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11 SEP 2015

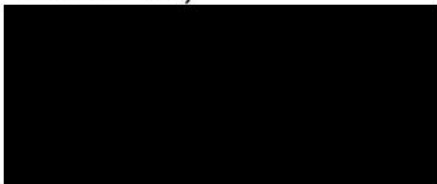
Mr Keir Delaney
Secretary
Port of Melbourne Select Committee
Parliament House
Spring Street
MELBOURNE VIC 3002

Dear Mr.Delaney

Please find attached the Tasmanian Government's submission to the Victorian Legislative Council Select Committee Inquiry into the Proposed Lease of the Port of Melbourne.

Thank you for the opportunity to provide input to the Committee's deliberations on this important matter.

Yours sincerely



Hon M. T. (Rene) Hidding MP
Minister for Infrastructure

Attached:

Victorian Legislative Council Select Committee Inquiry into the Proposed Lease of the Port of Melbourne – Tasmanian Government Submission

Victorian Legislative Council Select Committee Inquiry into the Proposed Lease of the Port of Melbourne

Tasmanian Government Submission

I. Introduction

The Tasmanian Government welcomes the opportunity to provide a submission to the Victorian Legislative Council Select Committee Inquiry into the Proposed Lease of the Port of Melbourne.

Tasmanian businesses are reliant on the facilities and services at the Port of Melbourne and account for a significant proportion of trade through the port. Around 98 per cent of Tasmania's inbound and outbound container freight is processed through the Port of Melbourne and Tasmanian trade is estimated to comprise around 25 per cent of volumes handled by the Port.

The Tasmanian Government, therefore, has a strong and legitimate interest in ensuring that port costs remain efficient and, in general, that continued efficiency for Tasmanian freight is maintained.

Over the past six months the Tasmanian Government has been actively involved in high-level discussions with the Victorian Government, seeking its assurances that the privatisation of the Port will not result in unreasonable cost increases for Tasmania.

The Tasmanian Government notes that the Victorian Government's *Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Bill 2015* would provide additional economic regulatory protection across a much broader range of services than is currently the case.

The Victorian Government's commitment to cap, at the Consumer Price Index (CPI), annual tariff increases for 15 years is welcomed on the basis that it will provide a significant degree of medium-term price certainty for Port users.

The Tasmanian Government has also been encouraged by the recent announcement that the Port of Melbourne Corporation (PoMC) and international stevedore DP World have, after a lengthy and public dispute, reached a commercially acceptable long-term agreement on future port rents. The Tasmanian Government would expect to see, ahead of privatisation, similarly positive commercial outcomes in relation to active lease renewal negotiations involving Tasmanian shipping operators based at the Port, in keeping with repeated undertakings made in good faith by the Victorian Government.

However, the Tasmanian Government remains concerned that there is no long-term certainty that Tasmanian freight will have continued access to the Port of Melbourne. The proposed legislation may still not adequately protect port users in the future against a new, private operator extracting monopoly rents with respect to those components of the cost base for port users that will remain entirely unregulated; namely, terminal lease costs. Even if suitable new lease agreements are in place, there is no guarantee that Tasmanian freight will have long term and reasonable access to the Port of Melbourne beyond the respective lease terms.

The Tasmanian Government acknowledges that it may not be realistic to establish binding lease terms beyond the initial 25-year period. However, it is reasonable to expect from the Victorian Government a public statement of principle, which recognises that the critical, long-term strategic interests of the people of Tasmania will be duly considered and protected in any future ownership and management arrangements over the Port of Melbourne.

In light of this, the Tasmanian Government is pleased that both the terms of the proposed Port lease and its facilitating legislation will be exposed to detailed scrutiny via the Select Committee process, and that the Victorian Government is supporting this process.

Many of the Committee's Terms of Reference relate to issues that are matters for the Victorian Parliament to weigh and consider, including potential environmental concerns and specific impacts on Victorian port users and the Victorian economy.

However, as Australia's largest container port, the Port of Melbourne's future operations will clearly have a significant and direct impact on the supply chains of a large number of businesses across the country and on the vast majority of Tasmanian businesses in particular.

The Tasmanian Government remains concerned to ensure that there is long term certainty for Tasmanian business in relation to access to the Port of Melbourne post-privatisation, and that Tasmanian freight needs are properly recognised in relation to any future port planning both within the Port of Melbourne and in relation to a second container port.

The Tasmanian Government's submission primarily focuses on those Terms of Reference that directly relate to potential impacts on Tasmanian businesses and the Tasmanian economy, namely:

- d) *the potential impacts of the proposed arrangements on the competitiveness of the Port of Melbourne, the supply chains that depend on it and the cost effects of goods passing through the Port of Melbourne; and*
- e) *the effectiveness of the proposed regulatory framework for dealing with the transfer of a monopoly asset from the public sector to the private sector.*

Information on key issues from the Tasmanian Government's perspective relating to these Terms of Reference is outlined in more detail below for the Committee's consideration under the headings 'Tasmanian Supply Chain Costs and Competiveness' and 'Proposed Economic Regulatory Framework', respectively.

