

# CORRECTED VERSION

## PORT OF MELBOURNE SELECT COMMITTEE

### Inquiry into the proposed lease of the port of Melbourne

Melbourne — 9 September 2015

#### Members

Mr Gordon Rich-Phillips — Chair

Mr Daniel Mulino — Deputy Chair

Mr Greg Barber

Mr Damian Drum

Mr Craig Ondarchie

Mr James Purcell

Ms Harriet Shing

Ms Gayle Tierney

#### Staff

Secretary: Mr Keir Delaney

Research officer: Mr Anthony Walsh

#### Witnesses

Mr Kerry Corke, policy adviser, and

Mr Michael Kilgariff, managing director, Australian Logistics Council.

**The CHAIR** — I declare open the Legislative Council's Port of Melbourne Select Committee public hearing. This hearing is in relation to the inquiry into the proposed lease of the port of Melbourne. I request that all mobile telephones now be switched off. I welcome Mr Kerry Corke and Mr Michael Kilgariff from the Australian Logistics Council.

The committee does not require witnesses to be sworn, but questions must be answered fully, accurately and truthfully. Witnesses found to be giving false or misleading evidence may be in contempt of Parliament and subject to penalty. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of Legislative Council standing orders. Therefore the information you give today is protected by law. However, any comments made outside the precincts of the hearing may not be subject to parliamentary privilege. All evidence is being recorded and you will be provided with a proof version of the transcript in the coming days for any corrections.

We have allowed 1 hour for this particular hearing. I invite you to make an opening statement, if you wish, and the committee will then proceed to questions.

**Mr KILGARIFF** — Thank you, Mr Chairman and committee members. By way of introduction, my name is Michael Kilgariff. I am the managing director of the Australian Logistics Council.

**Mr CORKE** — I am Kerry Corke, policy adviser, Australian Logistics Council.

**Mr KILGARIFF** — Again, thanks for the opportunity to come along this morning to talk about the port of Melbourne lease transaction bill. As just a bit of background on the Australian Logistics Council, we are the peak industry body for the major Australian logistics supply chain customers, providers, infrastructure owners and suppliers. Just as an example of our members, Asciano, the company to appear before us, is a corporate member of ALC. I understand that the recommendations in our submission have been circulated to the committee. We do apologise that we have not yet finalised that submission, but we do not envisage the recommendations will change, so we thought it prudent to table those today.

**The CHAIR** — Thank you.

**Mr KILGARIFF** — ALC as an organisation works with government at the national, state and local level to ensure that issues on the needs of the logistics industry are considered in all investment and policy decisions. We examine the issues facing the Australian freight logistics supply chain from a high-level strategic perspective, and we make our comments to the committee today on that basis.

You have heard from companies like Asciano on some of the practical issues faced by port users, as well as from other witnesses on the projected port needs of Victoria. On principle, I want to make it clear that ALC supports asset recycling as a means to unlock capital for investment in new logistics infrastructure to meet Australia's increasing freight task. Just to explain on that, by the way, the bureau of transport economics predicts that the Australian freight task will double between 2010 and 2030 and nearly triple again by 2050. That gives you, I guess, some idea as to the increase in container movements that we expect will be occurring.

In summary, ALC believes that when considering a particular transaction, the parties should consider, first, whether the proposed sale will promote competition and efficiency, and secondly, whether the asset should be the subject of economic regulation and how much, so as to permit the efficient use of the asset to the benefit of the Australian community as a whole. Viewed against these principles, ALC members do support the proposed lease of the port of Melbourne and, as I have stated before, the full ALC position will be articulated in our submission to be filed this week.

However, in opening on the basis of comments on the bill made by many of our members, we would suggest there are two particular areas where the legislation could be improved, the first one being the economic regulation proposed in the bill, and secondly, the operation of the Victorian Transport Fund. As I said, the first issue that we would like to address today is the economic regulation that is contained in the bill. As recently as 4 September, which was last week, the chairman of the ACCC, Rod Sims, remarked in a speech to the Infrastructure Partnerships Australia conference that the recycling of assets to access funds:

... creates a strong incentive for governments to structure their privatisation processes in a manner that maximises the sale price they receive.

ALC members are particularly concerned that the ACCC is excluded from reviewing any primary agreement connected with the transfer of port assets from the Port of Melbourne Corporation to a new port operator, and that is because the concept of what exactly is a primary agreement includes documents connected with the transaction. It therefore could include agreements, including whether compensation is payable if a second Victorian port is commissioned. So the ALC view is that the ACCC should be able to examine all relevant documents to consider the competition ramifications of the proposed transaction, as has been the case in other states' ports transactions. We also note that the Harper competition review said that part IIIA of the Competition and Consumer Act is a backstop, supporting many industry-specific access regimes. The Essential Services Commission in Victoria has also said that the current Port of Melbourne Corporation has substantial market power because of firstly, the lack of viable substitutes; secondly, a lack of countervailing power held by customers; and lastly, because of the high barriers to entry into port operations.

