

CORRECTED VERSION

PORT OF MELBOURNE SELECT COMMITTEE

Inquiry into the proposed lease of the port of Melbourne

Melbourne — 30 September 2015

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Witnesses

Mr Steven Wojtkiw, Chief Economist, and

Mr Hugh Horsfall, Manager, Economics and Industry Policy, Victorian Employers Chamber of Commerce and Industry.

The CHAIR — I declare open the Legislative Council 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 Steve Wojtkiw and Hugh Horsfall from the Victorian Employers Chamber of Commerce and Industry, VECCI.

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 the 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 so protected. All evidence is being recorded, and you will be provided with a proof version of the transcript in the next couple of days for any corrections.

The committee has allocated 45 minutes for this session, so I would invite you to make a brief opening statement of no more than 5 minutes, if you wish, and the committee will then proceed to questions. Thank you also for your written submission.

Mr WOJTKIW — Thank you, Chair, and thank you, committee members. In terms of my opening remarks, I would like to thank the committee for the opportunity to attend today's hearing and discuss VECCI's submission to the inquiry into the proposed lease of the port of Melbourne.

VECCI is Victoria's largest employer organisation. We have over 5000 members, and provide representation and business services to more than 15 000 members, customers and clients across the state each year. Our membership and customers are diverse and represent the spectrum of Victorian industry, covering small, medium and large-sized businesses, including those located in regional Victoria. Many of these businesses are port users who are playing their own part to develop new products, services and markets in order to remain competitive. Their success now and into the future will depend in no small part on an efficient, reliable and competitive port of Melbourne. It is this economic context, committee, that is a key influence on our public position of support for the leasing of the port of Melbourne.

Victoria's export performance has been a key feature of the state's recent economic performance, with total exports growing at an average annual rate of 3.2 per cent over the past five years. With an expanding network of free trade agreements that Australia has either entered into or is currently negotiating, Victorian businesses will have further opportunities to access new markets and expand trade in existing markets.

An efficient and competitive port of Melbourne is key to securing export growth for Victoria over the longer term. Importantly, it is VECCI's view that the lease of the port of Melbourne provides a timely opportunity for Victoria to release capital that is currently tied up, making way for investment in important productivity-enhancing infrastructure across the state. Level crossing removals, Melbourne Metro rail, the West Gate distributor and the Murray Basin rail project are all good examples of state-shaping infrastructure projects that could benefit from the proceeds of the lease of the port of Melbourne. These projects will create jobs and provide a boost to the broader Victorian economy over the longer term and deliver benefits to a range of industries across the state. Given that there are headwinds facing the Victorian economy with structural adjustment pressures on industry and softness in our labour market continuing, we see it as crucial that the momentum of reform in respect of the sale of the port of Melbourne and progression of Victoria's infrastructure agenda continues apace.

As our submission states, a decision to act soon to lease the port of Melbourne will ensure that Victoria benefits from the federal government's asset recycling initiative, which could provide the state with up to \$1 billion in additional funding from the federal government for investment in new infrastructure. If I may now hand over to Hugh Horsfall to touch on some specifics of our submission.

Mr HORSFALL — Thanks, Steven, and thanks to the committee for the opportunity to present. The first issue I will comment on is the duration of the lease. In our view, the proposed 50-year lease term is appropriate. It provides the purchaser with a clear time frame to maintain and improve the port's operations and to raise efficiency and boost competitiveness. It also ensures that the government of the day can maintain control over the long-term ownership of the port and future alternative uses of the land. VECCI also supports the option of a lease extension of up to 20 years on the basis that it is entirely at the discretion of the state, that it delivers a clear

financial benefit to the state at the point that the extension is negotiated and that it is linked to port infrastructure investment.

The second issue I will comment on is the proposed compensation arrangements. VECCI has no prima facie objection to the lease arrangement, including a provision for compensation if a second port is developed. The main rationale for including a compensation provision is to maximise the proceeds of the lease as it reduces an element of risk that would otherwise be borne by the leaseholder. However, a compensation provision creates a contingent liability that needs to be managed by future government and it represents a trade-off between a benefit received today and a future liability. The question for this committee and for the government in negotiating the sale is whether this trade-off represents a good financial proposition for the state and a good outcome for the economy.

However, it is difficult to comment more specifically on the implications of the compensation provision without knowing key variables such as the size of compensation payments proposed and the container capacity that would be used to determine whether payments are triggered. If the size of payments and the likelihood of payments being made are low compared to the uplift received in the sale price, then the port growth regime will present a good value outcome. While I note the government's positive announcement earlier today that these figures will be released following the transaction, there are still a number of risks in negotiating these key variables that need to be protected against. The development of a new port and associated road and rail infrastructure will be very costly and will have very long lead times. VECCI is keen to avoid a situation where a future government, for any reason, postpones the development of a second port beyond when it is needed, resulting in businesses being disadvantaged by capacity constraints.

