



Victoria Government Gazette

No. S 16 Monday 4 March 1996
By Authority, Victorian Government Printer

SPECIAL

Financial Management Act 1994 DECLARATION OF PUBLIC AUTHORITIES AS LEVIABLE AUTHORITIES

The Governor in Council under section 40M (2) of the **Financial Management Act 1994** declares each of the following public authorities within the meaning of the **Treasury Corporation of Victoria Act 1992** to be a leviable authority for the purposes of Part 6C of the **Financial Management Act 1994**:

- * Melbourne Water Corporation
- * City West Water Limited
- * South East Water Limited
- * Yarra Valley Water Limited
- * Power Net Victoria
- * Generation Victoria
- * Hazelwood Power Corporation Pty Ltd
- * Loy Yang Power Pty Ltd
- * Southern Hydro Pty Ltd
- * Yallourn Energy Pty Ltd
- * GASCOR
- * Gas Transmission Corporation

Dated 27 February 1996

Responsible Minister:

ALAN R. STOCKDALE

Treasurer

KATHY WILSON
Clerk of the Executive Council

Financial Management Act 1994 DECLARATION OF PUBLIC AUTHORITIES AS LEVIABLE AUTHORITIES

The Governor in Council under section 41A of the **Interpretation of Legislation Act 1984** amends the Order in Council dated 27 February 1996 made under section 40M (2) of the **Financial Management Act 1994** declaring each of the following public authorities within the meaning of the **Treasury Corporation of Victoria Act 1992** to be a leviable authority for the purposes of Part 6C of the **Financial Management Act 1994**:

- * Melbourne Water Corporation
- * City West Water Limited

- * South East Water Limited
- * Yarra Valley Water Limited
- * Power Net Victoria
- * Generation Victoria
- * Hazelwood Power Corporation Pty Ltd
- * Loy Yang Power Pty Ltd
- * Southern Hydro Pty Ltd
- * Yallourn Energy Pty Ltd
- * GASCOR
- * Gas Transmission Corporation

by deleting the public authorities listed in that Order and substituting the following list of public authorities in lieu thereof:

- * Melbourne Water Corporation
- * City West Water Limited (ACN 066 902 467)
- * South East Water Limited (ACN 066 902 547)
- * Yarra Valley Water Limited (ACN 066 902 501)
- * Power Net Victoria
- * Generation Victoria
- * Hazelwood Power Corporation Ltd (formerly known as Hazelwood Power Corporation Pty Ltd) (ACN 065 381 204)
- * Loy Yang Power Ltd (formerly known as Loy Yang Power Pty Ltd) (ACN 065 381 240)
- * Southern Hydro Ltd (formerly known as Southern Hydro Pty Ltd) (ACN 065 325 091)
- * Yallourn Energy Ltd (formerly known as Yallourn Energy Pty Ltd) (ACN 065 325 224)
- * GASCOR
- * Gas Transmission Corporation

Dated 4 March 1996

Responsible Minister:

ALAN R. STOCKDALE

Treasurer

KATHY WILSON
Clerk of the Executive Council

TREASURY CORPORATION OF VICTORIA ACT 1992

The Governor in Council under Section 36D of the **Treasury Corporation of Victoria Act 1992**, on the recommendation of the Treasurer, hereby declares that the liabilities of the Port of Portland Authority ("PPA") in respect of the inscribed stock issued by the PPA specified in the Schedule below, being financial obligations of the PPA that are governed by the law of Victoria, are to be taken to be liabilities of the Treasury Corporation of Victoria.

SCHEDULE "A"

Loan Number	Coupon Rate	Coupon Calculation Basis	Maturity Date	Face Value \$
211	5.750	Semi Annual	01/05/1997	50,000.00
315	6.400	Semi Annual	01/10/2017	25,000.00
905	7.400	Semi Annual	01/07/2015	20,000.00
311	6.400	Semi Annual	08/09/2012	300,000.00
203	5.750	Semi Annual	01/04/2006	80,000.00
906	7.400	Semi Annual	01/07/2015	30,000.00
371	10.500	Semi Annual	01/07/1996	30,000.00
400.1	10.400	Semi Annual	31/12/1997	15,000.00
400.2	10.400	Semi Annual	31/12/1997	10,000.00
112	5.500	Semi Annual	01/12/2000	40,000.00
244	5.875	Semi Annual	01/03/2009	100,000.00
281	7.400	Semi Annual	01/09/2015	50,000.00
295	7.400	Semi Annual	01/08/2001	100,000.00
330	6.900	Semi Annual	01/07/2018	10,000.00
903	6.400	Semi Annual	01/10/2009	100,000.00
105	5.500	Semi Annual	12/09/2005	100,000.00
97	5.500	Semi Annual	01/03/2006	40,000.00
126	5.875	Semi Annual	19/06/2006	100,000.00
149	5.500	Semi Annual	01/10/2002	190,000.00
172	5.125	Semi Annual	01/07/2003	40,000.00
902	6.400	Semi Annual	15/08/2014	150,000.00
268	6.400	Semi Annual	05/09/2014	100,000.00
456	13.900	Semi Annual	01/05/1996	59,600.00
457	13.900	Semi Annual	01/07/1996	200,000.00
125	5.875	Semi Annual	26/05/2001	8,000.00
212	5.750	Semi Annual	01/03/2007	100,000.00
430	10.800	Semi Annual	01/09/1999	87,694.68
455	13.900	Semi Annual	01/05/1996	14,993.70
86	5.500	Semi Annual	01/02/2000	100,000.00
901	5.500	Semi Annual	01/03/2005	360,000.00
206	5.750	Semi Annual	01/06/2011	160,000.00
218	5.875	Semi Annual	25/08/2012	400,000.00
238	5.875	Semi Annual	26/07/2013	300,000.00
197	5.500	Semi Annual	01/03/1999	200,000.00
198	5.500	Semi Annual	01/04/2000	200,000.00
904	7.400	Semi Annual	01/07/2015	50,000.00
				<u>3,920,288.38</u>

Dated 4 March 1996

Responsible Minister:

ALAN R. STOCKDALE

KATHY WILSON
Clerk of the Executive Council

Port Services Act 1995
PRICING ORDER FOR THE PORT OF
PORTLAND

The Governor in Council under section 50 (1) of the **Port Services Act 1995**, make the attached Pricing Order regulating—

- (a) the prescribed prices; and
- (b) the terms and conditions subject to which prescribed services are to be provided—

in the port of Portland with effect from 6 March 1996.

Dated 4 March 1996

Responsible Minister:

ALAN R. STOCKDALE

Treasurer

KATHY WILSON

Clerk of the Executive Council

PRICING ORDER FOR THE PORT OF PORTLAND

Table of Contents

1. General.....

 1.1 Objectives.....

 1.2 Application.....

 1.3 Interpretation.....

 1.4 Commencement.....

2. Weighted average revenue cap for Port of Portland.....

 2.1 General.....

 2.2 Maximum weighted average revenue cap.....

 2.3 New maximum weighted average revenue estimates and new prices.....

 2.4 Forecasts & reporting requirements.....

 2.5 Regulated pass through of cost elements related to Force Majeure.....

 2.6 Regulated pass through of cost elements related to a Change in Taxes.....

3. Application of the Pricing Order.....

 3.1 Notification of a change in Regulated Services or Regulated Entity.....

 3.2 Exempt Contracts.....

 3.3 Variation, expiry, lapse or termination of Exempt Contracts.....

 3.4 Change in market structure.....

4. Miscellaneous.....

 4.1 Modification to time periods in the Pricing Order.....

 4.2 Amending a maximum weighted average revenue cap.....

 4.3 Other powers of the Office.....

Appendix 1: Definitions.....

Appendix 2: Rules of interpretation.....

