March 2025



Port Management (Local Ports) Regulations 2025

Regulatory Impact Statement

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Executive Summary

Context

There are 18 ports along the Victorian coast. Four of these – Melbourne, Geelong, Hastings and Portland – are commercial trading ports. The remaining 14 ports, referred to as local ports, provide services for commercial fishers, some commercial shipping, marine and emergency services, tourism and recreation, and related sectors.

Local ports represent the legacy assets and operations of three predecessor port authorities, which had responsibility for such facilities and services along the Victorian coastline. The Victorian port system changed significantly from the late 1980s onwards through privatisation and corporatisation. Under these port reforms, port facilities were acknowledged to be non-commercial. As a result, the local ports were transferred to the State Government to manage through Crown land committees of management with port managers appointed under the *Port Management Act 1995.*[[1]](#footnote-2)*[[2]](#footnote-3)*

Local ports typically support a mix of minor commercial (for example, commercial fishing, vessel repairs, charter and ferry services) and recreational functions, including public access. They generally do not support trade, other than some servicing of the Bass Strait islands, and the offshore oil and gas industry.[[3]](#footnote-4)

Local ports provide enabling port facilities and services that support marine businesses, local recreation and broader tourism opportunities along the Victorian coast. Local ports support almost 10,000 jobs, contribute around $1 billion in economic benefit every year to regional and local economies[[4]](#footnote-5), and have a total asset replacement value of more than $1 billion[[5]](#footnote-6).

The Department of Transport and Planning (the Department) is reviewing the *Port Management (Local Ports) Regulations 2015* (the Regulations). This Regulatory Impact Statement (RIS) looks at remaking the Regulations.

Defining the problem

For the purpose of this regulatory refresh, the problem statement is defined as:

*Without appropriate regulatory controls, routine operations in local ports pose a risk of harm to local port users and the environment, and compromise access to and amenity of local ports.*

The risks and potential harms associated with the routine operation of local ports can be broadly split between three distinct but overlapping domains:

* **Safety problems** – including dangerous activities and behaviours, general health and safety of local port users and refuelling vessels;
* **Environmental problems** – including abandoned vessels, unseaworthy vessels and oversight of works; and
* **Access and amenity problems** – including high demand for existing port facilities, unauthorised installation and use of moorings, and traditional owner use and access.

If the Regulations are allowed to expire without being remade, some of the safety, environmental and access and amenity harms will be adequately addressed through regulatory controls and other existing factors. However, there are other examples where the Regulations regulate and manage harms that are not addressed elsewhere. In addition, there are a number of issues which may be targeted by the current Regulations but are not sufficiently addressed.

The Department considers that in addition to legislation and other regulations, there continues to be a need for the Regulations to regulate for the safe, efficient and effective operation of local ports. In particular, the Department notes that the outcomes observed over the last several years are the result of the regulatory requirements in both the *Port Management Act* *1995* and the Regulations. The Department’s conjecture is that outcomes would be worse (i.e. there would be higher fatalities, serious and minor injuries, environmental pollution and degradation, inequitable access to facilities and loss of amenity), if the Regulations were not in place.

Objectives

The primary objective of the Regulations is to provide for the safe, efficient and effective management of local ports within the meaning of the *Port Management Act*. This requires:

* **Safe local port operations** - Ensures the minimisation of fatalities, serious injuries, and near-misses by addressing risks such as vessel interactions and dangerous activities like wharf jumping. Success is measured by improved safety outcomes and increased public confidence in port safety.
* **Efficient and effective local port operations** - Focuses on ensuring safe, accessible, and affordable port usage for businesses and the community while balancing operational and environmental requirements. Success is indicated by increased mooring and berthing permits and positive public sentiment.
* **Minimising environmental harms** - Aims to prevent environmental damage by addressing risks such as abandoned or derelict vessels. Success is measured by reductions in vessel salvages and pollution incidents.

In addition to this primary objective, there are other important objectives including:

* minimising the regulatory burden; and
* effective and efficient monitoring and enforcement.

Options

The RIS identifies and compares feasible options to address issues arising from the sunsetting of the current Regulations. Methods used to compile a list of proposed feasible options include stakeholder consultations, interjurisdictional comparisons, regulatory and non-regulatory considerations, prior analyses, policy frameworks, and reviewing the status quo. Non-regulatory improvements were noted for future consideration but not assessed, and unsuitable options were excluded from the assessment.

Three options are proposed to address the key potential risks and harms:

* **Option 1:** Remake current regulations with only minor technical updates.
* **Option 2:** Build on Option 1 with low-impact regulatory improvements.
* **Option 3:** Include Options 1 and 2 with medium-impact improvements requiring extensive system changes.

Table E1 Summary of identified options to address key concerns

| Topic and sub-option | Option 1  Remake regulations | Option 2  Low impact | Option 3  Medium impact |
| --- | --- | --- | --- |
| Abandoned and derelict vessels |  |  |  |
| Introduce requirement that a vessel must not be ‘derelict’ |  |  |  |
| Increase monetary value of a low value vessel |  |  |  |
| Introduce a cost recovery mechanism |  |  |  |
| Introduce statutory seaworthy checks |  |  |  |
| Oversight of works and waste management |  |  |  |
| Allow low risk works |  |  |  |
| Enable public entities to carry out works |  |  |  |
| Improve waste water management |  |  |  |
| Replace permits with notifications for works |  |  |  |
| Access and use |  |  |  |
| Clarify access for traditional owner groups |  |  |  |
| Provide reasonable emergency access to and through the local port |  |  |  |
| Improve vessel overstay management |  |  |  |
| Prohibit the transfer of permits |  |  |  |
| Strengthen permit requirements |  |  |  |
| Replace permits with notifications for activities |  |  |  |
| Monitoring and enforcement |  |  |  |
| Apply the *Marine Safety Act* owner onus scheme to certain offences |  |  |  |
| Expand the class of persons able to give directions |  |  |  |
| Introduce higher penalties for subsequent offences |  |  |  |
| Other amendments |  |  |  |
| Minor and technical updates |  |  |  |

Analysis

The RIS assesses the proposed options against regulatory objectives and government policy, focusing on the expected costs and benefits of each option. Although the costs and benefits in regulatory impact assessments are typically assessed against the base case, for the purpose of this RIS, the base case is an unhelpful starting position as it is an inferior and unrealistic option. This is because if no regulations are made there would be limited and ineffective management of local ports in Victoria. As a result, for the purposes of options analysis in this RIS, the ‘reference case’ adopted is the regulatory framework represented by the current regulations.

The *Victorian Guide to Regulation* presents Multi-Criteria Analysis (MCA) as a useful decisions-making tool[[6]](#footnote-7) when it is not possible to quantitatively estimate the effects of many or most of the impacts of a regulatory proposal (for example, measures that have behavioural or environmental impacts). Given the difficulty in precisely quantifying the impacts and attributing them to the regulations, the RIS relies on an MCA to assess the options. This is supported by data to indicate the relative scale and significance of the problems and the impacts of the options.

**MCA Assessment criteria**

The criteria selected for the assessment of the options reflect government policy and regulatory objectives, as shown in Table E2 below. Monitoring and enforcement impacts are discussed within the selected criteria where relevant.

The criteria are weighted according to their overall importance in achieving government objectives. To prevent biases, the Department has weighted benefit-related criteria and cost-related criteria equally (50%/50%), as shown in Table E2 below.

Table E2 Descriptions and weightings of MCA criteria

|  |  |  |
| --- | --- | --- |
| Criterion | Description | Weighting |
| Safety | There are inherent risks associated with the operation of local ports. While other regulations deal with marine safety (for example, marine safety regulations), the Regulations promote the safety of all local port users, including those not on the water. Maintaining adequate levels of safety helps to reduce incidents including injuries and fatalities. Safety is also a primary objective of the current Regulations and is a key concern for Government. For these reasons it received the second highest weighting. | 25% |
| Effectiveness | Effective local port operations include management of port facilities and access to and use of those facilities. It also includes the management of people, vessels and cargo. Effective management of local ports is one of the primary objectives of the current Regulations. This criterion also encompasses efficient management of local ports, which is another primary objective of the Regulations. | 15% |
| Environmental impacts | Reducing environmental harms is a key theme throughout the regulations. This criterion encompasses appropriately managing environmental risks and minimising environmental pollution (for example, from abandoned vessels). Environmental impacts received a weighting of 10% because, while important, is not a primary objective of the current Regulations and also because it is covered by other regulatory instruments with a specific environmental focus. | 10% |
| Regulatory costs for port users | Regulations impose costs on local port users and marine and related businesses. These costs are the fees charged for using a port's facilities and services, which are based on the regulatory framework. | 30% |
| Regulatory costs for port managers | Regulations also impose costs on port managers, and ultimately, Government. It is important that these costs are scrutinised so the lowest possible burden is imposed on the port managers, while achieving the Government’s objectives. | 20% |

**MCA Results**

An analysis of each option against each criterion provided the results from in the Table E3 below.

Table E3 Summary of MCA assessment scores

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Criterion | Weighting | Options assessment – MCA weighted scores | | |
|  |  | **1** | **2** | **3** |
| Safety | 25% | 0.00 | 0.50 | 1.00 |
| Effectiveness | 15% | 0.00 | 1.12 | 1.42 |
| Environmental impacts | 10% | 0.00 | 0.30 | 0.35 |
| Regulatory costs for port users | 30% | 0.00 | -0.60 | -1.20 |
| Regulatory costs for port managers | 20% | 0.00 | -0.60 | -1.20 |
| Total | **100%** | **0.00** | **0.72** | **0.37** |

Preferred option

**The preferred option is Option 2 – low impact**

The Department considers that it is preferable to have regulations to support the operation of the *Port Management Act*. However, of the three options, simply remaking the regulations is the least preferrable option. As shown in Table E3 above, both Options 2 and 3 were preferred to Option 1, which is the reference case of remaking the regulations unchanged.

Option 2 is the preferred option with a total weighted score of 1.92, compared with the score for Option 3 of 1.07.

Proposed regulations have been drafted based on the preferred Option 2. The proposed Regulations are substantially similar to the current Regulations with some relatively minor improvements.

**Summary of key changes in Option 2 and the proposed Regulations**

The key changes to the proposed Regulations are:

* Regarding abandoned and derelict vessels in local ports:
  + Increase the monetary value of a low value vessel
  + Introduce requirement that a vessel must not be ‘derelict’
  + Introduce a cost recovery mechanism
* Regarding oversight of works in local ports:
  + Allow low risk works without a permit
  + Enable public entities to carry out works
* Other minor updates including:
  + Applying the marine safety owner onus system to local ports offences
  + Clarifying access for traditional owner groups
  + Allowing local port access for vehicles that are not motor vehicles such as prams and wheel chairs
  + Removing permissible vessel discharge of treated wastewater and sewage.

The proposed Regulations are available for consideration and comment on the Engage Victoria website at [https://engage.vic.gov.au/port-management-local-ports-regulations-2025](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fengage.vic.gov.au%2Fport-management-local-ports-regulations-2025&data=05%7C02%7Clindsay.gough%40transport.vic.gov.au%7Cdff351b848234249c99f08dd56d46812%7C5094c7a70748466e941e72882c3097ba%7C0%7C0%7C638762192491293574%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=RNdCKpnQMmBK7i4gZ4zp%2B0rh%2FoALpTqMoFGCAKJONUQ%3D&reserved=0).

Implementation

The proposed *Port Management (Local Ports) Regulations* remake the current Regulations, with amendments as considered in this RIS. Based on the analysis in this RIS, the Department is recommending substantively remaking the Regulations with a number of minor improvements.

After the public consultation period, the Department will review all submissions and stakeholder feedback on the proposed Regulations. Necessary adjustments and updates will be made to address concerns raised during this process. The final Regulations will be enacted before the current ones expire on 23 June 2025.

The proposed Regulations maintain the existing approach to local port management with minor improvements affecting vessel masters, operators and owners, people conducting work on vessels, and traditional owner group members. Port managers will lead implementation, including stakeholder engagement, staff training, and updates to documents and systems. Changes may require updates to internal processes and amendments to compliance regulations to ensure appropriate enforcement.

Evaluation

The Department will evaluate the proposed regulations before their expiry in 2035, with the aim to conduct a mid-term review around 2030-31 and an end-term review to assess their effectiveness and inform future regulatory decisions. The Department will continue meeting with its key stakeholder partners, including port managers and Safe Transport Victoria, to address emerging issues. The evaluation will use data from various sources, including local port permits, infringements, and safety incidents, to measure outcomes against baseline data. The assessment will follow a structured approach aligned with the regulations' objectives, and a detailed evaluation strategy will be developed before implementation to ensure proper data collection and analysis.

Consultation

The Department consulted key stakeholders to understand the issues affecting port management in Victoria prior to the release of the RIS and proposed Regulations. Stakeholders consulted include Victorian port managers, several Victorian government departments and agencies with responsibilities relating to local ports, responder agencies, and peak bodies representing both recreational fishers and boaters.

# Introduction

## Victoria’s local ports

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

Local ports represent the legacy assets and operations of three predecessor port authorities, which had responsibility for such facilities and services along the Victorian coastline. The Victorian port system changed radically from the late 1980s onwards through privatisation and corporatisation. Under these port reforms, port facilities were acknowledged to be non-commercial. As a result, the local ports were transferred to the State Government to manage through Crown land committees of management with port managers appointed under the *Port Management Act*[[7]](#footnote-8).

Local ports typically support a mix of minor commercial (for example, commercial fishing, vessel repairs, charter and ferry services) and recreational functions, including public access. They generally do not support trade, other than some servicing of the Bass Strait islands, and the offshore oil and gas industry[[8]](#footnote-9) .

Figure 1.1. Victoria’s local port network

A map of the Victorian coast showing the locations of all fourteen of the local ports in Victoria.



Source: State Government of Victoria, ‘About Victoria's local ports’, <https://www.vic.gov.au/about-victorias-local-ports>.

Table 1.1 Management of Victorian local ports

|  |  |  |
| --- | --- | --- |
|  | Local port | Port manager |
| 1 | Portland Bay | Glenelg Shire Council |
| 2 | Port Fairy | Moyne Shire Council |
| 3 | Warrnambool | Warrnambool City Council |
| 4 | Port Campbell | Great Ocean Road Coast and Parks Authority  *Formerly managed by Parks Victoria* |
| 5 | Apollo Bay | Great Ocean Road Coast and Parks Authority  *Formerly managed by Colac Otway Shire Council* |
| 6 | Lorne | Great Ocean Road Coast and Parks Authority  *Formerly managed by Great Ocean Road Committee of Management Inc.* |
| 7 | Barwon Heads | Barwon Coast Committee of Management Inc.[[9]](#footnote-10) |
| 8 | Port Phillip | Parks Victoria |
| 9 | Western Port | Parks Victoria |
| 10 | Anderson Inlet | Gippsland Ports Committee of Management Inc. |
| 11 | Corner Inlet and Port Albert | Gippsland Ports Committee of Management Inc. |
| 12 | Gippsland Lakes | Gippsland Ports Committee of Management Inc. |
| 13 | Snowy River | Gippsland Ports Committee of Management Inc. |
| 14 | Mallacoota | Gippsland Ports Committee of Management Inc.[[10]](#footnote-11) |

Source: State Government of Victoria, ‘About Victoria's local ports’, <<https://www.vic.gov.au/about-victorias-local-ports>>.

Publicly accessible port and boating facilities across Victoria are currently managed by a variety of entities (for example, local government, Crown land committees of management, statutory authorities, water corporations and port management bodies), each of which have varied levels of experience, control and obligations in their management duties[[11]](#footnote-12). For the south-western local ports of Portland Bay, Port Fairy, Warrnambool, Port Campbell, Apollo Bay, Lorne and Barwon Heads, the managers of the port facilities comprise three local councils, a statutory authority and a Crown land committee of management. In the east, the local ports of the Gippsland Lakes, Anderson Inlet, Corner Inlet and Port Albert, Snowy River and Mallacoota, port facilities and services are managed by a single specialised entity, Gippsland Ports, and in the central region (Port Phillip and Western Port) by Parks Victoria.

Local ports provide enabling port facilities and services that support marine businesses, local recreation and broader tourism opportunities along the Victorian coast. Local ports support almost 10,000 jobs, contribute around $1 billion in economic benefit every year[[12]](#footnote-13) to regional and local economies, and have a total asset replacement value of more than $1 billion[[13]](#footnote-14).

## Previous Regulatory Impact Statement

The *Port Management (Local Ports) Regulations 2015* (the Regulations / the current Regulations) were last updated ten years ago following a Regulatory Impact Statement (RIS) process. Those regulations are similar to the *Port Services (Local Ports) Regulations 2004* that were in place from 1 July 2004 to 29 June 2015 (the previous Regulations), but introduced several key changes, including:

**Consolidation and principles-based approach:** Consolidated existing provisions and outlined key powers of port managers in principles-based terms, moving away from the highly prescriptive nature of the previous regulations.

**Streamlining:** Streamlined the regulations by removing provisions that duplicated other legislation.

**General powers for port managers:** Changes to ensure port managers have a general power to set aside areas for activities, without a specific list of activities.

**Enhanced provisions:** Organised activities, vessel refuelling, protection of port facilities, and waste disposal provisions were added, clarified or strengthened.

**Permit system:** Requirements for cargo entering local ports were incorporated into the permit system.

**Vessel management:** Provisions related to vessel management were consolidated.

## Current Regulatory Impact Statement

The Department of Transport and Planning (the Department) is currently reviewing the Regulations before they expire on 23 June 2025. As part of the review, the Department is releasing this RIS and proposed regulations for public consultation.

The Department consulted key stakeholders to understand the issues affecting local port management in Victoria prior to the release of the RIS and proposed Regulations. Stakeholders that were consulted include all Victorian port managers, several Victorian government departments and agencies with responsibilities relating to local ports, responder agencies, and peak bodies representing both recreational fishers and boaters.

## Structure of this document

This RIS covers the following:

Chapter 1 introduces Victoria’s local ports and the regulatory impact statement.

Chapter 2 provides background information including the legislative framework and relevant local port management data and statistics.

Chapter 3 outlines the nature and extent of the problems related to local port management.

Chapter 4 describes the objectives of the regulations.

Chapter 5 details the identification of options to address the problems set out in Chapter 4.

Chapter 6 contains the assessment of the identified options.

Chapter 7 highlights the preferred option and summarised the proposed changes to the proposed Regulations.

Chapter 8 describes the implementation plan for the preferred option.

Chapter 9 describes the evaluation strategy for the preferred option.

Chapter 10 details the consultation that has occurred in preparation of this regulatory impact statement.

The Appendices provide additional information about local ports and the proposed changes to the Regulations.

## Consolidated list of questions for stakeholders

The following questions are posed throughout the RIS to help prompt targeted responses:

**Abandoned and derelict vessels**

Do you think abandoned and derelict vessels can be appropriately managed under the Regulations? If not, what regulatory options beyond those outlined in section 5.4 do you think could be considered to help better manage these vessels?

There is no definition for unseaworthy vessel in the Regulations. The Department has worked with stakeholders to explore potential definitions to help clarify the term, but there were no clear solutions (see section 5.4.5). If you have any views on this matter, please provide details.

Would a requirement that a vessel must not be ‘derelict’ assist in managing vessels which are in very poor condition in local ports? (Proposed Regulation 48).

Is the proposed value threshold of $10,000 for vessels and $2,000 for other goods, below which port managers would be authorised to dispose of abandoned vessels or goods, appropriate? Please provide details. (Proposed Regulations 5 and 50).

**Works**

Are there any unnecessary barriers to local port users undertaking works? Are there any improvements that can be made beyond those outlined in section 5.5? Should there be further protections for other local port users? (Proposed Regulation 52).

Should the Regulations enable works that are low risk to be undertaken according to requirements set by the port manager, without the need to apply for a local port permit? (Proposed Regulation 52).

Should the Regulations enable public entities to undertake works according to requirements set by the port manager, without the need to apply for a local port permit? (Proposed Regulation 52).

**Permits and set asides**

Is the framework for permits and set asides in the Regulations effective in managing equitable use and access to port facilities? Are there any improvements that can be made?

Are the regulatory mechanisms providing for notification of the establishment of set asides adequate?

Should activities determined to be low risk be able to occur without the need to apply for a local port permit? If yes, which activities and how would the associated risks be managed?

Do the current time limits for vessels in local ports appropriately balance access and equity for port users? How could this be improved beyond the options in section 5.6?

Do you have any additional concerns about access and use of local ports that could be better addressed under the Regulations? If so, please provide details.

**Organised and commercial activities**

Are there any unnecessary barriers in the Regulations to undertaking activities in local ports? Are there any regulatory improvements that can be made?

**Litter, other waste and environment**

Do you have any concerns with the Regulations in relation to the management of waste water in local ports?

Do you have any concerns with being required to use landside sewage pump out facilities to manage waste water and sewage in local ports? Are there any implications arising from the prohibition on disposal of treated waste water and sewage in local port waters? (Proposed Regulation 64).

Do you have any additional environmental concerns that could be better addressed under the Regulations? If so, please provide details.

**Safety**

Do you have any additional safety concerns that could be better addressed under the Regulations? If so, please provide details.

**General**

Can you identify any opportunities to reduce a compliance burden imposed by the Regulations without compromising the achievement of their underlying objectives? If so, please provide some details.

Do you believe that the costs associated with the local port permit system are appropriate?

Do you believe that there are any administrative costs imposed on local port users by the Regulations that have not already been discussed? 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 or eliminated.

## How you can have your say

You are invited to make comments on the RIS and the proposed Regulations.

Submissions may present an analysis of alternative options and recommend changes to the proposed Regulations.

Submissions are required to be made in writing and submitted on the Engage Victoria website at [https://engage.vic.gov.au/port-management-local-ports-regulations-2025](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fengage.vic.gov.au%2Fport-management-local-ports-regulations-2025&data=05%7C02%7Clindsay.gough%40transport.vic.gov.au%7Cdff351b848234249c99f08dd56d46812%7C5094c7a70748466e941e72882c3097ba%7C0%7C0%7C638762192491293574%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=RNdCKpnQMmBK7i4gZ4zp%2B0rh%2FoALpTqMoFGCAKJONUQ%3D&reserved=0).

Submissions must be provided on or before 11:59pm on 27 April 2025.

Please note that all submissions will be treated as public information unless you request otherwise.

You should be aware that all submissions are subject to the *Freedom of Information Act 1982*.

Personal information may be used to contact you regarding your submission and the outcomes of the consultation. Please clearly state in your submission if you do not wish for this to occur.

# Background

## The Port Management Act 1995

The *Port Management Act* is the primary statute regulating the management and operation of both commercial ports and local ports in Victoria.

The *Port Management* Act imposes a range of regulatory requirements on:

* Port authorities, port managers, port operators, channel operators and harbour masters;
* Towage and pilotage services providers;
* Owners of recreational vessels;
* Users of port waters and lands;
* Port safety officers and authorised officers; and
* Port land owners.

The key purposes of the *Port Management Act* include:

**Port planning and management:** The *Port Management* Act outlines provisions for the planning and management of port facilities and services. This includes the development of port development strategies to guide the long-term growth and development of ports, as well as the development and implementation of port management plans to promote safety and environmental improvements in day-to-day port operations.

**Environment management:** The *Port Management* Act includes provisions which relate to sustainable management of port operations and manage environmental impacts through port management plans.

**Safety and security:** The *Port Management* Act emphasises the importance of ensuring safety and security within port facilities. This includes implementing measures to prevent accidents, respond to emergencies and safeguard against security threats.

**Commercial activities and user access:** The *Port Management* Act addresses issues related to commercial activities within ports, such as leasing arrangements, tariff setting and access rights for port users. It aims to facilitate fair and competitive access to port services while also generating revenue to support port operations.

## The Port Management (Local Ports) Regulations 2015

The Regulations are made under the *Port Management* Act. The Regulations prescribe a range of matters to support the operation of that Act.

This includes regulations in relation to:

* Access to and use of certain areas in local ports;
* Berthing, mooring or anchoring vessels in local ports;
* Other types of activities in local ports, such as carrying out works, organised events and swimming;
* Safety and hazard management; and
* Environmental management.

While the *Port Management* Act establishes schemes and processes to ensure the safe, efficient and effective management and operation of local ports in Victoria, the Act relies on the Regulations to prescribe the detail of those schemes and processes.

## Other relevant legislation

There are a number of other Acts that are relevant to achieving the objectives of the Regulations or improving local port management. These include:

* The *Crown Land (Reserves) Act 1978*
* The *Marine (Drug, Alcohol and Pollution Control) Act* 1988
* The *Marine and Coastal Act 2018*
* The *Marine Safety Act 2010*
* The *Transport (Safety Schemes Compliance and Enforcement) Act 2014*
* The *Transport Integration Act* *2010.*

The **Crown Land (Reserves) Act** primarily governs the management and use of Crown land designated as reserves within the state. It provides a framework for the establishment, classification, and administration of various types of reserves, including parks, recreational areas, conservation reserves, and public land. The *Crown Land (Reserves) Act* outlines procedures for the reservation, leasing, licensing, and disposal of Crown land reserves, aiming to ensure their conservation, protection, and sustainable use for the benefit of the community and future generations.

The **Marine (Drug, Alcohol and Pollution Control) Act** prescribes offences in relation to drugs and alcohol, including prohibiting masters and other persons involved in vessel operations from being under the influence of certain prescribed drugs or impaired by alcohol. Additionally, the Marine (Drug, Alcohol and Pollution Control) Act allocates responsibilities with respect to the management of marine incidents that may result in pollution of waters.

The **Marine and Coastal Act** sets out the framework for marine and coastal planning and management in Victoria. It includes objectives and guiding principles for planning and managing the marine and coastal environment. The principles and objectives must be applied when planning for the use or development of the marine and coastal environment.

The **Marine Safety Act** imposes general safety duties on participants in the marine operations sector. Safety duty holders are required to:

* ensure, so far as is reasonably practicable, safety in respect of a range of marine activities depending on the person (i.e.., owners of vessels and employers of vessel operators are required to meet a higher standard than recreational boaters); and
* take reasonable care for their own safety where a requirement exists to take reasonable care.

Section 292 of the Marine Safety Act provides for prosecution of offences under marine and port legislation (including the *Port Management Act* and Regulations) by police officers, transport safety officers and bodies and persons authorised by the port manager (if prescribed).

The **Transport (Safety Schemes Compliance and Enforcement) Act** confers powers on Safe Transport Victoria (ST Vic) and transport safety officers to conduct compliance monitoring and investigations. This includes the powers of entry onto vessels. Transport safety officers are officers appointed under the *Transport (Safety Schemes Compliance and Enforcement) Act*. There is also provision in relation to enforcement, enabling:

* infringement notices, improvement notices, prohibition notices to be issued, and
* prosecution, and the imposition of court orders.

The **Transport Integration Act** establishes a framework for integrating transport and land use in Victoria. It aims to create a sustainable, efficient, and coordinated transport system that supports social and economic inclusion, environmental sustainability, and safety. The Act outlines objectives, principles, and policies to guide decision-making and planning in the transport sector.

Other Acts mentioned in the Regulations which are of lesser relevance include:

|  |  |
| --- | --- |
| Legislation | How it relates to the Regulations |
| The *Conservation, Forests and Lands Act 1987* | * Referred to in relation to authorised officers appointed under Part 9 of this Act not committing an offence under the Regulations if acting in the course of their duties. |
| The *Dangerous Goods Act 1985* | * Referred to in relation to offences associated with use of fireworks or other explosives. |
| The *Environment Protection Act 2017* | * Uses the definitions within this Act for industrial waste, litter and dangerous litter. * Establishes environmental duties. |
| The *Filming Approval Act 2014* | * Uses the definition within this act for commercial filming. To the extent of any inconsistency between this Act and the Regulations, the Act prevails. |
| The *National Parks Act 1975* | * To the extent of any inconsistency between this Act and the Regulations, the Act prevails. A port manager also must not issue a permit under the Regulations in respect of land to which this Act applies. |
| The *Occupational Health and Safety Act 2004* | * To the extent of any inconsistency between this Act and the Regulations, the Act prevails. |
| The *Road Safety Act 1986* | * Uses the definition within this Act for vehicle. |
| The *Sentencing Act 1991* | * Referred to in relation to the method of calculation of penalty units within the Regulations. |
| The *Monetary Units Act 2004* | * Referred to in relation to the method of calculation of penalty units within the Regulations. |

## Relevant policies and strategies

### Sustainable Local Ports Framework

The *Sustainable Local Ports Framework* 2021[[14]](#footnote-15) identifies four key principles for local ports - Local Economy and Job Growth, Tourism and Recreation, Emergency Response Capabilities, and Community and Cultural Value.

This framework highlights that local ports provide:

* Port facilities and services for commercial businesses including commercial fishing, vessel servicing and repairs, transport, and tourism;
* Safe harbours providing shelter for small vessels during storms and access for emergency services;
* Vessel maintenance including haul out facilities;
* Berths and moorings, and loading/unloading facilities for ferries and charter operators, commercial vessels including fishing, aquaculture and small cargo.