The last issue that I will comment on is the proposed regulatory regime. VECCI supports the role of the Essential Services Commission in its regulatory oversight of the port. The Essential Services Commission is already an important regulator of the port as well as Victoria's other essential services. We consider the proposed broadening of the regulatory regime to be appropriate, and we also support the proposed 15-year price cap, as it will provide a degree of certainty and protection for port users in the short to medium term. However, the committee should consider whether the regulatory powers of the ESC will be sufficient to protect port users over the full duration of the lease and to respond to all future market developments.

We have also posed the question as to whether port rents should be included in the regulatory regime. However, I note that today's announcement by the government also includes a mechanism for the ESC to review any misuse of market power in setting rents.

In closing I will just say that, on the basis of what we have seen, the duration of the lease, the proposed compensation arrangements and the proposed regulatory regime are appropriate. However, there are still risks that the government will need to guard against in proceeding with the sale to ensure that appropriate protections for port users are in place.

The CHAIR — Thank you, Mr Horsfall, and thank you, Mr Wojtkiw. I take you to the issue of compensation, and it is a point that you made, Mr Horsfall, in your comments and it is reflected in the submission, where you have highlighted the need for that compensation to be regarded as a contingent liability. One of the disincentives of a compensation regime is that, for a future government seeking to exercise the state's right to develop a second port, the need to pay that compensation will be a potentially significant disadvantage. How would you see your concept around a contingent liability working to avoid that disincentive? Do you envisage it actually being reflected on the state's balance sheet that, at some point in time, we will hopefully know the value of future compensation once those figures are released, which will not be until after the transaction is concluded? Is it VECCI's view that that should then be reflected on the state's balance sheet so there is less of a disincentive for a future government to move on a second port when it is required?

Mr HORSFALL — Whether it is reflected on the balance sheet would really be a question relating to the accounting rules, and if they require it to be on there, then it should be.

The CHAIR — I guess I am really asking: whether it is technically on the balance sheet or not, would you see it as desirable, with your concept of contingent liability, for the proceeds of that compensation — the estimated present value of that compensation — to be quarantined rather than spent today so that when it comes time for a future government to exercise its right to trigger a second port the issue of compensation is not a disincentive because the funds are already there?

Mr WOJTKIW — I think, to your point, the issue is that that liability will exist in one form or the other, and for that matter we need to have both regard for it — when I say ‘we’, the government of the day — and there needs to be an element of transparency around what that particular level is and the trigger mechanisms that might mean that it needs to come into play. At the end of the day it will be up to the government of the day to have regard for that liability, to manage around it and manage that risk, if one wants to consider it as a risk. That is not to say that all else is equal, and there may well be opportune occasions in the future where a government may find through its budgetary performance, the interplay of other government incentives at the federal level and the sale of other potential assets that there are sufficient revenues to ensure that that contingent liability can be effectively managed.

The CHAIR — Should the government of the day undertaking this lease make that provision for the future government that may need to pay it if those triggers are met, given that the government of the day is effectively bringing forward the value of the port as part of this asset recycling process? Is it appropriate that that provision be made by the government today?

Mr WOJTKIW — That provision has to be made, and the government of the day will be the one that has to make that, just as a government that might enter into borrowings and increase a level of government debt will need in its own period of office to manage that debt effectively. But for that matter, if the debt is of a nature that is longer term, that does mean successive governments will need to not only inherit that debt but manage it and hopefully manage it down.

Mr HORSFALL — I would probably add to that that we do not want to see is a set of compensation arrangements that impose compensation payments that are so large or come online so early that a future government would be disincentivised from developing a port when it is actually needed and, as a result, businesses being impacted by capacity constraints at the port.

Mr WOJTKIW — So too, if I could just add, Chair, for the same reasons there is a potential risk that would be created where a port of Melbourne leaseholder, anticipating the completion of a second port and the provision that exists under the compensation scheme, modifies their operational behaviour in order to trigger that particular level of compensation. They are two examples that we have indicated in our submission that we would want to guard against.

Mr MULINO — I will come back to the compensation clause, but I just wanted to ask a couple of high-level questions. I take it from your submission and also from your oral evidence that you are broadly comfortable with the concept of asset recycling, whereby something can be leased and on the balance sheet it can potentially be operated well by the private sector and that can free up capital for worthwhile other investments. Do you support that broad principle?

