

# CORRECTED VERSION

## PORT OF MELBOURNE SELECT COMMITTEE

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

Melbourne — 14 October 2015

#### Members

Mr Gordon Rich-Phillips — Chair

Mr Daniel Mulino — Deputy Chair

Mr Greg Barber

Mr Damian Drum

Mr Craig Ondarchie

Mr James Purcell

Ms Harriet Shing

Ms Gayle Tierney

#### Staff

Secretary: Mr Keir Delaney

Research officer: Mr Anthony Walsh

#### Witnesses

Mr Paul Scurrah, Managing Director and Chief Executive Officer,

Mr Jason Varsamidis, Chief Financial Officer, and

Mr Ian Ross, General Manager, Projects and Risk, DP World Australia.

**The CHAIR** — We recommence with representatives from DP World. I welcome Mr Paul Scurrah, Managing Director and Chief Executive Officer; Mr Jason Varsamidis, chief financial officer; and Mr Ian Ross, general manager, projects and risk.

The committee does not require witnesses to be sworn, but questions must be answered fully, accurately and truthfully. Witnesses found to be giving false or misleading evidence may be in contempt of Parliament and subject to penalty. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of Legislative Council standing orders. Therefore the information you provide in the hearing is protected by parliamentary privilege. However, any comments made outside the hearing may not be so protected. All evidence is being recorded by Hansard, 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 until 1.15 p.m. for this session, so I invite you to make a brief opening statement if you wish. The committee will then proceed to questions. We thank you for your written submission, which the committee takes as read.

**Mr SCURRAH** — I will take up the invitation to make an opening statement on behalf of DP World Australia and about DP World Australia, who we all represent, the three of us. We have made a written submission to the inquiry, and we are grateful for the opportunity to respond to any questions or clarification coming from that submission to this committee.

DP World, just a little bit about us by way of background, is the leading container terminal stevedore in Australia. We have a dedicated and professional team of over 2000 people who operate our marine terminals and ports in Melbourne, Sydney, Brisbane and Fremantle. We see ourselves, and I think others would agree, as a critical link in the cargo logistics chain with a very unique set of assets, machinery skills and experience. Within Victoria and particularly the port of Melbourne we represent around or just under 60 per cent of the cargo traffic at the port, and we directly employ more than 600 staff. That represents around \$200 million per annum in wages.

DP World Australia has a very long and successful history of port operations in Australia and particularly Melbourne via the now amalgamated P&O, or Peninsular and Oriental Steam Navigation Company. That company operated in Australia from 1852, and it provided shipping and logistics services, including ferries, shipping and port stevedoring. In 2006 the international marine terminal operator DP World Limited acquired P&O, becoming the fourth-largest port operator globally, with 65 terminals across six continents. The acquisition included the P&O container terminals in Australia, and today DP World Australia is, through a subsequent sell-down, privately owned through a diverse and global shareholder partnership between Corsair Infrastructure Management and Public Sector Pension Investment Board out of Canada, and DP World Limited as a 25 per cent cornerstone shareholder.

Particularly relating to Melbourne, we are committed to our Melbourne operations as a long-term partner in continuing to offer the customers that rely so heavily on us a very high level of service. In recognising the value local communities place on an efficient supply chain to their daily lives and also to their household budgets, DP World continues to invest heavily in terminal infrastructure facilities and invest in our people for both the short and the long term. This is both strategic business practice and it is also an expectation of the shareholders and stakeholders who have such an interest in our business.

DP World Australia has a track record of investment in internal infrastructure and technology in order to ensure that the port capacity is effectively matched to the projected container volumes as we look forward. As an example of that, we recently launched a \$17 million west Swanson terminal expansion project in the port, which will increase the terminal capacity by 100 000 TEUs. Additionally, as a sign of the approach we take to investment in technology, we have recently completed automation at our Brisbane terminal — and it is not something that we will or can rule out for Melbourne in the future. The Brisbane facility is now one of the most technically advanced container terminals in the world, and because of our thought leadership, as I said, this will transform itself into thinking that will ultimately benefit the port of Melbourne.

Turning to our written submission, we would like to highlight that DP World Australia supports the privatisation of the port of Melbourne. This is provided, though, that appropriate regulation ensures that any efficiency gains are not overwhelmed by higher costs and discrimination. As a company, DP World Australia

accepts that privatisation of the port should deliver important benefits to port users and Victorian taxpayers, but we do recognise it gives rise to substantial risk or risks unless it is supported by an appropriate regulatory framework. This framework needs to address the key risks of monopoly pricing, vertical integration and the risk of discrimination.

In our written submission we did express our view that changes are required to the port of Melbourne lease transaction bill. We put these to the committee wholly within a policy context and certainly not a political context. Hopefully you have all had a chance to read our submission, where these concerns are clearly enunciated. However, by way of summary the four key areas that we were concerned with included: one, the prevention of vertical integration by the new port operator; two, to expand the tariff provisions to reduce the reliance on arbitrary ministerial discretion and future orders in council; three, removing the ability to capitalise port licence fees; and lastly, removing the provision for potential compensation of the private lessee in the event of the development of a second container port within the lease period.

On behalf of DP World Australia I would like to thank the Chair and the sitting committee for listening to our opening submission. I am joined here by two of my team: Jason Varsamidis, who is the group chief financial officer of DP World Australia and a long-term employee, dating way back to the P&O days; and Ian Ross, who is our general manager of projects and risk and who also ran the Port Botany terminal for us for a period of time.