The provision and maintenance of dredged channels and aids to navigation, within and approaching local ports, also support safe vessel navigation.

In addition to enabling (powered) vessel operations, local ports are also home to a range of recreational uses, including walking, swimming, diving, snorkelling, angling, canoeing and kayaking, sightseeing and photography.

Local ports are also home to organised events such as the Lorne Pier to Pub, Festival of Sails, Paynesville Classic Boat Rally and Maritime Festival, and Portarlington Mussel Festival.

The nature and breadth of uses and activities require that the local ports are managed for public safely and equity.

### Better Boating Fund and the Victorian Recreational Boating Strategy

The Better Boating Fund, which is established under the *Marine Safety Act*, returns revenue from recreational marine licensing and boat registration fees to improving boating safety and facilities. The Fund commenced operation in July 2021.

The *Victorian Recreational Boating Strategy 2021-2030* informs how funds in the Better Boating Fund will be allocated. The Strategy outlines the vision and the objectives and priorities for the allocation of funds. The Strategy is supported by action plans which outline the projects and actions that will be taken to give effect to the Strategy.

The objectives of the Strategy are:

* Enhance the Victorian boating experience by:
  + supporting and improving the maintenance of our public facilities, including local ports
  + renewing existing facilities and building new ones
  + continuing to invest in destination locations
  + improving access and navigation
  + promoting boating across Victoria
* Improve waterway and boating safety by investing in marine search and rescue and boating safety and education.

A number of the objectives of the Strategy are relevant to the objectives of the *Marine Safety Act* which relate to safety. In particular, there are opportunities to improve boating facilities to ensure that risks and hazards relating to the safety of recreational boaters are eliminated or mitigated.

### The Marine and Coastal Policy and Marine and Coastal Strategy

The *Marine and Coastal Policy* is a comprehensive framework that guides the management and protection of marine and coastal environments within Victoria. It outlines principles and strategies for sustainable development, conservation, and enhancement of marine and coastal resources. The policy aims to promote ecosystem health, biodiversity conservation, climate resilience, and community engagement in decision-making processes related to marine and coastal management. It also addresses issues such as coastal erosion, pollution, habitat degradation, and access to coastal areas, with a focus on collaboration between government agencies, stakeholders, and the community to achieve shared goals for the long-term stewardship of Victoria's marine and coastal environments.

The *Marine and Coastal Strategy* serves as a comprehensive plan for the sustainable management and conservation of Victoria's marine and coastal environments. It outlines specific objectives, priorities, and actions to address key challenges such as climate change, biodiversity loss, pollution, habitat degradation, and sustainable resource use. The strategy aims to guide decision-making processes, promote ecosystem health, enhance resilience to environmental pressures, and foster collaboration among government agencies, stakeholders, and the community. It also emphasises the importance of scientific research, monitoring, and adaptive management approaches to ensure the long-term health and productivity of Victoria's marine and coastal ecosystems.

## Governance

A number of ministerial, government offices and agencies are involved in oversighting local port management. These include:

* The Minister for Ports and Freight – responsibility for matters in relation to ports and freight, and joint responsibility for marine safety and marine pollution with the Minister for Outdoor Recreation
* The Minister for Outdoor Recreation – joint and several responsibility for marine safety and marine pollution with the Minister for Ports and Freight
* The Department of Transport and Planning – provides advice to the Minister for Ports and Freight
* The Department of Jobs, Skills, Industry and Regions – provides advice to the Minister for Outdoor Recreation
* Safe Transport Victoria – a statutory office established under the *Transport Integration Act*. Safe Transport Victoria is vested powers to administer, monitor compliance with and enforce the Marine Safety Act and Regulations (these responsibilities extend to other legislation as well).
* Victoria Police – has power to prosecute offences under the *Marine Safety Act,* *Port Management Act* and associated regulations. There is a dedicated water police unit which undertakes these activities.
* VicRoads – administers vessel registration and marine licensing on behalf of Safe Transport Victoria under a service level agreement.

## Local port management data and statistics

Data and statistics relating to local ports are collected for a range of statutory and management purposes. Data and statistics about port management, marine safety and marine pollution, and employee and public safety management and incidents are collected by a range of government entities including port managers for all local ports. There are no specific provisions of the *Port Management Act* relating to data collection, other than data identified by port managers to support the implementation of port management plans. The following sections 2.6.1 to 2.6.6 highlight the broad usage of local ports with data sourced directly from port managers, local port management plans and Safe Transport Victoria.

The types of data collected, the methods used to collect the data, and the applicability of each data set may differ for each local port. This means it is not always possible to compare a data set in one local port with another. However, the data available can give an indication of the nature and severity of incidents and trends. This evidence can inform and supplement anecdotal views of stakeholders that the Department has consulted in preparing this document.

### Use of port facilities

In local ports, port facilities include wharves, jetties, slipways, breakwaters, moorings, buildings and vehicle parks. Across the local ports this represents a significant asset portfolio which enables the delivery of port functions and services. Further details of the location and extent of port facilities are provided in **Appendices** **1** and **2**.

In this document, a reference to “wharves” means wharves, piers and jetties. There are over 160 wharves managed by port managers across the Victorian coast.

On the south-west coast there are two manmade harbours, Portland and Apollo Bay, providing protection for vessels. Protection for vessels from weather and waves, is also available at Port Fairy, Port Phillip (for example, Portarlington and Sandringham Harbours), and the Gippsland Lakes.

There are approximately 100 berths and 3,000 moorings in Port Phillip and Western Port which are managed by Parks Victoria. Parks Victoria also manages seasonal swing moorings which may be removed from the water each summer.

There are approximately 500 berths and 200 moorings managed by Gippsland Ports.

There are approximately 120 berths in the south-western ports and approximately 30 moorings.

Port managers issue permits to vessel owners using berths and moorings in local ports. The duration of the permit varies, usually 12 months. The permits include terms and conditions, such as a requirement to have the mooring and tackle inspected annually. Berths and moorings can also be provided by other entities, including yacht clubs, councils and marina operators. Licences are also issued (by the Department of Energy, Environment and Climate Action) for private jetties on local port waters including Gippsland Lakes and Port Phillip. Most berths and moorings across the state are used by vessels throughout the year.

There are eight local port haul out facilities across the coast, including slipways at Paynesville, Port Welshpool, Apollo Bay and Port Fairy. Travel lifts are operated in Paynesville Boatyard and at Bullock Island Boatyard at Lakes Entrance where vessel servicing and maintenance can take place.

Use of haul out facilities, travel lifts and the boatyards is subject to the vessel owner accepting access subject to certain terms and conditions set by the port manager.

Maintenance dredging is undertaken at Port Fairy, Warrnambool, Apollo Bay, at various locations around Port Phillip and Western Port including Queenscliff and Patterson River, and on the Gippsland Lakes to support vessel access. Across the local ports there are approximately 2,000 aids to navigation.

### Visitations to local ports

As local ports are geographically large and include more than 160 wharves, it is challenging to collect visitation data cost effectively. Parks Victoria undertakes a biennial visitor number survey. Survey improvements in 2020-21, which improved accuracy in data for visits, means that it is not possible to make longitudinal comparisons. Similar data is not available for other local ports except at key sites.

Table 2.1 and Table 2.2 highlight the number of visits to Port Phillip and Western Port. No biennial visitor number survey was undertaken in 2019-20, 2021-22 and 2023-24. The survey methodology was changed in 2020-21 and hence figures after this date can’t be compared with prior years. The annual visitation varies due to temporary closures for safety, maintenance and refurbishment and COVID safe settings.

Table 2.1 Number of visits to Port Phillip and Western Port wharves (each financial year) 2016-17 – 2018-19

|  |  |  |  |
| --- | --- | --- | --- |
|  | 2016-17 | 2017-18 | 2018-19 |
| Visits to wharves | 39.5m | 39m | 51.6m |

Source: Department of Environment, Land, Water and Planning, Parks Victoria Key Performance Indicator reported annually in Victorian Government Budget Paper No. 3 and data sourced from Visitor Number Monitor, Ipsos Public Affairs.

Table 2.2 Number of visits to Port Phillip and Western Port wharves (each financial year) 2019-20 – 2023-24

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
| Visits to wharves | Not available | 33.3m | Not Available | 27.4m\* | Not available |

Source: Department of Energy, Environment and Climate Action, Parks Victoria Key Performance Indicator reported annually in Victorian Government Budget Paper No. 3.

\*The figure for 2022-23 is the listed expected outcome in the Victorian Government 2023-24 Budget Paper No. 3.

### Events and activities in local ports

The number of events and activities permits issued has remained relatively steady over recent years in the local ports of Port Phillip, Western Port and Port Campbell, except for a dip in activity during the peak of the COVID-19 pandemic.

Table 2.3 Number of events, photography and filming permits issued in Port Phillip, Western Port and Port Campbell (each financial year)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
| Event permits | 139 | 157 | 205 | 101 | 51 | 74 | 124 | 158 |

Source: Parks Victoria, Annual Report, Safety and Environment Management Plan (for the period 2016-17 to 2023-24 inclusive), Local Ports of Port Phillip, Western Port and Port Campbell.

The number of events permits issued has also remained relatively steady over recent years in the local ports of Corner Inlet and Port Albert, and Gippsland Lakes.

Table 2.4 Number of events permits issued in Corner Inlet and Port Albert, and Gippsland Lakes (each financial year)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
| Event permits | n/a | n/a | n/a | n/a | 25 | 20 | 26 | 17 |

Source: Gippsland Ports.

The number of events in other local ports such as those in south-western Victoria (including Portland Bay, Port Fairy, Warrnambool, Apollo Bay, Lorne and Barwon Heads) was not sought for this report but is known to be small.

### Works in local ports

Permits are also issued for works undertaken within local ports. Between 20 and 30 works permits were issued in the local ports of Port Phillip and Western Port year from 2016-17-2022-23, as shown in Table 2.5.

Table 2.5 Number of works permits issued for Port Phillip and Western Port (each financial year)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
| Work permits | 24 | 27 | 25 | 22 | 29 | 30 | 21 | 16 |

Source: Parks Victoria, Annual Report, Safety and Environment Management Plan, Local Ports of Port Phillip and Western Port

The number of works permits issued has remained relatively steady over recent years in the local port of Corner Inlet and Port Albert, and Gippsland Lakes. In 2022-23, Gippsland Ports issued 7 works permits, 17 for construction works and 39 for works on vessels. This is considered representative of an average year over the last ten years.

Table 2.6 Number of works (and related) permits issued in Corner Inlet and Port Albert, and Gippsland Lakes (each financial year)

|  | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Works permits | n/a | n/a | n/a | 12 | 18 | 10 | 17 |
| Refuelling permits | n/a | n/a | n/a | 8 | 7 | 9 | 7 |
| Works on vessels alongside permits | n/a | n/a | n/a | Approx 40 | Approx 40 | Approx 40 | 39 |

Source: Gippsland Ports.

### Vessel registrations and movements

Vessel registration and marine licensing is not directly relevant to the Regulations because the regulations do not provide for the issue of licences and vessel registration. However, this data is presented in this RIS as a proxy of recreational vessel activity levels at local ports.

The number of registered vessels and marine licences issued has risen steadily over recent years in Victoria.

Table 2.7 Recreational vessel registrations annually as at 30 June

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
| Total | 190,428 | 193,346 | 195,338 | 195,682 | 198,248 | 201,532 | 203,251 | 203,062 | 203,392 |
| Annual change (%) |  | 1.53% | 1.03% | 0.18% | 1.31% | 1.66% | 0.85% | -0.09% | 0.16% |

Source: Safe Transport Victoria

Table 2.8 Recreational marine licences annually as at 30 June

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
| Total | 395,431 | 407,631 | 411,673 | 419,697 | 421,208 | 434,966 | 445,971 | 448,422 | 452,606 |
| Annual change (%) |  | 3.09% | 0.99% | 1.95% | 0.36% | 3.27% | 2.53% | 0.55% | 0.93% |

Source: Safe Transport Victoria

As shown in Table 2.7, the number of recreational vessels registered in Victoria has increased from 190,042 vessels in 2016 to 203,392 vessels in 2024, representing a total eight-year growth in the number of recreational vessel registrations of around seven per cent (or a compound annual growth rate of 0.83 per cent).

The number of marine licences has also grown. Table 2.8 shows that the number of recreational marine licences in Victoria increased from 395,431 licences in 2016 to 452,606 licences in 2024, representing a total eight-year growth in the number of licences of around 14 per cent (or a compound annual growth rate of 1.70 per cent).

However, the rate of growth in recreational vessel registrations in Victoria is not necessarily consistent with the rate of growth in local port catchment areas. In fact, the growth of vessel registrations in local port catchment areas may be higher than the growth represented in Victoria.

For example, based on the data presented in the *Gippsland recreation vessel registration analysis 2020* report[[15]](#footnote-16), growth in recreational vessel registrations in Victoria was around 35 per cent (or a compound annual growth rate of around 1.9 per cent) over a 16-year period. By comparison, the number of recreational vessel registrations in the total Gippsland catchment increased from 14,786 vessels in 2003 to 32,921 vessels in 2019, representing a total 16-year growth in the number of vessel registration of around 123 per cent (or a compound annual growth rate of around 5.1 per cent).

The report demonstrates vessel registrations in the total Gippsland catchment were increasing at an average rate of 2.7 times the rate for Victoria over the period from 2003 to 2019.

The majority of vessels are ‘open’ watercraft (i.e. not having a fully enclosed hull), and the proportion of the personal watercraft is increasing. Half cabin and open vessels have shown a decrease in average length over time, with other categories remaining fairly constant. This decrease in average vessel length may reflect an increasing proportion of personal watercraft and is consistent with Victorians’ preference to own and operate trailerable recreational vessels.

While these statistics given an indication of the increased use of vessels in Victoria’s local ports, there are other relevant aspects which are not taken into account. For example, a proportion of recreational boating occurs outside of local ports on inland water ways such as Lake Eildon. Commercial vessels are regulated by the Australian Maritime Safety Authority (AMSA) and are not included in the analysis. This is because commercial vessels may not have a single home local port, and therefore may place additional demand on port facilities. These statistics also do not include off the beach, non-powered or visiting vessels.

### Areas set aside for particular activities

A set aside determination represents a decision by the port manager to restrict or permit a use or activity in a specific area. The purpose of these determinations is to maintain public safety, facilitate works and events, and prevent interference with the safe management of the local port. Port managers may make a set aside determination under the current Regulations and can specify conditions for the activity or use of an area.

Set asides determinations may be permanent (for example, berths, moorings, etc.) or temporary (for example, events, works, etc.). In general, the number of permanent set asides does not change significantly from year to year. Primarily, new permanent set aside determinations are made when a new facility is constructed. When a permanent set aside determination is made, the set aside determination will usually replace all previous set aside determinations for the area or sub-area covered by the determination.

Parks Victoria makes determinations for different types of set asides for the local ports of Port Phillip and Western Port. Table 2.9 below shows the types and number of set aside determinations made by Parks Victoria from 2015-16 to 2023-24.

Table 2.9 Parks Victoria set aside determinations made from 2015-16 to 2023-24

| Type of set aside | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Events | 9 | 17 | 16 | 10 | 14 | 2 | 16 | 29 | 29 |
| Works | 0 | 0 | 0 | 0 | 0 | 1 | 3 | 0 | 2 |
| Cruise ship visit | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Berthing area | 0 | 0 | 0 | 0 | 40 | 74 | 0 | 0 | 1 |
| Mooring grounds | 0 | 0 | 0 | 66 | 0 | 0 | 0 | 0 | 0 |
| Alcohol prohibition | 0 | 0 | 0 | 3 | 1 | 0 | 0 | 0 | 1 |
| Other | 0 | 0 | 0 | 8 | 0 | 0 | 0 | 0 | 0 |
| Total | **12** | **19** | **16** | **87** | **55** | **77** | **19** | **29** | **33** |

Source: Parks Victoria.

Note: The number of berthing set asides counts the number of distinct sub-areas that have been set aside, where a single asset (for example, a wharf) may have several set asides relating to different uses or access. Figures for 2023-24 include the period to 5 June 2024 only.

Set aside determinations for events cover activities such as triathlons, boating[[16]](#footnote-17), firework displays and carnivals, with the most recent two years showing the highest number of set asides for events (29 events) over the nine-year period. The COVID-19 pandemic likely impacted the number of set asides determinations for events, as only two set aside determinations made in 2020-21. Works-related set aside determinations are usually for the maintenance of port facilities (for example, repair work on a wharf) and are usually made on a temporary basis. Set asides are also sometimes made for cruise ships and alcohol prohibitions on an as needs basis.

As stated previously, permanent set aside determinations will not vary from year to year, which is particularly relevant to berthing areas and mooring grounds. For example, on 17 June 2019, Parks Victoria re-established its mooring grounds by making 42 new mooring ground determinations within the local port of Port Phillip and 24 new mooring ground determinations with the local port of Western Port. Similarly, Parks Victoria re-established its berthing set asides by making 40 new berthing set aside determinations for the local port of Port Phillip on 23 October 2019, and 74 new berthing set aside determinations for the local port of Western Port on 10 December 2020. These set aside determinations, when made, replaced all previous set aside determinations of specified activities and access, and will remain in force until amended or revoked.

Gippsland Ports provided the following information on the type and number of set aside determinations made as at June 2024, as shown in Table 2.10.

Table 2.10 Gippsland Ports set aside determinations

|  |  |
| --- | --- |
| Type of set aside | Number of set asides |
| Gippsland Ports’ facilities including swing moorings | 98 (285 sub-areas) |
| Worksite/commercial areas | 20 (20 sub-areas) |
| Permanent berthing facilities (including swing mooring areas) | 44 (44 sub-areas) |
| Other asset manager’s facilities (including boat ramps and marinas) | 61 (98 sub-areas) |

Source: Gippsland Ports

Table 2.11 shows the number of set aside determinations managed by Gippsland Ports by local ports as at June 2024.

Table 2.11 Gippsland Ports managed set aside determinations by local port as at June 2024

|  | Anderson Inlet | Corner Inlet and Port Albert | Gippsland Lakes | Mallacoota | Snowy River | Total |
| --- | --- | --- | --- | --- | --- | --- |
| Loading Zone | 4 | 6 | 33 | 7 | 2 | 52 |
| Permit Only Zone | 0 | 18 | 88 | 5 | 0 | 111 |
| Short Term Zone | 0 | 0 | 25 | 2 | 0 | 27 |
| Temporary Berthing Zone | 5 | 17 | 65 | 6 | 2 | 95 |
| Total | **9** | **41** | **211** | **20** | **4** | **285** |

Source: Gippsland Ports

Note: The number of set asides counts the number of distinct zones that have been set aside, where a single asset (for example, a wharf) may have several set asides relating to different uses or access .

# Nature and extent of the problem

This section characterises the nature and extent of the problems and risks associated with operations in local ports. It begins by identifying the key harm domains relating to local ports, mapping these against the causes of the harms and a problem statement, before linking the cause and effect of the problem and then providing evidence of the problem. Following this, a summary of the residual problem in the absence of the current Regulations is provided, together with a high level overview of some broader problems.

## Defining the problem

### Harm domains relating to local ports

Routine operations in local ports pose risks and potential harms to the health and safety of local port users and the broader local port environment.

These risks and potential harms can be broadly split between three distinct but overlapping domains as set out in Figure 3.1 below. An example of the overlapping nature of the types of harms within these domains is abandoned vessels which cause negative impacts on the environment particularly if they are deteriorating, sinking, submerged or sunk[[17]](#footnote-18). However, these abandoned vessels can also contribute to access and amenity problems by restricting access and safety problems if the vessel is not maintained or visible from above the surface.

Figure 3.1 Harm domains within local ports

**Additional factors contributing to the harms**

Including public goods, externalities, information asymmetry, coordination failures and underinvestment in infrastructure.

### Summary and extent of the harms

The key concerns identified in this chapter have been graded at a level of low, medium and high to represent the level or extent of the harms identified. This grading has considered the following:

1. The potential extent of the harms – for example, higher rating if there is a risk of serious injury, serious damage or worse occurrence
2. Whether the harms are adequately addressed through other regulatory frameworks separate from the Regulations
3. Whether the harms are adequately addressed through other factors including behavioural and market forces
4. The likelihood of the harm occurring

Table 3.1 outlines the extent of the harm for each key concern. These concerns and the possible options to address them will be discussed further in the following chapter.

Table 3.1 Extent of harm by key concern

|  |  |  |  |
| --- | --- | --- | --- |
| Type of harm | Level / Extent of Harm | | |
|  | **Low** | **Medium** | **High** |
| Safety problems |  |  |  |
| Dangerous activities and behaviours |  |  |  |
| General health and safety of local port users |  |  |  |
| Refuelling vessels |  |  |  |
| Environmental problems |  |  |  |
| Abandoned vessels |  |  |  |
| Unseaworthy vessels |  |  |  |
| Oversight of works |  |  |  |
| Access and amenity problems |  |  |  |
| High demand for existing port facilities |  |  |  |
| Unauthorised installation and use of moorings |  |  |  |
| Secondary market for mooring permits |  |  |  |
| Competing and conflicting activities and operations |  |  |  |

### Causes of harm

The primary causes of harm within local ports are:

1. **Risky human behaviour and inadequate competency**

* **Harm**: Poor decision-making, lack of awareness of hazards, and insufficient skills among port users and operators lead to accidents, unsafe practices, and compromised safety for vessel masters and passengers.

1. **Inadequate safety infrastructure and equipment**

* **Harm**: Insufficient or poorly maintained safety equipment and facilities increase the severity of incidents, delay emergency responses, and leave users vulnerable to avoidable risks.

1. **Poor maintenance and ineffective hazard management**

* **Harm**: Failure to adequately maintain port facilities, vessels, and waterways, including clearing debris or repairing structures, contributes to accidents, vessel damage, and operational disruptions.

1. **Uncontrolled environmental and pollution incidents**

* **Harm**: Pollution incidents, such as waste or fuel spills, cause ecological damage, health risks, and financial losses for businesses reliant on clean waterways. Poor preparedness exacerbates these harms.

1. **Congestion, overuse, and operational conflicts**

* **Harm**: High demand such that there is overcrowding and competition for limited resources (for example., berths or moorings) creates inefficiencies, operational delays, and increased risks of accidents or disputes among users.

Table 3.2 below lists the key concerns within local ports and maps which causes are relevant to each.

Table 3.2 Key concerns within local ports by causes

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Human behaviour and competency | Safety infrastructure and equipment | Maintenance and hazard management | Environmental and pollution risks | Port usage, congestion and operational dynamics |
| Safety problems |  |  |  |  |  |
| Dangerous activities and behaviours | ✔ | ✔ | ✔ |  |  |
| General health and safety of local port users |  | ✔ | ✔ | ✔ | ✔ |
| Refuelling vessels | ✔ |  |  | ✔ | ✔ |
| Environmental problems |  |  |  |  |  |
| Abandoned vessels | ✔ |  |  | ✔ |  |
| Unseaworthy vessels | ✔ |  |  | ✔ |  |
| Oversight of works |  |  |  | ✔ | ✔ |
| Access & amenity problems |  |  |  |  |  |
| High demand for existing port facilities | ✔ |  |  |  | ✔ |
| Unauthorised installation and use of moorings | ✔ |  |  |  | ✔ |
| Secondary market for mooring permits | ✔ |  |  |  | ✔ |
| Competing and conflicting activities and operations |  |  |  |  | ✔ |

There are high costs associated with some of the harms particularly safety incidents which result in fatalities and serious injuries. There are also substantial costs associated with the appropriate maintenance of assets and waterways, as well as the management of scarce and valuable port resources.

### Sunsetting regulations

In line with the *Victorian Guide to Regulation* (VGR) [[18]](#footnote-19), problem analysis for sunsetting regulations is conducted based on:

1. an assessment of the problems likely to arise if the existing regulations were allowed to expire without being remade. That is, the residual problem absent the regulations which are subject to sunsetting; and
2. problems that are evident under the current regulatory framework.

As a result, the analysis of each of the issues identified in this chapter includes discussion relating to both aspects.

In the absence of the Regulations the status quo would largely hold in relation to organised activities, such as festivals and boat races. For example, boating events would continue to be managed as appropriate through processes under the Marine Safety Act. The main difference would be that these types of activities would not benefit from an assessment from the perspective of the local port manager, who understands the complexities of all operations within the local port.

Evidence suggests that other activities, such as vessel maintenance and storage, passenger and cargo management, and inherently dangerous activities like hot works, require regulatory intervention due to safety risks and the scarcity of available facilities. As such, the problem section focuses on three key problem areas – (1) safety, (2) environment and (3) access and amenity.

### Problem statement

Without appropriate regulatory controls, routine operations in local ports pose a risk of harm to local port users and the environment, and compromises access to and amenity of local ports.

### Scope of this chapter

This chapter examines problems and harms that occur in local ports to help to provide a broad understanding of these environments. However, not all problems and harms are the responsibility of the local port manager. For example, incidents involving snorkelling may occur in local ports. Snorkelling is regulated in local ports where it occurs within 20 metres of a wharf, and it is not regulated beyond that boundary under the current Regulations. Therefore, a snorkelling incident which occurs beyond 20 metres of a wharf are not considered to be directly relevant to the Regulations or the responsibilities of port managers.

### Limitations of evidence

Although best efforts have been made to understand the local port environment in the absence of regulations, it is difficult to accurately quantify and estimate the unregulated environment as the existing regulations have been in place for ten years, and similar regulations have been continuously in effect prior.

## Safety problems

### Description and underlying causes

Local ports are shared places for tying up, refuelling and maintaining vessels, collecting passengers, loading and unloading goods, walking, cycling, fishing and participating in swimming, diving and snorkelling activities. Routine operations in local ports entail a spectrum of risks that necessitate systematic management to uphold the safety of all users. Considering local ports are widely accessible to the public, with Victorian visitor numbers surpassing 30 million annually within the ports of Port Phillip and Western Port alone, there is considerable exposure to these risks. Many of the visits to local ports are casual, pedestrian visits including many by tourists. This means that some visitors might not fully grasp the nature or magnitude of the port specific hazards they encounter.

Despite this, empirical data indicates a relatively low incidence of injuries and fatalities, implying that, overall, these risks are adequately mitigated within the current regulatory framework. Managing the risks associated with port facility usage by various groups, including the general public, entails employing a variety of pertinent strategies. These strategies, theoretically, could encompass both regulatory and non-regulatory approaches.

The primary activities undertaken within local ports that give rise to safety risks include:

|  |  |
| --- | --- |
| Activity | Associated safety risk |
| Loading and unloading vessels (for example, goods, construction materials, commercial fish catch, passengers) and transit of vehicles and cranes for operational and maintenance activities. | Heavy equipment and materials increase the risk of accidents, including falls, crushing injuries, and collisions, particularly in crowded or confined areas. Weather and tide changes can further destabilise operations. |
| Servicing, fuelling and maintaining vessels and fishing equipment (for example, net stretching and repair) at wharves and also on slipways and boatyard facilities. | Risks include spills of hazardous substances (fuels, oils), fire, equipment malfunctions, and injuries during maintenance tasks like net repairs. Slipways and boatyards can also be slippery and congested. |
| Maintenance of port facilities including aids to navigation which may require access by vessels. | Tasks often require working at height, over water, or in confined spaces, posing risks of falls, drowning, or equipment failures. Vessel access adds to the complexity of moving operations. |
| Dredging and sand management (including pumping sand slurry into an intertidal zone) (which may also involve a crane moving a dredge pipeline). | Involves heavy machinery (for example, cranes) and the movement of large volumes of slurry, creating risks of equipment malfunctions, sinking pipelines, environmental contamination, and worker safety concerns. |
| General public access to wharves (which may not have handrails due to vessel operating requirements) and other port facilities, which are shared with many different users for a variety of activities. | The absence of handrails on wharves due to vessel operating needs, posing fall risks. Crowded, mixed-use areas increase the likelihood of slips, trips, and conflicts between diverse user groups. |
| Vehicles entering onto wharves and other port facilities, resulting in interactions with other port users including pedestrians, or ending up in the water both due to deliberate acts and to misadventure. | Interactions between vehicles and pedestrians heighten collision risks. Vehicles can also accidentally or deliberately enter the water, leading to safety and recovery challenges. |
| Storage of items on vessels and recreational fishing obstructing access and raising safety issues for port operations and other port users. | Items stored on wharves can block emergency exits, impede operations, and create tripping hazards for other users, especially during high-traffic periods. |
| People jumping from wharves or other structures or swimming near berthing areas. | Jumping or swimming near active berths risks collisions with vessels, entanglement in mooring lines, and drowning, especially where visibility or vessel manoeuvrability is limited. Jumping or diving from wharves may result in serious injuries due to shallow water or submerged objects. |
| The installation of illegal moorings and vessels illegally moored in local ports including being tied up to non-port facilities such as trees. | These practices obstruct navigation, increase collision risks, and may damage natural habitats or port infrastructure, complicating lawful port operations. |

### Incident data

Incident data provided by port managers gives insights into the nature and frequency of incidents in local ports over the period 2015-16 to 2023-24. A total of 425 incidents have been recorded over the nine-year period which represents an average of 47.2 incidents per annum.

