Regulatory Impact Statement

# Port Management (Local Ports) Regulations 2015

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# Summary of Regulatory Impact Statement

**Name of Department:** Department of Economic Development, Jobs, Transport and Resources

**Name of Proposal:** Port Management (Local Ports) Regulations 2015

**Form of Regulatory Change Proposed in this Regulatory Impact Statement (RIS):** Replacement of sunsetting regulations

## Problem statement/objectives

The objective of the proposed regulations is to contribute to the safe, efficient and effective management of Victoria’s local ports. In particular, this requires:

* minimising the risks to personal safety associated with activities undertaken in local ports as far as practicable;
* ensuring equitable access to, and the protection of, facilities in local ports by a range of users wishing to undertake a range of different activities; and
* minimising pollution and other environmental harms as far as practicable.

Victoria’s 14 local ports receive over 40 million visits from members of the public annually, while there are also over 2 million vessel movements each year. A wide range of activities are undertaken within the local ports, including recreational boating, commercial fishing, other commercial shipping, vessel repair and maintenance, recreational fishing, regattas, and yacht and motorised vessel racing and general tourism. The high level of activity taking place in the local ports and the simultaneous conduct of such a wide range of activities necessarily gives rise to significant risks to personal safety and concerns regarding potential property damage. In addition, there is excess demand for access to berths and moorings at peak periods in many local ports, as well as more general excess demand in a small number of local ports, which must be managed equitably and efficiently. Finally, many of the activities undertaken in the local ports give rise to the risk of pollution of the waters or surrounding lands and must also be managed in a way that minimises these risks.

The local ports have been regulated for many decades, with the regulatory approaches adopted being broadly similar to those that are also in place in most or all other Australian states and territories. Given this, it is not possible to observe directly the level of risk that would exist in an unregulated environment. The current incidence of fatalities and injuries within local ports is relatively low in relation to the level of activity in the local port sector, but there have been 24 deaths and 28 hospitalisations entered onto local port incident registers over the past decade. However, only five of these deaths related to activities which are regulated via the existing local ports regulations.

A total of 768 incidents were recorded on incident registers over the same period. In addition, consultation with port managers and other stakeholders indicates that a larger number of safety related incidents not resulting in injury arise from time to time which the regulations provide some powers for them to address. A number of recent incidents have highlighted matters not encompassed by the existing regulations. The Department of Economic Development, Jobs, Transport and Resources (the Department) and port managers are concerned that as the breadth of activity and use of the local ports continues to increase, there is potential for the frequency and severity of incidents to rise.

Port managers also report that a small minority of port users whose behaviour is not driven solely or predominantly by social norms or information, but by the threat of sanction. For these users, the regulations are important in influencing their behaviour and, in the absence of regulatory restrictions on certain kinds of activities and behaviours, it can be presumed that there may be a slight increase in incidents.

Given these factors, the Department believes that the level of risk arising from the operation of Victoria’s local ports is sufficiently high as to require the continuation of a regulatory response.

### Affected sectors of the public

As the above summary of activities undertaken in the local ports indicates, there are a wide range of users of Victoria’s local port facilities. Therefore, a large cross-section of the Victorian population is affected by these regulations. This includes recreational boaters who berth or moor their vessels at local port facilities, or who launch their vessels from boat ramps located within local ports, commercial vessel owners and their employees (in both fishing and other sectors), businesses operating pleasure craft on a for hire basis, or providing cruises or other recreational boating opportunities to members of the public in local ports, recreational fishers who use local port facilities and vessel maintenance, and repair and supply businesses operating in or adjoining local ports. These groups include a variety of small businesses with fewer than 20 employees. In addition, a wide cross-section of the public which visits local ports for recreation (e.g. to promenade on wharves, or sightsee) is affected.

### Key regulatory changes

The proposed regulations are substantively similar to those which are due to sunset. However, they differ in that they consolidate some of the provisions of the existing regulations (rather than simply remaking them) and set out some of the key powers of port managers and other related provisions of the existing regulations in principle-based terms, whereas the existing regulations are highly prescriptive in nature. In addition, the proposed regulations represent a streamlining of the existing regulations, in that they do not incorporate several provisions which have been identified as duplicating the provisions of other legislation or regulation. Of particular note are the following changes:

* the powers of port managers to set aside areas for the conduct of certain activities is proposed to be a general one, with the current list of specific activities that can be the subject of set asides not to be remade;
* that organised activities, vessel refuelling and protection of port facilities and waste disposal have been added, clarified or strengthened;
* that current requirements in respect of cargo being brought into local ports have been incorporated into the permitting system ; and
* that the existing provisions in relation to vessel management would be consolidated.

### Expected costs

The proposed regulations are expected to lead to a slight increase in the overall level of costs imposed on port users, when compared with the costs imposed by the existing regulations. The cost increases are due to increased permit requirements for organised activities, vessel maintenance and refuelling. However, these costs will be offset by cost reductions which derive particularly from the consolidation of vessel management requirements noted above and the increased transparency associated with determinations. It is not possible to quantify the extent of these cost variations.

Similarly, few of the costs imposed by the current regulations are amenable to quantification. An indicative calculation suggests that the costs associated with the application for, and issue of, the approximately 4,500 permits which be issued annually by local ports managers may be of the order of $0.25 million per annum. Other, unquantified costs imposed by the existing regulations, which would, for the most part, also be imposed under the proposed regulations are as follows:

* *Costs due to activities being prohibited or confined*. The operation of the set aside provisions of the regulations have the potential to yield substantive costs in practice, particularly by prohibiting commercial activities from being undertaken other than pursuant to a permit. However, the Department is unaware of any significant concerns with the exercise of the discretions conferred on port managers in this regard, to date;
* *Cargo related costs*. There are costs associated with restricting where cargo can be unloaded, of requiring fallen cargo to be retrieved and of requiring unloaded cargo to be cleared from the port within a specified time. These costs constrain the actions of individuals as part of a broader management scheme which aims to ensure that a range of potentially competing users are effectively coordinated in a way that minimises costs and maximises benefits for port users as a group.
* *Costs due to unavailability of berths or moorings.* The regulations effectively restrict the availability of berths and moorings in local ports by preventing the installation of moorings without permission and preventing vessels being berthed or moored other than in approved areas, as well as preventing vessels being berthed or moored in certain places for longer than the specified maximum period. These restrictions are intended to provide benefits in terms of maintaining safe access to waterways and the free movement of vessels more generally. However, some costs necessarily arise as a result of these restrictions. Costs are incurred where access to a local port is prevented due to the unavailability of berths or moorings. However, advice from port managers indicates that unmet demand for berths and moorings arises at peak times of the year and in certain areas within some local ports[[1]](#footnote-1).
* *Costs due to restrictions on vessel maintenance and refuelling.* The regulations restrict the ability of vessel owners to undertake repairs, maintenance, refuelling and like activities aboard their vessels within the local port, subjecting such activity to a permit scheme when it involves hazardous port activities, discharge of pollutants to port waters or land, etc. These restrictions have the potential to impose costs on vessel owners, since they may need to make other arrangements for carrying out such repairs, maintenance and refuelling potentially at higher cost. The control mechanism adopted, of allowing such activities to be undertaken subject to a permit issued by the port manager (and only requiring the issue of such a permit in certain circumstances) is intended to minimise the costs imposed whilst providing adequate mitigation of public safety risks and controls on pollution in the port environment. The Department is unaware of any significant concerns on the part of vessel owners as to the exercise of these powers in practice by port managers and, consequently, does not believe that there are concerns regarding unreasonable costs being imposed through this mechanism.
* *Restrictions on recreational activities.* Several aspects of the proposed regulations constrain recreational activities in local ports, with bans placed on a range of activities including camping, swimming, diving, fishing, organised activities and fireworks. Again, the approach taken is for the most part one of enabling port managers to determine the circumstances in which such activities can be undertaken. The purpose of these restrictions is to prevent obstructions being caused to, or loss of amenity for, other port users and/or danger to persons undertaking recreational activities. The Department is unaware of any significant concerns with the manner in which these restrictions have been implemented in practice by port managers and, consequently, the costs that are thereby imposed.

### Expected benefits

The proposed regulations, which effectively constitute an updating, streamlining and modernising of the existing regulations, are expected to continue to support the safe, efficient and effective operation of local ports in Victoria in several ways. In particular, the regulation:

* of berths and moorings assists in providing equitable access and avoids costs to port users arising from vessels being berthed or moored where restricted access is required, in areas that impede through traffic, or from vessels breaking free and causing damage to other vessels or to port facilities;
* managing, prohibiting or restricting various activities that give rise to risks to port users help to prevent harm due to deaths, personal injuries and property damage;
* allowing certain areas to be set aside for specific uses help to ensure that a range of competing users can be carried out contemporaneously without impacts arising for fellow port users; and
* addressing the disposal of various wastes help to prevent pollution in the port and the associated negative impacts on the environment and other port users.

The dollar value of these benefits cannot be reliably estimated. In part, this is a product of the fact that regulations broadly similar to those that are currently sunsetting have been in place for many decades, so that it is not possible to compare the current functioning of the ports with that which would occur in an unregulated environment. Secondly, as has been noted above, little active enforcement activity is undertaken within local ports. While it is believed that the existing regulations are generally consistent with, and reflect social and behavioural norms, some port users, whose behaviour is not driven solely by social norms or information, modify their behaviour because of the threat of sanction. It is not possible to verify this proposition directly, or to determine to what extent user behaviour would differ in the absence of specific provisions in the areas covered by the regulations.

Nonetheless, it is important to recognise that Victoria’s local ports facilitate a substantial amount of economic activity, much of it occurring in regional areas. The value of this activity has been estimated at $293.4 million per annum. It is likely that this underestimates the overall effect as substantial economic value also derives from other activities e.g. regional tourism. To the extent that the regulations do, in practice, contribute to the efficient operation of the ports they can be expected to make some contribution towards the generation of this economic activity. However, it is not possible to reliably estimate this contribution.

That said, a consultant’s report prepared for the Department estimates the consumer surplus derived recreational fishing and boating alone at $16.7 million per annum, while the producer surplus derived from the commercial fishing industry is $16.6 million per annum. Thus, the minimum value of producer and consumer surpluses is equal to $33.3 million, while this amount is necessarily underestimates the total value of the surpluses arising from activities in the local ports, since it excludes producer surpluses arising from businesses servicing the recreational boating sector.

This measure – of consumer and producer surpluses – is a measure of economic benefit as used on benefit/cost analysis. The local ports regulations, by facilitating activity in the port sector, contribute to the generation of this economic benefit. While the size of this contribution cannot be estimated with any precision, if it is speculated that by contributing to the efficient operation of the local port sector the regulations contribute 5% to the value of ports related economic activity, this implies that they may be responsible for economic benefits in the vicinity of $1.7 million per annum, or $13.8 million in present value terms over 10 years.

### Safety benefits

In addition to enabling the efficient and effective use of the ports facilities, much of the content of the regulations is directed toward minimising the various safety risks that arise in the local ports context. These aspects of the regulations also constitute a potentially very significant source of benefits.

As discussed in section 2, over the past 10 years, there have been only five deaths in local ports that relate to the matters addressed by the existing regulations, while it is unknown whether the 28 hospitalisations recorded relate to such matters. This represents an average of 0.5 fatalities per annum occurring during the life of the existing regulations. Using a standard valuation of a statistical life (VSL methodology) of $4.2 million, implies that the average cost due to the 0.5 lives lost annually on average in the local port context due to causes related to the subject matter of the regulations – i.e., the residual risk associated with these regulations – is equal to $2.1 million per annum.

As noted above, it is not possible to estimate the historical level of effectiveness of the regulations in mitigating the various risks associated with the activities undertaken in the local ports. However, if the regulations are assumed to be 20% effective: i.e.; to have reduced the level of loss of life that would otherwise occur in these contexts by one fifth, the safety benefits attributable to the regulations would be equal to $0.525 million per annum and, if it is assumed that the regulations are 50% effective in reducing the risks associated with local ports related activities, this would imply annual benefits of around $2.1million.

In considering this issue, the port usage data is relevant. This data shows that there are well over 2 million vessel movements occurring in the local ports context annually, as well as more than 40 million pedestrian visits to port facilities, and that the level of activity is increasing. In the context of this high level of activity in a coastal environment, where the consequences of an incident are significant, the low level of harms being experienced is likely due to a combination of factors including the current regulations (e.g. the ability to separate inconsistent uses, make risky uses subject to permits and conditions, provide information via signage and education, specify a range of behavioural requirements, etc) as well as the impact of social and behavioural norms in regulating the behaviours of a majority of port users.

### Alternative options considered

As required by the *Victorian Guide to Regulation* (VGR), non-regulatory options are considered in this RIS. One of these involves publishing similar content to that contained in the current regulations as a code of practice or a guideline. Also considered is the use of the price mechanism to address the issue of excess demand for berths and moorings at some times and in some local ports. Increasing and/or restructuring the fees charged for permit-only berths and moorings would tend to reduce demand for these berths and moorings, as some existing users of these facilities respond by deciding to instead store their vessel at home or at another facility. It would also lead to a reallocation of these berths and moorings toward those who value these facilities most highly and are, therefore, most willing to pay higher prices, but are currently unable to obtain access to these facilities. This could include charter vessels and commercial fishers, as well as recreational vessel-owners who use their vessels more intensively than the average. This option would also reduce the net cost borne by local ports in providing these facilities, making additional revenue available to fund maintenance and renewal works on these and/or other port facilities.

Achieving significant further movement in this direction could, however, be problematic under current legislative arrangements. The Department’s advice is that there is currently no adequate power in the *Port Management Act* to enable fees to be set at local ports via regulation, or even the establishment of maximum fees via regulation. That said, a non-legislative option could potentially be adopted under the current arrangements. This would involve the Department providing a range of guidance materials and assistance to port managers to assist them to better exercise the fee-setting powers provided to them under the Act. This could include guidelines on estimating the cost of maintaining berths and moorings, on assessing demand and on relevant price-setting principles. Such an option could conceivably lead to a better pricing outcome than a centralised model, as it would mean that ultimate responsibility for price-setting would lie with port managers, who have close familiarity with the operating environment of the port which they manage. Although the Department has decided not to pursue this option at present, it is seeking stakeholder feedback on whether this type of approach should be investigated further and on what should be the key considerations in determining an appropriate pricing model.

The option of instituting charging for short-term berths and moorings has also been considered. An appropriate pricing strategy could include charges being differentiated between different local ports or different areas of local ports, reflecting differing demand levels. As with long-term berths and moorings, this could reduce excess demand, while also ensuring that the facilities were allocated to those who placed the highest value on them, rather than relying on “queuing” as occurs at present in some circumstances in which excess demand exists. This approach could, therefore, be considered more equitable than the current system and facilitate greater access to port facilities by a larger number of users. The Department has determined, however, that such an approach would not be practical at the present time, and would be more difficult to enforce than the proposed maximum time limits. It is, nonetheless, seeking stakeholder views about the feasibility and potential effectiveness of adopting such an option. Two regulatory options were considered as feasible alternatives to the proposed regulations. These were:

* to remake the existing regulations without substantive amendment; and
* to remake the existing regulations with limited amendments to address identified areas of concern with their current operation.

These options were compared with the proposed regulations using a multi-criteria analysis, the results of which are summarised in table S1, below. The proposed regulations are identified as option 3.

### ****Table S1: Multi-Criteria Analysis of identified feasible options****

|  |  |  |  |
| --- | --- | --- | --- |
|  | Option 1 | Option 2 | Option 3 |
| Safety/competing uses | + 5 x 0.2 = + 1.0 | + 7 x 0.2 = + 1.4 | + 8 x 0.2 = + 1.6 |
| Equity/availability | +5 x 0.2 = + 1.0 | + 7 x 0.2 = + 1.4 | + 8 x 0.2 = + 1.6 |
| Pollution management | + 5 x 0.1 = + 0.5 | + 7 x 0.1 = + 0.7 | + 7 x 0.1 = + 0.7 |
| Compliance costs | - 3 x 0.375 = - 1.125 | - 3 x 0.375 = - 1.125 | - 3 x 0.375 = - 1.125 |
| Administrative burdens | - 6 x 0.125 = - 0.75 | - 3 x 0.25 = - 0.375 | - 4 x 0.125 = - 0.5 |
| *Total* | ***+ 0.625*** | ***+ 2.000*** | ***+ 2.275*** |

In broad terms, the proposed regulations were considered to be best able to address safety issues, as well as those of competing uses, particularly because of their adoption of a more consolidated and principles-based approach, in preference to continuing with prescriptive provisions in relation to a wide range of individual activities and issues. In addition, they are believed to entail the lowest level administrative burdens of the three options. While both options 2 and 3 significantly reduce the administrative burdens compared with the existing regulations, largely because of the streamlining of the cargo based requirements, option 3 scores slightly better than option 2 due to its streamlining of the permit related provisions of the regulations.

### Consultation

Extensive consultation has been undertaken with a range of stakeholders during the course of the development of the proposed regulations. Stakeholders consulted have included all Victorian port managers, several Victorian government departments and agencies with responsibilities relating to the local ports, commercial port managers and peak bodies representing both recreational fishers and boaters.

The stakeholders consulted are generally comfortable with the content of the existing regulations and, to date, have not proposed any major substantive changes to their content. It is not anticipated that the proposed regulations will lead to any significant stakeholder concerns. However, a number of specific questions for stakeholders have been identified throughout this RIS and are intended to ensure that adequate feedback is obtained in relation to some specific issues in which the Department considers that there may be some concerns.

### Impact on regional areas

The majority of the local ports are located in regional and rural areas of Victoria. However, as noted above, it is not anticipated that the new regulations will have any substantive negative impacts in these areas, vis-a-vis the existing regulations.

# Contents

[Summary 2](#_Toc411841252)

[Contents 9](#_Toc411841264)

[1. Background 11](#_Toc411841265)

[2. Nature and extent of the problem 17](#_Toc411841266)

[2.1. Nature and extent of the problems arising from the operation of local ports 17](#_Toc411841267)

[2.2. Current issues in implementation and enforcement 24](#_Toc411841268)

[3. Objectives of the proposed regulations 29](#_Toc411841269)

[4. Overview of potential policy options 29](#_Toc411841270)

[5. Indicative estimates of benefits and costs of local ports regulations 36](#_Toc411841271)

[5.1. Overview of expected benefits 36](#_Toc411841272)

[5.2. Overview of regulatory costs 41](#_Toc411841273)

[6. Option 1: Remake the existing regulations without amendment 48](#_Toc411841274)

[6.1 Expected benefits of option 1 48](#_Toc411841275)

[6.2. Expected costs of option 1 48](#_Toc411841276)

[7. Option 2: Remake the proposed regulations with limited changes 49](#_Toc411841277)

[7.1 Overview 49](#_Toc411841278)

[7.1.1. Addressing duplication, overlap and redundancy 49](#_Toc411841279)

[7.1.2. Continuous berthing 52](#_Toc411841280)

[7.1.3. Abandoned vessels 52](#_Toc411841281)

[7.1.4. Direction to move vessel or thing 52](#_Toc411841282)

[7.1.5. Dumping of waste water 52](#_Toc411841283)

[7.1.6. Commercial and organised activities 53](#_Toc411841284)

[7.1.7. Penalties 53](#_Toc411841285)

[7.2. Expected benefits of option 2 57](#_Toc411841286)

[7.3. Expected costs of option 2 57](#_Toc411841287)

[8. Option 3: Adopting more principles based regulation 58](#_Toc411841288)

[8.1. Overview 58](#_Toc411841289)

[8.2. Expected benefits 59](#_Toc411841290)

[8.3. Expected costs 60](#_Toc411841291)

[9. Conclusion 62](#_Toc411841292)

[9.1. Benefits and costs of ports regulations 62](#_Toc411841293)

[9.2. Choosing between options 63](#_Toc411841294)

[10. Consultation 67](#_Toc411841295)

[11. Administration and enforcement 73](#_Toc411841296)

[11.1. Behaviour and activities in the local ports 73](#_Toc411841297)

[11.2. Existing regulation of behaviour in local ports 74](#_Toc411841298)

[11.3. Enforcement 75](#_Toc411841299)

[12. Statement of compliance with national competition policy 76](#_Toc411841300)

[13. Evaluation 77](#_Toc411841301)

[Appendix 1: Summary of proposed substantive changes to the existing regulations 79](#_Toc411841302)

[Appendix 2: Summary of the proposed regulations 84](#_Toc411841303)

[Appendix 3: Overview of Victorian Local Ports 86](#_Toc411841304)

[Port of Portland Bay 86](#_Toc411841305)

[Port of Port Fairy 87](#_Toc411841306)

[Port of Warrnambool 87](#_Toc411841307)

[Port of Port Campbell 88](#_Toc411841308)

[Port of Apollo Bay 88](#_Toc411841309)

[Port of Lorne 89](#_Toc411841310)

[Port of Barwon Heads 89](#_Toc411841311)

[Port of Port Phillip and Western Port 90](#_Toc411841312)

[Port of Anderson Inlet 90](#_Toc411841313)

[Port of Corner Inlet and Port Albert 91](#_Toc411841314)

[Port of Gippsland Lakes 91](#_Toc411841315)

[Port of Snowy River 93](#_Toc411841316)

[Port of Mallacoota 93](#_Toc411841317)

[Appendix 4: Summary of key characteristics of Victorian local ports 94](#_Toc411841318)

[Appendix 5: Proposed Port Management (Local Ports) Regulations 2015 95](#_Toc411841319)

# Background

There are 18 ports along the Victorian coast. Four of these – Melbourne, Geelong, Portland and Hastings – are commercial ports. The remaining 14 ports, referred to as the local ports, provide services for commercial fishers, some commercial shipping, marine and emergency services, and tourism and related sectors. The geographical location of each of the 14 local ports is shown on the following map, while table 1.1, below, details the port management arrangements for each local port.

### ****Map 1: Victoria’s local port network****

  
**Table 1.1: Management of Victorian local ports**

| Local port | Port manager |
| --- | --- |
| 1. Portland Bay | Glenelg Shire Council |
| 1. Port Fairy | Moyne Shire Council |
| 1. Warrnambool | Warrnambool City Council |
| 1. Port Campbell | Parks Victoria |
| 1. Apollo Bay | Colac Otway Shire Council |
| 1. Lorne | Great Ocean Road Committee of Management Inc. |
| 1. Barwon Heads | Barwon Coast Committee of Management Inc. |
| 1. Port Phillip | Parks Victoria |
| 1. Western Port |
| 1. Anderson Inlet | Gippsland Ports Committee of Management Inc. |
| 1. Corner Inlet and Port Albert |
| 1. Gippsland Lakes |
| 1. Snowy River |
| 1. Mallacoota |

The purpose and uses of Victoria's local ports have changed over time. In many locations (e.g. Warrnambool) port facilities were originally built to service commercial and trading vessels which operated along the Victorian coastline. However, over time, with the growth of alternative transport options (notably a substantially improved road network), shipping activity has been increasingly concentrated in the four commercial ports, leaving the local ports to service the commercial fishing industry, and recreational and boating interests.

That said, a 2001 Victorian Government review noted:

*“Although during the* [1995] *port reforms these ports were described as ‘non-commercial assets’, it is important to note that they are non-commercial only in the sense that they usually cannot recover enough direct revenue to cover operating costs and maintenance. They are, however, public assets that can be the basis of considerable commercial activities as well as public enjoyment.”[[2]](#footnote-2)*

Port managers provide a range of services to shipping and boating including berths and moorings, boat yards at Lakes Entrance and Paynesville and slipways at Paynesville, Port Fairy and Apollo Bay. Some local ports (e.g. Portarlington Pier in Port Phillip Bay) also provide services to the aquaculture industry. In addition, many local ports play important roles in supporting regional economic activity and development through service provision to commercial shipping servicing the oil and gas industry (e.g. Corner Inlet) and other tourism activities such as ferry services and charter vessels.

Importantly, most local ports also provide services to the commercial fishing industry, although the extent of this service provision has been declining: historically each of the local ports provided facilities for commercial fishing, now ten of the 14 local ports continue to provide these services, with two – Port Campbell and Barwon Heads – providing services for commercial fleets of five or fewer vessels. The local ports of Lorne, Anderson Inlet, Snowy River and Mallacoota have a strong focus on tourism and leisure, which is a key role for all local ports. Hence, local ports play a significant role in local communities. In the aggregate, there were 395 commercial fishing vessels registered in Victoria in 2012-13, with 150 of these operating from facilities managed by the local ports. By comparison, over 4,000 recreational vessels were moored or berthed in local ports[[3]](#footnote-3).

*Recreation and tourism*

Recreational boating activity has increased at a rate exceeding that of population growth over most of the past 15 years: whilst Victoria’s population has grown by 2% per annum over the last 15 years, the number of registered recreational vessels grew by 2.7% per annum in the 10 years to 2010. However, the rate of growth in boat ownership in the subsequent, post-GFC, period has declined to around 1.4% per annum (2009-10 to 2012-13). Of Victoria’s 170,000 recreational vessel operators, approximately 70% identified recreational fishing as their principal reason for boating.

During the period 2001 to 2009, the number of people visiting local ports’ wharves in Port Phillip and Western Port increased by 5.3% annually. This highlights the importance of wharves within the recreation and open space network for Melbourne and the broader coast and the increasing use of local port assets. Annual visits to the local ports of Port Phillip and Western Port, including on water boating activities and visits to wharves in 2009 was 57.9 million visits. Visits to the local port wharves comprise 39.5 million of these 57.9 million visits, or 68.2%. Survey data[[4]](#footnote-4) indicates the major purposes of wharf visits are sightseeing (32%), promenading (26%) and fishing (17%). Table 1.1 provides more detailed data on activity in local ports for 2012-13.