**The CHAIR** — Thank you, Mr Scurrah. The committee appreciates your written submission in particular and your opening statement. DP World has raised in the written submission and you repeated in your opening statement a number of concerns around the proposed regulatory framework. I ask you at the outset: are you familiar with the changes that have been announced by the government since you made your submission — since the bill came into the Parliament — and do you feel that those changes address any of DP World's concerns?

**Mr SCURRAH** — To answer the first part of your question, we are aware of the announced changes. The position of DP World Australia is that they go part way to addressing some of those concerns, but we still think there is more to be done. We strongly take the position that there have to be more prescriptive and more precise mechanisms in place regarding some of the fears that we have as a stevedore, particularly around some of the Essential Services Commission-type roles that are outlined in that announcement. There are some pretty prescriptive ways of approaching fees that relate to 85 to 86 per cent of the fees going forward, but there is still a lot more work to be done on what might actually happen with the 14 per cent, 15 per cent. In fact our fear is that with a lack of doing that and with such a tightening up of the part that is covered there is a temptation for any new owner to use that to recover in areas that are ungoverned.

**The CHAIR** — I guess it will not come as any surprise to you that the committee has taken extensive evidence where your company's name has been raised in respect of the negotiations of rents — the proposal that was, we understand, put by the Port of Melbourne Corporation to renegotiate your lease. A very significant increase was foreshadowed; the committee indicated in the order of 700 per cent — that order of magnitude — and subsequently a more reasonable position was reached. Earlier evidence from the Department of Treasury and Finance indicated, to quote Treasury and Finance, that they were 'in the room' in the negotiations representing the shareholder, the state of Victoria, and that led to the outcome ultimately achieved. Do you have confidence that you would achieve a similar outcome in a post-lease environment, given the framework that has been set down in legislation for economic regulation and for the negotiation of lease agreements?

**Mr SCURRAH** — Is your question, if I can paraphrase a little bit, asking our level of confidence with a new owner post transaction, to get the same sort of — —

**The CHAIR** — In the post-lease environment, yes, without Treasury in the room, essentially.

**Mr SCURRAH** — Thanks for the question. There are two elements I would like to address there. First of all, the comments that I have made about the process of negotiation have been very public and available to anyone to see, and our position has not changed on our views on why we objected so strongly to those sorts of increases and ended up with what we think is a fair and reasonable outcome. The thinking on the other side of the table as to who influenced that is a question you will have to ask of them, but what I can say is that at all times it was made very clear to us that we were negotiating with the Port of Melbourne Corporation. We saw

Treasury's presence as nothing more than a heavily interested shareholder. I run a company that has shareholders who like to be interested in things that they like to attend, so I can absolutely empathise with the corporation. So for us, they were very clear.

For interest and disclosure, I had meetings with the Treasurer, and on those occasions it was made very clear that that was not the forum to negotiate. But our view was that there was a broader consideration needed about the flow-on impacts for many years, should that sort of price rise go through, and that would not be something that the new owners bear; it would be something that the government of the day has to bear. That is something that we were trying to espouse. That is just a little bit of background and views on the process.

On to the second part of your question about our levels of confidence, all of that would be speculation because we just do not know who the new owners might be. The only thing that we can reach back to is the negotiations we have had with other privatised ports in this country that have recently privatised, so you are talking about Brisbane, you are talking Port Botany. We have had a very positive experience with both those new owners, and we have found them to be like-minded in the sense that they are very commercial. They understand that they have a public obligation to help keep pace with demand, and there has been nothing in those discussions that would give me any fear that an unrealistic and ultimately economically damaging rent increase is likely to occur in the future with those guys. I do not have a crystal ball — that circumstance may change at some point in the future — but our experience to date has been quite a positive one.

**The CHAIR** — Given that comment, what is your understanding of the rationale for proposing a 700 per cent rental increase by the Port of Melbourne Corporation?

**Mr SCURRAH** — I will make some comments on that, and I invite my colleagues to add to that if I do not cover it off. What is my understanding of the rationale? The stated position of the counterparty in this negotiation all along is that that is where the market has moved to, and there were less ideal provisions in our current lease around how to handle disputes in that circumstance. It really purely came down to an opinion on where the market was. We strongly objected to that, of course.

**The CHAIR** — Based on the lease that had been struck with — —

**Mr SCURRAH** — Absolutely, and if I might, Chair, and then I am sure my colleagues have got something to add on that point, it is one of our concerns moving forward around potential market rent review protections. This might come over what is the integration to another port — —

**Mr VARSAMIDIS** — Lateral.

**Mr SCURRAH** — Lateral, thank you. So it might go into the lateral integration risk. Where a counterparty has involved a number of assets and it is only those assets under their control that are actually used to justify or verify an increase, that holds significant risk from my perspective — that the market rent reviews need to be true market rent reviews where they take into account an open market, not what is considered to be a closed market. Where the asset owner was using precedents of stuff that was inside their asset base, we felt that that lent us to a fair bit of risk. We would be looking for some sort of protection in the future around that circumstance happening again.