This data may include incidents reported to other regulatory agencies. This is because the current Regulations do not include incident reporting requirements other than for those involving circumstances where a person is carrying out hazardous port activity in a local port. Nonetheless, there are incident reporting requirements under the *Marine Safety Act* and the *Occupational Health and Safety Act* for safety related incidents. Reported incidents under these Acts, where relevant to port functions, have been used to inform the nature and extent of the problem in relation to local ports.

Incidents and near misses may be reported to port managers, albeit with limited information. For example, often the local port manager, and hence the Department, does not receive information on the outcome of the incident. The data is also limited to only what is directly reported to or observed by port managers. The data includes some occupational health and safety incidents. It therefore may overlap with data collected by WorkSafe Victoria, Safe Transport Victoria, Victoria Police or the Australian Maritime Safety Authority.

Table 3.3 shows the types of local port incidents recorded in Victoria local ports from 2015-16 to 2023-24.

For the purpose of this table:

* Central local ports include the ports of Port Phillip and Western Port.
* Eastern local ports include the ports of Anderson Inlet, Corner Inlet and Port Albert, Gippsland Lakes, Snowy River and Mallacoota.
* South-western local ports include the ports of Portland Bay, Port Fairy, Warrnambool, Port Campbell, Apollo Bay, Lorne and Barwon Heads.

Table 3.3 Incidents recorded in Victorian local ports, 2015-16 to 2023-24

| Type of incident | Central local ports | Eastern local ports | South-western local ports | Total |
| --- | --- | --- | --- | --- |
| Animal attack | 2 | 0 | 1 | **3** |
| Animal cruelty | 2 | 0 | 0 | **2** |
| Assault, abuse, intimidation | 6 | 0 | 1 | **7** |
| Camping | 1 | 0 | 0 | **1** |
| Debris, litter, hazardous material | 8 | 0 | 3 | **11** |
| Fire | 11 | 3 | 1 | **15** |
| Fuel, oil, sewage leak | 10 | 0 | 5 | **15** |
| HSE hazard/incident\* | 26 | 11 | 18 | **55** |
| Mooring damage | 6 | 0 | 0 | **6** |
| Other | 32 | 1 | 2 | **35** |
| Wharf jumping | 12 | 0 | 0 | **12** |
| Slip, trip, fall | 58 | 6 | 9 | **73** |
| Swimming, diving, activity on or near water | 46 | 1 | 1 | **48** |
| Theft, vandalism, trespass | 8 | 0 | 5 | **13** |
| Vehicle capsize, sink, swamp | 2 | 0 | 2 | **4** |
| Vehicle collision | 3 | 1 | 3 | **7** |
| Vessel capsize, sink, swamp | 27 | 2 | 4 | **33** |
| Vessel collision | 19 | 3 | 0 | **22** |
| Vessel drift, ground, trap | 24 | 4 | 8 | **36** |
| Vessel loss of control | 2 | 0 | 1 | **3** |
| Weather, natural event | 21 | 0 | 3 | **24** |
| Total | **326** | **32** | **67** | **425** |

Source: Local port incident report provided to and collated by the Department of Transport and Planning.

\* Note: The category labelled “HSE hazards/incidents” includes health, safety and environmental matters that involve both potential risks of harm (hazards) as well as actual occurrences of harm (incidents). Hazards and incidents may be structural (for example, protruding nail, broken boardwalk), electrical (for example, faults in power, lighting), operational (for example, error or accident arising from operation of port equipment), and environmental (for example, oil spill, erosion). The hazards and incidents include workplace related matters, as well as those affecting the community and the local port area more broadly.

The data presented in Table 3.3 shows all incident and near miss reports from staff, contractors and the public which are relevant to local port functions. The most frequent recorded incidents are vessel-related incidents (94 incidents), followed by slips, trips and falls (73 incidents, Health, Safety and Environmental (HSE) hazards/incidents (55 incidents), and swimming, diving, activity on or near water (48 incidents).

Although not exclusively relevant to local ports, the *2023-24 Life Saving Victoria Drowning Report* stated that in the past 12 months there were 54 drowning incidents and 132 non-fatal drowning incidents requiring paramedic attendance[[19]](#footnote-20). This includes 27 drownings over summer, the highest number on record for any summer in Victoria. There were 17 deaths in the 25-44 age group (the highest of any age group) and multicultural communities across Victoria also had the highest number of drownings since records began with 21 fatalities.

#### Data limitations

While the data presented is indicative of the types of incidents that occur in and around Victorian local ports, it only provides a snapshot of what is occurring. Currently, there are minimal regulatory requirements for the community to report incidents to port managers. The only incidents required to be notified to a port manager under the current Regulations are incidents that involve circumstances where a person is carrying out hazardous port activity in a local port and an explosion, fire or spillage or similar event occurs. In relation to incidents occurring while port managers carry out their function (for example, workplace incidents, incidents impacting port resources or facilities), port managers are obligated to record and report these incidents to the Department under management arrangements. Nonetheless, the number of incidents recorded, particularly in relation to the broader community where reporting is not mandated, could be less than what is actually occurring due to the fact that some incidents may simply not be reported.

Due to gaps and inconsistencies in the data obtained by the Department, it is difficult to ascertain with any certainty the consequences of the incidents (particularly in relation to personal injury). The data also lacks clarity in terms of which incidents are necessarily workplace incidents and which are local port incidents affecting the broader community. In addition, some incidents may relate to risks associated with marine safety more generally, such as the safe operation of vessels. As such, this data shows risks arising from local port operations which also fall within scope of risks addressed by other signification legislation, including the *Occupational Health and Safety Act* and the *Marine Safety Act*.

Nevertheless, the data does provide important insights into the activities and risks associated with the use of local port areas. There is value in understanding the environment in which port managers must operate when managing local port areas and consideration of all incidents in relation to local port functions provides this broader context.

### Key concerns

#### Dangerous activities and behaviours

*Extent of the problem*

Managing high risk, dangerous or unwanted activities and behaviours continues to be challenge for port managers, particularly with limited resources. These activities can result in substantial harm to individuals and groups, including serious injuries and fatalities.

A total of 31 fatalities were recorded by Victorian port managers during the period 2015-16 to 2023-24, with over half of those fatalities (18 fatalities) due to activities from swimming, diving or activities on or near the water (for example, boating activities, such as sailing, and windsurfing). The remaining 13 fatalities recorded were due to other factors (for example crime and medical episodes) or where the circumstances surrounding the fatality are unknown. On balance, this does not necessarily mean that swimming, diving or activities on or near the water are inherently high risk activities. Rather, the data highlights that large natural bodies of water pose an increased risk of drowning due to changeable conditions. The large number of people in these environments, particularly during peak summer months, may also increase the occurrence of safety incidents.

While the majority of the fatalities recorded occurred as a result of swimming, diving, and boating activities, primarily from drownings, these generally occurred in waters away from port facilities. A review of the circumstances surrounding the fatalities show only a small proportion relate to local port functions and operations in local ports more generally. Based on the short description of the circumstances surrounding the 31 fatalities recorded, a total of three deaths appear to relate to matters addressed or could be addressed by local port functions and operations. These are as follows:

* A child who went missing from a wharf, which is open to pedestrian access, was found in the water and was later confirmed to have died. This highlights the risk associated with the use and access of wharves due to its close proximity to water.
* A person died accessing their vessel which was tied up alongside another vessel highlights the risks associated with accessing a moored vessel.
* A person in a wheelchair died while being lifted from their moored vessel to the wharf. This incident highlights the importance of adequate and safe access to and from vessels when accessed from a wharf.

Identifying the three abovementioned fatalities that relate to matters addressed or could be addressed by local port functions and operations does not imply that the other 28 fatalities recorded are not within scope of port manager responsibility. This is due to the limited information available on the circumstances surrounding some of the fatalities. For example, some fatalities simply report that a swimmer, snorkeler or diver was found deceased in the water, often due to drowning. These types of incidents may well have occurred in areas near port infrastructure (such as wharves) or natural assets, but the limited nature of the data means it is unclear whether any port infrastructure or natural asset was a contributing factor to the fatality. As such, it is important to consider that port manager responsibility encompasses large bodies of waters. As mentioned previously, large natural bodies of water pose an increased risk to the community due to its changeable and unpredictable conditions. Port managers are responsible for areas (i.e. large natural body of water) that inherently pose a distinct risk to the community.

High risk activities can also lead to serious injuries. Based on the data provided, it is difficult to ascertain which activities are high risk based on the likelihood of that activity causing a serious injury. Where an injury is recorded, the data does not provide an indication of the seriousness of the personal injury (i.e. whether the injury was minor, moderate or serious). In some cases, it is unclear from the data whether an incident resulted in an injury at all. However, a review of the data does suggest there is a high risk of serious injury associated with wharf jumping. Of the 12 wharf jumping incidents recorded, four incidents reported spinal or suspected spinal injuries as a result, with another incident reportedly resulting in a concussion. This highlights the potential risks associated with shallow waters, vessels and other obstacles near structures in local ports.

The occurrence of incidents resulting from dangerous activities and behaviours, particularly severe and high impact incidents, may also pose reputational issues for the local port manager, the local port, and the wider community. If a local port is perceived as unsafe, tourists and locals may no longer choose to visit the area.

*Problem if the Regulations sunset*

The *Marine Safety Act* imposes a range of safety duties on port managers and users and promotes a culture of safety among all participants in the marine operating environment. The *Marine Safety Act* also establishes requirements in relation to some higher risk activities, such as ensuring the safety of participants or persons affected by boating activity events (see section 25A of that Act). However, the *Marine Safety Act* and Regulations primarily focus on safety in relation to the navigation, operation and movement of recreational vessels and do not cover certain other high-risk activities in local ports.

This means that in the absence of local port management regulations, activities associated with local ports such as wharf jumping, lighting of fires and interference with vessel moorings would not sufficiently be covered by other regulation. Activities which would not be considered particularly dangerous, like cycling and swimming, can become more hazardous in local port areas. The safe management of these activities in local ports is also not sufficiently covered by other regulatory instruments.

One activity that is controlled and enforced through other regulation is the use of fireworks and other explosives, which are regulated under the *Dangerous Goods (Explosives) Regulations 2022*. However, while these regulations establish requirements in relation to the management and use of fireworks, and a requirement to notify authorities of the intended use of fireworks, the regulations do not cover requirements to safely manage the site in conjunction with other operations and activities. If not appropriately managed, the use of fireworks can pose significant safety risks to other local port users.

Non-regulatory factors also play a crucial role in reducing the harms associated with dangerous activities and behaviours around local ports (see section 3.2.4).

*Concerns with the Regulations*

There have been no specific issues with the current Regulations identified in relation to dangerous behaviours and activities. The problems associated with the current Regulations are centred on monitoring, enforcement, and compliance. For example, the local port manager may not be present at all times so may not be able to actively monitor all activities and operations. Enforcement responsibilities for activities can also be unclear, and local port manager directions may be ignored resulting in reduced compliance.

#### General health and safety of local port users

*Extent of the problem*

Balancing the safety of local port users with the practical operations of local ports is a challenge. Commercial and recreational activities near water pose significant risks of water safety incidents. The dynamic environment of ports, with varied surfaces, and weather and wave conditions, increases the risk of slips, trips, and falls. Wet, slippery and uneven surfaces, wave overtopping, competing and conflicting activities are common. The movement of heavy cargo can also lead to accidents, including being struck by moving or falling objects.

Safety measures like the use of lifejackets and training in water safety are important but cannot prevent all incidents. Furthermore, options to make local ports safer through upgraded facilities may not always be appropriate. For example, installation of handrails where the general public is able to access port facilities may inhibit existing commercial operations.

Despite these risks, port managers have reported that generally port users are safe around local ports. Although data from port managers also indicates a low rate of safety incidences, there can be high consequences such as a fatality or serious injury when incidents do occur.

As previously discussed, due to gaps and inconsistencies with the port incident data, it is difficult to determine with any degree of certainty which incidents caused a personal injury. That is, while it can be readily determined what type of activity was involved with each incident, the consequences of the activity (i.e. whether a personal injury resulted) is not consistently recorded. However, based on the data available, some general observations can be made in relation to local port risks:

* Slips, trips and falls appears to be the most common type of incident where an injury is recorded. Of the 73 slip, trips and falls incidents recorded for the period 2015-16 to 2023-24, 48 reportedly resulted in a personal injury.
* Other incidents that reportedly resulted in a personal injury include swimming, diving, activities on or near water (46 incidents, 15 personal injuries reported), wharf jumping (12 incidents, 10 personal injuries reported), and animal attacks (three incidents, one personal injury reported).

*Problem if the Regulations sunset*

Section 44A of the *Port Management Act* provides that a local port manager is to manage the operations of the port with a view to ensuring that those operations are carried out safely, efficiently and effectively.

Section 24 of the *Marine Safety Act* requires port managers to ensure the safety of marine safety infrastructure operations. This includes providing and maintaining safe infrastructure and systems for navigation and marine safety as far as reasonably practicable. The Marine Safety Regulations also establish safety requirements on users of recreational vessels in relation to safety equipment, maximum number of persons allowed onboard and the provision of lifejackets.

There are also duties in the *Occupational Health and Safety Act* and the *Environment Protection Act* which would continue to apply to local ports should the Regulations sunset. For example, the *Occupational Health and Safety Act* contains a general duty of care for employers which would include port operators providing and maintaining a safe working environment for employees, contractors and others accessing the port. There are also duties relating to the identification and control of hazards, managing public risks and ensuring safe systems of work. The *Environmental Protection Act* contains duties relating to minimising risks of harm to human health and the environment from their activities which could extend from dredging, to waste management to illegal moorings. In addition, there are also related environmental protection regulations. For example, the *Environment Protection Regulations 2021* include an offence relating to the discharge or deposit of waste from vessels.

This means that in the absence of the Regulations, the occurrence of general health and safety incidents are largely covered by Marine Safety legislation, the *Occupational Health and Safety Act*, the *Environmental Protection Act* and related regulations. However, the specific guidance, standards, and rules tailored to ports (for example, managing dangerous activities and ensuring safe public access) would be less detailed, potentially leading to inconsistent management and enforcement. In many cases pollution and safety risks in local ports are not sufficiently high to warrant ongoing oversight by WorkSafe Victoria and the Environment Protection Authority. For this reason, the current Regulations, particularly through the use of set asides and permits, enable the port managers to have some ability to regulate to protect the health and safety of local port users.

Non-regulatory factors also play a crucial role in reducing the harms associated with general use and activities around local ports (see section 3.2.4).

*Concerns with the Regulations*

There have been no specific issues with the current Regulations identified in relation to the general health and safety of local port users.

As discussed in Chapter 2, set asides determinations are one of the key instruments to maintain public safety, facilitate works and events, and prevent interference with the safe management of the local port. Port managers balance the needs of all local port users when making these determinations. For example, a set aside area for refuelling of vessels or unloading of commercial cargo may need to exclude the general public for safety reasons. However, the local port manager will ensure other areas are available nearby for activities such as recreational fishing.

#### Refuelling vessels and vessel fires

*Extent of the problem*

Refuelling a vessel constitutes an inherently hazardous operation both in terms of safety and environmental risks. Although most vessels use diesel for fuel which is considered less flammable than other fuels, the process of refuelling introduces fuel vapours, which, when exposed to an ignition source in the presence of air, pose a significant risk of fire or explosion. Such incidents have the potential for severe injuries or fatalities. According to Safe Transport Victoria, vessel fires predominantly occur during refuelling procedures or during the ignition sequence following refuelling.

The Department has not identified any vessel fires within a local port contributing to a death or serious injury in the data during the last 10 years. There was a related incident in 2024 involving a group of Victorian school students who were safely evacuated from a vessel in Port Phillip after its engine started smoking during a snorkelling trip. The incident was handled swiftly, with no injuries reported, and the vessel was safely returned. In another incident in 2023, two men were rescued from Port Phillip Bay after their vessel caught fire and sank, likely due to a mechanical issue. The men were treated for hypothermia and shock, and the vessel was later salvaged.

Similarly in January 2025, a fibreglass cabin cruiser tied up at the wharf at Port Welshpool caught fire and was fully engulfed in flames. Five Country Fire Authority vehicles responded to the incident alongside the Coastguard. The vessel was towed away from the wharf so that it was clear of any infrastructure or other vessels. There were no injuries associated with the fire and the cause of the fire has not yet been reported.

While the small number of incidents may be an indication that the regulatory and other controls are working, there were a number of significant vessel fire related incidents in New South Wales (NSW) in the same period. Some examples of vessels igniting/combusting including, a vessel igniting when refuelling in Birkenhead, NSW in December 2018, a vessel exploding while reportedly refuelling in Hawkesbury, NSW in April 2021, a vessel exploding which refuelling in Akuna Bay, NSW in April 2023 and a yacht in Sydney marina in May 2024. In this time period there has also been a significant vessel explosion on the Murray River at Mildura in May 2021.

In addition to the safety problems, refuelling a vessel also poses significant risk to the environment due to the potential for spills, leaks and improper handling of fuel which can harm aquatic ecosystems and water quality (although covered here, other environmental problems are addressed in section 3.4). Key environmental risks associated with refuelling include:

* **Fuel spills into waterways**: Accidental overflows or leaks during refuelling can release hydrocarbons (diesel, petrol, or oils) into the water, harming marine life and contaminating habitats.
* **Air pollution**: Vapours released during refuelling can contribute to air pollution and pose health risks for humans and wildlife.
* **Contamination of sediments**: Spilled fuel can settle into port sediments, causing long-term contamination that affects benthic organisms[[20]](#footnote-21) and requires costly cleanup.
* **Impact on sensitive habitats**: Nearby mangroves, seagrass beds, or intertidal zones may suffer damage from fuel exposure, affecting the broader ecosystem.
* **Fire and explosion risk**: Mishandling of flammable fuels increases the risk of fires or explosions, further endangering the environment and port users.
* **Inadequate waste management**: Improper disposal of oily rags, filters, and other refuelling waste can exacerbate pollution.

*Problem if the Regulations sunset*

The low number of incidents may be a result of existing legislative and regulatory requirements related to refuelling. The *Marine Safety Regulations* contain a number of offences associated with fuelling a vessel and restarting a vessel if there are passengers on board. However, this does not extend to the refuelling requirements in the Regulations which cover what is used to refuel the vessel and fuelling facilities subject to set aside determinations. The Department expects that incidents might be higher if there were no regulations in relation to refuelling of vessels. The Department considers the consequences high enough to warrant some level of intervention in relation to refuelling vessels.

Non-regulatory factors also play a crucial role in reducing the harms associated with refuelling vessels in local ports (see section 3.2.4).

*Concerns with the Regulations*

There have been no specific issues with the current Regulations identified in relation to the refueling of vessels.

#### Other safety concerns in local port waters

There are several additional issues that relate to safety but better fit within the categories of environmental issues or access and amenity issues which will be discussed in detail in subsequent sections. These issues include:

* abandoned vessels
* unseaworthy vessels
* illegal moorings.

### Non-regulatory factors

Non-regulatory factors also play a crucial role in reducing the harms associated with safety incidents around local ports. When considering behavioural factors for example, many people act to protect themselves, their property and others from harm, particularly in high-risk environments like ports. There are also social norms established within port users that can encourage safe behaviours. These factors could be relevant in the context of recreational users wearing life jackets (regardless of legal requirements) or adherence to unwritten safe practices. When considering market forces, there are reputational incentives for businesses, liability concerns and insurance requirements that all encourage safe systems and behaviours. Non-regulatory interventions, like signage, education and CCTV, can further help to minimise risks and incidents.

However, it is not correct to assume that these factors will influence and encourage safe systems and behaviours from everyone or that there are sufficient funds available to pay for non-regulatory interventions. Some non-regulatory measures may be inexpensive and relatively quick to implement such as the installation of a sign. However, other interventions may involve significant resources, such as an extensive public education campaign. The level of effectiveness of these types of non-regulatory measures can also vary.

### Conclusion: safety problems

Given the significant possible consequences (including serious injury and death), the residual risk not covered by other legislation and regulation in relation to dangerous activities and behaviours is considered significant (see also section 3.1.2) .

This means there is a strong argument in favour of requiring some regulation such as the Regulations to prevent or limit safety related harms.

|  |
| --- |
| **Stakeholder Question 17**  Do you have any additional safety concerns that could be better addressed under the Regulations? If so, please provide details. |

## Environmental problems

### Description and underlying causes

Local ports in Victoria face environmental challenges due to various forms of pollution. Pollutants can enter the water through accidental spills, uncontained construction activities, and waste water discharge, leading to the contamination of marine environments and negatively impacting water quality and marine life. Additionally, littering and illegal dumping of waste materials exacerbate these environmental harms.

Air pollution is another concern, with emissions from vessels, trucks and forklifts and vessel maintenance degrading air quality and posing health risks to the public. Noise and light pollution from port operations also affects local residents and wildlife, disrupting their daily lives and natural habitats.

Local ports are also vulnerable to the impacts of climate change, such as rising sea levels and increased frequency of extreme weather events. These changes can affect port facilities and operations, as well as the surrounding environment.

The primary sources that can lead to environmental issues arise from:

* + Liquid waste spills, such as by-products from the use of vessels particularly due to works undertaken on them and refuelling
  + Waste water discharge, including sewage, from people using or living on board vessels
  + Litter and other waste including discarded fishing equipment, waste oil, fish offcuts, general litter from visitors
  + Vessels poorly maintained and allowed to become derelict, unseaworthy or abandoned
  + Dredging and other waterway management activities

### Pollution data

There is limited data that specifically measures the level of pollution within local ports. The Environment Protection Authority Victoria (EPA) releases an annual Report Card summarising the latest environmental water quality in Port Phillip Bay, Western Port, Gippsland Lakes and their catchments. The latest annual report (2022-23) stated:

*In 2022–23, water quality in the bays, lakes and waterways had changed from previous years, with improvements in Gippsland Lakes and Western Port and a decline in the Port Phillip Bay catchment waterways.*

*…*

*Data from the Bureau of Meteorology for the reporting period, shows that rainfall in central Victoria was well above average, and average in the Gippsland region. Significant rainfalls in some of the Port Phillip catchments during spring 2022 resulted in localised flooding, increasing sediment and nutrient loads to Port Phillip Bay, resulting in Fair water quality scores for four of the six bay sites.*

There was no discussion in the EPA’s Report Card regarding activities in local ports impacting the water quality.

Each year, Clean Up Australia produces an annual Litter Report which provides a snapshot of litter removed by volunteers during the year. Table 3.4 shows that litter, such as cigarette butts, beverage containers and food packaging, is a continuing problem in coastal and beach areas, which may include local port areas. In 2022-23, the counted litter items collected from coastal/beach areas numbered around 24,000, the second highest count of litter items by site, behind rivers/creaks and waterways.

Table 3.4 Clean Up Australia report showing location of litter collected by volunteers annually

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Site type | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023\* |
| Coastal/ beach | 10,075 | 5,848 | 3,822 | 4,147 | N/A | 14,294 | 4,083 | 12,459 | 23,355 | 24,767 |
| Footpath | 0 | 0 | 0 | 0 | N/A | 0 | 0 | 16,172 | 9,104 | 3,940 |
| Outdoor transport | 3,077 | 1,811 | 2,231 | 2,175 | N/A | 0 | 581 | 0 | 0 | 1,689 |
| Parks | 10,299 | 17,688 | 8,604 | 13,660 | N/A | 32,708 | 13,231 | 23,355 | 17,686 | 16,549 |
| Bushland | 2,039 | 3,918 | 3,470 | 7,231 | N/A | 6,530 | 6,988 | 7,261 | 6,821 | 6,304 |
| River/creek/waterway | 4,215 | 7,795 | 11,297 | 15,949 | N/A | 11,476 | 8,879 | 17,901 | 24,245 | 29,270 |
| Roadway | 8,978 | 11,727 | 4,746 | 13,995 | N/A | 16,221 | 12,355 | 19,690 | 9,110 | 15,761 |
| School grounds | 3,032 | 3,488 | 1,316 | 8,342 | N/A | 4,748 | 3,993 | 4,244 | 4,126 | 11,145 |
| Shop/mall | 4,722 | 1,609 | 1,958 | 7,526 | N/A | 159 | 627 | 118 | 4,456 | 0 |
| Dive site | 0 | 0 | 0 | 1,214 | N/A | 43 | 0 | 16 | 0 | 0 |
| Other | 4,650 | 1,532 | 1,393 | 10,263 | N/A | 16,014 | 8,420 | 309 | 7,384 | 3,377 |

Source: Clean Up Australia Litter Report (<https://www.cleanup.org.au/rubbish-report>)

\*Clean Up Australia changed from calendar year reporting to financial year reporting in 2023

The Department notes there are limitations to the pollution data presented in the annual Litter Reports. There is a self-selection bias, whereby the volunteers and the sites visited as part of the Clean Up Australia program are self-selected - there may be a bias towards volunteers collecting rubbish from areas they are privately incentivised to want to keep clean, rather than randomly selecting sites to clean. The need for a clean-up in the area and level of rubbish evident are also factors when selecting sites. However, while the data is limited in how it characterises the problem of pollution more generally, it does provide important contextual information to the problem of pollution in and around Victoria’s local ports.

Issues relating to litter in local ports can become evident through dredging activities. In 2022, local residents in Warrnambool requested that dredging be halted while the debris being pumped ashore at Lady Bay was addressed. This highlighted the issue of rubbish collecting in the waterways from various sources and was resolved by the removal of the rubbish from the beach.

### Key concerns

#### Abandoned vessels

*Extent of the problem*

The presence of abandoned vessels in local ports poses significant environmental problems. These vessels can leak oil, fuel, and other hazardous substances, contaminating the port waters and harming marine life. Not only are abandoned vessels an environmental concern, they may also pose safety (as mentioned in section 3.2.3.4), access, navigational and economic concerns. This is because abandoned vessels can obstruct waterways, cause damage to other vessels and property, and disrupt port operations. In Port Phillip and Western Port, Parks Victoria has reported the salvage, removal and disposal of at least 29 vessels between 2020 and 2024. While abandoned vessels represent a small percentage of the total number of vessels in local ports, the time and resources involved in effectively managing these vessels is considerable. Port managers estimate that each abandoned vessel requires at least seven to eight hours work by two full time employees.

*Problem if the Regulations sunset*

Division 4 of Part 5B of the *Port Management Act* deals with abandoned or unclaimed goods or things, including in local ports. A local port manager may move an abandoned thing, including a vessel, from a port if it has been left unattended at the port for more than one month, and if the identity or location of the owner of the thing cannot be established, or the port manager reasonably believes the owner will not move their property. If the abandoned thing is causing an impediment to the operation of the port, an environmental hazard, or a safety risk, the local port manager may be able to move the item immediately.

Port managers may enter a vessel when moving it and must move the item to the nearest safe and convenient place. A port manager must make all reasonable enquiries to establish the identity or location of the owner of the vessel. If the owner cannot be identified or located after reasonable enquiries, the port manager may dispose of the item by gift, sale, destruction, or other means. The port manager must publish a notice about the disposal in a newspaper and on its website, and wait 28 days before disposing of the item, unless it is perishable. If the owner is identified, they must be notified in writing and given 28 days to recover the item before it is disposed of.

Port managers can recover costs for moving, storing, and disposing of items left unattended in port areas. These costs can be claimed as a debt through the courts. Owners of disposed items are entitled to compensation, minus any costs incurred by the port manager, and these claims must be made within 12 months. If the owner of a disposed item is not found, proceeds from the disposal, after deducting costs, are paid to the Consolidated Fund.

Whilst this comprehensive approach is appropriate in many instances, it is considered too complex to deal with abandoned vessels which are often low in value.

*Concerns with the Regulations*

Managing abandoned vessels can involve legal complexities, including determining ownership and liability and ensuring there is legal authority to take action. This can be time consuming and costly for port managers. Under the current Regulations, there are steps and conditions port managers must follow when managing abandoned vessels. For example, a vessel must be of low value, which is currently defined as a value of less than $5,000. This requirement can pose issues when the vessel is of a higher value. There may also be differences of opinion with the vessel owner in terms of the value of their vessel, or in some circumstances, the condition of their vessel.

Further, a port manager may only dispose of a vessel if the owner is unable to be identified or located after all reasonable attempts are made to contact them (see below Regulation 47 excerpt). However, occasionally the owner of the vessel is known but does not respond to notices and directions to move or remove their vessel. These types of situations currently require the local port manager to take the matter to court, which adds complexity and costs.

*Regulation 47 – A port manager may dispose of a vessel, goods (other than goods that are perishable) or other thing by sale, destruction, appropriation or any other means if –*

*(a) the vessel, goods or other thing has or have been left unattended in the local port for at least one month; and*

*(b) the port manager is unable to identify or locate the master or owner of the vessel, or the owner or person responsible for the goods or thing, after all reasonable enquiries have been made; and*

*(c) the port manager reasonably believes that the vessel, goods or thing is or are of low value.*

Parks Victoria advised that the general steps it takes in accordance with the Regulations are to first, give a direction, second, move to secure the vessel, and third seek a valuation of the vessel, which is at a cost to the local port manager of approximately $450 in metro areas. Storage of the vessel may also be required.