**Table 1.1: Estimated vessel and pedestrian movements in local ports – 2012-13**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Usage category | Notes  2 | Number of movements (2012-13) | | | |
| **South and East Gippsland** | **South West** | **Port Phillip & Western Port** | **Total** |
| Commercial Vessel – Fishing | 1 | 12,848 | 716 | N/A | 13,565 |
| Commercial Vessel - Non Fishing | 1 | 14,024 | 46 | N/A | 14,070 |
| Recreational Vessel | 1 | 8,439 | 1,815 | N/A | 10,254 |
| Not for Profit Vessel | 1 | 1,893 | 32 | N/A | 1,925 |
| Waterway Commercial - Large GRT |  | 240 | 0 | 0 | 240 |
| Waterway | 6 | 175,728 | 28,861 | N/A | 204,589 |
| Landside Recreation and Tourism | 3 | 260,974 | 629,177 | 39,455,000 | 40,345,151 |
| Boatyard and Slipway |  | 10,574 | 84 | 0 | 10,658 |
| *Total* |  | ***484,720*** | ***660,731*** | ***39,455,000*** | ***40,600,452*** |

*Notes:*

1. All vessel movements based on vessels occupying local port berths and moorings.

(Commercial Vessel - Fishing and Non Fishing, Recreational Vessel and Not for Profit Vessel)

2. Data sourced from internal departmental papers and modelling except as noted for PV landside visits

3. Estimated vessel movements for Portland Bay include Portland Bay marina and boat ramp

4. Parks Victoria landside visitations for wharves **(**piers and jetties**)** from Parks Visitation Monitor (Newspoll)

5. Vessel movements counted as one movement for both outbound and return trips

6. Recreational vessel movements for Port Phillip and Western Port estimated from Ipsos (2014). *Boating Behaviour: Draft Report*. Prepared for Transport Safety Victoria. October 2014 at 2 million trips per annum

**Management**

The Victorian Government, through the Department of Economic Development, Jobs, Transport and Resources (DEDJTR), is responsible for the local port network[[5]](#footnote-5), which includes port facilities valued at over $450 million. DEDJTR provides the policy, direction and context within which the local ports operate. Port managers, comprising seven locally based public entities and one statutory authority as shown in Table 1.1 above, have day to day responsibility and management for each local port.

**Legislation**

The *Port Management Act 1995* regulates both commercial and local ports, with Part 2A of the Act dealing specifically with local ports. Port managers are appointed under the *Port Management Act* which also provides for the establishment, management and operation of the ports. The Act outlines the functions of port managers (section 44A(3)) and provides for the imposition of port charges (section 44D).

To be appointed a port manager of a local port*,* port managers must be a committee of management for at least one parcel of Crown land within a local port. The Minister for Environment & Climate Change is responsible for the *Crown Land (Reserves) Act* *1978*. Under the *Crown Land (Reserves) Act,* committees of management have responsibility and authority to manage, improve, maintain and control their reserves.

Port managers are also declared to be waterway managers for their port waters under the *Marine Safety Act 2010*. The principal responsibility of waterway managers is to ensure the safe operation of vessels in these waters. Hence, the port managers draw heads of power from three Acts; two governing port management functions (largely the on land and interface activities of berthing, mooring and slipping for vessel maintenance) and the third for waterway management, including vessel operations.

Two local ports are required to engage a licensed harbour masters. These ports are the ports of Corner Inlet and Port Albert, and Gippsland Lakes. Where there is no harbour master, the Port Management Act enables the port manager to act as a harbour master. The harbour master functions are detailed in the *Marine Safety Act* and associated regulations.

Both the *Marine Safety* and *Port Management Acts* are administered by the Minister for Ports.

Section 44A(3) of the *Port Management Act* sets out the following functions of port managers:

1. *to manage the operations of the port, particularly with respect to shipping and boating activities in the port, with a view to ensuring that those operations are carried out safely, efficiently and effectively;*

*(b) to provide, develop and maintain port facilities, including wharves, jetties, slipways, breakwaters, moorings, buildings and vehicle parks;*

*(c) to provide, develop and maintain, in accordance with any relevant standards developed by the Director, Transport Safety, navigational aids in the port;*

*(d) to carry out the functions and powers of a local authority under the Marine Safety Act 2010 in respect of any State waters within the port;*

*(e) to provide, develop and maintain, in accordance with any relevant standards developed by the Director, Transport Safety, navigation channels in the port;*

*(f) to manage the operations of the port, and the construction and operation of port facilities and navigation channels in a manner that minimises the risk of environmental damage;*

*(g) to participate in the control of marine and land pollution in the port as a relevant statutory authority under the Victorian component of the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances;*

*(h) to allocate and manage moorings and berths in the port;*

*(i) to exercise any other functions of the port manager of a local port under this or any other Act;*

*(j) to do anything else in relation to the port that is specified by Order of the Governor in Council under subsection (4)*

Section 44C enables the port manager to delegate powers under the Port Management Act to its employees.

Section 15(1) of the Crown Land (Reserves) Act sets out the following functions of committees of management:

A committee of management of any land appointed under section 14—

*(a) shall manage improve maintain and control the land for the purposes for which it is reserved and for that purpose may employ officers servants and workmen;*

*(b) may exercise all such powers functions and authorities and shall carry out all such duties as are conferred or imposed on it by any regulations made pursuant to section 13 and shall have authority to do all such acts matters and things as are necessary for or incidental to carrying into effect and enforcing such regulations in respect of the land;*

*(c) may carry out works and improvements on the land:*

*Provided that in the case of works or improvements on coastal Crown land—*

*(i) the consent of the Minister administering the Coastal Management Act 1995 has been first obtained; and*

*(ii) the works are carried out in accordance with any management plan prepared under the Coastal Management Act 1995 which relates to the land;*

*(iii) the works or improvements are being carried out solely to maintain the land;*

*(d) may—*

*(i) if it is a body corporate, in its own name or in the name of some person appointed by it in that behalf; or*

*(ii) if it is not a body corporate, in the name of any one or more of its members or in the name of some person appointed by it in that behalf—*

*take any legal proceedings for the purposes aforesaid;*

*(e) may expend any revenue from the land or any other moneys for any of the purposes mentioned in this section;*

*(f) shall expend or apply any revenue for any other purpose whether or not related to the land as directed by the Minister;*

*(g) notwithstanding anything in this Act where the committee considers it will not be inconsistent with the purposes of the reservation the committee may subject to the consent of the Minister upon such terms and conditions as it determines—*

*(i) grant a permit to any person to enter upon the land with cattle sheep or other animals and to pasture them thereon; or*

*(ii) cultivate the land or grant a permit to any person to enter upon the land with plant and machinery and cultivate it;*

*(h) may, in accordance with the Impounding of Livestock Act 1994, impound livestock trespassing on the land and, for the purposes of this paragraph, livestock has the same meaning as in section 3 of the Impounding of Livestock Act 1994; and*

*(i) may insure against any legal liability to members of the public which may arise out of the performance of its functions as committee of management*

Section 216(1) of the *Marine Safety Act* sets out the functions and powers of waterway managers, as follows:

*A waterway manager has the following functions—*

*(a) the management of vessel activities on the waters under the control of the waterway manager;*

*(b) the management and allocation of moorings and berths in the waters under the control of the waterway manager;*

*(c) the provision and maintenance, in accordance with standards developed by the Safety Director, of navigation aids, including appropriate signage as to water levels, hazards and laws applying to the waters under the control of the waterway manager;*

*(d) the control of navigation and vessel movement in the waters under the control of the waterway manager;*

*(e) the designation of areas in the waters under the control of the waterway manager in which anchorage of vessels is permitted and areas in which anchorage of vessels is not permitted;*

*(f) the altering or dredging of channels for navigation in the waters under the control of the waterway manager, in accordance with any directions or determination of the Safety Director and as so required by the Safety Director;*

*(g) the removal or marking of obstructions in the waters under the control of the waterway manager.*

**The proposed regulations**

The existing *Port Management (Local Ports) Regulations 2004*, made under the authority of Section 98 of the Act, are the primary means of regulating conduct and behaviour of people, vehicle movements and the operations of the local ports. These regulations are due to sunset on 29 June 2015, as a result of the operation of the *Subordinate Legislation Act 1994* and the passage of extension of operation regulations providing a one year extension of their scheduled sunsetting date. The proposed *Port Management (Local Ports) Regulations 2015* (the “proposed regulations”) are intended to replace the existing regulations. While the proposed regulations are intended to re-establish many of the substantive provisions of the existing regulations, their scope will be somewhat narrowed, both because several matters which are now regulated under other, relevant legislation (notably the *Marine Safety Act* and the Commonwealth *Marine Safety (Domestic Commercial Vessel) National Law Act 2012)* will no longer be regulated via the proposed regulations, and because several provisions which have been found in practice to be redundant or ineffective will not be remade. The proposed regulations represent a consolidation and modernisation of the existing regulations using a principles-based (rather than prescriptive) approach to better target the underlying problems which exist in local ports. Thus, the proposed regulations will represent a significant streamlining and modernisation of the existing requirements.

The proposed regulations provide a range of powers to port managers to ensure the safe, efficient and effective management of local ports. Key matters addressed include:

* establishing what activities and access are permitted, restricted and prohibited, either in ports as a whole, or in particular areas within ports;
* providing mechanisms for port managers to manage and approve the undertaking of certain activities in specific circumstances;
* enabling port managers to declare certain areas as being prohibited or restricted berthing areas and setting limits on the time for which vessels can be berthed in certain areas;
* establishing certain duties applicable to masters of vessels moored within local ports, particularly with a view to maintaining safety standards on and around the vessel;
* managing and restricting the use of vehicles in local ports; and
* managing and restricting commercial and organised activities within the confines of local ports.

**Terminology**

For clarity, the terminology used in this RIS is consistent with the *Port Management Act* and regulations. The following terms are outlined below for clarity:

* “local port” means the port land and waters;
* “port facilities” means the wharves, slipways, breakwaters, moorings, buildings and vehicle parks, as well as channels used for vessel navigation;
* “permit” (as used in the proposed regulations) has the same meaning as that given to an “authority” in the existing regulations;
* “short-term berths and moorings” includes 48-hour berthing and mooring areas;
* “vessel” means any kind of vessel that is used, or capable of being used, to navigate by water, however propelled or moved; and
* “master”, in relation to a vessel, means a person having command or charge of the vessel.

# Nature and extent of the problem

## Nature and extent of the problems arising from the operation of local ports

The policy problems currently addressed via the local ports regulations are threefold: port user safety risks, equity of access to and protection of port facilities, and pollution risks in relation to land and water within the local ports.

Determining the likely extent of the problems that would exist in the absence of specific regulation empowering port managers to regulate activities conducted within the local ports and the behaviour of port users is necessarily extremely difficult: regulations that are substantively similar to those currently in place have been on the statute books in Victoria for several decades, so that it is not possible to refer to practical experience with an “unregulated” environment. A further complicating factor is that other significant legislation also addresses some (though not all) of the risks arising from the operation of local ports, including the *Occupational Health & Safety Act 2004* and the *Marine Safety Act*.

This issue, of determining the “untreated” level of risk is a generic one, in the sense that it necessarily arises where regulation of long standing is sunsetting and it is necessary to attempt to assess its effectiveness in practice. One potential means of inferring what risks may exist in the absence of such specific regulation is to compare the current, regulated environment with that which exists in other, similar jurisdictions which differ in not adopting specific regulation in the same area. However, the Department does not believe that such comparison is feasible in the context of the existing regulations, since broadly similar regulatory approaches have also been adopted in other Australian states and territories over an extended period.

**Safety issues in local ports**

The normal operations of ports give rise to a range of risks which must be managed to ensure the safety of all port users. Exposure to these risks is necessarily high, given that there is a high level of public access to local ports, with visitor numbers exceeding 40 million annually, as noted above. Given that most of these visits are casual, pedestrian visits, it can be speculated that some visitors will have little appreciation of the nature or extent of the port-specific risks involved. That said, the available incident data shows that there is a low level of injuries and fatalities, suggesting that these risks are, on the whole, adequately managed in the current (albeit regulated) environment.

The risks associated with use of the port facilities by a range of groups, including the general public, may be managed by a range of relevant strategies, which could, at least in principle, include both regulatory and non-regulatory mechanisms. Examples of strategies that could be adopted include the widespread use of signage to alert users to specific risks and, potentially, to more general ones, the use of public education campaigns and reliance on other legislation of general application (e.g. occupational health and safety).

In generic terms, the major activities undertaken within the local ports that give rise to substantial safety risks are the following:

* loading and unloading of vessels (e.g. goods, construction materials, commercial fish catch, crates, passengers) and transit of vehicles and cranes for operational and maintenance activities poses public safety risks requiring traffic management intervention;
* servicing and maintaining vessels and equipment (e.g. net stretching and repair) at wharves and also on slipways and at boatyards raises occupational health and safety, public safety and environmental risks;
* dredging (which may involve a crane moving a dredge pipeline) and sand management (pumping sand slurry into an intertidal zone) poses issues of public safety and environmental risks;
* publicly accessible wharves (which may not have handrails due to operating requirements) raises public safety risks;
* vehicles entering onto wharves and other port facilities and ending up in the water, both due to deliberate act and to misadventure. While these incidents currently occur relatively infrequently, at least three have been identified as having occurred over the past five years by different port managers (one each at Warrnambool, Portland and in the Gippsland Lakes);
* fuelling of vessels poses dangers in terms of the risk of explosion or spills possibly causing injury, pollution of the waters and damage to port facilities, while the ability to issue permits enables safe work procedures to be established and required to be followed;
* access to wharves needed for port operations being obstructed by vessel owners using wharves as storage places, with attendant problems of the safety risks arising, and restriction of access for other vessel owners and users. Obstruction by recreational fisherman is also periodically problematic; and
* people jumping from wharves or other wharf structures or swimming near berthing areas and creating significant personal safety risks to themselves and vessel operators as a result.

Consultation with port managers and other stakeholders indicates that a range of safety related incidents arise from time to time which the regulations provide powers for them to address, while, the absence of regulatory restrictions on certain kinds of behaviours such as refuelling at wharves can be presumed that there would be a significantly greater incidence of such activity.

Table 2.1 provides a summary of all incidents recorded on the incident registers of the local ports over the decade to October 2014.

### ****Table 2.1: Incidents recorded at in local ports, November 2004 – October 2014****

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Gipps-land[[6]](#footnote-6) | Port Phillip & Western Port | Port-land Bay | Port Fairy | Port Camp-bell | Lorne | Barwon Heads | Total |
| Swimmer at wharf | 1 | 4 | 1 | 0 | 0 | 0 | 0 | 6 |
| Slips, trips & falls | 14 | 14 | 0 | 2 | 0 | 1 | 0 | 31 |
| Jumping from pier | 0 | 5 | 0 | 1 | 1 | 0 | 10 | 17 |
| Damage to port facilities | 38 | 7 | 2 | 9 | 1 | 0 | 2 | 59 |
| Vessel broke mooring | 9 | 2 | 0 | 0 | 0 | 0 | 17 | 28 |
| Vessel sank at mooring | 17 | 0 | 0 | 3 | 0 | 0 | 0 | 20 |
| Restricted area/heritage | 4 | 4 | 0 | 1 | 0 | 0 | 0 | 9 |
| Spill/waste | 22 | 2 | 3 | 4 | 0 | 0 | 0 | 31 |
| Obstruction in water | 19 | 0 | 0 | 0 | 1 | 0 | 0 | 20 |
| Fire | 4 | 3 | 0 | 2 | 0 | 0 | 0 | 9 |
| Propeller damage | 5 | 4 | 0 | 0 | 0 | 0 | 0 | 9 |
| Vehicle | 8 | 7 | 1 | 0 | 0 | 0 | 1 | 17 |
| Slipway or boatyard injury/damage | 58 | 0 | 0 | 1 | 0 | 0 | 0 | 59 |
| Storm damage | 10 | 6 | 0 | 2 | 2 | 0 | 3 | 23 |
| Workplace injury/damage  (*OH&S Act*) | 133 | 0 | 0 | 2 | 0 | 0 | 0 | 135 |
| Interference | 5 | 0 | 1 | 6 | 0 | 0 | 0 | 12 |
| Private property damage | 23 | 6 | 2 | 15 | 1 | 1 | 0 | 48 |
| Vessel (*Marine Safety Act*) | 76 | 18 | 0 | 4 | 0 | 0 | 25 | 123 |
| Other | 73 | 22 | 2 | 3 | 3 | 2 | 7 | 112 |
| *Total* | ***519*** | ***104*** | ***12*** | ***55*** | ***9*** | ***4*** | ***65*** | ***768*** |

*Notes:*

1. Sources: Individual local port incident registers (excluding Warrnambool and Apollo Bay) which may use different policies and approaches to incident data collection and recording.
2. Data may be incomplete as it reflects only those incidents known or reported to port managers during the period. For example, swimming and vessel related incidents within local ports may not be reported to the port manager.
3. In some instances data include incident details from offices and travelling to and from work. Data from port patrols is not included, hence, safety warnings issued by port managers are excluded.

Table 2.1 shows that there have been 768 incidents over this 10 year period, or approximately 77 per annum on average. It should be noted, however, that a significant number of these incidences are not of direct relevance to the local ports regulations, since they relate to matters that are regulated via other legislation. This observation applies to workplace injury/damage incidents (135 of the total), which are regulated via the *Occupational Health and Safety Act 2004* and vessel incidents (123 of the total), which are regulated under the *Marine Safety Act* (as noted in the table).

Approximately two-thirds of the total number of incidents has occurred at one of the five ports that collectively fall under the responsibility of Gippsland Ports. It should be noted that, while the Gippsland ports collectively constitute fewer than half (i.e. five of 14) of the total number of Victorian local ports, they include ports that have the highest levels of commercial activity, both in relation to commercial fishing, maintenance of vessels, and in relation to the provision of services to the offshore oil industry. In particular the high level of workplace incidents in Gippsland reflects the fact that:

* the facilities constitute more than half of the vessel lifting facilities across the local ports ie four slips and a large travel lift, whereas there are only two slips at Port Fairy and one at Apollo Bay;
* the port facilities include two large boatyards, with 13 full-time staff engaged on vessel repairs and servicing (including port management vessels) and marine pollution response, and there are no similar facilities in other ports; and
* the greatest level of vessel maintenance activity, ie around 94% of slipping activity in Victorian local ports, occurs in Gippsland ports.

There have been a total of 24 deaths over the period, with 10 of these being boating related and the other 14 relating to activities in the ports. According to the incident data, 28 people have also been hospitalised as a result of port incidents over the period. However, review of the circumstances of these deaths indicate that only a relatively small minority of them relates to the matters addressed in the regulations or to the operations of the local ports, more generally. Ten of the deaths recorded occurred as a result of incidents on boats, while several more are reported drownings of adults or children occurring at locations away from port facilities per se, such as bay beaches, the vicinities of rivers, etc.

A total of five deaths can be said to relate to the matters addressed by the regulations, are as follows:

* One of these involves a swimmer being struck by vessel approaching a wharf, and highlights the importance of separating swimming and vessel navigation, particularly in the port context, in which there is substantial boating activity being undertaken.
* A second incident involved a person slipping while attempting to alight a vessel at a wharf and consequently drowning. This incident potentially serves to highlight the importance of ensuring adequate and safe access to and from vessels at berths, a factor addressed in the existing regulations.
* A third incident involved a person dying as a result of a vehicle being driven off a wharf into the water and appears to highlight the importance of controlling vehicle access in the local port.
* The fourth incident involved a person who died as a result of a fire on board whilst berthed and this incident appears to highlight the importance of controlling the lighting of fires in the local port.
* The fifth incident involved a group of people jumping from a wharf, however one of the group did not resurface and this incident appears to highlight the risks associated with shallow water and obstructions in the local port.

As noted above, 28 serious injuries have been reported in local port incident data over the same period, while the data does not enable the clear view to be formed as to whether either of these incidents relate to matters with which the regulations are concerned. Estimates of the costs associated with these deaths (based on standard valuation of a statistical life (VSL methodology)) are provided and discussed in subsequent sections.

This data suggests that the residual safety risks associated with the operation of the local ports in Victoria are low: the five deaths cited above that are relevant to the operation of these regulations occurred over a 10 year period and therefore represent an average of 0.5 fatalities per annum occurring during the life of the existing regulations.

However, it is not possible to determine the extent to which the regulations have effectively prevented further fatalities occurring during this period. That is, it is not possible to estimate the extent of the likely “untreated risk” – i.e. the likely scale of deaths and injuries that would occur in the absence of regulations similar to those currently in effect. This reflects, in part, the fact that regulations broadly similar to those currently in place have operated in the local port context for an extended period of time. Moreover, even were data on incidents in local ports in an unregulated context to be available, the fact that usage of the local port facilities is increased substantially in recent years would prevent meaningful comparisons with current safety performance being made.

**Role of Occupational Health and Safety legislation**

The *Occupational Health & Safety Act 2004* (OH&S Act) does apply to many activities undertaken within local ports. However, the operation of this, generally applicable, legislation has not historically been seen as a sufficient response to the safety issues arising in local ports for two main reasons. Firstly, not all activities giving rise to the safety risks fall within the scope of the Occupational Health & Safety Act (for example, maintenance of a recreational vessel being undertaken by the vessel owner in port waters). This means that the legislation does not provide powers to address some of the risks that arise as a consequence of activities undertaken in the local port context.

Secondly, enforcement of the requirements of the OH&S Act can only be undertaken by officers who are trained in the application of the legislation and authorised by it. Such officers (i.e. those employed by the WorkSafe Victoria) are relatively few in number, given the substantial number of workplaces and other venues regulated under the OH&S Act, and can therefore be expected to have a relatively limited presence in local port environs. By contrast, port managers have a far more substantial presence in these environs and, consequently, are better placed to take action where safety risks arise and must be addressed. Moreover, port managers have a detailed understanding of the operations of local ports and the nature of the risks that arise and can therefore be considered as better placed to intervene from this perspective also.

**Protection of port facilities**

Very little data on the cost implications of the incidents in table 2.1 are available. The major incident type in respect of which some cost data is available is that of incidents resulting in damage to port facilities. A review of incident summary reports conducted by the Department suggests that the rectification costs incurred are generally within the range of $1,000-$30,000, with the average likely to be in the vicinity of $10,000. This implies that total costs due to this cause could be of the order of $0.6 million over the 10 year period to which table 2.1 relates, or an average of around $59,000 per annum.

Port managers have an important role in ensuring that port facilities are in appropriate condition and available for use.

**Managing competing demands for access to port facilities**

A second type of problem derives from the high level of demand for port services evident in some ports, particularly at peak times of the year (i.e. during summer and holiday seasons). For example, some local ports provide a limited number of short-term berths or moorings. There is typically high demand for space at these berths or mooring, as they tend to be located near town centres and shopping strips. This problem is equivalent to that of car parking in city/urban centres.

A further issue in relation to berths and mooring is that there are insufficient permit-only berths and moorings to meet demand in many ports, leading to waiting lists for berths and moorings existing in some locations. This situation is likely to endure for two reasons. First, adding substantial numbers of new berths or moorings would impact on the safe use of waterways for other activities in many cases.

While charges are imposed for the provision of berths and moorings, port services yield significant net costs to the local ports, since this revenue represents only a small portion of the port operating costs. As highlighted earlier in table 1.1, the vast majority of port visitations are casual, pedestrian visits which outnumber vessel movements nearly 20:1.

Rationing of access via the price mechanism has historically been rejected by policy-makers and the public. This rejection has largely reflected a strong view in favour of making these facilities widely accessible across the population, without raising significant affordability barriers. In addition, practical difficulties would be encountered in collecting fees / monitoring compliance for short-term berths and moorings, were these to be adopted, since port staff would not be available to undertake this task in many circumstances.

A related issue in relation to competing demands for port facilities is the issues associated with abandoned or sinking vessels, which occupy space that could otherwise be made available to other users.

A recent survey of port managers, conducted for the purposes of the current RIS indicates that the problem of competing demands, together with that of unauthorised moorings (which frequently give rise to the problem of obstruction of waterways or other facilities), is relatively widespread in the peak demand summer months in some ports. They note that problems are not necessarily reported to port managers, so that the size of the problem is likely to be larger than suggested by the specific indicators given below. However, the following responses have been received from port managers:

* Parks Victoria reports that it encounters problems with illegal moorings, particularly on the Mornington Peninsula, for up to 4 to 5 months of the year, and that 150 or more illegal moorings are found each year. Costs of the order of $10,000-$15,000 are typically incurred in removing moorings and associated tackle annually. In addition, illegal mooring creates the potential for damage to occur to other vessels, due to overcrowding and inappropriate location of moored vessels, while there is also an increased risk of vessels breaking free or drifting into navigable channels as well as potential damage to marine environments including native sea grass. Parks Victoria also notes that illegal mooring is perceived by vessel owners as an equity issue, given that vessels that are legitimately moored have paid for this privilege.
* Gippsland Ports states that illegal mooring is prevalent during the summer months and long weekends at Metung and Lakes Entrance in particular and, to some extent, at various locations in rivers which are also within the port. The instances of illegal moorings also involve vessels moored to facilities not provided or approved by the port manager including vegetation around the shore of the rivers and lakes. As noted above, such moorings give rise to risks of damage to other vessels where overcrowding results, as well as potential damage to marine environments and equity concerns among vessel owners.

**Pollution issues**

A third issue is that of managing potential pollution risks, particularly in relation to the dumping of liquid wastes and by-products of the use of vessels, including works undertaken on them.

Potential pollution risks arise in a number of contexts within the operation of local ports. Firstly, particularly where people are using or living on board vessels, wastewater will be generated and require disposal. If disposal into port waters occurs, rather than correct disposal into receiving facilities, pollution and associated health and amenity risks can arise. Boat owners may be inclined to dump sewage or wastewater either due to lack of concern regarding the creation of pollution, lack of understanding of the problem, lack of availability of wastewater facilities or avoidance of cost associated with private waste collection.

Litter and other waste may also arise from other uses of the port, including discarded or lost fishing line and equipment, fish offcuts from fish cleaning and general litter from picnickers and other coastal visitors. The loss of amenity and safety risks for other port users can be significant given high levels of port visitation.

