



*Submission to the*

**Upper House Select Committee Review of the  
*Delivering Victorian Infrastructure*  
*(Port of Melbourne Lease Transaction) Bill 2015***

## **The Victorian Farmers Federation**

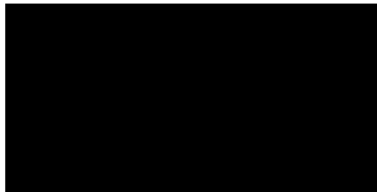
The Victorian Farmers Federation (VFF), Australia's largest state farmer organisation and only recognised consistent voice on issues affecting rural Victoria, welcomes the opportunity to comment on small business in Victoria.

Victoria is home to 25 per cent of the nation's farms. They attract neither government export subsidies nor tariff support. Despite farming on only three per cent of Australia's available agricultural land, Victorians produce 30 per cent of the nation's agricultural product. The VFF represents the interests of our State's dairy, livestock, grains, horticulture, flowers, chicken meat, pigs and egg producers.

The VFF consists of a nine person Board of Directors, with seven elected members and two appointed directors, a member representative General Council to set policy and eight commodity groups representing dairy, grains, livestock, horticulture, chicken meat, pigs, flowers and egg industries.

Farmers are elected by their peers to direct each of the commodity groups and are supported by Melbourne-based staff.

Each VFF member is represented locally by one of the 230 VFF branches across the state and through their commodity representatives at local, district, state and national levels. The VFF also represents farmers' views on hundreds of industry and government forums.



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## Executive Summary

**The VFF does not oppose the sale of a long term lease in principle, subject to:** greater transparency and appropriate mechanisms and safeguards to ensure Port of Melbourne (PoM) maintains its status as an internationally recognised competitive, efficient and sustainable port including stewardship of the assets; and further, that some of the proceeds from the sale of the lease should be quarantined for re-investment in agricultural and rural infrastructure given it is agricultural exports that have helped generate the lease sales revenue in the first place.

### Significance of the Port of Melbourne & Agriculture

1. The proposed sale is of significance to the State of Victoria, if not national significance, for a number of reasons:
  - PoM is **Australia’s largest single container port;**
  - It is the sale of rights to **essential services & essential infrastructure;**
  - It is the sale of **exclusive monopoly rights** to the State’s services and infrastructure;
  - It is the sale over a **long-term inter-generational** lease for **50 years** with an **option for a further 20 years;**
  - The PoM handles **\$92 billion of trade** for the Victorian economy each year; and
  - The sale will generate revenue of **\$5-8 billion dollars for the State of Victoria.**

For these reasons alone the proposal warrants detailed and transparent assessment & scrutiny.

2. **Agricultural exports including cereal grain, dairy, fruit and vegetables, fibre and meat number in the top 10 commodity exports through the PoM.**
3. The Agricultural sector is a **key driver of the Victorian economy** contributing 4.9 per cent to gross state product and in 2013-14 it accounted for **48 per cent** of the state’s total goods **exports** valued at **\$11.8 billion.**
4. Dairy, grain, meat, wool and horticultural industries constitute \$11.4 billion of the State of Victoria’s revenue.
5. Therefore anything impacting the efficiency or competitiveness of the Port of Melbourne, or that of the export sector, has the capacity to **impact the financial standing of Victoria.**
6. The sale as proposed is likely to increase the **cost of exports** to industry and farmers, as well as impact the **relative competitiveness of Victoria’s balance of trade.**

### Key Concerns & Issues

7. VFF are concerned regarding the lack of detail in the Bill and the lack of a detailed business case. This may enable the Government to maximise short-term revenue from the sale of the lease, but in so doing leaves port users and the State of Victoria exposed to greater port pricing and competition risks over the next 50-70 years.
8. Treasurer Tim Pallas has stated the government has **“put in safeguards to ensure that the port will be even better and more efficient for Victorian farmers”** yet hasn’t provided sufficient information to support this statement.

9. Given the scope & scale of the lease, and potential to impact the Victorian economy, VFF is calling on the Government to:
  - 9.1. Provide a **detailed business case** into the proposed sale of the lease.
  - 9.2. Detail how Government will **prevent a misuse of market power** by a private monopoly entity seeking a return on its investment?
  - 9.3. Detail **why ESC oversight is restricted** to oversight of wharfage, channel deepening and other charges, but not oversight of rental agreements or pricing?
  - 9.4. Detail **why ESC oversight should not be extended in scope and timeframe** given the leaseholder does not have a history of performance as PoMC has, and the life of the term of the lease extends to a period of 50 years with a further option of 20 years.
  - 9.5. Detail **how the Government will deliver on its commitment to ESC oversight** of the 15-year CPI cap on wharfage, channel deepening and other charges, as well as an initial four-year freeze on these charges? (These details are not in the Bill).
  - 9.6. Explain **why a consumer price index (CPI)** was chosen as the appropriate index to apply to transport/export services?
  - 9.7. Will the government direct the PoM to **renegotiate all stevedore lease agreements**, prior to privatisation, to minimise the risk of unrealistic rental hikes?
  - 9.8. Detail how the government will **encourage/incentivise investment** by the private sector leaseholder and stevedores in the port's efficiency and capacity?
  - 9.9. Detail **how and when will the private PoM leaseholder be compensated** if a second container port is built? And who will pay the compensation?
  - 9.10. Detail the **incentives provided to build a second port** to meet capacity constraints – especially if it exposes the Government to compensation?
  - 9.11. Detail the business modelling and timelines for a second port given current government modelling suggests capacity will be reached in only 15 years.
  - 9.12. Address how the government will ensure increased lease costs and/or compensation clauses will not put a **floor price in the container market**, and thus prevent cost efficiencies being delivered through competition and/or the development of a new port.
  - 9.13. Detail how Government will **guarantee ongoing maintenance and re-investment** in the PoM assets and infrastructure for the life of lease to ensure assets are not run down as in other asset sales, such as rail?
  - 9.14. Detail how Government will **guarantee ongoing infrastructure investment and maintenance of the transport supply chain assets** from the farmgate to the dock for the life of the lease.
  - 9.15. Just as the competition impacts will be felt for 50-70 years, detail how the Government will ensure some of the **sales revenues are held 'in-trust' for future generations** rather than be expended in the first terms of this Governments office?

