

CORRECTED TRANSCRIPT

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 Brendan Lyon, Chief Executive Officer,

Mr Jonathan Kennedy, Executive Director, Policy and Strategy, and

Mr David Jiang, Policy Officer, Infrastructure Partnerships Australia.

The CHAIR — I declare open this Legislative Council Port of Melbourne Select Committee public hearing. The hearing is in relation to the inquiry into the proposed lease of the port of Melbourne. I ask that all mobile telephones now be switched off. I welcome Mr Brendan Lyon, the Chief Executive Officer; Mr Jonathan Kennedy, Executive Director, Policy and Strategy; and Mr David Jiang, Policy Officer of Infrastructure Partnerships Australia.

The committee does not require witnesses to be sworn but all evidence must be truthful, accurate and questions fully answered. 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 provide in the hearing is protected by parliamentary privilege. 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 a 45-minute slot for this hearing 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. We thank you for your written submission.

Mr LYON — I wish to thank the committee for the invitation to appear before it today. The essence of our submission is that the structure and form of the port lease is among the most important issues that are going to face the Parliament in this term. Indeed, the recommendations by this committee and ultimately the legislation that is put to the Parliament will help to dictate how much infrastructure Victoria can build in the next decade and how much the Victorian economy can grow across the next half a century.

Our written submission to the committee can be neatly summarised as providing three substantive points on the legislation and an important contextual point about the need for this transaction, above others that have gone before, to be well structured, well debated and well executed because of the unhelpful spectre of sovereign risk that was created by the damaging cancellation of the east–west link motorway.

In terms of our substantive points, we submitted that the lease term should be fixed at the initial term with the contingent 20-year option removed from the legislation. On price control, we submitted that the draft regime reflects national better practice and should be supported. We also note some additional minor strengthening of the regime and we continue to submit that the amended price control regime is as good as any and better than most. On balance, we believe and submit that the current approach should be supported.

Our final substantive point concerns the more complex issue of how the port lease best contemplates the need for new port capacity in future decades. This is as much a transactional issue as it is a policy one. After all, this decision about how new capacity comes online will dictate in part the sale price taxpayers receive for the existing port and will also dictate the costs and structure of Victoria's freight market until 2066.

We consider that there are three essential ways in which the port lease could provide for new capacity. It could provide the port of Melbourne lessee with a first right of refusal to develop a new port in the future, akin to the mechanism in the Sydney Airport privatisation deed. Another approach could be for Victoria to specify a particular year — say, 2035 — after which investors could consider a new potentially competing port could be developed, with or without monetary recompense; or alternatively by specifying a particular capacity level at the existing port, after which a new facility can be developed by the state, again, with or without monetary recompense.

The discussion on this point has largely focused on the downside to the Victorian economy if new port capacity is delivered too late. Obviously a lack of capacity would damage Victoria through higher than necessary costs as scarce capacity becomes more expensive, and potentially through a loss of trade to other jurisdictions or countries. But there are also substantial downsides for the Victorian economy if a new port is developed unduly early, with the costs picked up on the grocery bill of every home in Victoria and the transport and logistics bill paid by every business in the state. That is why we believe that this is the most important aspect of the transaction that is still to be resolved.

The principal losers from overly late or overly early delivery of a new port can only be the consumers, workers and businesses which together comprise the state's economy. This is an issue where the committee would benefit from engaging an independent external adviser for a short and sharp review. We submit that one of the

three broad options of first right of refusal, specifying a particular year or specifying a particular container volume through the existing port, will provide the best opportunity to balance the investors' need for certainty against the state's need for flexibility and timely delivery. That is why we submit that this committee should refer this issue to an independent, appropriately qualified transaction adviser — someone who can advise the committee on the options; who can review the advice used by the state to justify the current port growth regime; who can interrogate the alternatives; and ultimately someone who can provide clear advice to the committee on the best possible approach to maximise the efficiency of the freight sector in Victoria.

With this advice, we believe that the committee should be able to provide a cross-party position and cross-party amendments to the legislation, and should be able to do this within the earlier reporting timeline I will reference in a moment.

I now wish to turn to an issue which we submit should form a consideration for this committee's and Parliament's approach to the legislation, and importantly should see the committee's reporting time line accelerated. As each member of the committee is aware, Victoria has become associated with sovereign-type risks since the government's decision to terminate the contract for the east–west link. While this matter is awkward to raise in a cross-party committee, it is nonetheless very real and a material contextual issue to this transaction. It is one that relates directly to the value of the port lease. While there are obvious differences between the lease of an existing port and a contract that provides a right to build and operate a motorway, they share one essential ingredient. Both the port lease and the east–west link contract are promises from the government for the lease of a right from the public sector for a period of time. Whatever else the committee might hear, I submit that the east–west link cancellation has damaged Australia's, as well as Victoria's, reputation.

