

Victorian legislation to lease the Port of Melbourne

March 2016

On 21 March 2016, the Victorian Treasurer, the Hon Tim Pallas MP called for expressions of interest for the 50-year lease of the Port of Melbourne. The deadline for responding to the request for expression of interest is 10:00am, Monday 18 April 2016. This will be the first step in shortlisting qualified parties, who will be invited to submit final proposals to lease the Port of Melbourne.

The Victorian Government expects to announce a preferred leaseholder before the end of 2016.

Morgan Stanley and Flagstaff Partners are the State's Financial Advisers for the Port of Melbourne lease transaction.

Parties who are interested in participating in the Port of Melbourne lease transaction process and to receive a copy of the Victorian Government's Expression of Interest, can contact pomlease@morganstanley.com.

Background

In May 2015, the Victorian Treasurer, the Hon Tim Pallas MP introduced the *Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Bill 2015* (the Bill) into Victorian Parliament. After a Committee Inquiry and subsequent amendments, the Bill was passed on 10 March 2016.

This Occasional Paper outlines progression of the Bill through both Houses of Victorian Parliament.

The Port of Melbourne is Australia's largest general and container port. It handles almost 7,000 containers per day, and in 2013-14 paid a dividend of \$43.7 million to the Victorian Government.

This Bill stems from Labor's 2014 election policy commitment to fund the removal of 50 level crossings by leasing the Port of Melbourne. The legislation proposes that the port's commercial operations will be leased for a maximum term of 50 years and to establish the Victorian Transport Fund (VTF).

The Victorian Government has also announced it will establish a new \$200 million Agriculture Infrastructure and Jobs Fund in order to invest and grow Victoria's regions.

The Bill guarantees proceeds from the lease will go to the VTF and used to support the removal of level crossings and other Government transport initiatives such as the Melbourne Metro and the West Gate Distributor.

The lease will also make Victoria eligible for a 15 per cent payment from the Commonwealth Government's asset recycling initiative, to be invested in new infrastructure projects.

The eventual leaseholder will be responsible for improving the port's capacity to operate efficiently and to maintain other assets of the port in order to be returned to public hands in good condition. The Victorian and Commonwealth Governments will maintain the responsibility to oversee the regulation of the port's security and environmental functions. Station Pier will remain in public hands.

The Victorian Treasurer has said the Government will work with the lease holder to manage traffic around the port.

The Essential Services Commission, Victoria's independent economic regulator, will oversee the pricing structure for port users. Annual tariff increases will be capped at the Consumer Price Index. The Victorian Treasurer has said the lease is good news for producers and manufacturers who export.

Furthermore, the Port of Melbourne Corporation recently released its Reference Tariff Schedule (RTS) 2015-16, detailing a price freeze on loaded international export container charges in order to enhance the competitive position of the port within Australia. The RTS became effective from 1 July 2015.

Labor needed the support of the Opposition in the Upper House to pass the legislation. Victorian Greens leader Greg Barber had previously said his party would not support the legislation, with the Party voting against the Bill to pass the Legislative Council in its final form.

Port of Melbourne Select Committee

On 7 August 2015, a Port of Melbourne Select Committee was appointed by the Victorian Legislative Council to inquire into and report on issues surrounding the proposed lease, including:

- The structure and duration of the proposed lease;
- The potential impacts of the proposed lease on the development of a second container port in Victoria;
- The potential impacts on the environment of the further expansion of the Port of Melbourne;
- 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;
- The effectiveness of the proposed regulatory framework in dealing with the transfer of a monopoly asset from the public sector to the private sector;
- 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
- Any other relevant matters.

The Victorian Department of Treasury and Finance provided a submission to the Inquiry, which outlined its considerations in regards to lease terms options, citing:

- At 50 years, there is sufficient incentive for leaseholders and tenants to invest in order to optimise the capacity of the Port of Melbourne, thus preserving the State's strategic flexibility – container trade needs versus port land use.

The submission from the Victorian Department of Treasury and Finance is available [here](#).