**Conclusion**

10. VFF's position is that we do not oppose the sale in principle subject to: greater transparency and appropriate mechanisms and safeguards to ensure a competitive, efficient and sustainable port; and further, that some of the proceeds from the sale of the lease should be quarantined for re-investment in agricultural and rural infrastructure given it is agricultural exports that have helped generate the lease sales revenue in the first place.
11. As a result, the VFF are calling for the release of a detailed business case supporting the proposed PoM lease sale addressing issues such as those raised above. The proposed sale where the rights to operate state monopoly essential infrastructure is to be transferred to private hands is of State if not national, significant. If the sale is not conducted with clear safeguards and transparency it will impact the State of Victoria, industry, and farmers for generations to come.

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## Introduction

The Victorian Farmers Federation welcomes the opportunity to contribute to the Port of Melbourne Select Committee inquiry into the proposed lease of the Port of Melbourne.

The VFF would further welcome the opportunity to present to members of the Select Committee at a public hearing.

### Significance of the Port of Melbourne and Agriculture

The proposed sale is of significance to the State of Victoria, if not of national significance, for a number of reasons, including but not limited to:

- The Port of Melbourne (PoM) is **Australia's largest single container port**;
- It represents the sale of rights to **essential services & essential infrastructure**;
- It is the sale of **exclusive monopoly rights** to the State's services and infrastructure;
- It is the sale over a **long-term inter-generational** lease for **50 years** with an **option for a further 20 years**;
- The PoM handles **\$92 billion of trade** for the Victorian economy each year; and
- The sale will generate revenue of **\$5-8 billion dollars for the State of Victoria**.

For these reasons alone the proposal warrants serious and detailed assessment & scrutiny, given the capacity for the sale to impact the State of Victoria's budget, relative terms of trade, competition, and import and export industries.

### **Agricultural exports including cereal grain, dairy, fruit and vegetables, fibre and meat number in the top 10 commodity exports through the PoM.**

The agricultural sector is a key driver of the Victorian economy contributing 4.9 per cent to gross state product. In 2013-14 the industry accounted for 48 per cent of the total goods exported by Victoria, valued at \$11.8 billion.

Dairy, grain, meat and wool industries constitute in excess of \$11 billion of the State of Victoria's revenue.

Therefore anything impacting the efficiency or competitiveness of the Port of Melbourne, or that of the export sector, has the capacity to impact the financial standing of Victoria.

Given the sale as proposed is likely to increase the cost of exports to industry and farmers, as well as impact the relative competitiveness of Victoria's export trade, it again warrants serious and detailed assessment & scrutiny.

## Recommendation

Given the scope & scale of the lease, and potential to impact the Victorian economy, VFF is calling on the Government to:

1. Provide a detailed business case into the proposed sale of the lease.
2. Detail how Government will prevent a misuse of market power by a private monopoly entity seeking a return on its investment?
3. Detail why ESC oversight is restricted to oversight of wharfage, channel deepening and other charges, but not oversight of rental agreements or pricing?
4. Explain why it is not necessary for ESC oversight on rental agreements or pricing, to be extended in both scope and timeframe to a new private leaseholder.
5. Detail how the Government will deliver on its commitment to ESC oversight of the 15-year CPI cap on wharfage, channel deepening and other charges, as well as an initial four-year freeze on these charges?
6. Explain why a consumer price index (CPI) was chosen as the appropriate index to apply to transport/export services?
7. Advise if the government will direct the PoM to renegotiate all stevedore lease agreements, prior to privatisation, to minimise the risk of unrealistic rental hikes post privatisation?
8. Detail how the government will encourage/incentivise the private sector leaseholder and stevedores to invest in the port's efficiency and capacity?
9. Detail how and when the private PoM leaseholder would be compensated if a second container port is built? Who will be responsible for paying the compensation?
10. Detail the incentives provided to build a second port to meet capacity constraints – especially if it exposes the Government to compensation?
11. Detail the business modelling and timelines for a second port given current government modelling suggests capacity will be reached in only 15 years.
12. Address how the government will ensure increased lease costs and/or compensation clauses will not put a floor price in the container market, and thus prevent cost efficiencies being delivered through competition and/or the development of a new port.
13. Detail how Government will guarantee ongoing maintenance and re-investment in the PoM assets and infrastructure for the life of lease to ensure assets are not run down
14. Detail how Government will guarantee ongoing infrastructure investment and maintenance of the transport supply chain assets from the farmgate to the dock for the life of the lease.
15. Demonstrate how Government will ensure some of the sales revenues are held 'in-trust' for future generations rather than be expended in the first terms of this Governments office?



