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**TRANSCRIPT OF PROCEEDINGS**

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**PRODUCTIVITY COMMISSION**

**PUBLIC HEARINGS**

**AUSTRALIAN MARITIME LOGISTIC SYSTEMS**

**MONDAY, 4 NOVEMBER 2022**

**PRODUCTIVITY COMMISSION, L8, 2MQ, 697 COLLINS STREET, MELBOURNE**

**BEFORE:**

**COMMISSIONER STEPHEN KING  
COMMISSIONER JULIE ABRAMSON**

**WITNESSES APPEARING:**

**MR PADDY CRUMLIN  
MR WARREN SMITH  
MS PENNY HOWARD  
MR ROD PICKETT  
MR MIKE GALLACHER  
MS MARGIE BARBOUTTIS  
MR NEIL CHAMBERS  
MR PAUL ZALAI  
MR EDDY DECLERCQ  
CAPTAIN MELWYN NORONHA  
MR JIM WILSON  
MS BIANCA RUDDOCK**

COMMISSIONER KING: Good morning, welcome to the public hearings for the productivity commission enquiry into Australian Maritime Logistics System. I'd like to begin by acknowledging the traditional custodians – have we still got massive echo? No. Okay. I'd like to begin by acknowledging the traditional custodians of the lands from which we are all meeting today and pay my respects to elders past and present and emerging.

My name is Stephen King. I'm a Commissioner with the Productivity Commission. My fellow commissioner, Julie Abramson is here and we're leading this enquiry. The purpose for today's hearings is to facilitate public feedback and comment on the recommendations and findings that we made in our draft report, released in September. Following this hearing today, we'll be working to finalise the report and hand that to Government by the end of September 2022 having considered all the evidence that's been presented at the hearings and the submissions that we receive in relation to the draft report. Participants and those who have registered their interest in the enquiry will be advised of the final reports released by the Government which may be up to 25 Parliamentary sitting days after we hand it to them .

In the course of this enquiry, we've talked to cargo owners and representatives from service providers within the industry, peak bodies and governments including the US and UK. We are grateful to all the organisations that have taken the time to meet with us and hear submissions and to appear at these hearings.

We'll conduct all hearings in a reasonably informal manner but I remind participants that the sessions are being recorded and a full transcript is being taken. For this reason, comments from observers cannot be taken but at the end of the day's proceedings I will provide an opportunity for anyone who wishes to do so to make a brief presentation.

Participants are not required to take an oath but are required under the productivity commission act to be truthful in their remarks. Participants have welcomed the comment on the issues raised in other submissions. Transcript will be made available to participants and will be available from the Commission's website within a week of this hearing. Submissions are also available on the website.

For any media representatives attending today, some general rules apply. No broadcasting of proceedings is allowed and taping is only permitted with prior permission. Participants should be aware that media representatives present may be using Twitter and other internet mechanisms to convey information online in real time, including participants' remarks.

Participants are invited to make some opening remarks of about five minutes, keeping the opening remarks brief will allow more opportunity for discussion. I would like to ask all observers and participants not speaking to please ensure that their microphones are on mute to ensure limited disruption. So thank you for that in advance. Okay, I would now like to welcome the representatives of the Maritime Union of Australia. If you could just please state your names and the organisation, which is Maritime Union of Australia for the transcript and then if you'd like to make any opening statements.

MR CRUMLIN: Hello, Paddy Crumlin, National Secretary of Maritime Union of Australia.

MR SMITH: Warren Smith, Deputy National Secretary of the Maritime Union.

MS HOWARD: Penny Howard, I'm the Union National Research Officer.

COMMISSIONER KING: Rod, you're on mute. No, still on mute.

MR PICKETT: Rod Pickett – yeah, Rod Pickett, Policy Advisor, Maritime Union of Australia.

COMMISSIONER KING: Thank you, Rod. Yes. So Paddy, would you like to lead off or one of your team lead off with an introduction?

MR CRUMLIN: Yes, sure. Well, I recognise the Gadigal people of the Eora Nation and we're sitting on their land and their elders past and present and I'll move on quickly. I'm also the President of the International Transport Workers Federation. I represent nearly 20 million members in transport and supply chains worldwide, aviation, road, rail, urban transport, shipping and dock workers. I have been on the ILO, representative on the ILO's since 1990 as a delegate and was central to the negotiation of the Maritime Labour Convention.

I am also Chair of the – I'm also as I said President of the ITWF. I'm the Chief negotiator of the ITF forum that covers 10,000 ships, has 10,000 ships worldwide, known as flag of convenience vessels, registered in tax havens like Bermuda and Panama and by far the largest provider of shipping in the world.

I think it's fair to say I've known virtually every senior executive in both shipping and stevedoring worldwide and have just returned from the US where I inspected ports in New Jersey and two weeks before that in Los Angeles and San Francisco. I regularly visit vessels, it's part of my responsibility. I'll say from the outset, I believe that the terms of reference reference of this, were highly subjective and that's not to say Mr King and Ms Abramson are in any way critical of your personal involvement. You have to deal what you're served up, but I have found the terms of reference extraordinary. And now, when I put them down to part of the shaping of the election strategy by the Morrison government, but we have to deal with what we deal with, and I hope that that criticism - I'm sure that criticism will be noted. In terms of - - -

COMMISSIONER KING: All good, thanks. Sorry, there was a problem at our end.

MR CRUMLIN: In terms of the terms of reference, I find them highly skewed, particularly in my overview. The reality is, in world supply chains, that they are enormously congested and dysfunctional, and in fact, any reasonable overview, or macro view of what's going on particularly after two years of Covid, would have indicated the reasons why, and I'll go in to them a little - and just by touching, they'll be thrust out further. The reality is that the failure's been in international capital investment, in

infrastructure, the deregulated nature of shipping where there isn't any planning, the continuing monopolisation of services down the supply chain when you have people like Amazon that are continuing to control port, shipping, rail, road, inner mail, all the way from manufacturing to retail, or from mining to manufacturing. You're finding that that field is becoming less and less competitive and being driven by enormous investment and the consolidation around things like the requirement of the various ESG, particularly environmental, and increasingly social, responsibilities as well as governance.

The other thing I'd like to point out is that, due to the pandemic we were facing the last couple of years, an enormous challenge to be able to deliver supply chain in a country that has very limited scope. We have mainly imports, very few exports in terms of containerisation, which we're concentrating on here. The reality is that that was also impeded by a lack of engagement by both the employers and the industry itself to the pandemic, where there was never any formal forum, and in fact, in the period of time that's referred to in regards to poor productivity for industrial relations, I'm surprised, I'll say as an aside, that in your overall report, there's very little on industrial relationships or the impact of industrial relations, and yet when you get to the recommendations, it's dominant in the conclusions you draw. I think there's something like eight out of the 10, or 10 of the 14 recommendations go there. And again, I just find that whole thing extraordinary in terms of delivering an outcome.

The other things I'd like to comment on is that part of the real impediment to productivity has been COAG, and the lack of aptitude by the state jurisdictions to take a long-term position in terms of forward infrastructure investment. As the President Biden, and increasingly clear in Europe, mainly, the failure of productivity has been poor infrastructure investment over a long period of time, compounded by things like flooding and environmental disasters, and the lack of ability to be able to deal, as an alternative with short-sea shipping, for example, or shipping to be able to lock into a land-based distribution.

That's the same in North America; we've seen enormous problems where ports are placed, usually through decisions, political decisions, many due to privatisation and privatisation has been in the remit of state jurisdiction regardless of national planning, and what we're seeing as a lack of hubbing, continuity, vertical and horizontal integration across those areas, and that's overlaid by an investment that at times, in privatisation, that are natural monopolies and not been able to deliver the sorts of private productivity outcomes because the price they paid in privatisation doesn't allow it, and doesn't allow capital expenditure, and again, I find it extraordinarily naive to separate poor productivity from capital expenditure, both at state level, by the employers, by the ship owners, and by the federal government that don't have a national logistics council that are able to bring the stakeholders including the unions together in a functional and integrated fashion.

This was demonstrated in the pandemic, where we were told in the instance that there was going - by the employers, there was going to be no - absolutely no - supply of PPE because masks were not proven to be scientifically or medically important to the impediment of COVID. Now, this is the start of a bargaining period that was going to be difficult in its own area, and again, there has been no reference to that, where the unions sat down and

said they would roll over on the CPI that, at that stage, was one and a half per cent, predicated upon sitting down and being able to sit and have a reasonable and stable response.

Now - and I'll go on the record with this - we were contacted by a whistle-blower inside the Department of - and of course, I'm constrained by that legislation - within the Department of the Attorney-General, where the employers had approached the Attorney-General with the view of putting the stevedoring industry into an essential services legislation because of the threat, and to mitigate the threat - and this is at the start of the bargaining period - that would mitigate the threat of any industrial action through that process of the pandemic. This is at the same time as not providing a forum or in any way being able to deliver a meaningful response to our members' need to have a comprehensive approach to the pandemic. I can go into that further during questions, if you'd like.

One of the big issues that we're dealing with here is that the - I'm sorry to say it - that this whole process is in great danger of missing the reason that there is a worldwide shortage and worldwide congestion, and why ships - you've seen our recommendation - eight out of every 10 ships from August 2020 to January 2022 were arriving late in Australian borders. Now, this was outside our control, and one of the largest impediments of productivity that we've seen. We know today that places like Shanghai and Shenzhen and the big ports in China, because of their Covid policy, continues to choke up the supply chain as one of the suppliers.

There are similar problems in India and in the emerging manufacturing countries like Vietnam and in Asia Pacific, Indonesia, they're compounding - those problems have been compounded by the same issues: deregulation, lack of port planning, lack of capital investment, and to be able to - should have had in 10 of 14 of the recommendations due to labour relations in this country? Now really. Even now, with the improvements, 50 per cent of the ships arriving late are arriving five days late. If you look at our productivity figures, I've been the national secretary of this union since 2000, for 24 years. We've bargained in good faith, we've gone from one or two-year agreements to four-year agreements. In many instances, we've rolled over on the CPI.

We've been able to try to establish - and one of the extraordinary outcomes of your recommendations is that you believe that casualisation and continually ignoring the diversity where three or four per cent of stevedores are women, with absolute - while we recognise first nations, recognitions that are no affirmative policies for employment that allows for a 24-hour, seven-day - there is not a day, and this is one of the only countries in the world that keeps their ports going 24-seven. In the United States of America, there are five or seven days where no work takes place. Every day, including Christmas Day, if the employers require it, we will man up the cranes and be able to deliver the stevedoring. The only day the employees don't require, is Christmas Day.

And to be able to translate that into a view that to casualise a workforce at a time where there are no truck drivers in the supply chains, and this is an endemic problem across the world, there has been no training. There is no national training body, there is no vocational planning, there is no diversity. And to come up with the recommendation to

say that there needs to be further casualisation in an industry that absolutely requires a workforce to be flexible enough so that if a ship goes off its window for five or 10 or longer, then we have to put the labour over the cranes to be able to put it back onto its window so it can continue to meet its requirements within that supply chain, and yet there's absolutely no reference to that flexibility, and the answer is to make it more flexible and more casual?

And you guys know that one of the biggest problems in trucking and one of the biggest problems in this country today is lack of long-term planning, workplace planning that's able to fill those gaps in these critical industries. And this industry, stevedoring, is only one link within a supply chain that includes intermodal, road and rail, logistics, and delivery, and not to have an holistic position in your recommendations, not to reconcile the absolute lack of COAG, state and federal to be able to deliver a reasonably productive and predictable environment where investment can be made - you can't even get containers into Newcastle.

You know, there has been no planning whatsoever in the state privatisations and landlord models to be able to identify, for example, how the last government, who was putting a rail line from Brisbane to Melbourne - how they intend linking that up to the existing hubs. That's the issue. I have to say to the commissioners, they're the issues. They're right at the root of those problems. Now, we're seeking - this industry started off with a casual workforce, and it didn't work.

The majority of stevedoring in the world is done through hiring laws, the only way they can have predictable supply of well-trained labour that's able to meet the high competencies, the safety standards and the critical nature is to have industry employment, and yet in this country we've negotiated an arrangement where we have enterprise employment that is able to deliver that productivity relationship between the employer and their representatives and the - sorry - the employee representatives in their union and the employer, and you guys are seeking to casualise it even further? In an industry that absolutely relies - you need to put those cranes over a ship three, four, five, six cranes to have the straddles and the rubber tyred gantries to meet the intermodal returns, to be able to process the truck turnaround time, to do it safely.

But you can have a casual workforce with more flexibility in an industry where we work 24/7 and the only industry in the country - one of the few stevedoring industries in the world, as I've said, commissioners, that were able to deliver that level of productivity in the face of no national or state national planning and without a capital expense priority where we're actually investing in the types of intermodal connection when all of our ports, for example, are in the middle of heavily urbanised area, where environmental and social in community issues are at the forefront of community opposition to the expansion of the moving of cargo even out of those areas.

I mean, you know, and again, I don't want to sound subjective about it, and I'm not subjective, but this is - if we're going to address this, and this is going to be another attempt based on a terms of reference for union bashing and to be able to apportion blame to a stable industry that has some of the lowest manning scales - I shouldn't say 'manning',

well I should say 'manning', because your report doesn't even address itself to diversity. And how do we in your casualised industry are able to deliver women and Indigenous people and fathers and parents into an area if they're fully casualised and they don't know when their next work is going to come from or even what day they're working.

We work very hard on those rosters. There is an order of pick to make sure that everybody - and again, I'm picking on a few the recommendations that I find absolutely bemusing, sirs and madam. You know, they have a situation that you're going to a more laissez-faire approach in an industry that has no recognition of 50 per cent of the demographics and people that want to work on the waterfront are women. With employers that refuse to employ women notwithstanding this union's longstanding advocacy for diversity in the workplace and the employers - I wonder if they put that into their submission - who refuse to do it because they don't want to pay domestic violence leave; they don't want to pay parental leave; they don't want to pay maternity leave; they don't want to deliver part-time work.

In a civilised country and a civilised supply chain, haven't we got a responsibility to deliver a framework of employment that is both productive and socially aware as well as environmentally in governance? And I really hope honestly that in this final report, that those enormous gaps - that's my gap analysis of the problem - we're happy to sit down. The productivity since I came in as national secretary has done nothing but rise, and I was on the picket line at Patrick's. I have a relationship with each of the employers, and we work those things through.

We really, we have got a responsibility all of us to have a framework, a transparent framework not predicated by political cycles and partisan politics, to be able to sit down both state and federally and develop a real supply chain, long-term investment. Who would invest in the place when you don't know whether or not you can put containers, for example, into Newcastle? I'm using that. Or that you don't know whether or not China is going to continue to own Darwin - the Darwin port. And I could go on. You guys know that, you know, many of the examples of the failures and the political failures. And again, I'll finish on this.

I know I went over my five minutes, but I'm a little bit - I'm bemused by it. It's not an issue that I deal with with the employers. We have a shipping industry that is dominated by cartels, that Maersk for example, MSC gouged billions of dollars including out of this economy, that do not pay tax, that do not get members - we've had seafarers in this country that have been unable - international seafarers - to get on and off ships for up to two years, cannot be repatriated. Don't you think there are productivity issues about the regulation and control of those seafarers that drive those ships? They're sending ships down to Melbourne that can't get under the bridge so that they can manipulate the market through their conference lines.

And yet one of your recommendations is to be critical of the coastal shipping framework that's seeking to have some sort of integrated supply chain arrangement with road and rail and intermodal predicated upon anti-cyclical long-term infrastructure investment, including by these international companies that always invested, and invest in New

Zealand. If you want to broaden the scope a little bit, go and have a look at the investment in New Zealand merchant shipping to be able to facilitate those sorts of short sea shipping that the geography of that country requires.

And the geography of this country means that if we're going to get agricultural and manufacturing products to market or we're going to bring in that machinery and that essential goods to our industry, then we need to be able to have a fully integrated supply chain, and not segregate out the shipping - of domestic shipping, I'm talking about, because that's in direct confrontation with the discussion that's been and the election that the shipping framework that was put in place by the Albanese Government, and have a situation where we can do that on a level playing field and not rely on seafarers that are imprisoned on ships that pay no tax when there was \$80 million that we were found to be unaccounted. An ombudsman that pays absolutely no attention.

If you want to concentrate on industrial relations, to the implementation of industrial law for those seafarers, and yet there's a recommendation to promote that laissez-faire exploitation - something that the genuine link in Europe now - the accountability of mandatory due diligence to make sure that there's a level playing field, does not feature at all in your report. And given the importance of the supply chain to Australia, the fourth-largest user of ships in the world not to have an integrated overview of what best practice is around the world. Again, look, Mr King and Ms Abramson, I'm not blaming you guys. You were served up a very flawed term of reference and you're doing your best with it. But honestly, if we're serious about port productivity, let's sit down in a proper framework and get on with the business. That's my opening statement. Thank you very much.

COMMISSIONER KING: All right. Thanks, Paddy. And as I said, we like to keep this informal, so Stephen and Julie, by the way.

COMMISSIONER ABRAMSON: Yes. And thank you for your submission because I know what your positions are on these issues, but thank you for participating in the process, and the effort that you've put into your submissions, particularly the one that we've received post draft, so we appreciate that.

COMMISSIONER KING: Yes. So, perhaps if I can start off, just a few things I want to follow up from your opening comments. Yes. First off, does the shipping market power - so during COVID we've seen the congested supply chain. We've seen clearly, you know the Maersk's, the MSC's and so on have been making hay while the sun shines, but it's been put to us that, you know, there's a lot of ships on order that the number of new ships that will come on will offset - more than offset those that are moving out of - simply due to age that are being retired. But that shipping market power is transitory, and what we're going to see, let's say, by 2025/2026 - we're going to be back in the world of around 2014/2015 where there's not excessive market power by the shipping lines.

Now, from your opening statement I suspect you strongly disagree with that, and I'd really like to understand what's wrong with that case that's being put to us, that this is all transitory market power for the shipping lines.



MR CRUMLIN: Well, it's an argument that's put to you by the shipping lines, isn't it? The MSC has just ordered a 24,000 TEU container ship. They've got Buckley's chance of getting that into any port in Australia. The ships that they're building aren't designed to service Australia. They can't even get those bigger ships underneath the bridge in Melbourne because there's been no planning. They manipulate the market because they're in cartels and put ships in place, and there's plenty of competition. There is one, two, three, four stevedores in the country, and you know, there's plenty of other bulk and general stevedores.

