



Submission to the Productivity Commission

Lifting productivity at Australia's container ports:  
between water, wharf and warehouse: Draft Report

13 October 2022

## EXECUTIVE SUMMARY

NatRoad remains wedded to its longstanding policy that an independent price regulator should set all waterfront heavy vehicle charges, including landside port charges.

The waterfront needs a better and more comprehensive framework for measuring port performance which should include data on the time taken to move containers through each of the key steps between ship and port gate.

Productivity measurement would be more meaningful if time taken to exit a port after a container is loaded or periods spent waiting in holding bays or outside the port gates are included in truck turnaround statistics.

There has been a recent decline in container terminal operators' revenue from shipping lines and this has been the main driver for terminal operators to increase landside charges.

NatRoad believes that there is a clear market power imbalance between transport operators and those who operate container terminals.

We agree with the Productivity Commission that existing regulation does not prevent container terminal operators from exercising their market power to the detriment of transport operators. We cannot agree with the Australian Competition and Consumer Commission (ACCC) that profits of container terminal operators are not "excessive" compared with the transport operators' margins of less than 2.5%.

NatRoad favours regulatory intervention to correct this imbalance.

Unfeasibly short time slots and imposition of penalties for reasons beyond the control of drivers remain unfair and may be construed as breaching the Heavy Vehicle National Law under some circumstances.

## INTRODUCTION

1. The National Road Transport Association (NatRoad) is pleased to provide a submission in response to the Productivity Commission's (PC) Draft Report entitled [Lifting productivity at Australia's container ports: between water, wharf and warehouse](#) (Draft Report).<sup>1</sup>
2. As the PC is aware from the initial NatRoad submission<sup>2</sup> about this inquiry, NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from subcontractors to large fleet operators, general freight, road trains, livestock, tippers, express, car carriers, tankers, and refrigerated freight operators.
3. NatRoad has a solid commitment to reform of Australia's ports, particularly capping or limiting the essentially unconstrained increases in landside port charges that members have experienced over the last five years. In this submission, we reinforce that policy position and comment in a targeted manner, focusing on landside issues, albeit recognising that an increase in efficiencies at Australian ports benefits all Australians<sup>3</sup>, including the transport sector.
4. We have not commented on all of the issues raised in the comprehensive Draft Report. Concerning NatRoad's main focus, we have adopted and support the definition of landside activities used in the Draft Report thus:

*(T)he movement and temporary storage of containers in the container yard and the loading or unloading of containers on to land-based transport (typically trucks or trains) and the passage of that transport into and out of the port.*<sup>4</sup>

### Measuring Landside Productivity

5. NatRoad agrees with the PC's conclusion that:

*All other things equal, lower turnaround times are indicative of higher landside productivity. Further, a more efficient port will backload trucks such that trucks haul containers on both the in-bound and out-bound legs of a single trip.*<sup>5</sup>
6. We also agree that the extent of productivity measurement would be enhanced where the time is taken for the truck to exit the port after a container is loaded or any time that the truck spends waiting outside the port be included in truck turnaround statistics.<sup>6</sup> Time spent in holding bays should also be included in these measurements. As noted by the PC, ports can appear relatively efficient if trucks are forced to wait outside the gate rather than inside the port, a matter that also applies where trucks are required to wait in holding bays. This measure is essential given that trucks are required, for example, to remain in a holding bay at Port Botany. We draw the PC's attention to the dedicated Truck Marshalling Area at Port Botany<sup>7</sup>, with a second marshalling area under consideration.<sup>8</sup>
7. NatRoad supports the measurement of waiting time<sup>9</sup> at ports, particularly as demurrage is rarely paid to transport operators. Unfortunately, we cannot assist the PC concerning its information requests in this context. However, we agree with draft finding 3.3 as follows:

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<sup>1</sup> [Lifting productivity at Australia's container ports: between water, wharf and warehouse](#)

<sup>2</sup> [Submission 8 - National Road Transport Association \(NatRoad\) - Australia's Maritime Logistics System - Public inquiry \(pc.gov.au\)](#)

<sup>3</sup> Considered at length above note 1 pps141-144 and summarised in Draft finding 3.9

<sup>4</sup> Above note 1 p97

<sup>5</sup> Id p101

<sup>6</sup> Id p107

<sup>7</sup> [Port Botany Truck Marshalling Area - Ward \(wardgroup.com.au\)](#)

<sup>8</sup> See [PAMA Act and PBLIS Options Paper \(amazonaws.com\)](#); The PAMA Act and PBLIS Independent Review | Your Say Transport for NSW see Option B15 at p61

<sup>9</sup> Above note 1 p110

*A comprehensive framework for measuring port performance would include data on the time taken to move containers through each of the key steps between ship and port gate. Comparison of these time-based metrics across ports would reveal where operations in a port are relatively inefficient. Other performance measures could then be used to understand why these relative inefficiencies exist.*<sup>10</sup>

8. The landside issue and additional data to better measure landside efficiencies and inefficiencies are given more importance having regard to this finding by the PC:

*Landside transport costs are ... likely to be the primary factor determining which port a shipper uses, and data suggests that they create a strong preference for local ports — Australian container ports have large, effectively exclusive catchment areas.*<sup>11</sup>

### Market Power and Landside Charges

9. The PC notes in the Draft Report that there has been a recent decline in container terminal operators' revenue from shipping lines — referred to as quayside revenue.<sup>12</sup> In that regard, NatRoad agrees with the PC draft finding 6.3 as follows:

*Greater competition between container terminal operators and consolidation of shipping lines over the past decade have increased shipping lines' bargaining power relative to container terminal operators. This has contributed to declining quayside revenue for container terminal operators.*<sup>13</sup>

10. NatRoad considers that the decline in quayside revenue has been the principal motivating factor for terminal operators to increase landside charges, a matter further addressed below.
11. NatRoad also agrees with the PC that transport operators have little or no choice in shifting their business if they are dissatisfied with the cost or quality of service from a container terminal operator. We agree with the PC conclusion that “each container terminal operator is a monopolist supplying a service to many transport operators.”<sup>14</sup>
12. The Draft Report notes the intensely competitive nature of the road transport sector and then mentions that “in the very short term, transport operators bear the brunt of any fee increases or new fees from container terminal operators.”<sup>15</sup> The PC indicates that “in the longer term, transport operators pass those costs to cargo owners.”<sup>16</sup> But that is one outcome. The other is that the transport operator is locked into an unfavourable contract and the transport operator's margins fall (especially in the short to medium term), or the transport operator exits the industry. Industry revenue is also expected to continue to fall, especially in light of high and growing fuel costs. This has led one observer to find:

*The deterioration in demand conditions over the two years through 2020-21 due to the COVID-19 pandemic has contributed to the overall decline in industry revenue over the period.*<sup>17</sup>

13. There is a clear market power difference between transport operators and those who operate container terminals. Despite the PC's observations that a form of indirect competition is possible (a matter we confirm that we have not observed), the conclusion reached in the Draft Report's discussion, with which we agree, is as follows:

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<sup>10</sup> Id p112

<sup>11</sup> Id p160

<sup>12</sup> Id p189 and figure 6.3

<sup>13</sup> Id p190

<sup>14</sup> Id p191

<sup>15</sup> Id p191-192

<sup>16</sup> Id p192

<sup>17</sup> IBIS World Road Freight Transport in Australia Feb 2021 p13

*The market structure and the lack of effective direct or indirect constraint on the fees charged by container terminal operators to transport operators means that the container terminal operators have substantial market power with regard to transport operators.*<sup>18</sup>

14. The PC discusses the difference between fees that are labelled as fixed charges (such as terminal access fees (TACs)) and fees which, in theory, increase efficiency. The Draft Report reflects the view that so-called “no show” fees may engender greater efficiency based on the fact that:

*(N)o show fees are charged when a landside operator fails to collect or drop off a container on time. This fee is charged because the container terminal operator must prepare the container prior to the landside operator arriving, and a truck missing its time slot costs the terminal operator. These fees are avoidable as long as the truck arrives on time, and they ensure that containers are picked up and dropped off efficiently.*<sup>19</sup>

15. The missing issue from the extract in the prior paragraph is the reasonableness of the time slots. NatRoad members have complained of contracts where tight time slot allocation is prescribed (a 15-minute time band) with subsequent rescheduling at the transport operator’s cost and all charges associated with missing the allocated time slot met by the transport operator. Whether such provisions are unfair contract terms is moot until considered by a court. But NatRoad has a longstanding policy that unfair contract terms must be strengthened so that, by way of example, time slot windows are not oppressively short.<sup>20</sup> This topic is further considered below.
16. A further complication is that some penalties for so-called “no-shows” are imposed per booking rather than per truck. Attachment A is NatRoad’s submission regarding the independent review of the *Port and Maritime Administration Act, 1995 (NSW)* (PAMA) and the Port Botany landside improvement strategy (PBLIS).<sup>21</sup> We note that there are reciprocal penalties associated with lack of service by port operators, at least at Port Botany, and turnaround times in that regard. As we indicated in Attachment A, this is a successful way to regularise the market power exerted by stevedores. The efficiency at ports is not as black and white as painted in the Draft Report. Fair time slots and penalties or incentives that flow both ways in the container terminal operator/transport operator relationship are required to increase efficiency.
17. We note the discussion about TACs. As well as the issue mentioned in paragraph 10 of this submission contributing to the rise in TACs, the PC identifies two other factors: privatisation of ports, which has been associated with higher container terminal operator rents, and increases in labour costs, particularly from 2016-17.<sup>22</sup> In responding to the PC’s information request (per request 6.2<sup>23</sup>), NatRoad believes that the principal motivator for the increased TACs is to moderate the decline in profitability associated with a fall in quayside revenue.
18. We agree with the PC conclusion that existing regulation does not provide a practical constraint on container terminal operators to prevent them from exercising their market power to the detriment of transport operators. We disagree with the arguments proposed by the Australian Competition and Consumer Commission (ACCC) about the outcomes from their monitoring of TACs, as was made plain in NatRoad’s initial submission to this inquiry. The profits of container terminal operators appear “excessive” compared with the transport operators’ margins of less than 2.5%.<sup>24</sup> Accordingly, of the three approaches to deal with the use of market power proposed by the PC, we reject the first option of the status quo. Regarding Option 2, NatRoad

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<sup>18</sup> Above note 1 at p192

<sup>19</sup> Id p192-193

<sup>20</sup> Arguments in this context appear here: [NatRoad backs unfair contract law changes | News \(fullyloaded.com.au\)](https://www.fullyloaded.com.au/news/natroad-backs-unfair-contract-law-changes)

<sup>21</sup> PBLIS is discussed above note 1 at p197. We have not included attachments to this submission

<sup>22</sup> Above note 1 p193

<sup>23</sup> Id p196

<sup>24</sup> IBIS World above note 17 p7

favours regulatory intervention and, at the least, making the NTC guidelines referred to in the Draft Report mandatory via reciprocal State and Territory laws. Without those laws, NatRoad provides qualified but limited support for the PC's Option 3.

19. Under Option 3, any container terminal operator charges fixed fees for collecting or delivering a container, not incentive-based. Fees cannot be directly levied on transport operators but must be collected from the shipping lines. The PC has formed the view that this redirection of charging will balance the current problems related to the market power that punishes transport operators. The difficulty is that the third option would not directly deal with incentive-based charges. Distinguishing those charges may be difficult. For example, the long vehicle fee discussed in NatRoad's initial submission<sup>25</sup> is purportedly levied because of problems with servicing these higher productivity vehicles at some terminals. This is a problematic charge unrelated to increases in productivity; in fact, it has the opposite effect. Its continued imposition hampers productivity by requiring additional truck collections of containers and impedes introducing newer, lower emissions heavy vehicles. (We note that the issue of emissions reduction is favourably pointed to when discussing the subject of the use of larger container ships).<sup>26</sup> The point is that stevedores would argue that this is an incentive based charge when it is not. But it could be so labelled under the proposed distinction made in the Draft Report.

20. In addition, the PC indicates:

*Any flexible fees and charges set by container terminal operators for transport operators would need to be monitored to ensure they are not being charged excessively to compensate for the reduction in revenue from fixed charges. This monitoring could occur at a state and territory level, similar to how fees are currently monitored in NSW under the PBLIS.<sup>27</sup>*

21. NatRoad's view is that current monitoring has failed transport operators and that the proposed monitoring would need to be backed up with more robust regulatory powers in any event – thus pointing reform towards Option 2. Therefore, it remains NatRoad's policy position that regulation of landside charges should occur and that they should be regulated through an independent price regulator, which would also be responsible for monitoring toll charges. Currently, heavy vehicle charges are set in a manner that does not encourage heavy vehicle road reform.<sup>28</sup> In a move to reform heavy vehicle charges, there is a need to establish an independent price regulator, with powers to set prices independently of government and potentially perform a range of oversight activities related to forward looking road expenditure, and encompassing all charges levied against trucks. We say that function must embrace regulation of landside port charges.

### Unfair Contract Terms

22. The use of unfair contract terms as a means to exercise market power is discussed in the Draft Report. This matter was discussed earlier in paragraphs 15 and 16 of this submission. The substance of the Bill that lapsed, referred to by the PC<sup>29</sup>, the *Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022 (Cth)* (the Lapsed Bill), remains supported by NatRoad, as to which see paragraph 25 below.
23. Concerning the PC's request for more information on potentially unfair contract terms in contracts used in the maritime logistics industry, NatRoad indicates that the short time slot issue mentioned earlier is one such provision. This proposition accords with the provisions of section

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<sup>25</sup> Above note 2 esp at p17

<sup>26</sup> Above note 1 esp at p219

<sup>27</sup> Id at p201

<sup>28</sup> See [Heavy Vehicle Road Reform | Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#) for a summary of current developments on this topic

<sup>29</sup> Above note 1 p204

26E Heavy Vehicle National Law (HVNL) and may well be unlawful in any event. To our knowledge that proposition has not been tested in the courts. Under that provision, any person is prohibited from requesting, directing, or contracting in a way that would cause or encourage a driver to breach fatigue requirements or speed limits or that would result in another party in the Chain of Responsibility (CoR) causing a driver to breach fatigue requirements or speed limits. The other party could be an operator pressing a driver to make an unrealistic time slot. The NHVR indicates that tight or unworkable delivery times or an unrealistic number of deliveries in a short window of time are indicative of a potential breach of s26E<sup>30</sup> and, we believe, should be characterised as unfair as well in violation of the HVNL.

