



AUSTRALIAN  
**FOOD &  
GROCERY**  
COUNCIL

# **AFGC SUBMISSION**

## **PRODUCTIVITY COMMISSION INQUIRY INTO THE MARITIME LOGISTICS SYSTEM**

October 2022

*Sustaining Australia*

## PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, beverage and grocery manufacturing sector.

With an annual turnover in the 2020-21 financial year of \$133 billion, Australia's food and grocery manufacturing sector makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity.

The diverse and sustainable industry is made up of over 16,000 businesses ranging from some of the largest globally significant multinational companies to small and medium enterprises. Each of these businesses contributed to an industry-wide \$3.2 billion capital investment in 2020-21.

Food, beverage and grocery manufacturing together forms Australia's largest manufacturing sector, representing over 32 per cent of total manufacturing turnover in Australia. The industry makes a large contribution to rural and regional Australia economies, with almost 40 per cent of its 272,000 employees being in rural and regional Australia.

It is essential to the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry is recognised and factored into the Government's economic, industrial and trade policies.

Throughout the COVID19 pandemic, the food and grocery manufacturing sector proved its essential contribution to Australian life. Over this time, while our supply chains were tested, they remain resilient but fragile.

The industry has a clear view, outlined in *Sustaining Australia: Food and Grocery Manufacturing 2030*, of its role in the post-COVID19 recovery through an expansion of domestic manufacturing, jobs growth, higher exports and enhancing the sovereign capability of the entire sector.

*This submission has been prepared by the AFGC and reflects the collective views of the membership.*

## OVERVIEW

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to respond to the Productivity Commission's Draft Report on Australia's Maritime Logistics System (the draft report).

The food and grocery sector is Australia's largest manufacturing sector. It is highly trade-exposed, accounting for over \$80 billion of the nation's two-way international trade. The food and grocery supply industry operates under just-in-time principles to reduce and eliminate wastage of perishable and time-sensitive inputs, ingredients, and packaging materials. The sector's reliance on just-in-time principles makes it highly susceptible to supply chain disruptions. The lack of local import substitutes, and cost-prohibitive freight alternatives, increases the sector's reliance on an efficient maritime logistics system.

The submission draws on the experience of AFGC members' significant and unsustainable freight-related impacts arising from acute disruptions and underlying market inefficiencies in the domestic maritime logistics system. These issues are having a material impact on the food and grocery supply industry's profitability, competitiveness, and sustainability. The underlying market problem in the maritime logistics system has been exacerbated by the global response to the COVID-19 pandemic.

It is the AFGC's view that the efficiency of the maritime logistics system can be improved through the implementation of smart regulatory, legal and structural reforms. To that end, the draft correctly identified the structural changes and impediments that impact the efficiency of Australia's maritime logistics system and offers recommendations to improve the sector's resilience and efficiency.

We support many of the recommendations contained in the draft report as they mirror the proposals the AFGC has put forward on its initial submission and detail concerns raised by recommendations or findings we do not support.

The AFGC makes the following comments on the findings and recommendations of the draft report.

### OPERATIONAL EFFICIENCY

#### Draft Recommendation 6.2

Terminal access charges and other fixed fees for delivering or collecting a container from a terminal should be regulated so that they can only be charged to shipping lines and not to transport operators.

The AFGC supports the Draft recommendation to regulate terminal access charges (TACs) and other fixed access charges so that they can only be charged to shipping lines.

As mentioned in the draft report terminal operators operate in two linked markets: the quayside and the landside markets. Although they only have significant market power over the landside, they have exercised

their market power by increasing fees and charges such as TACs which have ultimately been passed through to cargo owners<sup>1</sup>.

We note the Commission's regulatory approach to address the power imbalances of the different stakeholders in the multi-sided market by taking input from the payment systems sector. The AFGC recognises that the recommendation of redirecting the fixed charges from the market where the container terminal operators have significant market power to where they lack it has the potential of reducing their ability to pass unfair fees to food and grocery businesses. However, we emphasise that the incentive-based (variable) component of the price structure imposed by the terminal operators should also be closely monitored to ensure that it is not increased to compensate for the reduction from fixed charges.

### **Draft Recommendation 6.3**

Remove exemption for shipping contracts.

The AFGC endorses the Commission's recommendation regarding the removal of the exemption from the unfair terms provisions in the Australian Consumer Law (ACL).

AFGC member businesses have been severely affected by the levy of increasingly large detention and demurrage fees. The fast-moving consumer goods (FMCG) sector is particularly vulnerable to supply chain disruptions as the retailers, and ultimately the consumers, rely on the continuous supply of products. Since the beginning of the pandemic the additional detention and demurrage costs have been absorbed by the food and grocery manufacturers and distributors at a significant cost.