Appendix 3: Initial schedule of prices for Regulated Services.....

Appendix 4: Pricing Order cargo categories.....

1. General

1.1 Objectives

In administering this Order and exercising its powers under the Act and the ORG Act in relation to the Regulated Industry, the objectives of the Office (the "Objectives") are:

- (a) to ensure that a 20% real reduction in the cost of using Regulated Services currently provided in the Port of Portland is achieved by 30 June 2000; and
- (b) otherwise, its objectives under section 48(a) and (b) of the Act and section 7 of the ORG Act.

1.2 Application

- 1.2.1 This Order applies to all persons who provide Regulated Services, charge Regulated Prices or propose to do either ("Regulated Entities")
- 1.2.2 This Order, other than this clause 1.2.2, does not apply in respect of the provision of towage in the port of Portland. However, subject to section 51 of the Act, the Office may exercise its general powers under Division 3 of Part 3 of the Act and under the ORG Act in relation to the provision of towage in the port of Portland. Accordingly, the Office may monitor the provision of towage by requiring the providers of towage to make financial and business records available to the Office under the Act. If the Office makes any determination relating to towage in the port of Portland, it must ensure that determination is consistent with the criteria applied at that time by the Prices Surveillance Authority or the Australian Competition and Consumer Commission in assessing towage prices in other ports in Australia.

1.3 Interpretation

- 1.3.1 In this Order, the words and phrases defined in Appendix 1 have the meanings given to them in that Appendix unless the contrary intention appears.
- 1.3.2 This Order must be interpreted in accordance with the rules of interpretation set out in Appendix 2 unless the contrary intention appears.

1.4 Commencement

- 1.4.1 This Order takes effect from the first day after the date on which this Order is published in the Government Gazette.

2. Weighted average revenue cap

2.1 General

- 2.1.1 Regulation of Regulated Prices under this Order is principally achieved by fixing a maximum average revenue in relation to the Regulated Services provided by each Regulated Service Provider. This Order also requires the Office to approve Regulated Prices for each Financial Year, increases in Regulated Prices, Regulated Prices for new or additional Regulated Services that may be provided from time to time and certain other Regulated Prices. The purpose of requiring these approvals of Regulated Prices is principally to enable the Office to be satisfied that Regulated Prices comply with the MWAR cap under this Order and are otherwise consistent with the Objectives.
- 2.1.2 A Regulated Entity must not charge a Regulated Price that is more than the maximum price specified in, or approved in accordance with, this Order.
- 2.1.3 A Regulated Entity may charge a Regulated Price that is less than the maximum price specified in, or approved in accordance with this Order if (but only if) the MWAR cap of the relevant Regulated Service Provider under this Order will continue to be complied with.
- 2.1.4 The initial schedule of maximum prices for Regulated Services to be provided by the Initial Port Operator for the period from the commencement of this Order to 30 June 1997 is set out in Appendix 3. Except as contemplated by clauses 2.5 and 2.6, these maximum prices may not be increased under this Order. However, prior to 30 June 1997, the Office may approve Regulated Prices under clause 3 in respect of any new or additional Regulated Services provided or proposed to be provided by the Initial Port Operator.
- 2.1.5 Subject to clause 2.1.4, the Office may approve a new or revised schedule of maximum prices for Regulated Services provided by a Regulated Service Provider in accordance with this Order if the Office is satisfied that:
- (a) the Regulated Prices charged for the provision of, or in connection with, those Regulated Services (whether charged by the Regulated Service Provider or other Regulated Entities) will comply with the Regulated Service Provider's MWAR cap under this Order; and
 - (b) they are consistent with the Objectives.
- 2.1.6 A Regulated Entity must provide a customer or potential customer with a statement in writing setting out the Regulated Entity's then current Regulated Prices as soon as practicable after being requested to do so by that customer or potential customer.

2.2 Maximum weighted average revenue cap

- 2.2.1 The Initial Port Operator is subject to an MWAR cap under this clause 2.2. Other Regulated Service Providers may become subject to a MWAR cap in accordance with clause 3.

2.2.2 If a Regulated Service Provider is subject to a MWAR cap under this Order, each Regulated Entity must ensure that the AR derived from Regulated Services provided by that Regulated Service Provider in a particular Financial Year after the Base Year does not exceed the Regulated Service Provider's MWAR cap for that Financial Year. Subject to this Order, the AR for a Financial Year is to be calculated in accordance with clause 2.2.3 and the MWAR cap for a Financial Year is to be calculated in accordance with clause 2.2.4.

2.2.3 The AR derived from Regulated Services provided by a Regulated Service Provider in Financial Year "t" is to be calculated in accordance with the following formula:

$$AR_t = \frac{R_t}{T_t}$$

where:

AR_t = the AR (in \$/MT) derived from all Regulated Services provided by that Regulated Service Provider in Financial Year "t" (whether charged by that Regulated Service Provider or other Regulated Entities).

R_t = the total revenue (in \$) that all Regulated Entities derive from Regulated Prices charged for the provision of, or in connection with, Regulated Services provided by that Regulated Service Provider during Financial Year "t"; and

T_t = is the total quantity of cargo (in MTs) which is loaded or unloaded in the port of Portland utilising Regulated Services provided by that Regulated Service Provider during Financial Year "t".

If AR_t is to be determined before the commencement of Financial Year "t", R_t and T_t are to be calculated on the basis of reasonable forecasts by the Regulated Service Provider. If AR_t is to be determined after the commencement of Financial Year "t", R_t and T_t are to be calculated having regard to actual revenue derived and the quantity of cargo loaded or unloaded since the commencement of Financial Year "t".

2.2.4 The MWAR for all Regulated Services provided by a particular Regulated Service Provider in Financial Year "t" is to be calculated in accordance with the following formula:

$$MWAR_t = (CPI_t - X) * WAR_t - K_{t-1}$$

where:

$MWAR_t$ = the MWAR (in \$/MT) for all Regulated Services provided by that Regulated Service Provider in Financial Year "t" (whether charged by that Regulated Service Provider or other Regulated Entities).

CPI_t = the CPI for Financial Year "t" as defined in Appendix 1.

X = an annual adjustment factor applied for Financial Year t consistent with the definition of CPI (which accumulates from the March Quarter in the 1995/96 Financial Year):

Financial Year	X Factor
1997/98	.04
1998/99	.08
1999/2000	.12

WAR_t = weighted average revenue determined in accordance with clause 2.2.5.

K_{t-1} = the correction factor determined in accordance with clause 2.2.6.

$t-1$ = the prior Financial Year.

2.2.5 WAR_t for a Regulated Service Provider for Financial Year "t" is an amount determined in accordance with the following formula:

$$WAR_t = \sum_{p=1}^{p=n} \left[AR_{p,b} * \left(\frac{TP_{p,t}}{T_t} \right) \right]$$

where:

b = the Base Year being the year ending 30 June 1997;

$AR_{p,b}$ = the AR (in \$/MT) that all Regulated Entities derive from Regulated Prices charged for the provision of, or in connection with, Regulated Services provided by that Regulated Service Provider in connection with Cargo Category p during the Base Year calculated in accordance with the following formula:

$$AR_{p,b} = \frac{R_{p,b}}{T_{p,b}}$$

where:

$R_{p,b}$ = the total revenue that all Regulated Entities derive from Regulated Prices charged for the provision of, or in connection with, Regulated Services provided by that Regulated Service Provider in connection with Cargo Category p during the Base Year;

$T_{p,b}$ = the Metric Tonnes of Cargo Category p that is loaded or unloaded in the port of Portland utilising Regulated Services provided by that Regulated Service Provider during the Base Year.