To ensure that the federal backstop is unnecessary, Victorian economic regulation should be as comprehensive as possible. We are therefore concerned that the bill appears to be designed in a way that excludes the capacity of the Essential Services Commission to consider competition issues arising from leases offered by the port operator to stevedores. More generally, price orders are designed so that the regulatory regime can only be implemented if the Governor makes an order in council on the recommendation of the Essential Services Commission minister. We believe that all port users should be able to apply to the Essential Services Commission as of right for it to consider whether it is appropriate to make an order with respect to the prices charged to port users.

The other main issue for ALC relates to the operation of the Victorian Transport Fund. We note that the fund is designed in a manner similar to the Restart NSW fund, which is obviously in New South Wales and which the ALC has been very supportive of. However, there is one key difference. The New South Wales legislation allows funds to be expended on projects approved by the minister on the recommendation of Infrastructure NSW. We believe that the benefits of asset recycling must be invested into infrastructure that provides productivity benefits that will increase the welfare of all Victorians, and by extension all Australians. So that industry has confidence that the funds that are locked up in mature assets will be used in the most economically efficient manner, thus improving the welfare of all Victorians, ALC believes that a similar provision should be added to this bill.

I thank the committee for the opportunity to appear. My colleague and I would be happy to take any questions.

**The CHAIR** — Thank you, Mr Kilgariff. This committee welcomes your summary of your submission and ultimately will welcome the full submission when you are in a position to provide that. The recommendations you have circulated reflect a number of matters which have been raised by other witnesses, which we no doubt will explore with you as well. One that has not been raised before, which I would like to explore with you, is your comments around the Victorian Transport Fund and your recommendation that funds be approved only on the recommendation of Infrastructure Victoria. Could you outline why it is your view that that is an appropriate mechanism and how that has worked with the New South Wales equivalent?

**Mr KILGARIFF** — For the very simple reason that asset recycling is really not just about the process of selling government assets and then the funds being used in any way that the government of the day sees fit. Asset recycling implies that the funds are recycled into similar economically efficient and productive assets that return a benefit to the, in this case, Victorian taxpayer. We believe that it should be incumbent on the new Infrastructure Victoria to be able to provide advice to the minister and the government of the day on what they would consider to be productive assets that would return an economic benefit to the economy and the taxpayers. That has been something that we have been quite strong on in New South Wales, but also in particular with Infrastructure Australia and the approach that Infrastructure Australia takes on the assessment of any particular project.

**The CHAIR** — The legislation as it is currently drafted provides that the bulk of those funds will be acquitted on metropolitan level crossing removals — grade separations. Is it ALC's view that there has been insufficient rigour around the allocation of funds to that purpose, as opposed to alternative infrastructure opportunities?

**Mr KILGARIFF** — The issue of grade separation and the level crossings is not a particular issue that ALC members have considered in great detail. It is not something that will appear in our submission. But I guess from our perspective the government went to the last election with a fairly firm position on grade separation,

and now they are following through on that election commitment. From our perspective that is really all that can be said about that.

**The CHAIR** — I guess that is inconsistent with your recommendation or your proposal that the transport fund be subject to Infrastructure Victoria endorsement?

**Mr KILGARIFF** — Yes. If there are any funds left over after the grade separation has occurred, the level crossing works have been completed, then we certainly believe that it should be up to Infrastructure Victoria to determine where the funds go, but we just accept that it was an election commitment made the government, and they are following through on their election commitment. What is the point of really taking it beyond that?

**The CHAIR** — Thank you. Your third recommendation relates to clause 90 of the bill, the exclusions from ESC oversight. You are recommending that be deleted. You heard some of the earlier evidence from some of the participants around concerns of rent increases and the fact that that is not constrained through the oversight mechanism, and the committee has heard from government that 86 per cent of current port revenue will be subject to regulation and 14 per cent will not. Is it ALC's view, as was presented by some of the witnesses earlier, that that simply represents squeezing a balloon at one end with the price controls on 86 per cent to allow the other 14 per cent to balloon out, and that is where the risk is — be it with rents or other new charges — that will simply see the commercial imperative of the leased port flow to the non-regulated charges or new non-regulated charges, and the 86 per cent will be somewhat redundant?