**The CHAIR** — Would you see that protection extending as far as actual regulation of rents?

**Mr SCURRAH** — Jason is probably a better regulation person than me. I am the sort of person, and our company is the sort of company, that would say we should avoid regulation unless it is completely necessary, and I think philosophically that is where I sit right now. But there are circumstances where you cannot avoid — —

**The CHAIR** — Was that your view when you had 700 per cent on the table in front of you?

**Mr SCURRAH** — Well, again it was very publicly stated that we engaged very heavily with the ACCC, because the decision about whether there needs to be regulation or not is only one you can make when you know what the alternative is that you are facing. The alternative for us of 767 per cent, to be precise, was not palatable, and regulation looked very palatable at that point in time. So philosophically I make the point that I am someone who would rather avoid it, but it is certainly something that is necessary where circumstances get out of whack. Did you want to add to that, Jason?

**Mr VARSAMIDIS** — The port had a unilateral right to issue a rent notice under the lease specifying what that rent was and making the determination themselves. We had a dispute resolution mechanism, which was the means by which if we did not agree to that rent, we could have an expert opine on what that rent should be.

What occurred was essentially following that process. As a business we had a counterpart that obviously was a government corporation. We felt that there was value obviously in a broader engagement and ensuring there was visibility. We do not obviously want to just roll over and accept increases of that amount. The basis of that increase, to our knowledge, was a market-determined rent in the opinion of the port based on one observable transaction, and in our opinion — and I am not an economist and nor am I a land valuer, so I cannot opine on whether that is appropriate just to use one data point — but to me it does not seem appropriate just to reference what rent should be paid by all parties based on what someone was prepared to pay in a competitive bid process.

We went through the dispute resolution mechanisms in the lease, but subsequently we were in a position to negotiate an outcome. If both parties reached an agreement, obviously we are of the view that on balance it represented a fair position and negated the risk for both sides of what was the possible opinion or the determination that could have come about through the independent valuer's assessment. The other thing for us is the certainty that is provided through a negotiated outcome. The independent valuer quite plausibly could have taken 6 to 12 months to provide their determination, and to us that uncertainty is not palatable because we are then left in a situation where we are having to pay a significant amount of back rent. That was one element of what occurred.

Regardless of who that counterpart would have been in those negotiations — and, as Paul says, obviously without the benefit of a crystal ball we cannot really say if it would have been any different had that counterpart been government or a private sector operator — it is important for us that the lease provides those mechanisms to protect us. We as a company are left with whatever my predecessors negotiated in those leases. I am personally of the view that that is a better mechanism than outright regulation. In 20 years time the lease that I was left with to deal and negotiate with, along with Paul and Ian, a future CFO will probably be saying, hopefully, that those mechanisms worked — but they may not. It is a commercial outcome, and I think it is best left like that, to be honest.

**Mr VARSAMIDIS** — Can I just add one point that you raised about the lateral integration and how that affects rents? When we have a basket of rent comparables that are used to determine our rent, that would be the only linkage with lateral integration that would raise a concern for us. I have no issue with common equity ownership across multiple ports, but when there is an ability, technically, to game a process because you control multiple ports, and then they cross-reference each other's rent, there is an air of exposure. I would like personally to see some controls over that to ensure that then the terminal operators are not left in a position where you subsequently just have this cascading jacking up of rents across all of the ports.

**Mr MULINO** — Thanks for your written submission and for coming in to give evidence. I just want to start with the rents and then finish off on a couple of broader principles. Is it fair to say that the process that you went through recently is essentially the same in terms of the regulatory overlay — the way that the dispute was resolved? Is it the same process as would occur at other ports? Specifically what I am asking is: rents are not regulated anywhere at the moment, are they?

**Mr SCURRAH** — No.

**Mr VARSAMIDIS** — No, they are not. Each lease is slightly different, but the intent of the wording, the clauses that are in the lease, are broadly the same, and that is to have some circuit-breaker. The key difference here is the data point. In the absence of there having been what I see as a price that is not sustainable offered by a new entrant into the market, there would have been no data point, hence no ability for the port to plausibly put forward a rent increase of that size. It could happen at other terminals, but I just do not see an entrant coming into the market and paying seven, eightfold what everyone else pays in that market, when we are not paying below what is a fair rent today.

**Mr MULINO** — Notwithstanding the fact that that data point was controversial, the end result was palatable?

**Mr SCURRAH** — Yes. I will come back to that. Just to add something to what Jason said as well, I think it is important to remember that market rent reviews are not new to the Melbourne lease. We have got two separate leases, and they have got sort of staggered rental reviews. We have been subject to market rent reviews for a long, long time. What worried us about this process, and these are points we are making going forward about how you manage market reviews and how prescriptive you need to be, was that even inside that market rent review regime, this risk of a massive escalation existed and almost manifested. It is important that even in that regime there were loopholes, and that is what we are trying to close and get rid of that risk happening again.

Coming back to your question, Deputy Chair, the outcome is a fair and reasonable outcome which we would have liked to have taken a far less dramatic journey to. We were never convinced; we were very worried about what it might do to our business viability and what it might do to the supply chain. We took a very strong representative view, being the first stevedore to go down this path, and if we had agreed to anything that was over market we would have been validating a new market to an extent. That responsibility sat on our shoulders very strongly. So yes, we came out with what I think is a fair outcome. The outcome — we are happy with it; we are not thrilled with it, but that is just the way it is. But it probably looked better because of where it was potentially going to go in the process. Where we ended up, as I said, we are happy, or satisfied, but we were really beaten up throughout the journey. We would rather have a mechanism that saves anyone in the future from having to go through that sort of process.

