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Productivity Commission

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Inquiry into the long-term productivity of Australia's maritime logistics system

The Housing Industry Association (HIA) takes this opportunity to respond to the Productivity Commission's (PC) inquiry into the long-term structural issues affecting the productivity of Australia's maritime logistics systems.

Under its broad terms of reference, the PC is required to inquire into and understand any long-term trends, structural changes, and impediments that impact the efficiency and dependability of Australia's maritime logistics system and connected supply chains.

Challenges with the operation and efficiency of Australia's ports are not new and it is unfortunate that it has taken a global pandemic to motivate further inquiry. It is particularly disappointing that while inquiry, investigation and recommendations have been made in relation to these matters in the past, little has been done to redress the current impediments impacting our ports. Notably recommendations made 7 years ago by the Harper Competition Review remain valid and viable yet have become nothing more than historical artefacts.

As Australia's only national industry association representing the interests of the residential building industry HIA's submission focuses on the impact of COVID-19 on residential building activity, on the ports and shipping system and ongoing industrial dispute at the waterfront which have, and continue to cause, significant problems for supply chains necessary to support a buoyant residential building industry.

The Residential Building Industry

HIA represents a membership of 60,000 throughout Australia. HIA members work and operate all across aspects of the residential building industry.

The residential building industry includes detached home building, low, medium and high-density multi-unit housing developments, home repairs, renovations and additions, along with the manufacturers and suppliers of building products and related building professionals. The industry has important linkages with other sectors, such as manufacturing, finance, real estate and retailing, meaning its impacts on the economy go well beyond the direct contribution of construction activities.

For example, it is estimated that the residential building industry employees over 1 million people representing tens of thousands of small businesses and over 200,000 subcontractors reliant on the industry for their livelihood.

The residential building industry contributes over \$100 billion per annum to the economy and accounts for 6.9 per cent of Gross Domestic Product.

The need to ensure an efficient residential building industry cannot be underestimated.

Over the past 12 months, the positive impact of the HomeBuilder scheme and other incentives, low interest rates and favourable market conditions has driven an unprecedented demand for residential building. There are currently a record number of detached dwellings (house) and renovation projects under construction across Australia.

Leading indicators show that the demand for new detached homes remains strong. Sales since the end of HomeBuilder (April 2021 – October 2021) are the strongest they have been since 2017 when over 115,000 detached homes commenced construction. This strong level of home building activity suggests that the current boom in home building will be sustained throughout 2022.

The industry will continue to run at capacity, constrained by the availability of land, labour and materials. During 2021 to September, the price of skilled trades increased by 5.2 per cent, while the price of materials as measured by the ABS increased by 8 per cent. The price of residential land increased by 8.5 per cent in the 2020/21 financial year. Combined these factors have led to an increase in the cost of a new house and land package.

It is anticipated there will have been 148,880 detached home starts in 2021. This is a record and represents growth of 31.3 per cent over 2020. A further 121,200 detached home starts are expected in 2022. This is 11 per cent above average for the 10 years to 2020. Starts are expected to decline to 107,700 in 2023. This is broadly in line with the average of the 10 years to 2020. A further decline to 96,930 starts is anticipated in 2024.

It is anticipated there will have been 76,440 multi-unit starts in 2021. This is growth of 8.9 per cent on 2020. Expected starts drop to 70,130 in 2022 but improve to 72,010 in 2023 and stay around that level in 2024. Growth returns from 2025 onwards.

Renovation activity has also surged. Each of the first two quarters of 2021 saw over \$11.5 billion worth of activity. This compares to an average \$9.4 billion in the first two quarters of 2020. These are the strongest quarters on record. They brought the 2020/21 financial year to \$43 billion in activity, being the strongest year on record, up by 14.8 per cent on the previous year. We expect that during the 2021/22 financial year renovation activity will increase by a further 5 per cent to a new high of \$45.2 billion.

Although industry activity is currently surging, the residential building industry is facing a number of challenges. Most particularly, supply and demand pressures are exacerbating material and labour shortages created due to COVID-19 across the breadth of products used in residential building work. This is in turn leading to project delays and additional costs on builders, contractors and home buyers.