**Mr CORKE** — As Asciano indicated in the evidence provided earlier this morning, ultimately the consumer pays if for some reason or other there is an inflated price paid for the provision of port services as a result of whatever lease agreement is made between a stevedore and a port operator. We have had regard very briefly to the government response, which as the Chairman has previously indicated, came out at 6 o'clock last night. Subject to the caveat that any observations we make of the document are on the basis that we have read it once and no more, we note the government arguments contained on pages 40 and 42 in the government submission relating to the reasons for the excision. The view that our members take is that as far as practicable, even though, as has been indicated from questions particularly from Ms Shing, this form of regulation is not involved in other jurisdictions — that is true — the regulatory structure we are looking at is the one proposed to be put in place in this state for this particular piece of infrastructure. Our view is effectively that where you are dealing with a monopoly asset such as a port all relevant port users really should have the advantage of the economic regulation provisions that the pricing orders offer.

On the pricing orders let me say that, as far as ALC is concerned, their structure is satisfactory, as was indicated previously — and there is the table contained in the submission for the various different streams in different states — subject to the point, as Mr Kilgariff said in his opening, that we would like as-of-right access to that scheme and that the scheme be placed in primary legislation and not the gift of the Governor in Council. Nevertheless, in our view the scheme operates satisfactorily, but unfortunately the arguments contained on pages 40 and 42 of the government submission do not appear to us, having read it once, to be of sufficient weight to answer the question. For instance, just because stevedores are big people and can afford costly advice with relation to land values and everything else is sufficient to lead to the conclusion that the excision should stand. As far as we are concerned all port users ought to be treated equally having regard to the effective monopoly asset, the nature of the asset — one playing field and a level playing field for all users.

**The CHAIR** — With regard to that point about stevedores being big boys and they can look after themselves, what would have been the result for your members had the proposed increase in DP World's rent gone through at \$120 per square metre and assuming a similar rental increase then flowed through to Asciano in due course? What would that have meant to your membership?

**Mr KILGARIFF** — I can just echo there the comments that were made quite publicly by John Mullen, the managing director of Asciano; Maurice James, the managing director of Qube; and a number of other industry players where they saw that it would be quite catastrophic on the industry. Those costs would flow through to consumers and would probably have resulted in a move by the freight that could be moved to Port Botany. But it is a bit of a moot point really, because the sorts of increases that were being proposed publicly do not appear to have eventuated. Again I just reflect the views of the industry at the time and the comments that have been made subsequently about the fact that the negotiation seems to have been completed quite satisfactorily to all parties.

**Mr MULINO** — I just want to start on this issue of the pricing arrangements. I think this is something you have alluded to, but I just wanted to clarify it and get it on the record. You support the fact that the proposed pricing regime will be strengthened relative to the current arrangement in the sense that it will be broader and apply to 86 per cent of current revenues and the fact that it will use the building block methodology, as opposed to simply monitoring.

**Mr CORKE** — You are quite correct. It is broader than the current price monitoring regime for that 86 per cent, although we reiterate at this stage we are unable to see why the remaining 14 per cent could not gain the same advantage as the proposed price regulation.

**Mr MULINO** — In relation to the remaining 14 per cent, what is being proposed is that contractual provisions govern increases in relation to reviews that occur during the life of rental arrangements. That is very much in line with industry practice and what people are accustomed to and what governs those kinds of increases at ports in other jurisdictions, isn't it?

**Mr CORKE** — You are certainly correct. As I indicated with respect to the Chair's question, that sort of regulation is not in place in other jurisdictions. It is not, and we accept that. Nevertheless, as I say, it is a bit like a person who is pulled over for speeding and there are other people speeding on the road. You say to the policeman who pulled you over, 'Look, they're speeding more than I am'; and he says, 'Yes, but we've got you'. In a similar sense we are examining this legislative structure, and as far as we are concerned when you are dealing with an asset of the nature of a port, it is regulatory best practice for all relevant users irrespective of status to have the same capacity to gain the advantage of the back stop or of the primary method of dealing with competition issues, which is the jurisdictional legislation in force over the infrastructure rather than having to rely on the vagaries of ACCC involvement.

**Mr MULINO** — In relation to the DP World negotiation, people have alluded to the claims and counterclaims that occurred at the start of that process, but is it fair to say that you were satisfied with the end result of that process, that you thought it was a sensible outcome?

**Mr KILGARIFF** — Yes, it would be very fair to say that we thought it was a very sensible outcome, taking into account, by the way, that the final agreement is still confidential. But the information I have back from both government and also industry partners is that they are very happy with how it was finalised.

**Mr MULINO** — You have read through the Treasury submission, and one of the issues when deciding the breadth of a regulatory regime is the extent to which one believes there is a natural monopoly, which is quite a high hurdle. Obviously what we are seeing in the proposed regulatory regime is that we have the ESC being proposed to regulate a very high proportion of services using a model which is suited to situations where there is a natural monopoly. In the case of some of the rental arrangements, and there are many of those at the port, there is less agreement as to whether or not there are different degrees of market power and different degrees of potential competition. So obviously what has been in place at Melbourne, but also at all the other major ports in Australia, is this contractual dispute mechanism, which, certainly in the case of DP World, people are generally happy with. That contractual mechanism, where there is a dispute resolution, does contain any potential rent increases and in practice has put quite a limit on the extent to which there have been increases.