If $AR_{p,b}$, $R_{p,b}$ and $T_{p,b}$ are to be determined before the end of the Base Year "b", they are to be calculated on the basis of forecasts by the Regulated Service Provider taking into account at least 9 months of actual results and annualising them by the factor (Actual for 9 Months/9)*12. If seasonal

factors are important a further adjustment may be used provided its calculation is contained in the information provided to the Office under clause 2.4;

$T_{p,t}$ = the Metric Tonnes of Cargo Category p which the Regulated Service Provider reasonably forecasts will be loaded or unloaded in the port of Portland utilising Regulated Services provided by that Regulated Service Provider during Financial Year "t";

T_t = the Metric Tonnes of all cargo which the Regulated Service Providers forecasts will be loaded or unloaded in the port of Portland utilising Regulated Services provided by that Regulated Service Provider during Financial Year "t";

$\sum_{p=1}^{p=n}$ = requires the summation over all Cargo Categories.

If a Cargo Category is loaded or unloaded in Financial Year "t" which was not loaded or unloaded in Base Year "b", the Office may make such adjustments as it considers necessary or desirable to the calculation of WAR_t .

2.2.6 K is a correction factor that adjusts for the difference between forecast AR and MWAR and estimated AR and MWAR based on nine months of actual data:

(a) if Financial Year "t" is the Financial Year ending 30 June 1996, 30 June 1997 or 30 June 1998, then $K_{t,t}$ is zero;

(b) if Financial Year "t" is after the Financial Year ending 30 June 1998, then $K_{t,t}$ is calculated in accordance with the following formula:

$$K_{t,t} = AR_{t-1}^e - MWAR_{t-1}^e$$

where:

AR_{t-1}^e = is the AR (in \$/MT) for Financial Year $t-1$ determined in accordance with clause 2.2.3, but substituting for forecast revenue and tonnes the actual revenue and tonnes for the first 9 months of the Financial Year $t-1$ and annualising them using the factor $(Actual Results for 9 Months/9) * 12$;

$MWAR_{t-1}^e$ = is the MWAR for Financial Year $t-1$ determined in accordance with clause 2.2.4, but substituting for T_t and $T_{p,t}$ the actual values for the first 9 months of the Financial Year $t-1$ and annualising them using the factor $(Actual Results for 9 Months/9) * 12$.

2.2.7 The Office may, in accordance with this Order, increase, decrease or adjust the basis for calculating AR, MWAR, WAR_t or $K_{t,t}$.

2.3 New maximum weighted average revenue estimates and new prices

2.3.1 A Regulated Service Provider must, at least 30 Business Days prior to the start of each Financial Year after the Base Year, give to the Office:

- (a) written notice of the Regulated Prices proposed to be charged for the provision of, or in connection with, Regulated Services to be provided by that Regulated Service Provider in the Financial Year (whether those Regulated Prices are to be charged by that Regulated Service Provider or other Regulated Entities) (an "Annual Price Schedule"); and
- (b) sufficient information to enable the Office to assess whether the proposed Regulated Prices would comply with this Order, including sufficient information to calculate the Regulated Service Provider's AR and MWAR cap for the Financial Year.

2.3.2 If during a Financial Year after the Base Year a Regulated Entity proposes to increase a Regulated Price, charge a new or additional Regulated Price (otherwise than in respect of a new or additional Regulated Service referred to in clause 3.1), or alter the basis for charging a Regulated Price which may have the effect of increasing the Regulated Price when it is converted into a price per Metric Tonne under clause 4.3.1(c) (each, a "Proposed Increase"), the Regulated Entity and the relevant Regulated Service Provider must, at least 30 Business Days prior to the date upon which the proposed increase is to take effect, give to the Office:

- (a) written notice of the Proposed Increase; and
- (b) sufficient information to enable the Office to assess whether the Regulated Entity's Proposed Increase would comply with this Order.

2.3.3 If after 20 Business Days from the receipt of a notice under clause 2.3.1 or 2.3.2, the Office has not given notice in accordance with clause 2.3.4 or 2.3.9, the Office will be deemed to have approved the Annual Price Schedule or, as the case may be, the Proposed Increase.

2.3.4 If:

- (a) a Regulated Entity gives to the Office a notice that purports to be in accordance with clause 2.3.1 or 2.3.2; and
- (b) in the Office's reasonable opinion, the notice does not comply with this Order,

the Office may, within 5 Business Days after receipt of the notice, give the Regulated Entity written notice:

- (c) stating that the Office is disallowing the notice because it does not so comply;
- (d) setting out why the Office thinks that the notice does not comply; and
- (e) requiring the Regulated Entity to submit a notice that does so comply.

- 2.3.5 If, prior to the expiration of 20 Business Days after the receipt of a notice under clause 2.3.1 or 2.3.2, the Office decides that the Regulated Entity giving the notice has failed to provide sufficient information to decide whether the Annual Price Schedule or Proposed Increase would comply with this Order, the Office may give the Regulated Entity a written notice requiring the Regulated Entity to provide specific further information.
- 2.3.6 If the Office gives a Regulated Entity a notice under clause 2.3.4 or 2.3.5, the 20 Business Days referred to in clause 2.3.3 ceases to run until the Regulated Entity submits a notice that does comply or provides the Office with the required information.
- 2.3.7 The Office may, subject to clauses 2.3.8 and 2.3.9, approve or disallow an Annual Price Schedule or a Proposed Increase.
- 2.3.8 Subject to clause 2.1.4 the Office must approve an Annual Price Schedule or a Proposed Increase if it is satisfied that the proposed Annual Price Schedule or Proposed Increase:
- (a) would comply with this Order; and
 - (b) is consistent with the Objectives.
- 2.3.9 Where the Office disallows an Annual Price Schedule or a Proposed Increase, the Office must give to the relevant Regulated Entity a written notice stating:
- (a) that the Office is disallowing the Annual Price Schedule or Proposed Increase; and
 - (b) the reason why it is disallowing the Annual Price Schedule or Proposed Increase.
- 2.3.10 If, for any reason whatsoever (including, without limitation, a failure by a Regulated Service Provider to give the Office a notice which complies with clause 2.3.1), the Office has not approved (or been deemed to have approved) an Annual Price Schedule for a Financial Year "t" prior to the commencement of that Financial Year, then, until the Office approves (or is deemed to have approved) an Annual Price Schedule for that Financial Year, a Regulated Entity must not charge Regulated Prices for the provision of, or in connection with, the Regulated Services provided by that Regulated Service Provider that are more than the Regulated Prices applicable at the end of the preceding Financial Year "t-1" multiplied by $(CPI_t - X)$ where CPI_t and X have the meanings given in clause 2.2.4.

2.4 Forecasts & reporting requirements

- 2.4.1 A Regulated Service Provider must within 60 Business Days after the end of each Financial Year, provide the Office with a statement in writing setting out:
- (a) the MWAR derived from all Regulated Services provided by it during that Financial Year in accordance with section 2.2.4;
 - (b) an allocation of all revenues included in that MWAR to each Cargo Category and the quantity (in Metric Tonnes) of cargo in each Cargo Category loaded

or unloaded in the port of Portland utilising Regulated Services provided by that Regulated Service Provider during that Financial Year;

- (c) the total revenue derived from Regulated Prices charged for the provision of, or in connection with, Regulated Services provided by that Regulated Service Provider during that Financial Year; and
- (d) the total quantity (in Metric Tonnes) of cargo loaded or unloaded in the port of Portland utilising Regulated Services provided by that Regulated Service Provider during that Financial Year.