More generally, for a number of historic reasons, residential building remains vulnerable and susceptible to sudden shocks or changes in the external environment including for example, changes to the efficient operation of Australia's ports. This includes the fact that the sector:

- is highly regulated by national, state and local laws, regulations and codes ranging from planning, design, environment, health and safety, to local authority inspection and certification and a multitude of building, electrical, mechanical and plumbing processes. These regulations impose significant costs;
- is predominantly comprised of small businesses with lower risk tolerances and limited contingency capabilities; and
- from the beginning up to the end of all construction projects, decisions must be made facing uncertainties driven by variable factors.

Supply chain and shipping challenges

Throughout much of the last 50 years the building product/materials supply chain in Australia has been relatively stable. There are large established businesses and the key outputs have been domestically produced while imported products complemented domestic production. This dynamic has changed over time. A greater share of building products and materials are now produced overseas and local manufacturing capacity has not kept pace with growth in industry demand.

A reduction in investment in manufacturing capacity was initially a response to the economic reforms throughout the 1990s which reduced barriers to trade and increased competition from imports. More recently, the reduction in local manufacturing has been a response to the high cost of labour, high energy costs, a strong currency and inadequate scale due to underinvestment in new capital in the past.

The businesses that have operated as manufacturers in the Australian market have diversified their business models to optimise production. This has seen a reduction in local manufacturing operations and increase in imported materials. This has in turn resulted in a gradual increase in the exposure to international trade.

As the global economy re-opens following COVID related shut-downs there has been a spike in demand for shipping which has seen a rapid escalation in costs of shipping globally and landside freight domestically. These issues have been exacerbated by industrial action at Australian ports.

Competition law and workplace relations

The ACCC's annual Container Stevedoring Monitoring Report (ACCC Report) includes discussion of global shipping drawing attention to the inefficiencies of Australia's major ports including the impact of industrial relations matters.

The ACCC Report adequately and accurately sets out the restrictive work practices and industrial action that are hampering productivity improvements and damaging the operation of the entire supply chain and is a key factor for consideration during this inquiry.

While those matters do not need to be repeated what is important to highlight is the cascading adverse effect that these practices have down the supply chain, across a range of operations and industries. In the case of the residential building industry the impact ultimately lands in the laps of homeowners who simply want their home or renovation finished on time and on budget.

Workplace relations have been largely excluded from the reach of competition and trade practices laws. This broad exclusion is found at section 51(2)(a) of the Competition and Consumer Act (CCA) and has historically been based on the notion that labour is a different market to other goods and services and should be regulated discretely.

At the same time, free enterprise and improved productivity essentially depends on effective competition in all markets, including the employment market. However, the prevalence of pattern bargaining and the inclusion of terms in enterprise bargaining agreements that restrict or prevent the engagement of different forms of labour are fundamentally at odds with principles of competition. They drive up costs and reduce productivity.

While a line remains between these complex areas ignoring their interplay continues to have consequences.

For example, on the issue of secondary boycotts, section 45DD of the CCA states that if conduct relates to employment matters, a person's activity is not deemed to fall under the illegal secondary boycotting provisions.

In HIA's view whilst this might exempt legitimate strike activity, it should not cover or enable aggressive picketing that prevents material suppliers entering or leaving premises or subcontractors entering site.

In the Interim Report of the Royal Commission into Union Corruption and Governance, Commissioner Heydon observed that:

'The current secondary boycott provisions in the CC Act were ineffective to deter illegal secondary boycotts by trade unions.'

Commissioner Heydon was specifically referring to allegations surrounding alleged 'black banning' of building products manufacturer Boral by the CFMEU. Whilst the ACCC issued, ultimately successful Federal Court proceedings, their intervention was belated and well after the conduct had occurred impacting the supply of product to the market.

Add to this that the current enterprise bargaining framework under the Fair Work Act fails to support productivity, flexibility and efficiency gains. Given the experience of the maritime industry this framework should be a starting point when responding to the current circumstances.