Mr WOJTKIW — Yes, we do. It is one we have supported for some time, and it is one which governments of many persuasions have tended to support in principle. Governments of Victoria in recent decades have subscribed to the view that the private sector can more efficiently own, operate and maintain many assets. We believe that the port of Melbourne is another good example of where the private sector can operate the port efficiently and in doing so free up capital which governments can use for any number of other purposes.

Mr MULINO — Just to drill down on one of the points you made, subject to there being the right regulatory environment, there should be the capacity for the private sector to bring in know-how, expertise and innovation and potentially increase the efficiency of the port’s operations.

Mr WOJTKIW — Absolutely. Ports operate in a very competitive marketplace, and the nature of trade is such these days that for a state like Victoria to remain competitive it needs to operate a port that really is operating at world’s best practice and that deploys the best of technologies that are efficient in terms of productivity levels in terms of keeping costs down to port users — yes.

Mr MULINO — Just a couple of quick questions on the compensation clause. One of the rationales for the compensation clause is that there is a widely held belief that the lowest incremental cost for growing capacity to handle containers is going to be to increase capacity at the port of Melbourne over the next decade or two or three and that we want the right incentives in place for the port of Melbourne to undertake that investment and have the confidence it will get a return on that. From what I understand you are comfortable in principle with

the clause that tries to provide that incentive such that it does not produce disincentives for an appropriate investment in a second port down the track?

Mr WOJTKIW — That is correct. It is vitally important that the port of Melbourne continues to operate efficiently, that there is the capacity to continue to grow it and grow its container capacity and container handling efficiencies. That should not be at the exclusion of a second port. We believe that they very much, over time, will complement each other and that certainly for the medium to longer term there is very much a future for the port of Melbourne, and one to which both the port manager or owner needs to be active in facilitating. And so too government, in terms of providing adjunct infrastructure — whether that be road and rail facilities in and around the port — must continue to be supportive of the overarching connectivity to the port, as has been the case with governments to date.

Mr MULINO — Just one last question. If the compensation clause were structured such that it led to revenue from a second port that was built before a certain threshold being transferred, then that in a sense would offset any potential liability, in the sense that it would be a transfer of revenue to compensate for a premature building of an asset, and that would offset any financial liability down the track in that it would be a shifting of revenue that the state would be earning from having built that second port.

Mr HORSFALL — I think rather than focus on that as an offset, I would probably characterise that as a change to the — it would impact on the incentives of the future government in deciding whether to bring that port on line. If that offset or minimised the compensation payments and meant that it was more economical to bring the port on line when it is needed, then you can view it that way.

Mr MULINO — The key thing is to get that threshold right.

Mr HORSFALL — The key thing is to get the threshold right, and the assumptions underpinning that threshold are rigorously tested — —

Mr MULINO — Yes.

Mr HORSFALL — because lots of things could go wrong if you do not get that right.

Mr WOJTKIW — If I could add to that, on your earlier point, the trade and freight pie is growing and forecast to grow quite significantly into future years, so there is no reason why both ports — either port — cannot continue to share and benefit in that growth respectively, generating not only efficient services but ultimately income and revenues to both port owners, operators, and ultimately to governments.

Mr MULINO — Thank you.

Mr BARBER — Who is the president of VECCI?

Mr WOJTKIW — Mark Birrell.

Mr BARBER — What does he do in his spare time when he is not helping you guys out?

Mr ONDARCHIE — With his family probably.

The CHAIR — Clarify 'spare time' Mr Barber.

Mr BARBER — He is still also the chair of the Port of Melbourne Corporation?

Mr WOJTKIW — That is correct.

Mr BARBER — Thanks. Just in terms of a couple of items in your submission here, you say:

It is difficult to comment more specifically on the implications of including a compensation provision without knowing:

the amount of compensation proposed;

the port of Melbourne container capacity that would be used to determine whether the compensation provision is triggered.

We have been hearing and we found out today for sure that we are not going to know that until this bill is passed and the transaction is done. Do you agree with that? We are not going to know that thing that you say here is your difficulty that stops you from commenting?

Mr WOJTKIW — That has not changed from our point of view. What has changed today, and which we are encouraged by, is the announcement by the government that it has reached an undertaking with the ACCC that there will be the public release of capacity levels and trigger points in relation to the port growth regime after the lease transaction is completed.

Mr BARBER — But you are not going to know beforehand, and therefore you are not going to be able to tell us whether or not this is a good deal because of the issue you have been raising about the compensation clause. Am I right about that?

Mr WOJTKIW — Insofar as our submission has flagged that particular issue as one which needs further clarification.