**Mr MULINO** — You have indicated that as a general proposition you would rather things not be regulated, but obviously in some situations they have to be, especially where there is market power. One of the elements of the agreement the government has reached following discussions with the ACCC to strengthen the regulatory regime is for the ESC to undertake periodic reviews of market power in rents. Do you support that broad approach as being a sensible one, so as to be able to justify step-in before we do something too heavy-handed?

**Mr SCURRAH** — I might throw to Ian in a second as well. Broadly, yes. But the point is that the devil is in the detail. Our issue with a number of the things in the current bill is that there is, without using the exact words, a best intentions-type scenario for the future to be dealt with then. It is almost like sweeping it under the carpet. As Jason said, we want to know that the future custodians of our company and the port actually have an obligation to consider the broader economy. So broadly yes, but we would like to see some deeper provisions. Do you want to add something, Ian?

**Mr ROSS** — Only to say I think the concept of a safety net and having an additional review process in the event that the independent valuer concludes a similar outrageous number, then having a method to circumvent that is appropriate. Two years ago we would never have contemplated a 767 per cent increase as being plausible, and it has been. For that reason alone we think having an additional safety net and having some regulatory review and powers would be appropriate.

**Mr MULINO** — Lastly on this point, before a couple of questions on vertical integration, one of the issues that has been raised in a number of contexts is the relativity. Obviously to some degree ports across Australia compete, to some degree. Would you agree that with the new proposed arrangements, with the ESC having a good look at rents and reviewing periodically for market power, that is going to be a stronger regime in relation to that aspect of port revenue than exists at other major ports?

**Mr SCURRAH** — I would agree to an extent, yes. However, when the other two ports were privatised, nobody saw this scenario playing out. I think there is a risk that none of us picked up that we may have to deal with in the future. One of the best things we need to do is learn from our lessons. In all of that I still think that risk needs to be dealt with up-front — the risk of a potential rent spike in the future. But having said that, I would agree. I think there have been some concessions that have moved in the right way that have gone some way to allaying our fears.

**Mr VARSAMIDIS** — The only thing I would add is that — and again, I am not an expert in this — I do not understand how this would work in practice when contractually the parties may already be under long-term leases and be governed by the terms of those leases. How is the ESC oversight going to play if a lease is already on foot? By way of example, our current lease does not expire for another 18 years. That would be something that I would really want to understand the details and the mechanisms as to how this would work. If it is only applicable to new leases, then obviously it is significantly weakened.

**Mr MULINO** — Just on vertical integration, do you support the fact that there is a restriction on stevedores bidding for the port of Melbourne lease, firstly, and secondly, do you support the ACCC retaining its existing regulatory powers in relation to vertical integration post lease?

**Mr SCURRAH** — I have not thought too deeply about the second part of that question. On the first part, circumstances at the moment seem a little one-way, so we would support it. But the restriction on the port operator becoming a stevedore is not in place, and that is our main concern.

**Mr MULINO** — In relation to the current ACCC powers, you would support those being retained and applying to the port?

**Mr ROSS** — In terms of what has been announced recently? Is that the context for the question?

**Mr MULINO** — No, more generally. I think it is something which, for example, is spelled out in the government submission but I think also in public pronouncements — that essentially what is being proposed is that when it comes to vertical integration, and potential proposed manoeuvres such as that, they would be regulated by the ACCC, as they currently are.

**Mr SCURRAH** — Philosophically we do not have an objection to the ACCC having that sort of a regulatory oversight if it creates a level playing field.

**Mr BARBER** — How many rent reviews are you going to face over the next 20 years or so?

**Mr VARSAMIDIS** — Nationally?

**Mr BARBER** — No, in the port of Melbourne.

**Mr VARSAMIDIS** — In the port of Melbourne, under the existing lease we have two leases: one is a biannual review and one is a triennial review, so on average one every 18 months under those two leases.

**Mr BARBER** — This bloke who has just paid seven or eight times as much per square metre in rent to operate Webb Dock, presumably now they are going to have to squeeze a lot more profitability or revenue out of their square metreage than you guys think you can.

**Mr VARSAMIDIS** — Or offset that by lower operating costs in other areas. That is the basis of my understanding — that they would have an automated terminal that would enable them to have a lower per unit operating cost. That is their commercial assessment. I am not of the view that it is necessarily a valid assumption, but it is a competitive bid process and they have determined that that rent is sustainable from their perspective. As long as it is not forced to be applied to all other operators in a market and they are left to deal with the situation that they believed is appropriate and they put themselves in, I think that is the right thing to do. That is a business bidding in a way that it feels is appropriate and what it can earn a return on. Their return metrics obviously are quite different from what I believe are appropriate return metrics.

**Mr BARBER** — Did DP World have a look at bidding for that development?

**Mr VARSAMIDIS** — I am not 100 per cent across the initial stage of what it was termed, but for want of a better term, let us just call it an expression of interest. We lodged one. This was in advance of a full-scale request for a proposal from us. We did not progress past that initial EOI stage or whatever it was termed.

**Mr BARBER** — As the years go by and if he makes a go of it with his amazing new automated system, is that not going to form part of the market review? They will say, 'Well, you guys have got to improve your technology so that you can compete against this competitor next door'. You will be actually competing against him as well, will you not?

**Mr SCURRAH** — I am not comfortable making commentary on the financial viability of a competitor. We are not privy to their records, and we are not privy to their plans or strategies. We can make some assumptions, which we have, around what it would take for us to be a strong competitor in that market, but as I said before, I do not have a crystal ball to look into the future as to how they are going to perform. We would assume that they are run by very intelligent businessmen who have done their numbers and done their homework, so we are moving forward as if they will be a strong and heavy competitor for a long time and we will deal with those

circumstances as they come up. As I said, we are satisfied with the outcome that we have got from a rental point of view. We believe we need that advantage for other reasons, as Jason points out, but that is our own view of our own company, not our view of them.