As mentioned, the existing Regulations define low value to mean an item with a value less than— (a) in the case of a vessel, $5,000; or (b) in the case of any other thing, $1,000. Port managers have reported the $5,000 value of a vessel in the existing definition is not adequate and should be adjusted to reflect cost indexation. A previous iteration of the Regulations – the *Port Services (Local Ports) Regulations 2004* – did not state a value in the equivalent provision and instead referred to a vessel, goods or thing that has or have no commercial or re-sale value. The inclusion of a low value amount in the current Regulations was designed to remove the ambiguity where (as an example), the fixings on a vessel may have some resale value. Despite the improvements, there are still limitations with the current Regulations.

Port managers currently manage removal of around 14 to 20 abandoned and derelict recreational vessels each year, 90 per cent of which fall below the $5,000 low value threshold. The average cost of salvage, removal, storage, transport and disposal of a small vessel is in the order of $6,000 to $10,000, depending on vessel and contractor circumstances (i.e. condition, size, location, materials, contractor availability, etc). These costs are borne by the state where the vessel owners are either unable to be identified or will not respond. Although the Regulations generally work for the vast majority of vessels which have a value below the threshold, the costs associated with dealing with vessels that have a value above the threshold are significantly higher. This is particularly so because the process for dealing with these vessels when the Regulations do not apply is far less efficient which means the condition of the vessel may significantly deteriorate before any action can be taken.

While Gippsland Ports advised it is difficult to provide specific values of low value vessels, a figure of $10,000 in Victoria would typically capture most vessels in poor condition. Gippsland Ports also noted that the value of the motor and other equipment on board a vessel may be significant, however the costs associated with removing, advertising and selling the parts ultimately results in little or no costs recovered. Parks Victoria indicated that the value of the vessel in two of ten recent vessel disposals was approximately $3,000, and the remainder likely had a $0 value. However, one vessel in late 2023 was valued at over $5,000. It is noted that although there are provisions in the *Port Management Act* to deal with higher value vessels through court processes, the preference for port managers is to deal with lower value vessels in a more straightforward manner under the Regulations.

The cost of salvaging, removing, storing and disposing of abandoned and derelict vessels often falls on port managers and ultimately taxpayers as there is no cost recovery mechanism in the current Regulations. Consequently, the provisions under the *Port Management Act* are followed in approximately 90 per cent of Parks Victoria cases, and in any situation where a reasonable cost is anticipated to be incurred from moving, storing and disposing of a vessel. This approach is not as straightforward as utilising the Regulations. Table 3.5 below outlines Gippsland Ports’ costs of disposal of abandoned vessels from 2016-2023. Not all activities relating to abandoned vessel removal are captured because there is, on occasion, the requirement to remove and dispose of large vessels which require special agreements. For example, a recent removal of a single vessel in Lakes Entrance in 2024 cost $80,000 alone. Similar large scale abandoned vessel removals occur around once every 18 months in Gippsland.

While Gippsland Ports advises costs associated with vessel salvage have reduced in recent years due to its proactive unseaworthy vessel identification and action plan, recent trends demonstrate increased instances of irresponsible and poorly maintained vessel use in local ports.

Table 3.5 Costs incurred by Gippsland Ports associated with removal of abandoned vessels from 2016-17 to 2024-25

|  |  |  |
| --- | --- | --- |
| Financial year | Total costs incurred | Number of vessels removed by Gippsland Ports |
| 2024-25  (to 31 December 2024) | $26,150 | 9 |
| 2023-24 | $123,140 | 10 |
| 2022-23 | $104,744 | 12 |
| 2021-22 | $65,865 | 5 |
| 2020-21 | $12,068 | n/a |
| 2019-20 | $6,037 | n/a |
| 2018-19 | $402 | n/a |
| 2017-18 | $5,999 | n/a |
| 2016-17 | $118,368 | n/a |
| Annual average | **$54,443\*** | **10.29\*\*** |

Notes: 1. Costs incurred may include salvage, removal, storage and disposal and are net of any costs recovered from the owner. 2. Port manager salaries, oncosts and overheads are excluded. 3. Costs are reported in the period in which the cost is incurred. 4. Where activities associated with vessel removal occur over multiple periods, the vessel removal is counted in the final year the removal is completed. 5. Costs exclude GST. 6. Figures for 2022-23 and 2023-24 include removal of a large steel fishing vessel. 7. The 2016-17 figure is significantly higher than the following five years because it included the removal of a large fishing vessel.

\*Costs for 2024-25 FY are up to 31 December 2024.

\*\* Average years calculated on the available data which is 3.5 years from 1 July 2021 to 31 December 2024.

Non-regulatory factors also play a crucial role in reducing the harms associated with abandoned vessels in local ports (see section 3.3.4).

#### Unseaworthy vessels

*Extent of the problem*

A closely related issue to abandoned vessels is that of unseaworthy vessels. In addition to potential safety and access issues, unseaworthy vessels, particularly those that are sinking, pose significant environmental risks. These include the release of fuels and chemicals into the water, degradation of vessel materials contributing to water pollution, and the disruption or destruction of seabed ecosystems.

Port managers have identified approximately 100 vessels across the local ports, representing around 2 per cent of vessels tied up at port facilities (including those at private facilities), which are being monitored due to concerns about the level of maintenance and increasing risk of the vessel sinking at berth or on a mooring (i.e. no longer seaworthy). This number has largely remained consistent over the last ten years (possibly increasing post-COVID-19 and with increasing cost of living pressures), despite increased action by port managers through education, monitoring, and removal of the vessels presenting the highest risk.

There are several challenges with determining seaworthiness. Visual assessment from above the water may be insufficient to form a view on seaworthiness. There is also uncertainty around how to classify a vessel undergoing repair or refurbishment, which may technically be unseaworthy but when works are complete may then be fit for operation.

Port managers can engage a marine surveyor to provide an assessment. This practice provides independent input from an experienced professional and a third party, so any difference of opinion is no longer just a matter between the local port manager and the vessel owner. However, this approach adds costs for the local port manager which may not be able to be recovered and is an assessment that is made on a case-by-case basis which does not provide a consistent measure of what is and what is not seaworthy across the state.

*Problem if the Regulations sunset*

There is no existing definition for seaworthy or unseaworthy in the *Port Management Act*, though the terms are used. A related term, “unsafe vessel”, is defined under the *Marine Safety Act* as one that poses a risk to the safety of people or property. The criteria for determining an unsafe vessel includes its condition, equipment, and the manner in which it is operated. Safe Transport Victoria may, by Order, declare that a vessel is unsafe based on the defined criteria. Owners and operators of vessels deemed unsafe may face penalties and are required to take corrective actions to ensure safety. While this definition is useful, it focuses on public safety relating to the operation of the vessel and does not incorporate other factors such as environmental impacts or impacts on the operations of local ports.

The *Navigation Act 2012* (Cth) also contains a definition for seaworthy, as noted below. However, this legislation covers international ship and seafarer safety to protect the marine environment where it relates to shipping and the actions of seafarers in Australian waters.

23 Definition of *seaworthy*

A vessel is *seaworthy* if, and only if:

* 1. it is in a fit state as to the condition of hull and equipment, boilers (if any) and machinery, the stowage of ballast or cargo, the number and qualifications of seafarers, and in every other respect, to:

(i) encounter the ordinary perils of the voyage undertaken; and

(ii) not pose a threat to the environment; and

* 1. it is not overloaded; and
  2. the living and working conditions on board the vessel do not pose a threat to the health, safety or welfare of the vessel’s seafarers.

Note: An unseaworthy vessel can be detained under section 248.

The lack of a definition in the *Port Management Act* and the narrow focus of the definitions in the *Marine Safety Act* and the *Navigation Act* mean the residual problem is considered significant in managing unseaworthy vessels.

*Concerns with the Regulations*

There is no definition for seaworthy or unseaworthy in the current Regulations. The lack of a definition may contribute to lengthy negotiation with owners as to whether their vessels are seaworthy, delaying the port manager in taking steps to deal with the issue (for example, issuing a direction to remove / move the vessel under Regulation 45). Further, if a vessel must be removed by the local port manager, and the owner decides to challenge the process through court proceedings, the local port manager risks exposure to costs awarded against them because of different interpretations.

In one particular case involving two unseaworthy vessels, the vessels were removed by the local port manager. In what should have been a relatively straight-forward operation, a protracted legal battle cost a port manager thousands of dollars. This ultimately resulted in the port manager paying for the disposal of the two vessels whereby no costs were able to be recovered from the owner of the vessels. Further complicating the matter was that because of the difficulties in enforcing the Regulations, the use of consumer law was ultimately necessary to dispose of the vessels. From the beginning of this case, the owner disputed the assessment of “seaworthiness” of their vessels as their main objection to undertaking maintenance.

One of the other difficulties with addressing the issue of both abandoned and unseaworthy vessels is due to the different circumstances of the owner of the vessels in question as well as their approach to notices from port managers such as a direction to move the vessel. For example, in some cases the owners of the vessel have died or are very sick and so unable to take any action. In some cases, the owner of the vessel cannot be found and other cases the owner will either dispute that the vessel is unseaworthy or they will state they are having assessments or remedial work done which does not always eventuate.

Perhaps the main problem with the ambiguity around the meaning of seaworthy / unseaworthy is that unseaworthy is the only word contained in Regulation 45(1)(e) which enables a port manager to be proactive in dealing with a vessel that is at risk of sinking and becoming a far more significant problem – in resources, to the environment and to the access and amenity of the local port. There is nothing in the current Regulations which deals with vessels that are derelict or heavily deteriorated and at risk of taking on water.

Regulation 45 of the current Regulations states:

* 1. A port manager may give a direction that a vessel, goods or other thing be removed from the local port, or moved to another place within the local port, if the port manager reasonably believes that the vessel, goods or other thing—

…

(e) in the case of a vessel, is unseaworthy, sinking, sunk or partially submerged.

As has previously been mentioned, there are provisions within the *Port Management Act* which also outline a process for the removal of abandoned things including vessels. Although this is important, it is more complex to use and so not feasible for lower value vessels. While there is merit in retaining the current Regulations to deal with abandoned and unseaworthy vessels, some adjustments would improve the utility of the Regulations.

Non-regulatory factors also play a crucial role in reducing the harms associated with unseaworthy vessels in local ports (see section 3.3.4).

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| **Stakeholder Question 1**  Do you think abandoned and derelict vessels can be appropriately managed under the Regulations? If not, what regulatory options beyond those outlined in section 5.4 do you think could be considered to help better manage these vessels? |
|  |
| **Stakeholder Question 2**  There is no definition for unseaworthy vessel in the Regulations. The Department has worked with stakeholders to explore potential definitions to help clarify the term, but there were no clear solutions (see section 5.4.5). If you have any views on this matter, please provide details. |

#### Oversight of works

*Extent of the problem*

Works in local ports include the erection, alteration or demolition of a wharf, building or other structure. Works also include major repairs, maintenance, installation and modification carried out on a vessel, equipment or fixtures on a vessel berthed or moored in port waters or on port land. The environmental consequences of waste contamination from works in local ports can be locally severe. Port managers have advised there are few incidents in local ports relating to assets requiring works as early action is taken to protect public safety.

*Problem if the Regulations sunset*

The *Port Management Act* enables port managers to undertake works such as removing vegetation, constructing or altering structures, and removing or decommissioning existing facilities, subject to requirements under any other legislation. The *Port Management Act* also allows a local port manager to undertake dredging works, subject to approvals. However, the *Port Management Act* does not provide for other entities or individuals, such as yacht clubs, to carry out works in local ports.

The *Marine and Coastal Act* requires individuals to obtain Ministerial consent to develop or undertake works on marine and coastal Crown land. In determining applications for consent, the Minister must have regard to relevant strategies, policies and plans, as well as any relevant coastal recommendation[[21]](#footnote-22), which may include a local port manager recommendation. The *Planning and Environment Act* *1987* also requires approvals for certain use, development and works within local port environments.

The *Crown Land (Reserves) Act* provides port managers, acting as committees of management, powers to manage, improve, maintain and control the relevant Crown land for the purposes for which it is reserved. This includes the power to undertake works on coastal Crown land provided Ministerial consent is received and the works are consistent with any applicable management plans.

While the existing legislation is comprehensive in providing application and consent systems to allow for works in local ports, it does not specifically enable individuals to undertake works on vessels in local ports. This means in the absence of the Regulations vessel owners may be expected to undertake works on their vessels in other locations which is not practical in many instances. The existing legalisation is complex and does not provide a simple oversight system for minor or maintenance works in local ports.

*Concerns with the Regulations*

The current Regulations require permits to be obtained from the relevant local port manager for all works that take place in local ports. Further, an individual must not carry out any alterations in a local port if those alterations involve the use of hot works (activities such as grinding, welding, thermal or oxygen cutting or heating, and other related heat or spark producing activities) or dangerous goods, except in accordance with a local port manager issued permit.

Between 16 and 30 works permits were issued annually in the largest local ports of Port Phillip and Western Port from 2016-17-2023-24, as shown in Table 3.6. In 2022-23 Gippsland Ports issued 56 works permits, 17 for construction works and 39 for vessel works on water. This is indicative of an average year (see Table 3.7).

Table 3.6 Number of works permits issued for Port Phillip and Western Port (each financial year)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
| Work permits | 24 | 27 | 25 | 22 | 29 | 30 | 21 | 16 |

Source: Parks Victoria, Annual Report, Safety and Environment Management Plan, Local Ports of Port Phillip and Western Port.

Table 3.7 Number of works (and related) permits issued in Corner Inlet and Port Albert, and Gippsland Lakes (each financial year)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 |
| Works permits | n/a | n/a | n/a | 12 | 18 | 10 | 17 |
| Works on vessels alongside permits | n/a | n/a | n/a | Approx 40 | Approx 40 | Approx 40 | 39 |

Source: Gippsland Ports.

Whilst a detailed level of assessment and oversight is appropriate for works with moderate or significant environment impacts to avoid and minimise harm, permits may not be required in all circumstances. Requiring permits for all works in local ports may be unnecessary where works are low risk or conducted by trusted entities is not an efficient way to manage these types of works and adds to the administrative responsibilities of port managers.

For example, although they are not lease holders, water authorities and commercial port managers currently require works permits. However, port managers have advised commercial port managers are trusted to work on their navigation aids, and water authorities are trusted to work on their water infrastructure in the local port. Under the current Regulations, works permits need to be obtained even for low risk works, for example, when an asset owner wants to install a single jetty pile[[22]](#footnote-23). Further, Regulation 8 (Liability for offences) currently requires that all persons (other than the port manager, police, etc) require a works permit for any type and extent of works.

Non-regulatory factors also play a crucial role in reducing the harms associated with works in local ports (see section 3.3.4).

|  |
| --- |
| **Stakeholder Question 5**  Are there any unnecessary barriers to port users undertaking works? Are there any improvements that can be made beyond those outlined in section 5.5? Should there be further protections for other port users? (Proposed Regulation 52). |

#### Other environmental concerns in local ports

***Minor pollution incidents***

*Extent of the problem*

Potential pollution risks arise in a number of contexts within operations in local ports. Firstly, particularly where people are using or living on board vessels, waste water 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. Vessel owners may be inclined to dump sewage or waste water either due to lack of concern regarding the creation of pollution, lack of understanding of the problem, lack of availability of waste water facilities or avoidance of cost associated with private waste collection. Waste water and sewage treatment undertaken using facilities onboard vessels may also be ineffective and disposal in local ports can lead health risks such as the presence of E. coli bacteria.

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.

Pollution may also 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, phosphates, fuels, lubricants and paints. Thus, there are significant concerns regarding pollution risks if they are disposed of in port waters.

*Problem if the Regulations sunset*

Environmental pollution is addressed by a range of legislation, including the *Environment Protection Act* (see also discussion within 3.2.3.2)and the *Marine (Drug, Alcohol and Pollution Control) Act*. For example, Part 5 of the *Marine (Drug, Alcohol and Pollution Control) Act* provides powers for certain authorities to take necessary actions to prevent, mitigate or remove pollution from marine environments. Authorised officers can also prosecute for offences under the *Marine (Drug, Alcohol and Pollution Control) Act*. The *Environment Protection Act* also contains duties relating to pollution incidents such as a general environmental duty, duties for waste management and duties to report pollution incidents. However, whilst these acts have broad coverage, port managers do not have jurisdiction to take action on their own. Early action by port managers on pollution matters would require additional powers to be made available in the aforementioned legislation.

Under the *Port Management Act*, a local port manager’s functions include participating 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. The National Plan is an integrated arrangement between the Commonwealth, State and Northern Territory governments and industry that enables effective response to marine pollution incidents and is managed by the Australian Maritime Safety Authority. Whilst port managers may have a role to play, this Plan is focused on providing a response to certain pollution incidents rather than prevention.

Port managers through port management plans (under Part 6A of the *Port Management Act*) require the identification of the nature and extent of the safety or environmental hazards and risks (as the case requires) associated with the operation of the port.

Pollution of the marine environment by ships, including fishing vessels, is strictly controlled by the International Convention for the Prevention of Pollution from Ships (known as MARPOL). To minimise pollution, MARPOL prohibits ships from discharging garbage into the sea except in very limited circumstances. Australia is a signatory to MARPOL which is now enforced in over 150 countries.

Measures being undertaken to manage the proper disposal of waste include the provision of waste collection facilities in local ports for waste oil and marine industry waste. There are also a number of initiatives to reduce fishing waste and waste management practices of commercial and recreational fishers.

Other non-regulatory factors also play a crucial role in reducing the harms associated with minor pollution incidents around local ports (see section 3.3.4).

*Concerns with the Regulations*

Regulation 60 of the current Regulations states that it is an offence to leave or deposit litter or industrial waste in a local port other than in accordance with certain exceptions. One of the exceptions includes in the case of waste water or sewage from a vessel if “the vessel has on board facilities to store and treat the wastewater before its disposal”. However, there are different levels of treatment of waste water, and there is a concern that the Regulations do not specify the level of treatment required to ensure the local port waters are clean and safe.

|  |
| --- |
| **Stakeholder Question 14**  Do you have any concerns with the Regulations in relation to the management of waste water in local ports? |

### Non-regulatory factors

Non-regulatory factors also play a crucial role in reducing the harms associated with environmental issues around local ports. When considering behavioural factors, some people act to preserve the quality of the environment they rely on for their livelihood or recreation. An example of this would include commercial operators avoiding or reducing pollution of the water or environmental disruption to protect fishing areas. There are also social norms established within port communities that can encourage environmentally conscious behaviours. This could be relevant in the context of dumping of waste (regardless of legal requirements). When considering market forces, there are reputational incentives for businesses, liability concerns and insurance requirements that all encourage safe systems and behaviours. Increasingly there is significant public and market demand for environmental sustainability. This can be observed from community advocacy groups for example opposing dredging as well as eco-friendly market trends to meet the growing consumer push for sustainable practices and products. Non-regulatory interventions, like signage, education and CCTV, can further help to minimise risks and damage.

However, it is not correct to assume that these factors will influence and encourage environmentally safe systems and behaviours from everyone or that there are sufficient funds available to pay for non-regulatory interventions.

### Conclusion: environmental problems

Given the significant possible consequences (contamination of water and disruption of eco-systems), the residual risk not covered by other legislation and regulation in relation to abandoned vessels is considered significant (see section 3.1.2).

This means there is a strong argument in favour of requiring some regulation such as the Regulations to prevent or limit environmental harms.

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| **Stakeholder Question 16**  Do you have any additional environmental concerns that could be better addressed under the Regulations? If so, please provide details. |

## Access and amenity problems

### Description and underlying causes

Local ports support a mix of minor commercial functions (for example, commercial fishing, vessel repairs, charter and ferry services) and recreational activities, including public access. Demand to carry out commercial and recreational activities is significantly greater than the space available in local ports. The high level of demand for access to and use of port facilities and services in some ports is particularly evident at peak times of the year, for example, during summer and holiday periods.

Berthing and mooring of vessels is one of the key issues in local ports. Some local ports provide a limited number of short-term berths or moorings for public use. There is typically high demand for these berths and moorings, as they tend to be located near town centres, hospitality and fuel suppliers. This problem is reported to occur more often during the peak season of the summer months when demand for places to tie up vessels is particularly high.

Issues with access to, and use of, local ports can arise from:

* High demand and limited supply of facilities such as berths and moorings
* Competing demands for port facilities from a range of different users
* Vessels remaining in one location for an extended period of time
* Unattended things and things causing an obstruction taking up scarce "parking” space
* Unauthorised tying up of vessels and storage of other items in and on port facilities.

The amenity of local ports includes the natural or physical qualities and characteristics of the local port area that contribute to its pleasantness, aesthetic coherence, and cultural and recreational attributes. The loss of amenity for port users can be significant given high levels of port visitation.

Loss of amenity can occur due to a range of factors including:

* Abandoned and derelict vessels
* Illegal disposal of waste and pollution from vessel operations and maintenance, and refuelling
* Antisocial behaviour
* Unauthorised use of port facilities, vessel overstays, storage of fishing equipment and illegal moorings
* Incompatible activities within local ports.

### Access and amenity data

The number of permits granted for berthing and mooring generally remain consistent from year to year. Parks Victoria advised that, as at August 2024, there were 102 berthing permits issued and 2,940 moorings permits on issue. In 2022-23, Gippsland Ports issued 497 berthing permits and 192 mooring permits, and this is indicative of the number of permits issued on an average year. Nonetheless, there is significant competition for space to moor vessels on water, as evidenced by wait lists maintained by some port managers, a secondary market for the sale of mooring tackle (subject to the local port manager’s approval of transfers), illegal mooring of vessels, and abandoned or not fit for purpose vessels taking up scarce space.

Whilst the number of abandoned and derelict vessels are relatively low compared with the total number of vessels present in local ports, as discussed in sections 3.3.3.1 and 3.3.3.2, even one vessel in very poor condition can have a significant impact on local amenity. Similarly, although minor waste and pollution incidents are relatively infrequent in local ports, their occurrence can significantly reduce local port amenity (see section 3.3.3.4). Antisocial behaviour can also be an issue in local ports, which is demonstrated, for example, in acts of animal cruelty, assault and vandalism. As highlighted in Table 3.8 below (extracted from section 3.2.2), there were approximately 48 antisocial and pollution related incidents in local ports over the past ten years.

Table 3.8 Antisocial and pollution related incidents recorded in Victorian local ports, 2015-16 to 2023-24

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of incident | Central local ports | Eastern local ports | South-western local ports | Total |
| Animal cruelty | 2 | 0 | 0 | **2** |
| Assault, abuse, intimidation | 6 | 0 | 1 | **7** |
| Debris, litter, hazardous material | 8 | 0 | 3 | **11** |
| Fuel, oil, sewage leak | 10 | 0 | 5 | **15** |
| Theft, vandalism, trespass | 8 | 0 | 5 | **13** |
| Total | **34** | **0** | **14** | **48** |

Source: Local port incident reports provided to and collated by the Department of Transport and Planning.

### Key concerns

#### High demand for existing port facilities

*Extent of the problem*

Port facilities meet around half of the State’s on-water vessel berths and moorings. While Parks Victoria provides the majority of the swing moorings in Port Phillip and Western Port, it provides only 102 permit berths[[23]](#footnote-24). The vast majority of berths in Port Phillip and Western Port are provided by the private sector (through local councils and private marinas, including yacht clubs). In other local ports, the berths and moorings are solely provided by port managers other than in the Gippsland Lakes (where there are three local council managed marinas and private jetty licences allow residents and businesses to tie up vessels at private facilities adjoining their freehold title) and Portland Bay, where Glenelg Shire operates a marina and other public facilities.

There are insufficient permit-only berths and moorings to meet demand in many local ports, leading to dissatisfied customers, unmet demand and waiting lists for berths and moorings in some locations. This situation is likely to endure for a number of reasons.

First, adding substantial numbers of new berths or moorings in high demand locations would negatively impact on the safe use of waterways for boating and other activities, amenity and the environment. Second, rationing of access via a pricing mechanism has historically been rejected by government and the public. This rejection has largely reflected a strong view in favour of making these port facilities widely accessible across the population, without raising significant affordability barriers. In addition, practical difficulties would be encountered in 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.

If current permits were terminated to allow for new permit allocation, existing vessels:

* cannot be taken away as they may be too large to be transported (without large equipment and permits);
* would need to be relocated to secure on water site (not available as most berths and moorings are being used); and
* if timber, need to be kept on the water to avoid damage.

If a new system such as this were to be implemented, it would require staged implementation and significant compliance resources.

There are also additional challenges managing compliance of vessels occupying public berths and moorings which were unsuccessful in securing further permits. The development of additional port facilities would be subject to detailed financial viability, amenity and environmental assessment.

Finally, the availability of berths and moorings are also impacted by abandoned, derelict or sinking vessels which occupy space that could otherwise be made available to other port users.

Port managers continue to attempt to accommodate high demand for port facilities. For example, several years ago a system of booking moorings specifically to cater for summertime demand was introduced in one of the local ports. These moorings (known as seasonal moorings) have proved to be very popular and are often fully subscribed within 24 hours of bookings going online. The port manager subsequently increased the number, with an 85 percent take-up for a booking over the period of November 2021 to April 2022. Despite these and other efforts in other locations, demand continues to outweigh the available space and facilities in some locations.

*Problem if the Regulations sunset*

Under the *Port Management Act*, a port manager’s functions include to allocate berths and moorings in the local port. The *Port Management Act* also provides port managers a function to provide, develop and maintain port facilities, including wharves and moorings. There are no specific obligations about how the management and allocation of these facilities should be undertaken. However, the *Port Management Act* does allow for port managers to impose a charge for the use of any facility in the port under section 44D. Adequate notice must be given before imposing charges. Unpaid charges are considered a debt and interest can be charged on overdue amounts. Whilst there is some flexibility for port managers in managing, allocating and charging for vessel berthing facilities, if the Regulations were to sunset there are gaps in terms of providing a consistent process or system to achieve fair allocation of port facilities, and the ability to designate specific areas for vessel storage to effectively manage port operations.

*Concerns with the Regulations*

Port managers have advised several issues are currently adding to the problem of high demand for vessel storage in local ports. Vessels are currently not permitted to berth or moor for a continuous period that exceeds 48 hours, or as specified by the port manager, without a permit issued by the port manager. To counter this regulation, some vessels are reported to be simply moved along to a different place on the same berthing facility. Essentially the vessels are changing spaces rather than location, like a car driving forward from one car park into the next within the same street. The impact of a vessel not moving away from a particular facility can be resource intensive for the port manager and create further port management and reputational issues. A vessel without a permit has the ability to continuously move back and forth along a wharf and use it as a semi-permanent, free berth unless compliance action is taken by the local port manager. This practice excludes berthing by other vessels, can cause conflict among facility users due to inequity, lead to antisocial behaviour and damage to public facilities, and can make compliance and enforcement difficult.

Managing compliance across the large areas of local ports and numerous facilities effectively requires installation of CCTV and ongoing monitoring of vessel use which would involve a high level of resourcing.

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| **Stakeholder Question 11**  Do the current time limits for vessels in local ports appropriately balance access and equity for port users? How could this be improved beyond the options in section 5.6? |

#### Unauthorised installation and use of moorings

*Extent of the problem*

The installation of mooring tackle without the permission of the port manager is illegal, unsafe and can be detrimental to the amenity, environment and operations of a port. Mooring tackle is the equipment used to secure a vessel to a fixed point, ensuring it stays in place, and usually includes a chain, shackles and buoy attached to a mooring block on the seabed. The installation of unauthorised, or illegal, moorings causes significant damage to the marine environment and can be hazardous for port users who may not be aware of their presence.

Illegal or unauthorised moorings in local ports in Victoria can cause significant environmental harm by damaging sensitive marine habitats, such as seagrass beds and coral reefs, through anchor chains scouring the seabed. They can also disrupt ecosystems by introducing pollution, such as oil or debris, and creating hazards for aquatic life. Additionally, improperly placed moorings can alter water flow and sedimentation patterns, further degrading the health of the local marine environment.

There have been one or two reported injuries from swimmers or boaters stepping on illegal moorings in the local ports. In 2017, an abandoned illegal mooring in shallow water in the Gippsland Lakes resulted in an injury to a member of the public while wading in shallow water. The moorings may also comprise inappropriate materials, such as star pickets or engine blocks, potentially causing property damage as well as environmental impacts including loss of seagrass or marine pollution.

The problem of unauthorised moorings tends to occur in the peak demand summer months in some local ports when queues at boat launching ramps are longest and regular waterway access is sought. These moorings give rise to the problem of obstruction, creating safety hazards for boating and other waterway users, and may also result in vessels breaking free and damaging other vessels or facilities. These incidents are not necessarily reported to port managers, so the size of the problem may be larger than suggested by the specific indicators given below. However, the following responses have been received from port managers.