Mr BARBER — It seems to be the main thing that you have raised as a major problem. You do not seem to have a lot of problems with anything else much about this deal. But then you go on in some considerable detail talking about the risks of not having that compensation clause set for the right amount or at the right level.

Mr HORSFALL — But I would say that that does not mean that those are issues that cannot be addressed during the negotiation of the lease.

Mr BARBER — But we have to decide whether there will even be a bill, whether this even proceeds under this legislation. No comment on that? Fair enough.

Performance monitoring safeguards could also be put in place to ensure the leaseholder does not seek to restrict the growth of port throughput in order to trigger compensation, for example by limiting productivity or investment.

That is from your submission. What sort of performance monitoring safeguards could be put in place, given that at this point they will already have their deal on compensation?

Mr WOJTKIW — Well I think we have seen, both in the preceding narrative from government and also today's announcement, that there is a proposed level of regulatory oversight from the Essential Services Commission, and I should say a strengthened level of oversight, that will have regard for dimensions around price, efficiency, reliability and timeliness of the port and its adjunct services that the port leaseholder will be responsible for, and so too matters dealing with port rents have also been dealt with more recently. So when one puts together the oversight that will exist with the ESC and also with the ACCC, and notwithstanding the proposed 15-year price cap, we are reasonably confident that the appropriate level of safeguards will be in place to ensure that the port leaseholder and their conduct will be efficient and fair and competitive.

Mr BARBER — Just on the 15-year CPI price cap, how many VECCI members have both a monopoly and the ability to raise their prices automatically at CPI for 15 years?

Mr WOJTKIW — To that point I would suggest there is nothing illegal with monopoly power; it is only how that power is exercised — in other words, market conduct is seen to be anticompetitive. We believe that a longer than 15-year price cap — and it is a cap only — given the nature of the environment in which the port operates, which also would affect the port leaseholder, is not warranted, because of competitive pressures. Again I make an earlier point that the port will need to have regard for international prices and international pressures. Capital and trade is footloose. This means that the port owner-operator would not want to, one would think, price themselves out of the market. To do so would be very uneconomic.

Mr BARBER — Did you hear the ACCC testimony before?

Mr WOJTKIW — No.

Mr BARBER — Okay. Well, he told us a tale about the port of Newcastle which was sold for 1.5 billion, then they jacked up at least one of their fees by 40 per cent and a few years later flipped it and got 2.5 billion for it. That was in relation to coal. I am not quite sure how footloose coal is. But there is a further point you make here where you say:

As previously stated, we would be concerned if the port of Melbourne lease included a compensation clause that was so significant as to cause the government to delay the development of a second international container port in Victoria.

This would give rise to capacity constraints that could in turn lead to higher prices or lack of access, harming our exports, and thus, Victoria's broader economic performance.

How much potential harm are we talking about here? Are we talking about a little bit of harm? Are we talking about a few million dollars' worth of harm? Or could it be in the hundreds of millions if that arrangement was set in a kind of punitive way, which you must know would lead to a higher upfront price if the government did that?

Mr WOJTKIW — Our point here is that business across the state relies on the port as a significant part of their supply chain. It is not just business, it is consumers more widely, through the capacity to have reliable and quick access to competitively priced products. With trade volume expected to grow significantly over the forward estimates period and into the ensuing decades, there is a very real need to ensure that capacity can be moved and moved competitively. That is our principal point and one to which, ultimately, independent experts have posited that ultimately in the longer term the port of Melbourne will likely reach capacity constraints. It is our point that that capacity constraint does need to be met — met elsewhere, in that case, with a second container port — but also as part of that process continuing to ensure that the port of Melbourne operates efficiently and can of itself expand and remain competitive into the future to meet that future trade growth.

Mr BARBER — Could the form of the risk, the size of the risk, be to the tune of hundreds of millions of dollars of lost competitiveness or revenue if we get this wrong?

Mr HORSFALL — I suppose I would also note that the further information that has been released in the government submission to this inquiry gives us some comfort around the setting of the compensation payments, which are — —

Mr DRUM — Where does this comfort come from?

Mr HORSFALL — The statement that the payments are to be calibrated to meet some but not 100 per cent of trade revenue lost. And so the characterisation of the compensation payments being set with reference to the economic loss by the leaseholder and not relating to punitive damages.

Mr BARBER — Chair, I note that Mark Stone is out there saying that the grand final holiday could put hundreds of millions of dollars of costs onto his members, and he is going to spend the next 366 days campaigning against that. I am not really hearing about a lot of campaigning against this compensation clause, forcing government to get it right. Let me just ask one last simple question in terms of a point of clarification. At the bottom of the submission on page 4 it says that:

... the federal government's asset recycling initiative, which could provide the state with up to \$1 billion in additional funding from the federal government for investment in new infrastructure.