## Key Concerns & Issues

### 1. Business Case & legislation

The VFF is concerned that there is a lack of detail contained within the Bill about the sale of the Port and further, the absence of a publically available detailed supporting business case. Without empirical evidence to suggest otherwise, many in the industry contend that the Government may be able to maximise short-term revenue from the sale of the lease, but in so doing it leaving port users and the State of Victoria exposed to greater port pricing and competition risks over the next 50 to 70 years.

Many VFF members have raised serious concerns at the impact of the Government selling a monopoly lease on Victoria's only container export facility to the private sector, given the risks to the competitiveness of the port. The private sector leaseholder will hold a monopoly over the rents it imposes on stevedores and a raft of other charges imposed on containers, shipping companies and other users of the port.

Treasurer Tim Pallas has stated the government has "put in safeguards to ensure that the port will be even better and more efficient for Victorian farmers"<sup>1</sup>. Yet VFF consider that these safeguards have yet to be adequately detailed in a supporting business case and are not adequately enshrined in legislation.

Global port expert Alex Kyriakoulis from law firm Holman Fenwick Willan, speaking at the July 2015 Australian Grains Industry Conference said that the more successful port privatisation agreements in other countries:

*"...have been the ones where the port authority and the government have done a lot more in terms of preparation of exactly what it is that they want the port terminal operator to achieve over the course of the 20, 30, 40, 50 year concession. Sometimes port authorities privatise just for the sake of privatising and get \$2,3,4 billion but you find others which take a much more mature approach to it, having done many more feasibility studies, many more surveys of the potential traffic, and then inputting into the concession agreement exactly what they want to achieve... the ones that are successful are the ones where the actual strategy is sort of interlaced into the terms of the concession agreement."*

Business cases are standard procedure for all large scale government investment, to provide the Government, the community and broader stakeholders the ability to understand the direction of investments being made, the benefits and any negative impacts from the action. The same should be expected for the sale of public assets, such as the PoM.

As a result:

***VFF is calling on Government to provide a detailed supporting business case into the proposed sale of the lease and that safeguards for those industries reliant on exports through the Port are adequately enshrined in legislation.***

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<sup>1</sup> Pallas, T. (2015). Agriculture and Infrastructure Jobs Fund to benefit regional Victorians. *The Weekly Times*, [online] p.1. Available at: <http://www.weeklytimesnow.com.au/news/opinion/agriculture-and-infrastructure-jobs-fund-to-benefit-regional-victorians/story-fnkerdb0-1227469660680> [Accessed 27 Aug. 2015].

## 2. Length of Lease

As it stands the Bill allows the Government to offer a private sector entity a lease of up to 70 years.

The Bill's Explanatory Memorandum states:

### ***Part 2—Authorised transactions***

#### ***Division 1—Transfer of port assets***

*Clause 11 authorises the transfer to a private sector entity or public sector entity of port assets subject to limitations that—*

- *the land comprising port assets may be leased or licensed to a private sector entity, but the ownership of the freehold title to that land must remain with a public sector entity; and*
- *the maximum term of a lease or licence of land comprising port assets to be granted to a private sector entity, including any period of a further lease or licence of those port assets is 50 years or, if the Premier makes an order under subclause (3), for a period not exceeding 50 years and 30 days or, if the regulations prescribe an additional period, for an aggregate period not exceeding 70 years or, if the Premier makes an order under subclause (3), for an aggregate period not exceeding 70 years and 30 days.*

VFF acknowledge that it is not uncommon for infrastructure leases such as port leases to operate on long term agreements. For example, both the NSW and Queensland Governments sold off 99-year leases on their ports (NSW Port Botany and Port Kembla Ports for \$5.07 billion in 2013 and Qld's Port of Brisbane for \$2.3b in 2010).

Our concerns arise more around **the terms and conditions of the lease given that** this is the sale of monopoly rights to essential infrastructure. Therefore ensuring that Victoria has adequate safeguards to prevent abuse of market power, promote competition, efficiency, and asset maintenance, re-investment, continuity, and capacity are seen as more significant than the term of the lease in itself.

***VFF's primary objectives are to ensure that Victoria has adequate safeguards to prevent abuse of market power while delivering competition, efficiency, asset maintenance, re-investment, continuity, and increased port capacity.***

By selling the lease the Government is essentially borrowing against or bringing forward future revenue streams to a lump sum in today's dollars. Sound financial management of that revenue is warranted to ensure Victoria benefits from that lump-sum revenue over the next 50-70 years, not just the immediate 5-10 years following a lease being struck.

***Principles of sound financial management raise the question as to what attribution of brought forward revenue will be set-aside for subsequent decades for the term of the lease.***

***How will Government ensure some of the sales revenues are held 'in-trust' for future generations rather than be expended in the first terms of this Government's office?***

### 3. Market Power, Competition Law & Oversight

The proposed sale is of significance to the State of Victoria as it is the sale of exclusive monopoly rights to the State's essential port services and infrastructure for 50-70 years. Under the ports current operational arrangement, the Essential Services Commission (ESC) had found the Port of Melbourne Corporation retained the potential to exercise substantial market power, and in 2014 the ESC found:

*"There is potential for PoMC to misuse substantial market power with associated adverse consequences for economic efficiency"*

The Bill:

- Allows the Government to negotiate a lease agreement that is not subject to the Federal Competition and Consumer Act.
- Gives the government free reign to negotiate compensation under the lease agreement to offset the impact of constructing a second port.