Historically productivity improvements or considerations of productivity were always an expected feature of enterprise bargaining, as highlighted by the AIRC:

'In our view the essence of enterprise bargaining designed to achieve increased efficiency and productivity also requires the parties to demonstrate that they have considered a broad agenda in their enterprise negotiations. We do not intend that that agenda be limited only to matters directly related to normal award prescriptions. It should cover the whole range of matters that ultimately determine an enterprise's efficiency, productivity and continuing competitiveness.

These could involve such things as:

- *short and long term plans for the enterprise including plans for future investment, product or service development, restructuring and greater emphasis on the needs requirements of suppliers and needs of customers;*
- *the current and future operational needs of the enterprise including requirements for improved performance in relation to quality, cost, delivery reliability and cycle time; and*
- *the needs of employees including skills development, job satisfaction and improved employment opportunities.¹*

It is HIA's view that the bargaining framework must be comprehensively reviewed.

HIA also urges the PC to support the conclusions and recommendations made in the ACCC Report, including:

- That regulation of container ports in Australia is inadequate and not fit for purpose including that regulation needs to compensate for a lack of competitive pressure on the ports.
- That governments, industry and unions address industrial relations and restrictive work practices, and limit privatised ports' ability to impose excessive rents and charges.
- That public and private infrastructure investments are made to fix inefficiencies in the supply chain caused by larger ships, lack of rail access to Australian container ports and shortage of space in empty container parks.
- Repealing Part X of the CCA to facilitate greater competition between shipping lines on Australian trade routes.

Further the ACCC Report echoes sentiments expressed by the Harper Competition Review, which also recommended repealing Part X of the CCA in addition to:

- Amending sections 45E and 45EA of the CCA so that they apply to awards and industrial agreements, except to the extent they relate to the remuneration, conditions of employment, hours of work or working conditions of employees.
- Removing the present limitation in sections 45E and 45EA, such that the prohibitions only apply to restrictions affecting persons with whom an employer 'has been accustomed, or is under an obligation,' to deal.
- Applying the maximum penalty for breaches of sections 45E and 45EA should be the same as that applying to other breaches of the competition law.

HIA recommends that the PC endorse the recommendations of the Harper Competition Review. HIA submits that reforms are required to both the FW Act and the CCA to establish a workable bargaining framework and to better address the use of anti-competitive conduct in an industrial relations context.

Role of the Regulators

At present industrial issues at the ports are largely a creature of the current enterprise bargaining framework and can only be responded to through the Fair Work Commission.

Notably, the Harper Competition Review recommended that the ACCC be given the right to intervene in proceedings before the Fair Work Commission and make submissions concerning compliance with sections 45E and 45EA. HIA would support this recommendation.

¹ Review of Wage Fixing Principles, 25 October 1993 (Print K9700).

Equally, the need to investigate activity on the ports has been highlighted by the recent move of the Australian Building and Construction Commission (ABCC) to inquire into picketing by the CFMMEU.

The ABCC is seeking to rely on a broad reading of its powers under the *Building and Construction Industry (Improving Productivity) Act 2016* (Act) to investigate whether alleged unlawful picketing occurred during a dispute last year involving the CFMMEU's MUA division on Fremantle's docks.

Under the Act the ABCC has power to investigate actions relating to building work which includes the transportation or supply of goods to be used for such work, directly to building sites. Further, the ABCC has power to investigate unlawful picketing at an 'ancillary site' which is defined as:

- a site from which goods are transported or supplied, or building industry participants are transported, directly to a building site; or
- a site where a building industry participant, who is performing building work, or managing building work that is being performed, on a building site, does work relating to the building work.

HIA is supportive of moves to investigate potential unlawful industrial action on our ports. HIA also sees that the construction industry requires access to an independent body, that can quickly and effectively respond to unlawful activity on building and construction sites. The primary function of the ABCC should be to police industrial lawlessness in the construction industry. HIA would have concern with any attempts to divert or redirect resources away from this primary function.

As an interim reform measure, and to give more targeted and timely attention to such conduct in the future, HIA considers that the ABCC should hold joint powers with the ACCC to ensure an appropriate response to matters that traverse both competition and industrial laws at Australis's ports.

Supporting the long-term productivity and efficiency of Australia's ports is critical to ensuring a well-functioning and stable residential building industry.

If you would like to discuss these comments in further detail, please contact Melissa Adler.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

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