I do not think that anybody is suggesting that we would get a \$1 billion bonus for selling the port. The only other things I am aware of in Victoria that we can sell are the water boards. Is VECCI suggesting with this that we should move on to selling the water boards next in order to collect the whole of the \$1 billion?

Mr WOJTKIW — VECCI's submission does not go to the issue of whether or not we should sell water boards.

Mr BARBER — There is nothing else to sell. You are saying there is \$1 billion here for selling stuff. How would we collect that \$1 billion if not by selling the water boards? Because I do not think we are going to get \$1 billion on top of our sale price.

Mr MULINO — Fifteen per cent, isn't it?

Ms SHING — Point of order, I think the question has been asked and answered.

Mr WOJTKIW — The narrative in our submission on page 4 says 'up to \$1 billion'. We are not for once suggesting that would be the exact and precise figure to which Victoria would be entitled.

Mr HORSFALL — We are also making reference to the fact that the asset recycling initiative has an expiry date, which is one of the reasons for there being some urgency around our progressing the port lease.

Mr PURCELL — I acknowledge all the good work that VECCI does with its employers as an employer organisation. You have 5000 employer members. How do you actually go about getting input from them into making a submission like this?

Mr WOJTKIW — Thank you for your question. We have a range of mediums which we ordinarily will use to canvass member input and it includes input on this particular issue at hand, which has informed our submission. They include direct consultations, workshops, online surveys and other forums where we have sought and do seek to ascertain both industrywide and firm-specific impacts and views as it relates to any particular matter at hand, including that of informing our submission to this inquiry.

Mr PURCELL — Excellent. And just then to follow on from that: do the businesses themselves — or the employers — feel that there will be any impact from the privatisation of the port?

Mr WOJTKIW — More broadly or more widely?

Mr PURCELL — No, you can be specific or speak more broadly, whichever.

Mr WOJTKIW — Well, I think when we have engaged, as we have, with members around this issue, their foremost priority is to see the port of Melbourne continue to grow to continue to service them and to service them in a competitive way. It is not lost on many businesses that there is a significant infrastructure agenda, a pipeline that needs to continue in this state beyond the port. Businesses, again, involved in not only exports and imports but more widely, rely on an efficient road, rail, airport and port network to ensure that their businesses can be competitive.

Mr BARBER — He has not really answered the question.

Mr PURCELL — No, and I will leave it at that. The issue though of the infrastructure needs of the state I think is a different question. The one in particular in regard to the port is that it is the biggest container port in the country, yet you actually are quite strong in your position that it should be privatised. I think you said that there were a number of efficiencies to be made through the privatisation. The port itself must have been doing something fairly well to have become the biggest port in Australia as a government-run port. What items of efficiency do you think that they could achieve by being privatised?

Mr WOJTKIW — Certainly on the point about the port of Melbourne in its previous guise being an efficiently run enterprise, we certainly did support and have supported the port for many years. The opportunity that presents itself here is simply to lift that efficiency to another level, and that means having regard for again what does occur widely overseas with private sector leaseholders bringing with them some new ideas but also some new technologies around container handling, some work practice changes that can be beneficial to the way in which labour is engaged in moving containers — around quality, around service standards and reliability, a care factor that we know certainly is not lost on particularly perilous cargo and precious cargos, and the need to get to market on time and at low cost. So we believe the private sector can. As it has to operate more widely across the economy, its whole competitiveness and its future relies on being efficient and delivering excellent customer service. We see no reason why the operation and management of the port should be any different to that.

Mr PURCELL — Are you saying that publicly run business cannot do those things?

Mr WOJTKIW — We acknowledge that it has been the case and they can do it, but the private sector has shown itself continually to be efficient — perhaps more efficient than government. But also I refer to our earlier point that this will free up government moneys to be used elsewhere, whether that is in reducing business taxes or improving frontline services to the wider community.

Mr ONDARCHIE — Thank you, Steven and Hugh, for coming in today. Lucky we did not have this hearing this Friday, because it is a public holiday and we would not have been able to have it. How do VECCI feel about the public holiday?

Mr MULINO — Oh, please! That is not in terms of reference.

Ms SHING — Oh, how do you feel about irrelevant matters that do not come within the terms of reference?

Mr ONDARCHIE — I just thought given VECCI were in the room we might be able to talk about the Victorian economy and the effect of the public holiday on the Victorian economy.

The CHAIR — On the terms of reference.