The Bill's Explanatory Memorandum states:

*Clause 69 provides that certain conduct is authorised for the purposes of the Competition and Consumer Act 2010 of the Commonwealth so as to exempt, in accordance with section 51 of that Act, such conduct from the application of various parts of Part IV of that Act.*

This clause exempts the lease agreement the State Government brokers with a private entity from the Part IV of the Federal Competition and Consumer Act (CCA) relating to Restrictive Trade Practices. Part IV Restrictive Trade Practices prohibit:

- Misuse of market power
- Cartel conduct
- Exclusive dealing
- Prohibition of acquisitions that would result in a substantial lessening of competition
- Contracts, arrangements or understandings that restrict dealings or affect competition
- Prohibition of contracts, arrangements or understandings affecting the supply or acquisition of goods or services

The obvious question arises then if substantial market power exists with the potential for associated adverse consequences for economic efficiency, and the lease agreement is exempt from Part IV of the *Trade Practices Act*, what will prevent a misuse of market power by a private entity that is seeking to maximise returns on its investment.

If the lease agreement is exempt from Part IV of the *Trade Practices Act*, the question which arises for the VFF in consider: what will prevent a misuse of market power by a private entity that is seeking to maximise return on its investment?

***How will Government prevent a misuse of market power by a private entity seeking a return on its investment?***

***Will the government direct the PoM to renegotiate all stevedore lease agreements (as had occurred with negotiations between PoMC and DP World), prior to privatisation, to minimise the risk of unrealistic rental hikes?***

***What measures are being undertaken to prevent a sale of the monopoly at the port to a leaseholder who is or may become vertically integrated in the supply chain?***

#### **4. Competition impact of Caps on competitors & compensation**

Clause 69 of the Bill relating to the lease agreement also states:

*(2) The Premier, by order, may do any one or more of the following—*

- (a) specify a person for the purposes of subsection (1)(a)(iv);*
- (b) designate an agreement that confers a right or imposes an obligation on a person referred to in subparagraph (v) or (vi) of subsection (1)(a) in relation to a primary agreement as an agreement for the purposes of subsection (1)(b).*

A ***primary agreement*** means an agreement connected with an authorised transaction containing provisions for or with respect to the making of any payment by the State relating to a port in Victoria specified in the agreement at which one or more of the following occurs—

- (a) the loading, unloading, handling, transport or transhipment of cargo containers serving international trade;
- (b) the storage of cargo containers serving international trade.

**The VFF is concerned Clause 69 of the Bill allows the Government to negotiate the highest one-off sale price by limiting competition. The clause also allows the government to negotiate caps on a second port and significant compensation payments as part of the lease sale agreement.**

In late October 2013 the NSW Government revealed it had entered into a cap and compensation agreement as part of its \$5.07 billion 99-year lease agreement with NSW Ports, which operates Port Botany and Port Kembla. Under the agreement the NSW Government is obliged to pay NSW Ports compensation for any containers moving through a rival port, such as Newcastle. In the event that container shipments exceed a “cap”, a fee will be collected by the Newcastle port leaseholder from stevedore tenants of the port and paid to the Port Botany leaseholder as “compensation” (See attachments one and two)

In Victoria, a second container port is likely to be needed to be built on 15 years as the Port of Melbourne reaches capacity. It is essential that the lease agreement encourages competition and efficiency and allows for the development of a second port to provide required capacity for our export industries into the future.

It is essential that industry know how any caps and compensation arrangement in lease agreements are to be applied. These should be made public and not hidden behind “commercial in confidence” claims. Full transparency around such agreements, prior to privatisation, will ensure port users and the wider public have a clear understanding of any impacts that the PoM lease agreement may have

on the development of a second port, any applicable caps on throughput and leaseholder compensation provisions.

The Victorian Government has made it clear that it “may” offer compensation as part of the agreement. The Victorian Department of Treasury & Finance has stated:

*“The leaseholder may be compensated if a second port is developed by the State during the lease term and takes international container capacity that would have been accommodated at the Port of Melbourne away from it. Port of Melbourne container capacity for the purposes of determining any possible compensation will be defined through the bid process, but will be capped at an amount that is less than the full natural container capacity potential of the Port of Melbourne”<sup>2</sup>.*

The VFF does not want to see the state’s container capacity, nor the competition a second port could deliver, stifled by the rush to gain the highest upfront sale price on the Port of Melbourne lease. A media release from the Premier Daniel Andrews said: “leasing the Port of Melbourne will make our port even better for Victorian farmers, increasing efficiencies and competitiveness, including a significant benefit from the Port’s decision to implement an export discount.”<sup>3</sup>

As a result the Government should address the below questions and issues:

***How will government encourage/incentivise investment by the private sector leaseholder and stevedores in the port’s efficiency and capacity?***

***How and when will the private PoM leaseholder be compensated if a second container port is built? And who will pay the compensation?***

***What incentives will be provided to build a second port to meet capacity constraints – especially if it exposes the Government to compensation?***

***How will the government ensure increased lease costs and/or compensation clauses will not effectively put either a floor price or capacity cap in the container market, and thus prevent cost efficiencies being delivered through competition and/or the development of a new port.***

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<sup>2</sup> Department of Treasury and Finance (2015), *Leasing the Port of Melbourne*, <http://www.dtf.vic.gov.au/Infrastructure-Delivery/Leasing-the-Port-of-Melbourne>

<sup>3</sup> Andrews, D (Premier of Victoria) 2015, *\$200M Fund To Support Farmers From Paddock To Port*, media release, 02 August, viewed 27 August 2015, <<http://www.premier.vic.gov.au/200m-fund-to-support-farmers-from-paddock-to-port>>

## 5. ESC Oversight of Prescribed Fees

The Bill extends the ESC's powers to the regulation of prescribed port charges, which are fees for channels, berths, slipways, roads, rail, gangways etc. The Bill specifically excludes the ESC from having any oversight of rental agreements between the Port leaseholder and stevedores (See Clause 90).