24. NatRoad agrees that detention fees are problematic and unfair. When detention fees accrue because a transport operator cannot deliver a container at the agreed time, the operator often compensates the cargo owner for those fees. In addition, the contractual provisions that impose these fees are unfair and should be treated accordingly under the law. This is because, as the PC notes:

*The role of transport operators in the contractual arrangements is also unusual, specifically because they are not a party to the primary contract that contains the detention fees but are still liable to pay them if their contract with the cargo owner specifies it.*<sup>31</sup>

25. We note the discussion about potential remedies with this problem. Still, ultimately, current provisions in the Australian Consumer Law (ACL) make it difficult for the ACCC and affected parties to bring actions for potentially unfair conduct involving shipping lines. NatRoad agrees with the PC that shipping contracts should not be exempt from the unfair terms provisions in the ACL and that their exemption under s. 28 should be removed. NatRoad believes that removal could occur simultaneously with the unfair contract terms reforms being enacted, with the substance of the Lapsed Bill proceeding. In this context we note that on 28 September 2022 the Government introduced strengthened unfair contract terms legislation via Schedule 2 to the *Treasury Laws Amendment (More Competition, Better Prices) Bill 2022*.

26. We note that the PC indicates a problem with this solution as follows:

*The primary contract to which the ACL provisions would apply is the contract between the shipping line and the cargo owner. If a cargo owner challenged and succeeded in an action over these fees then it is likely that such fees would not form part of their contract with a transport operator. However, as some of the fees are currently being borne by transport companies, cargo owners may have no incentive to challenge such fees.*<sup>32</sup>

27. The Draft Report indicates that:

*In such circumstances it may be that the ACCC could play a very important role as a regulator in setting industry standards.*<sup>33</sup>

28. We agree but also indicate that the need for creating industry standards in this manner reinforces NatRoad's prior expressed support for Option 2 above. In this regard, an independent price regulator (the ACCC or a new entity) would be responsible for setting relevant industry standards and prescribing related fees/penalties/incentive payments.

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<sup>30</sup> [Regulatory Advice - Prohibited requests and contracts under the Heavy Vehicle National Law | NHVR](#)

<sup>31</sup> Above note 1 at p206

<sup>32</sup> Id p209

<sup>33</sup> Ibid

## Infrastructure Needs and Constraints

29. The PC was, amongst other things, directed to assess infrastructure needs and constraints in the maritime logistics sector. In this context, NatRoad again comments only on issues affecting road transport operators.

30. Road transport has a range of advantages compared with rail, in moving containerised maritime freight. The PC notes these efficiencies but also states that moving freight on the road “adds to congestion and has other impacts on the community.”<sup>34</sup> The PC also notes that:

*This has contributed to calls over many years for greater use of rail, and to port operator and government plans to invest in dedicated rail infrastructure and intermodal terminals.*<sup>35</sup>

31. The PC notes the factors weighing against rail use at ports and indicates rail’s lower modal share. We endorse the comments that the flexibility of trucks is a crucial factor in increased rates of road use when moving containers between ports, empty container parks and final cargo destinations. Ultimately, however, many freight tasks associated with rail require the use of trucks, mainly where inter-modal facilities are established, and at rail heads.

32. As noted by the PC, intermodal terminals are designed to allow frequent freight rail services to transport containers to locations away from ports. From this point, containers or cargo can then be distributed by trucks. Whether road and rail modes are complementary or in competition has not been well studied since the BITRE examination in 2009.<sup>36</sup>

33. The PC describes some of the benefits associated with rail, including lower rates of urban congestion and emissions reduction, and then explains plans to achieve more significant rail mode share at four of Australia’s largest ports. These plans incorporate substantial investment in dedicated freight lines and intermodal terminals, and those plans are analysed in some detail.

34. The PC then discusses the issue of how road transport could become even more cost-effective in the future. As part of that discussion, the issue of curfews is addressed. Unfortunately, increasing urban encroachment on both ports and freight networks continue, a matter more fully addressed further in the Draft Report<sup>37</sup>. There should be development exclusion zones around port facilities to stop this erosion of efficiency. The PC notes that because of this urban encroachment, there is the possibility that curfews will increasingly influence the ability for freight to be delivered.<sup>38</sup> We note the PC’s observation as follows:

*While further evidence of community reaction to curfew removal is relatively limited at present, ongoing removals or reductions to truck curfews would have the effect of further improving road transport’s ability to compete with rail.*<sup>39</sup>

35. There is not only the ability to better compete with rail at stake (as curfews could also affect the rail freight task). The lifting of curfews from port areas and surrounding roads will also add to the overall efficiency of the freight task and assist in relieving pressure when larger ships unload and cause stress on landside facilities, including the need for the prompt removal of freight from terminals and the facilitation of better flows to and from ports. We suggest that the PC recommends that State and Territory governments examine the issue of curfews and their necessity and that other means of reducing noise (e.g. certain backing alarm types) and congestion be examined by port authorities.

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<sup>34</sup> Id p222

<sup>35</sup> Ibid

<sup>36</sup> [Road and Rail Freight: Competitors or Complements? | Bureau of Infrastructure and Transport Research Economics \(bitre.gov.au\)](https://www.bitre.gov.au/research/road-and-rail-freight-competitors-or-complements/)

<sup>37</sup> Above note 1 p237

<sup>38</sup> Id p229

<sup>39</sup> Ibid



36. In addition, NatRoad notes the discussion about the costly nature of rail infrastructure, which we endorse. We fully support that part of Draft Finding 7.2, which says:

*Any further government investment in rail to service container ports needs to be accompanied by a clear cost–benefit analysis, including analysis of the relevant externalities and including alternative scenarios for the development of truck technology, over the full economic life of the project.*<sup>40</sup>

37. Regarding the discussion of urban encroachment, NatRoad notes that the PC believes reliance on buffers and the planning system should occur. The PC has a Draft Finding, 7.3, where it is said that planning systems should allocate land around ports to the highest value uses.<sup>41</sup> NatRoad is concerned that the draft finding does not fully reflect the importance of buffers around the ports and freight corridors, which must, under planning laws, be recognised as such and main tained for freight purposes. Buffers must be applied to freight corridors as well as port sites. This matter should be given prominence and the draft finding modified to reflect the importance of these buffers. The nature and extent of those buffers should also be detailed or, at least, agreed between the various governments responsible for planning around ports and freight corridors. The planning for the latter must be integrated with the plans for port infrastructure discussed in detail by the PC.