Mr ONDARCHIE — Given the government are so nervous about that question, I will move on. Let us talk about the compensation. You referred to that in your document. You asked us consider maybe even taking the compensation off the table. We had the chair of the ACCC, Rod Sims, in today who said the compensation should come off the table, as did the president of the VFF, Peter Tuohey. You also said that we should get more detail around this whole compensation regime, because as you rightly said the contingent liability will be carried forward to future parliaments — to my children and my grandchildren as well. If we cannot get enough detail about what this compensation regime is going to be, is it your advice to us that we should take it off the table?

Mr HORSFALL — No.

Mr ONDARCHIE — No! That is not what you said here.

Mr HORSFALL — We have said in our submission that we do not currently have the detail to make that assessment, and we are urging the government in the dynamic negotiation process, which by virtue of being a negotiation needs to remain confidential, to ensure that the public interest is protected in the setting of those key variables.

Mr ONDARCHIE — How would you, as VECCI, know that, though? I think you are telling the Parliament to pass this legislation with that bit unknown. Is that in the interests of your membership?

Mr HORSFALL — The government of any day will enter into — —

Mr ONDARCHIE — I know what the government will do. I am asking what VECCI feels about that.

Mr WOJTKIW — We have indicated in our submission that the clarity needs to be had, and this committee, one would hope, is some way down that path of obtaining further clarity around the level of compensation and those trigger points. As my colleague has indicated, it is a very dynamic process and I think we have seen further light come to be shed on questions that previously were in existence amongst many stakeholders. From where we sit today the announcement around some further safeguards does go to the heart of showing that there are few issues that cannot ultimately be worked through in terms of resolving a satisfactory outcome around not just compensation but the overall regulatory oversight of the port.

Mr ONDARCHIE — I do agree this is a moving feast. Every day we ask a question and we get a new result from the government, but my point goes to: is your advice to the Parliament in the interests of your members that if the compensation issues do not have clarity around them — and no, we are not getting any further information, we are no clearer than we were two weeks ago on this — that that compensation should come off the table?

Mr HORSFALL — Again, the point that we make in our submission is not around the need for clarity, but it is around an assurance from the government that they are going to be seeking a value for money outcome for the state.

Mr ONDARCHIE — How will you look to get that assurance, Hugh?

Mr HORSFALL — To a certain extent some of the information that has been released in the government submission and in the additional information that has been released today have provided additional comfort.

Mr ONDARCHIE — It has not given you the assurance around the trigger points, and around the level of compensation either.

Mr HORSFALL — While those things have not released those figures or given an assurance, they give us greater comfort that the government is pursuing an outcome that is in the state's economic interests.

Mr ONDARCHIE — Yes, that is true but we have examples of the desalination plant and the myki ticketing system in this state that went down the same process. Are you saying to us that if the government says to you ‘Trust us’, you are okay with that?

Mr WOJTKIW — At the point in time of writing the submission we did not have the information that we have asked the committee to consider in its considerations and deliberations with stakeholders. That question that you have posed is a further ‘if’, and I think we would have to look at it and respond to it if that were to be the ultimate outcome of this committee where you could or you did find there was an impasse around those questions. I think we would come to that in due course, but is far too soon to actually make a decision or have a view today about levels of compensation and trigger points.

Mr BARBER — But you know you will not know because it is part of the negotiation. You are never going to know until after the deal is done.

Ms SHING — Is that a question, or are you coming back to your turn?

Mr ONDARCHIE — That is the issue before us right now.

Mr BARBER — Given that, should we accept that as a provision in the bill?

Mr ONDARCHIE — We are asking VECCI to advise us whether we should pursue this when we have a bit of critical information about the Victorian economy that we do not know yet and are unlikely to know until the legislation is passed. Is your advice today that we should go ahead anyway?

Mr WOJTKIW — I think you should seek to satisfy yourselves that the level of compensation is appropriate or proportionate to the risks.

Mr ONDARCHIE — But given that we cannot get this information.

Mr WOJTKIW — I do not believe that the committee hearing process has concluded as yet, and you still have some time, I would think, to seek expert opinion and advice.

Mr ONDARCHIE — Should we not be able to get that information?

Mr WOJTKIW — You should seek it. I cannot determine sitting here today whether or not you will receive it.

Mr ONDARCHIE — Steven, trust me, we are seeking it. We are asking the question all the time. We just cannot get the answer. Is it VECCI’s advice, should we not be able to get that information at the conclusion of this select committee’s hearings, that we should not proceed with the compensation clause of the bill?

Mr WOJTKIW — With respect, that is hypothetical at this juncture, and we would rather know whether that advice was ultimately obtainable before we posit our own particular opinion on this.

The CHAIR — Do you wish to move on to another matter, Mr Ondarchie?

Mr ONDARCHIE — No. Someone else can ask a question.