Further, pollution may be a by-product of refuelling, repair, maintenance or renovation works undertaken on vessels. Many of the products used in undertaking these works are toxic, including antifouling chemicals, cleaning fluids such as chlorine, ammonia, and phosphates, fuels and lubricants, paints, household garbage and sewage. Thus, there are significant concerns regarding pollution risks if they are disposed of in port waters. Data indicates that this latter issue is currently of modest size, with a review of port managers’ incident reports not revealing any recent significant pollution incidents. This is consistent with the overview provided in the most recent State of the Environment Report, which states:

*“Monitoring by EPA Victoria indicates that Victoria generally has good marine and coastal water quality….“Most marine pollution incidents reported in Victoria are for small spills, less than 20 litres….The greatest number of marine pollution incidents reported each year is in Port Phillip Bay. This is probably due to the higher level of activity associated with the bay and the greater potential for sighting and reporting incidents due to the larger number of people using the area. Gippsland has the next highest number of reported incidents.”[[7]](#footnote-7)*

Moreover, only 31 works permits were issued in the largest local ports of Port Phillip and Western Port during 2013 and a further eight being issued in the Gippsland ports[[8]](#footnote-8) . This suggests that a significant number of works involving construction or hazardous port activities (e.g. refuelling) are being undertaken in local ports and are not being brought to the attention of port managers. However, the environmental consequences of waste contamination can be locally severe. As noted in the State of the Environment Report:

*“Maritime pollution spills can result in heavy metals and other toxic substances and chemicals entering the marine environment. These can have drastic impacts on freshwater and marine ecosystems. The effects may vary in severity from reducing growth and reproduction to directly killing plants and animals. The results can be particularly destructive in coastal wetlands and bays where flushing is limited.”[[9]](#footnote-9)*

Environmental pollution is addressed by a range of other legislation, including *Environment Protection Act 1970* (EPA) and the *Marine (Drug, Alcohol and Pollution Control) Act 1988*. Whilst this legislation has broad coverage, port managers do not have jurisdiction. Early action by port managers on pollution matters would require additional powers to be made available.

**Integrated management**

A further policy issue to be addressed is the need to ensure consistency of approach in the regulatory or other controls adopted to address the above substantive policy issues. Consistency of approach, particularly at the level of frameworks and principles, is important to ensure that affected parties are dealt with equitably (i.e. that policy responses to similar issues arising in different contexts are consistent) and that the regulatory/policy environment is transparent and predictable. Integrated management has two key aspects. Firstly, it relates to the interface between the land (foreshore) and water. The foreshore is typically managed by local government using bylaws under the *Local Government Act 1989* whilst on water, the operation of vessels is encompassed by the *Marine Safety Act* and regulations. The operation of the local port environment is regulated under the *Port Management Act*. The interaction of these different pieces of legislation may give rise to significant differences in approach to addressing similar issues in different parts of the local ports (e.g. on land vs on water), while the absence of port-specific regulation could also give rise to gaps in legislative powers or, conversely, to overlap and duplication.

Second, integrated management implies replicating the provisions of a number of generally applicable regulatory provisions (e.g. those relating to littering) in the specific context of the local ports regulations in order to ensure that such requirements can effectively be enforced in a local ports environment in which port managers, who exercise power largely under the *Port Management Act*, are likely to be the only officers able to take on such a role in practice.

## Current issues in implementation and enforcement

The preceding discussion provides a general overview of the problems arising in connection with the operation of local ports. These have been addressed over several decades through a regulatory response which empowers port managers to manage and respond to the identified areas of concern. Experience with the operation of these regulations, including the operation of the existing regulations since 2004, highlights specific areas in which the existing regulatory response has been only partially successful in dealing with the underlying problems.

The following identifies key risks that form the focus of efforts to improve the current, regulatory response to the underlying problems associated with the operation of the local ports.

**Organised activities**

Organised activities constitute a particularly significant source of safety risks in local ports, since they will, in many or most cases, result in substantial numbers of people gathering in a particular area or areas within a port to undertake particular activities, while in many cases the ordinary business of the port may also be continuing, at least to some extent. The higher concentrations of people involved (vis-à-vis those experienced in the day to day running of the port) necessarily increases risks, while some of the specific activities being undertaken (e.g. water skiing or powerboat racing) are inherently somewhat risky.

In addition, the large scale of many organised activities undertaken in port waters can present equity issues for other port users, particularly by restricting their access to port facilities and ability to go about their normal activities. The need to balance the interests of participants in the organised activities and those of other local port users provides an additional, equity based, issue.

For the above reasons, the local port regulations have historically provided powers that port managers can exercise in relation to commercial activities. However, more recently, the *Marine Safety Act*, has introduced specific provisions relating to safe navigation associated with organised events, given the primacy of this regulation in relation to marine safety matters.

A remaining issue is that the extent of the *Marine Safety Act* powers in this regard is limited to circumstances in which these events require an exemption from waterway rules or safety equipment requirements. However, given the general obligations on port managers to ensure safety in all circumstances, there is a need to ensure that adequate regulatory powers exist to regulate all organised activities, including in circumstances where such exemptions are not being stored, or have not been provided. A particular issue arises where organised activities are being conducted simultaneously with the normal port activities, rather than being the subject of a declared exclusion zone giving them exclusive access to a particular area of the waterway.

Data for Port Phillip and Western Port indicate that approximately 1,000 such events take place annually. Major elements of this total include:

* approximately 350 events undertaken by around seven major yacht clubs based in one or other of these two bays;
* approximately 320 events undertaken by around 20 smaller yacht clubs based in one of the bays;
* approximately 100 major events, including major yachting regattas; and
* approximately 20 to 25 triathlons.

Other events which may require permits relate to organised open water swimming events, speed boating, paddle boarding, lifesaving carnivals, and visits by tall ships. It is also important to note that the pattern of issue of these events permits is irregular, with the great majority occurring during weekends over the summer months. Thus there is a high level of activity in many watercourses during these periods and significant potential for competing uses.

Gippsland Ports, the manager of five local ports in Gippsland, indicates that it already seeks notification for events, with 10 events having been declared during the 2013 calendar year.

**Equity of access and continuous berthing**

Port managers have identified wait lists for berths and moorings in some locations in local ports as evidence of excess demand for access to port facilities. Port managers are generally unable to increase the number of berths and moorings without impacting on other activities or on safe navigation in port waters.

As discussed above, excess demand for short-term berths and moorings at peak times has resulted in restrictions on the amount of time for which a vessel can stay in a berth or mooring being included in the regulations (212). However, this approach has been only partially successful due to compliance issues. A specific compliance issue that has arisen is that some vessel owners will simply untie and re-tie the vessel at the berth or mooring. Such behaviour does not achieve the objective of spreading access to available public berths and moorings among a wide range of boat owners. To the extent that this occurs, the underlying objective of equitably distributing access to short-term berthing and mooring facilities is undermined. The fact that this behaviour occurs highlights an apparent deficiency in the drafting of the existing regulations, in that they do not provide a definition of what constitutes a break in continuous berthing/mooring time.

The existing regulations (regulation 301) provide for a maximum continuous berth or mooring stay of 48 hours in unrestricted areas of the local ports. It is unclear how the maximum time limit was established and stakeholders have suggested that it may be more appropriate to set a maximum time taking into account the nature and scope of activities undertaken in each port. However, a risk of such an approach is that it may impede vessel owners who frequent numerous ports from developing a clear understanding of the applicable time limits in all cases.

**Abandoned vessels**

The existing regulations (regulation 324 and 325) empower port managers to remove abandoned vessels, thus freeing access to potentially scarce berths/moorings. However, this power is limited, requiring port managers to store such vessels within the port and only enabling them to be disposed of when they have no commercial or re-sale value. This restriction creates a number of problems. First, the need to store the vessels until they have reached a stage of age and/or deterioration at which they no longer have commercial or re-sale value creates difficulties due to the lack of space and facilities for the storage of such vessels in most ports, thus potentially restricting the ability of the ports to host other activities. An additional constraint in this regard is that timber vessels need to be stored in the water in order to avoid deterioration. This further limits the ability of port managers to address competing demands for space within ports.

Second, allowing vessels to deteriorate to the point of worthlessness, rather than having their value realised through an earlier sale, is clearly economically inefficient, as it increases the costs of removal, and is likely to cause a range of other issues, including navigation hazards (if the vessel sinks) and oil spills.

Third, a corollary of the deterioration of a vessel to the point of worthlessness will, in many cases, be that the cost of removing the vessel from the port increases significantly. As an example, one port manager has recently been required to remove a derelict 24 metre fibreglass vessel from its facilities at a cost estimated at some tens of thousands of dollars, a figure which includes legal fees, the removal of hazardous material (asbestos) and other potential pollutants prior to the ultimate breaking up and disposal of the vessel. Technical advice received was that the vessel could not be lifted from the water, due to the brittle state of its hull and general poor condition further complicating the removal task and adding substantially to its cost.

Port managers currently rely on a range of mechanisms, including other Crown land legislation and harbour master powers under the *Marine Safety Act* to deal effectively with these vessels.

Parks Victoria, which is responsible for managing three local ports, states that it has seized approximately 20 vessels over the past three years as a result of them being abandoned and/or illegally berthed. The net cost incurred has been almost $50,000, as it has not proven possible to recover this cost from vessel owners as shown in table 2.2.

### ****Table 2.2: Outcomes of vessels disposed from Port Phillip and Western Port****

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Date | Vessel | Valuation | Approx port manager costs | Outcome | Disposal proceeds | Net proceeds | Comments |
| Nov-14 | Vessel 1 | Not known | $15,686.59 | Sold | $2,462.73 | -$13,224 | In process |
| Oct-14 | Vessel 2 | No value | $5,413 | Crushed | Nil | -$5,413 |  |
| May-14 | Vessel 3 | No value | $4,587 | Crushed | Nil | -$4,587 |  |
| May-14 | Vessel 4 | $3,500 | $15,580 | Sold | $2,485.51 | -$13,094 | In process |
| Apr-13 | Vessel 5 | Salvage value only | $3,823 | Sold | $209.00 | -$3,614 |  |
| Oct-12 | Vessel 6 | $1,200 | $3,335.00 | Crushed | Nil | -$3,335 | No bids at auction |
| Sep-12 | Vessel 7 | $1,000 | $3,192.00 | Crushed | Nil | -$3,192 | No bids at auction |
| Jun-12 | Vessel 8 | No value | $4,910.00 | Crushed | Nil | -$4,190 |  |
| Feb-12 | Vessel 9 | $5,000 | $585 | Sold | $2,210.00 | $1,625 |  |
| Feb-12 | Vessel 10 | Not known | $802.00 | Sold | $1,430 | $628 |  |
|  |  |  |  |  | **Total** | **-$48,396** |  |

A recent survey of port managers, conducted for the purposes of the current RIS project, revealed that there are approximately 10 to 15 more vessels located in Victoria’s local ports at present that are in similar condition, with the costs of disposal of these vessels being estimated as being at least $10,000 each.

In addition, it was reported that at least 15 vessels are known to have sunk at berths or moorings in the local ports over the past five years. This is believed to reflect a dynamic in which owners of unused and deteriorated vessels find it more economical to continue to pay berthing or mooring charges rather than bear the costs associated with removing these vessels from ports. Moreover, some port managers argue that the estimate of 15 sinkings at berths/moorings is a significant underestimate of the true position, and suggest that the true rate of sinkings may be of the order of one vessel per month, or around 12 per annum. Of note is that such sinkings do not in all cases indicate that the condition of the vessel is poor. Rather, in some cases, it appears that sinkings have occurred as a result of causes such as a simple failure of a bilge pump on an unattended vessel.

These issues highlight the fact that, while the regulations do provide powers for the port managers to require that vessels be maintained in an adequate, seaworthy condition as a condition of continuing to be eligible to be berthed or moored in the port, these requirements are very difficult to enforce in practice and do not enable managers to direct owners to remove vessels that are in poor condition from the port.

**Dumping of wastewater**

While there is a general prohibition on “camping” within a port, this activity can be authorised by a port manager to enable camping to occur where appropriate facilities are available. However, there is no provision within the existing regulations preventing sewage or wastewater being dumped in the waters of the port and thus creating a pollution hazard. While *Environment Protection Act* requirements to prohibit any waste being deposited other than through appropriate “pump-out” facilities, the provision of specific powers to the port manager would be expected to improve compliance, due to the fact that the port manager is more likely to be present and able to respond to any compliance issues, as well as being better able to ensure that disposal occurs in the correct manner and place.

**Duplication and overlap**

As a general observation, several aspects of the regulations impose requirements that duplicate or overlap with those provided under the *Marine Safety Act* and/or the Commonwealth *Marine Safety (Domestic Commercial Vessels) National Law Act*. This reflects the fact that this legislation has come into effect since the passage of the *Port Management Act* and the existing regulations. The *Marine Safety Act* provides, amongst other things, for the regulation and management of the use of, and navigation of vessels on Victorian waters. The national law replaces eight federal, state and territory laws with a single law governing the safety of all commercial vessels and their crew in Australian waters.

As a general proposition, regulatory best practice seeks to eliminate or minimise regulatory duplication and overlap, since unnecessary compliance costs frequently arise as a result of the need to comply simultaneously with separate regulatory requirements seeking to achieve the same or similar regulatory objectives.

Given that the marine law was conceived as purpose-specific legislation dealing with safety issues, there should be a presumption that, where requirements overlap with its provisions, these should be removed from the existing regulations. That said, there are likely to be circumstances in which the retention of certain provisions is justified, notwithstanding possible duplication, in order to ensure that port managers are empowered to deal with certain matters, where they are the nearest available official.

Examples of identified areas of duplication with provisions of the *Marine Safety Act* include:

* requirement for vessels to be securely anchored (regulation 302(3) to (5));
* power for port manager or officers to give directions about anchoring (regulation 303);
* requirement for deck openings on berthed vessels to be closed between sunset and sunrise (regulation 307);
* requirement for gangways to be provided to enable safe access to berthed vessels (regulation 308);
* requirement to notify port managers of accidents involving a vessel (existing regulation 316).

In addition, the following areas of duplication with other legislative powers have been identified:

* prohibition on discharging firearms within a local port (regulation 313);
* prohibition on bringing animals into port (regulation 508);
* prohibition on harming or disturbing wildlife (regulation 509);
* prohibition on use of drag nets, grappling hooks, etc (regulation 524;
* prohibition on removal of sand, stone, etc from local ports (regulation 525)[[10]](#footnote-10).

A number of regulations have also been identified as being redundant, as they have not been used by port managers during the life of the existing regulations and are not expected to be used in the foreseeable future. These include some powers which port managers believe could not reasonably and effectively be exercised by them, even were relevant circumstances to arise. These include:

* restrictions on use of whistles, sirens or bells (regulation 315); and
* requirement to report accident or incident not involving a vessel (regulation 521).
* A detailed tabulation of regulatory duplication issues is provided in section 6.

**Inadequate enforcement powers**

Historically, very little enforcement activity has been undertaken in the local ports. Where enforcement activity has been undertaken, it has usually been necessary for port managers to do so either under other legislation, or with the support of Victoria Police. This has been the result of a number of deficiencies in the existing regulations and the authorising Act.

Many Victorian Acts, regulations and local council laws allow for the issue of infringement notices (often called “on-the-spot” fines) as sanctions for offences under those enactments. Most commonly, infringement notices are issued for minor summary offences, including parking and traffic offences, public transport offences and public order offences (such as littering or drinking in a public place, alcohol-related offences and offensive behaviour).

The offences created under the *Port Management (Local Ports) Regulations 2004* were not established as infringements under the *Infringements Act 2006* and nor were authorised officers accredited to issue infringement notices and enforce behaviour in the local ports. Hence, the only means of taking enforcement action under the regulations is to take court action against offenders. However, the penalties established under the regulations were relatively small in size, being set at five penalty units for all offences (currently $738.05). The small size of the available penalties effectively acts as a significant disincentive to the taking of court action, particularly given the size of the costs the Department would incur in taking such action and the limited likelihood that these could be recovered from offenders. Moreover, court action is unlikely to be considered worthwhile if the penalty able to be imposed is not seen as an effective sanction or, and deterrent to, the behaviour in question.

In 2009 the *Port Management Act* was amended to incorporate provision for infringements to be established in regulation. In addition, the maximum penalty in respect of offences created in regulations (section 98(1)(d)) pursuant to the Act was increased to20 penalty units. The higher maximum penalty reflects the seriousness of some offences – notably those giving rise to significant risks to life or property, such as those associated with vessel maintenance and refuelling.

Regulators, such as PrimeSafe and Transport Safety Victoria, have indicated the importance of maintaining access for their enforcement officers to enable enforcement of behaviour and activities encompassed by other legislation.

In addition to effectively constituting a disincentive to the taking of prosecutions, the level of penalties provided in relation to offences under the ports regulations can be considered unduly low in relation to the seriousness of many of the offences created, having regard to their potential consequences. In particular, a number of the offences in question give rise to substantial risks to personal safety, potentially to significant numbers of people. For example:

* conducting a commercial or organised activity without a permit implies that port managers have not had the opportunity to consider an event plan and address safety issues that will often arise due to competing uses of the port area;
* refuelling a vessel other than at appropriate facilities and in the permitted manner can give rise to risks of fire or explosion;
* discharging explosives or fireworks gives rise to clear and potentially major risks to persons and property; and
* carrying out prohibited works on vessels can give rise to both safety risks and risks of significant pollution to port waterways.

# Objectives of the proposed regulations

The objective of the proposed regulations is to contribute to the safe, efficient and effective management of Victoria’s local ports. In particular, this requires:

* minimising the risks to personal safety associated with activities undertaken in local ports as far as practicable;
* ensuring equitable access to, and protection of, port facilities, in local ports for use by a range of users wishing to undertake a range of different activities; and
* minimising pollution and other environmental harms as far as practicable.

# Overview of potential policy options

The VGR requires that all RIS must include a qualitative, high-level discussion of possible options to address the identified policy problem. This high-level discussion should precede and inform the identification of specific options that can be considered to be “feasible”, in the sense that they will, at least potentially, be effective in addressing the problem and do so in a way that implies that positive net benefits are likely to be achieved (i.e. that the benefits they confer will exceed the costs that they impose).

The VGR provides the following indicative list of options that should be considered as part of this high-level discussion:

* low-cost approaches adopted in other Australian jurisdictions;
* a non-regulatory option;
* variations to the regulations, such as the nature and scope of requirements (e.g. thresholds, frequency, groups affected);
* key options suggested by stakeholders during initial consultations; and
* risk-based and performance-based approaches, if applicable.

**Low-cost approaches adopted in other Australian jurisdictions**

The regulation of ports is an area of state/territory government responsibility, so that there is inevitably some variation in these requirements across Australia. However, each jurisdiction provides a legislative framework to manage port operations and on water vessel movements, with the administration of the legislation is supported through the prescription of penalties and the authorisation of officers to issue penalty notices for offences under the regulation in most cases. A summary of the legislative framework in each state relevant to the local port equivalent including regional or community ports, is provided in Table 4.1, below.

### ****Table 4.1: Summary of legislation governing local port operations in Australia****

|  | Act | Regulations |
| --- | --- | --- |
| Victoria | *Port Management Act 1995*  *Marine Safety Act 2010* | *Port Management (Local Ports) Regulations 2004*  *Marine Safety Regulations 2012* |
| New South Wales | *Ports and Maritime Administration Act 1995*  *Marine Safety Act 1998* | *Ports and Maritime Administration Regulation 2012*  *Marine Safety (General) Regulation 2009 (public ferry wharves)* |
| Western Australia | *Port Authorities Act 1999* | *Port Authorities Regulations 2001*  *Shipping and Pilotage (Mooring Control Areas) Regulations 1983*  *Shipping and Pilotage (Ports and Harbours) Regulations 1966* |
| Queensland | *Government Owned Corporations Act 1993*  *Transport Infrastructure Act 1994*  *Transport Operations (Marine Safety) Act 1994* | *Transport Infrastructure (Ports) Regulation 2005*  *Transport Infrastructure (Public Marine Facilities) Regulation 2011* |
| Northern Territory | *Darwin Port Corporation Act* | *Port By-laws 2013* |
| South Australia | *Harbours and Navigation Act 1993* | *Harbours and Navigation Regulations 2009* |
| New Zealand (Auckland) | *Maritime Transport Act 1994, the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009* | *Navigation Safety Bylaw 2014* |

*Notes:*

1. State based legislation operates in conjunction with the Commonwealth *Marine Safety (Domestic Commercial Vessels) National Law Act 2012* and Regulations 2013 as well as other international navigation laws
2. Ports and maritime legislation may operate in conjunction with other navigation, Crown land, planning, environment protection, marine, marine park and marine pollution legislation
3. Separate location-specific legislation such as the *Sydney Harbour Foreshore Authority Regulations 2011* may also apply to public facilities

Across Australia, the on-water operation of vessels is generally encompassed in marine legislation whereas port operations and management are encompassed in port legislation.

Review of the ports and maritime legislation identified above confirms that there is a high degree of commonality in both the approach taken and the subject matter contained these regulations, with state and territory regulation encompassing most or all of permissioning, prohibitions and restrictions on people and vessels in relation to a range of activities typically undertaken in port precincts, notably including:

* Access to port facilities for vessels, vehicles and people access;
* Arrangements for berthing and mooring;
* Use of propellers, and fishing equipment;
* Undertaking swimming, camping, vessel launching and events;
* Vehicle access and movement, handling and storage of cargo;
* Disposal of waste;
* Unseaworthy vessels and unclaimed goods; and
* Directions powers and conduct.

The regulations tend to be highly prescriptive with activities being regulated through the issue of authorisations, regulatory notices or permits determined by the port authority. The current Victorian regulations are consistent with this approach, as discussed above. However, there is some evidence of other jurisdictions that have recently revised or replaced their ports regulations moving to adopt more performance-based approaches.

Recent regulations, including the proposed regulations, tend to be more performance-based. An example is provided by the *Transport Infrastructure (Public Marine Facilities) Regulation 2011* (Queensland). The following extract from this regulation indicates the more generic nature of the regulatory powers created and indicates the degree of flexibility that the regulation provides to port managers as a consequence.

*13 General control of activities*

*(1) The chief executive may, by a regulatory notice, control access to, or the use of, a State managed boat harbour.*

*(2) Without limiting subsection (1), the chief executive may, by a regulatory notice, control activities or conduct in the boat harbour for—*

*(a) maintaining or improving the safe, secure or efficient operation of the boat harbour; or*

*(b) maintaining or improving the convenience of users of the boat harbour; or*

*(c) protecting the environment at or in the boat harbour.*

*(3) The power conferred by another provision of this subdivision to control by a regulatory notice does not limit the power conferred by this section.[[11]](#footnote-11)*

In sum, a review of the general approach is taken to the regulation of the local ports across Australia suggests that the regulatory environment is broadly similar at the national level and does not reveal any low-cost options which would merit consideration for possible adoption in the Victorian context.

**A non-regulatory option**

As discussed above, the problems being addressed via the existing and proposed regulations are threefold, incorporating the need to ensure port user safety, the need to manage competing demands for access to port facilities and the need to prevent pollution.

*Use of existing, generally applicable legislation*

In relation to the need to ensure port user safety, it was noted elsewhere that other legislation (notably the *Occupational Health and Safety Act* and the *Marine Safety Act*, as well as some other legislation of general application) addresses some of the safety issues which are also the subject of the existing regulations. A non-regulatory option would involve relying substantially on this suite of more generally applicable legislation to manage port safety and potentially supplementing it by adopting provisions similar to those elements of the existing regulations that deal with these safety issues as a code of practice, or guidelines, that would be endorsed by the Department and port managers and published widely.

To the extent that they are concerned with regulating behaviour, it is likely that, to a large extent, the regulations are consistent with, and reflect, social and behavioural norms. They also arguably reflect the port users’ inherent understanding of the risks associated with port use. These factors, combined with the low level of recorded incidents in local ports and historically relatively limited enforcement of the regulations, suggests that the existing regulations themselves may have limited effect on the behaviour of most port users and, therefore, on safety outcomes. They may, however, have been important in influencing the behaviour of a minority of people who would not otherwise behave appropriately.

Given this, it is likely that replacing these aspects of the existing regulations with a code of practice or guideline document containing similar substantive provisions would yield similar outcomes, but which did not have the force of law (instead essentially serving an information provision function) would result in an increase in non-compliance among those whose behaviour is not driven solely or predominantly by social norms or information, but by the threat of sanction.

Given the above, it would potentially be necessary to seek changes to other legislation to empower port managers to exercise some of these other regulatory powers and thereby enhance their effectiveness in the specific local port context. A similar approach could also be taken in relation to the prevention of pollution, with powers potentially being sought for port managers to undertake and enforcement role under relevant legislation such as the *Environment Protection Act*.

However, given that these powers established under other legislation are not specifically oriented toward the local ports context, they do not address as wide a range of safety issues, while they also generally do not provide implementation and enforcement powers to port managers.

In summary, the absence of local ports-specific powers in these areas would be likely to significantly reduce port managers’ ability to address these problems, particularly if the Department proved unsuccessful in obtaining authorisation for port managers to exercise existing legislative powers in these areas and other acts. An example, no other legislative head of power can be identified which would enable port managers to set aside particular areas in which certain activities can be prohibited, access prohibited or restricted and give regulatory force to such restrictions.

*Greater use of pricing mechanisms*

A non-regulatory option could also potentially be used to address the problem of ensuring equity of access to, and availability of, port facilities. A key issue identified above is that of excess demand for berths and moorings, at least in certain times and places. Associated with this is the observation that some occupants of berths and moorings in local ports make relatively little use of their vessels, while other vessel owners who may use their vessels more intensively (or may wish to do so) are unable to obtain a berth or mooring.

A potential means of addressing this issue would be to make greater use of the price mechanism. This would involve increasing the fees charged in respect of permit-only berths and moorings. Price increases would inevitably tend to reduce demand for berths and moorings, as some existing users of these facilities respond by deciding not renew their berthing permit, instead storing their vessel at home or at another facility. It can be noted that alternative berthing and mooring options are available in many cases, given that the local ports only provide approximately half of the total number of wet berths and moorings across Victoria.

Owners who make relatively little use of their vessels and thus obtain lesser benefits from the ready access to the waterway which the berth or mooring provides would be most likely to make such choices. A corollary of this impact is that some berths and/or moorings would be expected to become available to other vessel owners that are currently unable to obtain access to these facilities. Given the price increases that would be required to give rise to this dynamic, the overall impact is likely to be that a greater proportion of owners who use their vessels more intensively should be able to obtain access to berths and moorings. This can be considered a superior outcome, in that the facilities will increasingly be used by those that value them more highly. This may include businesses such as charter vessels and commercial fishers, for example, as well as owners of pleasure-craft who use their vessels more intensively than average.

Moreover, increasing the price of berths and moorings would reduce the extent of the net cost borne by the local ports budget in making these facilities available, making additional revenue available to fund necessary maintenance and renewal works on these and/or other port facilities.