There's plenty of competition. What they're doing is manipulating the market. They're building and they're consolidating. One of the things that's happening with the environment they don't tell you - to meet the requirements of the various environmental - leading up to 2050 - they have to make an enormous investment in new tonnage. They're doing that to force out their opposition. The opposition largely is driven by, you know, many of the ship owners that don't pay their seafarers is because they're on older ships. Many of them get abandoned. That's their competition? These guys are consolidating their market power.

And if Maersk got \$23 billion, the largest profit in their history multiples of - and they do it on a spot cargo arrangement, working in concert with MSC, with Hapag Lloyd with the big three Japanese companies. There's only a handful of companies - with COSCO, and China Shipping. Now COSCO and China Shipping - they've got the best interests of Australian ship owners and market in place - not. They were holding up Indian ships; they were holding up Australian ships that were taking coal - I know that's not within your remit, - we're talking about TEU - they're the largest ship owner in the world, COSCO Chinese shipping.

And you think that they're subject to market rules. They're going to go along and say, 'Oh, well, we're a bit over tonnage now. Let's drop.' They're going to continue to monopolise those services, and quite often enter into cartel arrangements with the big European and the Japanese for their own mutual benefit. Now, come on. This is something that these guys are putting out there, and this with - that's why they're embracing regulation. That thins out the ability of any other ship owner actually make competition in that area. And like I said before - I just have to get used to me calling you by your first name now.

COMMISSIONER KING: Sorry. Stephen.

MR CRUMLIN: I might have to change the tone of my conversation now where we on a first name terms basis, Julie and Stephen. That's nonsense. That's the tail wagging the dog for you, these guys are only interested in - that's why they registered their ships in Panama. That's why they registered their ships in Liberia. That's why they sidestep the ombudsman to even pay that minimal Australian requirement when they're moving Australian cargoes interstate. They've got absolutely no commitment to anything except their own self-interest, and we allow them to work in a cartel way, and there coming back and saying, "Oh well, we can fix all of this up. We're going to be overtonnaged."

Honestly, you know, that's a nonsense. And it is selective, subjective self-interest. And that's one of the reasons we have - everyone around the world knows what these guys get up to. There are good ones, and I'm not bagging Maersk who are prepared to enter into a long-term arrangement and capital, capex, but they'll only do it with people that knowingly understand the market. And what happens, Maersk work very well in the US because they acknowledge the importance to Maersk of cabotage and the Jones Act, and yet you guys have a recommendation to do away with - we haven't got the Jones Act; we've got a much more flexible arrangement, you know, that has been diminished through the manipulation of regulations.

But what we're proposing is to be able to build that up as a surety because if you're moving cargo - for example, phosphate - from somewhere in South Australia and distributing it to our agricultural enterprises around the country, you have to have a specifically-build ship. It has to fit into Thevenard, it has to have a certain ballast, it has to have a certain width, and those things don't happen if you are relying on spot cargoes and people being able to manipulate the spot price. And that's what they do. They manipulate the spot price. And in the case of China, they sell all their cargo. We sell any cargo going to China on an FOB basis. That means they control shipping.

We haven't even got any control - the fourth-largest user of ships in the world. We've given it away to China. And I'm not a xenophobe. I hope we resolve our issues with China. They certainly drive the economy. But if there was going to be a Productivity Commission inquiry, it should be into FOB as opposed to ex-ship, where the Australian - admittedly its commodities mainly, iron ore, coal, but the same thing will extend to Australia as an exporting manufacturing country which is hopefully as much on the Productivity Commission's agenda as it is on the MUA, and every other working Australian. And that we don't fully understand how these guys can manipulate the situation or the size of them. MSC aren't even a listed company. They're a private family company for goodness sake. They must have pretty good bankers.

COMMISSIONER KING: Yes. I want to follow up on at least two things just on that.

MR CRUMLIN: Sure.

COMMISSIONER KING: So the first one is - we asked in the draft report, you know, other industries I've looked at - and I've spent an awful lot of time looking at different industries over my career. You know, if you had the behaviour of the shipping lines just turning up when they want to to ports, there would be consequences. There appear to be no consequences - certainly no fines or anything like that - for a ship that just turns up five days late. And I think you mentioned that 50 per cent are still turning up five days late. Why not? Is it just purely the market power of the shipping lines? Is it the container terminal operators just - you know, is it something that they just don't want to do or can't do? Yes, why aren't there consequences of these ships turning up late, other than the fact they might be put at the end of a queue. But that doesn't seem to have too much of a disciplining effect.

MR CRUMLIN: Well, what happens in Rotterdam, their - all ships go off their window, so that's the nature of shipping. But the whole thing about port productivity is to get them back on their window, and that comes down to basic infrastructure and investment. If you can put six cranes over a ship and not three, you're going to discharge that ship twice or three times as quick, and you've got to build a - what they're building in LA/Longbeach and in these enormous terminals throughout Europe, they're having these big ships, you know, 22,000 TEU – like, they're cities, they're not ships,. They come in and they can put 10 cranes over from either side, so they're building ports so that they can take that and strip the whole ship out, and they do that by capital expenditure and long-term investment mostly in areas - particularly in the United States. You know who owns the stevedoring companies. The ship owners.

COMMISSIONER KING: Shipping lines. Yes.

MR CRUMLIN: And so they're vertically and horizontally integrated, and increasingly they're controlling the trucking, and the logistics, so this is where, you know, their ability to manipulate the market. I mean, I'm not - you know, how do you manipulate the market? That's your game, you have to work that stuff through and where the penalties are. But I tell you, from a person who's been in this industry, you know now they have a look at me, my hair used to be jet black.

So having watched this over a really long period of time, that there is no - and they have got the ability to invest, but you've got to have a stake in our country and a federal government that's willing not to play politics, that's going to privatise a port, to put a port out to pork-barrel and that that money that they sell, bit like if it was a road, if it all fails, what's happened? The Australian taxpayer buys it back because it can't make a quid and we're talking about monopoly assets where that money. At least if you privatise a port or lease it out to a long-term landlord, it should be a requirement of investment around a framework about what's a productivity target should be in five or 10 or 15 or 20 or 25 years.

That should identify that you want to have ships of 10,000, 12,000, 15,000, you know, whatever we can get into our ports. So we need ports that are going to dredge to that depth, that we have flexibility, if one port's congested we can put it in another port and have short-sea shipping like they do in Europe or lock in to the intermodal, they've got good intermodal connectors so that we can get that cargo, move it around to our gridlock, whether by road or by rail, and get that and fix it up because it is a multidimensional and multilevel approach. And no one is talking those ways at all, and that's the core of productivity - people have to invest, and I guess you've got to penalise them, you've got to penalise someone if you speed.

That won't stop people speeding is to show them the consequences that if you speed, what happens at the end when there is a wreck. You know, so you've got to have the penalty, but also it's an awareness. And one of the awareness that we should be concentrating on is that the Australian economy will be a wreck unless - if we continue to rely on that laissez-faire, well, in three or four years' time we're going to have plenty of ships and the spot rate might come down. Pigs might fly, you know.

COMMISSIONER KING: Can I just follow up just briefly because I want to move on to other topics that you raised. Your submission supports the removal of part 10, I think.

COMMISSIONER ABRAMSON: Yes.

COMMISSIONER KING: I hope I've got that right. I mean, you know, we see the removal of part 10 as bringing essentially the ACCC - the ACCC will be able to have some say on the shipping lines. So generally, just want to check. You're supportive of a removal of part 10 subject to there being some sort of - you know, some sort of ability to still share the ships but not to collude?

MR CRUMLIN: Yes, I think that's part of where you guys are going to go. I know I've been a bit rhetorical, but there's plenty of things that you can do. It can be replaced. For example, we put it in our response a limited form of class exemption, that limits what can be exempted in a liner conference agreement, for example. The CNC Act should be simultaneously strengthened by requiring container shipping lines to adhere to specified service standards, for example, maintaining capacity and constraining a diversity of services from Australia to high-value routes and volumes. The practice of rolling over cargo to allay the voyage and unilateral booking cancellations.

They do all of those things to maintain pricing stability to eliminate excessive increase in freight rates so that we're investing in a counter-cyclical approach. And part of the long-term planning with them, to maintain port schedules and omit of berthing slot windows, to minimise imposition on demurrage charges. If an Australian ship is at the end of the queue, well, these guys aren't paying their crews you know, that's this wage theft going on out there, they don't pay tax. The demurrage charges for an international ship as opposed to an Australian ship may be involved in short-sea shipping is an enormous gap which they manipulate by picking up that coastal cargo in their cartel arrangements.

And on and on it goes. So we had a whole lot of things that we identify in that - provide a minimum of two years' notice of the intention to introduce a substantially larger TEU capacity ship for the trade. So instead of me going down to the Port of Melbourne saying 'that can't get under the bridge'. What are we going to do in Melbourne? Are we going to build another port in Geelong? Maybe down at Western port. Well, according to the community I don't think that's going to happen, commissioners. So what's going to happen. We're going to lift the bridge a bit. I mean, I've been saying this to the CEO of Port of Melbourne.

Are we going to have some understanding about the ships they bring down here are fit for service, meet our requirements - our port requirements, and at the same time ensure the state governments or the federal governments or whoever it might be, both the ship owners, the stevedores and the shippers, you know, the people taking the cargo, are required to make long-term investment to deliver that port productivity. I tell you what. When that's delivered, commissioners, there will be MUA members working 24 hours a day, 27 - maybe with greater diversity, hopefully 50 per cent women meeting their social requirements, but also meeting their obligations. And then we really are cooking with gas.

Well, I shouldn't say that, it's not an appropriate metaphor any more - here we are burning with solar power , and going somewhere.

COMMISSIONER KING: Can I change tack without meaning to pun for a bit because - so we recommend - you know, we are very concerned about the terminal access charges, their impact on the trucking industry, and, of course, you know, the trucking companies pass it through to the importers; its impact on the importers, particularly the small importers and the customers. So we recommended that - you know, if the container terminal operators go to charge fixed fees for picking up your container - and I've run publicly, but it sounds a bit like ransom. You know, we have your container; you've got to pay us to pick up your container, and you can't go anywhere else to get it. So stop that sort of behaviour, and if they want fixed charges, well, they've got to try and get them off the shipping lines.

You haven't supported that. Really interested in understanding why you haven't supported that. Where have we gone wrong in that? What have we missed? What have we misunderstood? And also just to get your views on - you know, because you've got so much international experience, be really keen to understand. Are these sort of fixed landside charges to trucking companies - are they common overseas? It just seems we've had real trouble finding examples of these overseas. It seems to be an Australian invention which may not be allowed as far as we could tell in places like the EU or, if it was allowed, there would be a regulatory process in place, so very keen to understand that.

COMMISSIONER ABRAMSON: Could I just add to that. Paddy, we're really interested in your views on the national voluntary guidelines which you do support.

MR CRUMLIN: Yes.

COMMISSIONER ABRAMSON: And areas where you might see some gaps and where you think it could be strengthened. So it's the two questions: it's the international experience around TACs and your views on where we landed; and also your views on the voluntary guidelines.

MR CRUMLIN: Yes.

MS HOWARD: And I think it was Rod who did that part of our submissions Is that right, Rod?

MR PICKETT: Yeah.

COMMISSIONER ABRAMSON: Yes.

COMMISSIONER KING: Yes. Rod, if you - - -

COMMISSIONER ABRAMSON: Sure. If Rod would like to talk, that's no problem.

MR PICKETT: Okay. If Paddy doesn't want to speak first, I'll happy to - - -

MR CRUMLIN: Well, just for the sake of time, I don't want to get started again if you could just cut through.

MR PICKETT: Well, thanks, commissioners and Paddy. Look, just on the national voluntary guidelines, I mean, they've only been - they're only endorsed by ministers and the states and the Commonwealth, you know, some several months ago, so they need to be given a chance to operate. That's the key point we'd make about the voluntary guidelines. Now, they've been in - sort of, a prototype version has been in operation in Melbourne in Victoria for some time, a bit longer, and the advice we had from the Victorian Government is that that's been working well.

And, of course, that then formed the basis for the model that the National Transport Commission designed for the nation. So they need to be given a chance to work. So I don't think it's - I think it's a little bit premature to be suggesting that, you know, to be identifying problems with it at this stage, but we certainly should be evaluating - there should be an evaluation after, say, three-year period to see how those voluntary guidelines work before there'd be any consideration of, you know, some form of regulatory intervention there.

And I should note that we, too, have had a little bit of difficulty, although we haven't finished our research on finding what the international practice is, but I should say one thing. Under the sort of FOB shipping terms that Paddy talked about earlier, the cargo owner does have the responsibility for the cargo until it reaches the ship. So, of course, the transport companies are a part of the service that the cargo owners, the shippers require, to get their containers to and from ships. So we say under those principles of FOB contracts are that the cargo owners and the transport operators are the point - are the entity which should in fact pay the terminal access charge.

And I think it's quite a legitimate - it's a legitimate charge in the context of the investment that's going in by the terminal operators to provide services for that pickup and delivery of truck and rail-delivered containers.

COMMISSIONER KING: Yes.

MR CRUMLIN: Can I - sorry.

COMMISSIONER KING: Just want to follow up with on that last point. So, as far - and you'll see this in our draft report. As far as we can tell, the big driver of terminal operators actually investing is competition. They seem to get very excited about investment, both landside and quayside when they face a bit of competition. And we've seen that with the - you know, as Hutchison and Vic came in. But the terminal access charges - I mean, they've been around for a while, but they suddenly started shooting up in 2017. It doesn't - you know, as far as we can tell, it wasn't related to any specific landside investment. So, have you got any thoughts on that, Rod? Again, is there something we're missing or how do we explain that - you know, I always get worried a bit about an explanation that says, you know, the managers of the CTOs woke up one day and thought this is a good idea;

let's put these prices up. But no one has been able to explain it to us. So, you got any thoughts, Rod?

MR PICKETT: Well, only that I can't - I'm not in the minds of the terminal operators to know what their motivations are, but you'd have - but I think the key explanation surely is, as identified by the ACCC, the fall in the quayside charges that are charged to shipping lines. That's been falling consistently over a number of years, and if these terminal operators are going to make the sort of levels of investment that Paddy has been talking about, they've got to have, you know, some surety about their revenue stream. So I can't explain it any better than that. And it comes back to the power of the shipping lines that Paddy again is outlining quite cogently. They are the reason. That market power is the reason why those quayside charges are falling.

COMMISSIONER KING: Yes. Yes, okay. Just - - -

MR CRUMLIN: And they have - - -.

COMMISSIONER KING: Just - - -

MR CRUMLIN: Some of it was due to congestion.

COMMISSIONER KING: Sorry Paddy.

MR CRUMLIN: I was just saying some of it was congestion when they brought it in – DP World brought in the congestion thing when Paul Scurrah was the CEO and - anyhow they have to deal with congestion because this is one of the big issues, say, in Botany because you've got such a limited area, you know, and storage is a problem, so what do you do with your empties; where do you put your empties; how do you get them? And the other big problem is, you know, more banks being built, but they're not very good intermodal arrangements. So part of it, as Rod said, FOB is freight on board.

COMMISSIONER KING: Yes.

MR CRUMLIN: You're responsible once the freight gets onboard. So, you know, there's all of these pressures on the stevedores, including through the Port of Sydney, to say, well, we have to lift our productivity and we have to meet certain guidelines, but then to do that you've got to have state of the art intermodal and it's a very bad setup at Botany, for example. That's where it started, because you've got the finger - not the finger, the finger wharf that sticks right out and impedes Hutchinson's ability because Chris Corrigan, you know, was a brilliant entrepreneur, and then he developed the Patrick's down there by impeding the ability of Hutchinson to be able to have good intermodal access and, in fact, limit their quayside arrangement.

So, you know, that's ended up in the very congested area and they had to find solutions for congestion. So that was one component, and, of course, Rod has touched on the other one. The ship owner has got all the power, and they've got an ability to minimise their charges because they've got the strength. They can manipulate the market, and they do manipulate

the market. And I guess it's a matter of you guys to be able to see what is a reasonable spread of charges and service that makes it fair and that identifies that there has to be a partnership in this area for that long-term capital expenditure required on investment, including fiscal - you know, some of the productivity issues has to be about the fiscal arrangement for infrastructure to encourage - because there are essential monopoly instruments of delivery. You know, ports, I mean.

COMMISSIONER KING: Yes.

MR CRUMLIN: And a lot of the issues of congestion are common to all three port operators, for example, in Sydney.

COMMISSIONER KING: Yes.

MR CRUMLIN: If that's helpful.

COMMISSIONER KING: That's good. Only a couple minutes left, but I do want to touch on skills because in your submission, you know, you disagree with our draft finding that the skills training seems to be fit for purpose, and you mentioned it also in your introductory comments about the lack of vocational training, the lack of training. So, be really interested in understanding that a bit further, and Julie, you - - -

COMMISSIONER ABRAMSON: Yes. Just one question, Paddy, that I really wanted to ask. Why is it that so much of the training is informal as opposed to - you've got a training package, so what is that? Why is so much of the training done actually within the stevedores?

MR CRUMLIN: Because they don't want to invest in training facilities. It's that simple. And I guess with your encouragement, a bit in your draft recommendations you want to casualise everybody, and they won't - don't want to invest in long-term investment for people that may disappear because, you know, they don't know when they're going to get home next. So, it's a combination of factors. Mostly because of the importance of stevedoring, and also the fact that the stevedoring workforces are getting smaller and smaller. I don't know if you, Julie and Stephen, have been out there and seen the size of these straddles.

COMMISSIONER ABRAMSON: Yes, we have.

MR CRUMLIN: Or the cranes, yes. Well, I mean, it's a scary place, and even though they might only have speed limits on things, it is scary with that congestion, you know, and there are very few workers. They should be trained to a very high standard. And the other thing is as I indicated before, you know, we were so committed to productivity that - back in WIRA days, the waterfront industry reforms in the late eighties, and they took away the (indistinct) but they didn't replace it with a training framework. If you go to Europe, Rotterdam or Antwerp, the US, there are very big training facilities where there are - what do you call it?



COMMISSIONER ABRAMSON: There are simulators.

MR CRUMLIN: Simulators.

COMMISSIONER ABRAMSON: Yes.

MR CRUMLIN: State of the art, and if you get your hours up - - -

COMMISSIONER KING: Yes.

MR CRUMLIN: - - - you're able to combine resources. The Australian Maritime College originally was set up to provide all sorts of maritime skills and could've provided stevedoring skills but you know, there has always been a resistance, even to a stevedoring national qualification that we've been asking in a generic industry with generic skills that in machinery that's very similar, why we haven't got a – it's one of our submissions to Mr O'Connor and the Government. And it has been – we've all – and I have to stress this. This is not political with us. We want bipartisan politics behind productivity.