Indeed I was recently in Europe and the UK for a brief round of briefings with major global equity and debt investors and contractors outlining the Australian infrastructure investment opportunity. In every single briefing the east–west link was raised. Everyone from Brussels to Britain asked what the east–west means for future investments in Victoria and in Australia. That is why we submit that the tone, tempo and pace of the committee's inquiries are important in their own right, and why we submit that the committee should both report early and should use its best endeavours to reach a bipartisan position with bipartisan amendments put to the Parliament.

I submit that this is one of the most important issues that the committee and Parliament will consider in this term, but it need not be the hardest. Unlike the vicious privatisation campaigns in Queensland and New South Wales regarding the ownership of electricity, Victoria in fact enjoys a high degree of cross-party support for the concept of leasing the port to liberate funds for new infrastructure. With just three areas of actual disagreement between the government and opposition on the port legislation, and noting the overlay of the east–west link and the need to restore investor certainty in Victoria, we submit that each of these areas of divergence should be easily resolved by this committee.

Respectfully we submit that this committee should consider bringing forward its reporting life time line to 1 November. We make this point noting that if the committee did indeed report on 30 November as currently planned, then it is likely that there would be insubstantial time for the Parliament to consider the ideally bipartisan amendments and legislate in time for the report to reach the market.

The lease of the port of Melbourne is Victoria's best option to bridge infrastructure funding shortfalls in the immediate term, and all sides of the Parliament acknowledge this. The lease would free up somewhere in the order of \$6 billion for immediate reinvestment for tackling the state's worsening transport bottlenecks. The committee need only look to the level of infrastructure activity that is now possible in New South Wales off the back of port, water and electricity leases. The level of employment, economic growth and the strong retail trade figures reflect that circa 40 cents in each infrastructure dollar are flowing within the borders of New South Wales at this point.

It is within the powers of this committee to resolve the three aspects of the port lease and resolve it by a bipartisan series of amendments, and it is within the powers of the Parliament to pass this legislation by year's end. The major parties already agree that this is in the best interests of Victorians and we hope that this committee will be able to play an important role in making sure that this transaction is well structured, well executed and begins the process of rebasing confidence in the brownfield and greenfield infrastructure program

in Victoria. Chair, through you, we again thank the committee for making this time available and we look forward to your questions.

The CHAIR — Thank you, Mr Lyon. The committee very much appreciates your attendance today. I understand that you have joined us from Sydney. You have come down specifically for this hearing, and we very much appreciate IPA's written submission as well. There are a number of matters I would like to pick up out of your opening statement, in no particular order. The comments you made with respect to concerns about sovereign risk arising from the east–west decision of the current government, have those concerns being expressed in the context specifically of the port privatisation?

Mr LYON — They have.

The CHAIR — Has that been a widely expressed view in relation to the port?

Mr LYON — Certainly in terms of briefings I have provided to inbound and domestic investors and to contractors in terms of greenfield but equity in terms of the broader opportunity, we need to understand that what they are in effect buying with the port lease is similar to a motorway. It is a promise from the government to be able to do something or collect a revenue stream for a period of time, and I think that the interests of Victorian taxpayers, as they stand as shareholders of the port, are not likely to be well served if the transaction is delayed with a heavy political overlay. That would be my advice.

The CHAIR — Thank you. You referred to a recommendation to the committee of obtaining advice from a transactional adviser with respect to the second port issue, the port growth regime. Is IPA in a position to provide some advice to the committee as to the type of adviser we should consider for such a piece of work, if it was the committee's decision to do that? One of the challenges we are finding with this inquiry is that a great many parties are conflicted on the port. They are either providing advice to government or have provided advice to government, or they are providing advice to potential bidders, and there are very few widely recognised advisers in the transaction space who do not already have a relationship on one side of this matter or another.

Mr LYON — Yes, that is a very valid point. What I would be looking for is someone who has done transactions in the past or has had a very high degree of exposure to competition policy and to freight and logistics. I think that Bill Scales, the former Chairman of the Productivity Commission or industry commission, and a former Chairman of the port, would be potentially one option to look at this issue. Otherwise you are really looking for someone who works in an investment bank, works in one of the large consulting firms and is expert. But, as you say, everybody has been looking forward to this transaction for a number of years. It is well anticipated. People have formed up ready to bid and ready to take roles on it, so I do understand the complication in finding a suitably qualified person. I do not know Mr Scales personally; I have only read his work professionally, but he appears to have a degree of expertise around a number of the issues that would need to be examined.

The CHAIR — Indeed. That is potentially a very good suggestion.

Mr LYON — That was on-the-fly too.

The CHAIR — Can I take you to IPA's recommendations around the three options for addressing the second port issue. You referred to the downside of investing in a second port overly early. One of the issues that has not been canvassed with this committee in any depth, which I think is a relevant consideration, is the opportunity cost of the port of Melbourne continuing to operate on what is a very large site adjacent to the CBD. To date much of the committee's considerations have been essentially around a closed system, looking only at the port infrastructure and obviously the desire to maximise the value of that brownfield site before transferring to a new greenfield site, but that has always been to the exclusion of the opportunity cost question of: is that 500-hectare site immediately next to the CBD better used for non-port purposes? Is that something that Infrastructure Partnerships Australia have a view about, whether that opportunity cost consideration should be part of the consideration of a second port?

