



MARITIME UNION OF AUSTRALIA (MUA)

SUBMISSION TO THE VICTORIAN LEGISLATIVE COUNCIL PORT OF MELBOURNE SELECT COMMITTEE INQUIRY INTO THE PROPOSED LEASE OF THE PORT OF MELBOURNE

11 SEPTEMBER 2015

The Maritime Union of Australia proposes that the Committee:

1. Recommend that COAG establish a Ministerial Council of Ports Ministers, supported by a national Industry stakeholder advisory body to address national port coordination issues which would assist State Port Ministers and Treasurers to make the strategic national freight infrastructure investment and port management decisions, in the national interest.
2. Recommend that the Bill be amended to require the Victorian Government to publish the non-commercial in confidence provisions in the leaseholder contract when signed.
3. Recommend that the Victorian Government mandate the expected levels of transparency and disclosure of contracts with port service providers it enters into or supervises.
4. Recommend that the Victorian Government acknowledge it has a role in promoting Australian shipping as a nationally strategic industry and in so doing, agree to work with the Commonwealth Government and industry stakeholders under a bi-partisan consultative arrangement to identify the regulatory options available to the Victorian Government for assisting the growth of an efficient and competitive Australian shipping industry.
5. Recommend that the Victorian Government mandate the standards of corporate behaviour expected of the leaseholder in the Expression of Interest (EoI) documentation, and that those expectations include:
 - 5.1 A requirement that the governance Board of the leaseholder include a wide range of skills representative of the strategic role of the port, its wider role in the economy and as a place of significant employment, and in that context the governance Board include at least one Director with expertise in labour management relationships, work health and safety and workforce development;
 - 5.2 A requirement for establishment of a port stakeholders advisory body to advise the governance Board and port management team on strategic and port wide issues including overall port productivity, investment planning and execution, seaside and landside interface issues, beyond the port supply chain issues, maritime security and port safety;
 - 5.3 The performance standards to be met in relation to:
 - 5.3.1 Labour relations – for example adherence to core ILO Convention standards (the right to collectively bargain, the right to representation etc).
 - 5.3.2 Work health and safety – adherence to Victorian State OHS requirements and to a National Stevedoring Code of Practice.
 - 5.3.3 Workforce consultation – that workforce participation be an essential feature of future port governance arrangements.
 - 5.3.4 Contractor policy - that specifies a chain of responsibility policy for upstream and downstream contractors.

Introduction

- 1.1. The Maritime Union of Australia (MUA) represents over 14,000 workers in the shipping, stevedoring, port services, offshore oil and gas and diving sectors of the Australian maritime industry.
- 1.2. Members of the MUA work in a range of occupations across all facets of the maritime sector including in ports, stevedoring, on coastal cargo vessels (dry bulk cargo, liquid bulk cargo, refrigerated cargo, project cargo, container cargo, general cargo) as well as passenger vessels, towage vessels, salvage vessels, dredges, ferries, cruise ships, and recreational dive tourism vessels.. MUA members work on LNG tankers engaged in international Liquefied Natural Gas (LNG) transportation. In the offshore oil and gas industry, MUA members work in a variety of occupations on vessels which support offshore oil and gas exploration, construction and operations.
- 1.3. In ports, MUA members work directly for port authorities across Australia, including as safety officers, pollution control and oil spill response officers, emergency response personnel, dredging crew, pilot boat crew, and in vessel traffic control. MUA members also work in port services which are often sub-contracted, for example, tug boats, lines and mooring services (although these services are also provided by some port authorities), and in container and bulk and general stevedoring.
- 1.4. The MUA is a member of the International Transport Workers Federation (ITF) which is the peak global union federation for over 700 unions representing over 4.5 million transport and logistics workers worldwide.
- 1.5 The MUA welcomes the opportunity to present a submission to the Inquiry.

2. The MUA interest in the matters under consideration by the Committee

- 2.1 As a representative organisation, with a direct involvement in the Port of Melbourne, the MUA has an interest in the matters under consideration by the Inquiry from a number of viewpoints. We believe it is important to lay out those interests to provide context to the union's comments under the various terms of reference.
- 2.2 The primary interest we have derives from our role as a representative of the majority of the workforce that are engaged by the port and by service providers who operate within the port.
- 2.3 A related interest stemming from our role as a representative of the workforce goes to our role as a nominee of trustees on Trustee Boards responsible for managing and investing workers' superannuation accumulations that have in a number of instances, and may well in the case of the Port of Melbourne, take a controlling or majority interest in the entity that is the successful bidder for the long term lease. Those trustees have a fiduciary duty to promote the interests of fund members, who are in some cases, and may well be in relation to the Port of Melbourne, the future operators of the port.