**Mr KILGARIFF** — I might just, for the technical part, throw it to Kerry. But I will just pass on some anecdotal reports that we received from the industrial property industry where we went to them to query what they would regard as a market-based rent, and the advice that we received back, just oral advice, was that nobody in the industrial property market would use the basis of one property deal as evidence of what the market is therefore able to sustain. I thought you might find that interesting and you may wish to seek your own advice as to what the property industry would regard as a market-based rent, but that was certainly the advice that we received.

**Mr CORKE** — The more technical response, I suppose, is that with any contractual negotiation it necessarily requires the goodwill and consent of all of those involved, and whilst for the time being with the parties involved that consent and goodwill may be present, given that legislation is designed to protect against cyclones and not still days, best practice seems to dictate, that some form of statutory protection along the lines of including the 14 per cent currently excluded, be included, because, whilst, as Mr Kilgariff has said, the goodwill is present in 2015, I cannot say what the will of the parties will be in 2023, particularly when you are dealing with an as-yet appointed port operator.

**Mr MULINO** — Patrick referred to an arrangement in New South Wales which worked better than arrangements in Queensland. They have an arrangement where the rent reviews were subject to a range of factors that were explicitly set out, but that was still a contractual arrangement. It is possible to include factors other than just the one that you referred to in contractual arrangements.

**Mr CORKE** — That is right, but I go back to what I was saying earlier. When one is dealing with a contractual paradigm, there needs to be consenting parties on both sides. Now you are quite right in saying that these things have been handled in an appropriate way in the past, but legislation must look forward and anticipate circumstances where issues may arise. All that they are suggesting is that the pricing order regimen, which as we have said ALC thinks is quite a satisfactory structure that will do the job for the port of Melbourne, just be generally applied and they are to be used where necessary, always bearing in mind that that approach, the so-called light-handed regulatory reapproach, if there is the consent of the parties to negotiate bilaterally, that is always present there in any case. It is only in the circumstances of the policy cyclone I referred to earlier, where there may be some degree of, as it were, efficiency in the parties knowing what are the rules if there are problems with respect to access to an asset, the nature of the port of Melbourne.

**Mr BARBER** — Some of your members are in fact operators and owners of privatised ports, are they not?

**Mr KILGARIFF** — That is correct.

**Mr BARBER** — So when you were talking about arrangements that you think should operate here or that you think operate satisfactorily in other states like Brisbane and New South Wales, are you speaking on behalf of your port-owner members or your port-landlord members — tenant members, I should say?

**Mr KILGARIFF** — Yes. The actual owners of the ports per se are not the member. It is the actual corporation or the body that owns the port that is the member. I just make that clarification. We do not have any infrastructure funds, for example, as members.

The question really goes to the heart of the operation of any industry association. In the logistics industry, which is a very large industry with lots of moving parts, sometimes there are some members who are probably not going to agree entirely with the position that the association may articulate, but essentially the position that ALC articulates on any given issue is: what is in the interests of supply chain efficiency and safety. That is the high-level principle that we adopt whenever we articulate any position, and that is the view that we have taken here today and in our submission to the committee, which will be lodged in the next day or so.

**Mr BARBER** — Most of the other witnesses we have heard who also have an interest in supply chain efficiency have been agnostic, I would say, as to private versus public, whereas, you are actually backing privatisation.

**Mr KILGARIFF** — Yes, that is right, and the reason is because from our perspective a port that is operated by a private entity, whatever form that entity might take, does tend to work a little harder at making the port work efficiently, and that has certainly been our perspective in New South Wales and in Brisbane. That is why we generally support the long-term lease of ports, because, as I said, we just find that the operators are a little more commercially focused. They are more focused on getting containers over the wharves and making that happen as efficiently as possible.

**Mr CORKE** — The other aspect of it all is that it forms part and parcel of support of asset recycling where mature assets are used to invest in the very good things, such as level crossings, in a fashion that would otherwise be delayed because of an absence of capital held by government. The community welfare point that Mr Barber quite properly raises is protected by comprehensive economic regulation. That is the best way in the context of a privatised operator, at something like a port, is controlled, as it were, appropriate economic regulation.

**Mr BARBER** — Just on the subject of comprehensive economic regulation, you guys brought the Harper review into it, so do your members support the effects test proposed by Ian Harper?

**Mr KILGARIFF** — To a large degree we have not landed on a position on that, but it would be fair to say that my members have severe reservations about the effects test as proposed by Harper. Have we articulated that

view in our submission to Harper? No, we have not. I am just giving you some anecdotal feedback, if you like, about the effects test.

**Mr BARBER** — Which of your members might oppose an effects test?

**Mr KILGARIFF** — I would say it would be up to them. You could have a look at any of the membership of ALC and probably come to a conclusion of your own as to which ones might.

