

Ai GROUP SUBMISSION

Productivity Commission

Reply Submission

**Inquiry into Australia's
Maritime Logistics**

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Introduction

We welcome the findings of the Productivity Commission Inquiry into Australia's Maritime Logistics that call for greater transparency in pricing, increased efficiency, and certainty. However, the Commission report could further sharpen its analysis of performance, investment and skills issues in Australian ports.

This submission details these issues, with sub-sections that are structured to mimic the sequence of the draft findings and information requests highlighted in the Commission's draft report.

Performance of Australia's container ports

In regard to the Commission's draft finding 3.2¹ and Information request 3.1,² detailed data on port operations is not available and is fundamental in assessing port performance. It would be highly beneficial if the Commission were to recommend a **regular** collection and publication of said data, in conjunction with data audit from the Australian Bureau of Statistics (ABS) or other organisation(s) that the Commission deems appropriate.

With respect to Information request 3.3³ (whether the publication of aforementioned data may lead to anticompetitive behaviour), we note that port performance data is available in other international markets – such as Europe – without posing competition concerns.

The Commission has identified a lower number of cranes as the cause of longer ship turnaround times in Australia than international ports (draft finding 3.7⁴). This suggests that further investment in port infrastructure, to remedy this infrastructural deficit, is required. The Commission should address issues relating to the quantum of ports investment as part of its performance analysis.

As an island nation, the functioning of the Australian economy rests on port performance. If shipping lines continue to experience rising opportunity cost from

¹ Data gaps limit assessment of port performance

² The Commission is seeking data on the productivity of labour within ports.

³ The Commission is seeking feedback on the costs and benefits of collecting and processing the richer data required to implement a comprehensive performance management framework.

⁴ Australian container ports take longer to turn ships around than many international ports.

operating Australian routes (i.e., increasing turnaround times), we will inevitably lose out on shipping opportunities to more lucrative markets (i.e., destinations with lower turnaround times). A situation that would result in a reduction in the number of shipping lines operating in Australia, meaning a concentration of market power in favour of shipping lines thus exposing Australian businesses to a high concentration of market power and associated downsides, including but not limited to higher prices and even longer wait times.

Draft finding 7.2⁵

We welcome the longer-term planning around substantial investments in rail infrastructure as it will be beneficial for Australian businesses in the coming decades. However, the present concern around Australia's supply chain crisis remains. Particularly because such supply chain issues are creating inflationary pressures within the Australian economy.

Any recommendations or proposals aimed at alleviating the crisis in the short run would be extremely beneficial. The Commission has rightly highlighted that inefficiencies at Australian ports directly cost the Australian economy \$605 million a year (indirect costs are not identifiably on such scales but are likely to be similar). Several decades of wait for the execution of longer term infrastructure plans will accumulate these inefficiency costs, and expose Australian businesses to the continuing supply chain crises and inflationary pressures.

The Commission report could be augmented with specific recommendations on how future investments could help mitigating these costs.

Draft Finding 7.3⁶

Greater clarity is needed around the Commission's recommendation "Planning decisions should support the use of land in its highest value".

At present, urban encroachment is the result of the nexus of contradicting jurisdictions which may intersect various levels of government. Such situations can only be avoided if there is a clear directive or order of preference. For example, if in the current

⁵ Most container ports are planning substantial investments in rail infrastructure

⁶ Planning systems should allocate land around ports to highest value uses

jurisdictional hierarchy local governments are able to make decisions that are considered to be 'urban encroachment' what specific measures can be taken to prevent this from happening in the future?

Draft finding 7.4⁷

There are similar concerns around state government having adequate long-term plans for infrastructure improvements, as there is a disconnect between the longer-term solution and the present term \$605 million annual inefficiency related costs.

Industrial relations and workforce issues

We welcome the Commission's focus on industrial relations and workforce issues as a major determinant of port productivity. Particularly, the Commission has rightly identified that current enterprise agreements contain inflexible and prescriptive arrangements which constrain productivity, and that these imposes costs on all port users and customers across the economy.

We concur with the Commission's draft findings that unions hold significant and unbalanced bargaining power (draft finding 8.1), that restrictions on merit-based hiring and promotion harm workers and productivity (draft finding 9.1), that limits to the number of workers with flexible rosters is inefficient (draft finding 9.2), that 'order of pick' rules restrict productivity (draft finding 9.3), and that container terminal enterprise agreements distort operators' ability to automate (draft finding 9.4).

We agree with the Commission's draft recommendations to improve industrial relations practices in the maritime logistics system (draft recommendations 9.1 through 9.9). These cover issues such as prohibiting enterprise agreement content which excessively constrains productivity, improving bargaining practices, and balancing protected industrial action.. Equipping the Fair Work Commission for an enhanced and extended role in the ports (draft recommendation 9.9) is a critical institutional enabler of these recommendations.

⁷ Long term planning appears to be adequate

However, more is needed to address the restrictive work practices that the Commission has found to exist on the waterfront. The scale of these problems would place an unrealistically heavy onus on the Fair Work Commission to achieve compliance alone.

We note the Federal Government in September announced the establishment of a tripartite National Construction Industry Forum (NCIF). Bringing together business, unions and government, the NCIF is intended to "constructively address issues such as mental health, safety, training, apprentices, productivity, culture, diversity and gender equity in the [construction] industry"⁸.