2.4.2 The information given to the Office under clause 2.3.1 or 2.3.2 must include:

- (a) the total revenue $R_{p,t}$ which the Regulated Service Provider reasonably forecasts all Regulated Entities will derive from Regulated Prices charged for the provision of, or in connection with, Regulated Services provided by that Regulated Service Provider during Financial Year "t" taking into account at least 9 months of estimated results for year "t-1" and annualising using the factor $(Actual\ Revenue\ for\ 9\ Months/9) * 12$. If seasonal factors are important a further adjustment may be used provided its calculation is contained in the information provided to the Office;
- (b) the total quantity $T_{p,t}$ of cargo in MTs which the Regulated Service Provider reasonably forecasts will be loaded or unloaded in the port of Portland utilising Regulated Services provided by that Regulated Service Provider during Financial Year "t" taking into account at least 9 months of estimated results for year "t-1" and annualising them using the factor $(Actual\ MTs\ for\ 9\ Months/9) * 12$. If seasonal factors are important a further adjustment may be used provided its calculation is contained in the information provided to the Office;
- (c) CPI_t as defined in Appendix 1; and
- (d) the factor $K_{r,t}$ determined in accordance with clause 2.2.6.

2.4.3 Subject to the provisions of the Act, a Regulated Entity must make available to the Office such other information as the Office reasonably requests for the purpose of ensuring compliance with this Order or deciding whether this Order has been complied with.

2.4.4 All forecasts and estimates made by a Regulated Entity for the purposes of this Order must be made after due enquiry and must be reasonable in light of all surrounding circumstances and past performance.

2.5 Regulated pass through of cost elements related to Force Majeure

2.5.1 If a Force Majeure Event occurs or continues, a Regulated Entity may give notice to the Office requesting approval for it to pass on the costs of the event to users of Regulated Services by an increase in Regulated Prices.

2.5.2 A notice under clause 2.5.1 must include:

- (a) sufficient information to enable the Office to assess whether a Force Majeure Event has occurred or is continuing;
 - (b) an estimate of the effect of the Force Majeure Event on the Regulated Service Provider's costs and AR;
 - (c) the proposed increase in Regulated Prices; and
 - (d) the effect of the increase in Regulated Prices on the relevant Regulated Service Provider's MWAR cap and details of all calculations required to determine this effect.
- 2.5.3 Subject to clause 2.5.6, the Office must, within 30 Business Days after receipt of a notice under clause 2.5.2, determine if the Force Majeure Event specified in the notice occurred or is continuing. If the Office determines that a Force Majeure Event has occurred or is continuing, then it must also determine whether to approve the increase in Regulated Prices set out in the notice. After determining whether to approve the increase in Regulated Prices, the Office must advise the Regulated Entity in writing accordingly. If an increase in Regulated Prices is not approved, the Office must state the reason why and advise the Regulated Entity whether a revised request would be considered.
- 2.5.4 If the Office approves an increase in Regulated Prices under clause 2.5.3, it may increase, decrease or adjust the basis for calculating the MWAR cap of the relevant Regulated Service Provider to the extent it considers appropriate.
- 2.5.5 An approval of an increase in Regulated Prices under clause 2.5.3 and an increase, decrease or adjustment to the basis for calculating an MWAR cap under clause 2.5.4 may be for such period and subject to such terms and conditions as the Office considers appropriate.
- 2.5.6 A Regulated Entity must make available to the Office such information as the Office reasonably requests for the purposes of making a determination under clause 2.5.3. If the Office makes a request under this clause 2.5.6, the 30 Business Day period referred to in clause 2.5.3 ceases to run until the information requested by the Office is provided to the Office, or the Office advises that the information is no longer required.

2.6 Regulated pass through of cost elements related to a Change in Taxes

- 2.6.1 If there is a Change in Taxes, a Regulated Entity may give notice to the Office requesting approval for it to pass on the costs of the event to users of Regulated Services by an increase in Regulated Prices.
- 2.6.2 A notice under clause 2.6.1 must include:
- (a) sufficient information to enable the Office to assess whether a Change in Taxes has occurred;
 - (b) an estimate of the effect of the Change in Taxes on the Regulated Entity's costs;

- (c) the proposed increase in Regulated Prices; and
- (d) the effect of the increase in Regulated Prices on the relevant Regulated Service Provider's MWAR cap and details of all calculations required to determine this effect.

- 2.6.3 Subject to clause 2.6.6, the Office must, within 30 Business Days after receipt of a notice under clause 2.6.1, determine if the Change in Taxes specified in the notice has occurred. If the Office determines that a Change in Taxes has occurred, then it must also determine whether to approve the increase in Regulated Prices set out in the notice. After determining whether to approve the increase in Regulated Prices, the Office must advise the Regulated Entity in writing accordingly. If an increase in Regulated Prices is not approved, the Office must state the reason why and advise whether a revised request would be considered.
- 2.6.4 If the Office approves an increase in Regulated Prices under clause 2.6.3, it may increase, decrease or adjust the basis for calculating the MWAR cap of the relevant Regulated Service Provider to the extent it considers appropriate.
- 2.6.5 An approval of an increase in Regulated Prices under clause 2.6.3 and an increase, decrease or adjustment in the basis for calculating an MWAR cap under clause 2.6.4 may be for such period and subject to such terms and conditions as the Office considers appropriate.
- 2.6.6 A Regulated Entity must make available to the Office such information as the Office reasonably requests for the purposes of making a determination under clause 2.6.3. If the Office makes a request under this clause 2.6.6, the 30 Business Day period referred to in clause 2.6.3 ceases to run until the information requested by the Office is provided to the Office, or the Office advises that the information is no longer required.

3. Application of the Pricing Order

3.1 Notification of a change in Regulated Services or Regulated Entity

3.1.1 If a person proposes:

- (a) to provide new or additional Regulated Services (already being a Regulated Service Provider);
- (b) to cease to provide any Regulated Services (whether or not another person is providing or proposes to provide similar Regulated Services); or
- (c) to commence to provide any Regulated Services (not already being a Regulated Service Provider),

it must first:

- (d) give the Office not less than 40 Business Days prior written notice in accordance with this Order; and

either:

- (e) obtain approval from the Office of all Regulated Prices to be charged for the provision of, or in connection with:
 - (i) the new or additional Regulated Services referred to in paragraph (a); or
 - (ii) the Regulated Services referred to in paragraph (c),and any other changes to Regulated Prices proposed in connection with the matters referred to in paragraphs (a), (b) and (c); or
- (f) obtain a determination from the Office that no MWAR cap should apply in respect of any or all of the Regulated Services referred to in the notice.

If more than one paragraph of this clause 3.1 applies, notice must be given under each applicable paragraph.

3.1.2 A notice under paragraph 3.1.1(a) must include:

- (a) a description of the new or additional Regulated Services which the person proposes to provide;
- (b) the Regulated Prices proposed to be charged for the provision of, or in connection with the proposed new or additional Regulated Services;
- (c) information in support of the proposed pricing arrangements, including the Regulated Service Provider's reasonable estimate of any additional costs incurred or to be incurred in providing the proposed new or additional

Regulated Services and any benchmark prices relevant to those new or additional Regulated Services;

- (d) the Regulated Service Provider's revised estimates of AR (in accordance with clause 2.2.3) and MWAR (in accordance with clause 2.2.4) that would apply if the new and additional Regulated Services were subject to the MWAR cap, taking into account the proposed new or additional Regulated Services and the proposed Regulated Prices, together with information supporting these estimates; and
- (e) the Regulated Service Provider's proposal regarding any increase, decrease or adjustment to the basis for calculating its MWAR cap taking into account the new or additional Regulated Services.