- 2.4 A secondary interest we have is that as a major player in the maritime industry for over a century, we have a history of active engagement in public policy issues surrounding port operations but also in the wider issue of freight transportation and supply chains in Australia. It is in the interests of our current members and future members that Australia has a functional and productive freight transportation system that not only delivers a benefit to the economy and to citizens, but that the sector creates secure, safe and well paying jobs.

3. Addressing the terms of reference

- 3.1 We address each of the terms of reference as follows:

The structure and duration of the proposed lease

- 3.2 The union has no concerns with the proposed 50 year duration of the lease or with the capacity to extend the lease for a further 20 years.
- 3.3 As a general principle we believe that it is sound policy to optimise the productivity and longevity of existing infrastructure assets before a Government embarks on commitment of taxation revenue to provide additional capacity where the pressure to do so derives largely from commercial self interest and not from transparent and credible forecasting that has been publicly scrutinised that indicates new investment is needed to meet a longer term need. Ports, even within a geographical region, tend not to compete, though service providers within those ports might. Port competition should not be the objective of public policy, but rather port coordination as part of a wider freight transport network, and facilitation of freight flows, should be the public policy objective.
- 3.4 Furthermore, while port assets, port management and port regulation are currently a State/NT responsibility under Australia's system of federalism, we have consistently advocated that the Council of Australian Governments (COAG), working with bodies like Infrastructure Australia (and State infrastructure advisory bodies where appropriate) should take a national approach to port development, given it is just one facet in an overall national freight transport system.
- 3.5 If Australia is to realise the available efficiencies from its freight transport system, there needs to be considerably more coordination and integration of Australia's freight transport system, including use of ports.
- 3.6 For example, trends in container ship technology and stevedoring technologies along with freight volume forecasts suggests that the opportunities for Australia to move towards a transshipment model of port logistics, with greater use of sea and rail for all but the "last mile" in the supply chain must be kept under consideration, perhaps even planned, and that such integrated models must be coordinated at the national level through COAG or a dedicated Commonwealth State/NT Ministerial Council process, ideally with strong stakeholder involvement.

- 3.7 The debacles in stevedoring service provision in the ports of Sydney and Melbourne that Australia is currently witnessing, as a direct result of short sighted, poorly coordinated decisions of a former Liberal Government in Victoria and a former Labor Government in NSW has arisen directly from parochial port policy in the absence of national coordination. The mis-allocation of resources and capital investment that those Governments promoted is now costing taxpayers and consumers and has had a disruptive and detrimental impact on the skilled workforce. The introduction of third stevedores in those ports, when port container volumes do not warrant that level of capacity and cannot support the capital intensity of the new entrant stevedores, is the consequence of a lack of national port policy coordination in Australia. We ask: where is the ACCC now to explain to Australian consumers and supply chain users the folly of its theories of competition that bear no relationship to commercial reality.
- 3.8 We would encourage the Legislative Council to recommend that COAG establish a Ministerial Council of Port Ministers, supported by a national industry stakeholder advisory body to address these national coordination issues which would assist State Port Ministers and Treasurers to make the strategic national freight infrastructure investment and port management decisions, in the national interest.
- 3.9 Notwithstanding that privatisation of ports results in Governments losing direct control over port management and investment, this detrimental consequence can be offset by formation of a national industry stakeholder advisory body to Port Ministers that would provide for national coordination to be given effect through contractual provisions in the lease arrangements that each port has with the privatised port operator. This must however be articulated in the EoI documentation for the Port of Melbourne to enable bidders to understand the Government's future expectations.
- 3.10 The union does not wish to raise any specific concerns with the structure of the lease as proposed in the Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Bill 2015 (the Bill).
- 3.11 However, consistent with our comments in Paragraphs 3.3 to 3.10 above, and given that the Bill provides at Clause 74 for the future Port of Melbourne operator to be responsible for "*facilitating the sustainable growth of trade through the port of Melbourne or ensuring that essential port services are available and cost effective*"¹ rather than the Port of Melbourne Corporation which currently has this responsibility, we believe that the non-commercial in confidence provisions of any contractual arrangement put in place on transfer of the lease to a private entity be made public and be open to public scrutiny.
- 3.12 For example, we say it is in the public interest to make transparent the measures the Government will apply in assessing the private leaseholder's performance in facilitating the sustainable growth of trade through the Port

¹ Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Bill 2015
http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/6ea27097ab00e2b5ca257e5100803c4f!OpenDocument

of Melbourne and in ensuring that essential port services are available and cost effective.