Mr LYON — It does need to be part of the consideration. One of the constraints that sits on the existing port site is that proximity to the CBD, the congestion that already exists on the broader transport infrastructure, but that needs to be balanced against the sunk costs of the infrastructure that have been put in place — the very substantial investments in things like the channel-deepening project, in other investments that have been made

landside and waterside. One of the things that we suggested in the submission was that Infrastructure Victoria, now that it has been legislated, be required to provide a five-yearly assessment — or more often if the committee felt it was of worth. I think having an independent assessment every couple of years around the efficiency not of the port but of the efficiency of Victoria's transport and logistics sector, of which the port is one node, will allow an ongoing assessment of both the level of efficient capacity that is required and the performance of the broader network.

I think more broadly in infrastructure policy we often measure the wrong things. We often might tally up the amount of dollars, the amount of nuts and bolts and jobs that are created off the construction phase. I think if we start to measure the efficiency and the outputs and the price performance of infrastructure markets broadly, then we will begin to invert the incentives and people will begin to question governments around whether the efficiency and cost of the freight and logistics sector is getting higher or getting lower, and you begin to change the discussion around to: how do we actually make networks work together?

I think one of the recommendations that the committee could usefully make is around a process to ensure an ongoing assessment of the efficiency, capacity and cost of the transport and logistics network. It will help in the broader oversight of the Victorian economy and its relative efficiency and will also help in terms of the oversight of the port, as it moves from being an instrument of government policy into a commercial player within a freight market.

The CHAIR — Going back to the three options you have outlined to deal with the second port question, one thing not effectively canvassed here is the option of not having the port growth regime and allowing this transaction to stand by itself — the transaction of the operation of the port of Melbourne for 50 years — full stop, without a transition arrangement for that lease. When the ACCC gave evidence to this committee, the Chairman Rod Sims was very clear that in his view he would prefer that that regime was not in place, that it was a simple transaction that allowed a port operator to have this franchise for 50 years. Does the IPA have a view on that alternative to the three options you have outlined?

Mr LYON — I am not as confident as Mr Sims that you will get a high degree of competition between port assets. More particularly, one of the things that we have to bear in mind is that there are trade-offs in terms of any of the models. All of them are trying to bring together the desire for certainty from one side with a requirement for flexibility of decision on the other. All of the options introduce a degree of compromise and trade-off. That is why we are recommending that, because it is both a policy and a transactional issue and because there is a requirement both to meet the interests of the taxpayer shareholder but also the citizen consumer, there should be a reference to someone who is suitably qualified to do a peer review of the advice that the government has relied on and any extraneous material and provide a quick assessment but appropriate assessment back to the committee about the best structure.

There are some aspects of the port growth regime that we like, particularly the reference to the bid process in terms of determining a range of different factors within it and having the competition to some degree around the efficient capacity of the existing port, the degree of monetary recompense if things are triggered early, the capacity for the state to move earlier if it decides that it needs to do so, with the terms and conditions made explicit upfront. Again, I think that, given there has been a very high degree of focus around the triggering of new port capacity, it is very likely we would see an impact on price if there was not a degree of certainty put in place around the transaction and about how that is going to occur.

The CHAIR — I am not sure that the ACCC's argument was so much about competition as risk to the purchaser of the lease, rather than looking at competition down the track. I took from the comments of the Chairman of the ACCC that, in his view, that risk sitting with the lessee was an appropriate allocation of that risk, rather than that sitting with the state, reflecting that that would be acknowledged in the price that the state will get for the lease.

Mr LYON — Again, that is a question that the committee could appropriately put to the transaction adviser that we have suggested in terms of giving some meaningful advice around the likely impact on asset value. The state is trying to achieve two opposing outcomes in effect. You are trying to bring down the long-term cost of transport and logistics, but you are also trying to maximise the fair value for a very valuable asset. It is not an easy question to answer without having access to data, a greater level of knowledge about the asset, being able to form a view around the likely capacity of the existing port.

That is why I think that it is unlikely that we are going to be able to resolve all of those issues in 2015. That does not need to preclude the transaction. What it means is that we need to make a good decision around how new capacity can be triggered, and make sure that we are keeping it as flexible as we can, but we are making sure that taxpayers get a fair return on their valuable asset.

Mr MULINO — Thank you for your submission and also for your evidence. I just want to start with the east–west issue, and I note that IPA has been on the public record on a number of occasions with the commentary that you have repeated today. I should also put on the public record that obviously the government agrees to disagree with certain aspects of that commentary and felt that following the election, which many called a referendum on that project, that keeping faith with the electorate was absolutely key, given the centrality of that issue to the election.