Ms SHING — Thank you, gentlemen, for your submission and also for answering the questions in relation to the committee’s further discussion around the issues to date, including the announcement from the Treasurer today that the issues of compensation, price caps and also land rents will be addressed to provide it, to quote the ACCC, with a degree of sensible transparency which is welcomed as part of improved oversight.

I would like to return to the issue that both Mr Barber and Mr Ondarchie have pursued with you and note the public release of capacity levels and trigger points in relation to the port growth regime after the lease transaction is completed would in fact be a biddable item. On that basis we will not actually know that until the negotiation is complete. Is it the case that in the course of commercial negotiations there may be agreement in principle as to the desired outcome and that the detail, the quantum and the timing of the items up for negotiation are not known until such time as a transaction is concluded?

Mr WOJTKIW — That may be the case.

Ms SHING — In relation to the pricing regime, you have indicated that you have a reasonable degree of confidence off the back of today's announcements. That, in conjunction with the CPI cap of 15 years, the building block approach and ESC oversight as well as a periodic review of rents where there are issues for concern around rent setting in regulating any subsequent rent agreement to include a third party is a step in the right direction. Does that provide greater certainty and confidence to your members over and above the stringent economic regulatory framework that already exists as part of the bill and the proposed transaction?

Mr WOJTKIW — They do.

Ms SHING — Finally, I would like to ask what your position is in relation to the referral of the question of the second container port, because you have members from all over Victoria, and what your position is in relation to that independent body taking the politics out of the issue to determine that particular question.

Mr WOJTKIW — Your latter remarks go to the heart of our view — and that is that politics do need to be disentangled from that particular question. We would think the issue of deciding and assessing the viability of the respective locations for a second container port should be an important role that Invest Victoria looks at based on the best-available analysis and evidence around cost benefits of the respective sites.

Ms SHING — 'Invest Victoria' or Infrastructure Victoria?

Mr WOJTKIW — I beg your pardon. I stand to be corrected: Infrastructure Victoria.

Ms SHING — All right. So you do think that is the appropriate body to be doing that particular work as part of its independent review?

Mr WOJTKIW — Certainly to lead that work and, again, certainly to ensure that that process of evaluation is informed by significant stakeholder consultations and expert advice and evidence.

Ms SHING — Great. Do you have anything further to add, Hugh?

Mr HORSFALL — No. Thank you.

Mr DRUM — Earlier today we heard from the VFF, which urged us to take this once-in-a-generation opportunity to get the operation of the port right so that we are able to realise a whole range of improvements to the operation of the port. Can you show me one element of your written submission which actually shows Victoria's port operation being improved?

The CHAIR — I am not sure what you mean by 'improved'.

Mr DRUM — The operation of the port. You are agreeing with this process, but as I look through every aspect of it, it is all about minimising damage and minimising the port turning to rubbish. You are minimising all these problems that may happen. Can you show me one element of your written submission that actually shows where this privatisation is going to improve the operation? How is it going to make it cheaper for consumers and more accessible to your members? Can you show me where it is in your written submission that things are going to improve due to your support of this privatisation?

Mr WOJTKIW — We know that there will be an improvement in the underlying budget position of the state by way of the — —

Mr DRUM — No. Again, the VFF has said, 'If you are doing all of this just to make money then you have got it all mixed up. You are upside down'. The idea is to maximise this once-in-a-lifetime opportunity to get the port operating at its absolute optimum and prepare for a new port somewhere in the state in the future. It could be 10 kilometres up the road, or it could be 100 kilometres away. Make sure that you set the state up for its operation as a port into the future, and once you have done all of that, if you make some money along the way, then good. You are seeming to accept that provided we make a truckload of money, you are happy for all these unknowns to proceed on the fact that you have now got some new information from the government today at the 11th hour.

Mr WOJTKIW — You will see from our submission, on the very front cover, as it relates to the duration of the lease — this goes to the heart of our submission supporting the proposed lease of the port of Melbourne —

we make it clear that this whole process needs to be around continuing to link to port infrastructure development to ensure that there is a clear financial benefit to the state. So our submission goes to — —

Mr DRUM — But a ‘benefit to the state’ could mean they get a truckload of money.

Mr WOJTKIW — No, that is a financial benefit. We are talking more widely, and that benefit will be about continuing economic efficiency of our ports, not port.

Mr DRUM — That is not written in here anywhere.

Mr WOJTKIW — You have asked a question, and I am answering it.

Mr DRUM — Okay.

The CHAIR — Have you finished your answer, Mr Wojtkiw?

Mr BARBER — How? Mr Drum’s question is, ‘How?’.

Mr WOJTKIW — Our submission has not gone to talk about future port operations by a private sector leaseholder.