That's – we want to go off everyone's radar. We're – I mean, they're never going to – people are never going to fall in love with us. We've hardened to that. But the reality is we want to work in a conducive and institutional way that is reviewable and be able to deliver outcomes. At the ILO, I mean, it can be overly prescriptive at the ILO. But what it undertook is that in this critical workforce, it like – you'd see that stuff on mortality rates. When I was in Long Beach, and that – but the mortality rates are high. And yet we've been able – and you can imagine the impact on productivity for serious injury or mortality, forget about, you know, a shift extension. Being cancelled about the five days or seven days' notice to the commission. Imagine when someone gets killed, you know? Or badly injured? The impact is enormous. And part of the lift in productivity – I'll say it's a coincidence, since I became the National Secretary of the Union that we've been able to deliver such a safe workforce in the face of not having that training.

And to a certain degree that's also a break on productivity because we're not bringing people out with the fundamental skills into the workforce here their cohort or their peers have to keep a very close eye on them. Both for their own interests, personal interests but they don't get interest and also for the interests of the new trainees. Now, we've tried very hard with the employers and the governments and the state governments to have some uniform productive and accountable - I know you're getting sick of me saying it, but that's all predicated – well I presume you are - upon having a stable workforce that both meets your requirement of continuity but also meets the requirements about having a socially accepted and desirable job where they can live life and you only make investment at one point.

One of the reasons we've developed and negotiated with the introduction of technology good pension funds was because stevedoring workers lifetime limited through their – the various physical ailments that they develop. And if you see them lashing a container, it is a rigorous, difficult and dangerous occupation and the accumulative effect is that their backs and knees and elbows, you know, all go out at some point.

So part of our social framework and engagement with the employer is to make sure, through proper negotiations, legal negotiations that their lifetime when they get to that stage where there may be more health costs they can extract both the quality in the training and only pay for each module once and build on it. Order of pick isn't about merit-based. We've accepted merit-based employment. Anyone who says anything different is not telling you the truth. And that we're able to then – the only thing we're concerned is that we want the whole level of the competency within the workforce and that includes attitude not an aspirational in terms of improving themselves to lift as far as we practically can.

Obviously, certain people are going to be suited more to certain types of work so that we're actually not duplicating that critical training. So again, that's a bit of a long answer, but that's the sort of – I think that's the product – the training is so important for this industry because of the size of it, the very few workers that are there, when you picked up the editorial in the Australian, you'd think there were 5000 wharfies sitting down there making trouble and raising flags.

When you go down there, you don't see anybody at all, do you? They're completely empty. All there is is a very, very small workforce operating this enormous machinery and doing it basically at the behest of whatever the employer may or may not want on an enterprise by enterprise basis.

COMMISSIONER KING: Thank you for appearing before us, this morning, Paddy, Warren, Penny and Rod. That's been really helpful.

COMMISSIONER ABRAMSON: And thank you very much for what you've put in your submission about the skills area. That's been really helpful, particularly the international training. So thank you for that. And like Stephen said, thank you for making yourself available and for such a comprehensive submission.

MR CRUMLIN: Well, thanks for that, Julie and thanks for that Stephen, and I don't often get to address Productivity Commissioners by their first name and I feel greatly honoured by the generosity of that offer. And you can call me Paddy anytime, you want, okay?

COMMISSIONER ABRAMSON: Thank you.

COMMISSIONER KING: Thank you. All right. Now.

COMMISSIONER ABRAMSON: Ports Australia.

COMMISSIONER KING: Let's move on to Ports Australia. So if the representatives of Ports Australia - this is the first time I've done one of these.

COMMISSIONER ABRAMSON: They work pretty well.

COMMISSIONER KING: So literally, yeah, or I sort of feel like there should be - - -

COMMISSIONER ABRAMSON: Hello.

COMMISSIONER KING: You know, I can't wave to you down the back of the room and say, 'Come on up,' but it's just - - -

COMMISSIONER ABRAMSON: No, but you know, we've had the great good fortune to have met with a number of parties before. So it's very nice to see you, Ports Australia.

COMMISSIONER KING: Yes. So just to re-say. If for transcript you can state your name and organisation. I always – you get told to say the organisation but it has to be done for the transcript. And then if you'd like to make some introductory comments and we can have a bit of a chat and we like to keep these informal. So yes, first name basis.

MR GALLACHER: Well, Stephen, thank you very much for the opportunity. My name's Mike Gallacher and I'm the CEO of Ports Australia. And with me this morning, I have our policy director, policy and operations director in fact, Margie Barbouttis. As both of you know who we are, the National Member body for the ports sector. And we represent both private and public ports right around the country. And we have associate members who are organisations or entities that provide a good or a service to the ports sector such as towage operators, stevedores et cetera.

Look, thank you for the opportunity to present. I don't know of it's a good thing following on from Paddy. He's known as a very strong presentation style and it's what he's known and loved for around the country. But clearly very passionate and very knowledgeable in regards to his member's interests and he is to be recognised for that.

We have put in, as you know, Stephen and Julie, we've put in a draft submission or a submission to you following the draft report, where we touched upon a number of matters. I think it's important for me to recognise that a number of my members, be they individual ports or indeed stevedores, and perhaps others, have spoken to you also directly and put forth their positions and given that all of them are separate. They all are different, I think there is a recognition in the report that they are all different. And that is very much the case, not only in terms of their geographical location, their relationship with the hinterland around them but then also the relationship with their employees, their customers, et cetera.

So it's not our intention this morning to be going through the individual relationships that they have or indeed matters that you've no doubt had an opportunity to talk to them about pertaining to their individual port be they pricing, be that timing, et cetera. So what we'd just like to do this morning is speak to the report that we have put forward to you.

If I can start by the first point that we made in the report and it goes to the very core of your enquiry into the issue of port productivity. Prior to the report being released, draft report being released, we have for quite some time, do have a very good relationship with BITRE and with the Department of Infrastructure. And we were very conscious, following the initial release of the IHS Markit report about the concerns that a number of our members had regarding the data that was presented and what they believed to be clear

deficiencies in regards to the data and therefore, the potential reputational harm that that had to Australian ports.

We then commenced the discussion with BITRE and with the Department in relation to what we believe to be the shortcomings. And I'm pleased to say that we are now down the path where we're discussing with them, measures, additional measures that we can agree on to determine port productivity and port efficiency. But one of the points that we continue to make is that we can invest, we can talk about the efficiency, we can talk about steaming times, we can talk about how long it takes to get a container off a ship and put it onto a truck. But at the end of the day, we need to start looking, not only continue to look at ports, but what we really need to start looking at the overall efficiency of the supply chain, right through to the distribution set up and it is a point that we've made in our submission to you and it's a point that we will continue to make in our conversations with BITRE.

That being said, in a couple of weeks' time, we are bringing together a number of our container port representatives, together with stevedore representatives to start to finalise those measures that we can then further engage with BITRE and with the department around port efficiency for the future. It's important for us as a national organisation to ensure that the country and the governments and organisations like yours have confidence in us, in our ability to look into ourselves and see if we can do things better and that is what we are trying to do now is bring our organisation together which is not a difficult task. Bring them together, together with our stevedore members to have that initial discussion. And then once we've had that discussion in relation to those measures then look beyond that because a lot of what you've discussed in this report is not just limited to the port movement of the ship coming alongside.

There are of course, the role of our pilots, the role of our towage operators, the role of our lines people. They all play a role, although they aren't necessarily employees directly under the control of the port and they're very much, very much part of the whole port efficiency equation. So they, too, will be part of the discussion going forward with BITRE. My opening comments have been quite brief, I'll finish on that and then hopefully we can have a discussion in relation to other aspects of our submission to your draft report.

COMMISSIONER KING: Fantastic. So thanks for that, Mike. I'll start off, obviously on the port performance analysis. So, there's obvious problems in the data at the moment. There's problems – there's just a lack of a labour side data. So we weren't able to include labour productivity as part of the port product to be measured.

There's a lack of landside information as opposed to quayside information. The quayside you know, the IHS data's the best international dataset but we've pointed out problems with that.

And so we'd be really interested in understanding, and I understand that there are ongoing discussions with BITRE. But understanding exactly how you think the port performance should be measured, are you in your discussions, if you can say so on the public record, are we moving towards trying to fill those gaps on landside and labour in terms of the

measure that the data that's available? Just to understand that a bit better. So the, you know, the end result is we want to be able to do this port benchmark. That's what the Federal Government put in the terms of reference. But the data's just not there.

MR GALLACHER: Yes, thank you for that, Stephen. Yes, you're quite right the data in many instances is not there. I mean, I'm reading now from one of the submissions that was made from one of our ports in relation to truck utilisation rates where I am a member of the New South Wales Freight and Logistics Council and there have been an ongoing discussion around these very issues. And the data is simply not there. It's a question of whether we can obtain it – how do we obtain it and that's in part at the very core of the meeting with the stevedores and the ports later this month to find out what data they do have available to them and is it accessible. And how will it build in our understanding and our ability to work with governments to look at the issue of efficiency and productivity within our ports.

I mean, the submissions that you've no doubt received from a number of our ports in relation to the IHS Markit report, it's clear that there are in their view, quite significant deficiencies in relation to the data. So it's important for us to in our discussions with government, is to not rely on the IHS Markit report as the starting point for that conversation. But it's actually to sit down with our members, firstly, to find out – we know what you are looking for, we do see the deficiencies in your report. You've outlined those. We're now conscious with those.

It's now a question of sitting down with our people to find out what is readily available, what is available short, long-term, medium, long-term, is it going to be available and then how do we engage with governments in relation to progressing that through to an efficient form. Where everyone is satisfied that everything is being provided that can be provided to get a better understanding in relation to efficiency. But again, I continue to make the point that – the port is just one link in the chain and we have to start to look much further than that. We can achieve everything we wanted with an ideal world in a port. We can invest, you know, Paddy earlier talking about imports and increasing key line equipment. We can make all that investment.

We can do all of that to get the port up to the optimum, but at the end of the day, the port is relatively such a small footprint in relation to the transport of that freight. We need to make sure that outside the port gate, right up the road, efficiency equally is working towards an optimum level and we just don't simply focus in on one part of it.

COMMISSIONER KING: Yes. I understand that. I'm going to do the exact opposite and focus in on one part of it which is my next question, because agreed, you know, you've got to think of the logistics chain and we've had some questions in our draft report around things like you know, why our ships – shipping line is not being more explicitly fined for coming late out the window and so on. But what I really want to focus in on is one thing that's – well, I don't think we've had satisfactorily answered. So we identified the variability of crane runs. And there's variability across the container terminal operators, and that's been – you know, some of the submissions we've received have addressed that.

They've said, look, you can't compare one CTO directly with another on the crane rates unless you take into account things like how much storage area they've got. The actual configuration of their terminal. But it doesn't explain why we have this variability in crane rates within the same container terminal. Same operator, same setup. The crane rates are all over the shop and have you got any thoughts on that? Can you help us?

MR GALLACHER: I unfortunately can't because so much of it would relate on, I suppose, the manpower, the commercial decisions. A whole host of factors in the discussions that I've had with members over a number of years in relation to this. It is on a case by case basis and you've just given an example there where different rates at the same terminal. I unfortunately am not in a position to shed further light on it other than suggesting perhaps if it is a significant sticking point for you, to go back to the stevedores and seek further information in relation to it. That's the only suggestion I can give.

COMMISSIONER KING: Fair enough.

A lot of the difficulties we have is we, as an organisation have no visibility on pricing. To get involved in pricing, we probably find ourselves down to the ACCC being seen as the housing point for all price and discussions taking place. But we've got involved in that. We got involved in individual EBAs and the relationship with their employees or indeed their customer relationship, commercial relationship. So it's difficult for us to comment on a number of those factors. That's why our submission, what we're looking to, to be fairly high level.

COMMISSIONER KING: Yes, fair enough. Just one more from me, and then I'll pass over to Julie. So one of the things, if I remember correctly from your submission and my apologies when I get this wrong, because obviously we get a lot of submissions, it's sometimes difficult to remember exactly what each one says. But I think your submission post-draft was pretty happy with our draft finding that it wasn't a case for further regulation of ports.

I must confess that we're still in a bit of a quandary with regard to that recommendation or that finding. Because I don't think there's too much controversy about the ports being local monopolies, being regional monopolies. Certainly the ACCC agrees with that and I'm yet to – pretty much everyone seems to agree with that.

We've seen the issue where the Essential Services Commission looked at the Port of Melbourne and found all of these complainants. We haven't received huge numbers of complaints. Despite the fact that the regulation in the other states is less onerous than on the Port of Melbourne.

Now when we talk about this with perhaps a regulator who I won't name but will be pretty obvious, they say look "Look, you know, the problem is that, you know, there's a problem here. These are monopolies. There isn't a market power issue. You should just recommend further regulation and at least the Victorian system nationwide, but at the same time, we haven't seen the people lining up to complain to us."

So what's happening there? Port of Melbourne was going to exercise its market power, is it just the Port Melbourne's somehow different, or what are we missing?

MR GALLACHER: I think the starting point too, of course, is to come to a conclusion, you need to be able to point to the evidence. And obviously, as you've just said and you've said elsewhere earlier, that evidence has not been forthcoming. Therefore, the supposition that you've got is that there is the potential for it. Unfortunately, you don't have the evidence to be able to back it up. Whether it's because people aren't coming forward or because it simply doesn't exist.

In regards to Melbourne, the system in Melbourne did identify the issues in Melbourne, and rectification has been put in place there in regards to that earlier event, and the Essential Services Commission continues to play, obviously, a very significant role in the Victorian experience. But the observation that you made, if I can quote it verbatim, referencing the sort of, the threat that the spectre of regulation hanging over ports – as it would any industry – but also at the same time knowing that we have a very strong regulatory model. It could always be stronger I suspect. I suggest someone would say further, but if you were going to use the Victorian experience to replicate it across the country then you look at the charges across the various states right now and use Victoria as a benchmark.

And I think there's been a recent report released – a landside port charges index which actually does the comparison - and all of the prices are pretty consistent. There might be some variation up or down, but they are all pretty consistent. So the point that you made in Brisbane, at our biannual conference when you spoke about the spectre of regulation hanging over the head, and also recognising that there is a line in the sand in Victoria that says, "Here is a regulated model," and all the pricing is consistent with what is happening in Melbourne. To me, my view is the system at this point in time is working.

There is no evidence to the contrary that it's not, therefore maintain the current system that we have, being vigilant in relation to any potential outbreaks and then look at your options if there were to be outbreaks in the future. But don't guess that there may be – and I know you're not going to because you're looking at the numbers and you're looking at facts – but don't guess that it may happen, therefore, let's get ahead of the game. There's no need for that to be ahead of the game because the consequence of regulation could be far greater.

COMMISSIONER KING: Can I push back a little bit on that. So, I mean, the ESC has a number of roles with the Port of Melbourne, so let's put aside, you know, the ones in the privatisation agreement relating to pricing and so on. But it has been put to us, look, for ESC's role on the landside rents and investigating that is pretty light-handed. All it's really doing is shining a bit of light in there. The government's response has been, again, pretty light-handed. You know, it hasn't come in with heavy-handed regulation.

So it has been put to us the same sort of thing could be rolled out to the other major Australian ports at very little cost. The state regulators are already in place, it's not going to have a huge impact on anyone as long as there is no abuse of market power going on.

So, you know, it's been put to us that we could copy the Victorian approach in other states, just a bit like shining a torch. Not a big cost, but there could be benefits. Any thoughts about that?

MR GALLACHER: Well, of course, if you're going to have benefits, you then have to be able to show what are the complaints, what are the allegations, what is the evidence that you're hoping to fix. And of course, the point I made earlier is we haven't got any evidence because no one's come forward. I think you've basically spelled it out pretty strongly to the industry that should that evidence come forward in the future, then that is an option - going down the path of a Victorian type model across the country. But I don't believe there's a need for it at this point in time given the lack of evidence.

COMMISSIONER KING: Okay. Julie, did you want to ask anything?

COMMISSIONER ABRAMSON: Yes. I'm going to ask something entirely different, Mike. So it was about skills. There was an interesting comment in your submissions, which is on page 4, about the PC – us recognising educational institutions and the role that they have to play in the industry. What has been put to us generally in the skills space, particularly with stevedores, is that a lot of the training or most of the training is actually onsite, and it's not – there's not like a training institution, although there are for some particular skills. So I was just interested as to what you mean by that and whether you think there should be, you know, more TAFE, more employer-employee type arrangements around training you'd be familiar with in other industries.

MR GALLACHER: Yes, Julie. Thank you for that. Stephen, before I move in – on that last point, I will agree in relation to the comment that the – my comrades at the MUA made earlier with regards to the NTC's policy guidelines. I think that is something that equally should be held very closely and looked very closely in terms of whether there are breaches in relation to the as well.

Julie, in regards to your question, if we're looking at it purely from the context now of container ports or are you looking at it from ports in general?

COMMISSIONER ABRAMSON: Container ports to be honest, Mike, because that's where we were asked to focus.

MR GALLACHER: Yes. That's fine.

COMMISSIONER ABRAMSON: If there's something else to be said about bulk ports, of course we're interested.

MR GALLACHER: No, because in many of the instances when I talked to my container port people, they say to me they don't have a problem. We're not talking ports – and then you'll then talk a stevedore who works its way down the line, but if I talk to ports, they say they don't have a problem attracting people. In terms of the stevedores, it's probably different challenge. But in each of the ports we have a difference between landside jobs and those jobs that are on the water. And the ones that are on the water are the mariner



jobs, invariably, that fall under the domain about port authorities. And we have a whole different set of skills required in those areas. And many of those skills have been provided, traditionally, by organisations such as the Australian Maritime College.

COMMISSIONER ABRAMSON: Yes.

MR GALLACHER: That was quoted earlier as providing those maritime skills. But of course, for many of those people, they have to go offshore to get the requisite years at sea to then be able to come back and qualify for harbour masters, pilots, master mariners, all these critical roles that we have. In terms of the landside jobs Julie, there's no doubt that technology is continuing to play a role there. I would be keen to learn more from our stevedores, because it's not a discussion we've had with them directly in terms of where they see their future skill challenges and whether it's a TAFE qualification which is an excellent qualification in those skilled areas, or indeed, are they looking for something more higher education qualification in that engineering space.