However, achieving significant further movement in this direction could be problematic under current legislative arrangements. The Department’s advice is that there is currently no adequate head of power in the *Port Management Act* to support direct fee setting at local ports, or even the establishment of maximum fees in the regulations. Thus, legislative amendments to the *Port Management Act* would appear to be required before such an option could be considered. Moreover, even were such amendments to be adopted, it would be necessary for the fees to be set in consultation with port managers to ensure that fee-setting responded adequately to local circumstances.

That said, it is possible to envisage a non-legislative option that could potentially be adopted under the current arrangements. This would involve the of the Department providing a range of guidance material to port managers to assist them to better exercise their legislated fee-setting powers. This could include guidelines on estimating the cost of maintaining berths and moorings, on assessing demand and on relevant price-setting principles. Such an option could conceivably lead to a better pricing outcome than a centralised model, as it would mean that ultimate responsibility would lie with port managers. Conversely, the same dynamic of local involvement could increase the degree of difficulty involved in implementing significant changes to current practice[[12]](#footnote-12).

|  |
| --- |
| **Stakeholder question 1: Do you believe that the option of seeking to improve the allocation of berths and moorings by increasing and/or restructuring the fees applicable to these facilities should be further investigated? If so, what do you believe should be the key considerations in determining an appropriate pricing model?** |

*Short-term berths and moorings*

The above discussion refers largely to permit-only berths and moorings. However, as discussed above, a specific issue in this regard relates to excess demand for short-term berths and moorings, in respect of which no fees are currently charged. Given that fees are charged for permit-only moorings, consideration could clearly be given to supplementing this by implementing a charging system for short-term berths and moorings. Such a pricing strategy could include the adoption of differentiated pricing, with differentiation in short-term berthing/mooring charges between different local ports or different areas of local ports, reflecting differing demand levels.

This approach would necessarily reduce the demand for the short-term berths/moorings, thus likely eliminating excess demand, while also ensuring that the facilities were allocated to those who placed the highest value on them, rather than relying on “queuing” (i.e. anchoring offshore) as occurs at present in circumstances in which excess demand exists. This approach could be considered to be more equitable, as a result of the latter characteristic and is also more equitable as pricing would more closely reflect usage.

In considering this option, it is necessary to assess the likely practicability of implementing such a fee regime. Fees are not currently charged for short-term berths and moorings and there would therefore be a need to determine how to collect fee payments. It is likely that a largely self-administered system, involving the purchase of tickets from a “parking meter” located on the wharf to which the vessel was moored would be the most feasible option. However, given the practical challenges of providing and maintaining equipment in a marine environment, limited available resourcing by port managers and the likely resistance to the imposition of fees for this type of berth/mooring for the first time, there may be significant issues of non-compliance and port managers are likely to have limited practical ability to enforce compliance[[13]](#footnote-13).

|  |
| --- |
| **Stakeholder question 2: Do you believe that it is feasible to establish a pricing approach for short-term berths and moorings? Do you believe that it is desirable to implement fees for short-term berths and moorings? How might any practical difficulties be overcome?** |

**Variations to the regulations (including to the scope and nature of the requirements)**

The three feasible options identified and discussed in the following sections can be considered to fall under this heading, to the extent that they involve choices as to whether to:

* remake the regulations without amendment, or change the scope and nature of the existing requirements in order to address deficiencies identified in the context of administering and enforcing the existing regulations; and
* continue to adopt regulatory requirements that are essentially prescriptive in nature, or to move toward a more generic, or performance oriented approach.

Another general option that can be considered under this heading is whether to retain the existing regulatory approach, in which a number of the provisions of the existing regulations are substantively similar to those applied under other, more generally applicable regulation or whether to avoid including such provisions in new regulations in order to simplify the ports regulations and avoid regulatory overlap and/or duplication.

In this context, it can be noted that very little formal enforcement activity has historically been undertaken by port managers and, to this extent, it can be argued that removing such provisions from the local port regulations and relying on other channels of enforcement may make little practical difference in terms of impact on port user behaviours.

However, the Department does not favour this approach for two reasons. Firstly, the fact that little formal enforcement activity has historically been undertaken suggests that for most port users the regulations are generally consistent with social and behavioural norms. However, for a small number of users whose behaviour is not driven solely by social norms or information, the threat of sanctions is important in determining behavioural outcomes. To this extent, clearly spelling out behavioural requirements within an enforceable instrument, i.e. port specific regulations, arguably makes an important contribution to the achievement of the overall benefits. Secondly, it can be noted that a number of ports either now have staff appointed or are undertaking training for staff to act as Transport Safety Officers, giving rise to the probability that formal enforcement activity will increasingly be undertaken in the future. To this extent, ensuring that these officers are able to wield an appropriate range of powers will contribute to the effectiveness of the regulations.

**Key options suggested by stakeholders during consultation**

As discussed in section 9, below, the consultation undertaken to date in respect of these regulations is relatively limited, focusing primarily on local and commercial port managers, regulators, other enforcement agencies and peak body organisations representing recreational boaters and fishers in particular. No proposals for major changes to the regulatory approaches embodied in the existing regulations have yet been received.

However, the release of this RIS will constitute the major mechanism for consultation with users of local ports and the general public and any such proposals received will be assessed against the objectives identified in section 3 and the options analysed in the following sections.

**Risk-based and performance-based approaches**

As discussed in the following sections, the issue of moving away from the current, prescriptive regulatory approach has been given significant consideration. As a result, the proposed regulations would adopt a more principles-based approach and thus reduce the level of prescription contained in the regulations when compared with the status quo.

**Conclusion**

In light of the above consideration of the range of policy options that are generally required to be considered in the RIS context, the Department has concluded that the range of feasible options for replacing the existing regulations is restricted to a set of options involving the replacement of the existing regulations with greater and lesser degrees of substantive change. Specifically, the three options have been identified. These are:

* **Option 1**: to remake the existing regulations without substantive amendment;
* **Option 2:** to remake the existing regulations with limited substantive changes which respond only to specific deficiencies of the existing regulations identified in the course of their administration and enforcement over the past 10 years; and
* **Option 3:** to remake the existing regulations to incorporate a more principles-based approach, where feasible, in preference to the existing prescriptive approaches, while also addressing specific identified deficiencies with the existing regulations, as per option 2.

Clearly, all of these options involve taking a broadly similar approach to the regulation of local ports to that which is currently adopted. In light of this fact, and the inherent difficulties involved in assessing the expected benefits and costs of these regulations against a notional unregulated base case, the following section provides some indicative qualitative estimates of the benefits of local ports regulations which can be seen as being broadly applicable to each of these three options. By contrast, the subsequent comparative analysis of the benefits and costs of the three options identified above, which is contained in sections 6 to 8 below, is largely qualitative in nature and focuses on highlighting the incremental differences between the three feasible options identified.

# Indicative estimates of benefits and costs of local ports regulations

A RIS in respect of sunsetting regulations is required to assess the expected benefits and costs of proposed replacement regulations against the background of a notional, unregulated “base case”. In practice, however, there are many circumstances in which this task is rendered extremely difficult by the fact that the area in question has been regulated for an extended period, often encompassing several decades, making the determination of what would occur in the absence of such regulation a highly speculative task. Moreover, in many circumstances there will be few, if any, feasible means of achieving the underlying regulatory objectives other than by regulation.

This means that from a practical, policy perspective much of the focus of the process of replacing sunsetting regulations – including the RIS analysis and the associated public consultation process – will in many cases be on determining the appropriate choice among variants of the previous regulatory model.

The Department believes that this is the case in the context of the current regulatory proposal. Consequently, the discussion of the benefits and costs of proposed regulations presented in this RIS is in two parts. Firstly, this section provides a general overview of the benefits and costs of regulating in the local ports context, in response to the requirement to conduct an analysis against an unregulated base case. The subsequent sections then supplement this analysis with a consideration of the relative merits of a number of specific regulatory options.

As discussed above, it is not possible to directly quantify most of the benefits and costs of the proposed regulations. Given this, the approach taken in this section is to provide a selection of available quantitative data which may assist the reader in forming an understanding of the general magnitude of these benefits and costs and of the relationship between the regulations and other significant economic factors. This section implicitly provides an assessment of the regulations when measured against an unregulated base case, as is required in circumstances in which existing regulations are due to sunset and must be remade, as at present.

## Overview of expected benefits

The proposed regulations, which effectively constitute an updating, streamlining and modernising of the existing regulations, are expected to continue to support the efficient operation of local ports in Victoria in several ways. In particular:

* the regulation of berths and moorings contributes to the safe, efficient and effective operation of the ports, avoiding costs to port users arising from vessels being moored or berthed in areas that impede through traffic or from vessels breaking free of moorings and causing damage to other vessels, to the environment or to port facilities;
* regulations managing, prohibiting or restricting various activities that give rise to risks to port users help to prevent harm due to deaths, personal injuries and property damage;
* regulations allowing certain areas to be set aside for specific uses help to ensure that a range of competing users can be carried out contemporaneously without their impacts arising for fellow port users; and
* regulations addressing the disposal of various wastes help to prevent pollution in the port environment and the associated negative impacts on the environment and other port users.

As noted, the dollar value of these benefits cannot be reliably estimated. In part, this is a product of the fact that regulations broadly similar to those that are currently sunsetting have been in place for many decades, so that it is not possible to compare the current functioning of the ports with that which would occur in an unregulated environment. Secondly, as has been noted above, little active enforcement activity is undertaken within local ports in relation to the behavioural aspects of the regulations. While it is believed that some port users modify their behaviour because they are aware that certain behaviours are prohibited or restricted by the regulations (i.e. they wish to avoid non-compliance with the law per se) or because of the threat of sanctions – it is not possible to verify this proposition directly, or to determine to what extent user behaviour would differ in the absence of specific provisions in the areas covered by the regulations. It should be noted, however, that this issue relates only to those aspects of the regulations that are behaviourally related. Significant other elements of the regulations, such as the allocation of particular activities to particular areas within the port and prohibition of those activities being carried out in other areas and the requirement to obtain permits in respect of organised or commercial activities are effectively enforceable and do have a tangible impact on behaviours. These elements of the regulations can be considered to be the most important from the point of view of ensuring that risks to life and property are minimised.

Notwithstanding the uncertainties as to the size of the impacts in practice of the regulations noted above, it is important to recognise that Victoria’s local ports provide essential infrastructure to underpin a substantial amount of economic activity, particularly in regional areas of Victoria. The most recent estimates of the extent of this activity are contained in a report prepared for the Department by Deloitte Access Economics and completed in late 2013. As shown in table 5.1 (below), this report[[14]](#footnote-14) estimates the total value of economic activity stimulated by the 14 Victorian local ports as being $276.7 million per annum. Table 5.1 provides a breakdown of this estimate into major categories. Table 5.1 also includes equivalent estimates derived by Sinclair Knight Mertz in a previous report, prepared for the Department in 2009.

### ****Table 5.1: Economic activity stimulated by Victorian local ports****

| Benefit type | SKM report (2009) ($m pa) | DAE update ($m pa) |
| --- | --- | --- |
| Commercial fishing | 93.4 | 96.5 |
| Recreational fishing | 40.8 | 71.0 |
| Recreational boating | 70.7 | 79.7 |
| Direct local expenditure | 10.0 | 10.0 |
| Aquaculture | 0.0 | 1.3 |
| Tourism | 2.3 | 10.7 |
| Other (local businesses) | 7.5 | 7.5 |
| Total economic activity stimulated by local ports | **224.7** | **276.7** |
| Consumer surplus from recreational fishing and boating | Not provided | 16.7 |

**Source:** Deloitte Access Economics (2013)

A very substantial part of the existing regulations, including all of parts 2 and 3, are devoted to establishing powers for port managers to regulate what activities can be carried out in the ports and where, within the port, each activity can be conducted. By enabling port managers to specify where certain activities can be undertaken within ports, to prohibit certain activities in certain contexts and the like the regulations provide a basis for preventing negative externalities arising due to mutually inconsistent activities being undertaken in the same areas and help to ensure that the business of local ports is conducted in an efficient manner. For example:

* the provisions preventing unauthorised berthing and mooring ensure that waterways remain navigable and that access by vessels that are berthed or moored legitimately in local ports is not impeded; and
* the provisions allowing port managers to give directions for the movement of vessels or things causing obstructions or other problems, and to move such items themselves where necessary, also helps to ensure that the ability of port users to carry out boating related activities effectively is maintained.

The regulations thereby contribute to the maximisation of the value of the economic activity that is undertaken in the ports, and facilitated by them.

Table 5.1, above, estimates the value of these economic activities enabled by the port facilities at $276.7 million per annum, with the great majority (89.3%) of this value arising from fishing (both commercial and recreational) and recreational boating.

In addition SKM values the consumer surplus derived from recreational fishing and boating at $16.7 million per annum. Including this benefit yields a total value of the economic activities facilitated by the local ports of $293.4 million per annum. SKM noted particularly (page vii):

*“.. difficulty in estimating usage of the local ports as operated as a public good, leading to an underestimation of the use and value of local ports to the local community and regional tourists”*

That is, while the consumer surplus benefit highlighted above necessarily underestimates the total value of consumer surpluses derived from activities conducted in the local ports, those associated with other activities, such as tourism and recreation, could not be estimated reliably.

It is important to note, however, that the above measure of the value of total economic activity facilitated by the local ports is not a measure of economic benefit, in the sense adopted for the purposes of benefit/cost analysis. Rather, the appropriate measure of economic benefit for the purpose of BCA – which is at the core of the RIS process – is that of the value of consumer and producer surpluses derived from this activity – i.e. the extent to which the value derived by each party from the activity exceeds the cost of that activity to them. However, the SKM report also includes estimates of the value of these surpluses.

As noted in table 5.1, the size of the consumer surplus derived from recreational fishing and boating alone has been estimated by Deloitte as being equivalent to $16.7 million per annum. Deloitte also noted that, for commercial entities, the Gross Operating Surplus is regarded as a good measure of producer surplus and that the national accounts indicate that the GOS for the commercial fishing industry is around 17.2% of turnover. On this basis, it is estimated the producer surplus for the commercial fishing activities located in the local ports as equal to around $16.6 million (p 10). Thus, the minimum value of producer and consumer surpluses is equal to $33.3 million, while this amount is necessarily underestimates the total value of the surpluses arising from activities in the local ports, since it excludes producer surpluses arising from businesses servicing the recreational boating sector.

As above, if it is speculated that by contributing to the efficient operation of the local port sector the regulations contribute 5% to the value of ports related economic activity, this implies that they may be responsible for economic benefits in the vicinity of $1.7 million per annum.

**Safety benefits**

In addition to enabling the efficient use of the ports facilities, much of the content of the regulations is directed toward minimising the various safety risks that arise in the local ports context. These aspects of the regulations also constitute a significant source of benefits.

As discussed in section 2, over the past 10 years, there have been only five deaths in local ports that relate to the matters addressed by the existing regulations, while it is unknown whether the 28 hospitalisations recorded relate to such matters.

This data suggests that the safety risks associated with the operation of the local ports in Victoria in the current regulatory environment are low: the five deaths cited above that are relevant to the operation of these regulations occurred over a 10 year period and therefore represent an average of 0.5 fatalities per annum occurring during the life of the existing regulations.

A standard valuation of a statistical life (VSL methodology), recommended by the VCEC for use in the RIS context, is $4.2 million[[15]](#footnote-15). This implies that the average cost due to the 0.5 lives lost annually on average in the local port context due to causes related to the subject matter of the regulations is equal to:

$4.2 million x 0.5 = $2.1 million per annum.

As noted above, it is not possible to estimate the historical level of effectiveness of the regulations in mitigating the various risks associated with the activities undertaken in the local ports. However, Section 2 highlights the fact that at least five of the 24 deaths that have occurred in local ports in the past decade have been directly related to matters that are addressed in the regulations, with non-compliance by individuals with the requirements of the regulations potentially constituting a key causative factor in these cases. Observation of this level of “residual risk” in relation to matters addressed by the regulations, in the context of over 40 million visits per annum to port facilities, can be taken as suggesting that the level of “untreated risk” in these areas – i.e. the risk level that would be experienced in an unregulated environment – could be higher.

Several core aspects of the regulations, including the fact that they constitute the primary mechanism by which port managers can ensure that incompatible activities are separated within port precincts and that high risk events (such as commercial and organised activities) are managed through permit requirements, etc, can clearly be expected to contribute to significantly improved safety performance.

As discussed elsewhere, the level of specific enforcement activity in relation to the behavioural provisions of these regulations is low, however, port managers and the Department have a clear view, based on their extensive experience with the operation of the ports, that a minority of port users modify their behaviour due to their wish to avoid non-compliance with the law and/or the threat of sanctions. For this group, who would not otherwise behave appropriately, the regulations are believed to have been important in influencing behaviour.

The fact, noted above, that the great majority of visits to local ports are undertaken by members of the general public, who would in most cases have a low level of awareness of the specific risks associated with port facilities, tends to underline the importance of the regulatory requirements. That is, signs and other measures used to communicate the provisions of the regulations (including conversations with port management) serve to alert many port users to key risks and will tend to modify their behaviour, without a need for formal enforcement activity. While it would be possible to use signage in this way in the absence of formal regulatory requirements, as a practical matter it is considered substantially more likely that such signage will be provided where specific regulatory requirements exist. In this context, it should be noted that the current regulations specifically require port managers to direct signage in a range of contexts (for example, see regulation 201(3)).

Another mechanism by which the regulations are likely to be effective in modifying behaviour, despite little day to day enforcement being undertaken, arises from concern over public liability. That is, if a person is injured or killed in a boat or a port facility related incident and the master of the vessel (or controller of the port facility) is in clear contravention of a regulatory requirement, the probability of them being held liable in a legal context may be significantly greater than would be the case where no specific regulatory obligations exist. Thus, vessel owners and other relevant parties are likely to seek to comply with the requirements in part out of concern for this dynamic.

The size of the benefits associated with the existing regulations is necessarily subject to significant uncertainty, since there is no recent experience of an unregulated local ports environment either in Victoria or in other Australian jurisdictions. However, the Department believes that consideration of the likely practical importance the mechanisms highlighted above suggests that the regulations are likely to be relatively effective in reducing safety risks for port users. Given this, two indicative calculations are used to suggest the general order of magnitude of the likely benefits. These are based on effectiveness levels of 50% and 20% respectively. That is, they assume that the existence of the regulations reduces fatality rates in the local ports by between half and three quarters from the levels that would otherwise be observed. On this basis:

* if the regulations are assumed to be 50% effective: ie; to have reduced the level of loss of life that would otherwise occur in these contexts by a half, the safety benefits attributable to the regulations would be equal to $2.1 million per annum[[16]](#footnote-16); and
* if it is assumed that the regulations are 20% effective in reducing the risks associated with local ports related activities, this would imply annual benefits of around $0.525 million[[17]](#footnote-17).

It is clearly possible that the actual effectiveness of the regulations could be significantly lower than these indicative calculations would suggest. However, in considering the issue of the probable impact of the regulations in practice, the data presented in Table 1.1, above, is relevant. These show that there are well over 2 million vessel movements occurring in the local ports context annually, as well as more than 40 million pedestrian visits to the port facilities. In the context of this high level of activity in a coastal environment where the consequences of an incident are significant, the low level of harms being experienced is notable. To the extent that the existing regulations are generally consistent with, and reflect social and behavioural norms, it can be argued that similar behaviours and outcomes would be manifest in their absence. However, as argued above, the Department believes that a majority of port users comply with the regulations largely out of concern to avoid non-compliance with the law and/or to avoid the imposition of sanctions, rather than to do with a desire to conform to societal behavioural norms. To the extent that this is true, the regulations are likely to have an important effect in reducing overall harms (i.e. improving overall safety performance). That is, non-compliance by even a relatively small group would be likely to significantly increase overall risks and, therefore, harms..

It can also be noted that the above calculation excludes any potential benefits due to reductions in injuries incurred. This reflects the fact that reported injuries are few and that available information do not allow clear links to be drawn between these injury reports and the matters addressed in the regulation. However, it would be logical to expect, *a priori,* that the same mechanisms which would see the regulations reduce fatality levels would also lead to declines in injury levels. To this extent, the above estimates can be seen as conservative in nature.

## Overview of regulatory costs

The Department believes that, for the most part, the costs imposed by the existing regulations are, very limited in nature. To a substantial extent, the regulations formalise the power of the port manager to regulate where, and under what conditions, certain activities can be undertaken, in a context in which there are numerous users and numerous potential uses of the port facilities. In the absence of such powers to coordinate the activities of a wide range of enterprises and individuals, it is probable that the costs to many individual users of carrying out their preferred activities would be higher than is the case in the presence of the regulations. Given these factors, and the wide range of activities carried out within local ports, the Department believes that quantifying costs of the regulations to port users is, for the most part, infeasible.

The following highlights and discusses key areas in which costs to local port users can be identified. It includes further specific questions for stakeholders which are intended to assist the Department in assessing stakeholder views as to the above propositions and in identifying any specific areas in which stakeholders believe that the operation of the existing regulations gives rise to significant, and potentially avoidable, cost burdens.

**Costs due to activities being prohibited or confined**

As noted above, the provisions of the regulations allowing port managers to set aside certain areas for certain purposes and prohibit some activities from being undertaken other than in particular parts of the port are not considered likely to impose costs on port users overall.

At the margin, however, some aspects of these regulations could be considered to be more likely to yield discernible user costs. In particular, the existing regulation 507 prohibits the undertaking of any commercial activities within local ports, other than those undertaken pursuant to a permit issued by the port manager. The regulations do not provide any guidance or criteria to be applied in determining whether, and under what conditions, any such permits should be issued. Consequently, the possibility arises that commercial activities could be unduly constrained if this power were to be exercised in an unduly conservative fashion.

As a general comment, it must be acknowledged that these provisions of the regulations provide some discretion to port managers as to how they will be implemented in practice. Thus, at least theoretically, the costs imposed by these aspects of the regulations could differ according to the specific uses made of these regulatory powers by individual port managers. In practice, however, port managers have strong incentives to ensure the smooth and effective running of the port and are believed to be responsive to the needs of their local communities. In addition, this provision has similar wording to those used in other Crown land regulations including alpine resorts, gardens, forests, and national parks and is likely to be applied in a similar way. The Department is unaware of any significant current concerns in terms of the way that these parts of the regulations have been implemented in practice in Victorian local ports.

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| **Stakeholder question 3: Do you believe that you, or other parties, have incurred significant and avoidable costs as a result of the port managers’ powers to establish set aside certain areas within local ports and restrict the activities that can be undertaken in various areas? If so, can you provide details of these costs and suggest how they could be avoided?** |

**Cargo related costs**

Division 2 of part 3 of the existing regulations deals with cargo management. The provisions include requirements for port managers to be notified of details of cargo intended to be unloaded at the port and details of cargo carried which is not intended to be unloaded, within 24 hours of a vessel entering a local port. Also included are provisions requiring that cargo only be unloaded at specified places within the port and preventing cargo from being left at the port for more than three days after the vessel has departed. Other provisions relate to cargo to be loaded, with port managers being required to be notified of such loading at least 24 hours in advance of it occurring. Finally, the provisions deal with requirements for retrieving fallen cargo.

The costs imposed by these provisions can be considered as having two elements:

* the substantive costs of restricting where cargo can be unloaded, of requiring fallen cargo to be retrieved and of requiring unloaded cargo to be cleared from the port within a specified time. These costs are conceptually in the same category as those considered above; that is, they constrain the actions of individuals as part of a broader management scheme which aims to ensure that a range of potentially competing users are effectively coordinated in a way that minimises costs and maximises benefits for port users as a group; and
* the administrative costs associated with the notification requirements. Review of the existing regulations has led to the view that these regulations are no longer justifiable (as there is only one port, Corner Inlet and Port Albert, where cargo is loaded and unloaded) and, as a consequence, the proposed regulations provide for the port manager to manage cargo using permits and to determine any reasonable conditions attached to such permits.

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| **Stakeholder question 4: Do you believe that you, or other parties, have incurred significant and avoidable costs as a result of the port managers’ powers requiring notification of cargo movements? If so, can you provide details of these costs and suggest how they could be avoided?** |

**Costs due to unavailability of berths or moorings**

The regulations effectively restrict the availability of berths and moorings in local ports by preventing the installation of moorings without permission and preventing vessels being berthed or moored other than in approved areas, as well as preventing vessels being moored or berthed at temporary berths or moorings for longer than the specified maximum period of 48 hours (subject to particular local requirements). As noted above, these restrictions are intended to provide benefits in terms of maintaining access to waterways and the free movement of vessels more generally. However, some costs necessarily arise as a result of these restrictions. Costs are incurred where access to a local port is prevented due to the unavailability of berths or moorings.

In practice, advice from port managers indicates that the extent of this problem is likely to be limited. Unmet demand for berths and moorings arises only at certain, limited peak times of the year and only in certain areas within local ports[[18]](#footnote-18). Moreover, at first principles, the provision of additional berths and/or moorings by port managers in a controlled and planned manner is clearly likely to represent a more efficient means of minimising net costs, than allowing a situation in which vessels can be berthed or moored in an uncontrolled fashion. That is, the costs of having uncontrolled berthing/mooring arrangements, in terms of potential disputes among port users and potential obstructions to waterways and navigation are likely to outweigh any benefits from allowing users to berth or moor vessels wherever they choose.

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| **Stakeholder question 5: Do you believe that 48 hours is an appropriate maximum time limit for 48 hour berth and mooring areas? Should the same limit apply state-wide? If not, why not? Is a time limit needed for 48 hour berth and mooring areas? If so, what alternative period would be more appropriate, and why?** |

**Costs due to restrictions on vessel maintenance**

Existing regulation 310 restricts the ability of vessel owners to undertake repairs, maintenance and like activities on vessels that are berthed or moored within the local port. Specifically, such activity can be undertaken only if it either a) does not lead to the discharge of any materials or waste to land or water or b) it is undertaken pursuant to a permit issued by a port manager. A related prohibition is that of the regulation 514, which prevents users of a port leaving oily wastes.

These restrictions clearly have the potential to impose costs for vessel owners, since they may need to make other arrangements for carrying out such repairs and maintenance at higher costs. However, their clear purpose is to prevent the pollution of port land or waters, thus addressing externality issues and those of sustainability.

The mechanism adopted, of allowing such activities to be undertaken subject to a permit issued by the port manager (and only requiring the issue of such a permit where works may involve some discharge to land or water , involve the use of hot works or hazardous goods, or are likely to cause interference or impact on port amenity) is intended to minimise the costs imposed whilst providing adequate mitigation of public safety risks and controls on pollution in the port environment. The Department is unaware of any significant concerns on the part of vessel owners as to the exercise of these powers in practice by port managers and, consequently, does not believe that there are concerns regarding unreasonable costs being imposed through this mechanism.