- 3.13 We encourage the Committee to recommend that the Bill be amended to require the Victorian Government to publish the non commercial in confidence provisions in the leaseholder contract.
- 3.14 We submit that the transparency we call for in relation to the Government's contractual relationship with the leaseholder should be extended to the leaseholder's contractual relationship with the port service providers. Again, we submit that the non-commercial in confidence provisions in those contracts, in particular those provisions that set out the performance obligations on the service provider, should be made public in the national interest.
- 3.15 This level of transparency would be beneficial to regulators which seek to balance competing commercial relationships and to port users who respond to pricing decisions. It would also be beneficial to those responsible for managing labour relationships, the outcomes of which ultimately have an impact on port productivity, and who quite frequently are thwarted in attempts to better understand the commercial imperatives due to alleged commercial in confidence barriers, which are in reality no more than a bargaining chip creating unfair bargaining terms.
- 3.16 It is our view that in designing the Expression of Interest (EoI) documentation, the Victorian Government should place an obligation on bidders that they be required to adopt high levels of transparency in setting out how they will manage their relationship with port service providers.
- 3.17 We encourage the Committee to recommend that the Victorian Government mandate the expected levels of transparency and disclosure of contracts it enters into or supervises with port service providers.

The potential impacts of the proposed lease on the development of a second container port in Victoria;

- 3.18 No comments.

The potential impacts on the environment of the further expansion of the Port of Melbourne;

- 3.19 No comments.

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;

- 3.20 The MUA has raised its concerns about the pricing practices of privatised ports in previous submissions to government.² In the course of developing

² Maritime Union of Australia Submission to Legislative Assembly of the Northern Territory Port of Darwin Select Committee 11 March 2015 http://www.nt.gov.au/lant/parliamentary-business/committees/pod/Submissions/Number_3_Maritime_Union_of_Australia.pdf Maritime

these submissions, the MUA undertook a case study of Port of Brisbane commercial practices post-privatisation, and concluded on the evidence that significant price increases in port fees and rental appear to have been integral to the port's business model. In the case of the Port of Brisbane, port operating costs increased 412% in a single year. The Port raised fees to ships, rental fees to logistics and stevedoring companies as well as cutting costs and jobs.³

- 3.21 While this may be short term positive for shareholders, which includes pension funds which may distribute those commercial benefits in improved member returns, it has been detrimental to the current workforce. Our position is that the right balance must be struck between the interests of the current workforce and the shareholders, and that it is not appropriate or fair for the workforce to shoulder the majority of the downstream impact of port pricing strategies.
- 3.22 Given that the Victorian Government has been more strategic and significantly more committed to establishing a robust regulatory regime when compared to other Australian port privatisation processes, as reflected in the Bill, we are satisfied the Government has got the balance about right, and that all the parties are likely to gain fair benefit from the proposed arrangements in the Bill – the citizens of Victoria, the current and future workforce, and shareholders of the selected leaseholder (including potentially pension fund members).
- 3.23 In that context we welcome the announcement by the Victorian Government that it has entered into a new 50 year lease with DP World that provides incremental rent increases over the 50-year tenure period with agreed escalations to 2028, at which time as we understand, there will be a market rent review that will subsequently take place every five years thereafter until 2065.
- 3.24 It is our submission that the *Port Management Act 1995*, which prescribes the port services to be regulated by the ESC, be amended to include a monitoring role of rental charges, as well as a wider range of port services than those currently prescribed. We suggest that the Price Monitoring Determination for Victorian Ports 2010 be redesigned, and imposed through the lease arrangements on the new operator. We note that *Port Management Act* is currently confined to price regulation of:
- Shipping channels in Port of Melbourne waters.
 - Berths, buoys or dolphins for the berthing of vessels carrying container or motor vehicle cargoes in the Port of Melbourne.
 - 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.

Union of Australia submission to Senate Inquiry into Privatisation of state and territory assets and new infrastructure
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Privatisation_2014/Submissions