While the removal of the exemption from the unfair terms provisions in the ACL is a step forward towards market transparency and fairer shipping prices, it is the AFGC's view that the recommendation can go a step further by following the actions of other jurisdictions.

As the Draft mentions, evidence from overseas indicates that the comprehensive legal framework that shipping lines must adhere to is not restricting unfair detention and demurrage fees<sup>2</sup>. Historically, there has been a lack of transparency and uniformity in the circumstances under which the ocean carriers impose or waive detention and demurrage charges and other penalties, and these practices have not improved during the pandemic. In fact, due to the high market concentration in the global container shipping industry and the high demand for ocean shipping services, cargo owners had no other choice than to accept the additional costs.

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<sup>1</sup> Productivity Commission 2022. *Lifting Productivity at Australia's container ports: between water, wharf and warehouse. Draft report.* p. 200

<sup>2</sup> Productivity Commission 2022. *Lifting Productivity at Australia's container ports: between water, wharf and warehouse. Draft report.* p. 208

In June 2022 the US Government passed The Ocean Shipping Reform Act of 2022<sup>3</sup> (OSRA22) into law giving greater oversight and enforcement power to the Federal Maritime Commission (FMC) and bringing more clarity into prohibited acts by ocean carriers and marine terminal operators. Among some of the provisions the bill:

- Sets invoicing requirements specifying the applicable detention and demurrage rules on which the daily rate is based as well as the start/end of the free time,
- prohibits ocean common carriers and marine terminal operators from retaliating or discriminating against shippers because such shippers have patronised another carrier, or filed a complaint,
- directs the FMC to establish rules prohibiting ocean common carriers and marine terminal operators from adopting and applying unjust and unreasonable demurrage and detention fees,
- authorises the FMC to initiate investigations of an ocean common carrier's fees or charges and apply enforcement measures, as appropriate, and
- requires the FMC to establish a website for the submission of comments, complaints, concerns, reports of non-compliance, requests for investigation and requests for alternative dispute resolution.

The requirement to stipulate clear detention and demurrage rules on invoices, as well as the implementation of enforcement measures will discourage unfair charges to cargo owners and transport companies in the US. Moreover, the implementation of mechanisms for all the relevant stakeholders to submit complaints, reports of non-compliance and requests for information in a safe and de-identified way increases the enforcement and oversight capabilities of the Maritime Commission.

The AFGC advises evaluating the use of similar mechanisms to increase transparency, reliability and oversight of the Australian maritime logistic system.

### Draft Finding 3.3

The framework for measuring Australian container port performance could be enhanced.

We note the Commission's proposal on a new methodology for benchmarking Australia's ports.

It is the AFGC's view that the Commission should not lose sight of the Monitoring and Evaluation principles of ensuring that any activity attains its objectives and does so in the most efficient way possible.<sup>4</sup> Although the proposed metric has the potential to identify inefficiencies along port operations, it will only be valuable if the substantial information gaps can be addressed. Therefore, given the current data gaps and the potential lack of international comparison by implementing a new metric, the AFGC endorses the use of the Container Port Performance Index (CPPI) proposed by the World Bank and IHS Markit. As the draft remarks, the CPPI is an already available public metric, and it can assist with business planning and certainty as well as incentivising port operators to compete on the quality of their service.

<sup>3</sup> <https://www.congress.gov/117/plaws/publ146/PLAW-117publ146.pdf>

<sup>4</sup> OECD 2019. *Monitoring and Evaluation: A brief guide for investment promotion agencies*.

The incentive for firms to maximise their profits provides powerful motivation for them to structure and refine their operations in pursuit of the highest total revenue with the lowest total costs. Given that the new methodology has the potential of identifying relative inefficiencies along the network, port operators will have the incentive of implementing the newly proposed performance indicator to increase their productivity and differentiate from their competitors.

## COMPETITION

### Draft Recommendation 6.1

Repeal part X.

The AFGC supports recommendation 6.1 of the draft report to repeal part X of the Competition and Consumer Act 2010 (Cth)(CCA). Several reviews of Part X have recommended it be repealed or reformed, with concerns that it is not considering net public benefits. As the draft remarks, no other industry has an exemption like part X despite having similar market characteristics. The AFGC shares the draft views that the repeal of Part X will ensure that any anti-competitive avenues for price cooperation are only available when the cost of reduced competition is outweighed by other public benefits.

### Draft Finding 6.2

Competition is a constraint in the shipping line market.