3.1.3 A notice under paragraph 3.1.1(b) must include:

- (a) a description of the Regulated Services which the person proposes to cease to provide (the "Relevant Services");
- (b) if any other person (a "Transferee") is providing or proposes to provide similar Regulated Services under an arrangement with the person giving the notice, the identity of the Transferee and details of the Regulated Services which the Transferee is providing or proposed to provide ("Transferred Services");
- (c) the AR, both historical and projected, for the Relevant Services, as calculated for the purposes of clause 2.2.3;
- (d) the Regulated Service Provider's revised estimates for AR (in accordance with clause 2.2.3) and MWAR (in accordance with clause 2.2.4) excluding the Relevant Services, together with information supporting these estimates;
- (e) the Regulated Service Provider's proposal regarding any increase, decrease or adjustment to the basis for calculating its MWAR cap taking into account the Regulated Service which it is ceasing to provide;
- (f) any changes to Regulated Prices necessary to ensure continued compliance with this Order in light of the information set out in paragraphs (d) and (e); and
- (g) details of any sale, lease or other transfer of assets in connection with any arrangements with a Transferee in respect of Transferred Services.

3.1.4 A notice under paragraph 3.1.1(c) must include:

- (a) the identity of the person and any relationship or arrangement between that person and any other Regulated Entity;
- (b) a description of the Regulated Services which the person proposes to provide;
- (c) the Regulated Prices proposed to be charged for the provision of, or in connection with, the Regulated Services;

- (d) information in support of the proposed pricing arrangements, including the person's reasonable estimate of any costs incurred or to be incurred in providing the Regulated Services and any benchmark prices relevant to the Regulated Services;
 - (e) any proposals to fix Regulated Prices for the provision of, or in connection with, the Regulated Services for a specified period, including a base period for use in any subsequent MWAR cap arrangements; and
 - (f) proposals in respect of the MWAR cap if any, which should apply to the Regulated Services including the person's reasonable estimates of AR (in accordance with clause 2.2.3).
- 3.1.5 Where a notice under paragraph 3.1 (a) or (c) relates to Transferred Services, historical information relating to the Transferred Services must also be provided.
- 3.1.6 If:
- (a) a Regulated Entity gives to the Office a notice that purports to be in accordance with clause 3.1.1; and
 - (b) in the Office's reasonable opinion, the notice does not comply with this Order,
- the Office may, within 5 Business Days after receipt of the notice, give the Regulated Entity written notice:
- (c) stating that the Office is disallowing the notice because it does not so comply;
 - (d) setting out why the Office thinks that the notice does not comply; and
 - (e) requiring the Regulated Entity to submit a notice that does so comply.
- 3.1.7 If, prior to the expiration of 20 Business Days after the receipt of a notice under clause 3.1.1, the Office decides that the Regulated Entity giving the notice has failed to provide sufficient information to make a determination under clause 3.1.9, the Office may give the Regulated Entity a written notice requiring the Regulated Entity to provide specific further information.
- 3.1.8 If the Office gives a Regulated Entity a notice under clause 3.1.6 or 3.1.7, the 30 Business Days referred to in clause 3.1.12 ceases to run until the Regulated Entity submits a notice that does comply or provides the Office with the required information.
- 3.1.9 Where a person gives notice under clause 3.1.1, the Office may, subject to clause 3.1.10:
- (a) in the case of a person who is a Regulated Service Provider, increase, decrease or adjust the basis for calculating that person's MWAR cap to the extent it considers appropriate;
 - (b) in the case of a person who is not already a Regulated Service Provider, establish a MWAR cap that is to apply in relation to the proposed Regulated Service;

- (c) approve or disallow any Regulated Price proposed in the notice to the extent necessary to give effect to paragraphs (a) and (b) and the other provisions of the Order;
 - (d) approve or disallow the person's estimates of AR and, if applicable, MWAR; and/or
 - (e) determine that no MWAR cap should apply in respect of any or all of the Regulated Services referred to in the notice.
- 3.1.10 In exercising its powers under clause 3.1.9, the Office must approve the proposals set out in the notice under clause 3.1.1 if it is satisfied that would be consistent with the Objectives.
- 3.1.11 Where the Office disallows any proposals regarding Regulated Prices or any MWAR cap or any estimates of AR or MWAR contained in a notice under clause 3.1.1, the Office must give to the person who gave the notice a written notice stating:
- (a) that the Office is disallowing the proposals regarding Regulated Prices or any MWAR cap or the estimates of AR or MWAR; and
 - (b) the reason why it is doing so.
- 3.1.12 If after 30 Business Days from the receipt of a notice under clause 3.1.1, the Office has not given a notice in accordance with clause 3.1.11, the Office will be deemed to have approved the proposals regarding Regulated Prices or any MWAR cap and the estimates of AR and MWAR contained in the notice.
- 3.1.13 If the Office has given a notice under clause 3.1.11, no Regulated Prices may be charged for the provision of, or in connection with, the Regulated Services referred to in the notice under clause 3.1.1 until either the Office approves or is deemed to have approved proposed pricing arrangements (including any MWAR cap) and AR and MWAR estimates or the Office determines that no MWAR cap should apply in respect of those services.

3.2 Exempt Contracts

- 3.2.1 A Regulated Service Provider may apply to have a Contract or proposed Contract approved by the Office as an Exempt Contract by giving a notice in writing to the Office to that effect. Prescribed Services under an Exempt Contract are not Regulated Services and hence prices for those services are not subject to any MWAR cap
- 3.2.2 A notice under clause 3.2.1 must include:
- (a) a true and complete copy of the Contract or proposed Contract;
 - (b) a description of the services which are provided and/or are proposed to be provided under the Contract or proposed Contract and the assets employed or to be employed in providing those services;
 - (c) the AR, both historical and projected, for the services provided and/or proposed to be provided under the Contract or proposed Contract;

- (d) the Regulated Service Provider's revised estimates for AR (in accordance with clause 2.2.3) and, if the Regulated Service Provider is subject to the MWAR cap, MWAR (in accordance with clause 2.2.4) excluding future services which are provided and/or proposed to be provided under the Contract or proposed Contract; and
 - (e) the Regulated Service Provider's proposal, if any, regarding any increase, decrease or adjustment to the basis for calculating its MWAR cap taking into account the services which are provided and/or proposed to be provided under the Contract or proposed Contract.
- 3.2.3 Once the Office receives a notice under clause 3.2.1, the Office may, subject to provisions of the Act, request other information. If the Office makes a request under this clause 3.2.3 the 30 Business Day period referred to in clause 3.2.5 ceases to run until the information requested by the Office is provided to the Office, or the Office advises that the information is no longer required.
- 3.2.4 The Office shall approve a Contract or proposed Contract as an Exempt Contract if it is satisfied:
 - (a) with the Regulated Service Provider's revised estimates for AR and, if applicable, MWAR and any proposal regarding its MWAR cap; and
 - (b) that approval is consistent with the Objectives.
- 3.2.5 Where the Office does not approve a Contract or proposed Contract as an Exempt Contract or is not satisfied with the Regulated Service Provider's revised estimates of AR and, if applicable, MWAR or any proposal regarding its MWAR cap contained in the notice under clause 3.2.1, the Office must give to the person who gave the notice a written notice stating:
 - (a) that the Office does not approve the Contract or proposed Contract as an Exempt Contract; and
 - (b) the reasons why it does not do so.
- 3.2.6 If after 30 Business Days from the receipt of a notice under clause 3.2.1 the Office has not given a notice under clause 3.2.5, the Office is deemed to have approved the Contract or proposed Contract as an Exempt Contract, the Regulated Service Provider's revised estimates for AR and, if applicable, MWAR and the Regulated Service Provider's proposal regarding its MWAR cap (if any).
- 3.2.7 If the Office has notified the Regulated Entity that a Contract or proposed Contract is not approved as an Exempt Contract, the Regulated Service Provider's MWAR cap, if any, will continue to apply.
- 3.2.8 The Office must establish and maintain a register of all Exempt Contracts. This register must include:
 - (a) contracts notified in writing by the Treasurer to the Office as Exempt Contracts prior to the commencement of this Order; and
 - (b) contracts approved or deemed to have been approved by the Office as Exempt contracts under this clause 3.2.