Mr DRUM — Do you not think that you are an incredibly important stakeholder in the future operation of the port?

Mr WOJTKIW — We certainly believe we are.

Mr DRUM — Yet you do not think it is important that you comment on that.

Mr WOJTKIW — My earlier remarks did go to the more widespread examples of the private sector operating assets, and operating them efficiently, including touching on overseas ports and their management and their operation, not only from a stevedoring point of view but from a landholder’s point of view.

Mr DRUM — One of the issues you have flagged as a real concern is the fact that we do not know about the capacity, and therefore we are not quite sure how or when the compensation clause is going to be triggered. Can you give me a rough idea what you think capacity of the port is, within a million TEUs?

Mr WOJTKIW — We are certainly well aware of independent analysis that the port of Melbourne and even the Victorian government have cited that the maximum container capacity of the port of Melbourne is around 8 million TEUs, but we will leave that precise figure to the experts.

Mr DRUM — So just say that someone comes in tomorrow and buys this, and they stipulate that they will have a capacity of 8 million TEUs. Then over here we have another mob who have got a lifetime of experience in the shipping and port industry telling us that because the quayside metreage is limited at Melbourne port, irrespective of whether you have world’s best practices working behind the scenes, the absolute limitation due to quayside metreage brings your maximum down to 5.3 million TEUs, but you have already stipulated that you have a maximum capacity of 8 million. Now we have gone up to 6 million TEUs and we are still 2 million away from reaching capacity, so we are still 2 million containers away from getting over the compensation clause. Are you with me on this one? As we go to 7 million TEUs — by some miraculous way we will get to 7 million — and we are starting to approach capacity, who is going to pay for the development of a new port 10 years out from when we need it, because that is the approximate lead time?

Mr HORSFALL — I would say that this actually is a question that we do address directly in our submission regarding the setting of the container capacity trigger in the compensation clause. We are not saying that it should be 8 million TEUs or 5.3 million TEUs or any other figure.

Mr DRUM — So you are saying that the compensation should not be contingent upon capacity?

Mr MULINO — Mr Drum, let him answer.

Mr HORSFALL — What we are saying is that in the government assessing bids from bidders for the lease, they need to seek an outcome and seek a framework for that compensation arrangement and appropriate

thresholds that mean we do not find ourselves in a situation where we are running out of capacity at the port. That is what we refer to in terms of rigorously testing the assumptions underpinning those figures.

Mr DRUM — But you do understand that there is a long lead time — about 10 years — to get a port up and operational before it actually needs to come online.

Mr HORSFALL — Absolutely, and we have referred to those lead times.

Mr DRUM — So if we start talking about 10 years prior to reaching capacity, which by our very most urgent analysis we are 9 years away from right now — others suggest we are 30 years away, but because we do not know we are all just supposing — 10 years out from whatever mark, whatever time, who is going to pay for the development of a port when the only revenue that they are ever going to be able to get is the overflow?

Mr HORSFALL — Again, one of the things we do know about the compensation regime is that the trigger point is going to be set somewhere below the full natural capacity, so we will have an estimate of the maximum — —

Mr DRUM — How far below?

Mr HORSFALL — We do not know, but we are asking to ensure that there is an appropriate buffer or margin for error in there that ensures that a future government is not disincentivised from building a new port when it is needed.

Mr DRUM — What is your understanding about the earning capacity of whoever it is that funds the second port?

Mr HORSFALL — It is not our place to speculate on the financial arrangements.

Mr DRUM — So the god fairy is going to come down and build it — —

The CHAIR — Mr Drum, we will need to move on.

Mr DRUM — The god fairy is going to come down and build it for \$10 billion, making sure that until the port of Melbourne gets its fill they cannot receive any revenue. Is that how you understand the compensation clause as it currently sits?

Mr HORSFALL — No, that is not how we currently understand it.

Mr DRUM — So how are they going to get any revenue? If the port of Melbourne has not reached capacity, how are you going to build a second port and not have to pay them compensation?

Mr HORSFALL — Again, we do not know the proportion of lost revenue that will be set as the figure for the compensation payments.

The CHAIR — Mr Drum, we will need to move on to Ms Tierney.

Ms TIERNEY — Chair, the issues I was going to raise have already been covered off.

The CHAIR — Gentlemen, thank you very much for your evidence this afternoon. Mr Wojtkiw and Mr Horsfall, we appreciate your attendance and evidence. We also appreciate, obviously, the written submission VECCI has submitted to the committee. Obviously, as we have seen today, there is movement around this framework, so we may have to follow up matters that we wish to raise with you. We appreciate your evidence this afternoon.

Witnesses withdrew.

