Ai GROUP SUBMISSION

Victorian Legislative Council Select Committee

Inquiry into the proposed lease of the Port of Melbourne

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About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

Australian Industry Group contact for this submission

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[redacted]

1. Ai Group supports the proposal to lease out the Port of Melbourne

The Australian Industry Group (Ai Group) is pleased to make a submission to the current inquiry by the Select Committee of the Victorian Legislative Council into the proposal to lease out the Port of Melbourne.

Ai Group welcomes, with some caution, the introduction of legislation for the long-term lease of the Port of Melbourne. It makes clear sense to have these assets managed by the private sector and for the capital the state has tied up in these assets to be released for other purposes.

As a general principle of good public policy design, Ai Group supports the sale or lease of some state-owned assets, including the Port of Melbourne, and encourages "asset recycling".

At the same time however, we are concerned that where assets are leased or sold, the market and regulatory environment in which the new businesses operate must ensure that the new businesses are run to the benefit of the whole economy. In particular, where the new asset operators are likely to have monopoly characteristics, suitable regulatory arrangements need to be in place to safeguard the interests of other players in the market. In this case, the primary goal of the lease agreement must be to promote the efficiency of the freight and logistics industry of Victoria and of Australia more broadly.

For these reasons, Ai Group welcomes the involvement of the Victorian Essential Services Commission in the oversight of prices paid by port users. This, together with the capping of price increases in line with the Consumer Price Index, is a critical safeguard for the state's businesses and consumers over the full term of the proposed lease agreement.

2. Ai Group questions about the proposed terms and conditions for the lease of the Port of Melbourne

Ai Group and its members remain cautious of suggestions that the terms and conditions of the lease might enable the privatized operator to engage in monopoly pricing, to vertical integrate and/or to discriminate between users. It may also restrict the potential for future port competition. Our concerns relate to several key circumstances surrounding proposed lease:

- **Attempts to implement outsized price increases prior to the commencement of the lease?** Recent Australian experience shows that in other port privatisations, rental charges at the ports have significantly increased in the years prior to privatisation. For example, in the three years prior to privatisation, rents increased at the Brisbane Container terminal by 128%. The Port of Melbourne's recent proposal to DP World of a rent increase to \$120 per m^2 would have significantly raised rates above other capital city ports, including those already privatised. A smaller, though still substantial, rent increase has since been agreed.

  If the proposed rental increase to \$120 per m^2 had gone ahead, DP World estimated that it would have added \$80 per container passing through the Port of Melbourne. One major exporter estimated that the proposal would have increased their transport costs by \$3mn p.a., had it gone ahead. Although this initial demand for a large increase was tempered during the negotiation process, it illustrates the pressure the privatised operator will be under to maintain margins. These rent charges are levied by the stevedore on the shipping lines and landside operators. Any increases will be passed down the supply chain, detracting from Victoria's freight movement competitiveness relative to other Australian container ports.

- **Are all port prices subject to a CPI cap?** Currently there are three areas where the Port operator can alter its prices:

  a) Lease Rent

  b) Port Charges, which are applied by the port to shipping lines and include ship based charges (e.g. tonnage, pilotage, towage) and cargo based fees (e.g. wharfage charges, harbour dues).

  c) New Charges which the port operator may introduce, for example, surcharges for new infrastructure investments or services (e.g. new ID cards to access the Port). These charges may be directed at shipping lines, stevedores or landside port users. Safeguards may be required to ensure the Port operator does not engage in 'gold-plating' of any new services or facilities introduced.

  Of these three types of pricing, the proposed lease conditions cover only the second type (port charges), by requiring the ESC to monitor (but not necessarily regulate) port charges. The other two categories of pricing will be unregulated.

The effect of this lack of pricing protection could be to render the Port of Melbourne uncompetitive. As noted recently by Dr Hermione Parsons, Director of the Institute for Supply Chain and Logistics at Victoria University, "*these types of costs, like compensation payments, would be paid for either by taxpayers or by importers and exporters. That means that our port becomes really uncompetitive and … Australian businesses working on global markets cannot afford these extra imposts of costs. So probably it would mean businesses that rely on the Port of Melbourne would relocate away from Melbourne to go to more effective ports elsewhere*." (Interview on ABC 774, 7 Sep 2015)

- **Will some price caps have a finite life?** Price increases for a range of charges will be capped at CPI for 15 years. Beyond that time, there will be an opportunity to increase prices beyond the CPI. What are the safeguards to ensure increases will not get out of hand? If those safeguards are the Essential Services Commission's powers, what factors will be taken into account to ensure increases are appropriate?