3.3 Variation, expiry, lapse or termination of Exempt Contracts

- 3.3.1 At least 40 Business Days prior to the variation, expiry, lapse or termination of an Exempt Contract, the relevant Regulated Service Provider must give a notice in writing to the Office of the proposed variation, expiry, lapse or termination.
- 3.3.2 If a variation of an Exempt Contract is proposed, the variation is to be treated in the same manner as an application for approval under clause 3.2. If the Exempt Contract is varied before approval of the variation, it shall automatically cease to be an Exempt Contract.
- 3.3.3 Unless a new Exempt Contract is operative on or before the expiry, lapse or termination in respect of the relevant Prescribed Services, then the notice must include:
- (a) a description of the Prescribed Services which (subject to clause 3.3.5(e)) will become Regulated Services ("Relevant Services");
 - (b) the AR, both historical and projected, for the Relevant Services;
 - (c) the prices proposed to be charged for the provision of, or in connection with, the Relevant Services;
 - (d) the Regulated Service Provider's revised estimates for AR (in accordance with clause 2.2.3) and MWAR (in accordance with clause 2.2.4) that would apply if the Relevant Services were subject to an MWAR cap; and
 - (e) proposals in respect of the MWAR cap, if any, which should apply to the Relevant Services.
- 3.3.4 Once the Office receives a notice under clause 3.3.1, the Office may, subject to provisions of the Act, request other information. If the Office makes a request under this clause 3.3.4, the 30 Business Day period referred to in clause 3.3.8 ceases to run until the information requested by the Office is provided to the Office, or the Office advises that the information is no longer required.
- 3.3.5 Where a person gives notice under clause 3.3.1 or an Exempt Contract ceases to be an Exempt Contract under clause 3.3.2, the Office may, subject to clause 3.3.6:
- (a) in the case of a person who is a Regulated Service Provider, increase, decrease or adjust the basis for calculating that person's MWAR cap to the extent it considers appropriate;
 - (b) in the case of a person who is not already a Regulated Service Provider, establish a MWAR cap that is to apply in relation to the Relevant Services;
 - (c) approve or disallow any Regulated Price proposed in the notice to the extent necessary to give effect to paragraphs (a) and (b) and the other provisions of the Order;
 - (d) approve or disallow the person's estimates of AR and, if applicable, MWAR; and/or
 - (e) determine that no MWAR cap should apply in respect of any or all of the Relevant Services referred to in this notice.

- 3.3.6 In exercising its powers under clause 3.3.5, the Office must approve the proposals set out in the notice under clause 3.3.1 if it is satisfied that would be consistent with the Objectives.
- 3.3.7 Where the Office disallows any proposals regarding Regulated Prices or any MWAR cap or any estimates of AR or MWAR contained in a notice under clause 3.3.1, the Office must give to the person who gave the notice a written notice stating:
- (a) that the Office is disallowing the proposals regarding Regulated Prices or any MWAR cap or the estimates of AR or MWAR; and
 - (b) the reason why it is doing so.
- 3.3.8 If after 30 Business Days from the receipt of a notice under clause 3.3.1, the Office has not given a notice in accordance with clause 3.3.7, the Office will be deemed to have approved the proposals regarding Regulated Prices or any MWAR cap and the estimates of AR and MWAR contained in the notice.
- 3.3.9 If the Office has given a notice under clause 3.3.7, then (subject to clause 3.3.10) no Regulated Prices may be charged for the provision of, or in connection with, the Prescribed Services referred to in the notice under clause 3.3.1 until either the Office approves or is deemed to have approved proposed pricing arrangements (including any MWAR cap) and AR and MWAR estimates or the Office determines that no MWAR cap should apply in respect of those services.
- 3.3.10 If, as a result of events that could not reasonably have been avoided by the Regulated Service Provider, an Exempt Contract expires, lapses or is terminated before the Office approves, or is deemed to have approved Regulated Prices and revised estimates of AR and MWAR under this clause 3.3, the Office may approve interim Regulated Prices on any basis it considers appropriate having regard to the Objectives.

3.4 Change in Market Structure

- 3.4.1 If:
- (a) in respect of services referred to in paragraph (c) of the definition of Regulated Services in Appendix 1, at any time after the relevant determination under clause 3.1.9(e) or clause 3.3.5(e); or
 - (b) in respect of services referred to in paragraph (d) of the definition of Regulated Services, at any time after the date of this Order,
- the Office considers that there has been a material change in market structure which has reduced or is reducing contestability in the market for those services and that it is necessary for the achievement of its Objectives, the Office may determine that a MWAR cap is to apply to those services.
- 3.4.2 A determination under clause 3.4.1 may be for such period and subject to such terms and conditions as the Office considers appropriate.

4. Miscellaneous

4.1 Modification to time periods in the Pricing Order

4.1.1 The Office may:

- (a) by written notice to a Regulated Entity, extend the time by which, or the period within which, a thing required to be done by that Regulated Entity under this Order must be done; and
- (b) with the prior agreement of the Regulated Entity, reduce the time by which, or the period within which, a thing required to be done by that Regulated Entity under this Order must be done.

4.2 Amending a maximum weighted average revenue cap

4.2.1 The Office may make a determination under this clause 4.2.1. if (but only if):

- (a) all Regulated Entities adversely affected by the determination so agree; or
- (b) in the opinion of the Office, the determination is to correct a manifest error or is of a formal, technical or administrative nature only; or
- (c) in the opinion of the Office, the determination is necessary or desirable to avoid an unintended consequence of this Order which is materially prejudicial to a Regulated Entity and the determination is appropriate having regard to any effect on users of Regulated Services; or
- (d) without limiting the generality of paragraph (c), more than one Regulated Entity is charging Regulated Prices for the provision of, or in connection with, the same Regulated Services and the Office is satisfied that the determination is necessary or desirable to avoid possible double counting errors that would otherwise occur in the application of this Order and the determination is appropriate having regard to any effect on users of Regulated Services; or
- (e) in the opinion of the Office, the determination is necessary or desirable to correct errors attributable to information provided to the Office by or on behalf of a Regulated Entity proving to have been false or misleading in a material particular or to have had omitted from it a matter or thing the omission of which rendered the information misleading in a material respect; or
- (f) in the opinion of the Office, a person has or persons have entered into or commenced to carry out a Scheme for the sole or dominant purpose of avoiding the application of any provisions of this Order in relation to any person (whether or not that person has entered into or commenced to carry out the Scheme) and the determination is necessary or desirable to ensure the Scheme does not achieve that purpose.

4.2.2 A determination under clause 4.2.1, may:

- (a) increase, decrease or adjust the basis for calculation of the MWAR cap;
- (b) increase or decrease maximum Regulated Prices;
- (c) determine that prices which would otherwise be Regulated Prices are not Regulated Prices for the purposes of any or all of the provisions of this Order;
- (d) exempt a person or class of persons from complying with any or all of the provisions of the Order; or
- (e) subject to the Act and the ORG Act, otherwise regulate Prescribed Prices.

4.2.3 A determination under clause 4.2.1 may:

- (a) operate for such period as the Office considers appropriate;
- (b) be subject to such terms and conditions as the office considers appropriate; and
- (c) may be revoked by the Office at any time.

4.2.4 In making a determination under clause 4.2.1, the Office shall have regard to the Objectives.

4.3 Other powers of the Office

4.3.1 For the purposes of this Order, the Office may:

- (a) translate amounts expressed in currency other than Australian dollars into Australian dollars on such basis as it considers appropriate;
- (b) value any non-cash consideration (including, without limitation, offset, contra or other similar arrangements) as it considers appropriate;
- (c) convert any price (howsoever expressed) into a price per Metric Tonne on such basis as it considers appropriate;
- (d) determine that all or part of a price is to be regarded as being charged for the provision of, or in connection with, a particular Regulated Service even though it may be expressed to be charged for other goods or services;
- (e) determine that all or part of a price is charged, or revenue is derived, during a particular Financial Year or other period even though it may be expressed to be charged or derived during some other period;
- (f) add to, delete, replace or otherwise vary the Cargo Categories either generally or for a particular purpose.