I am interested in your analysis of where we are now, but without revisiting that whole debate. Your take now is that given that both major parties went to the last election supporting the lease of the port of Melbourne in broad terms, given that on your reading there are not a large number of substantive policy differences — you have boiled it down to three, and my personal take is that the number of substantive policy differences probably has been narrowing over the course of these hearings, which have been a very useful process. Your take is that from the perspective of both good public policy and also the international and domestic investment community a speedy but sound resolution of those outstanding policy objectives is critical to the investment environment in Victoria.

Mr LYON — I understand that there is a respectful disagreement. I think everybody, including the government, would agree that the consequence of the termination of the contract has raised questions — you would have heard them yourselves — in terms of investor roadshows and other things. One of the reasons Australia is such an attractive place to invest and Victoria is such an attractive place to invest is because we have not had a history or a heritage of sovereign-type risks. I qualify that by saying that in the end the contract was discharged in accordance with the contract, and that is an important point to make. I think the degree of damage would have been much more significant if the Parliament legislated to avoid a contract. In the end that did not happen, but I do think it is important that Victoria signals to global markets that it is back to its tradition of being a very safe, globally sophisticated place to make long-term investments.

I think this transaction is head turning in terms of its scale. It is the prize in terms of the transport and logistics assets that sit within Australia's freight market, and I think it is clearly in the Victorian taxpayers' interests that this transaction be used to rebase confidence. I think that the process and the debate have been very healthy ones, and I think that this committee has a really good opportunity to be able to resolve those remnant issues and then allow a bipartisan process once we reach transaction. I think that the upfront consideration around how the market is structured — the rules of the game once the port is leased and moves out to different ownership — is exactly what a Parliament should do. But once that decision is made, or once those issues have been fleshed out, then I think that there is an important role for this committee to get bipartisan consensus across the major parties and to get this transaction sent out with a very clear message that the east–west link — given the rights, the wrongs and all of the rest — was a one-off; it is not something that Victoria intends to repeat. I think that is an important message to send out, particularly given that this is the jewel on the balance sheet.

Mr MULINO — The three issues you have raised I think are broadly aligned with issues that I think are important, and there are probably several more you could add to that but not a huge list. On the compensation clause, I just wanted to ask a couple of questions. In principle you are comfortable with a clause that provides certainty, subject to there being a reasonable balance against issues like competition and providing flexibility to the state in a policy sense for expansion at other sites down the track. Getting expert advice on that balance — getting that balance right — is what you are suggesting.

Mr LYON — On my examination, and I am not an expert in this particular aspect of port lease transactions but there will be people who are, if you think about it in a policy sense, what you are trying to do is give a degree of comfort to equity and debt around the point in time — and this is a regulated monopoly-type asset — that the state is not going to pop up two years later and build a new facility that potentially competes for the revenue stream they have bid on. I think it is a very important balancing act because you are not wanting to lock in higher than necessary T and L charges, which would have broader and negative impacts across the Victorian economy, but you are trying to get a fair price and a good price for the asset. That is where certainty around how prices are going to be controlled and certainty around how a new, potentially competing port asset is brought

online are really two very fundamental aspects that debt and equity are going to want to and need to understand, and if they are unable to understand those going in, then it will be reflected in the way the asset is priced.

Mr MULINO — In addition to getting a fair price, one of the positives of a certainty clause or a growth facilitation clause — whatever you want to call it — will be that it incentivises the lessee, potentially, to undertake medium-term investments in the appropriate way. So that is to the benefit of all consumers and businesses in Victoria if that occurs.

Mr LYON — Absolutely right. You need an ongoing level of investment. You in fact want to sweat the port of Melbourne for as long as it is efficient to do so. If you think about the cost of bringing online a new port and the supporting landside infrastructure and so on, the only way that those costs are paid are through the charges that impact on businesses and the charges that impact on the consumer at the checkout when they are purchasing goods and so on. I think it is very important that these issues are dealt with, both for the long-term efficiency of the freight sector and the efficiency of the Victorian economy but also, as I say, in terms of a fair price for a very good asset.

Mr KENNEDY — Sorry, if I could just underline one point Brendan raised for the record, there has been a lot of focus, quite rightly, on bringing online a second port too late. I think in tasking the independent expert, key to that should be an awareness or recognition that the costs of bringing online a second port too early are as great, if not greater, than bringing it on too late. It is not simply a focus on being too late but also bringing it on too early. You used the term ‘sweating the asset’. I think that should be a key principle in terms of how we can maximise, if you will, the value and capacity of the existing port. It seems to have been lost in the debate somewhat that it is not all about bringing it on too late. The other side of the coin is as important, I think.

Mr MULINO — On the three options you have put forward, and I think they are three sensible options, one specifies a threshold around throughput, and one specifies a threshold around time. I would say that both of those are similar in the sense that what you are trying to do in setting those thresholds is to have the optimal point at which you get a second port started so you do not get it too early or too late, but of course it is almost impossible at this point to get that exactly right because what you are trying to do is balance those.