### Workforce Arrangements

38. We note that the PC does not examine workplace arrangements beyond the port gate, specifically not dealing with road transport. We noted in our initial submission problems with restrictive work practices at Australia’s ports, an observation made by the ACCC and one reflected in its submission to the inquiry, quoted by the PC:

*(S)ystemic industrial relations issues across the entire container freight supply chain have played a pivotal role in inhibiting productivity and efficiency gains at Australian ports. While this has been a challenging area for some time, restrictive work practices and industrial actions have escalated in recent years.*<sup>42</sup>

39. In this context, member feedback was as the PC has found: restrictions on merit-based hiring and promotion established in enterprise agreements harm workers and productivity. Hence, NatRoad agrees with Draft Finding 9.1.<sup>43</sup> We also remain constant in supporting a Ports Code, as put forward in the initial submission to this inquiry. We note that the PC has not yet determined the suitability of such a Code.<sup>44</sup> We note that there appears to be no other mechanism that would proscribe anti-productivity measures and other restrictive content in enterprise agreements in the ports. Beyond that observation, NatRoad makes no further comment on the workplace relations issues raised in the Draft Report.

### Technology

40. NatRoad notes the discussion on the progress of automation of heavy vehicles.<sup>45</sup> The use of automated heavy vehicles in areas where human interactions can be minimised may lead to their early introduction. Port facilities or at least deliveries of, say, empty containers from ports to empty container parks should be possible at a more accelerated rate than automation of freight delivery vehicles generally.

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<sup>40</sup> Id p230

<sup>41</sup> Id p242

<sup>42</sup> Id p260

<sup>43</sup> Id p274

<sup>44</sup> Id p284

<sup>45</sup> Id p344

## Conclusion

41. The maritime logistics system is complex and raises issues of the same calibre. This submission has largely restricted its responses to those elements of the Draft Report dealing with landside issues.
42. NatRoad departs from the PC concerning its discussion of the best option to deal with limiting landside port charges. Natroad has a longstanding policy that an independent price regulator should set all heavy vehicle charges, including tolls and landside port charges. We have applied that policy to the current context.



Submission to the Independent Reviewer

Review of the Ports and Maritime Administration Act 1995  
and the Port Botany Landside Improvement Strategy

29 July 2022

## EXECUTIVE SUMMARY

It's time to fundamentally review Australia's port system and increase its efficiency in the national interest.

NatRoad recognises that stevedore charges are out of scope for the independent review of the Port and Maritime Administration Act, 1995 (NSW) (PAMA) and the Port Botany landside improvement strategy (PBLIS).

Controlling these rising landside charges, however, should be a national economic issue. NatRoad supports the NSW Government's referring a request for their review to the Federal Government.

Across Australia, increasing port efficiency is about more than controlling costs.

Access constraints, congestion at ports and on the roads to ports, cause delays and inefficiencies in the supply chain.

Long waiting times at port facilities to load and unload containers and cargo more generally place a very real strain on drivers, particularly owner-operators.

NatRoad believes that there should be further investigation of how incentives may assist with port efficiencies. Lowering landside port charges where high productivity vehicles are used, rather than imposing a "long vehicle" fee, would be logical.

NatRoad does not believe the time is right to dismantle the PBLIS scheme, as it has conferred benefits on all port users and assisted to balance the undue market power held by stevedores.

NatRoad considers that any recommendations from the Productivity Commission's pending draft report into Australia's Maritime Logistics Systems, due in August 2022, should be considered by the NSW Government when assessing this Review's final recommendations.

## INTRODUCTION

1. The National Road Transport Association (NatRoad) is pleased to provide a submission in response to the Options Paper<sup>1</sup> published during the independent review of the *Port and Maritime Administration Act, 1995 (NSW) (PAMA)* and the Port Botany landside improvement strategy (PBLIS).
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from subcontractors to large fleet operators, general freight, road trains, livestock, tippers, express, car carriers, as well as tankers and refrigerated freight operators.
3. NatRoad has a strong commitment to reform of Australia's ports, particularly capping or limiting the largely unconstrained increases in landside port charges that members have experienced over the last five years. In this context, NatRoad did not respond to the initial discussion paper<sup>2</sup> issued as part of the current review. NatRoad instead concentrated on providing a comprehensive submission to the Productivity Commission in relation to its Maritime Logistics System inquiry.<sup>3</sup>
4. NatRoad policy is that a fundamental review of the port system, including of landside port charges, is necessary to increase the efficiency of port operations in Australia. Therefore, NatRoad considers that any recommendations that emanate from the Productivity Commission's report should be considered by the NSW Government when assessing the Review's final recommendations, particularly having regard to the limitations on the scope of the review set out in the discussion paper, notably as follows:

*In addition, specific consideration of stevedore charges, beyond current references in relation to PBLIS penalties, will be out of scope for this review. In recognition of these charges as a national economic issue, the NSW Government has referred a request for their review to the Federal Government for consideration.*<sup>4</sup>

5. In addition, it is difficult to currently compare port performance. For example, the measurement of container logistics chain performance across all of Australia's capital city ports is not standardised or consistent. As with all ports in Australia other than the port of Fremantle, State Governments have moved away from direct involvement in the operation of ports through privatisation. In that context, and with the exclusion of the effects of privatisation on port performance from the current review's terms of reference, it is critical that NSW and all other jurisdictions develop improved, independent measurement indicators of logistics chain performance in each port and regularise the way landside port charges are imposed.
6. The relevant exclusions from the current review are summarised in the Options Paper thus:

*Long-term lease arrangements applying to Port Botany, Port Kembla and the Port of Newcastle will only be considered within the context of those existing lease arrangements. Recognising that the matter of stevedore charges is a national economic issue, this has been referred for consideration by the Australian Government. As such, specific consideration of stevedore charges, beyond current references in relation to PBLIS penalties, will be out of scope for the Review.*<sup>5</sup>

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<sup>1</sup> [PAMA Act and PBLIS Options Paper \(amazonaws.com\)](https://www.amazonaws.com); [The PAMA Act and PBLIS Independent Review | Your Say Transport for NSW](https://www.amazonaws.com)

<sup>2</sup> [Transport for New South Wales \(amazonaws.com\)](https://www.amazonaws.com)

<sup>3</sup> [Australia's Maritime Logistics System - Public inquiry - Productivity Commission \(pc.gov.au\)](https://www.pc.gov.au) and [Submission 8 - National Road Transport Association \(NatRoad\) - Australia's Maritime Logistics System - Public inquiry \(pc.gov.au\)](https://www.natroad.com.au)

<sup>4</sup> Above note 2 at p8

<sup>5</sup> Above note 1 at p11

7. Across Australia, and at Port Botany, the issue of increasing landside charges imposed by stevedores is not just one of costs. Access constraints and congestion at ports, and on the access roads to ports, causes delays and inefficiencies in the supply chain. For example, long waiting times at port facilities to load and unload containers and cargo more generally place a very real strain on drivers, particularly owner operators. These delays should not be commonplace but are, unfortunately, many members lived experience. Unfavourable working conditions contribute to the ongoing Australian driver shortage.<sup>6</sup> That driver shortage has been exacerbated by the current rapid spread of the Omicron variant of COVID-19<sup>7</sup> with the situation of inadequate staff numbers being classed as generating a crisis for Australian industry.<sup>8</sup>
8. Further, waiting time eats into drivers' earnings and the time available to drive, so an opportunity cost arises. Demurrage<sup>9</sup> is very infrequently paid to heavy vehicle operators. These factors add to the problems that have been generated in the supply chain by the influence of COVID-19 and the war in the Ukraine.<sup>10</sup> But these influences have in turn underlined existing supply chain problems rather than causing them.<sup>11</sup>
9. The factors set out in the prior paragraph, and the need for more systemic reform than encompassed by the current review, in part shape the NatRoad response to the Options Paper. NatRoad has not commented on recommendations that relate to the regulation of rail, shipping or waterside issues. We have concentrated, instead, on matters affecting members. In the main, the perspective adopted is in opposition to recommended greater penalties under current schemes or under proposed options. A reconsideration of some options to add incentives rather than to exact punishment is proposed by NatRoad (see paragraph 46 below for an example of incentives proposed).