4.3.2 If a Regulated Service Provider provides more than one Regulated Service and the quantity of cargo loaded or unloaded utilising any Regulated Service differs from the quantity loaded or unloaded utilising any other Regulated Service, the Office may make such adjustments as it considers appropriate to the calculation of AR and MWAR to reflect the quantity of cargo loaded or unloaded utilising each Regulated Service.

Appendix 1: Definitions

The following words and phrases have the meanings given to them in this Appendix when used in the Pricing Order unless the contrary intention appears:

Act means the Port Services Act 1995.

Annual Price Schedule has the meaning given in clause 2.3.1.

AR means average revenue as defined in clause 2.2.3 (which is subject to adjustment in accordance with this Order).

Authority means any government or regulatory department, (including the Office), body, instrumentality, minister, agency, or other authority, or any body, which is the successor to the administrative responsibilities of such department, instrumentality, minister, agency, or authority.

Business Day means a day on which Banks are open for general banking business in Melbourne, not being a Saturday or Sunday.

Base Year means the year ending 30 June 1997.

Cargo Category means each of the Cargo Categories specified in Appendix 4 as added to, deleted, replaced or otherwise varied under clause 4.3.1 (f).

Change in Taxes means:

- (a) an obligation by a Regulated Entity to pay any amount which the Regulated Entity was not obliged to pay at the date of this Pricing Order arising from the imposition of a Relevant Tax; or
- (b) a change in the way or rate at which a Relevant Tax is calculated (including the removal of a Relevant Tax) to the extent that such a change results in a change in the amount which the Regulated Entity is required to pay (whether directly or under any contract) by way of Relevant Taxes from that which it was required to pay at the date of this Pricing Order;

as a consequence of:

- (c) a new statute or amendment of any statute or the interpretation of any existing statute resulting from the decision of any court or any arbitrator which binds the Regulated Entity;
- (d) a determination of any Authority; or
- (e) a government owned Regulated Entity ceasing to be government owned.

Channel includes swinging basin, turning circle, an area alongside a berth or dock, fairway and anchorage.

Contract means an agreement wholly in writing between a Regulated Service Provider and another party for the provision of Prescribed Services by that Regulated Service Provider to that other party for a term of not less than 5 years which the Office is satisfied is not intended and is not likely to be terminated within 5 years.

CPI for a particular Financial Year is:

- (a) the Consumer Price Index: All Groups Index Number Melbourne published by the Australian Bureau of Statistics for the March Quarter immediately preceding the start of the relevant Financial Year;

divided by
- (b) the Consumer Price Index: All Groups Index Number Melbourne published by the Australian Bureau of Statistics for the March quarter in the 1995/96 Financial Year.

Exempt Contract means a Contract which has been approved or been deemed to have been approved by the Office under clause 3.2 or registered under clause 3.2.8 (a).

Force Majeure Event means, in relation to the port of Portland and a Regulated Entity, a Relevant Event which results in a reduction of the capacity of Channels in the port waters of the port of Portland to permit transnavigation by vessels when:

- (a) the reduction is equal to or greater than 50% of the normal capacity of the Channel; and
- (b) the event or reduction could not have been reasonably avoided by the Regulated Entity; and
- (c) the reduction continues to have effect longer than 48 hours; and
- (d) the Regulated Entity has no right to compensation (including a right to recovery under an insurance policy) resulting from the Relevant Event and could not have obtained such a right by taking reasonable steps.

Initial Port Operator means the initial port operator who acquires the business of conducting the operations of the port of Portland under an asset sale agreement with the Port of Portland Authority and the State of Victoria and who manages a Channel in the port waters of the port of Portland under the terms and conditions of a channel operating agreement with the Victorian Channels Authority.

Metric Tonnes or MT means 1,000 kilograms.

MWAR or MWAR cap means maximum weighted average revenue as defined in clause 2.2.4 (which is subject to adjustment in accordance with this Order).

Office means the Office of the Regulator-General established under the Office of the Regulator-General Act 1994.

Objectives has the meaning given in clause 1.1.

ORG Act means the Office of the Regulator-General Act 1994.

Prescribed Services means:

- (a) the provision of channels for use by shipping in the port waters of the port of Portland;
- (b) the making available of berths, buoys or dolphins in connection with the berthing of vessels in the port of Portland;

- (c) the provision of short term storage or cargo marshalling facilities in connection with the loading or unloading of vessels at adjacent berths, buoys or dolphins in the port of Portland;
- (d) the connection of water or electricity to berthed vessels in the port of Portland; and
- (e) towage in the port of Portland.

Proposed Increase has the meaning given in clause 2.3.2.

Regulated Entities has the meaning given in clause 1.2.1.

Regulated Industry means the port industry in the port of Portland.

Regulated Prices means, subject to clause 4.2.2(c), prices charged for the provision of, or in connection with, Regulated Services.

Regulated Services means Prescribed Services other than:

- (a) towage in the port of Portland;
- (b) except for the purposes of clause 1.1(a), services provided under an Exempt Contract;
- (c) except for the purpose of clauses 1.1(a), 2.4.3 (to the extent the definition of Regulated Entity refers to Regulated Services) and 3.4.1 (and the provisions of this Appendix 1 to the extent necessary to give effect to those clauses), services which the Office has, in accordance with clause 3.1.9(e) or clause 3.3.5(e), determined no MWAR cap should apply to;
- (d) except for the purposes of clauses 1.1(a), 2.4.3 (to the extent the definition of Regulated Entity refers to Regulated Services) and 3.4.1 (and the provisions of this Appendix 1 to the extent necessary to give effect to those clauses), services provided at the commencement of this Order by a person other than the Initial Port Operator; and
- (e) prescribed services under the Grain Handling and Storage Act 1995.

If the Office, in accordance with clause 3.4.1, determines that a MWAR cap is to apply to any services referred to in paragraphs (c) or (d), those services shall then become Regulated Services in accordance with that determination.

Regulated Service Provider means a person who provides Regulated Services in the port of Portland.

Relevant Event in relation to the definition of Force Majeure means:

- (a) a war (declared or undeclared), a revolution or any unlawful act against public order or authority;
- (b) an act of God (including, hurricane, tidal wave or other natural disaster); or
- (c) a breach of duty by an Authority.

Relevant Tax means any tax, charge, levy or imposition (but not a fine or penalty) directly attributable to the provision of Regulated Services and, in the opinion of the Office, not normally absorbed in a fully competitive market but (without limitation) specifically excluding any:

- (a) income tax, fringe benefits tax or capital gains tax;
- (b) payroll tax;
- (c) sales tax (or State equivalent wholesale sales tax) or value added tax or goods and services tax to the extent that, in the opinion of the Office, compensation for the effect of the tax has been or will be received by the relevant Regulated Entity;
- (d) land tax; and
- (e) financial accommodation levy.

or any tax or levy that replaces any of those taxes or levies.

Scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether material or otherwise.

WAR means weighted average revenue as defined in clause 2.2.5.