**Mr BARBER** — Are any of your port-operating/owning members possible bidders for this port?

**Mr KILGARIFF** — Not the actual port operators, I am led to believe.

**Mr BARBER** — With super funds sitting behind it?

**Mr KILGARIFF** — I would imagine so, but I have not had conversations with any of them as to what they are doing. The whole process is really being conducted well beyond the reach of ALC. We are not really party to any of those discussions, but I would be surprised if any of the funds that own any of the other ports around Australia are not also in the mix for port of Melbourne.

**Mr PURCELL** — Thank you for the presentation. I would just like to confirm some of the capacity issues you started with. I think you said doubling by 2030 and trebling by 2050. Were they the figures that you used?

**Mr KILGARIFF** — That is correct, yes.

**Mr PURCELL** — If we are talking doubling and we are at 2.5 million containers at the moment and we are talking capacity could be 5, is there a possibility we are at capacity in 15 years time?

**Mr KILGARIFF** — The capacity issue is one that we have discussed internally. We do not have a firm view on when capacity might be reached. We have no reason not believe the numbers that were articulated in the Treasury submission of somewhere between seven and eight. We understand that there is an estimate that will be reached between 2035 and 2040. We do not have any reason to not believe those.

From our perspective, the one thing that I can tell you is that the members of ALC are all agreed about one thing, and that is that we need to sweat the asset as much as we can for as long as we can. The sort of technology that maybe even used down at the port in 20 years time probably does not even exist now. It is impossible to really say right now what the capacity of the port might be based on the current operations and technology that is applied. We are quite relaxed about going along with the estimate that has been put forward by the government because we cannot see that there is any reason why that should not be the case.

**Mr PURCELL** — We have been given evidence to the fact that capacity may be well less than the seven or eight that the Treasurer and the Treasury have suggested in the first place, and if we are looking at five, six or something like that, and we are talking as close as 15 years, the lead time for producing a second port is going to be 10 years to get operational. Is that reasonable? I know you are in logistics and this is your area.

**Mr KILGARIFF** — I am not an engineer. I could not really tell you, but it is an asset that would be in the billions of dollars and you would have to assume that it cannot be designed, constructed and operated within 12 months.

**Mr PURCELL** — I guess this is probably more of a statement than a question from a logistical point of view. You did raise the 50 level crossing as being important, and I totally agree with that, but if we are talking the issue of building a new port within 15 years, if we are talking somewhere in the order of — and I will throw some figures because they have been bandied around; I do not know how accurate they are — \$15 billion and we are looking at getting \$6 billion out of the lease of the current port, in my mind it would be logical to use the proceeds from any lease to start the process of building your second port rather than using it on your level crossings. I know you were quite supportive of the level crossings, and that is the reason why I bring it up here. Does that have logic from a logistical point of view?

**Mr KILGARIFF** — In terms of when the next port should be constructed and, probably more importantly, where it should be constructed, our view — —

I will just step back a bit. We are currently also at this time developing and finalising our submission to Infrastructure Australia on the 15-year infrastructure plan that should be released either later this year or early next year, depending on when the government releases it. We have taken the view that Infrastructure Australia as part of that plan should be developing a 30-year plan for all Australian ports for the Australian port industry. One of the issues that we have raised is the fact that IA should be making recommendations on where and when they believe the next ports in Australia should be built.

For the purposes of this bill we are very, very supportive of Infrastructure Victoria assessing and making the call on where that port ought to be and when it ought to be initiated, but really when you look at it from an Australian context, if Infrastructure Australia, as part of a 15-year infrastructure plan, does that review themselves, then the next port in Victoria may not even be in Melbourne and in fact may not even be in Victoria, because if you take a view of the Australian economy as being one whole, not broken up by state borders, then the next port is really one that ought to be considered in the context of the Australian economy, not the Victorian economy.

**Mr PURCELL** — Just to follow on from that — and I think you are probably right — would that have a significant effect on jobs in Victoria? Would they be moved with the port if we did go to a national port?

**Mr KILGARIFF** — Possibly, but that port may well be in Victoria. I could not really make any estimate as to what the impact on jobs might be. Our job is to talk about national supply chain efficiency, and national supply chain efficiency means that the next port is built in a time and location that suits a national economic agenda.

**Mr PURCELL** — Just one final one. In regard to the logistical side of it, you are talking doubling in 15 years and tripling in 35 years. To get goods in and out of the port of Melbourne, the proposal to have intermodal freight hubs in the north and the east and the west, is that the answer to the logistical problem of getting goods in and out of Melbourne?