It's not something that we've had an in-depth discussion with them, but it's something we're conscious of in terms of the changing work environment and the skills dynamic that we have in the ports. Margie, anything you want to say?

MS BARBOUTTIS: Yes. Just another comment to that. I think, just again, looking at much more about ports, you know, port operational or management side of things, really. And whilst, you know, there are definitely enough individuals, you know, to employ, especially at the moment in the engineering space, they don't necessarily have that maritime skillset or had that core skillset. And we've seen courses, you know, being dropped at universities around maritime engineering.

So that's just one of those areas which, you know, will probably need to be supported again. You know, sometimes there's a cohort that goes through, and you know, then that satisfies, you know, given that there's not a huge number of individuals necessarily, that might satisfy the needs of the ports for a certain period of time. But I think we're coming into the period now where there is greater demand for that, and we now need to look again and we are an industry body investigating, you know, what you might be able to support.

COMMISSIONER ABRAMSON: Could I just ask you something quite – thank you for that, Margie – just something quite direct about this. So with some of the skills which are required in the ports, for example, something like marine pilots. So I understand – and I could be wrong here – that each port is different. So you have to have different training, but it seems odd that you don't have, like, a universal qualification, you know, with core competencies. But, it could be individualised for each workplace. So I'm trying to understand why it is that that framework has not had an appetite amongst the ports, because it's in your interest that all of the people have core competencies because then people can move, and that's a good thing for the ports. So, I am interested in your views on that.

MR GALLACHER: Yes, look, there has been a shift in recent times in relation to the greater utilisation of simulators to train personnel in that piloting role, which is obviously a very interesting concept. It has mixed views - - -

COMMISSIONER ABRAMSON: Yes.

MR GALLACHER: - - - depending on where you sit. Some people will not be supportive of it, they might be of traditional approaches, which at the end of the day, meant, I think from recollection, Julie, it's about a minimum of 10 years at sea. Someone will correct me, but I'm sure it's a 10 year at sea qualification. And of course, this question about is it the port that actually needs to be investing in those skills when in fact they are not their employees, but is it the authorities that need to be investing in those skills and are use of simulators a way of attracting more people? That they don't have to go to sea for 10 years. So, it's a changing work environment. They don't have to say goodbye to their husband, and go to sea, and say goodbye to their kids for 10 years, or hubby goes on a ship.

So, now they can utilise simulators, but we need to be assured, and we are confident in the conversation with those using simulators, they are a safe and practical way to get the skillset, but they're not shortcutting safety, and they're not shortcutting experience as well. So, it is a bit of a balance, but it is a relatively new area for us, Julie, because you know, pilots are small in number. You used pilots as an example.

COMMISSIONER ABRAMSON: Yes.

MR GALLACHER: They were absolutely fundamental for keeping our nation afloat during COVID.

COMMISSIONER ABRAMSON: Yes.

MR GALLACHER: Because, unlike anyone else, a pilot's actually get off the cutter vessel and go on board international vessels at the time of the pandemic wearing little more than a mask, and you know, looking like Neil Armstrong boarding a vessel. But when you think about that, they're not just stepping off, they actually have to be able to climb up a ladder at night, in conditions that most of us would not even want to get out of bed to think about. That wearing all this safety equipment to bring the ship to shore for the unloading or loading to take place. So, they are highly professional, skilled people, and there's a significant risk there. So, now there is a move towards looking at alternative pathways, but a lot of it will really depend on not only industry, but also government being supportive because - - -

COMMISSIONER ABRAMSON: No, I understand that Mike, and I think we should always, as a nation, be very grateful for the work of a number of people did on the waterfront during recent issues. I guess I suppose what I am asking, and I don't want to put words in your mouth, but you know, where do you see a role for the ports in that training space? I take your point that these are individualised skills, but if you don't have some of these skills the port can't operate. So, you know, what sort of role do you see for ports themselves?

MR GALLACHER: It probably, I think, would be a discussion that probably needs to take place between the ports and the port authorities.

COMMISSIONER ABRAMSON: Yes.

MR GALLACHER: In terms of what are the best skillsets that they're going to need going into the future.

COMMISSIONER ABRAMSON: Yes.

MR GALLACHER: Because at the end of the day if you're asking a container port operator we want you to invest in a pilot, they're going to say, "But I am already investing in engineers. I am already investing in the autonomy and systems here, but they're not mine over there."

COMMISSIONER ABRAMSON: Yes.

MR GALLACHER: It's a discussion that probably needs to be had, and it probably takes place informally. But I don't see it as being as simple answer.

COMMISSIONER ABRAMSON: Nothing about the training system, Mike, is simple, in any area.

MR GALLACHER: I was in a meeting just recently with Paddy, and other members of various groups, and this issue came up about - and was convened by the Minister for Infrastructure, and a whole host of other authorities Minister King, and it came up about skills - - -

COMMISSIONER ABRAMSON: Yes.

MR GALLACHER: - - - and about marine maritime jobs, and the point you've just made, Julie, was made by a number of groups around the table. And my take on it was where there's a container port that has no marine skills, really has no need for any on water skills, where does their relationship end in regards to skilling up the maritime workers that are ostensibly the employees of another organisation.

COMMISSIONER ABRAMSON: No, thank you, thank you very much.

COMMISSIONER KING: I think we're out of time, but I would like to just have a quick chat about infrastructure and the planning. Obviously, our draft finding was that the planning is adequate. It's been put to us by some other parties - well, the short-term planning is pretty good - - -

COMMISSIONER ABRAMSON: Excuse me one minute, we're just - we're making assumption you've got another five minutes or so to be with us, is that fine?

MR GALLACHER: That's fine.

COMMISSIONER KING: Good point Julie. Thank you. So, it's been put to us, well short-term planning is fine, the long-term planning, there's lots of long-term plans, but they tend to be more kicking cans down the road. There's a medium-term planning problem. So, interested in your views on that. Also interested in your views on whether the plan is adequate on that landside, with road access, the curfews. Is that all going okay? You know, port activity is only going to increase, is there something that is missing in the planning space there. So, yes, let's start off with those two, we're very interested in that.

MR GALLACHER: I might start with the latter part of it.

COMMISSIONER KING: Yes.

MR GALLACHER: Before I go onto the infrastructure question. We recognise that in your draft report you talk about the greater value land.

COMMISSIONER KING: Yes.

MR GALLACHER: In terms of the protection of industrial lands. And that, at the end of the day, is absolutely critical for us that we have some protection around that. Obviously, when you were talking about it in the value sense, you're talking about the economic value, I'd assume you're talking about the economic value.

COMMISSIONER KING: Yes.

MR GALLACHER: Well, we're talking about the social and the environmental value as well. And that's why it is extremely important there'd be a holistic view in relation to the protection of this land for that very issue that you spoke about a few minutes ago in your first question, which was the long-term investment, the long-term infrastructure vision, this land is part of that equation. We need to protect it. If we don't protect it what we will see is increasingly more development taking place around what would be our main corridors. It would have a social impact, it'll have a detrimental environmental impact as well, and I hate to say, as more congestion, less planning, and long-term vision around the protection of this land takes place, it will have an economic consequence. Because whatever we invest in at the ports in terms of the efficiency will be totally reliant upon what the government invests in, in terms of road and rail.

COMMISSIONER KING: Yes.

MR GALLACHER: It does touch on that issue that you'd raised, Stephen and Julie, that governments shouldn't be playing a role in regard to the investment of ports for the future with respect to bigger vessels. There are certainly, and in particular, Fremantle, the classic example being a state-owned port, there's no two ways about it, the state is going to be investing in Fremantle, and the federal government will be investing in Fremantle too. But if you're talking about the existing east coast container ports, they will be responsible for what happens inside the footprint, but if we are to maximise their potential in terms of

supply chain efficiency, everything they do to increase the size of the port to be able to deal with bigger vessels will have a consequential impact on the road and rail infrastructure, and the supply chain outside the port gate.

So, our planning for the future is very much built on the experience of the past. I do get frustrated at times when people fail to accept that our ports have invested collectively billions of dollars since privatisation in upgrading and increasing the capacity of their ports. That will only continue. Our ports are economic creatures. They understand better than anyone growth in the economy, growth in population, growth in demand. And they too look to the future to ensure that they can be at that point where when demand is at that point, the investment in ports has already been made. Be it in terms of quay line equipment, investing in new equipment, in automation, or indeed dredging and extending quay lines to be able to deal with bigger vessels.

So much of it is based on data that we get from government, data we get from business to be able to forecast. So, for people to suggest that the long-term vision is not there, it's incorrect. But most certainly do not recognise the investment that has been made over many decades, both under private, but most certainly - sorry, under public initially, but then most certainly under private fails to acknowledge the fact that the ports have grown, and we'll see that as the economy grows.

COMMISSIONER KING: Yes, can I just again – sorry, this will be the last one. Is that – I'm just looking at Julie and she's sort of saying yes, there's one more and I'm probably should be done. But I just want to follow up on that with the medium term. Yes, and I'll pick on Port Melbourne because we're based in Melbourne out here and you think about medium term planning, for example, with Webb Dock and the rail access and so on and amusingly, in some ways during the course of this inquiry, I came across an article which was talking about a rail line going across Victor Harbour running parallel to the Bolte Bridge which is apparently still the medium term plan for getting rail access into Webb Dock

But I was reading the State government has vetoed that and it's not going to happen and I thought, oh, I haven't heard of any of that. Then I realised I was reading an article that was about 15 years old and it's only one example, but it does tend to suggest there's a few bits of the planning, and think of that medium term planning, which it's just, you know, it's just getting revolved around and so I can see why it's being put to us. The medium term planning may be a bit of a hole. So just your view on that?

MR GALLACHER: Yes. Look, I obviously relied on the information and what I see from plan members. I'm confident in submissions that they make and with regards to their public statements to their short, medium and long-term planning. Their aspirations, the investment that they're making. It would probably be a case really if there are specific issues that you have be it Port of Melbourne or indeed any other port before coming to a final conclusion on that. I think it probably would be good advice to seek advice or evidence from them to satisfy any concerns you had in that regard.

COMMISSIONER KING: Okay. All right. So thank you so much. Thank you, Mike and thank you, Margie, that's been fantastic.

COMMISSIONER ABRAMSON: And thank you for your submissions as well.

MR GALLACHER: Yes.

COMMISSIONER ABRAMSON: And thank you.

MR GALLACHER: No, thank you, Stephen and thank you for making the journey up to Brisbane.

COMMISSIONER KING: No trouble, no trouble. Now, we've got morning break, which is now running 12 minutes late. There's also apparently been some change in schedule. We've had some dropouts. Yes, we've got some nodding. So that means, we'll only reconvene at 1.15. So apologies for those of you who were hanging on for the other participants this morning. We will take an extended break. We'll resume at 1.15 with the Container Transport Alliance Australia, I think.

COMMISSIONER ABRAMSON: Yes, yes.

COMMISSIONER KING: Okay. Thanks, folks.

**LUNCHEON ADJOURNMENT**

**[11:35 am]**

COMMISSIONER KING: So folks, welcome back. After an extended morning tea/ lunch break. Let me just run through a few of the preliminary notes, remarks again, for those of you who weren't here this morning. These are of course the public hearings for the Productivity Commission enquiries of Maritime Logistics System. These hearings are being recorded as just became apparent. My name's Stephen King, my fellow Commissioner here is Julie Abramson.

We are leading the enquiry. We would like to keep these hearings informal so we tend to keep it on a first name basis. What else should I just remind people? If there are any media representatives joining us this afternoon, please make sure you don't broadcast the proceedings. If you're taping them, note that taping is only permitted with prior permission, and I don't think anyone's asked us for prior permission? No? There's shaking of the head.

But transcripts of these proceedings will be available in about a week's time. And yes, the way that we organise the sessions is we'll ask each of the participants to make some introductory remarks and then we'll open it up for general back and forth conversation and see where we get with approximately half an hour for each of the participants this afternoon.

So our first party appearing this afternoon at this hearing is the Container Transport Alliance of Australia, the CTAA. For the transcript, Neil, if you wouldn't mind stating your full name and organisation, which I always find slightly odd, seeing as I've said what organisation it is, and I've said at least half your name. But if you could please state name and organisation for the transcript, then if you would like to give just a short opening statement, then we can start having some questions.

MR CHAMBERS: Thanks, Stephen, thanks, Julie. Neil Chambers, Director of Container Transport Alliance Australia. Thank you for allowing us to appear at the hearing, and apologies for a very late submission that CTAA made. It's a reflection of my study time where every assignment was put in at the last minute, but thank you very much for accepting it at that late stage. Our supplementary submissions of the draft report really focusses on three key issues, without going through all of your draft recommendations or findings. We've really - - -

COMMISSIONER KING: One of the things I didn't repeat from this morning, if people can just make sure they keep themselves on mute so we minimises disruption. Sorry, Neil.

MR CHAMBERS: That's fine. So the three items that we put some supplementary comments on were productivity and performance measurements, particularly around the landside performance. I think that the report could probably be a bit more comprehensive around landside measurements. The second one was around the elephant in the room of terminal land access charges. And the third was really around container detention issues, which is very comprehensively covered in your draft report. So they're the three elements

of our submission, Stephen and Julie. Do you want me to talk any further about that, or do you want to take it issue by issue?

COMMISSIONER KING: Yes. How about you talk to the three issues and then we'll go to questions?

MR CHAMBERS: Okay. Thanks very much. Yes. I think the report is very comprehensive when its looking particularly at the quayside of the border measurements in relation to things like crane rates and terminal operations and ship turnaround times and those sorts of things. There is a mention of some of the landside issues, and certainly references the water line before from BITRE et cetera. But I think they're as equally important to the overall supply chain as the measurements around terminal performance and blue water performance, because we are looking at the total supply chain.

We've done a fair bit of work, as we said in our initial submission, with State Governments particularly around developing a broader set of indicators, but I've got to say that at the moment, it's very much a patchwork approach across the country. In New South Wales, of course, we have the – got the landside improvement strategy mandatory standards and along with that, under regulation comes a fair deal of investigation and measurement of performance, particularly that road transport terminal interface. In recent years, too, as you're aware, and referenced in the report, there's been a concentration on empty container management; a report starting in New South Wales around the inefficiencies in that element of the supply chain, and the potential for that to blow out to inefficiencies costing the New South Wales economy upwards of \$100 million by 2040 if nothing is done about improving that component of the supply chain.

But the empty container management issues aren't part of the New South Wales mandatory standards, at least not at this point in time, and as you're aware, there's an independent review of that regulation in undertaking for New South Wales as we speak.

Then we look at, say, Victoria. They've certainly adopted a very – a voluntary model, and to give everyone their credit, they are working closely with the Government around that voluntary set of data and performance indicators. And we've done a lot of work with the Victorian Government to both report on and improve issues around, again, empty container management as much as the landside interface with the container terminals. And we're starting to get some traction there in relation to the sorts of key performance indicators that we really should be looking at in relation to a empty container management.

In a smaller port like Fremantle, they have been – they have structures in place, both their Freight and Logistics Council as well as the West Australian Port Operations Taskforce, that looks like the key data around both empty container management and also rail operations and stevedore terminal operations on a monthly basis, but again, it's small volumes in the port of Fremantle.

In the other ports, unfortunately, it's very – it's really non-existent from an independent monitoring point of view. So that's why I'm describing the efforts to date in the various states as a patchwork sort of measurements. And certainly what we'd like to see is a



recommendation possibly through your report, to try and draw that together. And our view would be that Transport Ministers, Transport Infrastructure Ministers both State and Federal, through their ministerial body, take this as an issue and potentially do an independent review to come up with some consistent and independent performance indicators across all of the container ports in Australia.

And then also the methods of data capture, and I mention methods of data capture because, for instance, in New South Wales, they're starting to use automatic number plate recognition camera technology and other technologies to capture data around truck movements and the like. So there are some technologies that we can apply to developing those key performance indicators and reporting them on a consistent and frequent basis.

So that's our views around that. We think that you probably underestimate – as a result of it, you've probably underestimated the impact on the Australian economy of the inefficiencies. I think your report mentions about \$605 million. And as we've said in the submissions, simply alone in New South Wales they've identified at least \$49 million of inefficiencies now, blowing out, potentially, to \$100 million if we don't do better in the future. So there's just one state with that amount of inefficiencies. So once you add in all these landside issues, then I think you'll find that you could easily double that in the report.

COMMISSIONER KING: Sorry, just to make it clear. That number from New South Wales, that was just landside inefficiencies, or that was - - -

MR CHAMBERS: That was a report into empty container management.

COMMISSIONER KING: Okay, yes.

MR CHAMBERS: I think it's called the New South Wales - - -

COMMISSIONER KING: Thank you.

MR CHAMBERS: - - - container management study done in 2020, and then that was – that exercise was repeated in Victoria as well, although Victoria didn't set out to try and put a dollar figure on the potential inefficiencies. They were really just looking at the issues that needed to be addressed to – to improve efficiencies. So it's a blanket comment, I suppose, Stephen, that, you know, if we're to be really keen about this, then we need to incorporate this landside performance indicators as well, and we think the best way is for cooperation between Federal and State Governments to come up with a consistent basis.

We're trying to have those conversations in Queensland, for example, but you know, a personal view would be that there's not much interest. They've sold off the port of Brisbane to a private entity, and they think there's – everything is, you know, sweetness and light at the port of Brisbane and it's all going hunky dory, but it's not necessarily the case. So that's all I've got to say, I think, Commissioners, on the productivity and performance. Are there any other questions on that part of it?

COMMISSIONER KING: Well, I think just noting that you've put a couple of potential recommendations in your supplementary submission. Yes, and we'll obviously consider those. I mean, the general direction that you're going is the same direction that we obviously went in our draft report, which is to say that gaps in the data, and those gaps need to be filled in. We take your point about if it's going to be done at the State and Territory level, it would be very good if they could coordinate and collect data that's consistent.

And also, we'll think about – we note your – the second part of your recommendation, which is around making sure the technology and the way the data's collected is also done in a similar way. And I think that's a good point, because that again, when – other than the fact that it means that you've got consistency across, you know, in the way that transport companies are interacting with the ports, they - automatic number plate recognition adding support, it also means that it makes the data more consistent, so from the point of view of making sure you're comparing apples with apples across Australian ports, it also helps those. So thank you for those potential recommendations.

MR CHAMBERS: And certainly in the past when ports have tried to do truck counts and those sorts of things they've had that the University students standing in the pouring rain on street corners trying to see how many trucks went past. That that's not really an option in the future. Better ways to do it.