The Commission found that there appears to be robust competition in the shipping line market. The draft indicates that the fact that there are multiple shipping lines servicing Australia indicates that cargo owners can easily switch between them. It goes on denoting that before the COVID-19 pandemic, competition between lines resulted in overall declining prices although, it recognises that terminal handling prices have not declined.

It is the AFGC's view that the Commission should have analysed the competition per route as cargo owners will face different market restrictions depending on the number of shipping providers servicing that route. Most importantly, the Commission did not incorporate in the analysis the fact that 9 major shipping companies consolidated in 3 alliances control the majority of the ocean shipping in the world<sup>5</sup>. These companies compete with each other in multiple markets. Economic literature in the subject of multimarket competition suggests that high levels of contact between firms across multiple markets act as competition deterrence, as an aggressive action in one market can trigger a response from the competitor in another.<sup>6</sup>

<sup>5</sup> ACCC 2021. *Container stevedoring monitoring report 2020-21*. p20.

<sup>6</sup> Boeker,W;Goodstein, J;Stephan,J. 1997. *Competition in a Multimarket Environment: The case of Market Exit*. Organizational Science

The lack of competition as well as the high level of concentration in the market allows shipping lines to exercise their market power by levying extreme and unreasonable charges that are being absorbed by cargo owners. Therefore, the AFGC recommends that the level of competition should be re-evaluated incorporating the characteristics of the market.

#### **Draft Recommendation 12.1**

Amend coastal shipping laws to increase competition.

Recent damage to the rail connection between the East and West Coast of Australia demonstrates the vulnerability of relying solely on primary connections for the critical movement of goods.

The AFGC supports the draft recommendation to amend coastal shipping laws to streamline the temporary license system to increase operational flexibility and reduce the administrative burden on license applicants. We support the Commission's view that the reform will allow greater competition from foreign vessels on domestic sea routes resulting in more cost-effective shipping services as well as increasing the resilience of Australia's supply chain.

## **INFRASTRUCTURE**

#### **Draft Finding 7.2**

Most container ports are planning substantial investments in rail infrastructure.

#### **Draft Finding 7.4**

Long term planning appears to be adequate.

The AFGC agrees with the draft findings that the port operators as well as other maritime logistics systems are investing to adapt according to the market requirements. These companies need to invest as any rational market participant would in order to remain relevant. However, the AFGC disagrees with the draft's findings that there is no need for government to invest in relevant infrastructure. It continues to be our view that government has an important role to play in driving investment to improve Australia's supply chain resilience and efficiency.

The draft mentions that road transport has advantages compared to rail when it comes to moving containerised maritime freight. The Commission mentions that road freight is cheaper over shorter distances, and it advocates for increased truck productivity through the use and access to bigger and more technologically advanced trucks. It also indicates that rail infrastructure has a larger sunken cost when compared to investment in road freight.

However, the draft minimises the externalities and costs associated with road inefficiencies from road congestion. Moreover, it fails to do a cost comparison of additional congestion versus the cost of investing in rail infrastructure. Some studies in this area have suggested that the economic cost of congestion is significantly larger than the cost of investing in additional infrastructure. Conrad, K and Heng, S (2002)

found that *savings in congestion costs will exceed by 50% the costs of the addition in infrastructure investment.*<sup>7</sup>

Externalities derived from added congestion are highly relevant when considering that the Australian food and grocery sector is aiming to double its size by 2030 by taking advantage of the abundant export opportunities in Asia<sup>8</sup>. If the pressures on the already congested infrastructure are not addressed the Government could potentially restrain economic growth.

It is the AFGC's view that the government should invest in additional transport infrastructure to increase the efficiency and resilience of the extended supply chain. The Government should take a holistic approach when evaluating the costs and benefits of investing not only at the ports but in the surrounding transport infrastructure.

## BIOSECURITY, VESSEL, AND CARGO CLEARANCE

### Draft Finding 11.2

There is no case for a government-run port community system.

The draft suggests that the Australian Government should continue to work towards ensuring that its customs and biosecurity systems can seamlessly interface with private port community systems.

The AFGC strongly supports the finding. There are several examples provided to the AFGC from member companies that indicate that significant delays in inspection appointments by biosecurity Australia are resulting in products not being able to be unpacked from containers and moved to warehouses. Given the nature of the food and beverage inputs, biosecurity and clearance delays on perishable imported goods can have significant financial impacts on Australian businesses.

Inefficient processes and delays in biosecurity, vessel and cargo clearance have an economic impact beyond the one imposed on the cargo owner. In the case of the food and beverage manufacturing sector, import delays of key inputs can lead to production downtime impacting both businesses and workers alike. In the FMCG sector, production downtime can lead to product unavailability and product deletion at the retail level, reducing the options available to Australian consumers.