**Mr KILGARIFF** — It is certainly part of it. I understand that Salta is going to present this afternoon. We are very supportive of their proposal that some mechanism needs to be built into the Port of Melbourne in terms of the Port of Melbourne having to identify in their long-term master plan how they intend to deal with handling the increase of containers in and out of the port. Our view on intermodal terminals is that where possible or where economically efficient we should be encouraging as much as possible the use of rail freight in and out of all of our national ports, not just in Melbourne.

**Mr ONDARCHIE** — Kerry, you have been involved in policy development for over a quarter of a century, so we could say you know something about this sort of thing. I note the comments of the ALC around your concern about excessive rents in this 70-year monopoly proposal.

**Ms SHING** — It is a 50-year lease, and you know it.

**The CHAIR** — Order! Mr Ondarchie.

**Mr ONDARCHIE** — If there are committee members, Chair, who are not certain about what it says —

**The CHAIR** — Mr Ondarchie!

**Mr ONDARCHIE** — it says the lease term is 50 years plus 20.

**Ms SHING** — It says 50 years — —

**The CHAIR** — Order!

**Mr ONDARCHIE** — Fifty plus twenty makes seventy, in my mind.

**Ms SHING** — It is just 50.

**Mr ONDARCHIE** — I know they are not strong on mathematics. It also talks about significant increases to port rents will push up the price of users of the port and that is going to be passed on to consumers and, you said, make it harder for local manufacturers to compete, ultimately harming jobs, and I noticed your document



calling for submissions. Given your policy expertise, this legislation, Kerry, needs a fair bit of work before it could possibly be passed by the Parliament, don't you think?

**Mr CORKE** — Well, if the amendments that we recommend are put up to the Parliament, yes, there will necessarily be some redrafting required, but that is so with any piece of legislation that requires amendment — that of itself is not unusual. But the answer to your question is yes, there would need to be some degree of rethinking and redrafting, but that is what happens where an independent chamber proposes amendments to legislation passed by governments.

**Mr ONDARCHIE** — Sure, but the ALC would not support it in its current form, though, would it?

**Mr KILGARIFF** — Well, our view is that the amendments we have proposed do have general industry support. We do not see them as being ones that fundamentally change the purpose and outcome of the bill, so we would hope that the amendments would be made and we would be enthusiastic supporters of the bill.

**Mr ONDARCHIE** — Thanks. Nothing further.

**Ms SHING** — It is always a nice segue to come after the questions presented from Mr Ondarchie. Thank you, gentlemen, for the submission that you have outlined today and for the contributions you have made in oral evidence this morning. I would like to, at the outset and off the back of the issues that Mr Ondarchie raised about support for the 50-year lease —

**Mr ONDARCHIE** — Seventy.

**The CHAIR** — Mr Ondarchie!

**Ms SHING** — take you to your media release of 15 July, which indicates, and I will quote this:

It believes a lease over the port should be granted for a 50-year period, with priority given to maximising its efficient use, including the provision of appropriate road and rail infrastructure linking the port with key freight-generating areas.

It also indicates at the third paragraph of your release that you are keen to ensure whether the proposed sale — that 50-year lease — will promote competition and efficiency. In that regard I would like to ask you, firstly, whether you stand by the content of that media release, noting that it was issued on 15 July and we are now in early September?

**Mr KILGARIFF** — I do not believe that we have largely changed our position.

**Ms SHING** — Great, thank you. On that basis, I would like to take you to clause 89 of the bill. This comes off the back of the conversations that we have been having this morning in your evidence and also with other witnesses who have given evidence to this committee around the way in which the Port Management Act is sought to be amended and the objectives of the part which would be worked into the bill. Those objectives include to promote efficient use of, and investment in, the provision of prescribed services for the long-term interests of users and Victorian consumers — that refers to prescribed services, which I note you have a position on — and to allow that provider a reasonable opportunity to recover efficient costs but also to facilitate and promote competition between ports, between shippers and between other persons conducting other commercial activities in ports. That is something that the Essential Services Commission would have to have regard to in undertaking its functions around the port industry as a commercial trading port. What is your view on the way in which the wording of clause 89 might affect the concerns that you outlined earlier about rent?

**Mr CORKE** — Clause 89 is an objectives clause —

**Ms SHING** — They come in very handy in litigation.

**Mr CORKE** — which is very handy in litigation, and it gives the parameters under which a body such as the Essential Services Commission is bound to exercise its functions and duties. It nevertheless remains a live issue as to how in a particular case, notwithstanding the presence of an objectives clause, a relevant body, such as the commission, acts in a particular case. As you would be familiar, if things cannot be agreed by way of mutual consent, then whatever arbitration capacity, up to and including the Supreme Court, may very well be invoked. But clause 89 is no more than that — it is an objectives clause. It is certainly important to the extent it

guides the commission as to how it should do its work, but as to how well it applies those objectives in a particular case, it depends on the facts of that case.