COMMISSIONER KING: Yes. So the terminal access charges, we might have - - -

MR CHAMBERS: The terminal access charges, yes. And I'm sure that you've had some comments already this morning around TACs. I'll just make the point that in our initial submission, we were silent on who should the internal access charges be levied on, if at all. So we were more making the point in our initial submission that the transport industry hasn't necessarily seen a commensurate increase in productivity to offset the increase in that landside costs of access to terminals. So to us, it's not particularly transparent about where that additional money's being collected from the landside industries being spent in terminals to improve performance. And we point to, albeit small, marginal in a sense, decreases in productivity at that particular interface. So the frustrations there around the performance levels - not in all terminals, but in some - you know, there's some significant issues around productivity at that interface.

I suppose our supplementary submission, when asked about who should pay, there's a few schools of thought, as you're probably already gathering from the conversations that have been had in the other submissions. We've got some sympathy for the view that if they aren't charged to transport operators, then there is more likelihood, as has been the case in the past, that the stevedores will just not treat the transport industry as a customer. All their focus will be back on the ship and their ship owner clients, and again, in the past, that's been prevalent in some container terminals where the road and rail is left to languish while equipment and resources are thrown to the quayside to ensure that the client there is serviced and the ship gets away on time and those sorts of things. So it's a balancing act. Yes, so there is this concern that without it being charged in some way to the landside, that

there'll be a difficulty in being treated as a customer. I think the point is – the other point we make, though, is that – sorry, was that a question there? No?

COMMISSIONER KING: No, no.

MR CHAMBERS: Perhaps not, sorry. What the whole thing lacks, though, irrespective of whether your recommendation stands on it only being charged at the shipping line - the other aspect of that, sorry, is that – and I'm sure you'll get this from others, that if it is put back on the shipping lines, if the terminals, through regulation, are not allowed to have these fixed fees applied to the landside, if they have to be charged to their primary customer on the shipping line, then there is a concern that the shipping lines will simply keep – not be transparent about those additional costs and add them into either their port fees or their base ocean rate fees, and the shippers will be worse off in that regard. So there is a concern around that.

That's clearly been the case, as we said earlier our initial submission, that the ACCC monitoring reports over the years have described the reduction in the lift rates being paid by shipping lines to stevedore terminals of about 27, 30 per cent in a decade, none of which has necessarily been passed on as reductions in terminal handling charges that the shipping lines charge to their shippers, their customers, the importers and exporters. So already there's no transparency around what they're paying to stevedore terminals and passing that on to their customers, as I said, by way of port fees.

We made the point though, that – and we did it in our initial submission, that there are examples around the world, and we use DP World London Gateway as an example, where there's total transparency in the tariff, so a public tariff, for want of a better term, so that you have a complete transparency about what the terminal is charging their ship lines for lifts on and off the ship, all the ship services, and movements of the containers to and from the stacks, and what they're charging landside, either through - by the way the fixed fee of structure charges or variables fees, like vehicle booking systems fees and penalties for non-performance and all of those other matters.

So irrespective of who pays - and again, you do say in your report, and the ACCC reports on this as well, that the transport operators are passing these fees on. In the beginning, the concern was that there was very little notice. In the bad old days, when it really started to ramp up in 2017, terminals would give you less than a day's notice about the fee increases. so there was no opportunity for the transport operators to go back to their customers in a period of time and tell them that these increases were coming.

COMMISSIONER ABRAMSON: Neil, could I ask you a - sorry to interrupt you.

MR CHAMBERS: That's all right.

COMMISSIONER ABRAMSON: Could I ask you a question about that? So is your evidence that the charges are always passed on to the cargo owners?

MR CHAMBERS: In the vast majority, I would say, Julie. Again, in the beginning, you wouldn't be surprised that the bigger shippers, the importers particularly, with a lot of market power in the relationship and much more fixed contracts than other transport operators might have with smaller importers and exporters, pushed back on that. That was right at the beginning. I think by and large those negotiations have now been had. Certainly, the feedback I get from CTAA alliance companies is that by and large, they are passing them on.

And let's make no mistake about it, they're passing them on with a mark-up, and that mark-up, you know, I think is justifiable, because they have not only the cost of carrying the cash, but they pay it to the stevedores almost immediately and don't recover it from their customer until you know, weeks later, and also, they have a risk element there around the cash because their client may fold or become bankrupt, and they're left holding all these fees. So there's always that.

But the bigger cost is just the reconciliation of the terminal access fees and all the other fees against the job, and the additional administration and accounting complexities that go into that as a result. You know, on average, I think you'd find about a seven to 10 per cent mark-up on the terminal fees. And of course, each of the terminals have slightly different access fees. Some for both import and export and some others, even if it's just a flat fee for imports and exports, and the transport operators. Some pass those on close to cost or with a slight mark-up and differentiate across all of the terminals that they deal with. Some have just a one charge for terminal access fees, so they're amortising all of the fees across one charge. So it varies slightly, Julie, but in the main they're being passed on.

11.55.45

And you know, whether you – the case before that in fact, the shippers end up paying twice because they're paying these high terminal access fees which are being passed through by the transport operators, and they're paying by terminal handling charges to the shipping lines for the – for the same service. For the same service. And there's no transparency around this. So hence, the idea of regulation around a public tariff so that every container terminal needs to advertise not only its quayside costs and charges at the rates to the shipping lines, but also their landside fees. So there's full transparency about who's paying what. And then in a sense that - - -

COMMISSIONER KING: Just on that, Neil, so – and thanks for the link through to the London Gateway. And I noticed there were various charges on the landside, so those – and one thing that wasn't quite clear to me from the website, those charges are actually paid by the transport companies; they're not paid by the shipping lines. Is that right? Or have I got that wrong?

MR CHAMBERS: At London Gateway, do you mean?

COMMISSIONER KING: At London, yes. yes.

MR CHAMBERS: Yes, so at London Gateway, there is some - I haven't got it in front of me, but there is an element of the public tariff which relates to the vessel.

COMMISSIONER KING: Yes.

MR CHAMBERS: And of course, you'll see that THCs, or terminal handling charges, are as they've described in that public tariff in DP World. It's for containers on and off the ship, to and from the stack, to and from the landside vehicle, road or rail. That's what THCs are about. But there's – there is – what I'm saying is that there's complete transparency in the public tariff about what the rate is for the vessel charges. And again, I haven't got it in front of me, but I think it includes, you know, booking fees and lifts and all the things that they do with ships. And then there's an element of what happens, and there is a small fixed infrastructure charge, but as I said, it's something like 10 pounds.

COMMISSIONER KING: Yes, it was very small.

MR CHAMBERS: Roughly. Roughly \$20 a container. But at least it's all – what I'm saying is irrespective of the quantum here, there's a complete transparency.

COMMISSIONER KING: Yes, yes. It was more than a - - -

MR CHAMBERS: So there's - - -

COMMISSIONER KING: I couldn't quite work out was that landside, that fixed landside fee is still payable paid by shipping line. But we can chase that up. We can chase that up, so that's fine.

MR CHAMBERS: I think – I think it's paid by the cargo interests.

COMMISSIONER KING: Okay. Yes.

MR CHAMBERS: And then the other aspect, we stop – we stop short of saying that, you know, instead of say, the THCs being charged to the transport operator, charge them to the import and exporter, and they can have a conversation, as you have said in the report, about which shipping line they use and which terminal is then servicing that ship. But of course, the container terminals wouldn't want to do that because they have a relationship already, a financial relationship and an invoicing relationship, if you like, with the transport operators. It's just easier for them to pile these costs onto the transport operators.

COMMISSIONER KING: Yes.

MR CHAMBERS: Instead of starting to have invoicing relationships with a plethora of different organisations in the supply chain.

COMMISSIONER KING: Could I just follow up on another aspect that you just covered across, which was one of currently voluntary protocols. And I note from what you've just said before, and also from your supplementary submission, that you think they should be - or the CTAA thinks they should be mandatory, or at least parts of them should be

mandatory. Does that mean that the current voluntary nature of them, it's not working? Or why do we need that extra mandatory bit in there?

MR CHAMBERS: Well, I think if you bundle the two ideas of a public tariff in with – well, I'll give you a classic example. So - and this has just happened this week. So Victoria International Container Terminal in Melbourne has just put out its new – it's given notice. So here we go, we've got the longer notice, which is fantastic and welcomed, so there's 60 days' notice under the Victorian voluntary standards.

The protocol, if you read it in its pure sense, the NTC protocol and also the Victorian protocol, of which the NTC voluntary unit protocols are really based, is saying that you should only introduce a new charge once a year. So, the VICT this week has issued new charges for their vehicle booking system and associated ancillary fees.

COMMISSIONER KING: Yes.

MR CHAMBERS: But later on, in about six months' time, they will amend their fixed infrastructure fee.

COMMISSIONER KING: Yes.

MR CHAMBERS: And so in a purist sense, VICT is not abiding by the protocols of just having one increase per year.

COMMISSIONER KING: Yes.

MR CHAMBERS: So that's the first point. The second point is that – and we will go back and make comment through the channels that are part of voluntary protocol – you know, the slot fees, for instance. So, the container slot fee in their vehicle booking system is going up 20.81 per cent. Well, where's the justification for that?

COMMISSIONER KING: Yes.

MR CHAMBERS: The inflation at the moment in Australia is, what, 7.3 per cent. Some of their other charges, export turn fees, export reefer turn fees, import turn fees, have been set at the 7.3 per cent, so they've appreciated that those services, they only need to increase by CPI. But, what is the basis of the 20 per cent increase, almost 21 per cent increase, in their slot fees, and what are they going to do with that money to improve the interface? Does it mean more slots in the system? Does it mean, you know, some easy benefit in relation to vehicle bookings?

Now, to give them credit, VICT are also working on things where they're going to reduce that slot fee if the truck has what they call a best pick. So they operate an automatic stacking crane operation, the containers are all piled into those modules, and if the truck turns up and wants container ABCD-12345678, but it's right at the bottom of the stack, then the machine's got to do a lot of digging to get it out, and that costs money and time.

So they're saying, "Well, instead of taking that box, why don't you take the one that's on the top? That's the best pick from our point of view. We'll charge you less for doing that".

So good on them for doing that, that's fantastic. But, still we don't understand where the 20 per cent comes from. There's no explanation in the initial notice that's been provided. So we will ask the question and hopefully get some form of answer. But, you know, it's working in relation – the voluntary code is working in relation to the notes, which is great. The ability to have some question and answer going back and forth. But, you know, in VICT's case, they'll come back in six months and raise their other charge, which we're saying they should do that all once so everyone's clear about what the cost is going to be for the whole year. So that's just an example.

COMMISSIONER KING: Yes.

MR CHAMBERS: And again, we have no visibility about how much VICT charges the ship for the services. So, again, this concept of much more visibility and transparency around the overall costs and rates being applied.

COMMISSIONER KING: Yes. So no idea if they're sort of double-dipping, and also the timing and justification requirements under the code are perhaps a bit – they're not necessarily being followed to the letter of the law, let's put it that way.

MR CHAMBERS: Yes. And without being cynical, are they inflating - have they increased vehicle booking system fees by 20 per cent to offset some cost reduction – some revenue reduction they've had elsewhere in their business? Don't know.

COMMISSIONER ABRAMSON: I just had one final question, Neil, and thanks so much for your participation in the inquiry and also the submissions and meetings that we've held. Just with that detention fee recommendation – and I think I've your most recent submission, and it looked like to me that you were supportive of what we were suggesting there, that the consumer law would include the unfair – would no longer include an exemption for unfair contracts for shipping contracts, and it looked to me that you were supportive. But, I'm just wondering, firstly, if I'm right about that, but secondly, if there are any other solutions that you've been thinking through in terms of the detention fees?

MR CHAMBERS: Well, we see that you've picked up on something that we mentioned, and I think probably Freight Trade Alliance, which are on next, will have mentioned as well, and that is the work that's been done in the United States around the - identifying industry standards around the reasonableness of container detention.

COMMISSIONER ABRAMSON: Yes.

MR CHAMBERS: As we've said, Julie, in our submission again, no one's saying to the shipping lines, 'You can't charge container detention'. It's a legitimate hire charge, we get that. It is their equipment. You know, there has to be some incentive or incentivisation - that's a horrible American term, but it's about incentivising the fluidity of the movement of the container through the supply chain and back to the shipping line empty so that they can

use it for its next use, whether that's repatriation or upgrade to provide to an export client, or whatever the case may be.

So the concept of container detention is not questioned. The question is around the reasonableness. And look, I learn something new every day so when Stephen presented to the APSA conference in Wagga and mentioned – and the ACCC representative that was there as well, that shipping line contracts in that regard are protected by Part X of the Act. I hadn't quite put those two things together, but it makes complete sense.

All we're saying, though, is that if, once that exemption is removed, we think that a regulatory body like the ACCC should be asked to do a similar exercise to what's occurred in the United States, and that is to come up with a set of industry standards about what would be considered reasonable. And we've got plenty of examples, and you had a very passionate submission from Secon Freight Logistics where there's been numerous occasions where containers have tried to be returned to the facility that the shipping line wanted the container to go back to, only to find the facility was either so congested there were no slots available or closed because their hours of operation were shorter. But, of course, then the importer is receiving the container detention invoice from the shipping line weeks later saying, "Here's your 24 hours or 48 hours of container detention", and when you then tried to explain to the shipping line, "But, we tried to take it back to the place you said to take it back to, but it was closed or it was so congested that there were no slots available and we couldn't get a slot for the next 24/48 hours".

COMMISSIONER ABRAMSON: Neil, do you see a role for voluntary protocols there, or is this a matter that there needs to be regulatory guidance? Because in the one hand, when we talk about the stevedore charges, we've got that voluntary pricing protocol in Victoria and they're looking at nationally. So do you see a role for a voluntary protocol or you think it will need to be done by regulatory guidance?

MR CHAMBERS: I think it needs to be done by regulatory guidance, Julie, because at the end of the day, it is a contractual relationship between the shipper and the shipping line. But what we're saying is that there is potential - there's many potential disputes around a contractual dispute, to put it bluntly.

COMMISSIONER ABRAMSON: Yes.

MR CHAMBERS: But there's no guidance around, and that's what the United States is trying to put in place. They're trying to put in place – and they have now prosecuted a few shipping lines for not following the interpretive rules that they've come up with. And it still puts a lot of onus back on the importers and the transport operators. Transport operators are now having to take screenshots of the booking system for empty container parks to try to gather evidence to say, "Look, we tried to take it back". Remember the shipping line dictates where the box must be returned to. Yes, some are flexible in allowing alternative dehire points, but some aren't. So you could just imagine the day in the life of a fleet allocator or fleet controller trying to not only deal with the dozens of trucks that they're having to deal with daily, but sitting there taking screenshots because they can't find a slot into an empty container park, and then filing that somewhere in the



off that you need that to mount a case to give evidence as to why container detention is unreasonable. It's a big onus.

COMMISSONER ABRAMSON: No. Look, we understand.

MR CHAMBERS: Yes.

COMMISSIONER ABRAMSON: We've also spoken to our international colleagues. No, I understand. Thank you, Neil.

MR CHAMBERS: Thanks.

COMMISSIONER KING: Okay. So thanks so much for that, Neil. That's been fantastic. So thanks for your input here today.

COMMISSIONER ABRAMSON: Sorry, thanks for your participation in this inquiry.

MR CHAMBERS: Thanks, Julie. Thanks, Stephen. And it is a very comprehensive report. Someone actually said that they thought that – you know, particularly in the beginning of it, it actually is a very good document for someone who's new to the whole supply chain to get an understanding of how the whole thing works. So congratulations to you and the team, and Scotty Welsford probably there somewhere grinning in the background, but he's probably had a lot to do with it. So that's been good too. So thank you very much.

COMMISSIONER ABRAMSON: Thanks, Neil.

COMMISSIONER KING: Thanks, Neil.

COMMISSIONER ABRAMSON: Thank you.

MR CHAMBERS: Good on you. Thank you.

COMMISSIONER KING: All right. So next we have the Freight & Transport Alliance and Australia Peak Shippers Associations, so I think Paul.

MR ZALAI: Yes, thank you.

COMMISSIONER ABRAMSON: Hello, Paul.

MR ZALAI: Can you hear me okay?

COMMISSIONER ABRAMSON: We can.

COMMISSIONER KING: We can indeed. Hi, Paul. You've got Julie and myself at this end. So would you like to make just brief opening remarks? And then we can get into a bit of back and forth questioning.

MR ZALAI: Okay, sure. Thanks, Julie and Stephen. Yes, my name is Paul Zalai. I'm a director at Freight & Trade Alliance, and I'm also the secretary of the Australian Peak Shippers Association. FTA is a peak body for the international trade sector representing 477 businesses, including Australia's large logistics service providers and major importers.

On 1 January 2017, FTA was appointed to the secretariat role APSA. Importantly, APSA is the peak body for Australia's containerised exporters and importers as designated under Part X of the Competition and Consumer Act, and as designated by the Federal Minister for Infrastructure and Transport. APSA is also a member and has more representation on the Global Shippers Forum, and represents shippers interests and that of their national regional organisations in Asia, Europe, North and South America, Africa and Australasia.

So similar to Neil, I'd like to sincerely thank you and your team for engagement with both FTA and APSA, and importantly, direct with our members, including our recent regional event in Wagga Wagga. Stephen, as you stated during that presentation at the conference, that you were in a position prior to the release of the report to only speak about what you've heard during the consultation process. The subsequent release of the draft on 9 September clearly demonstrates that you and Julie not only heard our concerns, but also responded positively with well-considered recommendations, which we believe are largely aligned to those in our initial and supplementary submissions.

As you will recall, the focus of our submissions centred on the need for minimum service levels and notification periods, in particular following the US benchmark requiring a 30 day notice for variations in pricing surcharges, infrastructure investment, and the economic and reputational impacts of waterfront industrial action, and the need for business continuity. These issues haven't gone away. Right now we are extremely concerned about the potential impacts should there be an escalation of the dispute between the Maritime Union of Australia and the tug operator, Svitzer.

We also referenced biosecurity document and inspection delays. These concerns have also been addressed separately by the Senate Rural and Regional Affairs and Transport References Committee in their inquiry to the adequacy of Australia's biosecurity measures and response preparedness. We also addressed the need for container shipping competition reform, regulation of terminal access charges, and as Neil was just mentioning, regulation of container detention practices.