- **Are there any restrictions on vertical integration by a privatised Port operator?** A privatised Port of Melbourne operator might seek to expand its services into stevedoring, thus becoming its own 'customer'. A vertically integrated Port operator would have strong incentives to prefer its own related stevedore operator and could act on this through discriminatory pricing, planning or operational decisions. This would undermine effective competition in local stevedoring.

- **Is the Port Operator subject to normal planning processes and consultation requirements?** For the Port of Melbourne, this may include the Port Development Plan, a Landside Development Plan and any planning controls on the surrounding areas (for example, those that will apply to the development of the adjacent former Melbourne fruit and vegetable market or to proposals for improved rail access). Consultation processes for these plans must include input from Port users.

- **Will compensation clauses restrict the development of a new container port in Victoria?** Although there is little detail available, there has been discussion of compensation being payable to the privatised Port of Melbourne operator if a new container port is developed in Victoria. Providing such compensation will add a significant barrier to entry, by increasing the cost to any future government wishing to approve a second container port. Shipping operators believe that, while the Port of Melbourne currently has considerable spare capacity, the compensation arrangements could leave a future government in a very difficult situation.

  In these circumstances, the 'total' or 'potential' capacity of the current Port of Melbourne must be clearly defined and agreed in the lease documents, should any compensation clause be included. While the value of the compensation may be expected to be reflected in the price bid for the Port, the costs will be passed to future taxpayers or to the users of the port who will not benefit from the discipline of competition on future pricing. As noted recently by ACCC Chair, Rod Sims, on this crucial competition issue: "*It is not a good look to be selling an asset* *and providing compensation if a competitor sets up shop when, of course, it is the Government who can decide whether or not the competitor gets the go-ahead*". (The Age, 16 Aug 2015).

- **When will the lease agreement need to be renegotiated? And by whom?** The current proposal sets out a lease tenure of 50 years, with an option to extend to 70 years. At what stage will negotiations commence for the extension or renewal? Who will be responsible for this process on behalf of the State of Victoria? Should this responsibility reside with the Premier or the Parliament? Can such a large and distant negotiation be delegated?

Related to the question of a second container port for Melbourne, Ai Group recommends that Infrastructure Victoria (IV) should commence the process of considering and recommending the best site and the best timetable for establishing a second container port for Melbourne. Once IV has made its recommendations, the State Government and Opposition should both commit to the recommended site and work together to commence the necessary planning work for designating transport corridors, land for warehousing and other linkages. This long-term planning and bipartisan commitment is vital to maintaining an efficient freight and logistics industry for Victoria in the long term.

The business community needs to feel certain that additional costs and exposure to increases are not going to be unduly levied on stevedores, port users, the broader business community and ultimately Victorian consumers.

This legislation clearly has long-term implications for the economy and we welcome the additional time that this Committee is giving to consider the full range of its potential impacts.

Ai Group looks forward to ongoing participation in this Committee's inquiry.

Appendix: Terms of reference and timetable

On 5 August 2015 the Legislative Council agreed to the following motion:

A Select Committee of eight members be appointed to inquire into and report on the proposed lease of the Port of Melbourne as contemplated by the Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Bill 2015 and, in particular —

a. the structure and duration of the proposed lease;
b. the potential impacts of the proposed lease on the development of a second container port in Victoria;
c. the potential impacts on the environment of the further expansion of the Port of Melbourne;
d. the potential impacts of the proposed arrangements on the competitiveness of the Port of Melbourne, the supply chains that depend on it and cost effects on goods passing through the Port of Melbourne;
e. the effectiveness of the proposed regulatory framework in dealing with the transfer of a monopoly asset from the public sector to the private sector;
f. how the proposed lease balances the short-term objective of maximising the proceeds of the lease with the longer-term objective of maximising the economic benefits to Victoria of container trade; and
g. any other relevant matters.

The Committee has called for written submissions. Details about how to make a submission or contribute at a public hearing can be found on the Committee's website.

Submissions close on Friday 11 September 2015.

The reporting date for this inquiry is 30 November 2015.

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