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| **Stakeholder question 6: Do you have any concerns in relation to the use of port managers’ powers to regulate vessel maintenance in practice leading to unnecessary costs to vessel owners or other parties? If so, please provide details.** |

Some stakeholder representative bodies have expressed a desire for the regulations to permit the undertaking of recreational vessel maintenance in car parks without restriction, recognising that vessel-owners may have travelled some distance prior to launching. In the majority of cases, the car parks are outside port boundaries and are therefore not subject to the ports regulations. However, under the proposed regulations, carparks which lie within port boundaries would be covered by the same general restrictions as apply to vessels in berths or moorings – i.e. that works can only be carried out if they do not involve some discharge to land or water, do not involve the use of hot works or hazardous goods, or are not likely to cause interference or impact on port amenity. Moreover, works can be undertaken in specific set aside areas under regulation 10 or with a permit issued by the port manager under regulation 17, potentially subject to conditions.

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| **Stakeholder question 7: Do you have any concerns in relation to the proposed limited authorisation of minor works being undertaken on vessels in car parks within port boundaries? What costs, if any, would arise for other users of these facilities if this activity were to be authorised?** |

**Restrictions on recreational activities**

Several aspects of the regulations constrain recreational activities in local ports, with bans placed on a range of activities including camping, swimming, diving, fishing and fireworks. Again, the approach taken is for the most part one of enabling port managers to determine the circumstances in which such activities can be undertaken. The purpose of these restrictions is to prevent obstructions being caused to or loss of amenity for other port users and/or danger to persons undertaking recreational activities.

Some peak bodies expressed interest in being able to undertake certain recreational activities, specifically fish cleaning, anywhere in the port. Some port managers have restricted these activities away from piers due to increased costs of cleaning and waste removal, and loss of amenity complaints from other users. However, the Department is unaware of any significant concerns with the manner in which these restrictions have been implemented in practice by port managers and, consequently, the costs that are thereby imposed.

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| **Stakeholder question 8: Do you have any concerns in relation to the use of port managers’ powers regulating recreational activities in practice leading to unnecessary costs to port users? If so, please provide details.** |

**Abandoned vessels**

Under the existing regulations port managers are required to store abandoned vessels and cannot dispose of them unless and until they believe them to have “no commercial value”. It is estimated that there are currently 10-15 vessels abandoned in local ports. This requirement imposes substantial costs on port managers. Consequently, the proposed regulations would modify this provision to enable port managers to dispose of vessels and other goods if their estimated value falls below $5,000, in the case of vessels, and $1,000, in the case of other goods.

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| **Stakeholder question 9: Do you have any concerns in relation to the adoption of a value threshold of $5,000 for vessels and $1,000 for other goods, below which port managers would be authorised to dispose of abandoned vessels or goods? If so, please provide details.** |

**Specific regulatory provisions identified as entailing substantive compliance costs**

As a supplement to the above overview of the nature of the costs imposed by the proposed regulations, Table 4.3, below, identifies specific regulatory provisions that are considered to impose identifiable compliance costs. In each case it identifies the party that bears the cost in the first instance and provides a brief summary of the costs involved.

### ****Table 5.3: Summary of regulatory provisions potentially entailing substantive compliance costs****

|  |  |  |  |
| --- | --- | --- | --- |
| Reg no. | Reg no. and cost item | Costs imposed on | Nature of costs |
| 14 | Activities and access in areas set aside | Port managers | Preparation of set aside determinations and inclusion on port manager websites. Anticipate that a review of set asides in south west ports may be required |
| 16 | Notice requirements for set asides | Port managers | Most set aside signage is in place although life expectancy of signage is less than 10 years. Anticipate implementation of signage requirements for mooring areas and activities in south-west ports |
| 17 | Permits to carry out certain activities | Some port users | Cost to berth and mooring holders, other port businesses and lessees, yacht clubs, event organisers and participants, etc arising from restrictions and having to obtain permits |
| 17 | Permits to carry out certain activities | Port managers | Administration, management and compliance monitoring of applications and permits |
| 46 | Removal of vessel, goods or other thing | Port managers | Removal, storage and disposal costs associated with low value items and other things |
| 53 | Commercial activities | Some port users and other businesses | Cost to businesses arising from restrictions and having to obtain permits |
| 53 | Commercial activities | Port managers | Administration, management and compliance monitoring of applications and permits |
| 54 | Organised activities | Some port users | Cost to port users arising from restrictions and having to obtain permits |
| 54 | Organised activities | Port managers | Administration, management and compliance monitoring of applications and permits issued under reg 17 for approximately 1,000 organised activities annually in Port Phillip and Western Port (which do not require an exclusion zone under the *Marine Safety Act 2010*) and lesser number in other ports |

*Note***:** Regulation numbers refer to the proposed regulations, as described in Section 7, below.

**Administrative costs**

*Costs associated with permit requirements*

As discussed above, the proposed regulations require certain port users to apply for, and port managers to issue, permits in certain circumstances. The largest single category is that of berths and moorings, while other matters in respect of which the data show that permits are issued in practice include works, events, fixed fuelling facilities, and bunkers. Data on the number of permits issued has been obtained for Port Phillip, Western port and Gippsland ports. These collectively account for eight of the 14 Victorian local ports and would account collectively for a substantial majority of the local port activity occurring across the state. The following summarises the available data, which has been obtained from the relevant port managers.

### ****Table 5.4: Berth and mooring permits issued; Port Phillip, Western Port, Gippsland ports (2013 – 14)****

|  |  |  |  |
| --- | --- | --- | --- |
| Office / Location | Moorings | Berths | Total |
| Queenscliff | 170 | 55 | 225 |
| Rosebud | 1,017 | 28 | 1,045 |
| San Remo | 379 | 41 | 420 |
| Sandringham | 50 | 30 | 80 |
| Williamstown | 328 | 10 | 338 |
| Gippsland | 274 | 623[[19]](#footnote-19) | 897 |
| *Total* | ***2,272*** | ***787*** | ***3,059*** |

### ****Table 5.5: Other permits issued by port managers; Port Phillip and Western Port****

|  |  |
| --- | --- |
| Year | No. of works permits issued |
| 2009-10 | 29 |
| 2010-11 | 40 |
| 2011-12 | 41 |
| 2012-13 | 25 |
| 2013-14 | 23 |
| 2014-15 (to end October 2014) | 13 |
| *Average no. permits per annum* | ***33*** |

### ****Table 5.6: Other permits issued by port managers; Gippsland ports****

|  |  |
| --- | --- |
| Permit type | 2013-14 |
| Works | 10 |
| Events (under *Port Management Act 1995*) | 8 |
| Fixed Fuelling Facilities | 7 |
| Bunkering | 3 |
| *Total* | ***28*** |

The above data shows that permits for berths and moorings are by far the most numerous permits issued by port managers in practice, with 3,059 having been issued across the eight ports for which data is available in 2013 – 14. By contrast, only 61 other permits, of various specific types, were issued across the same nine ports in the same year.

No specific data on the cost to port users of obtaining permits is available. The following, therefore, comprises an indicative estimate only of the administrative costs imposed via the requirement to obtain permits.

Review of the application form used at Gippsland ports[[20]](#footnote-20) shows that it is a relatively simple, two-page form which requires five basic documents (vessel registration, insurance details (commercial vessel is only), photographic ID of applicant, recent vessel photograph and “Swing Mooring Declaration”) to be attached. It is assumed that the form can be completed and copies of these documents obtained within around one hour, on average. As most berthing and mooring authorisations are issued to recreational craft, it is conceptually appropriate to account for the time required to make these applications as having a value approximately equal to the post-tax average hourly wage rate. An approximate figure of $25 is used, yielding the following calculation:

4,500 permits[[21]](#footnote-21) x $25 = $112,500 per annum

If it is assumed that the cost to port management of processing these applications is similar to the cost incurred by applicants, this would imply that the total administrative cost associated with the issue of permits would be around $225,000 per annum across the local ports, after taking account an increased number of event and works permits. As noted above, these constitute easily the busiest ports in Victoria. Thus, the total cost across Victoria is unlikely to exceed $250,000 per annum.

This figure can be compared with the total annual revenue from berth and mooring fees generated by Victorian local ports of approximately $1.5 million. This comparison suggests that the administrative costs associated with berths and moorings could be equal to around 17% of the fees charged by port management, with around half of this total being the cost incurred by port management in processing applications.

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| **Stakeholder question 10: Do you believe that the above estimates of the administrative costs associated with the permitting system are generally accurate? If not, can you provide alternative estimates?** |

*Other administrative costs*

|  |
| --- |
| **Stakeholder question 11: Do you believe that there are any administrative costs imposed on port users by the regulations other than those highlighted above? If so, please identify what costs are incurred and which aspects of the regulations give rise to them. If possible, please provide any views you may have as to how these costs could be minimised and/or eliminated.** |

# Option 1: Remake the existing regulations without amendment

Option 1 would involve remaking the existing regulations without substantive amendment.

## Expected benefits of option 1

The Department considers the remaking of the regulations without substantive amendment to be a feasible option, given that the existing regulations have generally been found by port managers to be an effective means of achieving the objectives identified in section 3 and that they are well accepted by a wide range of users of local port facilities. As discussed above, the Department believes that the existing regulations yield benefits to society that are greater than the costs that they impose.

A key benefit of adopting this approach is that of ensuring the consistency and predictability of the regulatory environment for users of local ports. The existing regulations have been in place for over 10 years with limited amendments having been made during this time. As a consequence, local port users have a high degree of familiarity with the requirements of the regulations. There is also high degree of acceptance of the appropriateness of these requirements among the local port users who constitute the affected stakeholders.

These factors imply that remaking the existing regulations would avoid any transitional costs for port users or port managers in implementing new regulatory requirements, while providing a high level of assurance that the generally effective approach to regulating competing uses in a local port currently being adopted would continue into the future. The fact that no identifiable major changes to the port environment, other than increasing port visitations, in which the regulations operate have occurred in recent years also tends to underscore the potential appropriateness of such an option.

## Expected costs of option 1

However, while the existing regulations are considered to be generally effective, the monitoring of their implementation undertaken by the Department, including consultation undertaken with port managers, indicates that specific concerns exist in some areas and that the opportunity exists to make amendments to the existing regulations that have the potential to both enhance the benefits achieved and reduce the costs that they impose.

The nature of the specific areas of concern is discussed further below as part of the analysis of option 2. However, in general terms they involve taking action to address regulatory duplication and overlap arising from legislative change that has been made in related areas since the passage of the existing regulations, clarifying certain existing requirements in order to enhance their enforceability in practice and enhancing the powers provided to port managers in certain areas, notably relating to the management of abandoned vessels and those which cause hazards and obstruction in channels and at berths and moorings.

Thus, a key cost associated with the adoption of option 1 is that port managers would continue to be constrained in their ability to deal with identified issues of concern in these areas. Port users would also continue to be over-regulated in some areas e.g. commercial activities and works. Of particular importance is the fact that:

* many port users are likely to continue to experience significant inconvenience due to the difficulties encountered by port managers in addressing abandoned vessels and the consequent potential for obstruction to occur and for sometimes scarce berthing and mooring facilities to be unavailable to those who would wish to actively use their vessels;
* equity in respect of the allocation of scarce berths and moorings in certain locations, as evidenced by a wait list, would continue to be compromised due to the inability of port managers to re-allocate berths and moorings to those who place a high value on them; and
* equity in respect of the allocation of scarce berths and moorings during peak times would continue to be compromised due to the ability of some vessel owners to circumvent, in practice, the existing restrictions on the maximum times for which certain berths and moorings can be occupied on an uninterrupted basis.

# Option 2: Remake the proposed regulations with limited changes

## Overview

Option 2 involves remaking the existing regulations with limited substantive amendments. As noted above, the general view of port managers and users that the existing regulations are largely effective in managing the problems identified in section 2 in relation to safety, equity of access and protection of port facilities, and pollution issues in connection with the operation of local ports. However, consultation with port managers has indicated that they believe that they are deficient in some limited, but significant, respects.

These specific issues have been identified in the course of an internal Departmental review of the operation of the regulations and in the course of subsequent consultations conducted by the department with port managers and other stakeholders. Option 2 would, therefore, involve adopting specific amendments to the substance of the existing regulations to address these identified areas of concern. These proposed changes are described below.

### Addressing duplication, overlap and redundancy

Option 2 would involve narrowing the scope of the regulations in several respects. This is the result of a systematic assessment of the existing regulations having been carried out with the purpose of identifying areas of duplication, overlap and redundancy that could be addressed as part of the process of remaking the regulations. The following summarises the key changes in this regard.

**Duplication: matters also addressed under the Marine Safety Act 2010**

As noted above, the *Marine Safety Act* has been adopted since the passage of the existing regulations. This Act represents the first comprehensive, stand-alone legislation governing marine safety in Victoria and, as such, deals with a significant number of issues that are also addressed in the existing regulations. Given the primacy of the *Marine Safety Act* in relation to the operation of vessels, option 2 would include removal of several existing regulations that are also addressed in the Act. These regulations include:

* *Regulation 302(3) – (5) – vessel anchoring requirements*. This regulation requires particular configurations of anchors to be used by certain types of large vessels. It was adopted to promote the safety of port users and prevent damage to property. However, the safety duties of the master of the vessel, established under the *Marine Safety Act* are considered to embrace these issues to a large extent. Only subsections 1 and 2 of the existing regulation, which require annual inspection of moorings and tackle are proposed to be remade (as regulation 33). This reflects the large number of failed moorings and the high incidence of vessels breaking moorings in severe weather.
* *Regulation 303 – port manager may give directions about anchoring.* This regulation is a corollary of regulation 302, above, and is therefore also considered to be rendered redundant by the provisions of the *Marine Safety Act*. In respect of regulation 303, it can also be noted that it is understood this regulation has not been used during the 10 year life of the existing regulations.
* *Regulation 307 – deck openings on trading vessels and fishing vessels to be closed.* This regulation requires deck openings to be closed between sunset and sunrise as a safety measure. There are no incidents relating to deck hatches, or record of personal injuries arising, over the 10 years of operation of the existing regulations. Given this, and the establishment of general safety duties applicable to the masters of vessels under the *Marine Safety Act*, this provision is considered no longer to be required.
* *Regulation 308 – gangways.* This regulation requires that at least one good gangway be provided to enable safe access to a moored vessel. Again, this issue is considered to be adequately addressed via the general safety duties applicable to masters of vessels. In addition, should the need arise, a port manager can give directions to vessels in this regard by acting as a harbour master for the purposes of section 44G of the *Port Management Act*.
* *Regulation 316 – reporting of accidents involving a vessel.* This regulation are duplicates the *Marine Safety Act*, sections 93 and 94 which require that reportable incidents be reported to police and to the Director of Transport Safety.

**Other redundancies**

Table 7.1, below, sets out a number of other regulations which the Department considers to be unjustified or redundant, and which would therefore also not be remade under option 2. In many cases, this is due to sufficient powers being available in other legislation to address the issue in question. In other cases, consultation with port managers is indicated that these powers have not been used during the life of the existing regulations and would not be expected to be relied upon in the foreseeable future. The basis for determining that each of these regulations is redundant is also noted in Table 6.1.

**Table 7.1: Other redundant regulations**

| Regulation | Addressed in |
| --- | --- |
| Duplication with Marine Safety Act |  |
| 302. Vessel to be securely moored etc | MSA– Provisions (3), (4) and (5) relate to anchoring which is the responsibility of the master of the vessel |
| 303. Port manager or officer may give directions about berthing | MSA– Anchoring is the responsibility of the master of the vessel |
| 307. Deck openings on trading vessels and fishing vessels to be closed | MSA – Safety onboard is the responsibility of the master of the vessel (management plan). Applicable to trading vessels and fishing vessels now classified as commercial vessels |
| 308. Gangways | MSA - Safety onboard is the responsibility of the master of the vessel (management plan). Applicable to trading vessels only now classified as commercial vessels |
| 312. Identification of vessel | MSA– yachts, kayaks, etc are not registered however requirements for notification can be enforced using set asides and permits if required |
| 506. Placement of course markers | MSA – course markers are navigation aids and considerations of type and placement are matters under *Marine Safety Act*. Proposed regulation 57 will encompass the conduct of organised activities in local ports |
| Unused and redundant regulations |  |
| 306. Berthing at private jetties in a local port | Unused and not required |
| 316. Reporting of accident involving a vessel | MSA – Obligation is encompassed under other legislation. Masters of vessels are unlikely to be aware of reporting requirements to port managers |
| 315. Use of whistles, sirens all bells on vessel | Warning signals are regulated under other legislation including *Navigation Act 2012*. Regulation is unused and not required |
| 521. Reporting of accident or incident not involving a vessel | Unused and not required. Port users are unlikely to be aware of reporting requirements to port managers |
| Simplification and other duplication |  |
| 313. Firearms on vessels | Use and storage of firearms are regulated under the *Firearms Act 1996* |
| 317. Details of cargo to be provided to port manager | Regulation provides for all ports, but cargo shipments are limited to for the port of Corner Inlet and Port Albert however requirements for notification can be enforced using set asides and permits or as harbour master directions under MSA where required |
| 318. Cargo not to be unloaded until port manager notified | As above |
| 319. Cargo intended for other ports | As above |
| 320. Unloading and loading of cargo | As above |
| 321. Details of inward cargo to be provided to port manager | As above |
| 322. Cargo not to be loaded until port manager notified | As above |
| 323. Recovery of fallen cargo | Actions to recover cargo requires approval under *Coastal Management Act 1995* and other legislation |
| 508. Prohibition on animals in local port | If location is within local government area, can be enforced under local bylaws. Otherwise, a set aside area under regulation 14 can be used to restrict access by dog owners and others |
| 509. Disturbance of wildlife | Actions are encompassed under *Wildlife Act 1975*, and applicable regulations |
| 524. Use of drag, grappling hook, etc. | Actions are encompassed under *Coastal Management Act 1995* |
| 525. Removal of sand, stone, etc. | Actions are encompassed under *Mineral Resources (Sustainable Development) Act 1990* |

### 7.1.2. Continuous berthing

As discussed in section 2, above, the existing regulations have been found to be deficient, in that it has not proven practicable to enforce the limitations established in them on the amount of time for which a vessel can stay in a berth or mooring being included in the regulations. Thus, option 2 would address this issue by stating explicitly that a vessel will be regarded as being continually berthed, or moored, respectively unless it has been moved to a different berth or mooring. By providing a clear definition of what constitutes a break in mooring time, this proposed change to the regulations can be expected to significantly improve the ability of port managers to enforce this pre-existing regulatory provision, thereby helping to ensure that its underlying objective is met. In practice, where there is competition for limited berthing/mooring space, other port users might be expected to alert port managers to situations of non-compliance, thus enhancing their ability to enforce these provisions.

### 7.1.3. Abandoned vessels

Option 2 would also address the current problem of port managers being unable to dispose of abandoned vessels (or those whose owners cannot be located) in many circumstances by empowering port managers to dispose of vessels or things that they reasonably believe to be of “low value”. It is proposed that low value would be defined in the regulations as a monetary value of less than $5,000, in the case of vessels, and $1,000, in the case of other goods. This provision would provide greater powers for port managers, vis-a-vis the current regulatory requirement that a vessel can be disposed of only when it is determined to have no commercial value, which can never be realistically met because almost all vessels will have some commercial value, even if just as scrap.

### 7.1.4. Direction to move vessel or thing

Option 2 would also make a number of substantive changes to the existing regulation 324, dealing with the powers of port managers to require the removal of vessels or other things. Specifically:

* enabling the port manager to move / remove a vessel which is unseaworthy, sinking, sunk or partially submerged;
* enabling the port manager to remove from the port a vessel or thing;
* clarifying that the port manager’s direction must be in writing; and
* specifying the manner in which things are to be moved or removed.

### 7.1.5. Dumping of waste water and sewage

As noted above, the existing regulations are limited in their prohibitions on activities that can cause pollution in local ports. Specifically, there is no provision at present in the regulations preventing waste water or sewage being dumped in the waters of the port and thus creating a pollution hazard.

Option 2 would address this issue by providing a general prohibition on leaving or depositing “*any solid or liquid domestic or commercial waste, refuse, debris*” in a local port area, save for in specified circumstances in which depositing wastes will not give rise to pollution (e.g. where sewage pump-out facilities are used to evacuate waste water).

### 7.1.6. Commercial and organised activities

As noted above, while the existing regulations seek to protect public safety by requiring a permit to be issued to authorise the undertaking of any commercial activities, this restriction does not cover other organised activities of a non-commercial nature. Moreover, while the *Marine Safety Act* does deal with the latter issue, it provides only limited powers, in the sense that they are restricted to circumstances in which exemptions from waterway rules or safety equipment requirements are sought.

Option 2 would extend the existing powers in relation to commercial activities so that organised (but non-commercial) activities are also regulated on the same basis. This would, in effect, provide powers for port managers to deal with organised activities being undertaken within port waterways in circumstances in which no exemptions have been sought or obtained (and are therefore outside the scope of the powers conferred by the *Marine Safety Act*), including by imposing conditions on the conduct of such activities. This would potentially enable such activities to be undertaken in a wider range of circumstances, while maintaining appropriate safety standards.

This change has been proposed on the basis of concerns raised by port managers during initial consultations as to the risks that can arise due to the gap in the existing powers described above. While there is no clear evidence of substantial harm having occurred to date as a result of this gap in the existing regulatory powers, the Department believes that it is appropriate to act to address this issue of reasonably foreseeable risk on a proactive basis as the use of public spaces for organised activities is becoming increasingly common and the number of organised activities is expected to continue to increase.

### 7.1.7. Penalties

Under the existing regulations, penalties for all offences are set at five penalty units. Option 2 would increase the applicable maximum penalties to either 10 or 20 penalty units, depending on the offence. Table 7.2., below, sets out the offences that would be included in the regulations and the maximum penalty level in each case and compares these with the equivalent penalty provisions in the existing regulations.

**Table 7.2: Proposed offences and maximum penalties**

| Offence | Maximum proposed penalty | Current maximum penalty[[22]](#footnote-22) |
| --- | --- | --- |
| Fail to comply with temporary prohibition of access determination (Reg 11) | 10 units | 5 units (Reg 204) |
| Fail to comply with conditions of a permit (Reg 18) | 20 units | 5 units (Reg 216) |
| Fail to have permit in possession while engaging in an activity or access authorised by the permit (Reg 22) | 10 units | 5 units (Reg 217) |
| Fail to produce permit for inspection on request while engaging in activity or access authorised by the permit (Reg 23) | 10 units | 5 units (Reg 218) |
| Fail to return identity card (Reg 24) | 10 units | 5 units (Reg 219) |
| Unreasonably obstruct or interfere with permitted activity (Reg 25(1)) | 10 units | - |
| Engage in an activity other than a permitted activity (Reg 25(2)) | 10 units | - |
| Engage in prohibited or restricted activity (Reg 26) | 10 units | 5 units (Reg 202/528) |
| Enter or remain in area where access prohibited or restricted (Reg 27) | 10 units | 5 units (Reg 527) |
| Berth, moor or anchor a vessel in contravention of set aside (Reg 28) | 10 units | - |
| Install a mooring in a local port (Reg 29(1)) | 10 units | 5 units (Reg 300) |
| As master, moor vessel to a structure not provided or approved by port manager (Reg 29(2)) | 10 units | - |
| As master, berth vessel in prohibited berthing area (Reg 30(1)) | 10 units | 5 units (Reg 207) |
| As master, moor vessel in prohibited mooring area (Reg 30(2)) | 10 units | 5 units (Reg 206) |
| As master, berth vessel in a permit-only berthing area without a permit (Reg 31(1)) | 10 units | 5 units (Reg 209) |
| As master, moor vessel in a permit-only berthing area without a permit (Reg 31(2)) | 10 units | 5 units (Reg 208) |
| As master, anchor vessel in a mooring area (Reg 32) | 10 units | - |
| As master, allow vessel to be moored or berthed for a continuous period exceeding relevant specified period (Reg 33(1)) | 10 units | 5 units (Reg 210/211) |
| As master, allow vessel to be moored or berthed for a continuous period exceeding 48 hours (Reg 33(2) | 10 units | 5 units (Reg 210/211) |
| As master, fail to securely moor, berth or anchor vessel (Reg 34(1)) | 10 units | 5 units (Reg 302(1)) |
| As master, fail to anchor without endangering (Reg 34(2)) | 10 units | 5 units (Reg 302(2)) |
| As master, lie alongside another vessel in berthing area (Reg 35(1)) | 10 units | 5 units (Reg 304) |
| As master, fail to comply with alongside direction or permit (Reg 35(2)) | 10 units | 5 units (Reg 304) |
| As master, fail to maintain free access to berthed vessel (Reg 36) | 10 units | 5 units (Reg 305) |
| As master, leave vessel unattended by person authorised to act as master (Reg 37) | 10 units | 5 units (Reg 311) |
| As master, fail to manage cargo in set aside area (Reg 38) | 20 units | 5 units (Reg 320) |
| Fail to notify incident involving hazardous activity (Reg 39) | 20 units | 5 units (Reg 316/521) |
| Refuel vessel, except as permitted (Reg 40) | 20 units | 5 units (Reg 513) |
| As master, use propeller in manner which is not permitted (Reg 41) | 10 units | 5 units (Reg 309) |
| As master, fail to store equipment in a manner which may cause harm (Reg 42) | 10 units | - |
| Enter or leave vehicle standing in a local port in an area not set aside for that purpose (Reg 43) | 10 units | 5 units (Reg 400) |
| Abandon vessel in a local port (Reg 44(1)) | 20 units | - |
| Berth, moor or anchor vessel causing obstruction (Reg 44(2)) | 20 units | - |
| Failure to comply with direction to move vessel, goods or things (Reg 45(5)) | 20 units | 5 units (Reg 324/531) |
| Interfere with stored vessel, goods or thing (Reg 46(4)) | 20 units | - |
| Carry out works without a permit (Reg 47(1)) | 20 units | - |
| Carry out alterations involving hot works or dangerous goods (Reg 47(2)) | 20 units | - |
| Carry out alterations that do not involve hot works or dangerous goods other than in permitted manner (Reg 47(3)) |  |  |
| Camp in local port (Reg 48) | 10 units | 5 units (Reg 501) |
| Jump or dive from a wharf or structure on a wharf in contravention of sign (Reg 49(1)) | 10 units | 5 units (Reg 502) |
| Swim, bathe, snorkel or scuba dive under or within 20 metres of a wharf (Reg 50(1)) | 10 units | 5 units (Reg 502) |
| Clean fish in a local port in an area not set aside for that purpose (Reg 51(1)) | 10 units | 5 units (Reg 503) |
| Leave or store fishing-related equipment in an area not set aside for that purpose (Reg 51(2) | 10 units | 5 units (Reg 515) |
| Repair fishing equipment in an area not set aside for that purpose (Reg 51(3) | 10 units | 5 units (Reg 504) |
| Fail to retrieve fishing line from water when a vessel approaches or departs from a wharf (Reg 52) | 10 units | 5 units (Reg 505) |
| Conduct commercial activities, except as permitted (Reg 53(1)) | 20 units | 5 units (Reg 507) |
| Conduct commercial filming activities, except as permitted (Reg 53(2)) | 20 units | 5 units (Reg 507) |
| Conduct organised activities, except as permitted (Reg 54(1)) | 20 units | - |
| Cut, break or destroy vessel mooring (Reg 55(1)) | 10 units | 5 units (Reg 510) |
| Interfere with vessel mooring (Reg 55(2)) | 10 units | 5 units (Reg 510) |
| Damage, deface or interfere with property or infrastructure provided by port manager (Reg 56) | 10 units | - |
| Trespass on vessels (Reg 57) | 10 units | 5 units (Reg 511) |
| Discharge (or allow discharge of) fireworks or explosives (Reg 58) | 20 units | 5 units (Reg 314/512) |
| Leave or deposit litter or other waste in manner not permitted (Reg 59) | 10 units | 5 units (Reg 514) |
| Interfere with safety equipment (Reg 60) | 20 units | 5 units (Reg 516) |
| Damage, obstruct or interfere with road, footpath, access area, unloading area or gate (Reg 61) | 10 units | 5 units (Reg 518) |
| Fail to close gate bearing sign stating gate to be kept closed at all times (Reg 62) | 10 units | 5 units (Reg 519) |
| Causing hindrance or danger to navigation (Reg 63) | 10 units | 5 units (Reg 520) |
| Light fire in manner not permitted (Reg 64) | 10 units | 5 units (Reg 522) |
| Fail to comply with direction (Reg 65(3)) | 20 units | 5 units (Reg 529/530/531/532) |

The general increase in the level of the maximum penalties imposed follows consultation with port managers and benchmarking of the current offences and penalties against other, comparable offences and penalties and reflects the Department’s view that the existing maximum penalties do not adequately reflect the gravity of the offences, particularly in relation to the size and likelihood of the harms potentially resulting from the offences. A degree of differentiation between penalty levels is proposed, with a significant minority of offences which are regarded as more serious in nature, in the sense that they are more likely to result in death or injury, or substantial financial loss, attracting maximum penalties of 20 penalty units (or $2,952.20 in 2014-15 values), whereas the remaining offences would attract maximum penalties of 10 penalty units, or $1,476.10 in 2014-15 terms. By contrast, all maximum penalties are currently set at a level of 5 penalty units ($738.05), thus failing to differentiate between offences according to their seriousness.

