

91. Notwithstanding that blindside by the Minister, which can only be described as avoidance of a political problem for the Government in the lead up to the 2022 election, we note that the *Essential Services Commission Act 2001* (Vic) (ESC Act) requires the ESC to consider not only price but also the quality and reliability of essential services. We also note the very wide scope of ESC powers provided in section 8A(1) of the ESC Act which the ESC must have regard to in undertaking its regulatory functions.

92. I refer in particular to sections 8A(1)(a) efficiency in the industry and incentives for long term investment; 8A(1)(c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries; and 8A(1)(d) the relevant health, safety, environmental and social legislation applying to the industry. I regard the *Fair Work Act 2009* and enterprise bargaining agreements made in accordance with that Act as relevant social legislation that must be considered.

93. I refer the ESC to analysis by the Australian Competition and Consumer Commission (ACCC) in its *Container stevedoring monitoring report-2019–20* at Figure 4.2: *Total revenues in real terms: 2010–11 to 2019–20* which shows the decline in stevedoring company revenue from shipping line contracts. The PoM Webb Dock Project, which will directly reduce the market share of Swanson Dock stevedoring companies, thus further squeezing their revenue base will severely impact on enterprise bargaining parameters, inevitably resulting in labour instability and very likely lower labour productivity, at the port. We submit that this must be part of the consideration by the Inquiry.

94. In summary the MUA submits there is ample scope for the ESC to consider the full range of issues raised in this submission when performing its functions within this Inquiry.

95. The MUA and its members at the PoM are highly committed to ensure the PoM grows and maintains its position as the most important port serving the southeast region of Australia, and that investment in the port ensures it is functionally linked to intermodal connectors and into the national freight supply chain on the land side and into international markets on the seaside, which serves the consumers of Victoria, in order to realise its full potential as a critical supply chain asset in the Australian freight network.

96. The PoM Webb Dock Project is entirely at odds with that objective. We look forward to the ESC response to the matters raised by the MUA and trust that the ESC will use the full scope of its regulatory powers to address the matters outlined, and to consider the remedies we have proposed.