**Mr BARBER** — Part of the arrangement here, as you know, is compensation payments against a competing port, and that is capped at a number for what the bidder in fact thinks is the capacity of the port, because I gather it will be a biddable number. The evidence from VU was about the containers that can cross the quay line as being the sort of rate-limiting factor. Do you believe it is the rate-limiting factor or are there other factors at the moment, or will those things over time ultimately diminish and then quay line will be the rate-limiting factor?

**Mr VARSAMIDIS** — At any point in time there are three limitations that you have got to assess: the quay line, the yard capability and the equipped capability. In any terminal in Australia today it is the equipped capability that is the limiting factor. No stevedore is capable of meeting the maximum capacity because by definition it would mean we have overinvested and therefore that cost is being borne by the supply chain. What we know is that the equipment that exists today is capable of delivering circa 2000–2500 TEUs per metre of quay line, provided you have what we would call a traditional terminal layout. We generally have that in most of our facilities, and we are of the view that at the end of the day technology with respect to the yard capability will come about in order to maximise the quay line capability. That is a trend that we have observed for many, many years — decades. The equipment that exists today can deliver in excess of 2000 TEUs per metre of quay line in Melbourne, which would put our capacity, with today's technology, at about 2 million TEU.

**Mr BARBER** — So the bloke down at Webb Dock — I know you do not want to comment on him, but if he has paid more than that per square metre, his rent now is his big issue, then they are going to need to improve the yard capability over what we are seeing at the other stevedores. Would that be a fair assumption?

**Mr VARSAMIDIS** — I do not draw that same conclusion. Rent represents one of many operating costs. It is not the largest operating cost for our business. They have obviously formed a view that with their total operating costs they are going to have a potentially large portion of rent but lower portions elsewhere. It does not mean that they necessarily have to be more efficient per metre of quay line.

**Mr SCURRAH** — The only thing we can say is that all we know is that if we were paying those rental levels, we would go broke very quickly. That goes to what Jason is saying about the different operating model they may or may not have is something that they have obviously done their sums on. Like us, they are an experienced global and international operator. They obviously know what they are doing. We have not looked at their model enough to know whether or not it is the constraints of the quay line or the draught in and out of the bay or whether it is their equipment or the technology. We have not looked that far. We just know they are coming, and we know we are going to protect our business.

**Mr BARBER** — Okay, I take the point that you have never had a port operator try it on the way this one did in terms of a massive increase, and that is obviously a puzzling way to go about doing business, but is it not the case that the rent for this other Webb Dock operator is going to continue to form part of the equation as you have your regular rent reviews? They will say, 'If he can do it, why can't you guys do it?'

**Mr SCURRAH** — It goes to the point we were making before about what the inputs are into that market rent review. If our issue is about what happens inside that asset base without taking any other external but like-for-like asset assessments into account, then that is a bigger risk than it needs to be. Take away any observation that I will not be prepared to make on their viability, their future, their longevity or anything like that — there are plenty of others have commented on that so I cannot add to that — but what I can say is that if you overinflate the cost base of our industry, the port and the state will absolutely lose out.

The reason we took such a strong stance is because the impact of those sorts of cost increases or those sorts of rentals have to land somewhere, and in our case they will land in export and import land at the end user, and the economy suffers. Philosophically I am prepared to make a comment on that in terms of how that relates to the long-term viability of an operator and how that might impact our rental reviews going forward. It may be an input. If our feedback is taken on board, it would be one input amongst many others, and hopefully it will not see. But we have said in other jurisdictions and circumstances that rents should really be a level playing field and allow incentives for people to come in and compete on other terms.



**Mr PURCELL** — I appreciate the input you have given. It has actually clarified a lot of the issues for me. I have a note here that says ‘leave rentals’, but I have one question in regard to rentals. In a lot of businesses — I think in nearly every business I have ever worked in — rental has never been a big proportion of our costs. We have never considered: you pay it and you get increases. I know yours is different, but how important is the rental component of your overall cost?

**Mr SCURRAH** — How important is it, as in impactful or — —

**Mr PURCELL** — If you looked at all of your costs in your business, is it a small proportion or is it really a big proportion of your costs?

**Mr SCURRAH** — I will generally answer it, and then I will then ask Jason. It will not surprise you that as our CFO he watches the money very tightly. Generally, the circumstances we are in mean that we watch every cost very tightly. We are a heavy manual industry at the moment with the invested technology we have. We have quite a few staff. It is common practice for those costs to increase in line with the cost of living, or more, through the well-known industrial instruments that exist in our country, so our labour cost base, if we do not get more efficient, continues to rise. It is one we watch very closely.

There is equipment cost, depreciation costs, all of those sorts of things that come with our business. Rent is one of those. We do not have a narrow or over-focus on any particular cost line because if you take your eye off one of them, inevitably the equilibrium of your profitability erodes. It is important, having said all of that, we have a fairly set view about the sort of proportion that is fair and reasonable for rent. That proportion was completely obliterated through what was being proposed, and that created obviously a much more narrow focus for a very concentrated period of time on what the rental was going to be.