Providing more proportionate penalties would be expected to better signal to port users the seriousness of these offences and provide more significant incentives for compliance. As noted above, port managers and their staff are increasingly being appointed / trained as Transport Safety Officers, thus giving rise to the potential for “on the spot fines” to be issued in the future, while the higher available penalties will also potentially make taking court action a more probable option where required.

## 7.2. Expected benefits of option 2

Option 2 would enhance the ability of port managers to achieve the underlying objectives of the existing regulations in a number of respects. The enhanced powers that would be provided in respect of abandoned vessels and the ability to give directions to remove vessels causing an obstruction would contribute to the achievement of better safety outcomes, by enabling potential hazards to be addressed more effectively. Moreover, better addressing these problems would also contribute to better equity outcomes by freeing some berthing and mooring spaces for more active use by other vessel owners. The enhanced provisions in relation to continuous mooring would also improve the equity outcomes by ensuring better compliance with the underlying requirements of the existing regulations specifying time limits on uninterrupted use of berths and moorings. In addition, the adoption of specific powers in relation to the prevention of the dumping of waste water would also enable pollution issues to be addressed more effectively than under the proposed regulations.

Finally, the adoption of increased penalties in respect of many of the offences set out in the proposed regulations under option 2 would also be expected to enhance compliance in some circumstances.

## 7.3. Expected costs of option 2

Some small increases compliance costs to the local port users may result from the adoption of option 2. To a significant extent any such cost increases would be the result of the greater effectiveness of option 2 in achieving compliance with the substantive provisions that already exist under the existing regulations, rather than to the adoption of substantive changes to the existing regulatory requirements. Additional cost increases that can be identified are the transitional costs that would result from the need for port users to familiarise themselves with the new regulatory arrangements. However, these are likely to be relatively modest in scale, given that the general regulatory approach to be adopted under option 2 would remain broadly similar to that of the existing regulations, with substantive changes occurring only in a limited number of specific areas, as described above.

Moreover, some aspects of option 2 can be considered to be cost reducing. In particular, the ability to address the issue of abandoned vessels more effectively and in a timelier manner should reduce the costs involved in removing such vessels from the port, potentially leading to cost savings for both port management and the owners of such vessels.

Given these factors, it is considered likely that the aggregate costs associated with the implementation of option 2 would be likely to be slightly lower than those currently incurred under the existing regulations (and, by implication, under option 1).

# 8. Option 3: Adopting more principles-based regulation

## 8.1. Overview

Option 3 is similar to option 2, as described above, but would differ from it by consolidating some of the provisions of the existing regulations (rather than simply remaking them, as under option 2) and setting out some of the key powers of port managers and other related provisions of the existing regulations in principle based terms. Key areas of change are:

**Set asides**

Part 2 of the existing regulations empowers port managers to set aside areas in which one or more of a wide range of specified activities can be permitted to occur and, conversely, areas in which a range of specified activities can be prohibited.

Under option 3, this power would be expressed in generic terms, with the regulations no longer identifying a specific range of activities that can be either permitted or prohibited in these set aside areas. Rather, it would be explicitly provided in the regulations that such set-aside powers can be used to permit or prohibit activities in order to promote “*the safe, efficient and effective management of the port*”. This change is expected to have the practical effect of providing a greater degree of discretion to port managers to determine in what circumstances it is appropriate to use these powers to restrict or prohibit access to parts of the port area. Thus, for example, circumstances may arise in which a port manager considers it appropriate to set aside an area for a particular activity which is not included on the list of activities contained in the existing regulations.

In addition, previously separate provisions in relation to the berthing, mooring and anchoring of vessels would be consolidated into the provisions in relation to set asides. This change reflects the fact that control of these activities is also regulated for the purpose of ensuring the “safe*, efficient and effective management of the port*”.

The existing offence provisions would also be broadened slightly, so that, in addition to engaging in prohibited activities or remaining in restricted areas, it would also be an offence to interfere with any permitted activity in a set-aside area. This expansion should also contribute to the achievement of the underlying objective of providing for the “*safe, efficient and effective management of the port*”.

Finally, the existing requirement for notices or signs to be displayed by the port manager advising of set asides would be replaced with a potentially less burdensome requirement to display details of any set asides “including any condition to which the determination is subject, in a place or manner that ensures the information is reasonably likely to be seen and understood by relevant users of the local port.”

**Vessel and cargo management**

Under option 3, the currently separate provisions of Part 3 of the existing regulations that relate to vessel management (division 1) would also be consolidated, while the relevant provisions in relation to cargo management would be streamlined and minimised in order to remove unnecessary regulatory burdens. In particular, existing requirements to notify port managers of cargo entering the port and what cargo it is intended to unload would be replaced by a generic provision enabling port managers to issue permits for the loading and unloading of cargo. This change reflects the fact that the former, detailed provisions are not considered to contribute significantly to the achievement of the underlying objectives of the regulations in relation to the safe, efficient and effective management of ports.

Similarly, the provisions of existing regulations 324 to 326 relating to the ability of port managers to give directions in different circumstances have been consolidated into a single power which is directly connected to the risk/harm of the behaviour/conduct concerned. This is expected to provide for greater consistency in the powers given to port managers in different circumstances and also to help to simplify the regulations.

## 8.2. Expected benefits

In general terms, option 3 can be seen as being consistent with the presumption in favour of the use of non-prescriptive regulation which is set out in the government’s *Victorian Guide to Regulation*. The VGR states:

*The Victorian Government encourages that – where appropriate and where permitted by the enabling legislation – prescriptive rules should be avoided, and consideration should instead be given to the use of:*

* + *performance-based standards (or principle-based regulation in cases where it is not feasible to set objective performance based-standards);*
  + *process-based regulation, where there are substantial risks that need to be managed simultaneously; and/or*
  + *targeted regulatory requirements proportionate to risk.[[23]](#footnote-23)*

As suggested in section 5.1, the current regulatory context is one in which a principles-based approach does appear to be feasible, with the essence of this approach being to identify clearly matters such as the principles which should determine when port managers choose to set aside particular areas for particular purposes, or prohibit certain activity from being undertaken in certain areas. As a general observation, the expected benefits of taking such an approach to regulation include:

* making clear to regulated parties the risk/harm posed by the behaviour/conduct concerned and the purpose of the regulatory restrictions being adopted (or the powers being created); and
* ensuring that the powers provided are sufficient to address all circumstances likely to arise, rather than risking a situation arising in which a set-aside cannot be declared because the regulations have failed to anticipate a particular kind of risky activity.

In the specific context of the proposed regulations, this principles-based approach would have the benefit of providing greater flexibility to port managers, enabling them to address risky activities, or those that could inhibit the effective management of the port as they arise, rather than being restricted to a set list, formulated *ex ante*. This approach could therefore improve the effectiveness of the regulations by avoiding circumstances arising in which port managers were unable to regulate where, and/or in what circumstances, certain activities could be carried out due to those activities not being listed among those which they are able to regulate.

A related benefit is that this approach would arguably improve the transparency of the regulations in the sense that it would make the purpose of providing these powers to port managers more explicit. A second respect in which transparency may be enhanced is that the text of the regulations would be likely to be significantly shorter and less detailed under this option, improving the effective ability of regulated parties to read and understand the regulations.

Moreover, as suggested above, if port managers were also required to display details and conditions of the set aside, this could further assist in communicating to the users of individual ports the nature of the key risks and areas of concern in respect of the operation of that port, thus potentially exercising a positive influence on port user behaviour.

## 8.3. Expected costs

A key dynamic in relation to the existing regulations is that their major impact derives from consistency between the existing regulations and social and behavioural norms. That is, port managers report a low level of formal enforcement activity is generally undertaken, while it must also be acknowledged that the limited resources available to port managers mean that their ability to supervise all activities occurring within the port is constrained. At the same time, the experience of port managers indicates that some port users, whose behaviour is not driven solely or predominantly by social norms or information, respond to the desire to avoid non-compliance with the law and/or the threat of sanctions.

Within this context, the fact that behavioural requirements and prohibitions on certain activities are set out in the existing regulations in some detail suggests that this may be seen as a relatively important factor in achieving and maintaining the observed high level of compliance. That is, the fact that a range of activities are specifically identified as being prohibited, or subject to regulation, arguably constitutes an important element in communicating with regulated parties and ensuring effective compliance. To this extent, a potential cost of adopting option 3 is that it could risk reducing compliance levels by making the conduct required of port users less transparent than is currently the case.

Another factor related to this dynamic is that one reason that port managers undertake little formal enforcement activity appears to be that they generally have little training in this area and can, on occasion, be uncertain as to the nature and extent of their powers and obligations, particularly given the parallel powers exercised by other agents, such as the police or EPA authorised officers. The adoption of a more principles-based regulatory approach could yield costs in that it may further diminish the practicable likelihood of such enforcement activity being undertaken and thereby reduce regulatory effectiveness.

Conversely, however, it is possible that the use of guidance documents, as suggested above, would mitigate against any such difficulty arising. Moreover, it can also be argued that the provision of more generic powers may embolden port managers to make greater use of them, since there would be less doubt as to whether certain powers could legitimately be exercised in certain specific circumstances.

**Removal of reporting requirements in relation to cargo**

The VGR (p 46) requires that replacements for sunsetting regulations must reduce regulatory burdens for affected parties in at least one area. As discussed in section 8.1, above, one aspect of the changes proposed under both option 2 and option 3 is that a number of detailed requirements in relation to cargo being brought into local ports, largely contained in division 2 of part 3 of the existing regulations would be removed. This would mean, for example, that masters of vessels not carrying dangerous or hazardous goods may no longer be required, as a matter of course, to notify port managers of cargo being brought into the port, cargo being loaded or unloaded or cargo which would be trans-shipped through the port for a second destination. Rather, option 3 would simply provide a discretionary power for port managers to allow limited activities to take place in an area set aside for the purpose or to issue a permit to undertake various cargo management activities.

It is anticipated that this change will lead to cost reductions for operators of cargo vessels that use local ports.

In addition, a number of changes to other specific aspects of the regulations are expected to be burden reducing, as follows:

* Commercial activities permit requirements (proposed regulation 53, existing regulation 507) would be reduced in scope as commercial photography has been removed as an activity requiring a permit, with guidelines under the *Filming Approval Act 2014* now taking precedence[[24]](#footnote-24);
* The proposed requirements relating to works not on vessels (proposed regulation 47, existing regulation 500) are also narrower in scope than previously, now requiring works to be completed in a way that will restrict discharges to land or water and limit interference with other activities, while highlighting that the person must mitigate safety and environmental risks;
* Incident reporting requirements have been reduced (proposed regulation 39, existing regulations 316 and 521) as requirements to report vessel incidents have been removed and only major incidents relating to hazardous port activities would now need to be reported; and
* General directions powers (proposed regulation 65, existing regulations 529-533) have been substantially consolidated and reduced in scope. Under options 2 and 3, a direction can only be given where the port manager, transport safety officer or police officer believes that the direction is required to prevent:
  + significant harm or damage to health or safety, property or environment;
  + significant interference with activity, public access or amenity of the port;
  + significant interference with the safe, efficient or effective management of the port.

By contrast, the current powers enable directions to be given in a range of circumstances in which a person is contravening a provision of the regulations, regardless of the seriousness of the impact of this contravention. In summary, it is likely that the aggregate costs associated with the adoption of option 3 would be similar in magnitude to those of option 2.

|  |
| --- |
| ***Stakeholder question 12: Can you identify any additional opportunities to reduce the compliance burdens imposed by the regulations without compromising the achievement of their underlying objectives? If so, please provide some details.*** |

# 9. Conclusion

## 9.1. Benefits and costs of ports regulations

To a significant extent, the existing regulations provide a framework for the safe, efficient and effective management of local ports as an asset which is used by numerous parties for a range of purposes that, while sometimes complementary, are also sometimes competing in nature. One aspect of this is that, by providing a range of specific regulatory powers they assist port managers in managing the relevant assets for the mutual benefit of all users. Another is that they set out explicit behavioural requirements for users in a range of circumstances.

As noted above, little or no formal enforcement activity has, to date, been undertaken in connection with these regulations. Thus, the impact of the regulations occurs, to a significant extent, through the consistency of the existing regulations with social and behavioural norms. The Department believes, based on past experience in administering these regulations and its recent consultations with port managers, that there are some port users, whose behaviour is not driven solely or predominantly by social norms or information, but by the desire to avoid non-compliance with the law and/or the threat of sanctions.

Section 4, above, identified and discussed in qualitative terms a range of areas in which the regulations impose potential costs on a range of port users. While highlighting the fact that it is not feasible to estimate the size of these costs quantitatively, the qualitative discussion indicates the Department’s belief that the size of these costs is, in almost all cases, small. However, a number of specific questions have been posed for stakeholders in order to encourage feedback on this point during the public consultation process and enable any areas in which significant and/or unnecessary costs may be being imposed to be highlighted and considered further prior to finalisation of the proposed regulations. It should be noted that, in line with the requirements of the VGR the option proposed to be adopted as replacements for the existing regulations entails reductions in the extent of the existing regulatory burdens in some areas, while avoiding the imposition of any new, substantive regulatory burdens.

The size of the benefits arising from the regulations are also subject to significant uncertainty. However, the indicative estimates presented in Section 4 suggest that they are likely to include:

* Economic benefits (i.e. increased producer and consumer surplus) deriving from local port related activity of around $1.7 million per annum, or $13.8 million in present value terms over 10 years; and
* Potential benefits in terms of reduced loss of life of between $0.525 million and $2.1 million per annum, or between $4.3 million and $17.0 million in present value terms over 10 years.

Given the above, the Department believes that the benefits associated with the existing regulations are likely to outweigh the costs that they impose. Given this, and the imminent sunsetting of the existing regulations, it has determined to make replacement regulations which will come into effect by mid-2015.

As discussed above, given the range of matters dealt with by the regulations and the need for port managers to have adequate authority to deal with these matters, no regulatory alternative means of achieving the full range of identified objectives of the regulations has been identified. Consequently, the options identified and analysed above constitute variations on the existing regulations.

## 9.2. Choosing between options

Three options have been identified.

**Option 1** involves simply remaking the existing regulations without amendment.

**Option 2** is to remake the existing regulations with limited amendments that focus on addressing a number of specific areas of concern identified in the course of the administration of the existing regulations in recent years. These relate particularly to areas of regulatory duplication and overlap of arisen due to legislative changes made in related areas (notably the passage of the *Marine Safety Act* and related regulations), but also include addressing concerns in relation to compliance with mooring in berthing restrictions, powers to deal with abandoned vessels and the adequacy of penalties.

**Option 3** would also involve modifying the regulations to do with these issues, but differs from option 1 in that it would replace a range of detailed, prescriptive provisions with more generic, performance-based regulation. In addition, in some areas where regulation has been determined to be unnecessary, excessive or duplicative, the existing provisions would not be remade, thus reducing burdens in those areas.

As discussed above, the nature of the regulations is such that it is not possible to undertake a fully quantified assessment of the benefits and costs of these options. Consequently, a Multi-Criteria Analysis (MCA) is used in order to determine the preferred option.

A total of five assessment criteria have been identified, three of which are benefit related until which cost related. These are as follows:

**Benefit related criteria**

The identification of three benefit related criteria reflects the fact that the objectives of the regulations, as identified in section 3, are themselves threefold. Thus these criteria relate closely to the identified objectives of the regulations as follows:

* ability to contribute to safety outcomes in local ports by effectively managing competing uses;
* ability to address equity concerns in relation to access to local port facilities; and
* ability to prevent pollution in port waters and on port land.

The first two of these criteria have been weighted equally, at 0.2, reflecting the fact that both of these issues have historically been of significant concern within the port environment, the third criterion has been given a lower weighting of 0.1, reflecting the fact that while maintaining the land and water quality in local ports is considered a significant issue, it has not to date constituted an area in which major concerns have arisen in practice.

**Cost related criteria**

Two cost related criteria have been identified. The first of these is that of compliance costs for port users, while the second is that of administrative simplicity. The second criterion is clearly related to the first, since there is an obvious linkage between administrative complexity and compliance costs. However, it is considered as a separate criterion in light of the emphasis given by successive Victorian governments to programs designed to reduce administrative burdens, and emphasis which is predicated on the view that these burdens may in many circumstances have an effect on behaviours and outcomes which is disproportionate to the specific costs involved. The first of these cost criteria is weighted at 0.375 and the second at 0.125, reflecting the fact that substantive compliance costs are generally significant a larger than administrative burden related costs.

**Scoring**

Each of the options is scored against each criterion on a scale of - 10 to + 10. As required in the case of sunsetting regulations, each of the options is scored against a notional unregulated base case. Thus, if the expected outcome under a particular option in respect of a particular criterion is more favourable than in the unregulated base case, the score will be positive. Conversely, if the expected outcome is less favourable, the score will be negative.

**Multi-criteria analysis**

*Benefit Related Criteria*

*Ability to contribute to safety outcomes by effectively managing competing uses*

All of the identified options receive positive scores against this criterion, since all involve providing a range of regulatory powers to enable port managers to manage where particular activities can and cannot be undertaken within the ports, thus preventing or minimising situations in which risks arise from mutually incompatible activities being undertaken at the same time and in the same place, therefore enhancing safety for all port users. Option 1 scores + 5 on this criterion, reflecting the fact that it has historically proven generally effective in enabling port managers to achieve this regulatory objective in a wide range of circumstances. However, option 2 scores more highly on this criterion, with + 7. This higher score reflects in part the fact that the provision of additional powers in respect of the movement of abandoned vessels, as well as arrangements for port managers to require vessels to be moved will improve their capabilities in this regard. It also reflects the expansion of the existing powers to control commercial activities to include other organised activities that are not of a strictly commercial nature.

Option 3 also contains these additional powers, however, it would also provide greater flexibility to port managers in decision-making as to set aside and as to what activities can be permitted and/or prohibited in certain areas. This is the result of the adoption of a more generic, performance oriented approach to establishing these regulatory powers under option 3. This means that port managers would be able to exercise the range of set-aside powers and other, related provisions in any circumstances that they consider appropriate, rather than being limited to situations in which one of a number of activities specifically identified in the regulations is being undertaken. The expanded powers thus provided should, over time, enhance the effectiveness of these provisions in practice to some degree. Given this, option 3 receives the highest score on this criterion, of + 8.

*Ability to address equity and availability concerns in relation to local port facilities*

Option 1 scores + 5 against this criterion. This reflects the fact that it provides a range of powers that would not otherwise be available to port managers in the unregulated base case to address issues of equity of access. In particular, it provides limits on the amount of time for which vessels can be continually berthed or moored and provides powers to port managers to remove abandoned vessels under certain circumstances, thus freeing berths or moorings for other users.

Option 2 scores slightly more highly on this criterion, with + 7. This reflects, in part, the fact that the clarification of the requirements in relation to the maximum amount of time for which vessels can be continuously berthed will enhance the ability of port managers to enforce these limitations on berthing/mooring periods in practice. The enhancement of port manager powers to remove vessels causing obstructions and to remove abandoned vessels also partly accounts for the higher score of option 2.

Option 3 scores slightly more highly than Option 2 on this criterion, with + 8. While its substantive provisions in in the relevant areas are, for the most part, identical, the improved provisions in relation to set-asides and relating matters should contribute to better equity, as well as safety outcomes. This reflects the fact that the provision of more flexible powers in these areas should enable port managers to better protect the amenity of all users.

*Ability to prevent pollution in port waters and on port land*

Option 1 scores +5 against this criterion. It receives a positive score because the existing regulations (which would be remade under option 1) incorporates prohibitions on leaving oily waste – a significant pollution issue in the ports context – in ports and because it prohibits works being undertaken on vessels other than in circumstances in which no “materials or waste” are deposited on port land or in port waters – thus effectively creating a prohibition on leaving any “materials or waste” arising from works.

Option 2 scores more highly against this criterion, with + 7, largely because, in contrast to Option 1, it also incorporates restrictions on the dumping of waste water, thus addressing another potentially significant source of water pollution in the ports context. Option 3 is identical to option 2 in this respect and, consequently, it receives the same score of + 7.

*Compliance costs*

All three options receive negative scores against this criterion, since any of the regulatory options necessarily imposes higher costs on port users than would be experienced in an unregulated base case. Option 1 receives a score of - 3. This reflects the fact that, as discussed in section 4, the extent of the costs which the existing regulations impose is considered to be limited in nature, albeit that quantification has not proved possible.

Option 2 also receives a score of -3. Compliance costs for some port users may, in fact, increase under option 2, albeit that, as pointed out in section 7, to the extent that this occurs, it would primarily be the result of option 2 providing for improved management and enforcement of the regulations and, hence, improve levels of compliance, rather than any increase in costs due to changes in the substantive requirements of the regulations. Conversely, however, the changes proposed under option 2 in respect of the removal of abandoned vessels are expected to be cost reducing in nature. This reflects the fact that they are expected to allow this problem be dealt with in a more timely fashion, with lower vessel removal costs from being incurred where the vessel is less deteriorated when its removal is attempted. While the relative size of these offsetting cost impacts cannot be estimated precisely, the Department considers that the two effects are of broadly similar size. Thus, the overall level of compliance costs under Option 2 is expected to be similar to those incurred under Option 1. Option 3 also receives a score of -3 against this criterion, as no substantive differences in compliance costs have been identified between Options 2 and 3. .

*Administrative burdens*

Option 1 receives the lowest score, of -6, against this criterion. This score reflects, to a significant extent, the administrative burdens arising from the need to provide detailed information to port managers regarding the movement of cargo into and out of ports, including in relation to cargo that will be trans-shipped, rather than being unloaded at a particular port.

By contrast, option 2 would largely remove these existing administrative burdens and therefore receives a significantly better score, of -3. Option 3 receives a slightly lower score of -4. This reflects the fact that despite the proposed adoption of a more flexible and less prescriptive approach to set aside and permits to undertake particular activities, the administrative burdens associated with these processes to some extent when compared with option 2 will be slightly higher.

**Performance of the options against the identified criteria**

Table 9.1, below, summarises the scores of each of the three options discussed above in terms of each of the five assessment criteria. In each case, the final score on each criterion is reached by applying the relevant waiting for that criterion to the raw score.

Table 9.1 shows that all three options receive an overall positive score. This indicates that each of the regulatory options identified is expected to yield net benefits by comparison with the unregulated base case against which all are assessed.

Option 1, that of remaking the existing regulations without substantive amendment, receives the lowest score, of + 0.625. Whilst it receives significantly positive scores on all three benefit criteria identified, these scores are, in each case, lower than those received by either option 2 or option 3. In addition, option 1 receives the lowest or equal lowest scores in relation to both substantive compliance costs and administrative burdens.

Options 2 and 3 receive a relatively similar scores, of + 2.000 and + 2.275, respectively. These two options receive identical scores in relation to one of the benefit criteria (pollution management), but option 3 receives a slightly higher score in relation to the ability to facilitate effective management of competing uses of the port assets in order to ensure user safety and the ability to address equity and availability concerns in relation to local port facilities. These two options also receive similar scores in respect of substantive compliance and administrative costs, but option 3 receives a slightly worse score in relation to administrative burdens.