## CONCLUSION

Food and grocery manufacturing and distribution is critical in delivering Australia's everyday nutritional, personal care and domestic household needs as well as supplying products to health and aged care facilities, educational institutions, workplaces and restaurants.

<sup>7</sup> Conrad, K; Heng, S. 2002. *Financing road infrastructure by savings in congestion costs: A CGE analysis*. The Annals of Regional Science.

<sup>8</sup> AFGC. *Sustaining Australia. Food and Grocery Manufacturing 2030*.



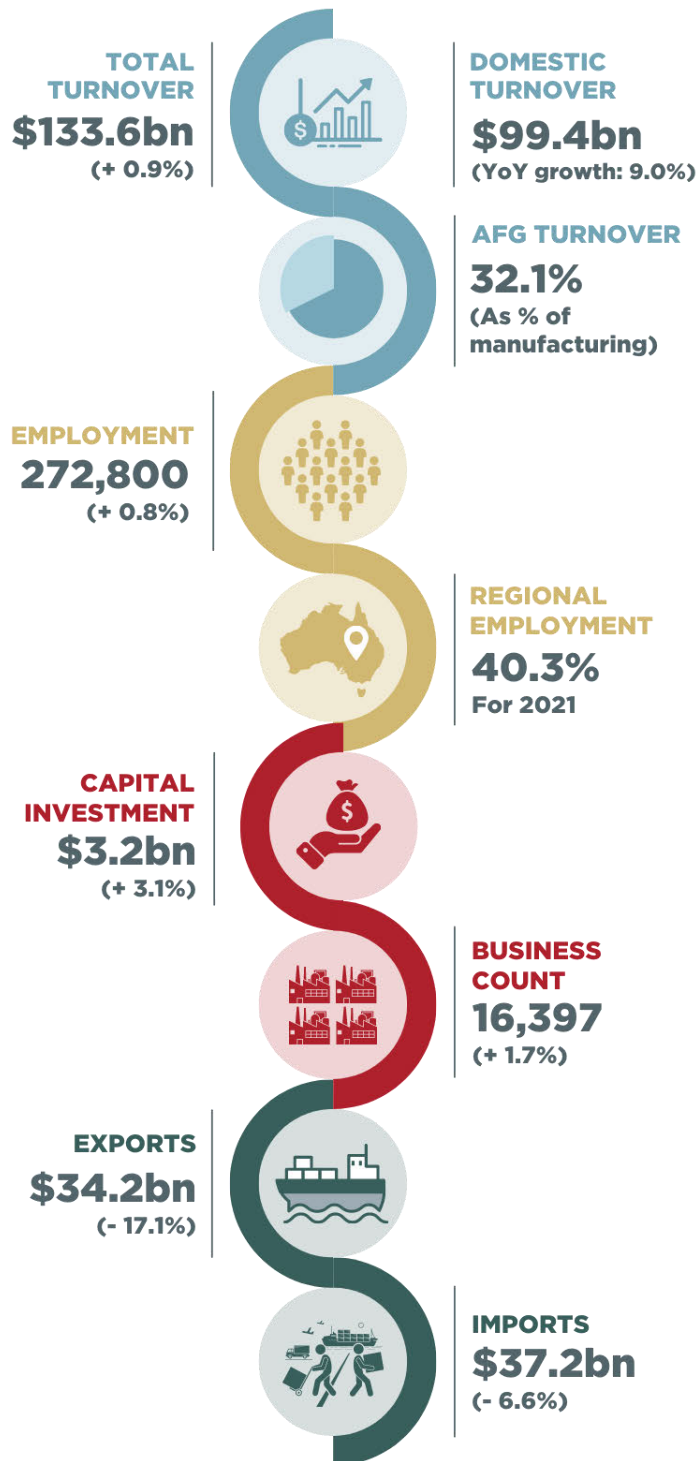
Persistent underlying market issues in the maritime logistics system, exacerbated by the pandemic, are having a material impact on the food and grocery supply industry's profitability, competitiveness, and sustainability.

The AFGC supports many of the recommendations contained in the draft report as in our view tackles the structural inefficiencies in Australia's maritime logistics system.

We thank for the opportunity to make further comments and recommendations to highlight the issues that are having the most impact to our members.

# State of Industry 2020-21

AUSTRALIAN FOOD & GROCERY COUNCIL



The figures on this page exclude the fresh food sector and are based on 2020-21 ABS data.

1: This is total number of employees, head count basis and does not include seasonal employees.

2: Gross fixed capital formation for food, beverage and tobacco manufacturing subsector is taken as indicator of capital investment.