*Clause 91 New Division 2 of Part 3 inserted*

*After Division 1 of Part 3 of the **Port Management Act 1995** insert—*

***"Division 2—Port of Melbourne Pricing Order***

***49A Pricing Order***

***(1) The Governor in Council, on the recommendation of the ESC Minister, may make an Order—***

***(a) for or with respect to the provision of prescribed services; and***

***(b) for the regulation, in such manner as the Governor in Council thinks fit, of the prices for the provision of prescribed services.***

The Department of Treasury & Finance has stated<sup>4</sup>:

*The Port of Melbourne Corporation has frozen prices on loaded international container export charges in 2015-16 and will progressively reduce export charges, by 2.5 per cent price annually for the four years thereafter.*

How will port pricing be set by the leaseholder?

*The existing Essential Services Commission regulatory arrangements will be strengthened such that the leaseholder will set prices in accordance with clear and transparent pricing principles contained in a Pricing Order. The scope of regulated charges will be expanded to cover all trade charges for cargo and shipping movements. Property rents will continue to be set by contract. A CPI price cap for at least 15 years will be monitored by the Essential Services Commission.*

While the Department of Treasury & Finance website and Treasurer have made these commitments, there is nothing in the Bill that enshrines the freeze, the consequent four year 2.5 per cent annual reductions in neither export charges, nor the CPI price cap. The VFF seeks details from the Government on how it will deliver these pricing commitments, beyond its term of government, if they are not written into the Bill. Further, explanation is sought to understand why the somewhat arbitrary measure of the Consumer Price Index has been selected over other freight and transport indexes.

***How will the Government ensure pricing commitments are delivered upon when they are not enshrined in the Bill?***

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<sup>4</sup> Department of Treasury and Finance (2015), *Leasing the Port of Melbourne*  
<http://www.dtf.vic.gov.au/Infrastructure-Delivery/Leasing-the-Port-of-Melbourne>

***Detail how the Government will deliver on its commitment to ESC oversight of the 15-year CPI cap on wharfage, channel deepening and other charges, as well as an initial four-year freeze on these charges? (These details are not in the Bill).***

***Explain why a consumer price index (CPI) was chosen as the appropriate index to apply to transport/export services?***

## **6. ESC has no oversight of stevedore rents.**

The Bill states that while the ESC has oversight of prescribed fees it will not have oversight of stevedore rents. The Bill's Explanatory Memorandum states:

**Clause 90** also inserts a new subsection (2) at the end of section 49 of the **Port Management Act 1995** which provides that for the purposes of Part 3 of the **Essential Services Commission Act 2001**—

- the granting of a lease or sublease by the port of Melbourne operator pursuant to which a person is permitted to provide container, automotive, dry-bulk, liquid-bulk or break-bulk terminal or stevedoring operations in the port of Melbourne or an activity or operations specified in the regulations to other persons is not a prescribed service; and
- any services specified in section 49(1)(c)(i) to (v) of the **Port Management Act 1995** are not prescribed services, where such services are provided by the Port of Melbourne Corporation.

Therefore given the exemptions from the Trade Practices Act and the above amendments, the question of Essential Services Commission (ESC) oversight are warranted. For example:

***Why is ESC oversight restricted to oversight of wharfage, channel deepening and other charges, but not oversight of rental agreements or pricing?***

VFF's understanding is that the ESC is recommending a 'lighter touch' oversight of the Port of Melbourne Corporation (PoMC) given it's history of pricing performance. Given the new extended scope and timeframe of potential lease arrangements and the introduction of a private operator the VFF considers it essential that the ESC reconsidered the requirement for oversight of lease agreements. Further explanation must be provided to detail why economic regulation is not deemed necessary.

***Should ESC oversight be extended in scope and timeframe given the leaseholder does not have a history of performance as PoMC has, and the life of the term of the lease extends to a period of 50 years with a further option of 20 years.***

On Christmas Eve 2014 the Port of Melbourne Corporation (PoMC) informed stevedore DP World that it proposed raising its rent from just under \$17/m<sup>2</sup> to \$120/m<sup>2</sup>. The proposal followed Filipino company ICTSI's May 2014 winning bid to develop the Port of Melbourne's new international container terminal and empty container park at Webb Dock. As part of the bid, ICTSI offered to pay rental of \$120/m<sup>2</sup>.

The Port of Melbourne Corporation's bid to extract similar rent from DP World set off alarm bells along the supply chain. Stevedores warned they would have to raise their shipping and landside fees to offset the impact, pushing their average cost per container from \$220 per TEU to \$300/TEU.

The dairy industry warned such a rental hike would cost the average dairy farmer more than \$1000, while grain growers faced paying an additional \$4/tonne in freight costs.

Stevedores DP World, Asciano and Qube Logistics formed an alliance with shipping lines Maersk Line, MSC, Hamburg Sud and China Shipping, plus industry associations, Shipping Australia, the Australian Industry Group, the Australian Peak Shippers Association and Australian Grain Link to launch a campaign calling for leasing reform and regulation in response to the proposed rent hike in the lead-up to privatisation.

The head of Australia Competition and Consumer Commission (ACCC) Rod Simms weighed into the issue of the DP World rent hike in March this year, arguing the government had the power to give the ACCC the power to regulate the port.