³ Ibid

- 3.25 The MUA also welcomes the decision to freeze port tariffs on loaded international container exports in 2015/16 and that such charges will be progressively reduced by 2.5% annually for the four years thereafter.
- 3.26 We also welcome the decision to maintain channel fee discounts for multi-sailing vessels such as Bass Strait operators at a marginally lower rate than other users and to continue the exemption from the Channel Deepening Infrastructure fee for ship movements between Tasmania and the Port of Melbourne.
- 3.27 This decision is very positive for Australian Bass Strait ship operators such as Searoad Holdings, which has invested heavily in new ships using the latest emission reducing engine technologies, and Toll Shipping.
- 3.28 However, there is currently a crisis in the Australian shipping industry. Incrementally the industry is dying, and the pace of decline is accelerating. Ships operating in the Australian coastal trades employing Australian seafarers are being withdrawn for replacement and reflagging in foreign ship registries, as well as being crewed by international seafarers, or are being decommissioned altogether, at an alarming rate.
- 3.29 The crisis requires a response that attracts bi-partisan support and a commitment from all participants with responsibility for supply chain infrastructure and regulation to play a role in stemming the Australian ship losses and in rebuilding Australian shipping. State Governments are one key participant and the Victorian Government has already demonstrated its willingness to play a role, but we want that role extended.
- 3.30 The MUA believes there is a strong economic case for extending differentiated port charging to support Australian coastal shipping, currently given effect through modest levels of discounted pricing for certain ships. We propose that the Victorian Government amend the *Port Management Amendment (Port of Melbourne Corporation Licence Fee) Act 2011* to specify that the Port of Melbourne License Fee (PLF) either not be charged to Australian registered multi-sailing coastal vessels or be set at a maximum of 10% of the scheduled fee, to be reviewed after 10 years.. This is one important but tangible step that the Victorian Government could take to support Australian shipping, particularly given it is the key transshipment port for Tasmanian outbound freight.
- 3.31 We encourage the Committee to recommend that the Victorian Government acknowledge it has a role in promoting Australian shipping as a nationally strategic industry and in so doing, agree to work with industry stakeholders under a bi-partisan consultative arrangement to identify further regulatory and access options for assisting the growth of efficient and competitive Australian shipping.

The effectiveness of the proposed regulatory framework in dealing with the transfer of a monopoly asset from the public sector to the private sector;

- 3.32 The MUA submission advocates greater transparency in the contractual relationship the Victorian Government establishes with the private port leaseholder.
- 3.33 That transparency in our submission must extend to specific public reporting by the selected leaseholder. Accountability is important when managing state assets.
- 3.34 In addition, we believe the Victorian Government should establish and publish its governance expectations of the legal entity which will be given the privilege of managing this important State asset for the next 50 or 70 years.
- 3.35 Good governance and transparency are part of effective regulation, and need not inhibit commercial opportunity and success. In fact the reverse is the case. Good governance and transparency reflect good risk management which is integral to commercial success. In addition, good governance and transparency provide the platform on which to establish Victorian citizen and port stakeholder confidence in the quality of corporate citizenship to be exhibited by the leaseholder.
- 3.36 Environmental, Social and Governance (ESG) practices by corporate citizens is becoming increasingly important in risk management and risk mitigation, and are now recognised as being equally important as good financial management.
- 3.37 In terms of future governance of the port asset on behalf of Victorian citizens and users, it is our view that the governance Board of the leaseholder should include a wide range of skills representative of the strategic role of the port and its wider role in the economy and as a place of significant employment. In that context we submit that the Governance Board should include at least one Director with expertise in labour management relationships, work health and safety and workforce development. This in our view should be mandated in the lease conditions and made clear in the EoI documentation.
- 3.38 Furthermore we believe the governance arrangements should require establishment of a port stakeholders advisory body to advise the governance Board and port management team on strategic and port wide issues including overall port productivity, investment planning and execution, seaside and landside interface issues, beyond the port supply chain issues, maritime security and port safety.
- 3.39 The MUA submits that the EoI documentation also contain provisions setting out the requirements of the Government in relation to the performance standards the successful bidder will be required to meet regarding:
- Labour relations – for example adherence to core ILO Convention standards (right to collectively bargain, the right to representation etc) and to Australian labour laws.

- Work health and safety – adherence to Victorian State OHS requirements and to a National Stevedoring Code of Practice.
- Workforce consultation – that workforce participation be an essential feature of future port governance arrangements, particularly around introduction of new technologies.
- Contractor policy - that specifies a chain of responsibility policy for upstream and downstream contractors.

3.40 It is our submission that good risk management would oblige the entity that retains responsibility for tendering for port services such as towage and line operations, which we understand is the restructured Port of Melbourne Corporation to require tenderers to commit to labour standards package such as compliance with the Fair Work Act 2009 and a commitment to payment of wages at prevailing market rates captured in an approved enterprise agreement, to comply with the requirements of the *Superannuation Guarantee (Administration) Act 1992* and so on. Again, it is our view that these minimum standards should be codified in the Eol documentation and where applicable in the Act.

3.41 We also propose that the Eol documentation set out the Government's Community Service Obligations (CSOs) requirements to be met by the selected leaseholder, going to issues such as community access to waterfront areas surrounding the port and the port/community interface issues.

3.42 All these matters should be explicitly laid out in the Eol documentation so bidders are clear about the standards of corporate behaviour that will be expected from them in return for the right to operate and manage the asset for the State and the nation. We strongly encourage the Committee to recommend that the Government mandate these standards in the Eol documentation.

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;

3.43 No comments.

Any other relevant matters.

3.44 No comments.