Mr LYON — That is where we quite like some of the aspects around the port growth regime that has been put forward, because it leaves a degree of flexibility but puts on the table, in a fairly explicit way, what happens if the government goes early. If the state decides to go early, what are the costs that need to be paid? That is quite a good thing to put in upfront, because it does retain a degree of latitude around the timing. It bases it around the capacity. It requires a fairly informed view around what an efficient level of capacity at the existing port might be and perhaps some consideration of the opportunity costs of leaving the port where it sits but nonetheless — —

Mr MULINO — And then first right of refusal is another model; as you say, that was used in Sydney with the airports. It is fair to say, is it not, that this if anything a stronger form of clause than the other two? And if anything, its anti-competitive aspects are stronger?

Mr LYON — As I said, all of these things — —

Mr MULINO — So it is worth putting on the table.

Mr LYON — Yes, we were not really suggesting that that is a path that the state might want to go down. We were more reflecting that all of these transactions of monopoly-type assets are trying to deal with a similar set of problems and challenges, and that is the way we dealt with it in 2004 when we transacted on Sydney Airport. There are some different views around, but, as I said earlier in the testimony today, all of these things are trade-offs because it is not pure market competition, it is not pure signals, it is not any of these things because we are dealing with monopoly-type assets with monopoly-type characteristics. All of them involve some degree of trade-off. If you look at a first right of refusal, you get some benefits in terms of certainty. You get some benefits in terms of the opportunity to switch between and to manage across the two different nodes, but you also reduce the pure competition around the design and cost of the future port when it is required. All of these things involve some degree of trade-off.

It is where we have made recommendations around an institutional framework in terms of assessing long-term requirement and other things. But I think that with the right advice the state will be able to make, and the

Parliament and the committee will be able to make, a decision based around what is the likely best outcome that balances the taxpayer shareholder's and the citizen consumer's interest.

Mr MULINO — Thanks.

Mr PURCELL — To take you back to your discussions with the overseas investors in regard to the sale of the port and the damage that was done through the east–west link, my understanding is that the option does exist to have this sale go through as legislation, or if it does not go through as legislation, there is the authority to do it without legislation. If that is the case, would that affect the price of the lease sale if it was done without legislation?

Mr LYON — These transactions are very complex, and there are a lot of risks that ideally you are wanting to retire through the use of legislation. There is a lot of additional aspects of the transaction and the structure of the freight market that are being considered by the committee and Parliament. The other thing I would say is that if it is done under regulation, if it is done under the State Owned Enterprises Act, then that would suggest that the Parliament was not able to reach a bipartisan position around the transaction. I think that that probably would raise questions in the minds of some potential investors. This is a very long-lived asset — a 50-year payback for debt and equity. People are going to want some degree of certainty that people accept the outcome, that the Parliament supports the outcome, that it remains a bipartisan issue.

It is very likely we will not know until the price competition is held, and hopefully by that stage the committee will have reached a position of bipartisan amendment. But given the overlay of the east–west link, I think there will be a much higher degree of sensitivity to political overlays to the offering of a 50-year promise from the state of Victoria out to investors.

Mr PURCELL — Thank you.

Mr ONDARCHIE — Brendan, I too have had to listen to the concerns of overseas investors associated with the withdrawal of the east-west link contract, and some of them cannot believe that we paid nearly a billion dollars not to do something. Given your comments about retaining an independent external adviser for this committee and Ms Shing's comments to an earlier witness that we have got to make sure that we get this right, there are some examples, such as the desalination plant, the myki ticketing system, the north–south pipeline, and the poker machine licences that were prematurely released — great examples of things that were done by government without proper due diligence. I take your point about trying to bring this forward, but I would ask you then: is it not more important that we get this right and get independent advice so we do not have a desalination mark 2 in this state before we proceed?

Mr LYON — It is very layered question in a whole range of ways.

Mr MULINO — That is a euphuism.

Ms TIERNEY — A very loaded question.

Mr LYON — What I would say is that there are twin outcomes that should be sought. One is to make sure the structure is right and the other is to make sure that the port reaches the market at the time that has been forecast out to the market. The tone of my submission is really suggesting that the areas of divergence in a material sense are relatively small, and in our view quite resolvable. There are correct answers for them and we have been quite explicit around the 20-year option; we believe that that should be dropped and should go. We have been quite explicit around the form and function of the price control mechanisms post-transaction, and we have been quite explicit with the committee that it is beyond our expertise, and probably beyond the individual expertise and collective expertise of the committee, to resolve the best and most efficient of the three wide pathways that exist to bring online new capacity.

The core of the submission we are making is that it is in the state's interest, in our view, to resolve these issues. We believe it is within the power of the committee with a good faith process to be able to do so; that all of these things should be able to be resolved, that there should be able to be bipartisan legislation before the end of the year and that the port should be able to be offered out to the market.

Mr ONDARCHIE — Thank you. Given I spent a bit of my career at M & A, it is all about the timing.

Mr LYON — It is.

Mr ONDARCHIE — But it is also about appropriate due diligence before you release an IM or anything to the market. Given you and I and others are watching capital flows around the world at the moment, if it is released in December or in January, it is going to make very little difference to the market opportunity.