The operator of the PoM roll-on-roll-off and Auto Terminal, Mirrat and the PoMC has already entered into an undertaking overseen by the ACCC. However the ACCC has no oversight at other ports when it comes to rental negotiations between the port operators and stevedores.

It became evident to the VFF that PoM's rental negotiations with stevedores seemed to be subject to a process of ambit claims. Ultimately if the parties cannot agree, an independent valuer is brought in to assess fair rental.

The VFF has previously called on the Government and PoM to re-negotiate stevedore leases to give port users greater certainty on future pricing prior to privatisation. In particular, the VFF raised the concept of adopting a throughput rental mechanism, similar to that introduced at NSW's Port Botany in 2009 (See attachment 3), where DP World brokered a deal that offset its investments in improved port efficiencies against future rent increases.

In August this year the PoMC finally reached agreement with DP World on a new 50-year lease agreement (to 2065). The new lease requires DP World to meet key performance indicators and efficiency incentives (Attachment 4).

The lease also includes incremental rent increases over the 50-year tenure starting with inflation-linked increments in 2015 and 2016 to nominally \$45 by 2023, and agreed escalations to 2028. The first market rent review will take place in 2028 and subsequently every five years.

***Can the government explain how rents rising from the current levels of \$16-\$20 to \$45 by 2023 fits within CPI? On face value it appears the rents more than double in just 8 years.***

## **7. Incentivising Performance, Maintenance & Port capacity**

The new DP World lease agreement provides incentives for the stevedore to improve its performance (meeting Key Performance Indicators) in return for greater certainty on rental increases. Improvement thresholds can include truck turnaround, quay crane rates and density. Improved container throughput benefits the stevedore and port leaseholder.

This model is appealing not just in terms of fairness, but also in terms of encouraging investment in the port's capacity and efficiency. The VFF Grain Group members are all too aware of the neglect and



deterioration of the state's rail freight network, after it was leased out to the private in the late 1990s. The Bracks-Brumby Labor Government was eventually forced to buy back the lease after parts of the network were allowed to degenerate to the point where trains faced speed limit restrictions of 20km/h.

The VFF acknowledges that it is challenging for Government to make a highly accurate assessment of the capacity of the PoM and the likely timeframe for the capacity to be reached. However, the VFF see that this is a key area where some firm modelling is required to provide any future leaseholder, port users and Government surety around future capacity constraints and compensation arrangements that may be called upon.

The VFF is keen work with the Parliament and Government to ensure the sale of a 50-70 year lease agreement to a private entity delivers equity, access and above all competitive pricing for food and fibre exporters at the Port of Melbourne for the term of the lease.

***How will Government guarantee ongoing maintenance and re-investment in the PoM assets and infrastructure for the life of lease to ensure assets are not run down as in other asset sales, such as rail? For example, channel dredging.***

***How will government ensure the port continues to meet and adapt to changes in export conditions which may occur over the next 50-70 years? For example Larger vessel sizes, mechanised infrastructure, environmental concerns, etc.***

***How will Government guarantee ongoing infrastructure investment and maintenance of the up-country supply chain assets that feed the port for life of lease?***

## **8. Fund for the Future**

The sale of the lease of the port is a mechanism to bring forward future annual earnings to one point in time.

Media speculation values the dividend from the sale of the lease from \$5 billion to \$8 billion. It is estimated that the annual Port Licence Fee paid to the state government from the Port of Melbourne Corporation was approximately \$80 million in 2013/14.

The state government has based a number of project funding announcements on the basis that the sale proceeds will total \$5 billion.

There would appear to be merit in proceeds of sale exceeding \$5billion to be set aside in a Port Victoria Trust Fund. The Trust fund should be established to provide an ongoing mechanism for the government of the day to meet port user related infrastructure funding requirements including upcountry investments, port and port precinct investments, and allocations associated with the establishment of the new second port.

To that extent the Port Victoria Trust Fund could operate similarly to the recently announced Agriculture Infrastructure and Jobs Fund which "supports investment in agricultural infrastructure

and supply chains to boost productivity, increase exports and reduce costs so our farmer, businesses and industries can stay competitive.”

The establishment of this fund to run for the full term of the lease would allay port user concerns that future governments may not have ready access to available funds, thereby leading to investment delays resulting in adverse impact on the operational efficiency and international competitiveness for port users.

## Attachments

### Attachment 1- News article: Transport and Logistics news

#### **“Government (still) silent on NSW Ports’ compensation entitlement re Newcastle”**

March 11, 2015

*Greg Cameron*

The NSW government still refuses to disclose the amount of compensation payable to Port Botany lessee NSW Ports, for container movements at the Port of Newcastle more than the cap number imposed by the government in 2013.

“The Newcastle port lease does not constrain container shipments passing through the port ... the lease also does not prevent a container terminal being developed on the former steelworks site,” said Mark Speakman, Parliamentary Secretary to Treasury, last July. However, in August, Treasury told a Budget Estimates Committee that a container terminal at Newcastle port was an “uneconomic enterprise”.

While the government was negotiating with Anglo Ports for developing a container terminal at Newcastle port, it was secretly imposing a cap on container numbers and a fee for movements more than the cap number.

The government revealed the existence of its cap and compensation agreement with NSW Ports in October 2013. However, the government had been negotiating with Anglo Ports since 2009, pursuant to a tender called by Newcastle Port Corporation the previous year. This negotiation was terminated by the government in November 2013 and the container terminal site was included in the Newcastle port lease.

The cap and fee apply to all container movements at Newcastle port, including for a container terminal on private land.