In January 2021, Parks Victoria removed 60 unauthorised moorings between Tyrone and Tootgarook. More recently in 2023, Parks Victoria issued Direction to Move Notices for vessels on illegal moorings and removed approximately 20 illegal moorings. Some vessel owners responded to the direction, however many did not comply with the direction. The total cost to Parks Victoria proved to be significant when it removed these moorings.

Gippsland Ports recently conducted a program to remove illegal home-made moorings at Loch Sport. Investigation and cleanup revealed up to 20 illegal moorings which were removed by the local port manager. There were also a number of legacy / unauthorised moorings at Lakes Entrance which were informally used by commercial fishermen. Once these moorings were identified, permit arrangements were established to change previous behaviour.

*Problem if the Regulations sunset*

Under the *Port Management Act*, a local port manager has a function to provide, develop and maintain port facilities, including moorings. The *Port Management Act* also provides port managers a function to allocate moorings in the port. However, there are no restrictions or penalties in the legislation for individuals who install or use unauthorised moorings. Therefore, if the Regulations were to sunset, there will be less capacity to deal with this issue compared to when the Regulations are in place.

*Concerns with the Regulations*

Where vessels are moored or tied up in local ports without permission from the port manager or for periods exceeding the designated period for that local port or port facility, the vessel master is considered to be acting illegally. In some areas of local ports, the master of the vessels is allowed to moor for a limited time (for example, 24 hours) without permission. Staying beyond this period without the permission of the port manager is also illegal, even on a public mooring.

Illegal moorings are a challenging issue for port managers because they are difficult to identify, monitor and enforce. Unless a person is caught ‘in the act’ of installing them, it may be difficult to find out who has installed the illegal mooring. It can also be difficult to enforce against people using the illegal mooring because evidence would need to be found demonstrating that person installed the mooring.

#### Secondary market for mooring tackle

*Extent of the problem*

A secondary market has developed where a vessel owner sells their vessel together with its mooring tackle on an online marketplace (or by other means). These transactions are subject to port managers allowing the new vessel owner to obtain a mooring permit by allowing permit transfers. Individual vessel owners appear to be generating value from these mooring tackle transfers which are reported to have changed hands for significant amounts. The beneficiary of the swing mooring permit transaction is the seller, with no benefit to the broader community and a small cost saving to government where it needs to remove mooring tackle. There is a high risk to the purchaser of the vessel that a permit transfer is disallowed.

*Problem if the Regulations sunset*

The Regulations provide for a permit system to allocate and manage moorings in local ports. In the absence of regulations, this system would not exist. As discussed, port managers have a function under the *Port Management Act* to allocate and manage moorings in their port areas. However, the legislation does not provide for a specific manner in which moorings may be allocated and managed, including whether individuals may sell or transfer any rights or permissions they obtain to moor their vessel. The current legislation therefore does not address the problems associated with fair allocation and reallocation of moorings in local ports.

*Concerns with the Regulations*

Regulation 17 of the current Regulations allow for permits to be issued to "berth, moor, or anchor a vessel in a local port". There is not a specified pathway for the transfer of these permits, although the port manager may vary them under Regulation 24(3). However, any transfer of a mooring permit should be based on a fair, equitable and transparent process.

#### Traditional owner use and access

*Extent of the problem*

The Victorian Government has committed to advancing Self Determination, Truth and Treaty[[24]](#footnote-25) [[25]](#footnote-26) [[26]](#footnote-27). One mechanism for the Government to deliver this commitment and achieve land justice outcomes is by negotiating Recognition and Settlement Agreements (RSA) [[27]](#footnote-28) with traditional owners under the *Traditional Owner Settlement Act 2010*.

At least part of the local ports of Corner Inlet and Port Albert and Snowy River and all of the Port of Gippsland Lakes fall within the Gunaikurnai Recognition and Settlement Agreement area.

Based on a preliminary review, it is likely the following local ports may fall within proposed RSAs under negotiation. The local ports of Portland Bay, Port Fairy, Warrnambool, Port Campbell, Apollo Bay, Lorne and Barwon Heads will engage with Gunditj Mirring Traditional Owners Aboriginal Corporation, Eastern Maar Aboriginal Corporation, and Wadawurrung Traditional Owners Aboriginal Corporation (as applicable).

There is also potential for the Port Phillip, Western Port and Anderson Inlet local ports to fall within the area of any Recognition and Settlement Agreements that may be negotiated in future with Wadawurrung Traditional Owners Aboriginal Corporation and Bunurong Land Council Aboriginal Corporation (as applicable).

Recognition and Settlements Agreements are additional to any rights and obligations of Registered Aboriginal Parties under the *Aboriginal Heritage Act 2006*.

*Problem if the Regulations sunset*

The current Regulations do not contain any provisions which explicitly refer to traditional owner use, access or groups. As a result, the problem if the Regulations sunset is the same as the problem if the Regulations were renewed with no changes.

*Concerns with the Regulations*

In Victoria, the *Traditional Owner Settlement Act* provides an alternative system for resolving native title claims. The *Traditional Owner Settlement Act* is an out-of-court settlement of native title and delivery of land justice in Victoria. The Act allows the Victorian Government to recognise traditional owners and certain rights, through an RSA.

An RSA is entered into by the Victorian Government and traditional owners, to recognise a traditional owner group and certain traditional owner rights over Crown land. The agreement package can include:

* Land Agreement – formalises the handing back of land to the traditional owner group. Select National Parks and reserves can become jointly managed.
* Land Use Activity Agreement – allows traditional owners to comment on or consent to certain activities on public land.
* Natural Resource Agreement – provides for traditional owners' rights to access and use specific natural resources and participate in the management of land and natural resources.

Native title is the recognition in Australian law that some Aboriginal and Torres Strait Islander people continue to hold rights and interests in land and water. Traditional owners can seek determination of native title under the *Native Title Act 1993* (Cth) through the Federal Court.

The *Traditional Owner Settlement Act* enables the Victorian Government and traditional owners to make agreements that recognise traditional owners and their rights. Under an agreement, Federal native title claims are settled and no claims can be lodged in the future over that area.

The Regulations have relevancy and potential to interact with both existing and in-development RSAs and Native Title consent determinations with traditional owner groups on land subject to the Regulations. The current Regulations do not explicitly take into account these traditional owner land and water rights and the associated agreements. There is a risk that the Regulations may prohibit some activities which traditional owners have a recognised right to undertake.

#### Other access and amenity concerns in local ports

***Competing and conflicting activities and operations***

*Extent of the problem*

There is competition for space in local ports for events and activities such as fishing, boat and swimming races, triathlons, cultural celebrations and festivals. 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. There is also competition for space to park vehicles and trailers in some local ports[[28]](#footnote-29). The pattern of these events permits is irregular, with the great majority occurring during weekends over the summer months.

Organised activities can result in substantial numbers of people gathering in a particular area or areas within a port, 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 necessarily increases risks, while some of the specific activities being undertaken (for example, water skiing or powerboat racing) are inherently risky.

Conflicting activities, arising from operations and uses of local ports have also been sighted as an issue. The conflicts can arise where there are incompatible uses of local ports, such as unloading commercial vessels and public access. Access for operations that involve the unloading of cargo using heavy vehicles and forklifts remains a challenge when not appropriately separated from other port users. These activities offer interest and experiences for port visitors. Incompatible uses can also detrimentally impact on the amenity of the area. The complexities associated with the interface between local ports and commercial ports, such as the local port of Port Phillip and Melbourne and Geelong commercial trading ports, is also of concern according to recreational boaters. Ensuring local ports are safe and accessible for both commercial and recreational use requires ongoing risk management. There are also economic impacts in the way in which different activities and operations are permitted.

*Problem if the Regulations sunset*

Port managers have a function under the *Port Management Act* 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. The *Marine Safety Act* also establishes a broad range of safety requirements, including in relation to some higher risk activities such as ensuring the safety of participants or persons affected by boating activity events under section 25A. The *Marine Safety Act* also provides powers in relation to managing events and activities.

The *Marine and Coastal Act* requires individuals to obtain Ministerial consent to use, develop and undertake works on marine and coastal Crown land. In determining applications for consent, the Minister must have regard to relevant strategies, policies and plans, as well as any relevant coastal recommendation. While this process ensures any use, development and works is compatible with relevant policies, plans, etc, a number of existing uses and works, including emergency works, are considered low risk and encompassed under a general consent.

Finally, the *Road Safety Road Rules* regulate landside facilities such as for the parking of vehicles and trailers on the declared road network. These rules may not apply in local ports.

Even if the Regulations sunset, the current system enables activities and operations to occur in local ports under the management of port managers. The existing legislation provides for a consent system to use marine and coastal Crown land. However, in the absence of the Regulations, there would be no system for port managers to assess and permit or refuse activities and operations which are exclusive to the Regulations, such as berthing and mooring, and activities in navigable waters including swimming, diving and fishing.

*Concerns with the Regulations*

Port managers have reported that set aside designations are working well to restrict particular activities and operations to certain areas and also to exclude the general public from certain areas. Port managers also believe the permissioning system for allowing certain events and activities to occur is sufficient, though have indicated minor improvements could be made to implementation. Feedback from recreational boaters indicates the permissioning system is working well, though additional consideration could be given to existing activities in local ports before permitting new activities.

As discussed in Section 3.2, port managers must balance the needs of all port users when making set aside determinations, which are established to maintain public safety, facilitate works and events, and prevent interference with the safe management of the local port. Some stakeholders have suggested additional consultation activities could be undertaken when making set aside determinations to improve public access outcomes. Ambulance Victoria has also raised concerns that the Regulations may not provide adequate emergency access to and through local ports where and when required.

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| **Stakeholder Question 8**  Is the framework for local port permits and set asides in the Regulations effective in managing equitable use and access to port facilities? Are there any improvements that can be made? |

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| **Stakeholder Question 13**  Are there any unnecessary barriers in the Regulations to undertaking activities and events in local ports? Are there any regulatory improvements that can be made? |
| **Stakeholder Question 9**  Are the regulatory mechanisms providing for notification of the establishment of set asides adequate? |

### Non-regulatory factors

Non-regulatory factors also play a crucial role in reducing the harms associated with access and amenity issues around local ports. When considering behavioural factors, port users may voluntarily coordinate activities to reduce conflicts relating to berths and moorings and they may self-regulate their activities to avoid overcrowding such as avoiding peak times or limiting the duration of their mooring use. Social norms and peer pressure also discourage unauthorised use of facilities or practices that prevent others from also having access. When considering market forces, a high demand for limited facilities may encourage private investment in facilities and some businesses may voluntarily adjust their operations (for example, scheduling or reducing high-impact activities) to avoid reputational damage from contributing to overcrowding or conflicts. Non-regulatory interventions, like signage, education and CCTV, can further help to minimise access and amenity problems.

However, it is not correct to assume that these factors will influence and encourage appropriate systems and behaviours from everyone or that there are sufficient funds available to pay for non-regulatory interventions.

### Conclusion: access and amenity problems

Given the significant possible consequences (people restricted from accessing and using the port facilities), the residual risk not covered by other legislation and regulation in relation to the high demand for existing facilities is considered significant (see also section 3.1.2).

This means there is a strong argument in favour of requiring some regulation such as the Regulations to prevent or limit access and amenity harms.

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| **Stakeholder Question 12**  Do you have any additional concerns about access and use of local ports that could be better addressed under the Regulations? If so, please provide details. |

## Summary and the residual problem

If the Regulations are allowed to expire without being remade, some of the safety, environmental and access and amenity harms will be adequately addressed through regulatory controls and other existing factors.

In some cases, separate from the Regulations, the existing legislation and regulations already address potential harms. Some examples of this include:

* Safety duties placed on port managers, suppliers, designers, installers and other boating users of local ports through the *Marine Safety Act*.
* There is a process for dealing with abandoned vessels in the *Port Management Act* although there are limitations regarding the circumstances these provisions can be used.
* Environmental pollution is addressed by a range of legislation, including the *Environment Protection Act* and the *Marine (Drug, Alcohol and Pollution Control) Act*.

In addition to the existing regulatory framework, a number of other relevant aspects play an important role in the reduction of harm. Some examples of this include:

* Behavioural factors such as self-preservation and social norms which encourage safe, appropriate or environmentally conscious behaviours from individuals and businesses.
* Market forces such as reputational incentives, cost avoidance and insurance can also cause businesses and individuals to prioritise safety and environmental stewardship to maintain their reputation, reduce risks and attract further business.

When viewed in isolation, it would suggest that the remaking of the Regulations may not be required. However, there are other examples where the Regulations regulate and manage harms that are not addressed elsewhere. Some examples of this include:

* Prohibiting or restricting potentially dangerous activities around local ports including wharf jumping, lighting of fires and interference with vessel moorings.
* Enabling individuals to undertake works on vessels in local ports.
* Providing a consistent process to achieve a fair and safe allocation of facilities for example through the use of set asides.

As this section has identified, there are also a number of issues which may be targeted by the current Regulations but are not sufficiently addressed. Some examples of this include:

* When port managers deal with abandoned and derelict vessels, the meaning of unseaworthy is not defined and the threshold for what is defined as a low value vessel is considered too low. This means the Regulations are restricted from the way they are intended to be used.
* The Regulations are designed to ensure that access to the port facilities is shared safely and equitably among the port users. However, there is nothing to prevent an itinerant vessel from moving from one place to another in the same berth facility which is contrary to the intention of the Regulations.

Based on these observations, data and analysis, the Department considers that in addition to legislation and other regulations, there continues to be a need to regulate for the safe, efficient and effective operation of local ports through the Regulations. In particular, the Department notes that the outcomes observed over the last several years are the result of the regulatory requirements in both the *Port Management Act* and the Regulations. The Department’s conjecture is that outcomes would be worse (i.e. there would be higher fatalities, serious and minor injuries, environmental pollution and degradation, inequitable access to facilities and loss of amenity), if the Regulations were not in place.

# Objectives

The objectives of the proposed Regulations considered in relation to the various proposed policy positions would produce outcomes that promote and improve the management of local ports, while minimising regulatory and compliance costs of port managers and users and enabling effective enforcement of port management laws.

The primary objective of the Regulations is to provide for the safe, efficient and effective management of local ports within the meaning of the *Port Management Act*. These objectives are important as they provide a framework for the development and assessment of options. These should align with the objective of the regulations and the principal statute. The key objectives of the *Port Management Act* are to:

* *provide for the establishment, management and operation of commercial trading ports and local ports in Victoria; and*
* *provide for the economic regulation of certain port services; and*
* *provide for the imposition of certain port charges or fees; and*
* *require the engagement of licensed harbour masters in* certain *circumstances and set out their functions.*

The overarching objectives of the proposed Regulations are described below.

**Safe local port operations**

Safety entails minimising fatalities, serious injuries and near misses. For example, minimising incidents that result from interactions between vessels and other port users and dangerous activities such as wharf jumping.

Success against this objective may include maintaining or improving the level of safety outcomes as measured by the number of fatalities and serious injuries and improved public confidence in the safety of operations in local ports.

**Efficient and effective local port operations**

Local port operations need to be efficient and effective, as well as safe. This means ensuring businesses and the community have good access and opportunity to use local ports in the way they choose, subject to safety, operational and environmental requirements. Ensuring local ports continue to be managed for the benefit of businesses and the general boating public in terms of affordability is also key.

Success against this objective may include maintaining or improving the level of access to port facilities as measured by the number of berthing and mooring permits issued and improved public confidence in accessing and using local ports.

**Minimising environmental harms**

Minimising environmental harms involves reducing or eliminating the causes of these harms. For example, ensuring abandoned or derelict vessels are not left to sink or cause environmental damage and other operational impediments.

Success against this objective may include maintaining or improving environmental outcomes as measured by the number of vessel salvages and minor pollution incidents avoided.

**Minimising regulatory burden**

Minimising regulatory and compliance costs entails achieving the objectives with the lowest necessary regulatory burden on participants. Success against this objective may lead to maintaining or increasing the level of participation in the recreational boating sector. This shows that the regulatory costs are not so high that it deters people from using recreational vessels. Reducing duplication and overlap with other legislation and regulation may also indicate success.

**Effective and efficient monitoring and enforcement**

Effective and efficient monitoring and enforcement means ensuring port managers, the marine safety regulator (Safe Transport Victoria), and other regulators such as the Environment Protection Authority and WorkSafe have appropriate regulatory power and information to be able to conduct compliance monitoring and enforcement to support the primary objectives (for example, allowing powers for inspections to be able to monitor and enforce dangerous activities).

Success against this objective may involve considering whether the port managers and the regulators have been provided the powers and tools necessary to perform their functions and ensure the safe, efficient and effective management of local ports.

**Other considerations**

As the Regulations are sunsetting, there are also other broader factors that need to be considered in the remaking of the proposed Regulations. These considerations include:

* modernisation of the Regulations with current operational practices such as digitalised permit systems and processes.
* alignment with recent changes to the *Port Management Act*.

# Options identification

## Method for identifying feasible options

A RIS is required to identify feasible options to address the problems identified. For this RIS, a variety of methods were used to compile a list of proposed feasible options for each proposal. These include:

* Stakeholder consultation: The Department undertook internal and external stakeholder consultation to canvass views on proposed changes to the current Regulations.
* Interjurisdictional comparison: The Department assessed how other Australian jurisdictions manage local ports and the relative benefits their regimes generate from safety, efficiency and effectiveness perspectives.
* Regulatory and non-regulatory options: The Department considered regulatory and non-regulatory options and the degree to which a non-regulatory approach could work in achieving safe, efficient and effective management of local ports.
* Background reviews: In 2020 a report was developed in relation to the effective functioning and performance of the Victorian ports system[[29]](#footnote-30).
* Policy frameworks: The Department considered guidance materials such as the Victorian Permissions Framework about how to design, assess and manage permissions, including fit and proper tests.
* Status quo: The Department considered the status quo (current Regulations) as these regulatory requirements have evolved over decades in order to achieve the implicit purposes of the *Port Management Act* and various policy proposals developed over time. Refinements have been made to these Regulations over time to minimise administrative and compliance costs and keep up to date with technology and the growth within local port environments. The status quo is a legitimate starting point for the consideration of options, along with the base case.

The focus of this chapter is on identifying feasible options for further analysis. The assessment of the impacts associated with these options then follows in the subsequent chapter (see Chapter 6). These options are assessed against a ‘base case’ which is where the current Regulations sunset.

Non-regulatory improvements in the management of local port operations were also considered. Given the potential to implement these changes without regulatory amendments, these improvements were not assessed but are outlined in the below sections for future consideration. In most cases, these non-regulatory improvements could be pursued alongside the regulatory options.

Other options considered but not assessed are also mentioned in each of the below sections. The Department considers these options not suitable to address the problems identified.

## Summary of identified options

Several options have been identified to address the key concerns discussed in Chapter 3. A summary of the identified options is provided at Table 5.1 and the options are discussed in detail throughout the remainder of the chapter. Each of the options are compared with the base case, which would involve the current Regulations sunsetting (see Section 5.3 for discussion).

Option 1 is to simply remake the current Regulations and continue with the status quo. Only necessary minor and technical updates will be made to modernise the Regulations. Option 2 includes the remake of the Regulations under Option 1, as well as a package of low impact improvements, which are regulatory amendments. Lastly, Option 3 includes Option 1 and 2 amendments, as well as a package of medium impact improvements. These sub-options include extensive changes to existing systems.

For the avoidance of doubt, the use of “impact” in the low impact and medium impact options is intended to cover the relative size of both the benefits and costs including implementation costs with each option.

Table 5.1 Summary of identified options to address key concerns

| Topic and sub-option | Option 1  Remake regulations | Option 2  Low impact | Option 3  Medium impact |
| --- | --- | --- | --- |
| Abandoned and derelict vessels |  |  |  |
| Introduce requirement that a vessel must not be ‘derelict’ |  |  |  |
| Increase monetary value of a low value vessel |  |  |  |
| Introduce a cost recovery mechanism |  |  |  |
| Introduce statutory seaworthy checks |  |  |  |
| Oversight of works and waste management |  |  |  |
| Allow low risk works |  |  |  |
| Enable public entities to carry out works |  |  |  |
| Improve waste water management |  |  |  |
| Replace permits with notifications for works |  |  |  |
| Access and use |  |  |  |
| Clarify access for traditional owner groups |  |  |  |
| Provide reasonable emergency access to and through the local port |  |  |  |
| Improve vessel overstay management |  |  |  |
| Prohibit the transfer of permits |  |  |  |
| Strengthen permit requirements |  |  |  |
| Replace permits with notifications for activities |  |  |  |
| Monitoring and enforcement |  |  |  |
| Apply the *Marine Safety Act* owner onus scheme to certain offences |  |  |  |
| Expand the class of persons able to give directions |  |  |  |
| Introduce higher penalties for subsequent offences |  |  |  |
| Other amendments |  |  |  |
| Minor and technical updates |  |  |  |

## Base case: No specific regulation

The *Port Management Act* provides port managers with functions to manage the operations of the port, particularly with respect to shipping and boating activities, to ensure those operations are carried out safely, efficiently and effectively. The Act also enables a local port manager to allocate berths and moorings in the port, and to develop and maintain port facilities, including jetties and moorings. Port managers are also empowered to undertake works such as removing vegetation, constructing or altering structures, and removing or decommissioning existing facilities, subject to requirements under any other legislation. The *Port Management Act* also provides a pathway for the management of abandoned and derelict vessels in local ports. However, there are a number of key issues the *Port Management Act* and other existing legislation do not address.

The Marine Safety Regulations provide conditions in relation to ‘fit for purpose’ vessels. However, these definitions and descriptions are focused on the safety of the vessel and its passengers when operating, rather than when not in use.

As mentioned, the *Port Management Act* provides a pathway for the management of abandoned vessels in local ports. However, this approach is considered inefficient and costly when dealing with vessels of low or no value. Costs for moving, storing, and disposing of vessels left in port areas are subject to potential legal process and the process is considered too complex when dealing with vessels which are low in value. Without the current Regulations, there would be a greater number of abandoned vessels that could cause additional impacts to the environment, safety and operations of local ports.

There is no specific guidance about how the management and allocation of port facilities, such as berths and moorings, should be undertaken. Without the current Regulations, there may be uncertainty in relation to the systems and processes to access port facilities across Victoria’s local ports.

The *Port Management Act* also does not provide for other entities or individuals, such as yacht clubs, to carry out works in local ports. The *Marine and Coastal Act*, the *Planning and Environment Act* and the *Crown Land (Reserves) Act* enable certain use, development and works within local port environments. However, the existing legislation does not specifically enable individuals to undertake works on vessels in local ports and does not provide a simple oversight system for low risk or routine works in local ports.

The *Port Management Act* does not specify the acceptable conduct and behaviour of people within the port, or conditions on which people may be admitted to or excluded from any part of the port. Without Regulations, there would be an absence of clearly defined permitted activities and designated areas which can be accessed, and no reference to applicable penalties. As a result, there may be a lack of monitoring, enforcement and compliance which could inhibit local port operations.

The *Port Management Act* also does not automatically integrate with the owner onus system under the *Marine Safety Act* to hold the owner of a vessel liable for certain offences if the master of the vessel cannot be located or identified at the time of the offence. This means port managers are required to commit time and resources to identify the master of the vessel, who may no longer be present or may deny being responsible for the vessel.

## Abandoned and derelict vessels

As discussed in Chapter 3, abandoned and derelict vessels can sink[[30]](#footnote-31) which can lead to environmental, safety and other hazards in local ports. These vessels also occupy valuable space which other vessels could better utilise. Although the ability of a vessel to undertake a journey safely is regulated elsewhere, the Regulations play an important role in terms of maintaining operations in local ports.

There are a range of powers and tools to deal with the issue available under port and marine related legislation and regulations as well as local laws. The best approach a port manager should take when dealing with abandoned and derelict vessels may not be immediately apparent. Vessel owners may be uncontactable or uncooperative which may also inhibit steps to remove a vessel causing potential hazards and risks.

Owners also may not view their vessel as derelict or unseaworthy despite a port manager’s assessment. There is also an inability for port managers to recover costs from owners for dealing with abandoned and derelict vessels under the current Regulations. Table 5.2 summarises options to better manage abandoned and derelict vessels in local ports, which are described in detail below.

Table 5.2 Options to better manage abandoned and derelict vessels in local ports

| Topic and sub-option | Option 1  Remake regulations | Option 2  Low impact | Option 3  Medium impact |
| --- | --- | --- | --- |
| Abandoned and derelict vessels |  |  |  |
| Introduce requirement that a vessel must not be ‘derelict’ |  |  |  |
| Increase monetary value low value vessel |  |  |  |
| Introduce a cost recovery mechanism |  |  |  |
| Introduce statutory seaworthy checks |  |  |  |

### Option 1: Remake regulations / status quo

Remaking the current Regulations and retaining the status quo provides a pathway for managing abandoned vessels of low value, which is simpler and more cost effective than meeting the requirements of the *Port Management Act*.

The reference case for the management of abandoned and derelict vessels does provide a streamlined pathway for dealing with low value vessels. However, retaining the status quo is costly for port managers and ultimately, the community. Several alternative options have been considered to provide greater certainty and consistency in the way abandoned and derelict vessels are managed.

### Option 2: Low impact

#### Introduce requirement that a vessel must not be ‘derelict’

This sub-option would introduce a requirement that a vessel must not be ‘derelict’ into the Regulations. ‘Derelict’ is defined in the English dictionary to mean “in a very poor condition as a result of disuse and neglect.” This amendment would provide additional circumstances in which a local port manager can take action to address heavily neglected vessels.

This enables a port manager to act earlier to salvage or remove derelict vessels rather than waiting for vessels to sink. If a vessel lapsed into a very poor condition, a port manager would be able to give a direction that the vessel be removed from the local port or moved to another place within the local port, in accordance with the current Regulations.

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| **Stakeholder Question 3**  Would a requirement that a vessel must not be ‘derelict’ assist in managing vessels which are in very poor condition in local ports? (Proposed Regulation 48). |

#### Increase the monetary value of a low value vessel

Under this sub-option, the current Regulations would be amended to increase the value of a vessel in the ‘low value’ definition. Under Regulation 47, a port manager may dispose of a vessel or other thing if it has been left unattended in a local port for at least one month; the master or owner of the vessel is unable to be identified or located; and the port manager reasonably believes the vessel or thing is of low value.

Currently, the value of a low vessel in the Regulations is set at $5,000 (and any other thing is $1,000). Increasing the monetary value of a low value vessel to $10,000 reflects cost indexation over time (more than 30 per cent over the last ten years)and also a need to make the powers more effective. This increase is anticipated to allow port managers to respond more cost effectively to the vessel removals and potentially increase removal of additional abandoned vessels. The cost of removing a vessel once it has begun to sink or has sunk is significantly higher due to the need for specialised equipment and knowledge.

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| **Stakeholder Question 4**  Is the proposed value threshold of $10,000 for vessels and $2,000 for other goods, below which port managers would be authorised to dispose of abandoned vessels or goods, appropriate? Please provide details. (Proposed Regulations 5 and 50). |

#### Introduce a cost recovery mechanism

This sub-option introduces into the regulations the ability for port managers to recover costs from owners for the seizure and disposal of vessels. The average cost of salvage, removal, storage, transport and disposal of a small vessel is in the order of $6,000 to $10,000, depending on vessel and circumstances (i.e. condition, size, location, materials, contractor availability, etc). These costs are usually borne by the state as the vessel owners are either unable to be identified or do not respond. This amendment would enable port managers to be proactive and more cost effective, and remove more vessels earlier, saving the state higher costs of salvaging a sinking or sunk vessel and potential marine pollution incident response. This amendment could be modelled on section 88U of the *Port Management Act[[31]](#footnote-32)*.

### Option 3: Medium impact

#### Introduce statutory seaworthy checks when a second-hand vessel changes ownership

This sub-option would introduce a new system to enable greater oversight of the condition of second-hand vessels. The system could be designed to be similar to vehicle roadworthy checks. This change may provide greater consistency and transparency in how and when vessel checks are carried out, leading to improved safety and environmental outcomes. This change also aligns with a recent Coroner’s suggestion to create a system for investigating recreational boats for seaworthiness following the death of a man in June 2023. This type of system would require considerable time and funding to establish.

### Potential non-regulatory improvements

#### Create guidance materials for the management of abandoned and derelict vessels

This sub-option would adopt a non-regulatory approach to help manage abandoned and derelict vessels. Guidance materials could be created to outline steps that can be taken in accordance with the existing legislation and regulation to manage these types of vessels. The materials could outline steps that can be taken depending on criteria such as estimated value of the vessel and the potential safety, environmental and operational risks the vessel poses. The guidance materials could be developed for port manager use only or could be public facing to better assist vessel owners to understand the process. Local laws could also be referenced where relevant. Examples of this type of material includes guidance published in the United States of America[[32]](#footnote-33) and the United Kingdom[[33]](#footnote-34).

### Other options considered but not assessed

The Department has considered a range of other options in relation to improving the management of abandoned low value vessels. The Department has assessed that these options are not suitable to address the problem and will not consider these options further.