Appendix 2: Rules of interpretation

In this Pricing Order:

- (1) **amendments:**
 - (a) a reference to this Order, a contract or another instrument includes any variation or replacement of any of them;
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (2) **singular and plural:** the singular includes the plural and vice versa;
- (3) **person:**
 - (a) includes a firm, a body corporate, an unincorporated association or an authority;
 - (b) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns.
- (4) **calculation of periods of time:** if a period of time is specified and dates from a given day or of a day of an act or event, it is to be calculated inclusive of that day;
- (5) **month:** a reference to a month is a reference to a calendar month;
- (6) **Business Days:** if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day;
- (7) **references to things:** a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to any one or more of these;
- (8) **parts of speech:** if a word or phrase is specifically defined in this Order, then other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (9) **summation:** the symbol " Σ " requires a summation to be performed over the range of variables specified in respect of the algebraic terms specified;
- (10) **multiplication:** the symbol "*" requires multiplication to be effected;
- (11) **Quarter:** a reference to a "Quarter" preceded by the name of a month, is a reference to the period of 3 months ending on the last day of the month referred to. For example, a reference to the March Quarter preceding a Financial Year is a reference to the period of 3 months ending on 31 March immediately preceding the beginning of that Financial Year;
- (12) **accuracy and rounding:**
 - (a) all data which is to be utilised in calculations made under this Order is to be utilised to the accuracy, in terms of a number of decimal places, to which it is given;
 - (b) all indices are to be calculated to 3 decimal places;

- (c) the calculation of a price, charge or fee is to be performed to the accuracy, in terms of a number of decimal places, used in the clause of, or attachment to, the Order which specifies the relevant price charge or fee for the Base Year; and
 - (d) any other calculation shall be performed to the accuracy, in terms of a number of decimal places determined by the Office.
- (13) **References to Financial Year:** when a calculation is required under this Pricing Order and also in this item:
- (a) Financial Year "b" is the Financial Year ended 30 June 1997, known as the Base Year;
 - (b) Financial Year "t" is the Financial Year in respect of which the calculation is being made; and
 - (c) Financial Year "t-1" is the Financial Year immediately preceding Financial Year "t".

Appendix 3: Initial schedule of prices for Regulated Services

Charges to apply at the first day after the date of gazettal of this Pricing Order up to 30 June 1997.

Port Tonnage Rates

Per GRT per visit	\$0.73
<i>or</i>	
Per GRT per hour (up to 2 days)	\$0.0152

Berth Hire Rates

Cargoes loaded or discharged using ships gear and/or mobile conveyor/handling systems	\$187.00/hour
Cargoes loaded via the GEB shiploader system and cargoes discharged direct into storage from self discharge vessels.	\$170.00/hour
Bulk liquids loaded/discharged via pipelines	\$130.00/hour
Cruise ships and other non-cargo vessels	\$130.00/hour
Vessels undertaking repairs	\$130.00/hour
Reefer cargoes	\$107.00/hour
RORO and other cargoes requiring heavy duty berth	\$260.00/hour

Wharfage Rates

Payable on the tonne, cubic metre, or kilolitre of cargo loaded or unloaded as determined by the port operator.

Bulk Goods loaded by pipeline, conveyor, or grab	\$0.27
Livestock--sheep	\$0.03 each
Livestock--cattle & horses	\$0.17 each
Bulk goods discharged by pipeline, conveyor or grab	\$0.51
All other goods	\$0.63

Berth and Mooring Fees for Fishing Vessels

Effective to 31 October 1996

Trawler Berth	
- Single Alongside	\$372.00/annum
- Double Alongside	\$186.00/annum
Fishermens Wharf	
- Single Alongside	\$116.00/annum
- Double Alongside	\$58.00/annum

Effective From 1 November 1996

Trawler Berth	
- Single Alongside	\$560.00/annum
- Double Alongside	\$280.00/annum
Fishermens Wharf	
- Single Alongside	\$175.00/annum
- Double Alongside	\$87.50/annum

Appendix 4: Pricing Order Cargo Categories

The initial Cargo Categories for use in the port of Portland are as follows:

Freezer:	Meat, Tallow, Butter, Cheese
Fertiliser:	Phosphate Rock, Sulphur, Potash, Soda Ash, Ammonia Sulphate
Fertiliser Liquids:	Sulphuric Acid
Grain	Wheat, Barley, Oats, Safflower, Peas, Faba Beans, Canola, Lupins
Livestock:	Sheep, Goats, Cattle
Other Bulk:	Silica Sands, Petroleum Products, Fodder
Timber Products:	Softwood woodchips, Particle Board, Timber Packs
Smelter Berth:	Alumina, Petroleum Coke, Fluid Coke, Aluminium Fluoride
Smelter Liquids:	Liquid Pitch
Smelter Other:	Aluminium Ingots, Bath
Miscellaneous:	Fishing Vessels

State Owned Enterprises Act 1992
DECLARATIONS UNDER DIVISION 1 OF
PART 2 IN RELATION TO THE PORT OF
PORTLAND AUTHORITY

The Governor in Council in the exercise of the powers contained in section 8 of the State Owned Enterprises Act:

- (i) removes Mr Douglas Allan (as Chairperson) and Mr David Peddie, Mr Trevor Adams and Mr Ian Haig (as members) from the board of the Port of Portland Authority (the "Authority") with effect from 7 March 1996;
- (ii) Changes the number of members of the board of the Authority from four to one with effect from 7 March 1996; and
- (iii) appoints Mr Graham Brooke as the member of the board of the Authority for the period from 7 March 1996 to 30 June 1997 with nil remuneration.

Dated 4 March 1996

Responsible Minister:

ALAN R. STOCKDALE
Treasurer

KATHY WILSON
Clerk of the Executive Council

Electricity Industry Act 1993
ORDER UNDER SECTION 84AB

Exemption in Relation to Vendor's Statement

The Governor in Council acting under section 84AB of the **Electricity Industry Act 1993**, hereby makes the following Order:

Yallourn Energy Ltd ACN 065 325 224 being a generation company under the **Electricity Industry Act 1993** is not required in respect of any sale of land entered into by it under a contract executed by the parties thereto between the date on which this Order is published in the Government Gazette and 30 April 1996 to include in the vendor's statement under section 32 of the **Sale of Land Act 1962** any of the particulars referred to in section 32 (2) (e) of that Act.

Dated 4 March 1996

Responsible Minister:

ALAN R. STOCKDALE
Treasurer

Department of Treasury and Finance

KATHY WILSON
Clerk of the Executive Council

34 S 16 4 March 1996

Victoria Government Gazette





Gazette Services

The *Victoria Government Gazette* (VGG) is published by AGPS Publications for the State of Victoria and is produced in three editions.

VGG **General** is published each Thursday and provides information regarding Acts of Parliament and their effective date of operation; Government notices; requests for tenders; as well as contracts accepted. Private notices are also published.

VGG **Special** is published any day when required for urgent or special Government notices. VGG **Special** is made available automatically to subscribers of VGG **General**.

VGG **Periodical** is published on Monday when required and includes specialised information eg. Medical, Dental, Pharmacist's Registers, etc.

Subscriptions

VGG is available by three subscription services:

General and Special—\$165.00 each year

General, Special and Periodical—\$220.00 each year

Periodical—\$110.00 each year

Subscriptions are payable in advance and accepted for a period of one year. All subscriptions are on a firm basis and refunds for cancellations will not be given.

All payments should be made payable to AGPS Publications.

Subscription inquiries (03) 9387 8135

Fax (03) 9387 3404

The *Victoria Government Gazette* is published by the Australian Government Publishing Service with the authority of the Government Printer for the State of Victoria

© State of Victoria 1996

ISSN 0819—548X

This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act.

Address all enquiries to the Government Printer for the State of Victoria

1 Macarthur Street

Melbourne 3002 Victoria Australia

Subscriptions

AGPS Victorian Operations

PO Box 263

Brunswick 3056

Telephone enquiries (03) 9387 8135

Fax (03) 9387 3404

Retail Sales

Information Victoria Bookshop

318 Little Bourke Street Melbourne 3000

Telephone enquiries (03) 9651 4100

Price Code C