#### Dangerous goods time limit penalty

10. The first option, labelled Option 1, in relation to possible changes to PAMA is the option to replace the current three tier dangerous goods in ports time-limit penalty structure with an ongoing daily offence penalty. NatRoad policy is that penalties must be proportionate to the harm caused by a breach and wherever possible a warning system should be put into place for first offenders or where the breaches have little or no impact on operations.
11. The Options Paper notes that currently penalties can apply to the dangerous goods cargo owner or the port facility operator if time limits are exceeded by less than 48 hours, between 48 and less than 96 hours, or 96 hours or more. It says: "Some dangerous goods containers have overstayed port facility time limits beyond the 96 hours (four days)."<sup>12</sup> The circumstances where this was experienced, who was fined and any harmful outcome that ensued are not addressed in the Options Paper. These are all factors that should be assessed, inclusive of awareness of the penalty amongst those parties who handle dangerous goods and an estimate of their effectiveness made. The Options Paper proceeds on the assumption that because of the potential risks these goods

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<sup>6</sup> For example see discussion here: <https://www.abc.net.au/news/2021-11-12/driver-shortage-hard-for-victorian-trucking-companies/100611784>

<sup>7</sup> <https://theloadstar.com/omicron-outbreak-in-australia-wreaking-havoc-with-supply-chains/>

<sup>8</sup> J Malcolm and M Maddison Crisis talks tackle staff shortages *The Australian* p 1 and p 4 12/1/22 and R Mizen Skills Mismatch Sparks Worsening Job Crisis AFR 1/7/22 p 3

<sup>9</sup> We define demurrage in this submission to mean a charge for detaining a truck beyond an agreed or reasonable time.

<sup>10</sup> See <https://fbe.unimelb.edu.au/newsroom/the-covid-19-shock-to-supply-chains> for a discussion of the seven types of supply chain risk that are at issue, inclusive of transportation risk.

<sup>11</sup> See for example discussion here: [https://www.ey.com/en\\_au/supply-chain/how-covid-19-impacted-supply-chains-and-what-comes-next](https://www.ey.com/en_au/supply-chain/how-covid-19-impacted-supply-chains-and-what-comes-next)

<sup>12</sup> Above note 1 at p16

pose “and to maintain appropriate management of dangerous goods in ports”<sup>13</sup>, it is proposed to replace the current three-tier penalty structure with a daily penalty offence that applies to each day that dangerous goods are left at a port facility past the relevant time limit. A review of the level of penalty will follow but the extent of the penalty is not foreshadowed and therefore the utility of the option should be re-visited when the penalty levels are in play.

12. NatRoad does not believe that there is sufficient evidence expressed in the Options Paper to establish this change, nor any assessment of its impact on the appropriate management of dangerous goods or how an increase in penalty will be sufficient to ameliorate the prior circumstance set out of an “overstay” of port time limits. More research and background information and a measurement of the regulatory impact (having regard to the level of penalty proposed) should be in evidence before this option proceeds further.

### Private Port Operator Directions

13. It is proposed that to “strengthen” enforcement of traffic controls at ports, the Government would introduce a criminal offence and PIN for breaching a private port operator direction. Under this option, the NSW Government would authorise the issuing of penalty infringement notices (PINs) by NSW Ports or Port of Newcastle staff that are “appropriately trained for issuing safety and security directions.”<sup>14</sup> For serious or escalating breaches, the NSW Government would be able to commence criminal proceedings in court on behalf of the private port operators. The ability for private port operator staff to issue PINs would be limited to the port operator safety directions. But the boundaries around what is or is not a “safety direction” are not clear from the discussion of the option.
14. NatRoad is opposed to this option. The Options Paper asserts that the proposed change “would ensure effective enforcement of port operators’ traffic control directions, provide clarity for port users on their obligations in port areas and strengthen the safe operation of the ports of Botany, Kembla and Newcastle.”<sup>15</sup> NatRoad notes that the provision of powers usually vested in Government’s should not be provided to private citizens, particularly where, as with the landside operation of NSW ports, there is already a power imbalance between stevedores and NatRoad members weighing heavily in favour of stevedores.
15. The rationale provided for the proposal is that: “The Cost Benefit Analysis of PBLIS noted enforcement of parking rules in the port precinct contributed to traffic decongestion at Port Botany.”<sup>16</sup> But that is an argument for reducing congestion in port precincts and at ports, not for vesting in private operators powers that are now exercised by the Police. Where is the evidence of the failure of the current system that would be assisted by this measure? The issue is that, particularly at Port Botany, congestion is a function of many factors, including limited and inappropriate road access, the port facilities not keeping up with the growing freight task and stevedore operational inefficiencies. How would giving private operators the powers proposed assist with these systemic issues? The answer is they would not. Hence, the NatRoad opposition to this proposal, labelled as Option 5, is strong.

### Private port operator directions – reporting requirements

16. The proposal, labelled Option 6, is for a reduction in the notice period for private port operator directions from at least two weeks to at least one week. NatRoad does not object to this change. However, we proffer that support on the basis that the current methods for communicating the directions are improved. Presently, as noted in the Options Paper, directions are able to be communicated via signs posted in the port, given directly to people, or gazetted and published on

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<sup>13</sup> Ibid

<sup>14</sup> Above note 1 at p19

<sup>15</sup> Ibid

<sup>16</sup> Ibid

the port operator's website. Where there is a change that affects safety or introduces a new obligation or reverses a prior position, these changes must be provided directly to affected parties. We would seek that change if this option is implemented.

### Extend liability for non-compliance with parking rules to the owner of the vehicle

17. Option 7 is opposed. The proposal is for the so-called "strengthening" of enforcement of parking offences. It is proposed to extend liability for failure to comply with section 41 of the Regulation to the owner of the vehicle. This is to allegedly cover the situation of where the driver "cannot be found."
18. Frankly, increasing punishments and extending liabilities to owners won't cure the problems with congestion, access and safety that abound currently. These are all systemic issues that require more fundamental, grass roots reforms not greater levels of fines, punishment or "cop-on-the beat" changes.

### Port price monitoring scheme – reporting requirements

19. Under the port price monitoring scheme in PAMA, the Minister is responsible for monitoring the prices port operators charge to users. But the Minister does not regulate or approve port charges. Considering NatRoad's concerns about escalating landside port charges, expressed earlier, and their effects on members, we believe that the Minister should have the power to approve port charges. In the alternative there should be an authority which is responsible for all heavy vehicle charges, including landside port charges, Australia wide.
20. In the Options Paper, it is proposed that port operators provide longer than the current 20 business days' notice of changes to their charges. Option 9 would see the notice period move from at least 20 business days to at least 40 business days prior to the change. In the absence of more systemic reform, this option is supported.