2. Tasmanian Supply Chain Costs and Competiveness

There is no doubt that any significant cost increases at the Port of Melbourne resulting from the proposed privatisation would have a significant impact on the overall competitiveness of Tasmanian businesses and, consequently, the health of the Tasmanian economy more broadly.

Tasmania's is uniquely exposed in this regard due to its heavy reliance on interstate container shipping, when compared to other states and territories. This is because – owing to unavoidable geographic realities - Tasmanian businesses moving goods interstate simply do not have the modal choices (i.e. rail, road) that are available to their mainland counterparts.

Bass Strait container shipping is, proportionally, the single largest transport cost in the supply chain of most Tasmanian businesses.

The majority of Tasmania's container trade is with domestic markets. The Port of Melbourne provides the closest port link in the supply chain for interstate freight movements, providing access to key domestic land freight and coastal shipping options. A container logistics study undertaken by the Port of Melbourne Corporation suggests that 86 per cent of Tasmanian imports to Victoria are destined for locations spread across metropolitan Melbourne, with relatively active areas both east and west of the central business district.

All three Bass Strait container shipping service providers – Toll, SeaRoad Shipping and TT-Line - are based at the Port of Melbourne. Each shipping operator operates independently using their own terminals and infrastructure at the Port under lease arrangements with the Port of Melbourne Corporation. Toll-ANL and SeaRoad both have their own dedicated unloading facilities at Webb Dock East, while TT-Line operates from Station Pier.

Since the cessation in 2012 of regular direct international container services out of Bell Bay, the Port of Melbourne has also become the central transshipment hub for Tasmanian non-bulk international exports, in addition to domestic freight. Several large Tasmanian firms have made significant long-term decisions to change their international supply chains, utilising the Port of Melbourne as an export 'hub'. While the Tasmanian Government remains positive that new international container services may emerge in the future, it is clear that the Port of Melbourne will remain the central transshipment point for substantial number of Tasmanian customers.

Therefore, while there is competition in the Bass Strait shipping market and Tasmanian shippers have access to choices with regard to their shipping service provider, they currently have little or no choice with regard to their destination port.

In 2012, Tasmanian shippers endured significant tariff increases at the Port, following the introduction of the Victorian Government's Port Licence Fee (PLF). The PLF increased port

tariffs, on average, by around 50 per cent. The PLF is unrelated to the cost of providing port services and is utilised by the Victorian Government as a general revenue raising measure; it is effectively a 'port tax' levied on all users.

Notwithstanding the PoMC's efforts to spread the legislated PLF cost impost broadly and on an equitable basis, it is worth noting that current port tariffs – which will be used as the baseline for annual increases following privatisation – still incorporate an \$80 million per annum cost pass-through to users that is unrelated to actual port services or costs.

The Committee may be aware that a significant number of Tasmanian shippers receive direct Commonwealth assistance to reduce their freight costs, via the Tasmanian Freight Equalisation Scheme (TFES). This assistance is provided in recognition of the fact that Tasmanian businesses face a fundamental transport disadvantage compared to firms on mainland Australia as a result of their reliance on sea freight.

Under the TFES, eligible non-bulk freight shipped between Tasmania and mainland Australia may receive a rebate to help off-set the cost of moving goods, up to a maximum of \$855 per TEU. From 1 January 2016, the TFES will be extended so that eligible goods transhipped via a mainland port to international destinations not presently covered by the scheme will receive a flat \$700-per TEU rebate.

However, because TFES assistance per-TEU is capped – once a shipper's costs reach a certain point, any additional costs beyond this point are borne by that shipper.

The Tasmanian Government is committed to ensuring that crucial Federal freight equalisation assistance - intended to place Tasmanian industry on a competitive footing – benefits the intended recipients and is not able to be 'captured' by a new private port operator through the exercise of market power.

While the Tasmanian Government does not wish to enter into the debate about the specific location and timing of a second Victorian container port in this submission, it is important to note that decisions made by the Victorian Government in this regard will have a direct impact on Tasmania, with land freight costs for some Tasmanian shippers likely to increase, depending on the location. As a key stakeholder, it is crucial that the Victorian Government involves the Tasmanian Government in future port planning discussions.

3. Proposed Economic Regulatory Framework

As a consequence of their reliance on the Port of Melbourne, Tasmanian shippers have very little countervailing market power that they can exercise and are extremely exposed should a new port operator be in a position to use its significant market power to extract monopoly rents. Unfortunately, it is not a simple matter for Tasmanian port users to 'vote with their feet' and take their trade elsewhere in response to monopoly pricing.

This is the reason the Tasmanian Government has been supportive of the Australian Competition and Consumer Commission (ACCC) and others in encouraging the Victorian Government to proactively put in place a fair, appropriate and transparent pricing and access regime for the port, prior to privatisation.