**Mr VARSAMIDIS** — The key concern is that once a rent amount is struck or agreed or determined, you have basically created a fixed cost. So it is not necessarily the proportion of your total costs that matter but the likelihood of that increasing and your inability to address that or have any recourse at a later point in time. Therefore it becomes more sensitive and there is greater exposure to eroding your margins through not managing your rent increase process and negotiating firmly around that.

Obviously if the rent increase that had been tabled had been accepted, we would not be a viable business in Melbourne. Essentially that increase would have eroded our entire margin that we make out of our business.

**Mr PURCELL** — That answers the question. I think your answer to Mr Barber’s query about capacity said that your capacity with your quay line would be about 2 million overall capacity. If you had the whole of the port of Melbourne for containers, where does that put the capacity of the port of Melbourne?

**Mr SCURRAH** — Somewhere around five to five and a half within the current equipment profile and [inaudible] areas. However, we do strongly believe that that can be increased if you maximise the use of adjacent land that is not currently used for container usage. We think quite comfortably you could get more than five.

**The CHAIR** — Just to be clear, does that include Webb Dock east?

**Mr SCURRAH** — Yes.

**Mr ROSS** — Yes.

**Mr SCURRAH** — I have seen commentary of the [inaudible] high rate. If you take into account the use of land that is not currently dedicated to container stevedoring and you add that to some of the technology that is emerging in the industry, then that is possible.

**Mr PURCELL** — Okay.

**Mr ONDARCHIE** — Firstly, Jason, well done on your submission.

**Mr VARSAMIDIS** — I cannot take credit — —

**Mr ONDARCHIE** — You have signed it!

**Mr VARSAMIDIS** — But thank you for the kind words.

**Mr ONDARCHIE** — Congratulations. I do, Paul, want to touch a little bit on your negotiations on the current rent regime. This is just a general question around how you go about your business and reflect on the negotiation that you had. When you are negotiating a new contract with a customer, is it common practice for you to bring your shareholders into the room for that?

**Mr SCURRAH** — Is not common, no; certainly not on that. But having said that, there are some fairly *Sliding Doors* moments in terms of a very different direction a business can take that are so important to get involved in.

I am a Director myself at other companies and there are very strong fiduciary duties that come with that, and that is that you are required by law to find out yourself what is going on. It is a legal requirement. So, in some circumstances, my Directors — and I have done it myself with boards that I sit on — by way of law get involved. My shareholders and Directors are one and the same in many cases, so it is quite unique. So, no, with customers, no, absolutely not, they would not get involved. But with something that is as impactful on future prospects of the viability of the company, it is not that surprising that a shareholder will get involved. So I was not surprised that the shareholders — —

**Mr ONDARCHIE** — I just found it unusual that the government were there leaning on the Port of Melbourne Corporation, that is all.

**Ms TIERNEY** — Have we dealt with that now?

**Ms SHING** — There you go: asked and answered.

**Ms TIERNEY** — Can we move on now?

**Ms SHING** — Thanks for the editorial, Mr Ondarchie.

**Mr ONDARCHIE** — I just found it unusual that you are muscling the Port of Melbourne to find the outcome that you think you needed.

#### **Members interjecting.**

**The CHAIR** — Order!

**Mr ONDARCHIE** — Anyway. You have addressed your concerns around certainty around the 70-year monopoly and the rent review —

**Ms SHING** — It is a 50-year lease.

**Mr ONDARCHIE** — so I will not touch on that, but I do want to go to your concerns about vertical integration and the comments you made in your submission that ‘The bill in its current form lacks transparency and fails to do enough to address these risks’. Is your advice to us, given that gap, that we should not put the bill through in its current form?

**Mr ROSS** — Yes.

**Mr ONDARCHIE** — Thank you. The other point I wanted to make was around the compensation that you touched on. The Department of Treasury and Finance actually called it a refund to us. The insinuation was that if a second port is built they will refund an amount to the successful bidder. Given that the bidder can set arbitrarily what the capacity is, is it not possible that a bidder could artificially set a monopoly then that has control over your destiny for a long period of time?

**Mr SCURRAH** — In the scenario that they control the entry at the second port?

**Mr ONDARCHIE** — Yes.

**Mr SCURRAH** — Or have constructed control? Is that what you are asking?

**Mr ONDARCHIE** — Sure. Given the government would not want to exercise their refund.

**Mr SCURRAH** — So the motivation is about avoiding the refund? Is that the question?

**Mr ONDARCHIE** — Yes.

**Mr SCURRAH** — Look, it is not one that I have a great answer for, to be honest. We look forward into the future and you would hope that in the way it is constructed that common sense is almost channelled in the future through the way that this is actually constructed, but there will be growing container demand to service the Victorian economy and to service the city of Melbourne. How we feel about a second entrant, if and when it comes about, will largely depend on our ability to be involved in that. We may be an interested operator in that as well, so we might be taking the view that there is one needed because it is an advantage to us.

**Mr ONDARCHIE** — Sure.

**Mr ROSS** — So it is a very hard question to answer. We are not experts in this space, so whether or not there is a Badgers Creek model that is better than any other model, that is for you guys to decide on.

**Mr ONDARCHIE** — I understand that. That is fine. Just finally, Ian, as the government has outlined to you today by way of questions, if you are aware of the fact that a stevedore cannot bid to be the lessee as part of the regime, are you aware that a lessee can in fact become a stevedore afterwards?