### PBLIS - General

21. The Options Paper says that PBLIS has "addressed the landside congestion and some of the inefficiency issues that were originally identified."<sup>17</sup> NatRoad is of the view, based on member feedback, that PBLIS has worked because it has ameliorated the disproportionate market power of the stevedore companies. It has done this by imposing financial penalties for poor terminal performance that delays road transport operators unduly or for non-service events. The other side of that coin is that PBLIS regulates the imposition of financial penalties on transport operators for poor arrival performance and "no shows."
22. The perspective expressed in the last paragraph is not reflected in what the Options Paper summarises the related cost benefits analysis (CBA) of PBLIS as showing:

*The CBA found the key benefits of PBLIS arise from traffic decongestion and reduced emissions resulting from the removal of heavy vehicles from roads around the port. This is achieved mainly through the provision of the Truck Marshalling Area and enforcement of service lines at terminals and, to a lesser extent, parking rules in the port precinct.*<sup>18</sup>

NatRoad notes that retention of the current scheme unchanged or its abolition have both been rejected.

### Option A1 -Apply late penalties per truck trip rather than per container

23. NatRoad agrees that the potential for incurring multiple late arrival penalties is one factor (but not the main factor) creating a disincentive to utilise trucks with higher capacity (like A doubles) and therefore may not be supporting overall port supply chain efficiency. In addition, the

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<sup>17</sup> Above note 1 at p28

<sup>18</sup> Ibid



narrative around this option speaks to an A double delivering and then collecting containers in the same trip. However, the Container Transport Alliance Australia, in its submission<sup>19</sup> to the Productivity Commission on the maritime reference referred to earlier indicates that:

*The worst performing port for truck backloading was Sydney (Port Botany) at just 5.7%, while the best performing was Adelaide with 22.9%.<sup>20</sup>*

24. We note the observation in the Options Paper that “Applying late arrival penalties per truck rather than per booking would reduce potential penalties for transport operators with multiple containers on each truck and support increased container density, leading to less truck trips overall.”<sup>21</sup> Whilst fewer truck trips are welcomed, we would like to see incentives built into PBLIS arrangements to support backloading and to incentivise the use of high productivity freight vehicles. In other words, positive payments or a “reward” system of some sort would be a better incentive than the undue emphasis on penalising heavy vehicle operators, a perspective that reinforces the comments made on the options discussed earlier in this submission.

#### Option A2 – Investigate options for stevedore impacted trucks

25. A stevedore impacted truck is defined as a truck affected by the failure of a stevedore to service the truck within the set truck turnaround time (TTT).<sup>22</sup> When this happens between 4pm and 4am on a weekday or during a weekend, the operator of the affected truck is not penalised for being late for subsequent bookings at the same stevedore.

26. The policy rationale for this rule is described in the Options Paper as:

*This ensures that road carriers are not unfairly penalised for late arrivals resulting from a previous failure to service by the stevedore during off-peak periods. It is also intended to incentivise off-peak port utilisation.<sup>23</sup>*

27. As identified in the Options Paper, a major flaw with this policy is that the lifting of penalties does not have port wide application. NatRoad strongly supports an extension of the policy port wide. Further, the policy should apply 24 hours a day, 7 days a week. Operators should not be penalised for a failure by a stevedore i.e. the flow on effect from the first failure to meet the TTT should be that no penalty is issued. In addition, that change will assist with the backloading issue mentioned earlier, a matter alluded to in the Options Paper where it is said that extending the current arrangements for stevedore impacted trucks to another stevedore “may improve overall port efficiency by supporting port wide visits to multiple stevedores, reducing the number of separate trips into the port.”<sup>24</sup>

28. The Options Paper outlines some issues with the extension of the policy, as supported by NatRoad. These “challenges” where overcome would add to port efficiency, particularly the issue of there currently being no IT communication system between stevedores that would enable them to notify each other of which trucks are stevedore impacted trucks. The institution of such a system would also facilitate the backloading issue, especially where information relevant to the collection of containers/cargo was shared with truck operators. A new IT system with the required effect should be implemented at the same time as the no-penalty flow on policy is introduced.

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<sup>19</sup> [Submission 50 - Container Transport Alliance Australia \(CTAA\) - Australia's Maritime Logistics System - Public inquiry \(pc.gov.au\)](#)

<sup>20</sup> Id at p5

<sup>21</sup> Above note 1 at p31

<sup>22</sup> Above note 1 at p32

<sup>23</sup> Ibid

<sup>24</sup> Above note 1 p33

### Option A3 – Apply unforeseen events to terminal sections

29. NatRoad supports applying a stevedore unforeseen event to only part of the terminal rather than the whole terminal. This would allow partial closure of a stevedore terminal for an impacted time zone and would increase efficiency where it was possible for part of the terminal to operate as against all of the terminal being closed. The major benefit is that this option would allow port users not affected by the unforeseen event to continue operational functions such as on time running and TTT.

### Option A4 – Change carrier cancellation rules to ‘take or pay’

30. This option is designed to discourage or eliminate “slot hoarding.” We oppose the option. Whilst the current situation enables some slots to be held and then returned to the system for others to book, there are often other reasons than “slot hoarding” that a truck operator may have for cancelling a booking for a slot, especially in times of increasing supply chain disruption.
31. The Option proposed is that an operator would incur a penalty for a returned booking if the slot were not re-booked by another carrier, up to 12 hours prior to the start of the time zone. The Options Paper says that “this would effectively remove the ‘free’ 24-hour period where a carrier can retain a booking and return it to the system without penalty.” But the imposition of a penalty could mean that many operators’ planning for efficient delivery would be disrupted, and the option does not take account of supply chain pressures. Hence, NatRoad is opposed.

### Option A5 – Remove large and small carrier classifications

32. NatRoad represents all categories of operator and therefore we do not comment on this option.

### Option A6 – Change penalty amounts

33. As noted earlier, the penalty system applies to stevedores and to operators. In this sense, it balances the power relationship where stevedores have much greater power than operators, particularly in terms of fee setting for landside port charges and controlling the use of port infrastructure.
34. Whilst NatRoad supports the use of reciprocal penalties to balance that power relationship, we do not support an increase in the penalties applying to members. We reject the proposition that penalties have been taken into account in truck operators’ costs of doing business. The industry is extremely competitive and, especially for small operators, even the level of penalty established in 2011 is a substantial deterrent to non-compliance. The comment from the CBA noted in the Options Paper as follows is rejected as overly speculative:

*The CBA further notes that this “may also indicate that the dollar values of the penalties are not enough of a deterrent to change behaviour.”<sup>25</sup>*

35. As is evident from other feedback in this submission, NatRoad would like to see design elements of the scheme that promoted incentives rather than the use of penalties. But we definitely do not support an increase in the current penalties for truck operators.