The other options include:

* **Introduce a definition for** **unseaworthy which would require that vessels meet certain conditions** – The introduction of such a definition could enable port managers to act earlier to remove vessels that are at risk of sinking. However, this option has the potential to cause confusion with how the use of the terms unseaworthy and unsafe vessels are used in other marine and boating legislative contexts. In these contexts, it can relate to appropriate safety equipment such as flares or a radio and the right number and qualification of the crew. In addition, this definition is unlikely to assist resolve disputes between port managers and vessels owners as to whether something is or is not seaworthy.
* **Allow port managers to make a determination in relation to seaworthy vessels –** These determinations could be made possible in the regulations and could be tailored to each local port manager’s requirements and published on their website. However, due to the differences in size and resourcing capacity of the local ports, this approach would not provide a consistent assessment of seaworthy vessels across the state.
* **Adopt relevant Australian Standards for vessels into the regulations (Marine Safety Regulations use ‘fit for purpose’) –** This could provide a greater level of certainty for what constitutes an acceptable standard of vessel. However, the existing standards only apply to recreational vessels, will not apply to imported vessels, and are designed for vessels being manufactured rather than older, second-hand vessels.
* **Include a definition for ‘seaworthy’ in legislation rather than regulation –** This could provide greater coverage and certainty for port managers and vessel owners. However, the length of time and uncertainty involved in implementing this amendment is considered too great.
* **Allow a local port manager to compel a vessel owner to act expediently if they fail to comply with a direction –** This amendment could be implemented in the regulations and could help to manage situations where vessel owners disregard a direction, which can lead to significant legal, storage, sale or disposal costs without consequence on the vessel owner. Although there are clear difficulties in this space, the Department views this approach to be excessive.
* **Allow for disposal of a vessel where the owner is known** – The Regulations could be amended to allow for the disposal of a vessel where the owner is known or has been located but refuses or is unable to deal with the vessel themselves. Currently, a local port manager would be required to take the matter to court in these types of circumstances. However, it is noted a change of this nature should be progressed via a legislative amendment.
* **Allow port managers to register an interest in items such as vessels, similar to the *Personal Property Security Act 2009 (Cth)* –** This may provide port managers with a greater ability to recover costs. However, this may also result in added complexities for port managers.

## Oversight of works and waste management

As discussed in Chapter 3, the ability to undertake works in local ports is perhaps too restricted. The current Regulations require permits to be obtained from the relevant local port manager for all works that take place in local ports. This requirement is considered unnecessary for all types of works and may be too burdensome in relation to certain public entities undertaking low risk or routine works. The incorrect disposal of waste water is also of concern as it can create pollution and cause associated health and amenity risks. Table 5.3 summarises options to improve works approval processes and waste water management in local ports, which are described in detail below.

Table 5.3 Options to improve works approval processes in local ports

| Topic and sub-option | Option 1  Remake regulations | Option 2  Low impact | Option 3  Medium impact |
| --- | --- | --- | --- |
| Oversight of works and waste management |  |  |  |
| Allow low risk works |  |  |  |
| Enable public entities to carry out works |  |  |  |
| Improve waste water management |  |  |  |
| Replace permits with notifications for works |  |  |  |

### Option 1: Remake regulations / status quo

Remaking the current Regulations and retaining the status quo provides a permission system and processes to enable works in local ports provided the relevant local port manager approves the works. The current Regulations require permits to be obtained from the relevant local port manager for all works that take place in local ports. Regulation 48 states a person must not carry out works or alterations that involve the use of hot works except in accordance with a permit issued under Regulation 17. Alterations that do not involve the use of hot works may be carried out under certain conditions, such as in a manner that does not cause the discharge of materials onto land or waters and does not unreasonably interfere with other activities in the local port, or is in an area set aside for those alterations.

A remake of the current Regulations would also provide for the appropriate management of waste in local ports. For example, Regulation 60 states that it is an offence to leave or deposit litter or industrial waste in a local port other than in accordance with certain exceptions. One of the exceptions includes in the case of waste water or sewage from a vessel if “the vessel has on board facilities to store and treat the wastewater before its disposal”.

### Option 2: Low impact

#### Allow low risk works without a permit

This sub-option would allow particular low risk or routine works to occur without a permit. This change could be achieved with a regulatory amendment to introduce the ability for port managers to develop requirements for the carrying out of works in a local port. These requirements could be tailored to meet each local port manager’s needs given their different operating environments. A person would then not be able to carry out works unless the works were in accordance with a permit issued by the local port manager, or in accordance with the requirements.

This sub-option could also be achieved with a regulatory change to introduce an ability for port managers to make a determination in relation to exempted works. This amendment could be modelled on the process in Regulation 55 regarding organised activities, though it would relate to works. The determination could be gazetted and published on the relevant local port manager’s website. The Department’s preference is to address this issue through requirements as outlined in the previous paragraph.

There is also an opportunity to align (where appropriate) the consent process for works with the Marine and Coastal (Prescribed Consents) Regulations which are currently being developed. These regulations will cover the repair or maintenance of port facilities; wharves and boat ramps; aids to navigation (including installation); swing moorings; and coastal protection structures. The alignment with the Regulations could include consistency of definitions where appropriate.

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| **Stakeholder Question 6**  Should the Regulations enable works that are low risk to be undertaken according to requirements set by the port manager, without the need to apply for a local port permit? (Proposed Regulation 52). |

#### Enable certain public entities to carry out works

This sub-option would allow certain public entities, such as Melbourne Water and Port of Melbourne Operations, to carry out particular works without a permit. This change could be achieved in the same manner as described in 5.5.3.1, which could then be extended to trusted public entities.

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| **Stakeholder Question 7**  Should the Regulations enable public entities to undertake works according to requirements set by the port manager, without the need to apply for a local port permit? (Proposed Regulation 52). |

#### Improve waste water management

This sub-option would improve the management of waste water and sewage from vessels in local ports. This change would remove the ability to discharge treated waste water or sewage on a vessel from its onboard facilities before disposal of the waste in a local port. The Regulations currently allow for discharge of treated waste water or sewage however this method is not always effective as there are different levels of treatment. Instead, vessel owners and operators would be required to use sewage pump out facilities in local ports. Implementation of this change could be accompanied with enhanced education for vessel owners to ensure understanding of their responsibilities and to assist with compliance.

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| **Stakeholder Question 15**  Do you have any concerns with being required to use landside sewage pump out facilities to manage waste water and sewage in local ports? Are there any implications arising from the prohibition on disposal of treated waste water and sewage in local ports? (Proposed Regulation 64). |

### Option 3: Medium impact

#### Replace permits with notifications for works

This sub-option would replace the current permit requirement to undertake works with a notification requirement. This could be implemented for both low risk works and works carried out by trusted public entities. The notification provision could require a public entity to notify port managers of all works, but then once notified, the person or trusted public entity may carry out the works without the local port manager conducting an assessment or providing a permission. Some guidance materials or criteria could be developed to provide clarity on the types and scale of works that could be undertaken under the notification arrangement.

### Potential non-regulatory improvements

#### Automate the approval of certain works

This sub-option would involve changes to current permit systems to allow for certain works to be approved automatically upon application. Low risk works such as routine works or works undertaken by certain public entities could be approved in this manner. The amendment would not entail regulatory changes but could instead be implemented directly into existing systems port managers use to receive applications for works in local ports. Rather than the port manager assessing the application and the applicant waiting for this assessment to occur, the applicant would receive an automatic notification to say their application has been approved and their permit issued. This approval could be subject to certain terms and conditions.

### Other options considered but not assessed

The Department considered several other options in relation to improving carrying out works in local ports. The Department has assessed that these options are not suitable to address the problem and will not consider these options further.

The other options include:

* **Introduce fees for permit applications for larger scale works –** This would be introduced to help port managers recover costs for time and resources dedicated to assessing and making decisions on large scale works applications, such as applications to reconstruct a marina. However, it has been determined a legislative change would be required as the regulation making power under section 98 of the *Port Management Act* does not refer to the charging of fees.

## Access and use

As discussed in Chapter 3, the problems associated with access to and use of port facilities stem from underlying issues of high demand for a limited number of facilities. This can lead to suboptimal access to and use of local ports. For example, vessel owners overstaying their permitted length of time at a berth. Other issues include inequitable access to mooring permits when they are transferred to other individuals in exchange for prices which exceed the value of the associated mooring. Competing and conflicting activities are also challenging to manage in local port environments. Table 5.4 summarises options to improve access and use of facilities in local ports, which are described in detail below.

Table 5.4 Options to improve access and use of facilities in local ports

| Topic and sub-option | Option 1  Remake regulations | Option 2  Low impact | Option 3  Medium impact |
| --- | --- | --- | --- |
| Access and use |  |  |  |
| Clarify access for Traditional Owner groups |  |  |  |
| Provide reasonable emergency access to and through the local port |  |  |  |
| Improve vessel overstay management |  |  |  |
| Prohibit the transfer of permits |  |  |  |
| Strengthen permit requirements |  |  |  |
| Replace permits with notifications for activities |  |  |  |

### Option 1: Remake regulations / status quo

Remaking the current Regulations and retaining the status quo provides a proven system to manage use of and access to Victoria’s local ports. The status quo provides for designations and permissions to access and use local ports in certain ways, for example to berth or moor a vessel or hold an event. These arrangements ensure conflicting activities are managed appropriately and help to ensure the safety of the general public in local port environments.

Under the current Regulations, port managers are able to allocate different facilities and areas for different uses and lengths of stay. For example, vessels can be permitted to temporarily berth at a local port facility for up to 48 hours or as specified by the local port manager under Regulation 33. Port managers can also require vessels to move to different locations with the use of set aside determinations under Regulation 12 and conditions under Regulation 14. This type of management ensures valuable public facilities are regularly made available for a variety of vessels.

### Option 2: Low impact

#### Clarify access for traditional owner groups

This sub-option would allow the current Regulations to be updated to ensure traditional owners are not limited in their ability to maintain their distinctive spiritual, material and economic relationship with the land and water with which they have a connection. The current Regulations would be amended to take into account land and water rights and the associated traditional owner agreements. This could be implemented so that traditional owner rights are recognised without impacting safety in local ports. For example, specified regulations that provide for an offence to carry out certain activities would not apply to traditional owner group entities who have entered into defined agreements. This change would not grant new rights to traditional owners but would simply ensure traditional owners could not be charged with an offence for carrying out their existing rights under other legislation.

This amendment could exclude or limit high risk activities which are already controlled in the Regulations, such as causing a hindrance or danger to navigation. The amendment would ensure the Regulations are aligned with various land management related regulations that have recently been updated, including the Alpine Resorts (Management) Regulations 2020, National Parks Regulations 2024, Water (Recreational Area) Regulations 2023 and Land (Regulated Watercourse Land) Regulations 2021.

In addition, the Regulations would be updated so that when making a determination about a set aside, a port manager must have regard to whether the determination will interfere or conflict with any agreed activity that is carried out in the local port in accordance with a traditional owner settlement agreement. This would ensure that traditional owner interests are taken into account when set asides are made.

#### Provide reasonable emergency access to and through the local port

This sub-option would allow for emergency access to local ports, as emergency access points may differ to the public access allowed under Regulation 10(1)(a). This amendment would also allow access through the port area, if appropriate, for emergency services to respond to emergency incidents that are just beyond the port defined area to provide the quickest and safest means of access. This amendment also aligns with Regulation 10(2)(d) protecting public health and safety. Records of the points of emergency access, roadways and defined areas within the local port could be captured through plans included in port management plans.

### Option 3: Medium impact

#### Improve management of vessel overstays

This sub-option would require a short stay vessel to move to an area outside the local port, or to a different berthing facility or mooring area within the local port, once the permitted length of stay lapses. Currently, Regulation 33 specifies that a vessel is taken to have been moored or berthed for a continuous period unless the master moves the vessel before the expiry of any time limit which applies to the vessel’s current mooring or berthing. Regulation 33 further specifies the requirements associated with moving the vessel, including that it must be moved so it no longer occupies any of the same space it previously occupied; from a mooring to a berth; or to an area outside the local port.

Implementing this sub-option would make clear the obligation to move to a different location, which may improve access for other vessels and minimise negative impacts such as conflicts and antisocial behaviour. This amendment would help to address the gap in regulation where a vessel owner currently meets the existing requirements if it is moved to a different place on the same berthing facility or to a different mooring within the same mooring area.

The Department understands this change may not be necessary to support improved public access. This is because it is possible to use the current Regulations to require vessels to move to different locations with the use of set asides (Regulation 12) and conditions (Regulation 14).

#### Prohibit the transfer of permits

This sub-option could be implemented in the Regulations with an offence provision to help prevent the transfer of permits, and in particular, to help reduce sales of mooring tackle at prices well in excess of the original tackle cost. If deemed appropriate, this amendment could be expanded to be applicable to all permits issued under proposed Regulation 17. The Department understands this amendment may not be sufficient in preventing permit transfers without additional funding and resources for monitoring and enforcement. An additional fee would also be required for extra mooring equipment inspections at the renewal of each permit, which may involve contracting specialist divers.

#### Strengthen permit requirements

This sub-option would require vessel owners to undertake training before being eligible to obtain a permit. The training could require vessel owners meet certain requirements and attain a specified level of knowledge and understanding of their responsibilities in berthing and using mooring equipment. Training in regular servicing of onboard and external equipment could also be required where necessary as well as vessel maintenance training. Due to the different contexts of each local port, a site inspection could also form part of the mandatory training. A similar training requirement could also potentially be extended to permits for the management of cargo in local ports. This change could be implemented in the Regulations to provide a consistent approach across all local ports. This sub-option would require additional funding and resources to implement the regulatory changes, including to undertake additional assessments, update systems and processes, monitoring and enforcement activities.

#### Replace permits with notifications for activities

This sub-option would replace the current permit requirement to undertake activities with a notification requirement. Similarly to the option to notify for works described at section 5.5.3.1, the notification provision could ensure it is a requirement to notify the port managers of all activities, but then once notified, the person could undertake the activity without the local port manager conducting an assessment or providing a permission. Some guidance materials or criteria could be developed to provide clarity on the types and scale of activities that could be undertaken under the notification arrangement.

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| **Stakeholder Question 10**  Should activities determined to be low risk be able to occur without the need to apply for a local port permit? If yes, which activities and how would the associated risks be managed? |

### Potential non-regulatory improvements

#### Automate the approval of certain uses and activities

Similar to an amendment to automate works approvals, this sub-option would involve changes to current permit systems to allow for certain uses and activities to be approved automatically upon application. Low risk uses and activities such as commercial filming and camping could be approved in this manner. The amendment would not entail regulatory changes but could instead be implemented directly into existing systems port managers use to receive applications for activities in local ports. Rather than the local port manager assessing the application and the applicant waiting for this assessment to occur, the applicant would receive an automatic notification to say their application has been approved and their permit issued. The approval could be subject to certain terms and conditions.

#### Enhance public consultation activities when making set aside determinations

. Port managers consult with port users and balance a wide range of requirements when making set aside determinations. This sub-option would enhance public consultation activities with additional notifications to reach those who may be directly impacted, such as recreational fishers and commercial operators. Public submissions received and justifications for final decisions could also be made publicly available. This information could be published on the local port manager’s website.

#### Expand non-regulatory measures to prevent mooring permit transfers

This sub-option would introduce non-regulatory measures to control mooring permit transfers. The Department understands that due to resourcing and enforcement constraints, the secondary mooring market issue may not be fully restricted even with regulatory changes. Non-regulatory measures may therefore be a useful alternative in managing the secondary market for mooring transfers.

One opportunity could involve expanding mooring permit conditions to stipulate that permit transfers are prohibited. Gippsland Ports’ mooring permit conditions already state a transfer is not permitted, which could be introduced into all mooring permits in all local ports. At present some permits allow changes to details such as vessel registration yet are silent on broader transfers of the permit.

Another opportunity could involve the introduction of policies to control mooring permit transfers, similar to those introduced for boatsheds and bathing boxes on Crown land[[34]](#footnote-35). A consistent approach across all local port mooring permits may help to clarify transfers are not acceptable and that permits may be cancelled if terms and conditions are not met or policies are not followed.

### Other options considered but not assessed

The Department considered several other options in relation to improving equitable access to and use of local ports. The Department has assessed that these options are not suitable to address the problem and will not consider these options further.

The other options include:

* **Implement a notification system for managing certain activities –** A notification system for certain uses of local ports could be implemented to streamline the approval of certain activities. Port managers have suggested this type of system could be useful for certain low risk activities such as commercial filming and could be implemented now without the need for regulatory amendments. However, a notification system is not preferred over the existing permit system in most instances as notifications would not allow proper consideration of conflicts of uses, safety and environmental hazards and risks.
* **Set and include fees for permits in the regulations –** The inclusion of specified set or maximum fees for permits in the regulations would provide greater transparency and consistency across all ports. For example, maximum fees could be set for berthing and mooring permits. However, the inclusion of fees in regulations would require a substantial shift to the existing arrangements. Currently port managers charge for port services differently. For example, permits may be costed by vessel length, vessel type, location, available infrastructure, etc. The Department also understands a legislative amendment may be required to introduce commercial fees into the regulations.

## Monitoring and enforcement

As discussed throughout Chapter 3, monitoring and enforcement of operations in local ports continues to be a challenge for port managers. It is difficult to ensure every illegal activity is captured, particularly as it is not practicable for local port management staff to be present at all times and in all locations. It is also challenging to build a sufficient evidence base against those who have committed an offence as many illegal activities depend on catching an individual ‘in the act’. Table 5.5 summarises options to help strengthen monitoring and enforcement activities in local ports, which are described in detail below.

Table 5.5 Options to help strengthen monitoring and enforcement activities in local ports

| Topic and sub-option | Option 1  Remake regulations | Option 2  Low impact | Option 3  Medium impact |
| --- | --- | --- | --- |
| Monitoring and enforcement |  |  |  |
| Apply the *Marine Safety Act* owner onus scheme to certain offences |  |  |  |
| Expand the class of persons able to give directions |  |  |  |
| Introduce higher penalties for subsequent offences |  |  |  |

### Option 1: Remake regulations / status quo

Remaking the current regulations and retaining the status quo would provide provisions for acceptable conduct and behaviour of individuals in local ports, as well as penalties for breaching the accepted rules. However, although the current Regulations provide clearly defined permitted activities and the ability to restrict access to certain areas within a local port, port managers experience significant limitations in undertaking monitoring and enforcement activities.

These limitations include insufficient resources and funding, particularly in larger local ports which cover vast areas of land and water. Port managers are also unable to be in all places at all times. Therefore, monitoring and enforcement may be reduced at different times of the day and in different locations. Unwanted, dangerous and illegal activities are not always able to be caught and the persons responsible penalised.

In addition, port managers are restricted in their ability to access vessel registration details, which further inhibits investigations and can delay owner identification and the issue of penalties. The status quo is an improvement on the base case which does not detail specific acceptable conduct and behaviours. However, the limitations in the port manager’s ability to monitor and enforce the current regulations is a challenge and may result in reduced compliance.

### Option 2: Low impact

#### Apply the *Marine Safety Act* owner onus scheme to certain offences

This sub-option would enable the application of the *Marine Safety Act* owner onus scheme to certain offences under the Regulations to improve enforcement activities in relation to vessel offences. The *Marine Safety Act* establishes an owner onus system for certain offences involving recreational vessels, holding the owner liable if the master or person in charge of the vessel is not identified at the time of the offence. The changes introduced could borrow from or model this system.

Perhaps the most effective and efficient approach to applying an owner onus system would be to include sub-regulations following offence provisions in the relevant local ports regulations to explicitly state they are owner onus offences[[35]](#footnote-36). This approach is already in operation and tested under the *Marine Safety Act* and is also considered appropriate to apply to the local port regulations. As owner onus under the *Marine Safety Act* is confined to the masters of recreational vessels, a definition for recreational vessel could also be added to the local ports regulations for greater clarity.

Another approach could be to address responsibility of the owner for each offence[[36]](#footnote-37). However, penalising the owner would not be appropriate in many instances, and this approach may create additional issues. The owner onus approach is considered a fairer method requiring the owner’s cooperation until the actual offender is identified and issued a penalty.

#### Expand the class of persons able to give directions

This sub-option would enable fisheries officers to be added to the class of persons able to give directions under the Regulations. Fisheries officers are employed to protect fisheries and promote responsible fishing and boating. One of their roles is to ensure compliance with fishing regulations, however, they are also authorised to enforce laws pertaining to litter, boating safety, and vehicle use. This change would specifically relate to directions to a person causing interference (current Regulation 66). Currently, a port manager, transport safety officer or police officer may direct a person under this regulation to cease engaging in an activity, leave a specified area, or leave the local port. They may also direct a person to move a vessel or vehicle. The circumstances in which to give these types of directions are limited, for example, to prevent harm or damage, or in the event of an emergency. Fisheries officers would be subject to the same limitations in the exercise of these powers.

### Option 3: Medium impact

#### Introduce higher penalties for subsequent offences

This sub-option would introduce a higher penalty for subsequent offences under the Regulations. For example, a higher penalty would be applied for either using or installing an unauthorised mooring when the offence is committed by a person for the second time. This approach may help to deter people from committing subsequent offences if they are aware the penalties will increase. The Department acknowledges additional systems and processes would need to be implemented or enhanced to progress changes in this area, such as ensuring the details of first and subsequent offences are recorded correctly and adequately maintained to be current and accurate.

### Potential non-regulatory improvements

#### Enhance non-regulatory interventions to better manage local port activities

This sub-option would see enhanced non-regulatory interventions such as signage, education and CCTV. For example, water safety campaigns could be strengthened and targeted to include dangerous local port activities such as wharf jumping and refuelling vessels. These types of interventions may have varied efficacy. There are limitations in terms of the effect measures like additional signage would have on changes in behaviour. It is also not possible, nor desired, to install CCTV at all port facilities. However, the Department notes that CCTV has been effective in deterring illegal dumping of oil and other materials at a metropolitan yacht club. These non-regulatory measures would assist enforcement of the Regulations.

#### Improve data collection methods

This sub-option could involve the development of guidance and training materials and processes to help build the data collection capability of port managers. The Department could develop these materials to provide a consistent yet adaptable approach across the state. The materials could address best practice record keeping for aspects of local port management, such as berths and moorings. The materials could also address incident reporting, in particular, the details required to take meaningful actions, ensure an effective response, and to assist with future analysis. The Department notes many of the incidents which occur in local ports are often captured via other means, such as through workplace health and safety requirements, police reports and other emergency response agency reports. The guidance and training would not duplicate these requirements. Instead, the materials and processes would seek to improve the quality, consistency and effectiveness of reporting across all local port operations.

#### Ensure directions to move a vessel are infringeable

This sub-option would allow for the introduction of an infringement penalty in the regulations in relation to directions to move a vessel. Although it is a regulation change, it is not a change to the Regulations but rather a change to the Transport (Safety Schemes Compliance and Enforcement) (Infringements) Regulations 2024 (the Transport (SSCE)(I) Regulations). Currently the failure to comply with a direction under Regulation 45 (direction to move vessel, goods or other thing) is not infringeable because it is not listed in the Transport (SSCE)(I) Regulations. This amendment would provide more immediate and greater penalties for those who do not comply with a direction.

### Other options considered but not assessed

The Department considered several other options in relation to improving monitoring and enforcement in local ports. The Department has assessed that these options are not suitable to address the problem and will not consider these options further.

The other options include:

* **Enhance illegal mooring removal programs –** These types of programs have resulted in the successful removal of many illegal moorings in recent summer months in both Parks Victoria and Gippsland Ports managed local ports. The programs require significant additional resources to locate, remove and dispose of the illegal moorings, and so are not being further considered at this stage.
* **Build a public awareness campaign about illegal moorings –** This type of campaign may help to raise awareness about the dangers of illegal moorings and reduce the number of individuals installing and using these types of moorings. However, as there are around 200,000 registered recreational vessels across Victoria targeted education would be the most effective approach. This would require additional resources and funding and may not be enough of a deterrent to produce the desired results.

|  |
| --- |
| **Stakeholder Question 18**  Can you identify any opportunities to reduce a compliance burden imposed by the Regulations without compromising the achievement of their underlying objectives? If so, please provide some details. |

# Options analysis

## Assessment method

### Assessment against the objectives

This chapter assesses the options identified in the preceding chapter against the regulatory objectives and government policy. It seeks to determine the expected costs and benefits of the options and evaluate to arrive at a preferred option. In regulatory impact assessments, costs and benefits are assessed against the base case (described in section 5.3). However, if no regulations are made there would be limited and ineffective management of local ports in Victoria. The Department considered this to be an unhelpful starting point for a detailed analysis of the options. Therefore, for the purposes of options analysis in this RIS, the ‘reference case’ adopted is the regulatory framework represented by the current Regulations.

### Multi-Criteria Analysis

The Victorian Guide to Regulation[[37]](#footnote-38) presents the Multi-Criteria Analysis (MCA) as a useful decision-making tool when it is not possible to quantitatively estimate the effects of many or most of the impacts of a regulatory proposal (for example, measures that have behavioural or environmental impacts).

Given the difficulty in precisely quantifying the impacts and attributing them to the regulations, the RIS will rely on an MCA to assess the options. This will be supported by data to indicate the relative scale and significance of the problems and the impacts of the options.

### Assessment criteria

The criteria selected for the assessment of the options reflect government policy and regulatory objectives, as shown below in Table 6.1. Monitoring and enforcement impacts are considered within the discussion on the selected criteria where relevant.

The criteria are weighted according to their overall importance in achieving government objectives. To prevent biases, the Department has weighted benefit-related criteria and cost-related criteria equally, as shown in Table 6.1 below.

Table 6.1 Options assessment criteria

|  |  |  |
| --- | --- | --- |
| Criterion | Description | Weighting |
| Safety | There are inherent risks associated with operations in local ports. While other regulations deal with marine safety (for example, marine safety regulations), the Regulations promote the safety of all port users, including those not on the water. Maintaining adequate levels of safety helps to reduce incidents including injuries and fatalities. Safety is a primary objective of the current Regulations and is a key concern for Government. For these reasons it received the second highest weighting. | 25% |
| Effectiveness | Effective local port operations involves management of port facilities and access to and use of those facilities. It also involves the management of people, vessels and cargo. Effective management of local ports is one of the primary objectives of the current Regulations. This criterion also encompasses efficient management of local ports, which is another primary objective of the Regulations. | 15% |
| Environmental impacts | Reducing environmental harms is a key theme throughout the regulations. This criterion encompasses appropriately managing environmental risks and minimising environmental pollution (for example, from abandoned vessels). Environmental impacts received a weighting of 10 per cent because, while important, is not a primary objective of the current Regulations and also because other regulatory instruments provide a specific environmental focus. | 10% |
| Regulatory costs for port users | Regulations impose costs on port users and businesses through their imposition of regulatory systems and processes. Port fees may also be charged for using a port's facilities and services, which are based on the regulatory framework. | 30% |
| Regulatory costs for port managers and Government | Regulations also impose costs on port managers, and ultimately, Government. It is important that these costs are scrutinised so the lowest possible burden is imposed on the port managers, while achieving the Government’s objectives. | 20% |

### Criteria scoring

A score is assigned depending on the impact of the option on each of the criteria measured. A rating scale from -10 to +10 (shown in Table 6.2) is used for each criterion listed in Table 6.1. This scale allows for more detailed feedback on the choices made, helping to better understand the proposal. Options 2 and 3 are scored compared with Option 1, the ‘reference case’ (i.e. current Regulations), which is given a score of zero for each criterion.

The sub-options of each option are discussed where relevant under each of the criterion. Sub-options that provide the most benefit or costs are discussed in more detail. If a sub-option is of little or no relevance to the criterion it will not be discussed or will be briefly mentioned.

Table 6.2 Options assessment criteria scoring

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Type of change | Very low | Low | Medium | High | Very high |
| Negative change | -1 | -3 | -5 | -7 | -10 |
| No change | 0 | 0 | 0 | 0 | 0 |
| Positive change | +1 | +3 | +5 | +7 | +10 |

## Options assessment

### Safety

#### Option 1 – Remake regulations

Option 1 is the reference case (i.e. current Regulations / status quo), which is given a score of **0**. Option 1 is a remake of the current Regulations with only necessary minor and technical updates.

Under Option 1, the safe management of local ports would continue to be prioritised as one of the key objectives of the Regulations. This objective is demonstrated through local port manager’s ability to provide for designations and permissions to access and use local ports in certain ways; the management of vessels, cargo and works; and monitoring and enforcement activities.

#### Option 2 – Low impact

In comparison with the reference case (Option 1), Option 2 provides additional safety benefits for port users.

The increase in the monetary value of a low value vessel and the inclusion of derelict vessels will improve on-water safety outcomes for vessel owners and operators. An increase in the monetary value of a low value vessel would assist port managers to effectively manage a greater number of vessels which could create a safety risk. Similarly, the broadening of directions powers to move a derelict vessel will improve the management of vessels which are deteriorating and potentially at risk of sinking[[38]](#footnote-39). The purpose of this change is to minimise the number of vessels needing to be salvaged that are already taking on water and sinking, as this is a costly exercise.