**Mr ROSS** — Yes.

**Mr ONDARCHIE** — How do you feel about that?

**Mr ROSS** — I think it is in our submission that we are concerned with that potential.

**Mr ONDARCHIE** — Thank you.

**Ms SHING** — Thank you, gentlemen, for your submission and also for providing the oral evidence to the committee that you have today. Mr Ondarchie and I set up a little bit of a routine whereby I get to follow him and then tag off the back of a number of the comments and/or questions that he has already asked. I would like to take you to the part of your submission which is headed 'The bill in its current form lacks transparency and fails to do enough to address these risks'. You indicated, Mr Ross, that your advice would be that it should not proceed in its current form, and that is in relation to VI and monopoly pricing. I note that your submission itself is dated 11 September 2015, and that is two and a half weeks before there was an announcement by the Treasurer that followed —

**Mr ONDARCHIE** — A last-minute change.

**Ms SHING** — intensive discussions with the ACCC, and that also resulted in ongoing oversight by the ACCC and confirmation of periodic reviews et cetera to strengthen further the regulatory framework within which the transaction will operate. On that basis, and taking into consideration those more recent developments and public comments, do you change your view at all in relation to the concerns that you have set out in your submission, or would you like to clarify anything in relation to those issues?

**Mr ONDARCHIE** — On a point of order, Chair, the witness has been asked this question and has just answered it.

**Ms SHING** — Further to the point of order, I am asking a very different question to the one that you asked, Mr Ondarchie.

**Mr ONDARCHIE** — He gave a very simple answer — the answer was yes.

**The CHAIR** — Order! Actually, Ms Shing, it is very similar to the question I asked, but I am happy for you to re-ask the question.

**Ms SHING** — Thanks, Chair.

**Mr ROSS** — I think we would reserve our position. We would be curious to see what is proposed. We have seen the public announcement, but are curious to see what is put forward in the modified legislation to reflect that announcement.

**Ms SHING** — But you note that the ACCC does retain oversight, even after specific periods have elapsed, as part of the transaction?

**Mr SCURRAH** — I think we are on the record before as saying that particular announcement did go some way to addressing some of our concerns —

**Ms SHING** — Yes.

**Mr SCURRAH** — but based on the evidence in front of us, we still think there is more to do, but Ian's point is that it has not yet made its way into a bill for us to scrutinise, so it would be very difficult to expect us to.

**Ms SHING** — No, that is helpful. Thank you. I would also like to take you to earlier evidence that has been given by Austrak today. I am not sure whether you are here for that today —

**Mr SCURRAH** — Yes, we were.

**Ms SHING** — which referred to a Salta proposal and to discussions that are being undertaken with you. I understand that DP World is the sole focus of Austrak's desire to develop the proposal for the MIRT as it is set out in its submission. The evidence that was given to the committee, as you heard, was that things are all systems go, as far as the support from your end goes, to proceed with that initiative. What is the status of your request to Austrak in relation to the project?

**Mr ONDARCHIE** — On a point of order, Chair, our last witness was asked a similar question by Ms Shing, who responded by saying that those discussions are commercial in confidence. I am not sure why Ms Shing is now using the opportunity for this committee to source that information.

#### **Members interjecting.**

**The CHAIR** — I will allow the question. The witnesses will answer as they see fit.

**Mr SCURRAH** — I will reflect a similar response that has been given around specific discussions between specific parties are commercial in confidence, but what I will say is that here and nationally we do have a strong focus on rail. We are on the record saying that we think there has to be a large investment in rail moving forward. For us, there is still some work to do to maximise rail in the West Swanson, or the Swanson Dock, precinct, which a lot of it is out of our hands. Some of it is legislative, some of it is caught up in transport planning and potential other projects; so, yes, we have an opportunity to work with many parties, and we do. We are very open. We are not closing our negotiations on rail to any one party.

**Ms SHING** — So, you would support a competitive tendering process for that particular project?

**Mr SCURRAH** — From our point of view it is not that different to the road access that comes into our terminal — that is, that many, many trucking companies come into our terminal today and, as long as there are full trains coming with containers on them, we are happy.

**Ms SHING** — Yes, thank you. Just on that issue of rail — and you have got the on-dock rail work which, as you have proudly indicated publicly, will take 27 000 trucks off the road and is similarly being developed in Sydney as well — as far as the 50-year lease and the investment into on-dock rail and further infrastructure at your end, does that suggest, building on the comments that you have made about something heading up north toward the 8 million TEU range, that the container throughput can really grow significantly and substantively over the period of that 50-year lease?

**Mr SCURRAH** — I have a rail background prior to being a stevedore, or a wharfie — as my wife likes to tell me. The challenge with rail is, yes, it can help become a lot more efficient, but there is a lot of investment required just to keep pace with the market share that they hold right now, and that is a challenge for every single government. I do not yet think anyone has got it right in driving true modal change, and it almost becomes a backstop when road congestion gets too much. That is where you see incremental steps up in rail. In order to get

to the maximum potential throughput for the port of Melbourne, there will have to be a substantial investment in rail and potentially you are looking at handling longer trains. There would be — putting my rail hat back on — issues around passenger versus freight priority on the metropolitan line and the passenger lines.

**Ms SHING** — Your standard 40-footer as the container?

**Mr SCURRAH** — Yes, and the potential use — and I note that the previous submission would have a strong interest in this — of inland rail terminals. Philosophically we are not opposed to any of that. We are a strong supporter of rail, but we have been very, very vocal in urging governments to actually think about the level of investment that is required to have rail take a step change in terms of ports.