### Option A7 - Improve road data transparency

36. NatRoad supports this option. Increasing information available publicly on stevedore and truck performance at Port Botany would provide greater visibility for industry of this part of the port supply chain. Our support is qualified only by the fact that data should be aggregated, its collection low cost and that it be published in a timely manner. Wherever possible, the data should be nationally consistent so as to enable the comparison of port performance, currently absent as is set out at paragraph 5 of this submission.

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<sup>25</sup> Above note 1 at p36

### Option A8 – Remove the broad power for regulating stevedore charges

37. In line with the NatRoad view, the Options Paper expresses the policy position that the Australian Government is best placed to consider the Australia wide regulation of stevedore landside charges. We mentioned our submission to the Productivity Commission earlier where the NatRoad position on this issue is set out at length.
38. Because the Options paper adopts the position that this is a national issue, the option proposed is for the NSW Minister to no longer have power to regulate the prices charged by stevedores. Whilst we agree that the issue of stevedore price regulation is currently being considered at a federal level, we would urge the reviewer to in fact move 180 degrees from the propositions that removing this broad power provides clarity of government responsibilities and provides certainty for industry that price regulation will not be applied. NatRoad believes that the National Transport Commission guidelines on stevedore charges<sup>26</sup> should be mandated and mandated at the State Government level. This is because such regulation would be within the plenary power of the NSW government and because landside port charges have grown unfairly and inequitably over the last five years, an issue set out in the NatRoad Productivity Commission submission referred to earlier.<sup>27</sup> Whilst this proposition appears to be out-of-scope for the inquiry, in the current context it is highly pertinent as another perspective from the “vacate the field” position adopted in the Options Paper, which we reject.

### Option B9 – No booking until discharge

39. This option further considers the systems used by stevedore terminals to manage truck bookings for container pick-up and delivery. The option further considers “slot hoarding” discussed in paragraph 30 of this submission. Stack runs are discussed as one method of coping with a large volume of containers arriving for collection:

*Stack runs are provided based on a set number of containers over a specified time period, usually a number of hours. Carriers are provided with any container destined for that carrier, rather than specifying which container they want to pick up first.<sup>28</sup>*

40. The Options Paper discusses an advanced booking system used at other ports. This system requires that the container must have landed at the terminal (i.e. been unloaded from the vessel) before it can be booked for pick up. The Options Paper states that this means that containers become available for booking over the time it takes to unload the entire vessel, not all at one time.
41. NatRoad agrees that the system as outlined is more efficient than the current system and would facilitate more backloading. This is because when containers are discharged the carrier is able to book a container directly to an available slot and the operator would then have the choice to pick up multiple containers within a single module as well as being able to drop off containers on the same trip. A further benefit for operators is they would only book slots when required and not in expectation that the containers will be ready for collection.
42. Offset against these benefits are the challenges noted in the Options Paper:
- *The time between a container being ready and the next available slot might be longer than preferred, especially during peak times, with containers potentially spending longer on the terminal.*

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<sup>26</sup> [National voluntary guidelines for landside stevedore charges | National Transport Commission \(ntc.gov.au\)](https://www.ntc.gov.au/national-voluntary-guidelines-for-landside-stevedore-charges)

<sup>27</sup> Above note 3

<sup>28</sup> Above note 1 at p44

- *Carriers cannot swap containers between slots that are in different modules or from any position in the terminal (if an advanced booking system is applied in an ASC-based terminal).*<sup>29</sup>

43. NatRoad therefore prefers to defer a recommendation in relation to this option until the detail of how it would work is assessed by users of Port Botany and whether any costs associated with the new system would be passed to truck operators. That latter point will be critical; the introduction of a more efficient booking system should not be a trigger for further landside port charges.

#### Option B10 – Points systems

44. As noted in the Options paper, under PBLIS, regular penalty payments are made between stevedores and operators (when penalties are incurred). In addition, operators pay fees to the stevedores to access the terminals.
45. The Options Paper recognises that an alternative system could be adopted to administer stevedore fees and PBLIS penalties. This is NatRoad’s preferred position with the aim of achieving simplification via incentives and rewards rather than the imposition of penalties. The Options Paper has a more specific focus on adoption of an alternative: it could be a means to “simplify or reduce the effort involved in this transfer of funds between parties.”<sup>30</sup> In this context, it is proposed that a points system, a demerit points approach, or a less frequent reconciliation of penalties would replace the way the imposition of penalties currently works. We oppose the advance payment of fees which would provide the terminal operator with additional interest benefit that truck operators would lose if not compensated. This would also firmly swing back the balance of power to the stevedores.
46. The Options Paper also notes that stakeholder feedback was that to reduce administration of the penalty system “a system of performance reviews conducted over a longer periodic timeframe” could be introduced. This is close to the preferred NatRoad model with incentives applying (such as reduction of or elimination of landside port fees) where certain KPIs are met by truck operators. This proposal would obviously depend on some element of price control and a more radical approach to the penalty system than is currently within scope of the review. But it remains NatRoad’s preferred position.
47. Despite the comments in the prior paragraph, and having regard to the options proposed, a longer period over which penalties were reconciled would reduce the administrative burden of all parties and is therefore supported.

#### Option B11 – Differential pricing of time zones

48. This option would introduce different prices for different times of the day.
49. The Options Paper quotes the CBA as follows:
- The CBA shows there has been a very limited shift towards 24/7 port logistic chain operations, noting that bottlenecks outside of the port contribute to the significant demand for peak hour slots, such as local council regulations and working hours of other parties in the supply chain.*<sup>31</sup>
50. There are various issues with truck curfews, overtime rates for work outside of ordinary hours and community pressure to limit night deliveries that are critical elements of an examination of this issue. The process of auctioning the relevant spots will obviously drive-up costs of time slots that are “auctioned” as proposed, to the extent of where these financial and operational disadvantages do not apply. In other words the costs of “peak” slots will be costed up to the additional cost incurred by the operator in off-peak operations. It is noted in the Options Paper

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<sup>29</sup> Above note 1 at 45

<sup>30</sup> Id p46

<sup>31</sup> Id p48

that an auction system may cause price uncertainty and system complexity, as per feedback from stakeholders. We agree.

51. We also agree with the conclusion that “it is not expected at this time that an auction approach would be suitable.”<sup>32</sup> Instead the Options Paper proposes that voluntary adoption by stevedores of a differential pricing approach occurs. We do not support such an approach because it would lead to the setting of higher fees for peak period slots. The assumption that discounting off-peak charges to incentivise 24/7 operations would occur, as indicated in the Options Paper, is challenged. There is no evidence that this would be the case.

52. Before leaving this topic, we must also question the proposition in the Options Paper thus:

*Additional costs may be associated with off-peak labour, but some labour is already employed off-peak and is currently under-utilised.*<sup>33</sup>

53. That proposition does not apply to truck drivers. There is a large truck driver labour shortage.<sup>34</sup> There is no under-utilisation of truck drivers. The current market is one where labour shortages abound. We therefore challenge the accuracy of the quoted statement in the prior paragraph.