Although the focus of these changes is not on safety, safety benefits will be realised. This is due to a greater number of unsafe, abandoned or derelict vessels being able to be captured by the Regulations and subsequent swift action being taken to direct these vessels to be removed from the local port. However, although there are some anticipated safety benefits flowing from these changes, the quantum of these benefits is difficult to measure. As an example, the increase in the monetary value of a low value vessel and inclusion of derelict vessels are not anticipated to save lives and so cannot be quantified using the value of statistical life (VSL)[[39]](#footnote-40). In addition, the *Marine Safety Act* and Regulations promote safety including in local port environments.

Finally, there is a possibility that the removal of the requirement for works permits in certain situations could lead to worse safety outcomes. However, this change enables the local port manager to set requirements to determine the circumstances in which this could occur. As a result, in practice it is unlikely that this change will lead to detrimental safety outcomes.

For these reasons, the additional safety benefits from Option 2 are considered low. Consequently, a score of **+2** is assigned to this criterion for Option 2.

#### Option 3 – Medium impact

Option 3 provides the safety benefits from Option 2 as well as several additional sub-options.

The introduction of statutory seaworthy checks by port managers upon the exchange of second-hand vessels will help reduce the number of vessels kept on the water that need maintenance. These regular checks could ensure vessels are not permitted to be kept on local port waters if they do not pass certain safety and maintenance requirements. As a result, vessel operator and passenger safety may be increased. As mentioned at section 5.4.3.1, a recent Coroner’s recommendation was to create a system for the regular assessment of the condition of recreational vessels following the death of a man in June 2023. This change will only impact those vessels where the owner holds a berth or mooring permit, although many other sales of recreational vessels will occur. Further, many recreational vessels may never be inspected because they are never sold to another person.

It is not anticipated that this recommendation would result in a significant safety benefit in the context of local ports, although it is possible safety benefits would be realised. This is because for the majority of time, recreational vessels are tied up in local ports. The deterioration of vessels impacts the effectiveness of local port operations and the local environment, and has an immaterial impact on the safety issues in local ports.

Option 3 also prohibits the transfer of permits and clarifies permit holder responsibilities. Prohibiting permit transfers ensures all permits are issued by the local port manager in accordance with port policies, rather than, for example, a vessel owner simply taking a mooring location held by the previous vessel owner. Port managers’ enhanced oversight of the permit system will allow them to more effectively prohibit transfers. This may result in improved safety outcomes due to the ability to better assess vessels associated with new permit applications. Introducing training requirements for permit holders would further enhance existing berth and mooring arrangements. The requirements could be designed to ensure vessel owners understand their responsibilities for vessel maintenance and monitoring.

Compared with the reference case, Option 3 provides additional safety benefits. However, as with Option 2, the benefits are still considered relatively low due to other existing legislation and regulations. Consequently, a score of **+4.0** is assigned to this criterion for Option 3.

Table 6.3 MCA assessment – Safety

|  |  |  |  |
| --- | --- | --- | --- |
| Option | Weighting | Safety assignment score | Weighted score |
| 1 – Remake regulations | 25% | 0.0 | 0.00 |
| 2 – Low impact | 25% | 2.0 | 0.50 |
| 3 – Medium impact | 25% | 4.0 | 1.00 |

### Effectiveness

#### Option 1 – Remake regulations

Option 1 is the reference case (i.e. current Regulations / status quo), which is given a score of **0**.

Under Option 1, the effective management of local ports would continue to be prioritised as one of the key objectives of the Regulations. This objective is demonstrated through port managers’ ability to provide for designations and permissions to access and use local ports in certain ways; the management of vessels, cargo and works; and monitoring and enforcement activities.

#### Option 2 – Low impact

In comparison with Option 1, Option 2 provides additional improvements in effectiveness.

All sub-options within Option 2 contribute to providing enhanced effectiveness in local port operations. The current Regulations help manage different uses of local ports at the same time, for example, commercial fishing operations and public visitation. However, there are several improvements that could be made to the existing arrangements to provide better and more consistent operations within local ports across the state.

The introduction of a requirement that a vessel must not be derelict would help to provide greater effectiveness in the appropriate management of vessels which may be deteriorating, inadequately maintained or abandoned. Although the current Regulations enable port managers to direct an owner to move their vessel if it is unseaworthy or sinking, there is no reference to derelict or deteriorated vessels. This means that port managers are not able to be proactive in dealing with a vessel that is at risk of sinking and becoming a far more significant problem – in resources, to the environment and to the access and amenity of the local port. The inclusion of this requirement for a vessel not to be derelict enables a port manager to act earlier to salvage or remove derelict vessels rather than having to wait for the vessels to sink.

The monetary value of a low value vessel is too low at $5,000 to effectively manage vessels that are of little value and may be abandoned or unseaworthy, but which exceed the current low value definition. There is also no cost recovery mechanism for port managers in recovering and disposing of those vessels. An increase in the monetary value of a low value of a vessel and the introduction of a cost recovery mechanism would assist port managers to effectively manage a greater number of vessels which would otherwise be difficult to address under the current Regulations. Port managers would no longer be required to use the resource intensive pathway under the *Port Management Act* to manage vessels with values between $5,000 and $10,000 and would be empowered to recover costs associated with moving, storing and disposing of abandoned and derelict vessels. This increase, while potentially affecting only around two vessels per year (see section 3.3.3.1), will have a significant impact by enabling the port manager to take earlier and more efficient action in managing vessels at risk of sinking.

There are three key types of benefits that are likely to flow from the derelict vessel change: a reduction in salvage costs, an increase in resale value and a reduction in administrative costs.

There is an anticipated reduction in salvage costs because acting earlier in moving and where applicable, removing a derelict vessel from a local port means that there is intervention before significant costs associated with moving or removing a vessel that is sinking are incurred. These salvage and disposal savings are around $10,000 per vessel. Port managers have identified approximately 100 vessels across local ports which are being monitored due to concerns about the level of maintenance and increased risk of the vessel sinking at a berth or on a mooring. It is anticipated that these changes are likely to apply to at least five vessels across the local ports annually.

An additional benefit from a port manager taking action when the vessel is merely derelict rather than once it is sinking is that the vessel and its components will be in better condition when it is moved or removed from the local port waters. This means that less extensive repairs may be needed and if it is to be sold, it is likely to obtain a higher price. It is difficult to quantify the benefit of this aspect but given the vessels are considered derelict, it is not anticipated to be a large saving.

The final key saving from the derelict vessel change is the reduction in administrative costs. Anecdotally, 50 to 80 per cent of vessels that are moved, removed or disposed of cause significant legal and administrative costs. This is particularly the case when the dispute leads to legal proceedings which can cost the port manager alone more than $10,000. It is anticipated that there will be less capacity for disagreement following the changes which is expected to see a reduction in disputes.

It is important also to note that the low value vessel threshold change is going to increase the scope of potential vessels that are covered by the provisions relating to removing and disposal of vessels. This means that the number of vessels the derelict changes applies to (and therefore the associated savings) will increase. It also means it will apply to other higher value vessels that are unseaworthy or sinking.

The application of the *Marine Safety Act* owner onus scheme to certain offences will also improve the effectiveness of local port operations. This amendment will hold the owner liable if the master or person in charge of the vessel is not identified at the time of the offence. This is beneficial in reducing local port manager resources to identify and locate the person responsible for the offence, and will allow the owner of a vessel to nominate the person in charge if it was not themselves. There is not enough data available to estimate the benefits associated with this change. However, if it functions as intended, it has the potential to create a greater deterrence to people offending which will in turn enhance the effectiveness of the local port operations.

The current Regulations help to ensure works and alterations are undertaken in a suitable area of the local port and in a manner that ensures any safety and environmental risks are appropriately managed. This provides strict oversight of the types of works which may be carried out and the entities who may carry out the works. However, there are several improvements that could be made to the existing arrangements to provide a more efficient and effective system. Greater effectiveness in local port management would be achieved with the allowance of low risk works without permits and public entities carrying out works without permits under the Regulations. This change would remove the need for approximately five to ten permits per year. There would also be savings for local ports users and certain public entities in preparing their applications and for port managers in assessing each application. It is estimated that there would be savings of 3 to 10 days preparing each application and 3 to 10 days assessing each application.

Improving traditional owner group access to and use of local ports is also consistent with self-determination, existing land management regulations and government policies and would provide for a greater level of effectiveness of local port operations, particularly for traditional owners.

Option 2 also includes providing reasonable emergency access to and through the local port. Where appropriate and required, this enables emergency services to respond to emergency incidents that are just beyond the port defined area and the port area provides the quickest and safest means of access. This enables more streamlined and effective local port operations when these situations apply.

Compared with the reference case, Option 2 provides a high level of positive changes in the effectiveness of local port operations. Consequently, a score of **+7.5** is assigned to this criterion for Option 2.

#### Option 3 – Medium impact

Option 3 provides the improvements in effectiveness from Option 2 as well as additional sub-options. All sub-options of Option 3 are considered to contribute to providing enhanced effectiveness in local port operations.

The introduction of statutory seaworthy checks upon exchange of second-hand recreational vessels, similar to roadworthy checks, will ensure inadequately maintained vessels are easily identified. The new owner would then have the option of either disposing or repairing the vessel to a good condition. These routine checks would help to ensure fewer inadequately maintained vessels are kept in local ports. As discussed in section 6.2.1, this change would result in safer local port environments. This change would also result in a saving in local port manager resources to deal with derelict or inadequately maintained vessels, including those which may be at risk of sinking, further enhancing the effectiveness of local port operations. As outlined in section 6.2.2.2, salvage savings are likely to be in the order of $10,000 per vessel, and there may also be savings in administrative and repair costs.

As discussed in section 6.2.1.3, prohibiting the transfer of permits and strengthening requirements for permits provides additional safety benefits for port users. These sub-options also include improvements in the effectiveness of local port operations, such as providing transparent allocation of permits. In terms of strengthening permit requirements, vessel owners would need to undertake training in relation to permit holder obligations. These changes may in turn result in improved operations within local ports, although are difficult to quantify.

Option 3 also includes improvements in effectiveness through the replacement of certain works and activity permits with notifications. In many cases notifications are sufficient for low risk works and activities provided certain conditions are met. This change would remove the need for approximately 50 to 100 permits per year, which could include low risk works and events per year. There would also be savings of 3 to 10 days each for local ports users in preparing their permit applications and for port managers in assessing each application, as discussed in section 6.2.2.2.

Changes to vessel overstay management will also provide effectiveness improvements. An amendment to ensure vessels relocate to another local port facility, like another wharf or mooring area, or to another local port will also enhance the availability of port facilities for other port users. This is beneficial in providing sufficient access to local ports, particularly those areas in high demand.

Compared with the reference case, Option 3 provides a high level of positive changes in the effectiveness of local port operations. Consequently, a score of **+9.5** is assigned to this criterion for Option 3.

Table 6.4 MCA assessment – Effectiveness

|  |  |  |  |
| --- | --- | --- | --- |
| Option | Weighting | Effectiveness assignment score | Weighted score |
| 1 – Remake regs | 15% | 0.0 | 0.00 |
| 2 – Low impact | 15% | 7.5 | 1.12 |
| 3 – Medium impact | 15% | 9.5 | 1.42 |

### Environmental impacts

#### Option 1 – Remake regulations

Option 1 is the reference case (i.e. current Regulations / status quo), which is given a score of **0**.

Under Option 1, environmental impacts would continue to be managed in local ports under the Regulations. This is demonstrated in the Regulations primarily through port managers’ oversight and management of vessels, works and waste.

#### Option 2 – Low impact

In comparison with Option 1, Option 2 provides additional environmental benefits.

As discussed in sections 6.2.1 and 6.2.2, the increase of the monetary value of a low value vessel and the introduction of a requirement that a vessel must not be ‘derelict’ will help to enable a greater number of vessels being identified as unseaworthy, abandoned or derelict, and subsequent action being taken to direct these vessels to be removed from the local port. These improvements will ensure fewer vessels are allowed to deteriorate in the water without intervention. When this occurs, vessels are at risk of leaking oil and fuel, releasing other materials into local port waters and becoming an environmental hazard. A proactive approach taken to prevent these types of occurrences will contribute to improved environmental outcomes.

In addition to the safety and effectiveness benefits arising from the increase of the monetary value of a low value vessel and introduction of a requirement that a vessel not be ‘derelict’, as outlined in 6.2.1.2 and 6.2.2.2, there are also potential environment benefits. An Environment Protection Authority notifiable incident means a pollution incident that causes, or threatens to cause ‘material harm’ to human health or the environment[[40]](#footnote-41). Pollution incidents usually involve a leak or spill and the cleanup or management of the pollution or cost of restoration would cost $10,000 or more. Pollution incidents are far more likely to occur with abandoned or derelict vessels that are sinking. In the case of abandoned or derelict vessels, the changes enable the local port manager to take action prior to the vessel reaching this condition. This means there is potential for $5,000 to $15,000 savings from preventing a pollution incident from occurring. For example, if it is anticipated that early action as a result of the changes will apply to at least five vessels per year, then it is likely that this will prevent an environmental incident for at least one of these vessels annually.

The improvement of waste water and sewage management in local ports will also likely lead to better environmental and health outcomes, though this may be relatively minor in effect.

Due to the relatively low occurrence of negative environmental impacts from abandoned and derelict vessels, the additional environmental benefits from Option 2 are considered low to medium. Consequently, a score of **+3** is assigned to this criterion for Option 2.

#### Option 3 – Medium impact

Option 3 provides the environmental benefits from Option 2 as well as several additional sub-options.

As discussed in sections 6.2.1 and 6.2.2, the introduction of statutory seaworthy checks for second-hand vessels will ensure inadequately maintained vessels are easily identified and appropriately managed. The introduction of this system will provide additional safety benefits and improvements in the effectiveness of local port operations. The system will also reduce environmental impacts as fewer unseaworthy, abandoned, and derelict vessels will be able to be kept in local port environments. This will, in turn, reduce the risk of oil and fuel spills and release of other materials from the vessel polluting local port waters. As discussed in section 6.2.3.2, there is potential for $5,000 to $15,000 in savings from preventing a pollution incident from occurring.

Due to the relatively low occurrence of negative environmental impacts from abandoned and derelict vessels, the additional environmental benefits from Option 3 are considered medium. Consequently, a score of **+3.5** is assigned to this criterion for Option 3.

Table 6.5 MCA assessment – Environmental impacts

|  |  |  |  |
| --- | --- | --- | --- |
| Option | Weighting | Environmental impacts assignment score | Weighted score |
| 1 – Remake regs | 10% | 0.0 | 0.00 |
| 2 – Low impact | 10% | 3.0 | 0.30 |
| 3 – Medium impact | 10% | 3.5 | 0.35 |

### Regulatory costs for port users

#### Option 1 – Remake regulations

Option 1 is the reference case (i.e. current Regulations / status quo), which is given a score of **0**.

Under Option 1, port users would continue to experience charges associated with the use of any facility in the local port. These costs are primarily associated with permits to undertake certain activities in local ports such as berthing or mooring a vessel, refuelling of vessels, and managing cargo. The activities may also include carrying out works in local ports. Other types of activities which may require a permit include recreational, commercial and organised activities, such as holding an event. It is estimated port users spend 3 to 10 days preparing each application, depending on the complexity, as indicated in sections 6.2.2.2 and 6.2.2.3. Applications to moor a vessel may take less time to complete than a more complex works application, for example. A local port user would then be required to await the outcome of the assessment of their application, which may take a local port manager a similar amount of time to complete. Fees are generally not applicable unless an application is successful. These fees can range from hundreds to thousands of dollars, depending on the charge for that facility.

Option 1 also contains the existing arrangements for port managers to manage low value, unseaworthy, sinking, sunk or partially submerged vessels. These arrangements include the ability to give directions to move a vessel, and then for the local port manager to remove or dispose of a vessel under certain circumstances. These actions may result in costs for port users and vessel owners where identifiable.

|  |
| --- |
| **Stakeholder Question 19**  Do you believe that the costs associated with the local port permit system are appropriate? |

#### Option 2 – Low impact

In comparison with Option 1, Option 2 would add a low level of additional costs for port users.

Under Option 2, vessel owners would be required to reimburse port managers under certain circumstances for costs associated with the removal, storage and disposal of vessels due to the introduction of a cost recovery mechanism. As previously mentioned, although these circumstances occur infrequently, the costs could total $6,000 to $10,000 for a vessel owner.

Option 2 may also add additional regulatory costs for port users due to the application of the *Marine Safety Act* owner onus scheme to certain offences related to vessels. Although the current Regulations enable infringements for certain offences, applying an owner onus system may result in a greater number of vessel owners receiving infringements. This change to the way infringements are issued may result in a slight burden on the part of vessel owners if the vessel owner’s vessel is involved in an offence. If the vessel owner was not responsible for the vessel at the time of the offence, they will then have the option of nominating the appropriate person.

Port users may also experience additional costs under Option 2 due to the increase in the monetary value of a low value vessel and the introduction of a requirement for a vessel to not be ‘derelict’. However, these changes are expected to add minimal additional costs compared with the existing arrangements and would not affect all port users.

Due to the relatively low scale impact of Option 2 on port users, the additional costs are considered low. Consequently, a score of -**2.0** is assigned to this criterion for Option 2.

#### Option 3 – Medium impact

Option 3 includes the regulatory costs for port users from Option 2 as well as several additional sub-options.

The introduction of new systems such as statutory seaworthy checks and mandatory education and training for permit holders will add a medium level of additional costs for some port users. Vessel owners will be most impacted as they will be required to meet certain requirements in relation to understanding their obligations.

The cost of obtaining a roadworthy certificate is a useful comparison for a seaworthy certificate. A desktop review suggests a typical vehicle roadworthy inspection and certificate ranges from $120 to $300. The cost can depend on the age, type and condition of a vehicle, and this process is expected to be similar for vessel seaworthy certificates. However, it is expected the costs would be greater for seaworthy inspections in comparison with roadworthy inspections due to the added complexities managing and inspecting vessels on water. As previously mentioned, this cost would only apply when a vessel, kept on-water in the local port, is sold.

For the purpose of determining potential costs, this type of change has previously been considered. For example, in the Marine Safety Regulations 2022 Regulatory Impact Statement (MSR RIS), seaworthiness inspections were considered. The MSR RIS estimated that about 15,600 vessels (approximately 7 per cent of the State’s registered recreational vessels) would need to be inspected each year and the costs of each inspection would range between $400 and $1,000 for the community (approximately $6M-$15M per annum). The MSR RIS graded the cost to the community –6 (medium to high) in the multi-criteria analysis and was therefore not considered a realistic option. If implemented through the Regulations, this type of change would likely only affect 50 to 100 vessels per year as port managers have no ability to impose requirements on vessels launched from boat ramps. Although these figures from the MSR RIS are not directly applicable to this change, they provide some indication of the potential costs.

The costs of obtaining the mandated education and training to be eligible for a local port permit would be applicable to permit applicants. A desktop review indicates the costs to attend a four hour online or in-person training course for a Victorian marine boat licence ranges from $100 to $150. These costs can vary depending on the type of licence and the format of the training. A similar level of costs is anticipated to attend a permit holder training and education course. Additional costs may be applicable if training courses are required at multiple local ports. As mentioned, the costs would only apply only to persons applying for a permit and would not be mandatory for all vessel owners.

Other additional costs for port users under Option 3 relate to higher penalties for subsequent offences. However, the occurrence of these incidents is low and therefore the additional costs would be minimal.

The impact of Option 3 on port users, particularly vessel owners, is considered moderate, therefore the additional costs are considered medium. Consequently, a score of **-4.0** is assigned to this criterion for Option 3.

Table 6.6 MCA assessment – Regulatory costs for port users

|  |  |  |  |
| --- | --- | --- | --- |
| Option | Weighting | Costs for port users assignment score | Weighted score |
| 1 – Remake regs | 30% | 0.0 | 0.00 |
| 2 – Low impact | 30% | -2.0 | -0.60 |
| 3 – Medium impact | 30% | -4.0 | -1.20 |

|  |
| --- |
| **Stakeholder Question 20**  Do you believe that there are any administrative costs imposed on port users by the Regulations that have not already been discussed? 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 or eliminated. |

### Regulatory costs for port managers and Government

#### Option 1 – Remake regulations

Option 1 is the reference case (i.e. current Regulations / status quo), which is given a score of **0**.

Under Option 1, costs for port managers and staff and their operations would continue to exist. The operations include establishing set asides, issuing permits, managing berths and moorings, monitoring behaviour and signage. There are approximately 100 full-time equivalent (FTE)[[41]](#footnote-42) staff employed at Gippsland Ports, Parks Victoria and across the south-western local ports who carry out operations under the Regulations. Approximately 10 to 30 per cent of local port staff time is estimated to be dedicated to activities directly related to the Regulations. This is because other activities, for example dredging works, are related to port management functions under the *Port Management Act*. Therefore, an upper estimate of $3 million of expenses is applicable in staff related costs.

It is not possible to quantify specific costs for Option 1 as the teams involved in local port operations have other responsibilities beyond their regulatory roles. Further, the organisational structures and the nature of the port functions differ between local ports and it would be costly to prepare a detailed workplace analysis for the purposes of this RIS.

#### Option 2 – Low impact

In comparison with Option 1, Option 2 would add minimal regulatory costs for port managers, predominantly for additional monitoring and enforcement activities. These activities may be required to ensure compliance with the changes to better manage abandoned and derelict vessels.

There are a number of likely costs associated with increasing the monetary value of a low value vessel and the introduction of a requirement that a vessel not be derelict changes. For example, there will be implementation costs in the first year which includes the preparation of guidance materials, implementation of business rules and initial staff training. This is estimated to cost 0.5 FTE which is likely to amount to approximately $50,000 for the first year. There is also an additional annual cost associated with the general monitoring of berths and mooring areas per year. Although, this is mostly part of the existing usual business activities, it is estimated that this will equate to 0.2 FTE ($20,000) each year. Over the 10 year period of the RIS, the total cost of these changes is estimated to be $250,000 or averaged out to be $25,000 per year.

There will also be some additional administrative costs for port managers when attempting to recover costs from vessel owners if the local port manager needs to move or dispose of a vessel. However, it is likely these costs will be minimal and are therefore not expected to be more than the amounts likely to be recovered as a result of this change.

In relation to the oversight of works changes, there will be some initial costs associated with the implementation of the change. This would include the preparation, documentation and publication of requirements including updates to websites, and forms and initial staff training. It is estimated that this would amount to 0.2 FTE (in the first year) for the first local port that intends to benefit from this change (approximately $20,000). If other local ports sought to subsequently also benefit from this change the cost is likely to be less because they may have a model to base their own documentation on.

Although there will be some costs associated with applying the owner onus system to local port offences, it is difficult to estimate the magnitude of the costs. The intention of the change is to reduce the time and resources spent on tracking the owners of vessels involved in offending the Regulations. As a result, the costs should be less than the benefits.

Although there are costs associated with option 2, they are not significant or prohibitive Consequently, a score of -**3.0** is assigned to this criterion for Option 2.

#### Option 3 – Medium impact

Option 3 includes the regulatory savings for port users from Option 2 as well as several additional sub-options.

The introduction of new systems such as statutory seaworthy checks and mandatory education and training for permit holders will add a significant level of additional costs for port managers. Under these new arrangements, port managers may be required to undertake compliance checks to ensure seaworthy certificates are current. Port managers may also be required to deliver or administer the education and training required for permit holders, on top of their existing regulatory responsibilities. However, the total costs for port managers will depend on who is responsible for implementing the systems. Currently, each local port manager operates with its own systems and processes. A significant level of resources will be required to set up the new systems, with establishment costs potentially applicable for each local port manager, though each system could be modelled on existing systems which may reduce costs. There will also be substantial ongoing costs to administer these new systems. Benefits will also be realised due to the introduction of these systems, as previously discussed. Given the investment required, another government entity may be more appropriate to set up and administer the seaworthy checks and mandatory education. Either way, both port managers and government will likely bear additional regulatory costs.

As mentioned in 6.2.4.3, the MSR RIS considered seaworthiness inspections. The MSR RIS considered the significant potential associated costs to government which would need to cover ensuring inspectors are appropriately qualified and potentially accredited, determining prescribed standards, and establishing and administering a scheme including auditing inspection activities and results. The MSR RIS graded the cost to government at -5 (medium) in the multi-criteria analysis. The high costs meant the seaworthiness inspections were not a realistic option when comparing the costs and benefits of alternative options.

Other additional costs for port managers under Option 3 relate to changes to vessel overstay management, higher penalties for subsequent offences, and the prohibition of the transfer permits. These additional costs may be incurred, for example, through increased monitoring and enforcement activities. As the occurrence of these incidents is low, and the changes will assist to improve local port operations, these additional costs are considered minimal.

The costs for port managers are considered to be relatively significant under Option 3. Consequently, a score of **-6.0** is assigned to this criterion for Option 3.

Table 6.7 MCA assessment – Regulatory costs for port managers

|  |  |  |  |
| --- | --- | --- | --- |
| Option | Weighting | Costs for port managers assignment score | Weighted score |
| 1 – Remake regs | 20% | 0.0 | 0.00 |
| 2 – Low impact | 20% | -3.0 | -0.60 |
| 3 – Medium impact | 20% | -6.0 | -1.20 |

# Preferred option

## Summary of preferred option

Each of the options were assessed using an MCA given the difficulty in measuring costs and benefits. The options were as follows:

* Option 1 – Remake regulations
* Option 2 – Low impact *(includes Option 1)*
* Option 3 – Medium impact *(includes Option 1 and 2)*

The table below summarises the results of the MCA assessment. The decision rule adopted in this RIS is that a positive score suggests that the benefits outweigh the costs, and the proposal should be adopted.

As previously discussed, the Department considers that it is preferrable to have regulations to support the operation of the *Port Management Act*. However, simply remaking the regulations is the least preferrable option. As shown in Table 7.1, both Options 2 and 3 were preferred to Option 1, which is the reference case of remaking the regulations unchanged.

**Option 2 is the preferred option** with a total weighted score of 0.72, compared with the score for Option 3 of 0.37.

Proposed regulations have been drafted based on the preferred Option 2. The proposed Regulations are substantially similar to the current Regulations. The following section provides a summary of the proposed Regulations. The proposed Regulations are available for consideration and comment on the Engage Victoria website at [https://engage.vic.gov.au/port-management-local-ports-regulations-2025](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fengage.vic.gov.au%2Fport-management-local-ports-regulations-2025&data=05%7C02%7Clindsay.gough%40transport.vic.gov.au%7Cdff351b848234249c99f08dd56d46812%7C5094c7a70748466e941e72882c3097ba%7C0%7C0%7C638762192491293574%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=RNdCKpnQMmBK7i4gZ4zp%2B0rh%2FoALpTqMoFGCAKJONUQ%3D&reserved=0).