Mr LYON — If the legislation is not passed by the end of the year, then we think it is very unlikely that the port will be able to go out in late quarter 1 or early quarter 2 as suggested, and we think that if you missed the lending slot — and you have worked in M & A — you have got other transactions that are coming down the path. There is already a question around Victoria because of the east–west link contract.

Given that this is the most valuable container port in the country, given that the Victorian economy is facing a lot of economic and fiscal headwinds, that there is very clearly a big infrastructure reinvestment requirement just to keep the state growing during a skinnier period in terms of general economic activity — for a whole range of reasons we submit that this is in the best interests of the state to resolve these issues in a way that maximises the return for the taxpayer, in a way that provides certainty around the long-term rules of the game, but most particularly that Victoria does not surprise the investment market again. I think it would be a shame if the very next transaction following the east–west link had that high degree of politicisation and overlay and delay that sat around it. I think that would be a poor signal.

Mr ONDARCHIE — I could not agree with you more. To restore certainty to the international investment market we have to make sure we get this right. We do not want to go out with an 8 out of 10 bid; we want to get it right. I do not want to rush it out just to cover the debacle of cancelling a contract that was not a contract, that was a contract they said they would not cancel. I do not want to rush this out unless we, to pick up Ms Shing's words from an earlier witness — —

Ms SHING — Speak slowly. We cannot hear you over here. I have got my political rhetoric filter on.

Mr ONDARCHIE — To pick up your words from the earlier witness: we have got to make sure we get this right. I think it is infinitely doable in quarter 1 of 2016.

Mr MULINO — Infinitely doable?

Ms SHING — Like a side deal doable, or what are you talking about?

Ms TIERNEY — Side letter doable.

Mr ONDARCHIE — Is that the contract you said you would not cancel but did cancel?

Ms SHING — Forty-five cents in the dollar, mate. We just kept our promises. Anyway, we could sit here all day. What is the question?

Mr ONDARCHIE — I will allow the government to rabble now.

The CHAIR — Thank you, Mr Ondarchie.

Ms SHING — It is so deliciously predictable when we get to these sorts of ends of the day. Thank you, gentlemen, for your presentation and for providing the additional oral evidence to the committee in relation to Infrastructure Partnerships Australia and the perspectives that you bring to this. The role of Infrastructure Victoria as an independent body to oversee the process of engagement with industry stakeholders and to make sure that there is not the same sort of political footballery, if I may make up a term, as occurred under —

Mr ONDARCHIE — Footballery? Is it a word? It sounds like a trade deal.

Mr LYON — Sovereign parliaments can invent words.

Ms SHING — previous commitments that did not stack up to anything more than 45 cents in the dollar as a return. Giving that sort of role to Infrastructure Victoria to determine — what is your view on that body being charged to determine the location of a second container port?

Mr LYON — The decision about a second container port is a really important one, because the eventual cost of developing it to some degree is going to be dictated by the decisions and the land corridors and the identification and protection of those, particularly given the growth of Victoria and Melbourne specifically. We think it is an important but not an urgent issue. We think that Infrastructure Victoria, in its legislated shape, is the right agency within the government to take carriage of that. It will be very important that Mr Bolt's department, that the Treasury, that other areas of government are integrally involved, but the structure of the legislation provides for that the integration through the board. We are quite optimistic around Infrastructure Victoria's opportunity to drive long-term planning, long-term outcomes and so forth.

In terms of the politicisation of individual projects, that is to some degree beyond the power of an independent and relatively small agency to do. It is more within the hands of the people who are in this place and the other chamber. Nonetheless — —

Ms SHING — What do you mean a relatively small agency? Are you referring to yourselves?

Mr LYON — No, to Infrastructure Victoria.

Ms SHING — Right. I beg your pardon. Okay. Sorry.

Mr LYON — We are a very small agency; Infrastructure Victoria is a fairly small agency.

Ms SHING — I was just wondering who you were referring to, that is all. Thank you for clarifying that. So the market for large infrastructure assets — and I apologise if I missed this while I was out of the room — is in fact going to interact with the sequencing of the transaction with interstate operations, so poles and wires, Fremantle et cetera.

Mr LYON — Yes.

Ms SHING — To pick up on the point that Mr Ondarchie has made about the importance of getting it right, which is one thing that he is still learning the art of, how would you say that the time priorities that you have set out in your submission would interact with getting best value and extracting the most benefit from the transaction in the terms that you have described?

Mr LYON — I would submit that getting the legislation agreed and legislated within this calendar year is going to be a fundamental part of getting it right.

Ms SHING — Can you extrapolate a little?

Mr LYON — There are a range of transactions that are coming into the market. We have got a few and just yesterday the Northern Territory government announced a 25 times multiple for the sale of their port. We have got some very large international and Australian investors who have investment mandates for exactly these kind of assets. In fact Queensland's inability to be able to prosecute the reform argument around its own transmission distribution transactions actually means there is a larger pool of pre-allocated capital — equity and debt — that is seeking exposure to Australian core and core-plus assets.