**Ms SHING** — Finally, and noting the position that you have already stated around needing ‘to sweat the asset as much as we can for as long as we can and as much as we can’ — to quote you back to yourself, having said that a few minutes ago — why do you support a 50-year lease?

**Mr KILGARIFF** — The main reason being that really was the number landed on in the legislation. We do not have any evidence to suggest that it is not a viable term. If you believe the government figures of between 7 and 8 million TEUs landing somewhere between 2035 and 2040, there is no reason not to support it.

**Ms SHING** — A doubling and trebling, as you indicated in evidence this morning.

**Mr KILGARIFF** — We do not have any evidence to suggest that it is not a viable term.

**Ms SHING** — Great. Thank you, gentlemen.

**Mr ONDARCHIE** — We got some yesterday.

**Mr DRUM** — Thanks, gentlemen. Your very first point goes to the port development strategy — that a lessee must publish their port strategy every five years. I suppose this goes to the direct relationship between capital investment by a lessee on the one hand and the expected return of that investment on the other hand and where that relationship will fit into the future. Obviously there are issues within this relationship of investment and return that are causing you concern, otherwise it would not be on your no. 1 issue. Can you take us through some of the concerns that you see with the need for the operator to have this port development strategy published?

**Mr KILGARIFF** — It is of some significant concern in the industry that in Victoria, and Melbourne in particular, the use of rail freight off the port does not seem to be handled exceptionally well. We do not necessarily use Sydney as being the benchmark that everybody should aspire to, but the reality is that in New South Wales about 13 per cent of containers are shipped out of Port Botany on rail. The government has a target of 28 per cent. In fact the minister for freight, Duncan Gay, has said in a number of public forums that he hopes to hit a target of 40 per cent. We just do not see the same focus in Melbourne on that rail freight question.

If you take into account the growth in containers that we are talking about — and again we are using Bureau of Transport Economics figures — if we do not ensure that operators actually focus on supply chain issues that go well beyond the front gate, then all of those sorts of things are going to land us in some fairly significant trouble when it comes to congestion around the port. If we are going to wind this port out for the term that we are talking about, the issue of rail freight needs to be front and centre.

**Mr CORKE** — And the more technical extension onto that is that our port development strategies are already required. The Port of Melbourne Corporation has to do it. Clauses 138 and 139 of the bill place the port operator under a duty to provide a plan. What we would be suggesting ultimately is that section 91K of the Port Management Act be extended to make perfectly clear that matters relating to the efficient operation of the product chain be put in place in any plan for the reasons Mr Kilgariff has indicated. That obligation can be implied for the broad terms contained in the section. We think it would be a good idea if this issue was expressly identified in the provision itself as something that must be dealt with by the operator in the context of its port development strategy.

**Mr DRUM** — You are effectively saying that the government would be able to direct a lessee to undertake certain works?

**Mr CORKE** — Not quite. The port development strategy is effectively a planning document that is obliged to be prepared indeed for the consideration of government, but it is more of a document that is guided by, as an example, guidelines issued by the minister, by the things that need to be included in the development plan. In answer to your question, Mr Drum, that could give them a broad direction of what government expects a port operator to do. But broadly speaking, it is an illustration to the world as to how the port operator proposes to operate its business over the next five years so that port users can then make infrastructure and use decisions based with a degree of knowledge as to the way in which the port is proposed to be moving by the operator.

**Mr DRUM** — Are you concerned at all about the scenario where the government, opting in to maximise its sale price, accepts a large capacity figure — somewhere over 7.5 million TEU — and then effectively the lessee realises that until he hits that capacity there is no option for an additional port or a second port or a new port and there effectively happens to operate very profitably and very easily within the status quo and therefore does not effectively invest in the existing port to reach capacity in the time that would suit both the state and the government?

**Mr KILGARIFF** — From our perspective, we have not heard any numbers that go beyond the 7 to 8 million that has been articulated in the Treasury paper. I am not aware that anybody is suggesting that the number could be higher, and I doubt very much whether anybody could at this particular point in time legitimately say that.

**Mr DRUM** — On that, we heard evidence yesterday that anywhere near eight is totally impossible. If the government is to accept somewhere in the vicinity of eight, which the Department of Treasury and Finance is saying we should, if the government takes its own department's advice and they set a capacity at around eight, we have all this other advice saying that that is just going to be impossible to ever reach. Therefore the state finds itself in this situation with an impossible capacity, therefore the development of any second port, wherever the current government of the day wants to put it, has to trigger this compensation?

**Mr KILGARIFF** — It is a difficult question, that one of exactly what is the capacity. I am aware of the appearances yesterday by a number of parties who suggested that it was 5 million. I rely on the advice of the experts in the industry as to what they think it is, and most members of mine seem to be quite comfortable that it is actually larger than that figure. The other thing I think that needs to be said is that the capacity of the port to a great degree will probably be driven more by urban encroachment on the port rather than a particular number of containers that may be moved in and out on an annual basis.