**Table 9.1: Multi-Criteria Analysis of identified feasible options**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Option 1 | Option 2 | Option 3 |
| Safety/competing uses | + 5 x 0.2 = + 1.0 | + 7 x 0.2 = + 1.4 | + 8 x 0.2 = + 1.6 |
| Equity/availability | +5 x 0.2 = + 1.0 | + 7 x 0.2 = + 1.4 | + 8 x 0.2 = + 1.6 |
| Pollution management | + 5 x 0.1 = + 0.5 | + 7 x 0.1 = + 0.7 | + 7 x 0.1 = + 0.7 |
| Compliance costs | -3 x 0.375 = - 1.125 | - 3 x 0.375 = - 1.125 | - 3 x 0.375 = - 1.125 |
| Administrative burdens | -6 x 0.125 = - 0.75 | - 3 x 0.25 = - 0.375 | -4 x 0.125 = - 0.5 |
| *Total* | ***+ 0.625*** | ***+ 2.000*** | ***+ 2.275*** |

Given the above, it is proposed to proceed with option 3, involving the making of replacement regulations that address a number of specific areas of concern with the operation of the existing regulations, as well as reducing the degree of prescription of the regulations and substituting a more flexible and performance oriented approach.

# 10. Consultation

Extensive consultation has been undertaken with a range of stakeholders during the course of the development of the proposed regulations. Stakeholders consulted have included all Victorian port managers, several Victorian government departments and agencies with responsibilities relating to the local ports, commercial port managers and peak bodies representing both recreational fishers and boaters. A full list of organisations consulted during the preliminary consultation process is as follows:

* + Port managers:
  + Glenelg Shire Council
  + Moyne Shire Council
  + Warrnambool City Council
  + Colac Otway Shire Council
  + Great Ocean Road Coast Committee Incorporated
  + Barwon Coast Committee of Management Incorporated
  + Parks Victoria
  + Gippsland Ports Committee of Management Incorporated
  + Transport Safety Victoria (TSV)
  + Victorian Regional Channels Authority
  + Commercial port managers:
  + Port of Melbourne Corporation
  + Port of Portland Ltd
  + Patrick Ports - Hastings
  + Department of Economic Development, Jobs, Transport and Resources (DEDJTR) formerly Department of Transport, Planning and Local Government (DTPLI)
  + Department of Environment, Land, Water and Planning (DELWP) formerly Department of Environment and Primary Industries (DEPI)
  + Department of Justice and Regulation
  + Regulators:
  + Consumer Affairs Victoria
  + Environment Protection Authority (EPA)
  + Primesafe
  + WorkSafe Victoria
  + Peak bodies
  + Boating Industry Association of Victoria (BIAV)
  + Victorian Recreational Fishing Peak Body (VRFish)
  + Victorian Water Police (Williamstown)

Table 9.1, below, highlights the substantive impact of these consultations, in terms of the impact of the views presented on the shape of the current regulatory proposal. In each case, the table identifies the number and a broader content of the existing regulations to which the comment refers, the stakeholder providing the relevant input and the issue which they highlighted, as well as summarising the change proposed to be made to the relevant provision as part of the adoption of the proposed regulations.

**Table 10.1: Summary of regulatory changes arising from the consultation process**

| Existing reg no. | Content of regulation | Stakeholder | Issue highlighted | Action taken |
| --- | --- | --- | --- | --- |
| 103 | Definition – unrestricted berthing and mooring areas | Port managers | Maximum duration of stay should be consistent with the demand and nature of activities at each port | Proposed to maintain statewide consistent duration as 48 hours (as per reg 301) and seek feedback |
| 103 | Definition - wharf | TSV | Clarify distinction to vessel operations provided for by the *Marine Safety Act 2010*. Need to define berth and mooring and purpose and include pontoon | Include pontoon in definition for wharf. No specific definition adopted for berth and mooring |
| 104 | Exemptions from regulations | DELWP | Provide for the activities of traditional owners | Hunting and fishing activities are not regulated under these regulations |
| 200, 201, 203, 502 | Set asides for vessels and swimmers | TSV | Regulation of the use of State waters by boaters and bathers is encompassed under s184 of *Marine Safety Act 2010* | Provisions are necessary to support the functions of the port manager to allocate and manage moorings under s44A(3) of *Port Management Act 1995* |
| 200, 201, 203, 502 | Set asides for vessels and swimmers | TSV | Determinations of the port manager should be publicly available | Provisions included for determinations to be in writing and published on port managers’ websites and in gazette |
| 203 | Port manager may set aside area where entry or access is prohibited | Primesafe | Primesafe officers may require access to locked areas for inspection purposes | Make provision for exemptions for other authorised officers to act in accordance with public duties |
| 203 | Protection of flora, fauna, geology, historical and cultural features | Port managers | Could be managed by provisions of *Planning and Environment Act 1987* | Retain as not all local ports are fully within local government boundaries |
| 205(4) | Requirement for notice or sign on the point of land nearest that area | Port managers | Provision of a notice or sign may not be practicable | Provide for details of set aside to be displayed in most appropriate manner |
| 208, 209 | Moored / berthed in regulated area | Port managers | Regulated and unrestricted are not terms readily understood by boaters | New terms proposed which are readily understood by port users |
| 210 | Time limit on vessel berthed in restricted area | Port managers | Poor compliance with berth and mooring time limits due to lack of clarity regarding time restriction | Define ‘continuous’ time period to assist enforcement |
| 212, 214, 215 | Considerations for issuing / varying / cancelling an authority | DELWP | Environmental considerations have been omitted | Include harm to the environment as one of the considerations of the port manager |
| 212 | Issuing an authority | Port managers | Port manager is obligated to issue an authority unless significant risk regardless of previous behaviour of holder | Allow consideration of previous non-compliance when determining whether to issue a permit |
| 219 | Identity cards | TSV | Clarify authorising power for enforcement | Require identity cards for port managers given s44C of *Port Management Act 1995* enabling delegations to staff. Authorising power for transport safety officer is under *Transport (Safety Schemes Compliance and Enforcement) Act 2014* |
| 300 | Offence to install mooring | Port managers | Illegal mooring to trees and inappropriate structures may cause environmental harm or property damage | Include offence to use unapproved mooring |
| 300 | Offence to install mooring | Port managers | Illegal anchoring in mooring areas may cause damage to property or harm to the environment | Include provision to prohibit anchoring in mooring areas without a reasonable excuse |
| 302(3) - (5) | Anchoring requirements | TSV | Safety duties are the responsibility of the master of the vessel | Remove |
| 303 | Give directions about anchoring | TSV | Safety duties are the responsibility of the master of the vessel | Remove |
| 306 | Berthing at private jetties in a local port | Port managers | Difficult for port managers to enforce as they are not a party to the Crown land licence | Remove |
| 307 | Keeping deck openings closed | TSV | Safety duties are the responsibility of the master of the vessel | Remove |
| 308 | Use of gangways | Port managers | Safety duties are the responsibility of the master of the vessel | Remove |
| 309 | Use of propellers | Port managers | All propulsion systems may cause erosion or property damage if operated inappropriately whilst at berth | Amend to include all propulsion systems |
| 310 | Repairs, maintenance, etc to vessels | VWA | Some maintenance is not regulated under *Occupational Health and Safety Act 2004* | Amend to require notification of use of hot works or dangerous goods |
| 310 | Repairs, maintenance, etc to vessels | BIAV | Minor maintenance of vessels may be required in boat ramp carparks prior to launching | General works provisions to apply to those works carried out within port boundaries |
| 311 | Leave vessel unattended | Port managers | Inclusion of requirement for owner to remain on board in regulated berthing area is not practicable | Remove |
| 312 | Identification of vessel | Port managers | Vast majority of vessels berthed or moored in a local port are subject to an authority issued by the port manager and have a unique identifier (registered vessels) | Remove |
| 313 | Possession and use of firearms | DELWP | Overlap with *Firearms Act 1996* | Remove |
| 314 | Explosives, fireworks | Port managers | Duplicates reg 512 in part | Provision retained with responsibilities reduced for the master of the vessel |
| 315 | Use of sirens and bells | TSV | Safety duties are the responsibility of the master of the vessel | Remove |
| 316 | Reporting accidents involving vessels | TSV | Overlap with *Marine Safety Act 2010*. Retain reporting for hazardous port activities for port risk management purposes | Remove except as noted |
| 317 to 322 | Details of cargo to be provided to port manager | Port managers | Retain for some ports. Details can be obtained by issuing a permit | Remove and incorporate as permit activity |
| 324 | Direction to remove vessel, goods or things | TSV | Review terminology for unseaworthy vessel | General usage applied and ‘sinking’ added for clarity |
| 324, 325 | Removal of abandoned vessel, goods or things | Port managers | Major issue impacting effective port management | Amend regulation for reasonable actions by port manager |
| 324, 325 | Removal of abandoned vessel, goods or things | Consumer Affairs Victoria, DOJ | Consider owner’s rights and value of goods in determining course of action | Amend regulation for reasonable actions by port manager with principles-based on low and medium value goods with guidance from Australian Consumer law. Public feedback sought on low value threshold |
| 500 | Works to be undertaken | TSV | S211 of *Marine Safety Act 2010* provides for the control of navigation in the vicinity of works carried out on, over or under waters | Work permits required as port managers responsible for public safety, beyond safe operation of vessels |
| 501 | Camping | Port managers | Use of landside and sewage pump-out facilities need to be encouraged | Add waste disposal regulation |
| 502 | Swimming and snorkelling | Port managers | Scuba diving also poses a safety risk | Expand regulation to include scuba diving |
| 502 | Swimming | TSV | S184 of *Marine Safety Act* provides to regulation of use of State waters by boaters and others | No change – *Port Management Act 1995* purports to provide powers for port managers to manage the operations of local ports |
| 503 | Cleaning of fish | Port managers | Problematic for other users as fish cleaning may occur on wharves or structures | Amend to include wharves |
| 504 | Cleaning of fish | VRFish | Seek ability to undertake fish cleaning in local ports | To balance competing interests and address amenity issues |
| 506 | Placement of course markers | TSV | Regulated as navigation aids under *Marine Safety Act 2010* | Remove |
| 507 | Commercial activities | Port managers | Regulatory gap in *Marine Safety Act 2010* for organised events which pose public safety risk | Include separate regulation for organised events |
| 507 | Commercial filming | BIAV / VR Fish | Query need for regulation of commercial photography and filming | Ensure consistency with *Filming Approval Act 2014* including removal of some commercial activities from scope of the regulations |
| 508 | Animals | Port managers | Regulation is not required | Remove – can be regulated using set asides where problematic |
| 509 | Disturbance of wildlife | DELWP | Encompassed by *Wildlife Act 1975* and other legislation | Remove due to duplication and lack of enforcement powers for port manager |
| 513 | Offence to operate fixed fuelling installation | Port managers | Refuelling from unsuitable containers is a major safety risk for port users and community | Add expanded refuelling regulation |
| 514 | Offence to leave oily waste | EPA | Clarify fish offcuts as litter and include industrial waste eg paint | Add provision for industrial waste (to emphasise EPA requirements for port users) |
| 514 | Offence to leave oily waste | Port managers | Restrict overnight berthing and mooring to areas where facilities are available to prevent inappropriate disposal of untreated wastewater from vessels. Address inappropriate sewage disposal from vessels | Add provision for disposal of wastewater from vessels |
| 522 | Fires not permitted | Port managers | Need to provide for a fireplace | Amend to include a fireplace |
| 523 | Use of certain equipment and combustible material | VWA | Activities can be regulated under *Dangerous Goods Act 1985* | Remove due to duplication and lack of enforcement powers for port manager |
| 524 | Use of grappling etc | DELWP | Encompassed by *Coastal Management Act 1995* and drag net activities under *Fisheries Act 1995* | Remove due to duplication and lack of enforcement powers for port manager |
| 525 | Removal of sand, stone etc | DEPI | Encompassed by *Mineral Resources (Sustainable Development) Act 1990* | Remove due to duplication |
| 526 | Prohibit entry to certain areas | TSV | Encompassed by *Marine Safety Act 2010* | Broader powers needed for land beyond onwater navigational safety |

Note: BIAV = Boating Industry Association of Victoria, DEPI = Department of Environment and Primary Industries, EPA = Environment Protection Authority, TSV = Transport Safety Victoria, VRFish = Victorian Recreational Fishing Peak Body, VWA = Victorian Worksafe Authority

A particular focus of the consultation undertaken to date has been the port managers. This reflects the fact that this group are primarily responsible for the implementation and enforcement of the existing regulations and therefore have the most detailed understanding of local port environment, the application of the regulations in practice and the problems arising from their implementation. As a result, the development of the proposed regulations has been undertaken with substantial input from port managers, with a view to using their insights to revise and update the regulations in ways that will enable them to achieve more effectively they’re identified objectives.

A key element of the consultation process undertaken with port managers was the conduct of extensive discussions of the regulations at a meeting of all Victorian local ports managers conducted on 10 October 2014. This discussion covered:

* experience with the practical implementation of the regulations and key problems and issues arising;
* the nature and seriousness of safety-related and other incidents arising from the operation of the local ports; and
* identification of key areas in which port managers would like to see change to the existing regulations.

Following this meeting, a questionnaire seeking data on the types and consequences of incidents occurring in local ports over the past 10 years, together with views on deficiencies in the existing regulations and proposals for their improvement was distributed to all port managers. Responses were received from the majority of port managers and were analysed and considered as part of the process of finalising the regulatory proposal, as well as contributing to the development of the discussion of the problem contained in section 2 of this RIS.

The release of this RIS constitutes the next stage in the consultation process and is the primary means by which individual users of the local ports are able to provide input to the regulatory process. This RIS is being published on the Department’s website and is being sent to all of the stakeholders listed above who were engaged in the initial consultations.

Written comments on the RIS and the issues raised within it will be received for a minimum of 28 days and will be considered prior to the finalisation of the proposed regulations.

# 11. Administration and enforcement

## 11.1. Behaviour and activities in the local ports

Discussions with port managers and stakeholders indicate that behaviour of local ports users is generally good, with port managers reporting a high degree of compliance. These regulations are generally consistent with, and reflect social and behavioural norms and are therefore widely regarded as appropriate and legitimate by a wide range of port users. This results in a high level of compliance occurring without there being a significant level of either surveillance or formal enforcement activity undertaken by port managers. It is expected that this will continue to be the case under the proposed regulations which, while simplifying the existing regulatory requirements to a significant extent and generalising a number of the powers already provided, are in general terms similar to them in approach and content.

The observed level of compliance does, however, vary to some extent with both the size of the port and the time of the year. As would be expected, a greater number of compliance issues arise in the larger ports (e.g. Port Phillip, Western Port and the Gippsland Lakes) and over the summer period. However, all the local ports have issues with non-compliance, with most advising at least one breach of port regulations being detected each week (notwithstanding that some breaches will not be detected).

Given the growth in recreational boating and competing demands for access to, and use of, Victoria’s waterways, some uses will inevitably be mutually incompatible, or at least generate risks to safety, property and the environment, as well as public equity issues that require careful management. Port managers have largely used education as a tool to encourage appropriate behaviour in the local ports, fostering awareness of the regulations and encouraged cooperation.

The type of non-compliant activities that the port managers deal with most frequently include:

* the unauthorised use of both public and private berths and moorings;
* diving and jumping from wharves and other wharf structures;
* swimming around vessels that are underway;
* performing vessel maintenance in inappropriate places;
* leaving oily waste or cleaning fishing equipment in areas not set out for this purpose; and
* vessels or goods being abandoned in the port.

Instances of anti-social behaviour by repeat offenders, such as berthing overstays, abandoning vessels, illegal mooring and failing to comply with directions of the port manager continue to constitute areas of concern and, where they give rise to significant public safety or property damage risks, or compromise equity or environmental standards, port managers have sought assistance from Victoria Police to take action.

## 11.2. Existing regulation of behaviour in local ports

The existing regulations give port managers a range of administrative powers and specify a range of offences. In particular, the existing regulations allow port managers to manage competing uses of local port facilities (such as wharves, berths and moorings) by enabling them to regulate certain activities in local ports. The regulations also provide specific powers to enable port managers to carry out their functions under the Act, including ensuring port operations are safe, efficient and effective and implementing risk mitigation measures as determined by port Safety and Environment Management Plans.

Regulation of the local ports is achieved through a combination of the administration and enforcement of the existing regulations and broader activities undertaken by port managers and the Department which aim to encourage responsible and co-operative behaviours among port users. In the regulatory category, key tools are:

* Prescriptive regulation of behaviour and activities in several areas;
* The use of set asides – i.e. identifying areas where entry to or engaging in certain activities is either prohibited or restricted to separate activities;
* Signage - the placement of advisory signage outlining the port rules; and
* Leases and permits (authorities) – issuing permits and licences that place conditions on where, when and how certain activities can be performed (under *Crown Land (Reserves) Act* and *Land Act 1958*).

In the education and behaviour categories are:

* Use of media to influence behaviour, for example via campaigns such as Life Saving Victoria’s “LOOK before you leap” campaign. Some awareness and education programs have been supported by port managers, in conjunction with other entities such as Life Saving Victoria, Department of Environment, Land, Water and Planning, and Transport Safety Victoria, and it is likely that such programs will continue to be used to address some problems, particularly those that occur through ignorance rather than wilful law-breaking;
* Face to face educational activities – using port staff to share information and safety messages with port users about safe behaviour in vessels and on wharves;
* Regular patrols – monitoring port user behaviour and ensuring that activities are being undertaken in accordance with relevant regulations, and the conditions attached to permits;
* Assisting behavioural change – providing facilities such as hopper barges and waste oil disposal facilities to support and encourage clean waterways; and
* Increasing personal responsibility – removing rubbish bins on wharves with a message to encourage users to ‘take your rubbish home’.

## 11.3. Enforcement

As noted in Section 2, very little enforcement activity has been undertaken in the local ports. This is fundamentally the result of the fact that the offences established under the ports regulations were not established as infringements under the *Infringements Act 2006*, so that any enforcement activity has had to be undertaken through the courts system or under other legislation and with the support of Victoria Police.

There is a clear need for port managers to ensure adequate and appropriate resources are available to manage new and emerging safety and environmental risks, and to promote and encourage increased levels of vigilance and compliance.

A key challenge in relation to regulatory administration and enforcement is to ensure that sanctions are set appropriately, having regard to both the nature of the offence and the likelihood of non-compliance being detected (and hence the need to ensure adequate disincentives to non-compliant behaviour are created). In addressing this issue in the proposed regulations, a range of offences that are currently subject to penalties of 5 penalty units have had the applicable maximum penalty increased to either 10 or 20 penalty units.

**Increased penalties**

A risk based approach has been adopted to ascertain the appropriate magnitude of the maximum penalties to be established in respect of different offences created by the regulations. Table 11.1, below, summarises the types of offences that have been allocated to each of the two maximum penalty levels (i.e. of 10 penalty units and 20 penalty units).

It should be noted that these are maximum penalty is able to be imposed through the court process. The actual penalties to be applied in the case of any individual offence will necessarily be determined by the courts, having regard to the circumstances of the individual case. Thus while some quite different offences (e.g. littering and lighting of fires) would have similar maximum penalty levels attached to them, it would be anticipated that the penalties actually applied by the courts would differ in a way that addressed this issue of the seriousness of the risks or consequences following from the offence.

**Table 11.1: Summary of penalties**

|  |  |
| --- | --- |
| Offences | |
| 10 penalty units | **20 penalty units** |
| Set aside areas  Set aside offences  Permit (produce on request)  Vessel management  Regulated activities (other) | Permits  Abandoned goods  Regulated activities (works, commercial and organised events, fireworks, refuelling, interference with safety equipment)  Directions |

These improvements to the sanctions arrangements available under the regulations will be supported by the explicit adoption of an enforcement pyramid that is consistent with the concept of “responsive regulation”. The pyramid is as follows (commencing with the lowest level sanctions):

* information / guidance / education
* prohibition / infringement notices
* prosecution / directions / imposition of conditions / restrictions
* revocation / suspension of ‘permissioning’.

In relation to the last point, it should be noted that much of the substance of the regulations is implemented in practice via permit arrangements. These regulations empower port managers to issue permits to authorise a relatively wide range of activities to be conducted and to impose conditions on the manner in which those activities can be conducted as part of the permit arrangements. This mechanism implies that the withdrawal of permissioning constitutes a high-level sanction that is available in respect of many types of offence.

It is also expected that improvements in the drafting of the regulations should better enable effective enforcement by clarifying the nature of the obligations placed on port users in various contexts. An example is the clarification of the requirements in relation to time limits for berthing and mooring in restricted berth and mooring areas.

In summary, the above factors are expected to improve the ability of port managers to administer and enforce the regulations, vis-a-vis the existing regulations, thus giving rise to an expectation of an improved overall level of compliance.

# 12. Statement of compliance with national competition policy

The National Competition Policy Agreements set out specific requirements with regard to all new legislation adopted by jurisdictions that are party to the agreements. Clause 5(1) of the Competition Principles Agreement sets out the basic principle that must be applied to both existing legislation, under the legislative review process, and to proposed legislation:

The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:

(a) The benefits of the restriction to the community as a whole outweigh the costs; and

(b) The objectives of the regulation can only be achieved by restricting competition.

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation:

Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).*[[25]](#footnote-25)*

Therefore, all RIS must provide evidence that the proposed regulatory instrument is consistent with these National Competition Policy obligations. The OECD *Competition Assessment Toolkit*[[26]](#footnote-26) provides a checklist for identifying potentially significant negative impact on competition in the RIA context. This is based on the following four questions:

* Does the proposed regulation limit the number or range of suppliers?
* Does the proposed regulation limit the ability of suppliers to complete?
* Does the proposed regulation limit to the incentives for suppliers to compete?
* Does the proposed regulation limit the choices and information available to consumers?

According to the OECD, if all four of these questions can be answered in the negative, it is unlikely that the proposed regulations will have any significant negative impact on competition and further investigation of competition impacts is not likely to be warranted. The above questions must clearly all be answered in the negative in respect of the proposed regulations. While the powers exercised by port managers to issue permits for various purposes and to restrict the areas in which different activities can be undertaken, the purpose of these mechanisms is to balance competing uses and ensure that all legitimate uses of local port facilities can be accommodated as far as possible, with minimum negative externalities arising between user groups.

At the margin, it is arguable that the limitation on berths and moorings which the regulations effectively create (i.e. by prohibiting unauthorised berths or moorings being created) could restrict entry to commercial markets such as tourist boating and commercial fishing. However, as noted above, these restrictions are implemented with the intention of balancing competing uses and preserving the ease and safety of navigation in the ports, rather than to limit access per se.

The absence of complaints to the Department regarding the exercise of these powers in practice by port managers is regarded as clear evidence that anti-competitive results have not arisen and that the powers are, therefore, being used appropriately. Consequently, it is concluded that the proposed regulations are unlikely to have any material impact on competition.

# 13. Evaluation

As stated in section 3, the objective of the proposed regulations is to contribute to the safe, efficient and effective management of Victoria’s local ports. In particular, this requires:

* minimising the risks to personal safety associated with activities undertaken in local ports as far as practicable;
* ensuring equitable access to, and protection of facilities, in local ports by a range of users wishing to undertake a range of different activities; and
* minimising pollution and other environmental harms as far as practicable.

The performance of the proposed regulations must, therefore, necessarily be measured with reference to these objectives. The following identifies key data which will be used in evaluating the performance of the proposed regulations.

**Minimising risks to personal safety**

*Relevant data*

The key data set that is available to measure performance in relation to this objective is the database of incident reports compiled by port managers. As discussed above, this database indicates that there were 24 fatalities and two serious injuries occurring in or near the local ports over the past 10 years. However, only five of these fatalities related to matters directly addressed by the existing regulations.

Also relevant is the data on vessel and pedestrian movements in local ports, presented above in table 1.1. This data will be important in benchmarking any future changes in fatality and injury levels.

*Evaluation*

Evaluation of the above data will form of the major means of benchmarking the effectiveness of the regulations in minimising personal safety risks. This will require analysing the fatality and injury dated to identify the subset of fatalities and injuries that relate to matters dealt with in the regulations. Future fatality and injury numbers will need to be benchmarked against those recorded in the past decade, with a comparison of vessel and pedestrian movements also being made in order to be able to identify changes in relative risk (i.e. fatalities and injuries per pedestrian visits or per vessel movement).

At a minimum, it would be expected that this relative risk level would show some reduction from the levels recorded over the past decade.

**Minimising pollution and environmental harms**

*Relevant data*

Ports incident data set

*Evaluation*

Review of the port incident data indicates that at least some incidents involving spills of oil and other pollutants are incorporated in the database, albeit that it is not clear in many cases whether the incidents relate to matters that are addressed in the regulations and, therefore, whether all these incidents are relevant to an assessment of the performance of the regulations.

However, this database will be used as far as possible to identify trends in the number and seriousness of pollution incidents recorded under the proposed regulations. Assessments of performance in this regard will also necessarily be supplemented by the professional views of port managers.

**Ensuring equitable access to and protection of port facilities**

*Relevant data*

Ports incident data set

Complaints data

Wait lists for berths and moorings

*Evaluation*

No formal data set is available that would easily enable the performance of the proposed regulations against this objective to be measured. However, it is likely that aggrieved port users who feel that they have not had adequate access to port facilities in various circumstances would register complaints with port managers. For example, this could potentially occur where overstaying of berths and moorings occurs or where the scheduling of organised activities is considered to unreasonably impede port users’ access to some port facilities.

Consequently, port managers will be encouraged to retain and compile complaints data to assist in the future measurement of performance against this objective. In addition, as with the measurement of performance in relation to pollution prevention, there will necessarily be an aspect of consideration of the professional judgement of port managers.

Relevant officers of the Department will have the primary responsibility for collecting and analysing the above data and completing the evaluation of the effectiveness of the proposed regulations.

# Appendix 1: Summary of proposed substantive changes to the existing regulations

Table A1, below, describes the proposed substantive changes to the existing regulations, as well as providing a summary explanation of the underlying reason for making the proposed change.