It is hard to imagine a bigger prize for Australian and international super funds and others than the port of Melbourne. It is the largest, it is the most valuable and it is a prize economic asset. It gives people exposure to Australia's GDP story. I think timing is going to be important. As I say, I think it is part of getting it right. Part of it is about resolving the rules of the game after the port becomes a purely commercial enterprise.

The other part is about reassuring the investor group and making sure that you have as much price competition for the port of Melbourne as possible. That is where I think a vigorous political debate around how we set the rules of the game but then a settled approach to legislating in a bipartisan way and just ending that question of, 'Is this the way that Victoria approaches its sovereign contracts?' I think is very important.

Mr KENNEDY — We are talking about the committee bearing in mind also the commonwealth asset recycling funds — a very finite amount of money. As you have mentioned, there are transactions coming to market in other states. It would effectively mean Victoria misses out on hundreds of millions of dollars that would go elsewhere in incentive payments if they do miss that window.

Ms SHING — Yes. Would it be your evidence then that the timing as a relevant consideration to best value and getting it right — I think to paraphrase the evidence you just gave — along with the regular economic regulatory framework, which is set out not only in the bill but also has been crystallised further through announcements by the Treasurer and as set out in the DTF submission, in fact strikes an appropriate balance in relation to how rigorous it will be to give effect to the terms of the transaction, which is as important as it is for Victoria's commercial future.

Mr LYON — We would agree with that. We think that the price regulation-type structure is very strong compared to other jurisdictions. As far as I can see, it is really this issue around how we contemplate new port capacity coming online that really remains the major area of divergence. That is our external assessment; there may be different views across the committee.

Ms SHING — That is the independent advice again that you referred to at the outset in your contribution today?

Mr LYON — Yes. They could if they are commissioned in the right way to give the right answer. We do not have to reinvent the wheel. I think it would be important that the transaction adviser is required to report back relatively quickly. I did not mention it in the oral evidence, but in the submission we have recommended a 1 November reporting date.

Ms SHING — So time is of the essence, based on everything we have heard from you today.

Mr LYON — Yes, timing is very important. In the ordinary course of things it probably would not be as big an issue — there would not be as much focus on the political debate around the transaction as there is now — but the overlay of the east–west link, the activities in the ACT around the light rail, it is just starting to raise questions in the minds of investors that would not have existed with other transactions that Mr Ondarchie and others have worked on. It is not the kind of reputation that Victoria wants, that Australia wants. Victoria has had a very long tradition of being the most settled, the most sophisticated and therefore the most attractive state for infrastructure investment and so on.

Ms SHING — So we are primed to quell any of those sorts of concerns that have been expressed to you?

Mr LYON — This transaction is a really important opportunity for Victoria to highlight to Australian and global investors that that was a one-off, that it was an aberration and it was the exception that proves the rule. I think that this process of discussion and debate around the most appropriate ways to deal with the trade-offs in terms of leasing a monopoly-type asset is a very healthy debate to have, and I think that both the legislation and the Victorian economy will be better for that process. But timing is important, because we do want to draw a line under the east–west link. Whether or not we agree on the causation of it, we all agree that the impact has not been ideal. Everybody agrees that. You have all heard it from constituents but particularly from investors and others. I think it is very important that Victoria is able to prosecute this argument, is able to resolve those few remaining questions, and again I submit that this committee has got a really important job in driving a bipartisanship around the eventual shape of the transaction.

Ms TIERNEY — My questions were mainly around timing, and they have been answered, but whilst you are here, and in terms of the issues in respect of the confidence that the investment community has or has not in relation to infrastructure projects, with the establishment of Infrastructure Victoria — and of course other jurisdictions have got similar bodies, and indeed other countries have too — is that a signal to the investment community that there is growing maturity within the political process, that there is a preparedness for analysis and transparency so that they can have a really good look at what is on the agenda, as opposed to doorknocking and lobbying behind closed doors and being part of the political football game?

Ms SHING — ‘Footballery’ I think is the term you are looking for.

Ms TIERNEY — A brand-new one!

Mr LYON — Again, a relatively layered question. One of the things, working in public policy, that I and my colleagues and others are constantly disappointed by is once you design a structure you actually have to populate it with people and it has to produce things. I would not suggest that forming an agency named after an infrastructure opportunity is going to answer those questions, but what it will do over the medium term — again

if it is well staffed, if it is well mandated, if its board holds it accountable and it does its job well, what it should be able to do is to drive the infrastructure investment debate, the infrastructure allocation debate, at a political level. It will drive that competition toward a selection of particular projects that have been well assessed, that have been well thought through in terms of the long-term requirements for transport or water or whatever else it is.

I think these types of agencies have an important role in terms of driving a degree of transparency around the investment decisions that the public sector makes for infrastructure, and I think that there is an important piece of work to be done in terms of measuring the output performance of things like transport networks, of water systems, of electricity markets, although that is well regulated and relatively explicit.