Table 7.1 Summary of MCA assessment scores

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Criterion | Weighting | Options assessment – MCA weighted scores | | |
|  |  | **1** | **2** | **3** |
| Safety | 25% | 0.00 | 0.50 | 1.00 |
| Effectiveness | 15% | 0.00 | 1.12 | 1.42 |
| Environmental impacts | 10% | 0.00 | 0.30 | 0.35 |
| Regulatory costs for port users | 30% | 0.00 | -0.60 | -1.20 |
| Regulatory costs for port managers | 20% | 0.00 | -0.60 | -1.20 |
| Total | **100%** | **0.00** | **0.72** | **0.37** |

## Summary of the changes in the proposed Regulations

| Proposed regulation number | Proposed regulation description |
| --- | --- |
| r.5 Definitions |  |
| * agreed activity * Part 6 traditional owner settlement agreement * traditional owner group, entity and member | New definitions inserted. These are required so that the proposed Regulations can clarify access for traditional owner groups in local ports. |
| * ambulance service * fisheries officer * responder agency * motor vehicle * trailer | New definitions inserted based on existing definitions in other legislation. These changes are required to enable these terms to be referred to in a specific regulation such as Regulation 8 (liability for offences). |
| * Chief Executive of Safe Transport Victoria * 48-hour berthing area * 48-hour mooring area * industrial waste * litter * local port permit * permit holder * permit-only berthing area * permit-only mooring area * sewage * transport safety officer | New or amended definition to ensure proposed Regulations stay up to date by ensure the Regulations represent current organisational names and structures, reference current legislation, and reflect current drafting approaches. There are no changes in policy relating to these changes. |
| low value | Amended existing definition. The existing low value definition is amended in the proposed Regulations to reflect the value of a vessel less than $10,000 and the value of any other good or thing less than $2,000. |
| vehicle | A reference to vehicle in the proposed Regulations has the same meaning as in the *Road Safety Act*, but is further defined to not include any of the following—  (a) a vessel;  (b) a wheelchair;  (c) a motorised wheelchair;  (d) a pram or stroller;  (e) any other device used for the conveyance of disabled or injured persons. |
| Liability for offences |  |
| r.8 | Chief Executive of Safe Transport Victoria, responder agency officers, employees and agents; ambulance service officers, employees and agents; and fisheries officers are added to the list of persons who will not commit an offence against the Regulations if acting in the course of their duties. |
| Set aside determinations |  |
| r.9-16 | **Part 2** is restructured to contain set aside determinations provisions only. The proposed Regulations retain largely the same content as the current Regulations, however, the language is simplified and the provisions are presented and in a more logical and clearer manner. |
| Activities in and access to areas set aside |  |
| r.10 | In making a determination to set aside an area in a local port, port managers must have regard to additional matters. These matters include the need for emergency services to have access to and through the local port, and whether the determination will interfere with an agreed traditional owner activity. |
| Local port permits |  |
| r.17-27 | **Part 3** contains provisions relating to local port permits. The proposed Regulations retain largely the same content as the current Regulations, however, the language is simplified and the provisions are presented in a more logical and clearer manner. |
| Notice of refusal |  |
| r.22 | If an application for a local port permit is refused, it will be a requirement that reasons for the refusal are given to the applicant by the port manager. |
| Cancellation or variation of local port permit |  |
| r.24 | If a port manager cancels or varies a local port permit (other than at the request of the permit holder), it will be a requirement that reasons for the decision are given to the permit holder by the port manager. |
| Offence not to comply with conditions of permit |  |
| r.27 | The maximum penalty for breaching the conditions of a local port permit will be 10 penalty units, whereas the current maximum penalty is 20 penalty units. The penalty is proposed to be lowered to reflect the gravity of the offence. |
| Management of local ports |  |
| r.28-51 | **Part 4** contains provisions relating to the management of local ports. The proposed Regulations retain largely the same content as the current Regulations, however, the language is simplified and the provisions are presented in a more logical and clearer manner. |
| Offence to interfere with permitted activity |  |
| r.28 | The proposed Regulations provide for an additional exemption to carry out an activity in contravention of a set aside determination for an area in which the carrying out of a specified activity is permitted. The exemption is for a person who is a traditional owner group member if the activity is an agreed activity. |
| Offence to carry out prohibited or restricted activity |  |
| r.29 | The proposed Regulations provide for an additional exemption to carry out an activity in contravention of a set aside determination for an area in which the carrying out of a specified activity is prohibited or restricted. The exemption is for a person who is a traditional owner group member if the activity is an agreed activity. |
| Vessel related offences |  |
| r.31-40, 44-45 | The proposed Regulations apply an owner onus system for recreational vessel related offences. Sub-regulations are included in relevant offence provisions to state they are owner onus offences under the *Marine Safety Act*. This change means the owner of the vessel may be held liable if the master or person in charge of the vessel is not identified at the time of the offence (unless the owner can establish that they were not responsible for the vessel at the time of the offence and provide information sufficient to identify and locate who was). |
| Motor vehicle management offences |  |
| r.46 | The terms ‘motor vehicle’ and ‘trailer’ are used instead of ‘vehicle’. The offence of driving or being in charge of a motor vehicle or trailer in contravention of the offence in Regulation 46 is proposed to be an operator onus offence under the *Road Safety Act*. This change means the owner of a motor vehicle or trailer is generally held liable if the driver or person in charge of the motor vehicle or trailer is not identified at the time of the offence, unless the operator can establish that they were not responsible for the motor vehicle or trailer at the time of the offence and provide information sufficient to identify and locate who was. |
| Vessels, goods or other thing left unattended |  |
| r.47 | The term ‘requirements’ is used instead of ‘guidelines’. |
| Direction to move vessel |  |
| r.48 | The term ‘derelict’ is added to the list of conditions a vessel may be in, which may then enable a port manager to give a direction to move that vessel. |
| Recovery of costs |  |
| r.51 | If a port manager has disposed of a vessel, good or other thing under Regulation 50, the port manager will be authorised to recover from the owner: (a) the costs of the moving the vessel, good or other thing; (b) the costs of storing the vessel, good or other thing; (c) if the vessel, good or other thing has been disposed of, the costs of the disposal of the thing; and (d) any relevant overhead and other indirect costs arising from the moving, storing and disposing of the vessel, good or other thing including the cost of cleaning the surrounding environment. If the vessel, good or other thing is disposed of, an amount that may be recovered is to be paid out of the proceeds (if any) of the disposal. |
| Activities in local ports |  |
| r.52-69 | **Part 5** contains provisions relating to activities in local ports. The proposed Regulations retain largely the same content as the current Regulations, however, the language is simplified and the provisions are presented in a more logical and clearer manner. |
| Work in a local port |  |
| r.52 | Introduces the ability of a local port manager to issue requirements in relation to the carrying out of works in a local port. These requirements must be published in the Government Gazette and on the port manager’s website. If the requirements are met, then a local port permit will not be required to carry out the works to which the requirements apply. |
| Organised activities |  |
| r.59 | The term ‘requirements’ is used instead of ‘guidelines’. |
| Leaving or depositing of litter or other waste |  |
| r.64 | The proposed Regulations remove the ability to deposit waste water or sewage from a vessel in a local port if the vessel has on board facilities to store and treat the waste water or sewage before its disposal. |
| Certain regulated activities |  |
| r.52-56, 58, 59, 69 | The proposed Regulations provide for additional exemptions to carry out certain regulated activities in local ports for a person who is a traditional owner group member if the activity is an agreed activity. |
| Directions to person causing interference etc |  |
| r.70 | Fisheries officers are added to the list of persons able to give directions. |
| General |  |
| r.71 | **Part 6** contains general matters. Draft Regulation 71 contains the provision about identity cards which is existing Regulation 24. The draft provision introduces the ability of a delegate of a port manager to not produce their identity card for inspection when asked to do so under certain circumstances such as where there are safety concerns. |
| Other minor and technical updates |  |
| Various | Other updates in the proposed Regulations include changes to dates, headings and regulation numbers. The updates also include changes to reflect recent amendments in other legislation, such as inclusion of the term *Chief Executive of Safe Transport Victoria*. |

## Summary of competition and small business impacts

The Department considers that any impacts to competition or small business from the proposed changes to the Regulations will be minimal.

The primary users of local ports are recreational boaters, as well as other recreational port users, rather than businesses. The regulation changes which relate to works in local ports will have limited small business impacts. Other regulations which relate to operational requirements and abandoned vessels will have no small business impacts.

Improvements to enable low risk works in local ports without a permit aim to make it quicker and easier for vessel owners and other persons and entities to undertake routine type works. This may be beneficial for small businesses operating in local port areas, such as fishing and tourism operators.

The application of the *Marine Safety Act* owner onus scheme to certain offences will affect recreational vessels only. This means the owner will be held liable if the master or person in charge of the vessel is not identified at the time of the offence. This owner onus system will not be applicable to commercial vessels, and will not have small business impacts.

While improvements to the management of abandoned vessels are the subject of regulation under the proposed Regulations, the improvements are focused on recreational vessels not commercial vessels. Therefore, the proposed Regulations in relation to the removal, storage and disposal of abandoned vessels do not have small business impacts.

Further, the proposed Regulations do not impose any barriers to entry or enforce a change to the conduct, structure or performance of businesses in local ports. The proposed Regulations will not limit the number or range of suppliers or limit their ability to compete. Therefore, the proposed Regulations do not have competition impacts.

# Implementation plan

The proposed Port Management (Local Ports) Regulations 2025 remake the existing Port Management (Local Ports) Regulations 2015, with amendments as considered in this RIS. Based on the analysis in this RIS, the Department is recommending substantively remaking the Regulations with a number of minor improvements.

## Making of the proposed Regulations

Following the public consultation period, the Department will consider all submissions and stakeholder comments on the proposed Regulations. The Department will make changes to the proposed Regulations based on its consideration of the submissions and comments received. After this, the Department will submit its final recommendations to the Minister for Ports and Freight for approval. The Minister will publish a notice of decision in the Government Gazette. This notice will outline the changes from the exposure draft of the proposed Regulations.

The proposed Regulations would be made before the expiry date of the current Regulations, 23 June 2025.

The Department will communicate the outcomes of consultation and its recommendations to stakeholders following the Minister’s decision.

## Changes to processes and systems

The broad existing regulatory approach to local port management is not proposed to change. The proposed minor improvements will not impose substantial changes in requirements but will impact vessel masters, operators and owners; persons conducting works in local ports; and traditional owner group members. The implementation of these changes will include a series of activities that involve direct engagement of the impacted groups and their representatives, as well as communication to the broader community for awareness. Port managers will be the primary agency to implement any changes arising from the new Regulations and undertake communication and consultation with the industry and the public to implement the new regulations as required.

The proposed Regulations will require updates to be made to documentation such as letters, forms, notices, website information and publications produced by port managers, Safe Transport Victoria and other Victorian Government agencies like Victoria Police. The full extent of the updates required is currently being considered, however, may include changes to permit conditions and the preparation of new requirements for works in local ports. Staff training is likely to be required.

The implementation impacts will range from State Government departments, who will need to be aware of the new regulations and make some minor amendments to references in their documentation and public-facing information, through to individual port users and commercial operators, who will need to meet any new requirements implemented. This could include, for example, adjusting to new requirements in relation to works and wastewater disposal in local ports.

Differences between the existing Port Management (Local Port) Regulations 2015 and the final version of the proposed Regulations may require minor changes to computer systems. Vessel registration records are currently maintained by VicRoads on behalf of Safe Transport Victoria, in most cases as part of driver licensing and motor vehicle registration records. Improved access to these records will be required to effectively implement changes proposed in the proposed Regulations. The Department is currently exploring the best way to facilitate improved record access whilst meeting privacy and data sharing requirements.

The proposed Regulations will also require the references within the Transport (Safety Schemes Compliance and Enforcement)(Infringements) Regulations 2024 to be updated so that the correct offences are prescribed as infringeable offences. As referred to in section 5.7.4.3, this could also involve amending the Transport (SSCE)(I) Regulations to ensure that the failure to comply with a direction to move a vessel will now be infringeable.

# Evaluation strategy

Under the *Subordinate Legislation Act 1994*, all regulations expire after ten years. The Department will review the operation of the proposed Regulations before their expiry. The review will evaluate the effectiveness of the proposed Regulations and inform whether the proposed Regulations should be remade in part or in full. A thorough review of the proposed Regulations, as amended during the next ten years, will take place in preparation for their sunsetting in 2035. This review would commence approximately 12 to 18 months before the expiry of the proposed Regulations in 2035.

The success of the proposed Regulations will be evaluated on an ongoing basis until they sunset in ten years’ time. The evaluation will be conducted by the Department.

The Department will continue meeting with its key stakeholder partners, providing an ongoing forum where any issues with the local port regulation can be brought to the Department’s attention as they arise. The range of partners include port managers and Safe Transport Victoria. The Department will also liaise with external parties such as the Victoria Police and key local port stakeholders as necessary.

The Department also intends to assess the performance of the Regulations and then undertake a mid-term review of the proposed Regulations if needed. The review would assess how the Regulations are operating at least five years after the commencement of the proposed Regulations. As part of the mid-term review, the Department may seek to commission additional research to supplement existing studies and understand keep emerging trends and information to ensure that the regulations remain fit for purpose in an era of rapid development of both technology and, also, practice in other jurisdictions.

The Department provides advice to the Minister for Ports and Freight on strategy and regulatory policy in relation to local port management and the operation of the proposed Regulations.

## Evaluation approach

The evaluation approach, outlined below, will be used as the basis for both the mid-term and end term reviews of the Regulations. The Department will undertake the evaluation drawing on information and input from various relevant sources. The Department will primarily draw on data and information collected by port managers, Safe Transport Victoria, Victoria Police and studies commissioned by the Department. This includes permit and determination data, infringement data, penalties imposed by the Courts for local port offences, data and information relating to fatalities and serious injuries and information and data kept by the Department as records (as required by the proposed Regulations).

The evaluation of the proposed Regulations would be structured around the objectives identified in Chapter 4 of this RIS. The proposed approach to this evaluation includes:

* identifying the proposed Regulations or provisions in primary legislation, or changes in such law, that are relevant to the specific objective,
* identifying indicators — the changes in outputs or outcomes providing an indication that the objectives of the intervention are being achieved,
* identifying the baseline data — the data that will be collected prior to the commencement of the intervention, that will be used as the basis of the analysis,
* identifying the data to be collected — the data that will be collected after the commencement of the intervention. This data will be assessed against the baseline data, and
* comparing the outputs and outcomes post-implementation against the baseline data.

The evaluation strategy specified here is provided as a high-level methodology. An example of how a sub-option of the evaluation could be implemented relates to the proposed changes to works in local ports. If requirements are made and published as proposed, the number of works permit applications received and assessed could be collected over a particular timeframe. This data could then be compared with the number of works permit applications for a similar timeframe prior to the introduction of the works requirements. This would enable an analysis to determine if there has been any change in the number of permit applications submitted. The number of incidents related to works in local ports could also be analysed to determine if there are any safety concerns with the introduction of works requirements.

The Department will develop a more detailed strategy once the proposed Regulations are made and prior to the commencement of the proposed Regulations. This will be undertaken as part of the task of implementing the proposed Regulations. The systems and processes for data collection can be designed with the evaluation in mind.

# Consultation

Extensive consultation has been undertaken with a range of stakeholders during the course of the development of the proposed regulations. The Department engaged in online video conference sessions, onsite visits to local ports and correspondence via email with stakeholders between May 2024 and February 2025. Stakeholders consulted include all Victorian local 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 recreational boaters. A full list of organisations consulted during the preliminary consultation process is as follows:

* Local port managers:
  + Barwon Coast Committee of Management Incorporated (Barwon Coast)
  + Gippsland Ports Committee of Management Incorporated (Gippsland Ports)
  + Glenelg Shire Council
  + Great Ocean Road Coast and Parks Authority
  + Moyne Shire Council
  + Parks Victoria
  + Warrnambool City Council
* Commercial trading ports:
  + Port of Portland Pty Ltd
* Ports Victoria
* Safe Transport Victoria
* Department of Energy, Environment and Climate Action
* Department of Jobs, Skills, Industry and Regions
* Department of Justice and Community Safety
* Victoria Police
* Emergency Management Victoria
* Environment Protection Authority
* Victorian Fisheries Authority
* Better Boating Victoria
* WorkSafe Victoria
* Boating Industry Association of Victoria
* VR Fish (peak body representing recreational fishing in Victoria)
* Sailing Australia

Appendix 1 – Overview of Victorian local ports

|  |  |  |
| --- | --- | --- |
|  | **Local port of Portland Bay**  **Local port manager – Glenelg Shire Council**  The local port services the commercial fishing fleet with alongside facilities for the larger trawlers and pontoon berths for the Southern rock lobster boats. The wharf also provides access for heavy vehicles to transport the fish catch and acts as a viewing platform for locals and visitors. | |
|  | **Local port of Port Fairy**  **Local port manager – Moyne Shire Council**  The historic working port is used by commercial fishers, charter operators, and recreational boaters and anglers. Situated on the Moyne River, the local port offers alongside and marina berths on a casual or permit basis, and two slipways for vessel servicing and maintenance. The picturesque timber wharves are popular with locals and visitors alike for promenading. | |
|  | **Local port of Warrnambool**  **Local port manager – Warrnambool City Council**  Lake Pertobe and Lady Bay are popular summer recreational places at Warrnambool. The local port, protected by the heritage listed breakwater, provides launching facilities for the Southern rock lobster fleet and a place for mooring commercial and recreational vessels. | |
|  | **Local port of Port Campbell**  **Local port manager – Great Ocean Road Coast and Parks Authority**  The Port Campbell Jetty, located in Port Campbell Bay, is exposed to swell and wave action. The jetty has a fixed 3.7 tonne slew crane that supports launching and retrieval for a small number of commercial fishing vessels, and recreational boats. Access for emergency ocean rescue is also via the jetty. | |
|  | **Local port of Apollo Bay**  **Local port manager – Great Ocean Road Coast and Parks Authority**  Integral to Apollo Bay’s identity, the harbour is an important feature of the town and attracts thousands of Great Ocean Road visitors each year. The harbour is home to the commercial fishing cooperative and commercial fleet made up of trawlers, crayfish and charter boats. Enclosed by two large breakwaters, the harbour contains a main fisherman’s wharf, marina berths, slipway, vessel moorings and boat ramp. | |
|  | **Local port of Lorne**  **Local port manager – Great Ocean Road Coast and Parks Authority**  The Lorne Pier is a popular destination frequented by pedestrians, boaters and anglers for recreation and fishing. The pier is a bustling hub of activity, with more than 90,000 visitors recorded on average each month during peak season (November to January and public holidays), including locals and visitors. | |
|  | **Local port of Barwon Heads**  **Local port manager – Barwon Coast Committee of Management Inc**  The lower reaches of the Barwon River are a popular recreational place for locals and visitors. The two timber jetties, Main and Ozone, support public recreation by pedestrians, boaters and fishers. Annually there are approximately 20,000 visits to the two jetties, 5,000 boat movements transiting the navigable channel, and 1,250 recreational sailing vessels and 10,000 participants engaged in paddlecraft and surfing activities. | |
|  | **Local port of Port Phillip**  **Local port manager - Parks Victoria**  Port Phillip is a dynamic and heavily utilised port that features a unique range of marine activities and environments. The local ports of Port Phillip and Western Port are used year-round, receiving more than 74 million visits per year with numbers peaking during the warmer months and fish migrations.  There are a wide variety of port users and at times competing and conflicting user activity types. Cooperative arrangements between the local port manager, government, private sector, clubs and sporting bodies, and volunteers support the port management delivery. | |
|  | **Local port of Western Port**  **Local port manager - Parks Victoria**  Western Port is a unique combination of natural values, small coastal centres, and heavy industry. A large portion has international significance, as one of the most important destinations on the Ramsar flyways for migratory birds. Mangroves and tidal flats fringe much of the coastline, which present important feeding and roosting areas for birds.    A network of boat ramps and small vessel channels support year-round boating and fishing, receiving approximately 12 million visits per year. Deep channels lead from Bass Strait into the western section of the port, giving access to the facilities utilised by commercial shipping and irregular cruise liners. | |
|  | **Local port of Anderson Inlet**  **Local port manager - Gippsland Ports Committee of Management Inc**  High levels of seasonal recreational activity take place at Inverloch and Tarwin Lower. Recreational boating and fishing, charter vessels and pedestrian access to the jetties are popular activities in the local port. | |
|  | **Local port of Corner Inlet and Port Albert**  **Local port manager - Gippsland Ports Committee of Management Inc**  The large shallow coastal embayment is sheltered by Wilsons Promontory and sandy barrier islands (including Snake Island and Sunday Island). The port waters include a marine national park and is a declared Ramsar wetland. Port activities and operations are characterised by commercial and recreational shipping and boating facilities and activities at Port Welshpool, Port Albert and Port Franklin. Commercial operations are primarily linked to commercial fishing, Bass Strait island trade, offshore energy and the private port facilities at Barry Beach and Port Anthony Marine Terminals. The Port Welshpool Long Jetty receives approximately 70,000 visits annually and provides stunning views and great fishing opportunities. | |
|  | | **Local port of Gippsland Lakes**  **Local port manager – Gippsland Ports Committee of Management Inc**  An extensive system of estuarine lakes and wetlands separated from Bass Strait by the Ninety Mile Beach barrier dunes, with several large rivers discharging into the lakes. There is a permanent artificial opening at Lakes Entrance and much of the Gippsland Lakes are navigable. Port facilities at Lakes Entrance support commercial fishing and recreational activities. Elsewhere, the lakes are popular boating and fishing locations with marinas, destination jetties and moorings. Vessel servicing and maintenance is supported from two boatyards. |
|  | | **Local port of Snowy River**  **Local port manager - Gippsland Ports Committee of Management Inc**  The local port is a river estuary located on the Snowy River and Brodribb River floodplain. A jetty at Marlo supports recreational boating, fishing and charter operations. |
|  | | **Local port of Mallacoota**  **Local port manager - Gippsland Ports Committee of Management Inc**  The local port is an inlet formed by a drowned river valley system fed by the Genoa and Wallagaraugh Rivers. The port area adjoins the significant Croajingalong National Park. Facilities at Mallacoota, Karbethong and Gipsy Point support charter operations, recreational boating and fishing. |

Appendix 2 – Summary of the key characteristics of Victorian local ports

At December 2024 (indicative figures only)

| **Port Manager** | **Local Port** | **Area of Port Land and Waters** | **Number of Wharves** | **Number of Boat Ramps** | **Number of Slipways and Boatyards** | **Number of Aids to Navigation** | **Number of Berths** | **Number of Moorings** | **Licensed Harbour Master** **(Yes or No)** | **Maintenance Dredging** **(Yes or No)** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Parks Victoria | Port Phillip  Western Port | 1,610 sq km | 42 | 1 | 0 | 800 | 102 | 2,940 | No | Yes |
| Gippsland Ports | Anderson Inlet  Corner Inlet and Port Albert  Gippsland Lakes  Snowy River  Mallacoota | 1,400 sq km | 104 | 0 | 4 slipways and 2 boatyards | 1,000 | 497 | 192 | Yes (Corner Inlet and Port Albert, Gippsland Lakes) | Yes (Lakes Entrance, Gippsland Lakes) |
| Barwon Coast | Barwon Heads | N/A | 2 (plus 1 managed by Barwon Coast) | 0 | 0 | 23 | 0 | 3 | No | No |
| Great Ocean Road Coast and Parks Authority | Port Campbell  Apollo Bay  Lorne | 0.26 sq km | 8 | 1 | 1 (Apollo Bay) | 9 | 32 | 14 | No | Yes (Apollo Bay) |
| Warrnambool City Council | Warrnambool | N/A | 3 | 1 | 0 | 4 | 0 | 12 | No | Yes (Periodic) |
| Moyne Shire Council | Port Fairy | 1 sq km | 12 | 1 | 2 | 13 | 68 | 0 | No | Yes (Periodic) |
| Glenelg Shire Council | Portland Bay | 1 sq km | 2 | 0 | 0 | 1 | 25 | 0 | No | No |

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1. Department of Transport. (2020). *Independent review of the Victorian Ports System: Discussion paper July 2020*. [↑](#footnote-ref-2)
2. To ensure consistency with the Port Management (Local Ports) Regulations, unless otherwise specified, a reference to “port manager” in this document refers to a local port manager and does not include commercial port managers. [↑](#footnote-ref-3)
3. Department of Transport. (2020). *Independent review of the Victorian Ports System: Discussion paper July 2020.* [↑](#footnote-ref-4)
4. Department of Transport. (2020). *Independent review of the Victorian Ports System: Discussion paper July 2020*. [↑](#footnote-ref-5)
5. Department of Transport (2021). *Sustainable Local Ports Framework.*  [↑](#footnote-ref-6)
6. Department of Treasury and Finance (2024). *Victorian Guide to Regulation: A handbook for policy-makers in Victoria*. [↑](#footnote-ref-7)
7. Department of Transport. (2020). *Independent review of the Victorian Ports System: Discussion paper July 2020*. [↑](#footnote-ref-8)
8. Department of Transport. (2020). *Independent review of the Victorian Ports System: Discussion paper July 2020*. [↑](#footnote-ref-9)
9. Future references are to Barwon Coast. [↑](#footnote-ref-10)
10. Future references are to Gippsland Ports. [↑](#footnote-ref-11)
11. Better Boating Victoria (2022). *Victorian Boating Facility Maintenance Guidelines.* [↑](#footnote-ref-12)
12. Department of Transport. (2020). *Independent review of the Victorian Ports System: Discussion paper July 2020*. [↑](#footnote-ref-13)
13. Department of Transport (2021). *Sustainable Local Ports Framework.* [↑](#footnote-ref-14)
14. Department of Transport and Planning (2021). *Sustainable Local Ports Framework.* [↑](#footnote-ref-15)
15. Gippsland Ports (2020). *Gippsland Vessel Registration Analysis – 2020.* [↑](#footnote-ref-16)
16. Boating events not requiring boating activity exemptions and exclusion zones under Part 5.3 of the *Marine Safety Act* [↑](#footnote-ref-17)
17. To avoid repetition, the words “sink” and “sinking” in relation to a vessel includes a vessel that is sinking, partially submerged or sunk. [↑](#footnote-ref-18)
18. Department of Treasury and Finance (2024). *Victorian Guide to Regulation: A handbook for policy-makers in Victoria*, [↑](#footnote-ref-19)
19. Life Saving Victoria. (2024). *Victorian Drowning Report 2023-24*. [↑](#footnote-ref-20)
20. Benthic organisms are animals and plants that live in the bottom of a body of water, such as an ocean, lake, or river. The term "benthic" refers to the bottom of a body of water, or the benthic zone. [↑](#footnote-ref-21)
21. Relevant coastal recommendation is defined in section 3 of the *Marine and Coastal Act* and means a recommendation of the Victorian Environmental Assessment Council relating to or affecting marine and coastal Crown land that has been accepted by the Government under Part 3 of the *Victorian Environmental Assessment Council Act 2001*; or a recommendation of the Land Conservation Council relating to or affecting marine and coastal Crown land under section 5(1) of the *Land Conservation Act 1970* (as in force immediately before its repeal) of which notice has been given by the Governor in Council under section 10(3) of that Act (as so in force), where the recommendation does not relate to land that is the subject of a recommendation to which paragraph (a) applies; [↑](#footnote-ref-22)
22. A jetty pile is a strong support typically made of wood, steel or concrete, that holds a jetty structure above water. Jetty piles are driven deep into the seabed to provide stability and withstand strong currents, waves, and heavy loads. [↑](#footnote-ref-23)
23. This excludes temporary berths at boat ramps. [↑](#footnote-ref-24)
24. Department of Premier and Cabinet. (2018). [*Victorian Aboriginal Affairs Framework 2018-2023*](https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework_1.pdf) (extended to June 2025). [↑](#footnote-ref-25)
25. [*Advancing the Treaty Process with Aboriginal Victorians Act 2018*](https://content.legislation.vic.gov.au/sites/default/files/50f587e2-f753-3e01-b2ca-2f86930eef93_18-28aa001%20authorised.pdf). [↑](#footnote-ref-26)
26. [*Department of Premier and Cabinet. (2019). Victorian Government Self-Determination Reform Framework*](https://www.vic.gov.au/sites/default/files/2019-09/Self-Determination-Reform-Framework-August-2019.PDF). [↑](#footnote-ref-27)
27. Registered Aboriginal Parties (RAPs) are representative corporations, inclusive of all Traditional Owners of an identified Country. <<https://www.aboriginalheritagecouncil.vic.gov.au/about-victorias-registered-aboriginal-parties>>. [↑](#footnote-ref-28)
28. For example, the local ports of Portland Bay, Port Fairy, Warrnambool, Apollo Bay and Gippsland Lakes (boat yards) may include areas to park vehicles and/or trailers. [↑](#footnote-ref-29)
29. Department of Transport. (2020). *Independent Review of the Victorian Ports System: Discussion paper July 2020.* [↑](#footnote-ref-30)
30. To avoid repetition, the words “sink” and “sinking” in relation to a vessel includes a vessel that is sinking, partially submerged or sunk. [↑](#footnote-ref-31)
31. Section 88U of the *Port Management Act* provides a mechanism for port managers to recover the costs of moving, storing and disposing of a thing such as a vessel. [↑](#footnote-ref-32)
32. US Environmental Protection Agency. (2020). *Abandoned vessel authorities and best practice guidance*, 2020 Update, Version 10. [↑](#footnote-ref-33)
33. British Ports Association. (2022). *Guidance: dealing with abandoned vessels in harbours*, 2022, Version 1.0. [↑](#footnote-ref-34)
34. Department of Environment, Land, Water and Planning. (2021). *Guidelines for the management of existing bathing boxes and boatsheds on marine and coastal Crown land*, March 2022. [↑](#footnote-ref-35)
35. An example could be to include wording such as *“An offence against sub regulation (1) or (2) is an owner onus offence for the purposes of Part 4.7 of the Marine Safety Act if the relevant vessel is a recreational vessel.”* [↑](#footnote-ref-36)
36. An example could be to include the wording “or owner” into each relevant offence. This would enable the owner of the vessel to be penalised for offences, regardless of their involvement in or knowledge of the offence. [↑](#footnote-ref-37)
37. Department of Treasury and Finance (2024). *Victorian Guide to Regulation: A handbook for policy-makers in Victoria*. [↑](#footnote-ref-38)
38. To avoid repetition, the words “sink” and “sinking” in relation to a vessel includes a vessel that is sinking, partially submerged or sunk. [↑](#footnote-ref-39)
39. The value of a statistical life (VSL) is an estimate of the value society places on reducing the risk of dying. By convention the life is assumed to be the life of a young adult with at least 40 years of life ahead. It is a statistical life because it is not the life of any particular person. [↑](#footnote-ref-40)
40. *Environment Protection Act 2017*, see [section 30 (Meaning of notifiable incident)](https://classic.austlii.edu.au/au/legis/vic/consol_act/epa2017284/s30.html). [↑](#footnote-ref-41)
41. For the purposes of this RIS, we have calculated the full-time equivalent wage amount to be approximately $100,000 per year including oncosts (similar to Victorian Public Service level 4 or 5). This is an estimate of the wages and oncosts of an average port manager. There are different arrangements for each port and different skill and experience levels required for the tasks to be performed. [↑](#footnote-ref-42)