To its credit, the Victorian Government's Bill includes an economic regulatory framework that appears to provide significant protections, as well as medium-term price certainty, for port users. The ACCC has noted that recent privatisations in other jurisdictions have not always placed a clear priority on achieving a balance between short-term budgetary goals (sale price) and long-term competition and consumer protection outcomes.

Firstly, the Bill provides for a significant widening and deepening of economic regulation compared to current arrangements.

The Committee may be aware that, presently, the Essential Services Commission (ESC) of Victoria only has the ability, under a 'light-handed' regulatory regime, to monitor prices, service quality and profitability of the following services at the Port:

- shipping channels in Port of Melbourne waters, including the shared channels used by ships bound either for the Port of Melbourne or the Port of Geelong;
- berths, buoys or dolphins for the berthing of vessels carrying container or motor vehicle cargoes in the Port of Melbourne; and
- short-term storage or cargo marshalling facilities for the loading or unloading of vessels carrying container or motor vehicle cargoes in the Port of Melbourne.

The ESC does not presently have the power to set prices or direct the PoMC to change prices with respect to these services.

Under the framework proposed by the Bill, economic regulation would extend to services across the cargo base (i.e. not limited to containers and motor vehicles). The Victorian Government advises that the regulatory framework will cover 86 per cent of the Port's commercial revenue. A wider range of tools and options would also be available to the regulator, from prices oversight at one end of the spectrum, through to tariff-setting at the other.

Secondly, the Victorian Government has committed to cap overall annual tariff increases by the consumer price index for a period of 15 years following privatisation and to reduce loaded international container export charges by 2.5 per cent per annum for four years. The Tasmanian Government understands that the starting point for the indexation of port charges will be the tariffs as laid out in PoMC's 2015-16 Reference Tariff Schedule.

It is important to note that specific tariff control commitments are not captured in the Bill itself and would be likely to be implemented via the proposed 'Port Pricing Order' mechanism established under section 49A of the *Port Management Act 1995* as amended via the Bill.

The Committee may wish to consider requesting that the Victorian Government provides it with a draft example Pricing Order so that it can understand in more detail how the promised price caps would be given practical effect via this instrument.

The Bill provides that, once enacted, a Pricing Order can be amended or revoked by the Governor-in-Council on the recommendation of the Minister in certain circumstances. The Tasmanian Government is concerned that these circumstances appear to include the instance where the regulated entity agrees to the revocation, which presumably would not be difficult to obtain if the effect of a revocation is in the interests of the entity and potentially contrary to the interests of port users.

The Committee may wish to seek to understand the process that a future ESC Minister would undertake for determining whether price regulation would continue to apply to the prescribed services, and in what form, at the conclusion of the initial 15-year Pricing Order, particularly given the Bill seeks to abolish the ESC's current five-yearly reviews of port regulation.

Further, the Committee may wish to seek to understand the process and circumstances under which a Pricing Order may be amended or revoked, and may wish to consider whether the Minister should be required to demonstrate that such an amendment or revocation would not reduce competition or have a disproportionate burden on a particular customer group.

While port tariffs would be subject to price control, rents would remain completely unregulated. On this issue, the Tasmanian Government shares the concerns of industry stakeholders such as the Australian Logistics Council and the Freight and Trade Alliance, who have suggested that this will leave open the possibility of a new operator increasing port rents significantly, the cost of which would be passed on by terminal operators and, ultimately, borne by all port users.

The Tasmanian Government is acutely aware of the rent cost issue given that terminal lease arrangements for two of Tasmania's major Bass Strait container shipping operators – Toll and SeaRoad Shipping - are due to expire in 2017. Together, Toll and SeaRoad Shipping support around 80 per cent of Bass Strait container trade. Both operators have recently announced plans for significant investment in new vessels. Certainty around achieving reasonable lease arrangements (including price and access to appropriate land and supporting infrastructure) is critical to support these investments, which will increase capacity across Bass Strait and enable future growth in the Tasmanian economy.

It is understood that commercial discussions between Bass Strait shipping operators and the PoMC are now in train. However even if new leases are negotiated for a reasonable time period post 2017, there is no longer term certainty or protection for Tasmanian shipping operators in the post-privatisation environment.

The Tasmanian Government suggests that the Committee consider the merits of potential regulatory or other safeguards that could be included in the legislation to provide appropriate long term certainty and prevent unreasonable (and economically inefficient) rent increases for terminal operators once the operation of the Port is passed into private control. In short, Tasmania seeks assurances on the continued efficiency of the Bass Strait freight market as it relates to the PoM.

As the ACCC has noted, access regulation need not take the form of *ex-ante* price regulation, but could be based on a 'negotiate-arbitrate' model, such as the process that applies where certain infrastructure services are 'declared' under the National Access Regime.

At a minimum, some form of independent prices oversight/monitoring of rents would seem worthy of consideration, with the potential for future regulatory 'step-in' if and where monopoly pricing is evident.

The Tasmanian Government suggests that the Committee actively seeks expert advice and evidence on these and other regulatory matters directly from the ACCC and the ESC.