Ai Group believes a tripartite industry forum for the maritime logistics system, modelled along similar lines to the NCIF, would be beneficial in providing a forum to address these workforce issues. Per informational request 9.1, such a tripartite industry forum would also provide a vehicle to determine the need for and benefits of the modernisation of the Stevedoring Award.

Reliance and security

Given that nearly all our physical trade is connected to a port, port operators are custodians of infrastructure assets of key national significance.⁹ In the absence of appropriate regulatory arrangements, these operators may be unable to determine the infrastructure and asset needs of Australian importers and exporters into the future. It is important that port businesses are supported to consider national interests when determining their objectives.

Going forward privatisation agreements need to be structured with Australia's long-term interests in mind. Current competition law gives the ACCC little power over the conduct of former state monopolies like ports, though the ACCC has urged the states to consider regulation to help prevent the use of unconstrained market power.¹⁰ Does the Commission have any specific instructions regarding reliance and security

⁸ Jobs & Skills Summit Outcomes, 1-2 September 2022, <https://treasury.gov.au/sites/default/files/inline-files/Jobs-and-Skills-Summit-Outcomes-Document.pdf>

⁹ [Ports & Shipping Policy in Australia in the 21st Century – a 'Wicked Problem'](#) Macquarie Lighthouse lecture series (March 2019).

¹⁰ [Port privatisation forces price inflation on Australian importers and exports.](#) Australian Financial Review (June 2017).

matters for the public and private sectors?

Possible actions also listed in our original submission:

- For future lease or privatisation agreements, any regulatory arrangement should be made clear to potential purchasers. This should include but not be limited to, outlining the regulatory regimes regarding potential national interest issues prior to the submission of bids.
- For existing port leasing or privatisation agreements, the Productivity Commission should assess the sovereign risk issues associated with any *ex-post* change in regulatory arrangements; and the extent of the financial ramifications for existing lease holders (who may be superannuation fund members) that would arise from any *ex-post* changes to an agreement regarding issues of national interest and any appropriate compensation that should be paid. A potential source for compensation could be the state that privatised the asset recompensing lease holders for the difference in the bid, had the new regulatory regime been introduced *ex-ante*. Undoubtedly, certain contractual issues would arise resulting from any attempt to impose regulatory arrangements after the fact and there may be a case for the lease holders to enter arbitration with the state government responsible for the privatisation.

Skills and training

Given the increasing use of autonomous vessels in the shipping industry, there is a need to upgrade regulatory and safety codes to keep up with the change.¹¹ It is anticipated that Australian transport and logistic enterprises will use blockchain for financial reconciliation, tracking goods and services, and supply chain reporting.¹² There are also experiments involving the use of fatigue management technologies which can send warnings to drivers.¹³ Transport Certification Australia has formulated protocols which set interoperability requirements for heavy vehicles with telematics and fatigue management technologies.¹⁴

¹¹ Maritime Industry Outlook 2021, Industry Reference Committee, 2021.

¹² Transport and Logistics Industry Outlook 2021, Industry Reference Committee, 2021.

¹³ Ibid.

¹⁴ Ibid.

The implementation of such technologies requires the simultaneous upskilling of the workforce to manage and utilise them efficiently.

Such needs can be met by coordinating the implementation of skills requirements across the country; through diplomas and other VET qualifications. For instance, using specialised port management equipment and software requires upskilling the workforce to work with the same technology/machinery, not only to enable the better management of the current infrastructure but also to allow the integration of greater automation.¹⁵

Any improvements in the shipping sector must also be accompanied by improvements in the transport and logistics sector. This will require the upskilling of transport and logistic workers to be able to incorporate the use of artificial intelligence, blockchain, and data analytics.¹⁶

The Commission should analyse the need for skills and training upgrades to match planned and infrastructure improvements.

Greater automation will mean greater vulnerability to cyber threats, as autonomous systems rely on the proper functioning of their computer systems. The ports and shipping industry will require a skilled workforce to prevent cyber security events and to mitigate the adverse effects of any such incident. Especially considering the recent Optus data breach,¹⁷ ensuring the digital safety of critical infrastructure assets is of paramount importance.

The Commission should analyse the cybersecurity dimensions of port infrastructure investments.

¹⁵ Maritime Industry Outlook 2021, Industry Reference Committee, 2021.

¹⁶ Transport and Logistics Industry Outlook 2021, Industry Reference Committee, 2021.

¹⁷ <https://www.theguardian.com/business/2022/oct/03/optus-commissions-independent-review-of-data-breach>



ABOUT THE AUSTRALIAN INDUSTRY GROUP

The Australian Industry Group (Ai Group®) is a peak employer organisation representing traditional, innovative and emerging industry sectors. We are a truly national organisation which has been supporting businesses across Australia for nearly 150 years.

Ai Group is genuinely representative of Australian industry. Together with partner organisations we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our members are small and large businesses in sectors including manufacturing, construction, engineering, transport & logistics, labour hire, mining services, retail, food, the defence industry, civil airlines and ICT.

Our vision is for thriving industries and a prosperous community. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

With more than 250 staff and networks of relationships that extend beyond borders (domestic and international) we have the resources and the expertise to meet the changing needs of our membership. We provide the practical information, advice and assistance businesses need. Our deep experience of industrial relations and workplace law positions Ai Group as Australia's leading industrial advocate.

We listen and we support our members in facing their challenges by remaining at the cutting edge of policy debate and legislative change. We provide solution-driven advice to address business opportunities and risks.

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