A container terminal would be an ‘economic enterprise’ if used for exporting food produced in northern NSW to China. China Merchants owns 50 per cent of the Newcastle port lease and Westpac Bank the other half.

More than one-half of imported containers at Port Botany are exported empty and this proportion is expected to grow as imports increase. Empty containers would be railed from western Sydney into northern NSW where they could be filled with food products. The containers would be loaded at Newcastle port onto ships returning to China from Port Botany. This would be a low-cost option for exporting to China, the government fee on container movements more than the cap number included.

Developing an export-only container terminal at Newcastle port would be consistent with the government’s objective of preventing competition for Port Botany. Importers’ costs would be lower because they would not have to pay for exporting empty containers through Port Botany. NSW Ports would earn less by not handling exports of empty containers but would recover this loss by receiving compensation from the government.

A judicial inquiry into the secret agreements between the government and the ports lessees is justified. The agreements are anti-competitive, unjustified, may be unlawful and could be unenforceable. Mr Mike Baird, as Treasurer, commissioned a judicial inquiry to look into the sale of the electricity generators proposed by the previous Labor government. The electricity inquiry found nothing irregular, but secret agreements are irregular.

The ACCC has been briefed 'in confidence' by government officials but is yet to acknowledge the existence of the government's agreements with the ports lessees in relation to compensation payable to NSW Ports and the cap on numbers at Newcastle port.

Source:

<http://www.tandlnews.com.au/2015/03/11/article/government-still-silent-nsw-ports-compensation-entitlement-re-newcastle/>

## Attachment 2- News Article: ABC News online

### Greens demand details of secret deal to cap Newcastle containers

Wed 17 Dec 2014, 10:08am

The New South Wales Greens have accused the state government of trying to cover up a deal to cap the number of container movements through the Port of Newcastle.

Greens MP John Kaye said questions have been put to the Roads and Freight Minister Duncan Gay and the Treasurer Andrew Constance about the size of the cap and what compensation would be paid if the cap is exceeded.

Dr Kaye said both MPs have dodged the question, referring the matter back to each other.

"Duncan Gay and the Treasurer Andrew Constance are playing pass the parcel," he said.

"They're refusing to own up to the awful truth that they have put a cap on container movements through the Port of Newcastle and punitive compensation if that cap is exceeded."

He said it raises serious concerns about how Newcastle's port has been locked into a future reliant on coal exports.

"What they have done is in effect put a limit on the economic future of the Hunter and they're refusing to take responsibility for it.

"This was all about fattening up the sale of Port Botany.

"The people of the Hunter have been sacrificed in order to get a maximum return by giving Botany an effective monopoly over container movements.

"That might have helped the budget bottom line, but it's a disaster for the future of the Hunter.

"It looks like for 98 years, the port of Newcastle will be restricted to dangerous and dirty goods, the clean, exciting goods, the container goods will go through Sydney.

"Newcastle will be left with coal and explosives."

The Treasurer has denied there is any deal to prohibit development of a container terminal in Newcastle, but did not comment specifically on the issue of a cap.

A spokesman for Andrew Constance said the transaction arrangements for Port Botany and Kembla and the Port of Newcastle reflect the government's Freight and Ports Strategy, that Port Kembla should be the State's next container terminal once Port Botany reaches capacity.

"This strategy recognises that Port Botany has significant capacity for container growth; most containers travel within a relatively short distance of Port Botany; future demand for containers is expected to occur in the South West of Sydney and

thereby closer to Port Kembla than Newcastle; and the landside infrastructure costs to support a major container facility at Newcastle are higher than for Port Kembla," he said.

"The arrangements do not prohibit the development of a container terminal at the Port of Newcastle and enable the growth of container volumes through Newcastle servicing that region.

"The Government's transaction team engaged extensively with the Australian Competition and Consumer Commission regarding the competition and regulatory framework, including the container arrangements."

Source:

<http://www.abc.net.au/news/2014-12-17/greens-demand-details-of-secret-deal-to-cap-newcastle-containers/5972208>

## **Attachment 3 – News Release, Premier of New South Wales**

### **New DP World lease at Port Botany secures jobs**

8 July 2009

Premier Nathan Rees today announced that DP World has signed a new multi-million dollar lease for its operations at Port Botany which will secure jobs and provide a boost to the economy over the next 15 years.

Mr Rees said that DP World is one of the biggest marine terminal operators in the world with its Port Botany lease dating back to 1979 and in 2008-09 they handled almost 800,000 TEUs (containers).

“Today’s agreement will see DP World continuing to operate at Port Botany until 2024 which is a major vote of confidence in the NSW economy,” Mr Rees said.

“This is not only great news for the company’s 600 on-site workers but for the thousands of indirect jobs supported throughout the supply chain.

“This signing further confirms the NSW Government’s commitment to improving overall port efficiency.”

Mr Rees said the lease includes incentives to improve truck servicing and rail performance which will ease congestion at the port and reduce truck movements on Sydney roads.

“This is the first time a lessee at Port Botany has contractually undertaken to meet performance standards not only in relation to its ship loading functions, but also in relation to road and rail servicing operations.

“DP World’s preparedness to enter into such arrangements is a clear demonstration of its commitment to this shared goal,” Mr Rees said.

Ports Minister Joe Tripodi today welcomed the new lease which was signed today by Sydney Ports Corporation CEO Grant Gilfillan and Senior Vice President and Managing Director for DP World’s Australia region, Jack Williams.

“The new lease forms an integral part of the Sydney Ports reform agenda and I’m delighted to be able to take this step with one of our key stakeholders,” Mr Tripodi said.