**Table A1: Summary of proposed changes to the existing regulations**

| Proposed reg no. | **Subject** | **Existing reg no.** | **Reason for change** |
| --- | --- | --- | --- |
|  |  |  | Penalties throughout have been made consistent with related marine and other regulations. |
| PART 1 | **PRELIMINARY MATTERS** |  |  |
| 1 | Objective | 100 | Better reflects the purpose of the regulations. |
| 2 | Authorising provision | 101 | No change. |
| 3 | Commencement | 102 | Different date (regulations must come into operation before existing regulations expire). |
| 4 | Revocations | N/A | Clarification needed. |
| 5 | Definitions | 103 | Definitions to facilitate appropriate interpretation of provisions. |
| 6 | Certain Acts, regulations and other instruments prevail | 105, 106, 107 | Changes needed for recent legislative changes. |
| 7 | Harbour master’s directions prevail | 108 | Clarification needed given presence of harbour masters in some ports. |
| 8 | Liability for offences | 104 | Some parties need liability exemptions to be able to effectively carry out their duties. |
| PART 2 | **POWERS OF PORT MANAGERS** | | |
| Division 1 | **General set aside determinations** | | |
| 9 | Application of Division | N/A | Clarification needed as to application. |
| 10 | Activities in and access to areas set aside | 200, 201, 203 | Set asides outlined as performance-based regulation. |
| 11 | Temporary prohibition of access in certain circumstances | 526, 527, 528 | Need to prepare access prohibition determination in writing for transparency. |
| Division 2 | **Set asides determinations for specific purposes** | | |
| 12 | Berthing, mooring and anchoring | 205 | Clarification needed as to application. |
| 13 | Management of cargo | 311 | Clarification needed as to application. |
| Division 3 | **Conditions, notifications and record-keeping requirements** | | |
| 14 | Set aside determinations subject to conditions | 200(2), 201(2), 203(2) | Set aside conditions outlined as performance-based regulation. |
| 15 | Port manager to maintain records of set aside determinations | N/A | Need to prepare determination in writing for transparency. |
| 16 | Notice requirements for set aside determinations | 205 | Revised for practicable display of information for port users. |
| Division 4 | **Permits** | | |
| 17 | Permits to carry out certain activities or access | 212 | Need to add principles for harm or damage to the environment, for interference and likely or previous non-compliance as considerations for issue of permits. Permits may be issued for cargo management. |
| 18 | Offence not to comply with permit | 216 | Revised to refer to permit and any attached conditions. |
| 19 | Purpose of permit not to be detrimental | 213 | Consistency with long-term operation of some ports. |
| 20 | Suspension of permit | 215 | Conditions for suspension outlined as per issue of permit. Need to clarify that suspension notice must be provided to holder, holder’s employee, agent or contractor and when it takes effect. |
| 21 | Cancellation or variation of permit | 214 | Conditions for cancellation outlined as per issue of permit. |
| 22 | Permit to be in possession of holder | 217 | No material change. |
| 23 | Person to produce permit for inspection on request | 218 | No material change. |
| Division 5 | **Identification of delegates of the port manager** | | |
| 24 | Identity cards | 219 | Amended to reflect section 44C of the Port Management Act. |
| PART 3 | **MANAGEMENT OF LOCAL PORTS** | | |
| Division 1 | **General set aside determination offences** | | |
| 25 | Offence to interfere with permitted activity | N/A | Need to provide clarity about conduct of activities. |
| 26 | Offence to engage in prohibited or restricted activity | 202 | Revised to provide for restricted activities. |
| 27 | Offence to enter or remain in area where access prohibited | 204 | Reviewed to enable enforcement of set asides. |
| Division 2 | **Berthing, mooring and anchoring offences** | | |
| 28 | Vessel to be berthed, moored or anchored in accordance with determination | N/A | Need to provide clarify about berthing, mooring and anchoring set asides. |
| 29 | Offence to install or use unapproved mooring offence | 300 | Need to prevent mooring to other assets including trees and structures. |
| 30 | Vessel not to be berthed or moored in prohibited area | 206, 207 | Exemption provided for a permit issued under reg 17. |
| 31 | Vessel not to be berthed or moored in permit-only area without permit | 208, 209 | Revised for effective management of the port. |
| 32 | Vessel not to be anchored in mooring area | N/A | Need to protect other property. |
| 33 | Time limit on berthing and mooring | 210, 211, 301 | Need to define continuous berthing and mooring to improve equity of access. |
| 34 | Vessel securely berthed, moored or anchored | 302 | Regs 302(3) – (5) removed as anchoring is a responsibility of the master of the vessel. |
| 35 | Vessels not to lie alongside in berthing areas unless directed | 304 | Provision for port manager to direct berthing alongside. |
| 36 | Free access to and from berthed vessel | 305 | No change. |
| 37 | Offence to leave vessel unattended by person authorised to act as master | 311 | Erroneous reference to vessel berthed in regulated berthing area removed. Provision for unloading and loading clarified to include passengers. Clarification of master for commercial vessels. |
| Division 3 | **Cargo management offences** | | |
| 38 | Cargo only to be managed in area set aside if required by port manager | N/A | Need to prevent loading, unloading and transfer of cargo other than in defined areas. |
| Division 4 | **Vessel management offences** | | |
| 39 | Reporting of incidents involving hazardous port activities | 521 | Need to remove Marine Safety Act duplication and clarify reporting obligations to improve public safety. |
| 40 | Refuelling of vessels | 513 | Need to include all major refuelling activities to protect public safety. |
| 41 | Use of propellers | 309 | Propulsion system included and principles for harm and damage. |
| 42 | Storage of equipment and other items | N/A | Need to provide for inappropriately stowed equipment and other items which can be a hazard to other port users. |
| Division 5 | **Vehicle management offences** | | |
| 43 | Vehicle entry restricted | 400 | No material change. |
| Division 6 | **Abandoned vessels, goods and other things** | | |
| 44 | Offence to abandon vessel or cause obstruction | N/A | Need to provide for abandoned vessels and inappropriate berthing, mooring and anchoring of vessels. |
| 45 | Direction to move vessel, goods or other thing | 324 | Need to provide broader range of circumstances under which direction can be given and most appropriate method of removal. |
| 46 | Removal of vessel, goods or other thing | 325 | Need to provide for removal of items causing obstruction and introduce low value threshold for effective port management. |
| PART 4 | **ACTIVITIES IN LOCAL PORTS** | | |
| Division 1 | **Regulated activities** | | |
| 47 | Works in a local port | 500 | Works definition clarified to include alterations. Need to provide clarity on types of works requiring permit to those impacting amenity of port, interference with other activity or access or causing discharge. |
| 48 | Camping | 501 | No change. |
| 49 | Jumping and diving | 502(1) – (2) | Clarified to including jumping or diving from a natural asset or other infrastructure in a local port. |
| 50 | Swimming and other in-water activities | 502(3) – (4) | Need to remove swimming around a moored vessel and clarify that scuba diving is also prohibited. |
| 51 | Fishing-related activities | 503, 504, 515 | No material change. |
| 52 | Retrieval of fishing lines when vessel approaching wharf | 505 | No change. |
| 53 | Commercial activities | 507 | Commercial photography removed and consistency established with Filming Approvals Act 2014 to take precedence. |
| 54 | Organised activities | N/A | Need to introduce organised activities due to gap in Marine Safety Act where events do not require an exclusion zone. |
| 55 | Interference with vessel moorings and other things | 510 | No material change. |
| 56 | Interference with property or infrastructure of port manager | 517 | Consolidated provision. |
| 57 | Trespassing on vessels | 511 | No material change. |
| 58 | Fireworks and other explosives | 314, 512 | Amended for permit to be sought in all circumstances. |
| 59 | Leaving or depositing litter or other waste | 514 | Need to clarify appropriate disposal of all types of vessel waste including domestic and industrial waste including sewage and wastewater from vessels. |
| 60 | Interference with safety equipment | 516 | Need to protect fire services and other safety equipment. |
| 61 | Obstruction to, or interference with, roads, gates and other areas | 518 | No material change. |
| 62 | Certain gates to be kept closed | 519 | No material change. |
| 63 | Hindrance or danger to navigation | 520 | No change. |
| 64 | Lighting of fires | 522 | Inclusion of a fireplace where a fire may be lit. |
| Division 2 | **Directions** | | |
| 65 | Directions to person causing interference, etc | 529, 530, 531, 532, 533 | Provisions narrowed to address behaviour which poses a risk of harm or damage or significant interference and transport safety officer added to improve enforcement of regulations. |
| PART 5 | **SAVINGS AND TRANSITIONALS** | | |
| 66 | Existing authorities taken to be valid permits | N/A | Clarification needed as to application. |
| 67 | Existing set aside determinations taken to continue | N/A | Clarification needed as to application. |

# Appendix 2: Summary of the proposed regulations

**Part 1** of the proposed regulations addresses a range of preliminary matters, including identifying the authorising provision of the *Port Management Act 1995* and the proposed commencement date of the regulations, and defining key terms. Importantly, part 1 also states that other legislation of general application, notably the *Marine Safety Act 2010* and the *Occupational Health and Safety Act 2004* prevail over the regulations, to the extent of any inconsistency. In addition, it specifies that any directions given by a Harbour Master under the authority of the *Marine Safety Act* prevail over directions given under the authority of these regulations, to the extent of any inconsistency.

**Part 2** of the regulations deals with the powers of port managers. Division 1 empowers port managers to set aside certain areas in which particular activities are permitted, or are prohibited, and to restrict access to such areas for the purposes of promoting the safe, efficient and effective management of the port. Division 2 authorises areas to be set aside in which the specific activities of berthing, mooring or cargo unloading are either permitted, prohibited or permitted subject to certain restrictions. Division 3 authorises conditions to be established in respect of set aside areas and creates notification and record-keeping obligations. Division 4 establishes powers for a port manager to issue permits to enable certain activities to be carried out which would otherwise be prohibited in a set-aside area. There is a presumption in favour of such permits being issued, unless the port manager is satisfied that to do so would yield a significant risk of harm or damage to persons or property or significantly interfere with the operations of the ports generally. Division 5 provides for port managers to issue identity cards to delegated officers.

**Part 3** of the regulations deals with port management. Division 1 establishes offences relating to set aside determinations including prohibited or restricted activities and prohibited access, including the offences of interfering with a permitted activity in a set-aside area or conducting a prohibited activity in such an area. Division 2 establishes a range of offences in relation to the berthing and mooring of vessels. Division 3 establishes an offence for cargo to be managed other than in a set aside area. Division 4 establishes a reporting requirement in respect of incidents involving hazardous port activities and restricts the refuelling of vessels and the use of propellers by berthed vessels. Additional safety-related provisions are a requirement that equipment must be stowed on a vessel in a way that does not give rise to the risk of harm or damage. Division 5 restricts the access of vehicles to the local port to those in set asides or operating under the terms of a permit issued by the port manager. Division 6 establishes an offence for abandoning a vessel or causing obstruction and empowers the port manager to give directions to remove abandoned vessels, goods or other things and to undertake such removal themselves in the event that such directions are not complied with.

**Part 4** of the regulations deals with activities undertaken in local ports. Division 1 creates a range of prohibitions, including:

* prohibitions on works, including dredging, making other changes to the natural condition of the land or construction, demolition or alteration of a structure;
* prohibitions on alterations involving hot works or dangerous goods unless they either (a) do not involve the discharge of materials or waste to port lands or water or (b) are being carried out in an area set aside for that purpose
* prohibitions or restrictions on a range of recreational activities, including camping, jumping or diving, swimming and fishing;
* prohibitions on trespassing on vessels or on interfering with moorings;
* a prohibition on undertaking commercial or organised activities, except in accordance with a permit; and
* a range of other safety-related prohibitions, including those on the use of fireworks, the lighting of fires or interference with safety equipment.

Division 2 empowers port managers, transport safety officers and members of the police force to issue directions to persons to cease undertaking certain activities, to move vessels or vehicles or to leave certain areas, including the port as a whole, if they believe it is necessary to prevent harm or damage to persons or property or interference with the legitimate activities of the local port.

**Part 5** deals with savings and transitional matters.

# Appendix 3: Overview of Victorian Local Ports

The following provides a brief description of each of Victoria’s local ports, including the nature of the facilities provided and the nature and extent of the activities undertaken in each port. It is intended to provide a broader context to assist the reader in understanding the issues addressed via the proposed regulations.

### Port of Portland Bay

The Local Port of Portland Bay comprises the Trawler Wharf, which was reconstructed and extended to approximately 250 metres with a $14m investment in 2009, together with an attached floating jetty.

The port services the commercial fishing fleet with the wharf capable of berthing nine vessels up to 300t. The wharf provides modern facilities for loading and offloading, including capacity for multiple semi-trailers and B-double vehicles to transport the catch. Approximately 40% of Victoria’s wild commercial fish catch is landed at Portland with a value of around $30m per annum. The Trawler Wharf is open to the public and attracts recreational users and visitors.

In 2013 a 70 berth floating Marina was added catering for commercial and recreational vessel berths between 5 and 18 metres. The Marina can accommodate larger visiting vessels up to 40 metres. The Marina includes facilities for electricity and water as well as having a full-time security system.

A 2012 study has found that the recreational Southern Bluefin Tuna (SBT) Fishery in Portland makes a significant contribution to the Portland economy and regional community. With $7.3 million to $7.7 million per annum in expenditure on accommodation, meals, fuel, fishing supplies and charter boat fees, the recreational fishery contributes to local tourism and attracts numerous overnight visitors whose main purpose for travel is the SBT fishery.

**Port manager – Shire of Glenelg**

### This is a photo of the historic Port of Port Fairy depicting boats tied along the warf.Port of Port Fairy

The historic Port of Port Fairy is a working port used by commercial fishing and recreational boaters. Situated on the Moyne River in Port Fairy, the Port has 52 alongside berths offered on a casual or annual basis.

Some of the commercial operations using the Port include abalone, southern rock lobster, shark and squid fishing operations, as well as charter boat operators. Recreational users include yachts, recreational anglers and other leisure craft, with the picturesque Port and wharf area popular with locals and visitors alike. The port also includes two slipways, refueling facilities and operates a dredge at the entrance to the river.

**Port manager – Moyne Shire Council**

### This is a photo of the Port of Warrnambool depicting the Breakwater.Port of Warrnambool

The Port of Warrnambool is home to the second largest allocation and quota for southern rock lobster in Victoria. The Port provides direct access to Bass Strait for commercial and recreational fisher people, moorings for 12 vessels and loading and unloading facilities from the recently completed upgrade of the lower landing.

The Port assets include the historic breakwater which is popular for fishing, including the low landing facilities and a public boat ramp.

**Port manager – Warrnambool City Council**

### This is a photo of the Port of Port Campbell, depicting the Port Campbell jetty.Port of Port Campbell

The key assets of the Port of Port Campbell are the jetty and jib crane, located within the Port Campbell Cove, which is exposed to swell and wave action.

Port Campbell jetty is the only means of access for a small number of commercial (fishing and charter) and recreational vessels at Port Campbell. A new jib crane was installed in 2011 to launch and retrieve vessels and was funded by the State Government.

**Port manager – Parks Victoria**

### This is an aerial view of the Port of Apollo bay, breakwater and jetty.Port of Apollo Bay

Apollo Bay’s harbour is home to a vibrant local fishing industry which generates an annual catch value estimated at $6.5 million.

The operations of the harbour are reliant on a cutter dredge which will be commissioned in October 2013.

The existing facilities within the harbour have been progressively replaced over the last decade. The facilities include 30 berths and 30 moorings and a large 70 tonne slipway for vessel maintenance.

**Port manager – Colac-Otway Shire Council**

### This is a photo of the Lorne Pier depicting people walking along and fishing.Port of Lorne

The Port of Lorne consists of a single asset – the Lorne Pier – which is primarily a tourist asset, serving as a platform for recreational fisher people and pedestrians. The pier is home to the largest open water swim in the world with the Lorne Pier to Pub held in January each year.

**Port manager – Great Ocean Road Committee of Management**

### Port of Barwon Heads

The Port include two jetties and supports recreational and commercial activities: a commercial cray fisherman and two occasional charter fishing vessels operate from about six moorings and a boat ramp with access to Bass Strait.

A variety of recreational activities occur within the Port: powerboats, power skis, sailing vessels, canoes, sea-kayaks use the port and the jetties are used by recreational fishermen and for promenading.

**Port manager – Barwon Coast Committee of Management**

### Port of Port Phillip and Western Port

Melbourne’s urban population, as well as interstate and international visitors, is attracted to the local ports of Port Phillip Bay and Western Port predominantly for recreation and leisure activities. There are 44 piers and jetties managed as part of the local port program, and approximately 1,000 aids to navigation. During 2009, 57.9 million visitors accessed the local port waters, piers and jetties of Port Phillip and Western Port.

Around 1,000 events occur on the waters of Port Phillip and Western Port each year, including yachting, open water swimming – such as the Portsea Lifesaving Club Pier to Perignon, fireworks and other community events.

Previous investment in the ports during the 1950s has left a legacy of a strong yachting and boating community. The many yacht and boating clubs around the Bays provide recreational, social and economic benefits to the state. Fishing, promenading and sightseeing are popular activities at most piers and jetties around both Bays.

**Port manager – Parks Victoria**

### Port of Anderson Inlet

Anderson Inlet lies at the head of Venus Bay and includes the township of Inverloch. The port enables recreational boating in the inlet and access to Bass Strait however, the inlet is tidal and at times the locations in which vessels can operate are restricted due to water depths. Port assets are limited to two jetties; one which supports recreational boating and another which is primarily a fishing platform.

**Port manager – Gippsland Ports**

##### Port of Corner Inlet and Port Albert

The Port of Corner Inlet and Port Albert provides access to Bass Strait and the main channel extending to Barry Beach and also to Port Welshpool. The port waters also include Port Albert and Port Franklin and cater for recreational and commercial fishermen, recreational boating, charter boats and larger commercial vessels.

The port waters include the private Barry Beach Marine Terminal used by Esso to support its offshore oil and gas facilities in Bass Strait and adjoining Port Anthony facilities currently under development. The port facilities at Port Welshpool support offshore oil and gas facilities in Bass Strait. The port supports several small cargo vessels that operate to the Bass Strait islands utilising the roll-on/roll-off facility for cargo and livestock.

**Port manager – Gippsland Ports**

### Port of Gippsland Lakes

The Port of Gippsland Lakes is one of Australia’s largest and scenic inland waterways. The port waters comprises of 420 square kilometres from Sale in the west to Lakes Entrance in the east.

Lakes Entrance hosts the largest commercial fishing port in Victoria that directly generates from the commercial fishing industry and related processing and food service industries around $35.0 million annually in the East Gippsland region. Recreational boating estimated at $163.0 million per annum, contributes substantially to the region’s economy. The ocean access constructed in 1889 at Lakes Entrance enables access to Bass Strait and has contributed significantly to the township’s identity and economy. Funding to keep the entrance open is provided by the State Government through the Gippsland Lakes Ocean Access Program.

Lakes Entrance and Paynesville also provide important boatyard and slipping services to commercial fishers and other mariners in the region. The port includes a range of facilities to service recreational and commercial vessels, a range of cruising and destination jetties, refueling facilities, berths and moorings.

**Port manager – Gippsland Ports**

### This is a photo depicting a jetty along the Snowy River.Port of Snowy River

The Port of Snowy River is a small estuarine waterway adjacent to the township of Marlo. The entrance to Bass Strait remains closed for most of the year, although on occasions is opened by the prevailing weather and tides or assisted by machinery.

The assets at Snowy River include a jetty and aids to navigation with recreational boating and fishing undertaken at the port.

**Port manager – Gippsland Ports**

### This is a photo depicting a vessel moored to the rebuilt Mallacoota wharf.Port of Mallacoota

The Port of Mallacoota is located in the far east of the state. The port services a significant abalone fleet and provides an entrance to Bass Strait. Mallacoota is a popular tourist destination for holiday makers and recreational fisherman.

The port assets include the Mallacoota Wharf which houses a mix of permit-only and short-term berthing, jetties and a small slipway available for vessel maintenance.

**Port manager – Gippsland Ports**

# Appendix 4: Summary of key characteristics of Victorian local ports

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Port Manager | Local Ports | No. of Local Ports | No. of Waterways (incl Local Ports) | Area | Replacement Value of Assets | Nav Aids | Wharves | Berths & Moorings | Slipways | Employees | Harbour Master | Hydro Survey Capability | Recurrent Dredging |
| Gippsland Ports | Anderson Inlet, Corner Inlet & Port Albert; Gippsland Lakes, Snowy River; Mallacoota | 5 | 7 | 1,400 km2 | $109m | 800+ | 100+ | 900+ | 4 | 44 | yes | yes | Lakes Entrance, Corner Inlet on intermittent basis |
| Parks Victoria | Port Phillip, Western Port, Port Campbell | 3 | 10 | 1,610 km2 | $220m | 1,000 | 44 | 3,000 | 1 | 32 | no | no | Queenscliff, Patterson River & other sites on intermittent basis |
| [Barwon Coast Committee of Management Inc](http://www.barwoncoast.com.au/) | Barwon Heads | 1 | 1 | N/A | $1.6m | 33 | 2 | 6 | 0 | <1 | no | no | no |
| Great Ocean Road Coast Committee | Lorne | 1 | 0 | N/A | $6.5m | 1 | 0 | 0 | <1 | no | no | no |
| Colac Otway Shire Council | Apollo Bay | 1 | 1 | N/A | $41m | 2 | 61 | 1 | 4.3 | no | no | yes |
| Warrnambool City Council | Warrnambool | 1 | 3 | N/A | $34m | 3 | 12 | 0 | <1 | no | no | yes, periodically |
| Moyne Shire Council | Port Fairy | 1 | 1 | <1km2 | $23m | 9 | 55 | 2 | 2 | no | no | yes |
| Glenelg Shire Council | Portland Bay | 1 | 0 | 1km2 | $14m | 1 | 9 | 0 | 1.3 | no | no | no |

# Appendix 5: Proposed Port Management (Local Ports) Regulations 2015

1. More than 91% of registered recreational vessels are able to be launched from public boat ramps in Victoria – refer Ipsos (2014). *Boating Behaviour: Draft Report.* Prepared for Transport Safety Victoria. October 2014 [↑](#footnote-ref-1)
2. Department of Infrastructure (2001). ***The Next Wave of Port Reform in Victoria***, p 71. Independent Report prepared for the Minister for Ports by Professor Bill Russell. [↑](#footnote-ref-2)
3. *Source:* Local ports; data compiled by DEDJTR. Total number of vessels berthed and moored under permits in local ports in 2012-13 was around 4,231, of which 4,013 were recreational vessels, 31 were passenger vessels, 50 works vessels and 150 commercial fishing vessels. [↑](#footnote-ref-3)
4. *Parks Visitation Monitor Quarter 1-2 – 2012/2013 Executive Summary Report* (2013), Newspoll [↑](#footnote-ref-4)
5. DEDJTR (formerly the Department of Transport) took over responsibility for local ports in 2010, pursuant to a machinery of government change [↑](#footnote-ref-5)
6. Includes Anderson Inlet, Corner Inlet & Port Albert, Gippsland Lakes, Snowy River, Mallacoota [↑](#footnote-ref-6)
7. Commissioner for Environmental Sustainability Victoria (2013). ***Victoria: State of the Environment***, p 188 [↑](#footnote-ref-7)
8. Source: DEDJTR, excludes works undertaken in boatyards [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. See Table 6.1, below, for a summary of the other legislative instruments that currently address these issues. [↑](#footnote-ref-10)
11. *Transport Infrastructure (Public Marine Facilities) Regulation 2011* (Queensland) [↑](#footnote-ref-11)
12. That is, port managers may, being locally based, be less likely to make significant changes in pricing arrangements in the face of strong local opposition than a central pricing authority (i.e. the Department). [↑](#footnote-ref-12)
13. Some similar questions of enforceability arguably arise in relation to the specification of a 48 hour maximum for short-term berths and moorings, however, the Department considers that there are a number of important differences. Firstly, over-stayers are likely to be pressed by other, intending users who may also seek to contact port managers to seek to have enforcement activity undertaken, whereas this dynamic is unlikely to operate in respect of payment of mooring fees via a meter-type device. Second, the adoption of a specified maximum stay does not require the installation and maintenance of equipment, as would the adoption of charging for short-term moorings. [↑](#footnote-ref-13)
14. Deloitte Access Economics (2013). ***The Economic and Social Value of Victoria's Local Ports***. Report prepared for the Department of Transport, Planning and Local Infrastructure, 22 November 2013. (Unpublished). [↑](#footnote-ref-14)
15. This source is referenced on the VCEC website: https://www.dpmc.gov.au/sites/default/files/publications/Value\_of\_Statistical\_Life\_guidance\_note.pdf . The stated figure of $4.2 million is expressed in 2014 dollar terms. [↑](#footnote-ref-15)
16. i.e. in the absence of the regulations, the average fatality rate would be 1.0 per annum, rather than 0.5 at present. [↑](#footnote-ref-16)
17. i.e., in the absence of the regulations, the fatality rate would be 0.625 per annum, rather than 0.5 per annum as at present. Reduction in fatalities due to the regulations = (0.625 x 20%) = 0.125. Value of this reduction is 0.125 x $4.2 million = $525,000. [↑](#footnote-ref-17)
18. More than 91% of registered recreational vessels are able to be launched from public boat ramps in Victoria – refer Ipsos (2014). *Boating Behaviour: Draft Report.* Prepared for Transport Safety Victoria. October 2014 [↑](#footnote-ref-18)
19. Includes 133 itinerant berths (authorised on a monthly basis). [↑](#footnote-ref-19)
20. <http://www.gippslandports.vic.gov.au/pdfs/jobs/job_pdf10_0.pdf> [↑](#footnote-ref-20)
21. Allowing permits for berths, moorings, works, events and other activities across all local ports [↑](#footnote-ref-21)
22. Where no current penalty or regulation number is identified the proposal constitutes a newly created offence. [↑](#footnote-ref-22)
23. Department of Treasury and Finance (2014). *Victorian Guide to Regulation: Toolkit 1; Purposes and Types of Regulation*, p7. [↑](#footnote-ref-23)
24. See: http://www.film.vic.gov.au/\_\_data/assets/pdf\_file/0018/93042/Victorian-Film-Friendly-Guidelines-Web-Version.pdf [↑](#footnote-ref-24)
25. *Competition Principles Agreement*, Clause 5. 1995. See: www.ncc.gov.au [↑](#footnote-ref-25)
26. See OECD (2011) *Competition Assessment Toolkit. Volume 1: Principles*, pp 8-9. OECD, Paris, 2011. [↑](#footnote-ref-26)