**Mr DRUM** — Just one last point, ALC is very strong on how this money should be spent on infrastructure. Are you aware that the Minister for Agriculture has indicated that some of these proceeds of the sale of the port will in fact be used for training purposes?

**Mr KILGARIFF** — Yes, we are. We are also well aware that some of the funds are going to be used to improve the regional rail network and the Murray Basin network, and we are generally supportive of that.

**Mr DRUM** — I do not think that is right. If that is true, that is news.

**Mr KILGARIFF** — That is my understanding, that there is a sum of money that has been invested in the regional — —

**Mr DRUM** — In the Murray Basin rail project?

**Mr KILGARIFF** — In the regional rail network in the north-west of Victoria that will also connect Portland. I may be wrong.

**Mr DRUM** — With this mob, I tell you, nothing surprises us.

**Mr CORKE** — I guess the answer to Mr Drum in one way is we note that in clause 15(1)(a)(ii) one can fund 'infrastructure projects for or in relation to public transport, roads, rail' and the like. It is arguable that training could fall under that rubric. That very well may be obviously a desirable outcome. However, that is one reason why, in our view, the New South Wales approach of requiring the filter of Infrastructure Victoria is necessary, so that the funds that are liberated from a mature asset such as a port are used appropriately in other, newer infrastructure that the community needs.

**Mr MULINO** — The issue of capacity has been raised by a couple of people today, and obviously it came up yesterday. In arriving at the figure of 5.5 million, did the Institute for Supply Chain and Logistics engage with you specifically in arriving at that number and ask for your advice?

**Mr KILGARIFF** — No.

**Mr MULINO** — You said that you have talked to some of your members in relation to arriving at an understanding that a larger number should be feasible.

**Mr KILGARIFF** — It is possible, yes.

**Mr MULINO** — I just want to put on the record: your members are very broad and include many in the industry. They include people like Qube and Toll, they include other ports in other jurisdictions, they include Tasmanian rail. Your membership is very large and broad across the sector, so your understanding is coming from a very deep and broad engagement with the logistics sector.

**Mr KILGARIFF** — That would be a fair assessment, yes.

**Mr MULINO** — Just to go to the capacity issue again, a number larger than 5.5 million, which has been flagged — and I do not think anybody claims that we can pinpoint this specifically now — but larger numbers have also been put, not just by DTF but by the port itself in public documents which are based upon detailed analysis, so documents in 2006 and 2009. Are you familiar with those documents?

**Mr KILGARIFF** — Not intimately. I am assuming that they were part of the submissions that were put forward to the various freight strategies that were developed by Tim Pallas as minister and by the previous government.

**Mr MULINO** — But in arriving at those estimates in 2006 and 2009 the port would have engaged with some of your members at least, and it would obviously have a significant amount of interaction with many parts of the logistics chain.

**Mr KILGARIFF** — I would imagine so. I take the advice from members such as the Port of Melbourne as coming from experts.

**Mr MULINO** — We have got larger numbers in the public realm which are based upon rigorous analysis from other parties and also based upon an understanding from many of your members. You have also flagged the fact that the reality is we should also factor in the fact that technology is improving constantly and it is likely that there will be improvements that we cannot foresee now in the next 10, 20, 30 years. There is a lot of evidence that suggests that significantly more than 5.5 million is not, as Mr Drum would put it, impossible.

**Mr KILGARIFF** — Yes, absolutely. As I said before, our view is that this industry is really only at the tip of the iceberg in terms of its take-up of technology. The reality is that we are getting increasing automation of supply chains and uses of technology that were not envisaged only five years ago. Where we will be in 20 years time is anybody's guess.

**Mr MULINO** — Just one last question. I will just go to your point in relation to clause 69 of the bill and the ACCC. It is fair to say though that, leaving that issue to one side, the ACCC will retain the capacity to regulate vertical integration under current commonwealth legislation as a part of the transaction?

**Mr CORKE** — That is correct. The ACCC retains its extant jurisdiction except to the extent that it is taken away by clause 69, correct.

**Mr MULINO** — That is very important. Just in addition, and I think you have had a chance to read over the DTF submission once. But in addition to that, under the port lease there will be a prohibition on a leaseholder under the lease in terms of vertical integration and a restriction on stevedores from being part of a bidding consortium. So there are also a number of constraints within the transaction in addition to ongoing ACCC powers under federal legislation.

**Mr KILGARIFF** — Sure, okay.

**The CHAIR** — Thank you, gentlemen. The committee appreciates the evidence from the logistics council today. We look forward to receiving your final written submission and indeed any further comment that you may wish to make with respect to the government submission now that that has been published, if you wish to add that as part of your submission as well. We appreciate your attendance today.

**Witnesses withdrew.**