In the interest of time I'll only recap on the latter three items. So shipping competition review. Over the last three years the container line market, dominated by foreign-owned shipping alliances, has been void of any genuine competitive detention. We support your draft recommendation 6.1 to repeal Part X, placing an onus on shipping lines to show that their agreements provide a net public benefit to gaining authorisations whilst facilitating past exemptions, allowing businesses to collectively bargain in negotiating terms with shipping lines.

Our position aligns at a more global basis, too, with the views of the Global Shippers Forum, and those of multiple international associations that are advocating to the European

Commission not to continue its Consortia Block Exemption regime beyond the current period, which expires in 2024, again believing its benefits have not been fairly shared with users of liner shipping services in the time since it was last renewed.

Regulation of terminal access charges. In response to your information request, 6.2, we are of the opinion that the introduction of the third stevedore operating in Brisbane, Sydney and Melbourne during the last five years has created a highly competitive environment, resulting in reduced quayside revenue charged to the stevedore commercial client shipping line, presumably to retain existing and/or attract new business.

According to the ACCC stevedoring monitoring report that was referenced by the Maritime Union of Australia earlier today, this has been offset by a commensurate increase in landside charges administered against the transport operators. We firmly agree with your draft recommendation 6.2 that 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.

Furthermore, we recommend that similar regulation be extended to empty container parks, and potentially to LCL depot facilities, that in recent years have mirrored the stevedore model of rapidly increasing vehicle booking system charges administered against transport operators rather than the commercial client.

Regulation of container detention practices. We support the intent of your draft recommendation 6.3 to offer protection for importers and exporters, noting your commentary acknowledging the US Federal Maritime Commission, when faced by a similar predicament, issued a rule that they would consider the reasonableness of the conditions attached to fees in interpreting the relevant law. With due respect, we do, however, question your position that detention charges may be an unenforceable penalty, and this has held not to be the case in the past Australian cases and more recent English cases.

Based on legal advice that we've obtained, the fundamental problem is that for an amount to be an unenforceable penalty, and we understand the amount must be payable on the occurrence of a breach of contract. Container detention charges do not require a breach to be payable. Importers are entitled to hold a container as long as they want; they simply have to pay an amount per day. As payment is not conditional on the occurrence of a breach of contract, an importer cannot establish that container detention charges are an enforceable penalty.

Like Neil's mentioned earlier, we remain of the view that the only realistic solution is for regulatory intervention to impose limits on when or the amount of container detention can be charged. Some options to protect importers could be requiring shipping lines to offer to sell their container to the consignee after a set period, and that sale would end the detention period; cap the amount of detention to the lesser of the value of the container or the actual loss suffered by the shipping line; place a limit on shipping lines being able to charge detention when the delay returning the container was due to a border or biosecurity intervention, not due to a breach of law by the importer; a force majeure event; any act of

the shipping line or their contractors; and restricting the daily charges to an amount equal to a set amount. For instance, the provision could be that the maximum daily charge cannot be greater than an amount equal to 5 per cent of the replacement value of a container.

Similarly, considerations are also required in context of exports, but some shipping lines start the free detention time from the time of the container collection to the time it boards the vessel for export. Again, this is only fair in circumstances where vessels bypass ports or face delays. We see the need for some form of safeguard for the detention clock to stop once the export container is received by the stevedore.

Julie and Stephen, we trust this additional information is helpful in preparing your final report. I'm now more than happy to provide any extra detail, or as required, come back to you after the hearing with further evidence. Thank you.

COMMISSIONER KING: Thank you very much, Paul. I might start off, if that's okay.

COMMISSIONER ABRAMSON: I'm just going to ask one quick question of Paul.

COMMISSIONER KING: Yes, okay. I thought you might.

COMMISSIONER ABRAMSON: Paul, I understand exactly the point that you're making about the contracts and the penalty issue. As you would have noted in the report, we merely raise that as a possibility, but we had another solution. It would be helpful if you could just send through to us perhaps the headline court cases on the area. But, again, I understand exactly the point that's been made. Sorry, Stephen.

COMMISSIONER KING: No, I thought you would probably want to ask something about the legal argument, which - that's why they have lawyers and economists both on these inquiries. Thanks, Paul. Can I come back, actually, to a bit that you didn't concentrate on in your comments, which comes back to the service levels. So any thoughts about - and this is obviously just landside, but any thoughts about the voluntary protocol that has been operating in Victoria and is meant to be rolled out more generally? How's that going, and you know, is it working, is it enough? You know, it's certainly been put to us in a number of submissions that, "Look, you know, it's fine to make our recommendation about terminal access charges, but come on, there's a scheme that's been rolled out, give it time" So I'm really interested on your views on that.

MR ZALAI: Look, you probably touched a nerve with that question. It's something that we were sceptical about from the very beginning. We doubted that the stevedores would ever give us a level of detail that would satisfy us that the charges that they are imposing are warranted. Our view all along was that those charges need to go back to the shipping line. The shipping line is the only entity that will have the power to keep a lid on pricing. Our view isn't that there should be any regulator overseeing the charges, just leave it up to commercial courses to sort it out, but make sure that the costs are passed on to the commercial entity, not to a third party.

So these are the concerns that we raised to the Victorian government in the very early days and to their consultants that they put in place. To the credit of the Ports Minister, Minister Horne, we meet with her quite regularly, and every time we meet, we express the concerns at the very beginning and ongoing. The Minister pleaded with us to give the process a go, which we did. I can't recall the sequence of which stevedore went first in Melbourne with all of these, but with each of them; with DP World, Patrick's and VICT, every time when they first introduced charges under this new arrangement, we wrote to them requesting further detail and transparency.

We met with each of them. We had very polite conversations, but they politely declined to give us any detail that gave us any level of comfort. We went back to the minister every time, and the minister basically shrugged her shoulders. Now, I heard earlier today that the MUA had been speaking to the Victorian government, the Victorian government have said that it's working very well. From a shipper perspective it's not; as in an importer and exporter. To us it's still a ransom model, a ransom that transport operators just have to pay.

And as Neil said, you know, the transport operators were jumping up and down in the early days because it was a huge impact on them. To the credit of Neil and others, there is so much awareness now about these terminal charges that the transport operators can pass on that cost, and they do pass it on with the margin, and as Neil said, probably justifiably so. But already high charges become further inflated as they pass down the supply chain, and there is no ability to influence the service or price.

So when the National Transport Commission came out and mirrored the Victorian model, we just threw our hands in the air and going, you know, this is going nowhere. To be honest, the first time we got an element of hope and relief is when you've produced your draft report. For the first time, anyone in government or any regulator has actually listened to us and understood our concerns. So, yes, we haven't been a supporter of the voluntary arrangements.

COMMISSIONER KING: Yes. I'm not sure if you caught just the tail-end of our discussion with Neil from CTAA before you, but it's been put to us, well, voluntary may not be working as well as it should, but if you made it mandatory, you required under that that there be justification, that somebody perhaps in Victoria, it could be the ESC, it could be the New South Wales IPART, but somebody then checks that justification to make sure that the charge is being properly justified, or the increase the charge, that that would fix it. But, you know, we don't need more regulation than that, we just need to make that code mandatory. Now, thoughts on that?

MR ZALAI: You're just going to create so much more bureaucracy and – look, with all due respect, I think we've got a much simpler solution here. We don't need to monitor this price at all if the price is passed back to the commercial client. Let the commercial entity sort it out. So, you know, if the stevedores have these costs - and they will have increasing costs; everybody does, you know, whether it's rent, whether it's power now, whether it's labour costs, whether it's further infrastructure. Like every other business, you have to either absorb those costs, and hopefully some of those costs generate some efficiencies for

you, and if you can't absorb those costs, well, then you've got to pass it on to your commercial client. In the case of the stevedores, it's so much easier for them not to go back to their commercial client and try and negotiate, they just ratchet up the terminal access charge. What a beautiful model. I wish we could do it.

So our position remains, as per your recommendation, if we have regulation just having the stevedores pass the cost back to the shipping line, we don't need a regulator then overseeing how much that it is. Let the commercial entity sort of out. If the shipping line can't absorb that cost, they will definitely look to pass it on in commercial negotiations with the importer, the exporter, or the freight forwarder.

COMMISSIONER KING: Okay. The last one on TACs, and then I'll pass over to Julie. It's been put to us that our TAC recommendation is unworkable, and the reason is that, okay, you can make the shipping lines pay the fixed fees, but won't that just lead to the CTOs manipulating the incentive fees? And, you know, a simple example that's been pointed out to us – and I may have the term wrong; I think Neil also used it. I think they've now got a system where you have an incentive or you get a benefit if you go for the easy container – it might be called the "first pick" or something like that – rather than a container that's harder to get at. Well, it's been put to us, well, what happens if going for the first pick becomes standard, and if you actually want the container down the bottom of the stack, then you have to pay extra as an incentive fee? How do you stop them just ratcheting up those incentive fees and using all sorts of other gaining, essentially, of the incentive fees? And we thought that was a good point. We'd be very interested in your response to that.

MR ZALAI: Look, it is a good point, and our stevedores are very inventive. I'm sure they would look at alternative ways to get the revenue. So, yes, that would have to clearly be managed. But, yes, I think as a basis, you know, again coming back to your recommendation, I think if all of those charges just get sheeted back to the commercial entity and then, look, we'd just have to deal with any other scenarios that get invented along the way.

COMMISSIONER KING: All right. Julie, can you add anything?

COMMISSIONER ABRAMSON: Thank you. Paul, I wanted to ask you about workplace relations. And in your most recent submission, you did have a recommendation around a review, and particularly around essential service. So I'm just interested in understanding a bit more about that.

MR ZALAI: Look, upfront I'll say I'm not an industrial relations expert, and we never look to get involved in the detail of the dispute between, you know, the stevedore, the tug operator and the union. That's a matter for them to sort out. All we can say is that we suffer the consequences of these extended industrial election periods, and what we experienced over the last few years, particularly during the pandemic, was just adding salt to the wound.

So really, without prescribing what the solution should be, we do really need a clear focus on our port gateways. We need business continuity for our reputation, so people want to keep trading with us, but also – and I think in our original submission we gave some evidence and some case studies on particular issues that have happened, and I'm sure you've got a very good appreciation yourself with the economic impacts when we have got disputes. And right now we've got a situation with Svitzer, the tug operator, and the MUA, and I've got a whole lot of details in front me. You've got pages of different impacts that have happened over the last couple of years and are happening in coming days and may happen into the future.

So really without having the magic wand or the experience or the expertise on how that should be addressed, all I can say is that the supply chains suffer incredibly from the current environment.

COMMISSIONER ABRAMSON: I think of the things – I'm looking at team here, because I'm recollecting our recommendations, but, one of the things was giving interveners an opportunity to actually make an application to the Fair Work Commission. So I'm just wondering, Paul, in the circumstances that we're talking about, whether your members wouldn't apply, or even through an industry association, whether that's a useful - - -

MR ZALAI: Yes. Look, it's interesting that you say that, and I'd have to dig out my files. We actually did get some legal advice to go down this path, I think towards the tail end of the Patrick dispute.

COMMISSIONER ABRAMSON: Yes.

MR ZALAI: And – what's the – I can't remember the term now, but, to actually make the application, you had to be directly - - -

COMMISSIONER ABRAMSON: Impacted, yes.

MR ZALAI: - - - impacted by the - - -

COMMISSIONER ABRAMSON: By the dispute.

MR ZALAI: The legal advice that we got then was that FTA and/or APSA could make that application because we weren't - as an industry body, weren't directly impacted. We then went back to our members. We had quite a few members that were very interested to make that application. But, then one by one the dropped off in fear of repercussions from industrial action.

COMMISSIONER ABRAMSON: Yes.

MR ZALAI: So if there was an opportunity for an industry body to make a claim on behalf of its members, that would be very welcomed.

COMMISSIONER ABRAMSON: No, I understand. Thank you, Paul.

COMMISSIONER KING: Just one final one from me. So we talked about the terminal access charges – sorry, I'm coming back to the fees one again - - -

COMMISSIONER ABRAMSON: We keep concentrating on our areas that we've been working on, Paul, for the obvious.

COMMISSIONER KING: Yes. The competition economist concentrates on the competition ones., the workplace relations on the law side, so Julie concentrates on that. So what other fees should we – I mean, so there's a number of other fees, obviously they've gone up. Some of them have gone up by more or as much as the TACs had gone up. So we've also had increase of vehicle booking system charge. The charge for de-hiring an empty container at the container terminal I understand has gone up. What other charges – you know, so just saying, "Well, terminal access charges need to be paid by the shipping lines", that's not enough. So we said all the fixed fees.

MR ZALAI: Yes.

COMMISSIONER KING: Is that going to capture everything we actually need to think about capturing? Or are there other fees that are just unjustified and have been going up that we also need to sort of say, "no, this is beyond the pale."

MR ZALAI: It's a good point, and I think the vehicle booking system is one that also should just be incorporated into the costs of running the business that should get passed back to the shipping line. Perhaps the only one that – and I'd have to run my eye over all the charges again, but the obvious one that is fair and to impose back on to the shipper is storage. So if the containers aren't collected within the agreed period of time or the prescribed period of time, storage should be paid by the cargo interest, not sheeted back to the shipping line.

But, I would say every other surcharge that is created there, you know, how many do you want to have? You know, you could end up having rent increase charge, energy increase charge; it's all the cost of running the business, and that should go back to the either absorb it, do it more efficiently, or pass it on to your commercial client. So off the top of my head, the storage would be the only one.

In relation to empty container parks it's exactly the same situation. As Neil said, you don't generally have a choice of which empty container park the containers return to. So again, you've got a ransom model. If you want to get the box back there, you have to pay the fee, and you know, there's a huge focus on the terminal access charges by the stevedores, but the empty container parks are catching up very quickly and will soon overtake. You know, they're - and across the board it's very high fees, which I think we've shared with you a table of all the costs for the empty container parks across the country and the history of their growth as we've recorded them.



And then the next stage of that too. More recent times, LCL container depots. So when containers get broken down, you've got multiple consignees in one container, they go to a depot and get deconsolidated and get picked up as separate consignments. Well, the LCL depots have now picked up on this cost recovery model too, and they're now charging a fee on their booking systems. So booking systems have got a very good place in terms of managing and controlling the delivery of cargo. We're not against booking systems at all. What we are against is booking systems being used as a revenue collection mechanism, and that seems to be one of the main incentives for more and more companies to take up these systems.

COMMISSIONER KING: All right. Thanks for that, Paul. That's been fantastic. So thank you for appearing.

COMMISSIONER ABRAMSON: Thank you so much, Paul, and thanks for your participation in the inquiry.

MR ZALAI: Okay. Thanks again, Julie. Thanks, Stephen.

COMMISSIONER ABRAMSON: Thank you.

COMMISSIONER KING: Thanks. Now, we'll take a 15 minute break. See you back here at 2.30.

## **SHORT ADJOURNMENT**

**[2.16 pm]**

## **RESUMED**

**[2.30 pm]**

COMMISSIONER KING: Good afternoon. Just the first formal bit. So welcome back after the afternoon break. Just to remind people who have joined us today, if you can keep your phone on mute – sorry, your device on mute just to avoid any interruptions. Our next participants at the hearing are Shipping Australia. So Melwyn and Jim, if you would be able to introduce yourselves and your organisation for the transcript and then if you'd like to make any introductory comments.

MR NORONHA: Thanks, Stephen. Thanks, Julie. Yes, I'll start off with a good afternoon, everyone. My name is Captain Melwyn Noronha and I am the CEO of Shipping Australia. I am accompanied today by Mr Jim Wilson, who is Shipping Australia's policy manager. Shipping Australia is a local industry association that represents the participants in the marine side of Australia's supply chain. Our comments today elaborate on certain aspects of our previously-filed submission, the draft report by the Productivity Commission, and our response to the same.

Firstly, I'd like to talk about ports generally. Given that container ports are vital to the wellbeing of Australia, there should be consideration by the Productivity Commission for

a nationally-based governance regime with oversight of the container port sector. Our ports don't work well. The World Bank has issued two reports to this effect. The Productivity Commission has also made similar findings about low productivity in its draft report.

As a former accident investigator, I often carried out root cause analysis, which involved "why" to get to the root cause. This analysis shows that many of the complaints of which shippers complain, and which they erroneously attribute to ocean shipping, have a root cause in poor port practices and performance.

Consider, for example, this root cause analysis that could apply when there is a build-up of empty containers in Australia. Question: Why is there a snarl-up in the container supply chain? Answer: Because empty container boxes cannot be sent to empty container parks. Question: Why is it that containers cannot be sent to empty container parks? Answer: Because the empty container parks are full. Question: Why is it that the empty container parks are full? Answer: Because containers cannot be moved to the port. Question again: Why is it that containers cannot be moved to port? Answer: Because there is insufficient amount of shipping capacity at port. Question: Why is there insufficient amount of shipping capacity at port? Answer: Because the box ports are working too slowly relative to the volumes of ship calls and containers. The container ports have also set a berth utilisation rate that is too low.

The root cause in this scenario is poor port performance and low berth utilisation. Now, this exercise can be repeated with numerous complaints in the supply chain, whether it be in surcharges, delays, costs, unreliable services; the root cause of these complaints is often to be poor port performance or poor port practices or both. Container ports are the central node in the logistics supply chain. If our box ports work well, then it's like everything - everything works well. If our ports don't work well, then there is a near certainty that little will work well.

To demonstrate the cascading effect of how ports can make everything worse, consider the comment on page 106 of the draft report under the subheading, "Time-Based Metrics", where it is written that:

*Ports may appear inefficient if many ships miss their windows and are forced to spend time at anchor.*

This is confusion of cause and effect: box port inefficiency and delays make ships late; ships don't worsen the performance of box ports. An accurate re-write of that statement would read, "Ships may appear inefficient if port delays cause ships to repeatedly miss their window and force them to spend time at anchor."

These comments sort of tie into information request 6.1 of the draft report. Terminal operators should not charge ships for arrival outside of their windows because it is often port delays that cause ships to be late. Shipping companies are thrown off time by ports, then have to engage in schedule-and cost-management tactics such as skipping port calls,

blanking sailings - which cuts capacity, issuing surcharges, and speeding-up ships, which is an expensive way to burn vastly more fuel.

Subsequently, after ports have made ships late, a variety of landside problems then manifest themselves. Ship arrivals at port can bunch up. So instead of one ship arriving at a port, there may be two or three or more. Ship bunching means that there's a lot of containers need to be handled in a short time. Trucks handle these containers. Suddenly, there is a local spike in demand for trucking services, and trucks can fall into short-supply relative to that spike in demand. Higher truck fees, higher truck hire fees, cargo handling delays, wasted costs and shipper/consignee frustration will result.