#### Option B12 – Certified transport operators

54. The Options Paper notes that other jurisdictions adopt a certification requirement or Truck Licensing System (TLS) to truck operators to obtain port access. It is asserted that introducing a certified transport operator requirement could support port efficiency by ensuring truck operators meet performance standards. In fact, on current indications, the opposite may be the case; for example, higher productivity heavy vehicles are currently penalised where infrastructure requirements do not suit their loading and unloading. A long vehicle fee is charged by Patrick at Port Botany.<sup>35</sup> This fee stands at \$50.00 per vehicle.<sup>36</sup> It is counterproductive and denies the efficiency that use of higher productivity vehicles brings.

55. We note that the Options Paper records stakeholder feedback that Performance Based Standards (PBS) vehicles be promoted as the road freight vehicle of choice in Port Botany, for their safety, environmental and productivity benefits. But the long vehicle fee stands in the way of such usage.

56. Until this issue is sorted out, as well as costs and benefits being better assessed, NatRoad is opposed to the recommendation to introduce a certification/licensing requirement.

#### Option B13 – Empty container storage facility data transparency

57. This option discusses an issue that causes difficulties for NatRoad members. Because of a surplus number of empty containers, with increasing frequency the empty container parks at Port Botany become full, leading to issues for transport operators trying to return empty containers to the park they are directed to by shipping lines. One of the factors that is also a drag on operating 24/7 is the limited operational hours of empty container parks, a factor that reinforces our arguments at paragraphs 48-53 of this submission. For systemic reform, these opening hours must be extended.

58. The Options Paper says that government should require empty container storage facility data and make this publicly available and require empty container redirections in EDI format. We agree with these suggestions but believe that more fundamental reform is required. This is especially

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<sup>32</sup> Id p50

<sup>33</sup> Id p51

<sup>34</sup> Discussed for example here: [Truck driver workforce shortages: A perfect storm - News - Labourforce Australia](#)

<sup>35</sup> [Container stevedoring monitoring report 2020-21.pdf \(acc.gov.au\)](#) p52

<sup>36</sup> Ibid

the case with hours of operation. We reinforce that extending empty container park operating hours will add to supply chain efficiency.

#### Option B14 – Freight Community System (FCS)

59. In essence, this option covers formalising data sharing between NSW freight businesses.
60. We note the proposition that the data standards that are used in the NSW FCS need to be widely acceptable, implementable, and applicable for users in other jurisdictions. Subject to this caveat, we support the option that calls for the further development of an FCS Strategic Business Case and, if positive, development of a phased implementation plan. Whether or not this development is accorded a high priority as proposed in the Options Paper is, in NatRoad’s view, only something that can be decided once the business case work has been completed.

#### Option B15 – Second Truck Marshalling Area (TMA)

61. NatRoad agrees with the statements in the Options Paper that:

*A possible location of the second TMA closer to the Patrick and Hutchison terminals could reduce travel distances within the port precinct for early arriving trucks accessing the Patrick and Hutchison terminals, leading to potential reductions in congestion on roads surrounding the port precinct. It would also provide greater flexibility for road carriers to manage their fleet.<sup>37</sup>*

62. The Options Paper is, however, cautious in its approach and proposes that further investigation of the need and timing for a second truck marshalling area be undertaken. The Options Paper then says that, if required, options for its development should be considered. NatRoad believes that this is a high priority issue and that the investigations proposed should be fast tracked.

#### Option B16 – Non-government implementation of PBLIS

63. The Options Paper says that:

*The administration of PBLIS requires close involvement in and oversight of the operations of the port landside logistics supply chain. Due to its highly operational nature, the administration of PBLIS may be more appropriately undertaken by the port operator NSW Ports, given its strong focus on port operational efficiency*

64. We disagree. There is no evidence that private sector administration of the system will increase efficiencies. The fact that there is no price regulation of landside port charges or administration charges that could be applied by a private corporation, weighs in this consideration. We do not agree that the vesting of this responsibility in the private sector would lead to better working conditions and lower costs for truck operators. Therefore, in the absence of evidence, compelling or otherwise, we oppose enabling NSW Ports to administer PBLIS and TfNSW contracting NSW Ports to manage the TMA and ANPR cameras.

#### Option C17 – Transition away from PBLIS but retain oversight

65. NatRoad, as a general policy position, holds to the view expressed in the Options Paper that “it is preferable wherever possible for government to not intervene in private markets to avoid unintended consequences such as impeding market flexibility or driving inefficient behaviours.”<sup>38</sup> But governments should intervene where the power imbalance between parties causes market distortions. We agree with the following comments on PBLIS:

*Arguably, PBLIS has been successful in improving the road transport interface with the three international container terminals at Port Botany, leading to a relatively consistent truck turnaround time (TTT). PBLIS has also balanced to a degree the disproportionate “market power”*

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<sup>37</sup> Above note 1 p61

<sup>38</sup> Above note 1 p66

*of the stevedore companies by imposing financial penalties for poor terminal performance that delays road transport operators unduly or for non-service events. In addition, it regulates the imposition of financial penalties on transport operators for poor arrival performance and “no shows”<sup>39</sup>*

66. Mere monitoring of port performance is a poor substitute for market intervention that balances market power to some extent, albeit the growth in landside port charges shows that the balance remains undeniably in favour of the stevedores.
67. We do not agree that the PBLIS regulation should be removed in a phased transition with retention of performance monitoring and the potential to re-introduce PBLIS should port performance deteriorate. Port performance measurements need to take account of the increase in landside port charges and, as we have proposed to the Productivity Commission, become subject to price regulation. Those port performance measures must, as we argued earlier, be consistent Australia wide and permit comparisons with other ports' operations.

#### Option C18 – Oversight of access arrangements

68. It is proposed that in the context of the situation brought about by the implementation of Option C17, oversight of the commercial contractual arrangements between stevedores and truck operators that would replace the PBLIS rules could be provided to support a transition process. This is proposed to: “introduce appropriate arrangements to ensure equitable access to the port.”
69. With respect, this is another way of regulating an imbalance of market power. In this context, the process is similar to, but goes further than the provisions of the now defunct Bill<sup>40</sup> that would have introduced a strengthened unfair contracts regime for small business, also a measure to equalise differences in market power.
70. The Options Paper indicates that “each stevedore would consult with truck operators before submitting its standard form agreement to an appropriate entity, or independent organisation such as a pricing regulator (possibly IPART or the ACCC), for approval.”<sup>41</sup>
71. The proposed mechanism has utility and is supported no matter the other reforms introduced. Accordingly, whilst the option proposed is for regulatory oversight of industry access arrangements to support the transition away from PBLIS, NatRoad submits that the proposed oversight of contracts should occur as part of any ongoing regulatory system, as a check on the power imbalance referred to throughout this submission.

#### Option D

72. Option D considers the performance of rail and its impacts on the Port Botany container task. Accordingly, NatRoad offers no comment on Option D.

#### Conclusion

73. NatRoad believes that especially for truck operators, there should be further investigation of how incentives may assist with port efficiencies e.g., through a lessening of landside port charges where high productivity vehicles are used rather than these vehicles being subject to a “long vehicle” fee.
74. NatRoad does not believe the time is right to dismantle the PBLIS scheme, as it has conferred benefits on all port users and assisted to balance the undue market power held by stevedores.

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<sup>39</sup> Above note 19 p3

<sup>40</sup> Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022

<sup>41</sup> Above note 1 p68