“The new rental model for stevedore leases at Port Botany provides incentives for operators to improve their performance by way of lower rents.”

Sydney Ports CEO Grant Gilfillan said DP World’s new lease includes a commitment to capital expenditure over its fifteen year life.

“These reforms will assist the NSW Government to achieve its policy objectives of increased competition and trade growth, greater investment in port facilities and a target of 40% rail mode share of containers to and from Port Botany,” Mr Gilfillan said.

DP World Managing Director Jack Williams said the lease extension followed the signing of new, long term commitments for the company in Brisbane and Adelaide.

“DP World’s commitment to Port Botany ensures our customers will continue to have access to the most comprehensive ports network in the country.

“DP World offers a national stevedoring service across the five mainland capital city ports as well as access to DP World’s vast international port network. DP World regards Sydney as a key terminal in its expanding global portfolio.

“Importantly, DP World is delighted to renew its commitment to the NSW economy, where it provides key infrastructure and services for the state’s businesses, particularly exporters, and is a major employer,” Mr Williams said.

Mr Gilfillan said the new rental model underpins the significant reforms being implemented through the Port Botany Landside Improvement Strategy which aims to introduce greater efficiency and productivity in the logistics chain.

“The new rental model not only applies to DP World, but will also apply to the operator of the new T3 Terminal,” Mr Gilfillan said.

Source:

<http://www.records.nsw.gov.au/digitalarchives/repository/archive/content/b194cd4c-e387-4d12-a62c-985002ecbd00>



## Attachment 4 – News Article, The Age

### DP World wins rent battle with Port of Melbourne

August 3, 2015

DP World Australia negotiated better terms with the stevedores. Photo: Jessica Shapiro

The Port of Melbourne will forego tens of millions of dollars in annual revenue after abandoning a 750 per cent rent increase for DP World Australia and accepting price rises a tiny fraction of that amount.

The agreement clears uncertainty surrounding the \$6 billion privatisation of the port and enables bidders to put a more accurate value on the port, which handles more than one third of Australia's container trade.

The Port of Melbourne Corporation, which is owned by the Victorian Government, wanted to increase DP World's annual rent to as much as \$60 million annually from about \$8 million ahead of its privatisation, which will fund a large part of the state Labor's election promises.

Sources said DP World will now pay about \$20 a square metre under the new deal, which has been the source of a bitter dispute between the stevedoring industry and the port, and threatened to drive up the cost of sea-born trade.

DP World previously paid about \$16 to \$18 a square metre. The Port of Melbourne's proposed increase would have taken this up to \$120 a square metre – an increase of 750 per cent. News of the backdown was first reported online by The Australian Financial Review.

The new lease gives DP World a 50-year tenure to 2065, and requires it to meet key performance indicators and efficiency incentives. It includes incremental rent increases over the 50-year tenure starting with inflation-linked increments in 2015 and 2016 to nominally \$45 by 2023, and agreed escalations to 2028.

The first market rent review will take place in 2028 and subsequently every five years.

"With a longer period between rental reviews, the new lease takes uncertainty out of the container market," said DP World's chief executive, Paul Scurrah.

Nick Easy, chief executive of the Port of Melbourne Corporation, said the lease would ensure the port remained competitive with estimated rent costs at other Australian ports.

Rod Sims, chair of the Australian Competition and Consumer Commission, said the agreement between DP World and the port was an "extremely pleasing outcome."

Outcome 'better than regulation'

"Negotiated outcomes are always better than regulation but sometimes you need the threat of regulation to get a good outcome and sometimes also a bit of helpful public opinion," he said.

The ACCC plans to keep an eye on future rental agreements to ensure privatised entities don't raise rents. "It's bad for the economy and it puts people off privatisation," Mr Sims said. "We should be

privatising because the private sector is more efficient, not to try and do artificial things to raise a lot of money."

Mr Sims declined to comment on whether the new agreement would reduce in a lower price for the port when it is sold off but said that privatisations should not be about price.

"Wouldn't you rather have an efficient port giving us the best, cheapest possible service we can get?," he said. "Isn't that more important for the future of the Victorian economy than a once-off payment?"

The Port of Melbourne has total annual revenues of \$368.4 million, mostly contributed by wharfage charges for loading and unloading goods.

Asciano, the owner of stevedore Patrick Ports, also expected to be affected by the proposed rent hike when its rent is reviewed early next year. It now expects a similar outcome to DP World's new agreement given it operates at the same terminal.

The logistics industry remains concerned about the lack of regulatory oversight over the port, and a coalition of stevedores and shippers has urged the Victorian government to amend its draft legislation for the privatisation to protect it against future price increases.

"Even if short-term rental increase issues are resolved with the Port of Melbourne Corporation, the draft legislation falls short of effective regulation, creating uncertainty and putting at risk future investment and trade volumes through the port," said coalition spokesperson, Rod Nairn, Shipping Australia CEO.

The coalition also called for a parliamentary inquiry to "allow further time for the consideration, discussion and debate of issues with the draft legislation."

"We are also concerned that the current draft appears to try to remove ACCC scrutiny for any transaction," Mr Nairn said.

The coalition said it was prepared to encourage federal government intervention, if needed, to ensure an effective regulatory regime was put in place.

"The Victorian government can resolve these issues by including a mandatory requirement for the privatised owner to submit a voluntary access undertaking to the ACCC prior to the sale being completed."

Source:

<http://www.smh.com.au/business/dp-world-wins-rent-battle-with-port-of-melbourne-20150803-giqddz.html>