Alternatively, if ships are scheduled to arrive but don't turn up because they have been delayed by a port, then wasted costs can be incurred across the supply chain and even quite far inland. For example, the operators of a remote logistics centre could have engaged work gangs to unstuff, handle, store and distribute goods in containers that haven't shown up on time. Those logistics workers still have to be paid even if the cargo does not arrive on time.

Now, I'd also like to discuss port monitoring, port fees, and port charges by a variety of port-related actors. Melbourne aside, there is no effective monitoring of our ports, which happen to be regional monopolies. Ports directly and indirectly support 1 in 5 Australian jobs, they handle 99.96 per cent by volume of all our physical trade, and they basically help underpin our entire economy.

Ports are too important to Australia's economic life and wellbeing not to have effective regulation. We dispute that there is no case for regulation of port charges. There is a clear pattern of a variety of parties in the ports sector imposing a range of unjustifiable charges on shipping. These charges need to be controlled, but currently there is no effective oversight. We detail a few examples below.

Each year port prices go up regardless of the economic environment and against the wishes of their customers. One port in New South Wales has imposed a penalty on the flow of empty containers, and this was against the wishes of its customers. This penalty will likely be a detriment to shippers in New South Wales, who may find empty containers will fall into short supply because of the port's scheme. Meanwhile, tankers are charged a certain fee to cross the port boundary in New South Wales. If a tanker has paid that fee, has entered the port and is then ordered out of the port against its wishes by the port authorities, then that tanker must pay another fee to enter the port. It is double-charging, and it is quite wrong. And there is no way to challenge this double-charging.

Moving out west, in Western Australia, the state government has imposed a charge on the movement of capesize bulkers to pay for a relocation project of its citizens that are affected by the presence of dust. However, the dust originates from iron ore stockpiles owned by the WA government and for which the WA government receives billions of dollars in royalties upon sale, and which are stored and handled by a WA government owned entity. The WA government is the polluter, yet it is the ocean shipping that has to bear the cost. Whatever happened to the principle of polluter must pay?

Now I turn now to the exemption to competition law for liner shipping, namely the proposed repeal of Part X. Review after review by the European and Hong Kong competition authorities has shown that an exemption to competition law for liner shipping is beneficial to society. Based on this evidence, the Productivity Commission should recommend that there be no repeal of Part X until, and only until, a block exemption is in place. Similarly, the recommendation that there should be a case-by-case review prior to a vessel sharing arrangement being approved is unnecessary as the economic benefits have already repeatedly been demonstrated.

We are also very, very concerned about the findings and recommendations in respect of terminal access charges. Recommendation 6.2 in the draft report, which recommends forcing shipping companies to pay terminal access charges, is a terrible recommendation. It basically amounts to a further subsidy of a sector, namely the trucking industry, that is already extremely subsidised. Some of those trucking industry operators are already generating huge revenues and profits. Meanwhile, about \$4 billion a year is directed to the trucking industry, which does not pay its fair share of the costs of road creation and maintenance. Trucking can pay its own way, but it basically lobbies to make everyone else pay for the trucking industry instead.

Even worse, trucks are very dirty. Per tonne kilometre, they belch out huge volumes of greenhouse gases. They are the second highest polluters of greenhouse gases per tonne kilometre, only aeroplanes are worse. In Australia, trucks produce more carbon emissions than rail, aviation and shipping combined. Amongst other things, trucks belch carbon monoxides, nitrous oxide, sulphur dioxide and particulate matter. These are damaging to human, plant and animal health. They cause lung cancers, they aggravate heart disease and cause a range of illnesses. They can severely damage ecosystem health and agricultural productivity through, for example, the formation of acid rain. Trucks can also be hazardous to human health. About seven Australians a fortnight are killed because of heavy truck accidents; just under ten Australians a week are hospitalised because of heavy trucks. Draft Recommendation 6.2 would subsidise an industry highly subsidised already.

It is a recommendation that, if carried out, would make rich Australians richer at the expense of all other Australians. It would also help to grow an industry that is one of the worst environmental offenders in the transport sector and which, each year, makes hundreds of Australians sick, grievously injured or dead. On these grounds, 6.2 is truly an awful policy and it deserves to be condemned. And we do condemn it. Recommendation 6.2 defies common sense. It is morally wrong. It should be dropped.

Now, I turn to the economic aspect of terminal access charges. We note with (indistinct words) that there is an important missing regulatory option from the regulatory choices presented on page 199 in the draft report. If anyone should be forced to absorb terminal access charges in Australia, then it should be the people who ultimately benefit from the movement of freight. And those people are shippers and consignees. If this is difficult for any reason, the next ideal candidates to be targeted for the imposition of terminal access charges are the direct agents of shippers and consignees, which are usually freight forwarding companies.

If ocean shipping companies are forced to pay and pass on terminal access charges, then they will likely charge a mark-up to cover costs and administration. These increased costs will likely be paid by the next parties in the supply chain which would then pass on the charge again with a mark-up. It can be seen that recommendation 6.2 will likely lead to unnecessary escalation in costs.

If trucking companies must, for some bizarre reason, be absolved of the burdens that they should rightfully bear, then the least distortionary option is to force shippers and consignees, or their freight forwarding agents, to pay the charges. Meanwhile, although there may have been some changes in the choice of stevedore by the smaller volume shipping companies, it is wrong to assume that all shipping lines have market power over terminals in Australia.

The bigger lines, for example, can only use one stevedore as the others simply cannot cope with the volumes. There are many inefficiencies for shipping lines in using different terminals at different ports so shipping lines generally need to use one terminal operator, where possible, for their port calls in one country. So, the fact that there are three terminal operators in three of the five capital city ports is not a sign that competition has been significantly boosted, especially as there is a monopoly supplier in one of those ports, namely Adelaide.

We must also consider the international angle. Global carrier terminal negotiations are just that, global. The Australian market is too small to influence global negotiations between world spanning companies. Global companies simply cannot alter their global operations to suit the Australian market. When large international companies come to a deal, they sign contracts for years at a time; ships cannot simply pick and choose which terminal to go to. These are likely the reasons why the newer terminal operators have not won large volumes of business. In any event, even if shipping lines do have market power over terminals, which they don't, they will not exercise market power for the benefit of third parties. If shipping lines are somehow - - -

COMMISSIONER ABRAMSON: Melwyn, could we just interrupt you at that point there about the shipping lines and market powers? Stephen, did you want to ask something more directly on that?

COMMISSIONER KING: Yes. Sorry, so just a bit confused by what you're saying there about shipping lines and the terminal operators and market power. What is your claim, or what are you saying about who has market power in that relationship? I'm really quite confused about – you seem to almost be saying that the shipping lines don't choose the container terminal operators that they go to, but I'm assuming I've just got that wrong; I'm misinterpreting what you said, because clearly they do. I mean, it's in the contracts; they have contracts for particular routes for particular services with the container terminal operators. So clearly that is - - -

MR NORONHA: Those are long term contracts, as I have alluded to.

COMMISSIONER KING: I understand that they're long term. But the fact that I have a long term contract with a party that I choose doesn't mean I don't choose the party. So really, can you just double-back on that bit? Because I'm sorry, but I think both Julie and I are a bit confused about what you're saying about market power and about the claim that somehow the shipping line doesn't choose the terminal operator, which I really just don't understand.

MR NORONHA: I'll get Jim to do this one here.

MR WILSON: Thank you. Can everyone hear me okay?

COMMISSIONER KING: Yes.

COMMISSIONER ABRAMSON: Yes.

MR WILSON: So, look, in the draft reports it was basically determined that there is market power - the shipping lines have got market power and can push back on various jobs at the terminals. What the point is we're making is you can't turn around, it's not reasonable to turn around and apply that reasoning to the whole of the shipping industry. Different shipping lines have different levels of market power.

Now, the companies that you would have thought would most likely have had the most market power, i.e the biggest guns, they have such large volumes they can only really choose one terminal operator at all. They have to use the same terminal operator in all the ports in the country (indistinct words) as near as possible as they can and they have such huge volumes, no one else can turn around and sufficiently handle them here.

It was put to me recently when I was making the case shipping lines don't have as much power of terminal operators as everyone thought they had, it was put to us, "Well, there's a choice of three in Melbourne". Well, there is a choice of three in Melbourne if you're a smaller operator maybe. But, if you're a large operator, you need to have, insofar as much as it is possible, the same terminal operator servicing your ships in all ports all the way around Australia. And if you have truly huge volumes, there's really only one stevedore terminal as far as I understand it from our market research, that you can really go to.

So the answer is really this: you only use our terminals who operate all the way around Australia where you don't really do business in Australia. So in those kind of scenarios, the stevedores know this, of course, and, you know, just want to emphasise this is not personal of anyone, it's just trying to explain my understanding of the market.

If you only really have one choice of one or no business at all, then that's not really market power. Then if you turn around and look at the smaller operators, they also have no market power. You know, the stevedores basically say, "Well, this is the situation. These are the terms and conditions. This is the way you accept it". Then you come to the situation of Adelaide where no one's got any market power at all because there's only one monopoly operator.

So, yes, you're right. You can turn around and say, you know, shipping companies do choose terminals and, as your analysis showed, there was some movement. But, I guess what we're cautioning against the inference here, is don't assume all shipping companies have the same level or anywhere near the same level of market power over the terminal operators because they don't. Because different shipping companies of different sizes, different volumes, different levels of sophistication, will have different levels of power.

So this is the kind of point we're arguing. In the Productivity Commission's analysis, it seemed to be a two-step process or a three-step process. Who has market power and are they exercising it, or in the case of providing relief from terminal access fees, you know, whom would have the ability to exercise it? One way of say that is the second part of that analysis, that assumption, it's a bit more nuanced and influenced than merely saying, "Hey, there's been some movement of shipping lines versus terminals, therefore all shipping companies have power and can push back". What we're pointing out here is that would be an unsound assumption because of the differences between the different companies and the different relationships they have with the terminals.

COMMISSIONER ABRAMSON: Jim - - -

MR WILSON: And I'm happy to clarify (indistinct words) - - -

COMMISSIONER ABRAMSON: Can I ask you – and, Stephen, I defer to Stephen because Stephen's the competition expert – but, why then does the ACCC find that profits have been falling because the stevedores are competing from the business of the shipping lines? So if the shipping lines don't have market power; why on earth would the terminal operators be competing and putting down the amounts that they're charging? I'm not a competition person, but I don't quite understand.

MR WILSON: Yes, sure. I understand your confusion there. It's not that they don't have market power, it's that they don't have as much and not all stevedores and shipping lines enjoy the same levels of relationship. We have heard from one of our members. They say, you know, "We don't understand where these views are coming from that prices are going down. We only ever get costs going up. One of them actually said this and this is a quote He said, "I can't even get a \$20 credit from the terminal".

And I just want to emphasise that's not necessarily a criticism of the terminal but that's what our members are telling us. They are saying, "Look, we don't know what the ACCC and the other bodies are coming at. We're not experiencing lower costs, our costs are really only increasing, we have nowhere else to go to". And, you know, the draft report does actually refer to that at some point. It says there – and I forget the exact page – but your draft report does say shipping lines can't credibly leave because if you go to the terminals, the terminals are in the capital city ports and that's it.

So what we're trying to say is there's different levels of market power. Some of the very biggest companies have almost no market power because, again, everything's done on a global basis, they can't creditably go to terminal operator because there no one big enough to satisfy them. Same to the smaller operators, there's probably more market power with

the mid-range operators, that, you know, note the one, two, three ships but all the same amongst the world leading companies. Thank you.

COMMISSIONER KING: Yes. So can I just understand. So put aside whether shipping lines have more or less market power, I guess what we were saying in our draft report is the market between the shipping lines and the terminal operators is pretty competitive. So we weren't sort of saying, well, it's necessary that shipping lines have some sort of market power or the CTOs have some market power in that market. We were saying that the quayside market, if I can call it that, is a pretty competitive market.

Are you saying that it's not competitive, that the container terminal operators have market power? You know, our claim about market power was that there's market power problems in the landside not on the quayside. So I'm just wondering what – are you disagreeing with us? You're saying that there is some sort of market power we've missed on the quayside?

MR WILSON: Look, I mean, I guess I would refer you to our submissions and what we've said in our original submission, our response to the draft report and our supplementary submission. My comments there were really in relation to the terminal access charges. If I remember rightly, it was implied or inferred or outright stated that the shipping companies have market power and can therefore act as some kind of pseudo regulator in pushing back on terminal access charges.

What we're saying is that analysis of market power that shipping companies allegedly have, is not (indistinct words), it's not an absolute market power, it is more nuanced than -  
- -

COMMISSIONER KING: No, I think - - -

MR WILSON: - - - (indistinct words) - - -

COMMISSIONER KING: I think perhaps there's a bit of a misunderstanding. We're saying that there's a market power issue on the landside and the quayside market is fairly competitive by putting the cost over, or the fixed charges over on the competitive market, then any attempt by the container terminal operators to set prices that are excessive, they'll simply lose shipping business.

It's not that shipping lines have market power. It's just that the market will operate in a relatively efficient manner. If Patrick start charging well above what it costs, then the shipping lines over time will start moving to one of the other container terminal operators. What, so you don't think that will occur and if it doesn't occur then why the hell aren't the container terminal operators charging you monopoly prices at the moment?

MR WILSON: It won't happen just simply because the really bigger companies, they can really, really only go with one terminal in Australia. Now, yes, there may be a choice of three - amongst three east coast ports but, as I explained before, they need one terminal



operator all the way around Australia and also these things are done on an international basis.

What happens in Australia is not going to really make a great deal of difference between choices overseas. So what you're really doing is transferring the cost that should rightfully be paid by the trucking operator and the key point we'd make here is if it's fair for ships to pay to use waterside infrastructure that's provided for their basis and their benefit so they can make a commercial profit for the purposes of loading or discharging cargo, then it is equally fair to charge trucking companies for the provision of landside infrastructure so they can make a profit on their loading and discharging the cargo.

All that would happen is you will transfer the cost from the trucking industry to the shipping industry, the ocean shipping industry, and thereby subsidise the trucking industry. It's then the competitive power that you were earlier alluding to, I just don't think is there because some of the bigger shipping companies are tied into the bigger terminal operators and that's just the way it is.

COMMISSIONER KING: Okay. I'm a bit wary of time and - - -

MR NORONHA: (Indistinct words) - - -

COMMISSIONER KING: I appreciate that we interrupted you - - -

MR NORONHA: I just want to - - -

COMMISSIONER KING: Most of the comments – sorry.

MR NORONHA: No, I just want to cover a few aspects and I'll get container detention. I'll start off from the place I stopped, I guess. In any event, even if shipping lines do have market power over terminals, which they don't, they will not exercise market power for the benefit of third parties. If shipping lines are somehow forced to pay for Australian terminal access charges, they will eventually pass these charges to Australian shippers and consignees. The passing on of fees will likely become a private matter between the parties involved. The supply chain as a whole will then lose visibility of the terminal access charges and it will also lose the opportunity for regulatory oversight. For all these reasons, we believe that recommendation 6.2 should be and must be dropped.

So, now we've touch on the container detention charges and I promise I'll be about three minutes from now. These fees are a vital component of international trade and work to ensure that parties in the supply chain return boxes at an appropriate time. The system as a whole works well and benefits shippers as a sector by ensuring that there is a supply of containers for them to use and by discouraging inappropriate use by some parties. For example, some parties use containers as a form of storage or even simply do not return containers and put them to other uses. Meanwhile, truckers could make more efficient use of empty container parks.

One reason that there are redirection of containers and subsequent container detention fees is because empty container parks can run short of capacity. However, many, but not all, trucking companies refuse to work in the early morning, evenings and weekends. Empty container parks formerly offered these extended hours but trucking companies refused to use them. Most trucking companies prefer to work standard hours. Working extended hours could cut down on gate congestion and full park congestion as container runs to port could be more frequently thereby improving empty container park capacity, cutting redirections and avoiding container detention fees.

Meanwhile, the parties who are most inconvenienced by container detention fees have a wide range of other options to avoid having to pay them. These include, but are not limited to, truckers not competing for business on the basis of being able to redeliver containers so as to avoid container detention fees, insurance, shipper and trucker terms and conditions of business, shippers using their own containers, and many more. Interfering with the ability of shipping lines to charge container detention fees, or ongoing hire fees, could produce a variety of adverse consequences, such as truckers abandoning containers during times of high congestion.

Additionally, we are concerned about the application of the Australian unfair contract rules into well-established international shipping law which could have a variety of adverse effects. These are detailed in our draft response to the draft report. So in summary, after numerous hours of research, the writing of 116 pages of submissions, 36 pages of a response to your draft report and 13 pages of testimony today, we've sort of come to the following conclusions: Ocean carriers are working well and are delivering the goods, but they are getting the blame; ports are poorly regulated, under-performing, and overcharging, but they're escaping the blame.

Political actors are meddling with the system while being misled, and they are clueless about the game; meanwhile, truckers do what they want, refuse to pay for anything while trying to rig the game and dish out the blame. Our comments conclude. Thank you so much for listening to me and being patient. Thank you.

COMMISSIONER KING: Thank you. I do note the time. Melwyn and Jim, have you got another five minutes just so that we can - - -

MR NOROHNA: Yes, yes.

COMMISSIONER KING: Yes, okay. Apologies for others on the call because it is getting to the time when we were going to open up for others. I just wanted to touch on one thing that relates to the unfair contract which you touched on a little bit in your comments just at the end there. So currently the shipping lines in Australia receive a benefit but no other business that does business in Australia under the legal definition has, which is that they're exempt from our unfair contract laws. And we can't see any justification for that.

It does get raised with regards to the return of empty containers that, you know, no other party in Australia would be able to say, "Well, we will charge you for not being able to

return a container to the empty container park that you require", as I've said publicly, if a rental car company tried to do that then the ACCC would be jumping up and down tomorrow. But, it seems like your submission is that this exemption that only applies to shipping lines in Australia should remain and so can I get your comments on that?

MR WILSON: Sure. If we go to our draft response to your draft report, paragraph 226 to paragraph 265 - - -

COMMISSIONER ABRAMSON: Sorry, Jim, where were you referring to? Your first submission?

MR WILSON: No supplementary.

COMMISSIONER KING: It's supplementary.

COMMISSIONER ABRAMSON: Your supplementary submission.

MR WILSON: Yes. Now, the submission of 14 October 2022.

COMMISSIONER ABRAMSON: Yes.

MR WILSON: Our response to your draft report.

COMMISSIONER ABRAMSON: Yes.