One of the things that was blindingly obvious out of the Infrastructure Australia audit recently is that the more reformed markets are performing much better. The more reformed infrastructure sectors are performing light years ahead of the least reformed infrastructure sectors, and by that I effectively mean transport and then water. Telecommunications and electricity, where micro-economic market-based reforms were undertaken a very long time ago in this jurisdiction, mean that the gap between what is needed and what is available is much smaller than it is in transport, where the pricing is a mess, where the investment decisions are not as transparent and so on.

That was a long way of saying I think Infrastructure Victoria will be important, provided it gets in place the right level of skill, that it has the right degree of independence from executive government. But the legislation has created a high degree of independence. There is a very skilled Chairman that we know well who has been appointed in to lead it. But a lot of it is going to depend on the CEO, on the degree of support from across the public sector itself and also a realisation from Infrastructure Victoria that it is not trying to reinvent all of the thinking that has been done from Hoddle onwards, it is really to assess where and how much demand is going to occur and then putting in place some logical processes to protect the land corridors that the transport agencies identified and protect the long-term future health campuses on the urban fringe, or whatever else it might be.

At the end of it, it is the public sector that controls every single decision around where infrastructure demand is going to occur in terms of planning decisions and other things, so it should be well within the power of a well-mandated and skilled agency to make some very solid contributions to how future demand is going to be managed. Demand for social and economic infrastructure is to some degree a factor of the population that it supports, so it should be possible for Infrastructure Victoria to really drive some very sensible decisions around corridor protections, around project prioritisation, but also to be a counterparty to Infrastructure Australia, the Productivity Commission and others around some of those broader reforms to road user charging, toward economic regulation of water markets and other things that need to occur.

The CHAIR — Mr Lyon, we have run over a little bit, but I would like to ask you while you are here if you would like to express a view on the depth of the market we could expect with this transaction given your knowledge of other similar port transactions in Australia and indeed the very recently concluded Northern Territory transaction. A transaction of this size and scale, what kind of market depth would we be expecting to see, and is that likely to change with the uncertainty you spoke about if issues are not resolved in the near term?

Mr LYON — Eventually the price will be the price will be the price, and that will be determined by the degree of competition. I think if Victoria gets the transaction to the market in the right time with the right regulatory structure — —

This is the jewel of the crown of Australia's seaports. It is a very well understood asset, there has been a very high degree of focus and attention and anticipation of this asset coming into the market, so I think that Victoria should be expecting a very deep field of well-qualified bidders who will compete for the right to own and operate this asset according to the rules that are established under the legislation.

The CHAIR — What would you regard as deep? Is it five proposals?

Mr LYON — I cannot remember how many came in for New South Wales ports. I have to take that on notice, but I would expect that you would see a very high degree of price competition for the asset. You have globally skilled and very large pension and superannuation funds who are in Australia. They want access and exposure to Australian assets, and this is among the best assets that are available alongside the transmission and distribution sector in New South Wales, and Queensland when it eventually recognises the benefits of reform in

electricity. I think you will expect a very good price. I think that if you look at the multiples in terms of all of the port transactions, including the re-price after GIP left the port of Brisbane, you are looking at 25, 26, 27 times multiples. They were obviously longer terms of the lease, but I still expect that you will see something of that value and magnitude.

The CHAIR — It is interesting — obviously the figure quoted that is being today for Darwin: \$506 million purchase price.

Mr LYON — I think 25 ish.

The CHAIR — Twenty-five multiple. The last published annual report of the port of Melbourne would suggest that its earnings for 13–14 would need substantially greater than 25 multiple to get the type of sale proceeds that the state is hoping for. Is that something that is realistic?

Mr LYON — We had a brief look at this on the aeroplane on the way down. I think that it related to about a 5.07 billion face price on the port of Darwin multiple. You have got to include into that the additional 15 per cent from the commonwealth, and you probably would expect that the additional scale and also the additional volume and probably a more optimistic outlook for growth in volumes at the port of Melbourne will probably lead to some degree of higher price competition than you would see in Darwin, which has a very different profile, a very different population outlook.

The port of Melbourne is being privatised within a city — or is being leased within a city — that is going to become Australia's largest during the period of the lease, so I think it is unlikely that Darwin is going to see growth of that magnitude. As I said earlier, we can expect that demand through the port is to some degree going to be a factor of the population it supports as well as the outbound export opportunities. We would expect that you will see a very high degree of competition for this asset. We will come back to you on the depth of the field for the other port transactions.

The CHAIR — There are no further questions from the committee. Mr Lyon, thank you very much for your evidence this afternoon and your submission on behalf of Infrastructure Partnerships Australia. It has been very useful and a different element to that the committee has heard previously. We thank you very much for your efforts in coming to Melbourne and indeed for your written submission. There are a couple of matters we may follow up based on the testimony; that would be very much appreciated.

Mr LYON — Thank you, and we thank you, Mr Chairman, and the committee.

Committee adjourned.