The Select Committee handed down its report on 8 December 2015, outlining recommendations, some of which included:

- That a lease may be issued for no more than 50 years;
- That the Government immediately commit to re-activating the expressions of interest for the delivery of the Port Rail Shuttle project for which funding of \$58 million was provided in the 2014-15 Budget;
- Include the ability by the Port of Melbourne to lease or sub-lease for the purposes of terminals or stevedoring operations; and
- Provide within the Pricing Order a rent capping mechanism in order to prevent the exercise of monopoly power in relation to leases or sub-leases.

The Select Committee's full report is available [here](#).

Port Regulatory Regime Safeguards Added, including the Port Growth Regime

On 30 September 2015, the Victorian Government announced it would make refinements in order to strengthen the economic regulatory framework around the final Port of Melbourne lease transaction documents.

The Port Growth Regime is a payment regime to deal with the possibility of a second State-sponsored container port being built by aligning the leaseholder's interest with Victoria, in order to provide interested parties with certainty and upfront value.

The key new economic safeguards included in the Port Regulatory Regime announced by the Victorian Government are as follows:

- The Essential Services Commission will undertake a periodical review to determine whether a misuse of any market power by the final Port Leaseholder occurs when setting the rent rate of the Port;
- Documents will be made publicly available when the lease transaction is completed relating to capacity levels and trigger points in relation to the Port Growth Regime; and
- The Port Leaseholder will be required to introduce a market standard rent review process, including dispute resolution by an independent property market expert to any new tenants or renewing tenants who seek to undertake this process.

The Victorian Government developed these safeguards following concerns raised by the Australian Competition and Consumer Commission (ACCC) about, "the incentive and ability to exercise substantial market power in land rent costs at the Port of Melbourne."

The ACCC has recognised that the proposed Port Growth Regime for the Port of Melbourne will provide stronger oversight than any other privately operated port in Australia.

Amendments to the Bill

On 10 March 2016, a division was called whether the Bill - including proposed amendments - would be read a second time.

The result of the division was in favour of the Government, with the President of the House Bruce Atkinson from the Liberal Party, the Greens Party and the Democratic Labour Party opposing.

A significant amendment to the Bill proposed that the lease be limited to 50 years plus 30 days, which the Government has described as a saving provision in relation to tax treatments that apply beyond 50 years. This amendment was carried on the voices and became part of the final draft of the Bill.

The Government also proposed to insert a new section into the Bill which outlined provisions for compensation that may be paid to a port leaseholder, being the Port Growth Regime. The amendment detailed that in circumstances where a future Victorian government establishes a second state-sponsored international container port in Victoria and if containers are diverted within a 15-year time frame from when the lease is entered into, then compensation provisions to the leaseholder may apply. This amendment was carried on the voices and became part of the final draft of the Bill.

A division was called for the Legislative Council to decide whether the Bill be read a third time and pass.

The result of the division was in favour of the Government, with the Greens Party and the Democratic Labour Party voting against the passage of the Bill.

The Bill in its final form was sent back to the Legislative Assembly, where the House agreed to amendments made by the Legislative Council.

Full amendments passed by the Legislative Council available [here](#).

Further information

The Victorian Government's media releases on the lease of the Port of Melbourne are available as follows:

- Port Of Melbourne Lease Transaction Process Begins, 21 March 2016 available [here](#);
- Labor Passes Port Lease Legislation, to Get Victorians Home Safer And Sooner, 10 March 2016 available [here](#);
- Major Breakthrough on Lease of The Port of Melbourne, 25 February 2016 available [here](#);
- Statement On The Port Lease Legislation, 10 December 2015 available [here](#);
- Government Strengthens Port Regulatory Regime With Additional Safeguards, 30 September 2015, available [here](#);
- Port Lease To Promote Rural And Regional Development, 18 September 2015, available [here](#);
- Lease The Port, Remove The Crossings, Create 5000 New Jobs, 27 May 2015, available [here](#); and
- Lease of Port Legislation Passes Assembly, 25 June 2015, available [here](#).

The Treasurer's Second Reading speech on the original Bill is available [here](#).

The full report from the Port of Melbourne Select Committee Inquiry into the proposed lease of the Port of Melbourne is available [here](#).

A Department of Treasury and Finance presentation to the Select Committee is available [here](#).

The submission from the Victorian Department of Treasury and Finance to the Inquiry into the proposed lease of the Port of Melbourne is available [here](#).

Hawker Britton's Occasional Paper on Labor's 2014 Election Policies is available [here](#).