MR WILSON: And then it's page 23 of 36, paragraph 226 onwards to paragraph 265. That essentially details the legislative history and so on. But, it basically boils down to this: shipping is not like many other businesses. There's a big major international dimension and aspect to it. The recommendation as currently written, but applying to all shipping contracts, would kind of interfere with the international rules and regulations, and what have you, for cargo liability and the carriage of goods, the Hamburg Visby Rules and so on.

There's a simple solution to all of this is and this is for the Australian government to adopt. If memory serves me right, reading Hamburg rules I think - yes, we've currently got the Hague-Visby rules and they're modelled in the Carriage of Goods by Sea Act and then the solution would be really to extend the rules, or rather adopt the Hamburg Rule. So shipping, unlike many other businesses in Australia, is a massive international business and it's kind of regulated on a global basis. There's been literally centuries of discussion on this particular point. And, you know, the balance of powers between the carriers and shippers and carriers and shippers, there's massive working groups set up all around the world to discuss these exact issues.

Our suggestion would be – you know, look, we appreciate that shipping has perhaps a benefit like no one else, we can see that a lot of shippers might feel it's unfair, without necessarily commenting whether it is, our response is really from a practical viewpoint. It's an international global business. It should be regulated in an international global way.

International global rules to address all these issues have already been set up and worked out at great detail and great cost and previous situation as indicated by a variety of cross party political support and if you look at paragraph 244 onwards.

You know, politicians from right across the political spectrum said the whole situation as it was previously was a nightmare. Go with the current international situation and then when the shippers complain, on an international world basis, the Hamburg Rules were formulated. So if the Australian government really wants to do something in this area, they can just adopt the Hamburg Rules and then persuade the other national governments to do the same.

I think in the submission there we looked at some possibilities and problems that might occur. Some of the obvious ones, you know, can possibly interfere with the desirability which the international marine insurance markets might look at Australia. The one that struck me was, you know, if there's Australian small scale ships, I understand that the unfair contract terms legislation mostly applies to small business. If you've lots of smaller businesses loading cargo on international ships and if there's a general average event so a ship gets into difficulty somewhere, some parts of the cargo has to be jettisoned or destroyed or something happens so the crew can save their own lives on the ship, then you have this process called "General Average".

Does this then mean that the Australian shippers, the small scale shippers, who have got the unfair contract terms legislation can turn around and say, "Well, look, we don't want to take part in this General Average". If that happens, what happens then? How does the marine insurance market work? What's going to happen since national regulations? Will the marine insurers then deny cargo coverage for smaller shippers? I mean, who can say? What I'm worried about in relation to all this, is there's a whole world of other things that could possibly go wrong, particularly involving the marine insurance.

I would suggest, given the nature of this particular part of the law, the international dimensions of it, the literally centuries of history and extreme difficulty in changing or adding it or doing it, it's best left to the Australian government to follow its international foreign affairs relations to raise with the appropriate international fora, such as the Comite Maritime International, and deal with it from there. And as I said, there's always political/legal solutions to this in the form of the Hamburg rules. So, yes, I would suggest that maybe this isn't a good one to take on board because of political/practical rules.

COMMISSIONER KING: Yes, I would notice that my understanding of aeronautical is that aeronautical freight doesn't get the same exemption and hasn't had any issues of the sort you raise in your submission, certainly not with regards to insurance or any of the other factors. They also don't have Part X exemptions and I will point out they have been brought under Australia's cartel law as well. But, it seems like the unique shipping exemptions, getting rid of them or not having those in aeronautical freight has caused no problems and lead to better outcomes for Australian consumers.

MR WILSON: Well, I think there's a big difference there in terms of volumes if nothing else. Also the powers of the sea are magnificent and tricky, you know, you don't get rogue

waves. So I think it's not actually a good analogy. That said, I don't really know anything about aeronautical freight so I couldn't comment too deeply but, you know, if you looked at most of this international legislation law, international treaties and so on. It's work done specific peculiarities of the sea. And as I said, there already is a vast existing international framework. They already did have cross party political support in Australia and I do appreciate, as you've just testified to me, that aeronautical is radically different.

However, there is an existing framework and if you were to introduce new ways of doing things, then it would cause, I think, disturbances in the international way of doing things, in the way the international market works. I think it would create quite a headache for the Australian government. Obviously if you recommend to the contrary, then that would be something the Australian government would want to, you know, decide whether (indistinct words) of, you know, pushing it through or (indistinct words).

COMMISSIONER KING: Okay. Julie, anything? No. Look, thank you so much and apologies for running overtime a bit there.

COMMISSIONER ABRAMSON: And thank you for your substantive submission as well and your engagement with the process. It's been really well appreciated by us. So thank you.

COMMISSIONER KING: Yes. So thanks, Melwyn, and thanks, Jim.

MR WILSON: My pleasure.

COMMISSIONER ABRAMSON: Thank you.

MR WILSON: Yes, thanks, thanks.

MR NORONHA: Apologies if we've been a bit over passionate a bit there, we're a bit - - -

COMMISSIONER KING: No, that's fine.

COMMISSIONER ABRAMSON: Jim, it's actually an area where everyone is passionate on behalf of their stakeholders and that's a good thing.

MR WILSON: Thanks, Julie. Thanks, Stephen.

COMMISSIONER KING: All right, sorry, I'm just looking for my relevant documents. Now, this is a point in the hearings where we open up for any parties who would like to make other comments. If you would like to make any further comments or any other comments if you haven't made comments today, if you could put your hand up, this being a virtual meeting - - -

COMMISSIONER ABRAMSON: In an electronic way.

COMMISSIONER KING: Yes, so use the function and put your hand up. The way we're going to work this, because we will not be able to see if you've got your hand up, is that we've got somebody monitoring for hands up, they will then let us know and we will then call upon you. So I will now look across the table and wait a few minutes if there are no hands up, but we'll give a few minutes for people to respond.

COMMISSIONER ABRAMSON: It will say the transcript recorded silence.

COMMISSIONER KING: We have a couple of minutes though, so I'll wait.

COMMISSIONER ABRAMSON: Bianca Ruddock.

COMMISSIONER KING: Okay. Bianca Ruddock. Hi, Bianca. You'd like to make a - -  
-

MS RUDDOCK: Hi, how are you all?

COMMISSIONER KING: Good, thanks.

MS RUDDOCK: My name is Bianca - - -

COMMISSIONER KING: If you could state your name and any organisation for the transcript.

COMMISSIONER ABRAMSON: Or if it's a personal capacity, just that.

COMMISSIONER KING: Yes.

MS RUDDOCK: No problems. My name is Bianca Ruddock. I am an employee of Marubeni-Itochu Steel Oceania. We are an importer. I've simply got a comment in terms of the dehire side for us for containers and ship. It's something that we've seen quite a lot of in the last two years especially with obviously extenuating circumstances.

But, what we found is, with empty parks specifically, is that they haven't adapted to the change in circumstances and they still kind of run the same operating hours that they have for the last probably 10 to 20 years. So most of our transport companies that we employ run into difficulty returning containers after 4 o'clock because they're closed.

COMMISSIONER ABRAMSON: Yes.

MS RUDDOCK: They're not open on the weekend. So it makes it very difficult. We'd like, you know, and even our transport companies have said, "We'd love to run 24/7 operations" but they physically can't because they're hampered in that way.

COMMISSIONER KING: Okay.

MS RUDDOCK: So that's just a comment from my perspective. I just wanted to put that out there.

COMMISSIONER ABRAMSON: No, that's really helpful, Bianca, and that's the sort of evidence - we've had other people who have provided us with that evidence so that's very helpful, thank you.

MS RUDDOCK: Thank you.

COMMISSIONER KING: Thanks.

COMMISSIONER ABRAMSON: Thanks very much.

COMMISSIONER KING: Again, if anyone else wants to raise their hand.

COMMISSIONER ABRAMSON: Paul Zalai.

COMMISSIONER KING: Paul Zalai?

MR ZALAI: Yes, thanks again.

COMMISSIONER KING: Welcome back, Paul.

COMMISSIONER ABRAMSON: Yes, welcome back, Paul.

COMMISSIONER KING: Again, if you could just state your name and organisation for the transcript.

MR ZALAI: Paul Zalai, Freight & Trade Alliance and the Australian Peak Shippers Association. Just picking up on the comment from Bianca as well. And it was a little bit disturbing hearing some of the commentary from Shipping Australia. Where we're coming from for some reform around container detention, we're not saying that importers should be holding onto containers and using them for storage facilities and the like. We understand that there's a need for disciplines to return containers. All we're asking for is some reasonableness around it.

As you said, Stephen, in situations where, you know, relating it back to the car hire situation. In the extreme circumstances when we've got congestion and the empty container parks are full, you would expect the importer should be compensated in that situation because the transport operator then has nowhere to take them, they have to store them in their facility and yet the shipping lines see it appropriate to administer a charge against them.

Now, the shipping lines will argue on a case by case basis they will waive it: well there's a hell of a lot of work, as Neil indicated, in every shipment to try and – you're basically guilty until you can prove innocent to try and work through the process. So there is definitely a need for reform. We're not suggesting that we should remove container

detention arrangements. We don't want and we don't expect and we don't think importers want to use containers as storage facilities as indicated by Shipping Australia. We're just talking about a reasonable arrangement. And again, as Bianca said, you know, we're coming up again to the silly season with Christmas, we're going to have periods – and I have to have a look at the calendar – but over Christmas, New Year and all the public holidays, you will find that a lot of the empty container parks will be closed yet the detention clock will keep ticking.

Now, traditionally the last couple of years we've had one or two shipping lines that will provide extended periods during that time. But, the rest of them just go "bad luck". I think there's no two ways around it but to say that container detention is a very important revenue strength for shipping lines. Okay, I'll get off my soap box now.

COMMISSIONER ABRAMSON: No, no.

COMMISSIONER KING: Before you finish though, Paul, I just want to clarify. You said "Neil indicated", were you referring to the evidence presented by Neil Chambers from the CTAA?

MR ZALAI: Yes.

COMMISSIONER KING: Okay. I just wanted to make sure that was clear for the transcript.

COMMISSIONER ABRAMSON: Yes, thank you, Paul.

COMMISSIONER KING: Again, thank you, Paul.

MR ZALAI: Thank you.'

COMMISSIONER ABRAMSON: Eddy Declercq.

COMMISSIONER KING: Eddy Declercq.

COMMISSIONER ABRAMSON: Declercq.

COMMISSIONER KING: Declercq, sorry. Hopefully Eddy will – there we go.

MR DECLERCQ: Good afternoon.

COMMISSIONER KING: Eddy, again, if you don't mind just saying full name and organisation for the transcript.

MR DECLERCQ: My name is Eddy Declercq and I'm the managing director of OOCL, representing my shipping line here apart from what Shipping Australia has already presented. Just making a little comment here on what Bianca Ruddock has said. Yes, there are various circumstances where sometimes trucking companies or shippers are



redelivering a container, the depot was closed. Every shipping line works differently. I just need to say for our company, for instance, if a trucking company is arriving at a closed depot or it's full, what usually happens is that they contact our equipment department and immediately we will give an alternative depot.

I agree with all the comments that have been provided on reasonableness. If a depot is full, there should be an alternative and we're trying to provide that through an immediate alternative for the trucking company and all the truck companies, and even the depot holders, know that if they are full, they refer the trucking company to our booking desk for equipment. So that way we can solve problems as well.

I also agree on the reasonableness. When it comes to the detention charges, I believe FTA has in their submission, or in other request for reports, gathered all the proof from shippers or consignees that sometimes detention charges were not reasonable. I must say for OOCL we are trying to take a reasonable approach when detention charges have been incurred because of closed depots, then we are more than happy to mitigate those charges and in some cases even waive them.

Like I said, every shipping line works differently. There are some who are taking a very strict approach, there's some shipping lines that are taking a practical approach as well. In that respect, when the question was asked to FTA to come up with a proposal or proof that there were occasions that were not reasonable, I've been collecting sort of proof of our mitigations (indistinct words) for the last three or four years, and we keep records of that as well, just in case the Productivity Commission or even ACCC would be in need of such proof, then we are happy to share that. I just want to make mention that it's not a black and white situation. Thank you.

COMMISSIONER KING: Further data.

MR DECLERCQ: Thank you.

COMMISSIONER KING: Thanks, Eddy.

COMMISSIONER ABRAMSON: Eddy, before you go it would really be helpful for us, we do have a public portal on pc.gov.au. There is like a thing that you can click on to leave a comment. If you can leave your details, we might speak to you further about the data that you have.

COMMISSIONER KING: Yes, that'll be helpful.

COMMISSIONER ABRAMSON: Thank you.

MR DECLERCQ: Okay, thank you.

COMMISSIONER KING: Thank you.

COMMISSIONER ABRAMSON: Paul Zalai.

COMMISSIONER KING: Okay. Paul again?

COMMISSIONER ABRAMSON: Yes.

COMMISSIONER KING: Hello, Paul. Each time you come on you have to restate your name and organisation for the transcript.

MR ZALAI: Paul Zalai, Freight & Trade Alliance and the Australian Peak Shippers Association. Everyone was quiet so I didn't think you would mind me taking a bit more time.

COMMISSIONER KING: No, that's fine.

MR ZALAI: And I respect everything that Eddy just said and in fact I know Eddy very well, I've known him for a very long time and you're not going to find a more decent person and better operator. Unfortunately – and look, that goes the same with all the other shipping lines that we're dealing with here in Australia, but unfortunately so many of them throw their hands in the air and say, "Sorry, we're just following directions from our overseas masters" and we find that less and less. The management here in Australia have their discretion and in fact some of the feedback that we're getting is that some of the shipping lines are even struggling to retain staff because it's just such an unenviable position to be in.

So we've supplied a fair bit of evidence and examples but if you do need more, I'm more than happy to go back to our members and ask for more details and situations like this where it hasn't been reasonable and I'm sure it's not a phenomenon of six months ago/12 months ago, I'm sure it's happening day in-day out now. But, if we need more evidence of it, I'm more than happy to call on our membership for it - - -

COMMISSIONER ABRAMSON. No, thank you, Paul. I think you and your members have been enormously helpful. I was simply asking our previous participant because we'd not heard from him before and he said that he had data. But, we found your data and the contribution of your members to be very helpful. And as you would know, Paul, we have not been shy in asking for data.

MR ZALAI: All good, thank you.

COMMISSIONER KING: Thanks, Paul.

COMMISSIONER ABRAMSON: Shipping Australia.

COMMISSIONER KING: Shipping Australia. Which – Melwyn and Jim again, I guess. So, yes. Hello, Melwyn and Jim. Again, if you could state your names and the organisations for the transcript.

MR NOROHNA: Do you want (indistinct words). Yes, sorry, we couldn't sit on the sidelines and listen to that commentary so we just wanted to talk about how free time is provided to shippers in terms of the term of containers and now having to articulate that clearly.

COMMISSIONER ABRAMSON: Jim and Melwyn, I would say we're very aware of what people have put in our submissions to us and whilst we've always welcomed people wanting to comment, the time we have at the end of the day is usually for people who have not made submissions to us. Very happy to hear from you but that's generally, you know, what we - - -

MR NOROHNA: I think with due respect, I think, you know, people have more chances than us. I think it's about time we actually responded in terms of free time actually provided. And the abuse of that free time from time to time; pardon the pun, yes.

MR WILSON: Well, I think the thing to bear in mind is that containers and so on are generally property of the shipping companies. They bear the cost of bringing the containers into existence, transporting them to where they need, (indistinct words) services, keeping them clean and in good order and maintaining them and keeping available stocks for which they also provide free time. So everyone has a certain amount of time that they can use to get the containers to and from container parks.

And what might not be known is if you want extra free time, you can just phone up the shipping companies and the major shipping companies certainly will actually allow you to have extra free time if you buy it in advance. You can actually buy it, there's a purchase program. So in relation to things like (indistinct) disputes and extra congestion, what have you, there are certainly other option that you can do.

So I don't think it's reasonable to throw their hands up and say, "Well, you know, container detention fees are not something that should be paid or there should be restrictions on them because manage the business in order to get the containers back in time". You have a company giving valuable free time to the ship of about ten days or so, and you can actually buy extra free time in advance. Thank you.

MR NORONHA: Just a follow-on from that and this is from feedback from our members. People choose to return the container on the last day. Some of them have been given 30 days and they choose to return it on the 30th day when they've had so much time. And I'm not making a blanket (indistinct) These are live examples. And, you know, I think shipping companies over the entire COVID period have been very flexible and on top of that we then get sluggish with a low discharge ratio with some of our lines are I think are paying close to half a million dollars a quarter because it's a private port operator. So I think, you know, in that space, we are getting sluggish on one side to get the containers out and then people want extra free time.

So I think it has got to be managed and I think the landside needs to manage how they actually get their containers back and I think there's a lack of management on the landside, that's my personal view having been part of this group for a long period of time and

actually looking at managing it. So that's just a comment. Thanks for giving me the opportunity.

COMMISSIONER KING: Thank you, that's fine.

COMMISSIONER ABRAMSON: Thank you. There's no one else at the moment.

COMMISSIONER KING: No one else at the moment. Eddy, if you're still on the line, it would be very useful if we were able to follow-up on some of those examples because obviously there are two sides to every story and we want to make sure that we're getting a balance in terms of the examples that can underpin any final recommendation we make. There's still no one. Okay, despite my using 30 seconds then.

So we'll just check. For the record – yes, it's a bit hard to do this, these are clearly notes designed for in-person hearings - so for the record, is there anyone else who wants to appear today before the Commission who has not appeared? And I will just wait 30 seconds for the digital response. And waiting 30 seconds always seems like a very long time.

COMMISSIONER ABRAMSON: Nothing

COMMISSIONER KING: Well, I didn't look at my watch I'm afraid. It is interesting, as we move into the digital world, how things have to change.

COMMISSIONER ABRAMSON: And I think we had that for a different one too, another inquiry that I shall keep.

COMMISSIONER KING: All right, so still no one. All right. Given that, ladies and gentlemen, that concludes today's scheduled proceedings. I adjourn the proceedings and this concludes the Commission's public hearings for the Australian Maritime Logistic System for today and for the inquiry. A reminder for those planning to lodge a public submission with their feedback on the inquiry draft report, if you haven't done so, please do so as soon as possible. Thank you so much for participating.

COMMISSIONER ABRAMSON: Thank you for the participants and we thank the team.

COMMISSIONER KING: And thank you, team, and thank you (indistinct words).

**MATTER ADJOURNED**

**[3.26 pm]**