**Ms SHING** — So, having rail be a mandated part of any bid is a step in the right direction?

**Mr SCURRAH** — Can I ask for clarification around a bid for what?

**Ms SHING** — For the lease?

**Mr SCURRAH** — For our terminal lease?

**Ms SHING** — Yes.

**Mr SCURRAH** — Having rail as a part of that?

**The CHAIR** — No, no, for the port lease.

**Ms SHING** — Sorry, I beg your pardon, for the port.

**Mr SCURRAH** — Having rail mandated? Are you saying about commitments that are to be made by the potential owner around rail?

**Ms SHING** — That that be factored in as part of any party who bids for the lease.

**Mr SCURRAH** — We are not going to be a party, as you know. As an observer and an interested party, my uneducated view would be that there should be strong encouragement about rail being a future consideration for the future owner of the port.

**Ms SHING** — Okay, great. Thank you, gentlemen.

**Mr SCURRAH** — A strong consideration.

**Ms TIERNEY** — Thank you for being with us today. I note that you have outstanding issues, and many of those are reflected in your submission. I also note the comments that you made in response to Ms Shing in terms of the outcomes of the ACCC discussions and you want to see the finer details in relation to that. But it is my understanding that what is being proposed does have a greater regulation regime attached to it and greater levels of surety than has been the case in terms of exercises similar to this where private providers are undertaking lease arrangements with different ports around the country. Do you agree with that, that the current proposal essentially is a better proposition than has been the case with other exercises around the country?

**Mr SCURRAH** — I am just reflecting answers I have already given to say that there have been some positive changes that we think go some way to addressing our concerns, but we will reserve a more fulsome and official response until we see the legislation as drafted.

**Ms TIERNEY** — Okay.

**Mr ONDARCHIE** — I just want to touch on Ms Tierney's point to you asking if you thought that the regulations proposed are greater than before. I would have to say to you that ADSL2 is better than dial-up, but it does not give you any greater certainty, does it?

**Mr MULINO** — No, no, but other jurisdictions is the question.

**Ms TIERNEY** — No, I didn't say that. Don't editorialise my question.

**Mr ONDARCHIE** — That does not give you any greater certainty.

**Mr MULINO** — No, you misrepresented. She said than other jurisdictions.

**The CHAIR** — Order! Mr Ondarchie has got the call.

**Mr ONDARCHIE** — Can I seek from you: what would it take to give you more certainty in this legislation in terms of the ongoing regulatory regime?

**Mr SCURRAH** — A positive answer to the issues we raised in our submission, notwithstanding that we may alter our feedback based on what the new bill drafted with those changes reflects. We have been pretty clear, and we outlined at the beginning that it is about vertical integration being a big risk to us, with a port operator coming into our territory and the risks that are associated with that — how tariff provisions are handled in the future.

**Mr ONDARCHIE** — And would you look to add further comment once any of us got to see the redraft of the bill?

**Mr SCURRAH** — Yes — I mean, we are open-minded to it. It depends on how big or substantial the changes are and whether it is worth changing our submission. We will not know.

**Ms TIERNEY** — Just a quick one — it is a question that I think most people have been asked when they have come in here, and you also might have noted the interactions between the various members of the committee about infrastructure and the football game that goes on about the notion of infrastructure in this state and obviously right across the country. I suspect it is similar in other countries around the world. In terms of the election commitment to establish Infrastructure Victoria, the legislation has gone through. Do you think that such an organisation will be of significant value to not just the community but companies such as yourself in terms of having input and greater clarity and analysis of infrastructure projects?

**Mr SCURRAH** — We do not have a firm position on the way to encourage infrastructure development; we just hope it happens. We leave it to experts in that field to understand what is the most effective way. Whether Infrastructure Victoria is effective or not is not just about the structure; it might come down to the competence of those who run it. So it is not something we would weigh into. But as a company, we are very supportive of any regime that makes it easy to keep up with demand from an infrastructure point of view. In certain jurisdictions we operate in, there is too much red tape and too much bureaucracy. Time will tell how effective Infrastructure Victoria is.

**Ms TIERNEY** — But improved transparency, I think, would be of assistance to everyone.

**Mr SCURRAH** — Transparency is always a good thing, whether it is dealing with governments or the way we deal with our customers. Nobody is going to criticise transparency. But that is about as far as we would go in commenting on the operation of a government authority.

**The CHAIR** — Thank you, gentlemen. The committee very much appreciates your submission and your evidence today; it has been very helpful in understanding the scenario you have been operating in. We appreciate your efforts, and we will have a draft transcript for you in the next couple of days. Thank you very much.

**Witnesses withdrew.**

# PROOF VERSION ONLY

## PORT OF MELBOURNE SELECT COMMITTEE

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

Melbourne — 14 October 2015

#### Members

Mr Gordon Rich-Phillips — Chair

Mr Daniel Mulino — Deputy Chair

Mr Greg Barber

Mr Damian Drum

Mr Craig Ondarchie

Mr James Purcell

Ms Harriet Shing

Ms Gayle Tierney

#### Staff

Secretary: Mr Keir Delaney

Research officer: Mr Anthony Walsh

#### Witnesses

Mr Richard Bolt, Secretary, Department of Economic Development, Jobs, Transport and Resources; and  
Mr Kevin Devlin, Chief Executive Officer, Level Crossing Removal Authority.

**Necessary corrections to be notified to  
secretary of committee**