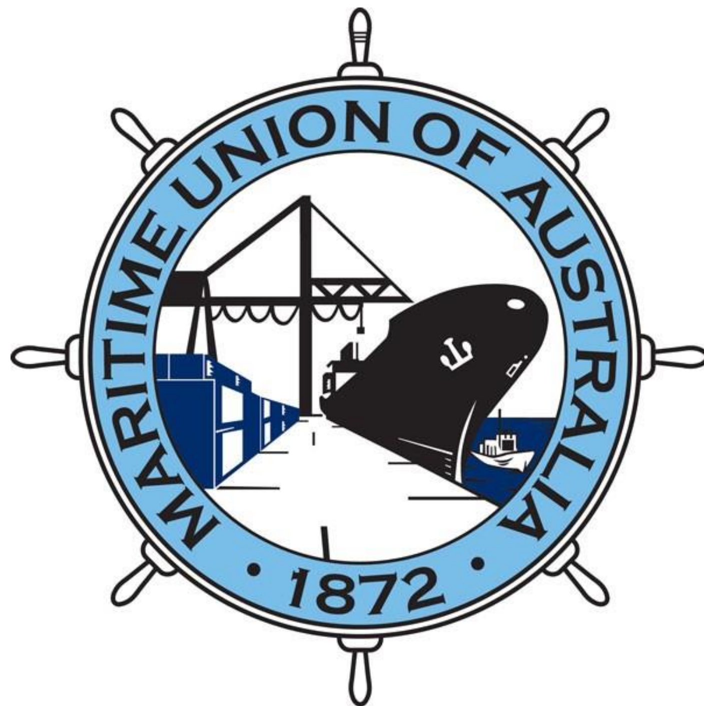
MUA Submission:

Draft report for the Inquiry into the Long-term productivity of Australia's maritime logistics system



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Productivity Commission

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About us

This submission has been prepared by Maritime Union of Australia (MUA). The MUA is a Division of the 120,000-member Construction, Forestry, Maritime, Mining and Energy Union and an affiliate of the 20-million-member International Transport Workers' Federation (ITF).

The MUA represents approximately 13,000 workers in the shipping, offshore oil and gas, stevedoring, port services and commercial diving sectors of the Australian maritime industry.

Overview of the MUA submission

This submission responds to issues raised, observations, findings, recommendations and calls for information in the following order, by chapter:

- Overarching comments

- 8. Workforce arrangements: background and framework
- 9. Workforce arrangements: issues

- 3. Container port performance

- 5. Market power of port operators
- 6. Market power in other markets

- 7. Container port capacity and landside infrastructure
- 10. Skills and labour supply
- 11. Technology, information and innovation
- 12. Australia's national shipping concerns.

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Overview: Australian ports and workforce have coped well with unprecedented global challenges

While the Commission has examined many factors that contribute to port performance, and has made many useful observations on how port performance could potentially be improved, and how that performance might be measured and benchmarked (including over time), the evidence it presents has not identified a smoking gun – a single factor or even a cluster of factors that identifies the underlying cause of alleged poor port performance that apparently motivated the commissioning of the inquiry.

That is not surprising, because the evidence presented in the report shows Australia's major container ports are generally working well.

However, the Commission seems intent on looking past that evidence in its own report to prosecute an argument that is astonishingly out of touch with the current debates on the state of Australia's economy and workforce. Four recommendations are amendments to the *Fair Work Act 2009* recycled from the Commission's 2015 Workplace Relations Framework report,[1] all of which reduce rights for workers, make it harder for workers to take protected action, hand additional rights to employers and government to terminate protected action by workers and to punish workers who take industrial action (and even if they don't take protected action).[2]

Even after seven years of a government that blamed and scapegoated workers at every turn, the Coalition would not implement any of these draconian recommendations. Australia already has some of the worst workplace rights in the OECD, resulting in growing inequality. It is also a signatory to ILO conventions that protect rights to freedom of association, collective bargaining, the elimination of workplace discrimination, and to a safe and healthy work environment. These rights must not be further eroded.

Of course, these recommendation from 2015 do not reflect any of the lessons from the pandemic or the current economic environment of growing inequality, chronically low wages, insecure work, widespread labour shortages, and highly gendered industry segregation.[3] Implementing the Commission's draft recommendations would make all these problems worse.

The Commission has also recommended that the Fair Work Act be amended to make unlawful some core provisions of current stevedoring enterprise agreements (Recommendation 9.1). In a workplace that requires flexibility to match shipping schedules and operates 24-hours a day and 365 days per year, these provisions are critical to providing workers with some job security and predictability in their work. In an overwhelmingly male-dominated industry, these provisions are critical to tackling gender segregation, and pay equity. They allow men to participate in care work at home, allow their partners to participate in the workforce, and allow more women to work in higher-paying jobs on the waterfront.

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[1] The Productivity Commission report on the Workplace Relations Framework was sent to government on 30 November 2015. The 2015 Commission report is discussed on p.27 of the Commission Draft Report.

[2] The Recommendations on *Fair Work Act 2009* amendments which are recycled from 2015 are Recommendations 9.3, 9.4, 9.6 and 9.8.

[3] Andrew Stewart, Jim Stanford, Tess Hardy, The Wages Crisis: REVISITED, May 2022. Dan Nahum and Jim Stanford, Working With COVID: Insecure Jobs, Sick Pay, and Public Health, May 2022.

The current government has nominated ‘Addressing pay inequity’ and ‘Improving job security and reducing industry and occupational segregation’ as key goals in its most recent budget.[4] Both job security and gender equity will be embedded as goals of the *Fair Work Act*.

In contrast, the words ‘gender,’ ‘male,’ ‘female’ or ‘inequality’ do not appear anywhere in the Commission’s 447-page report. ‘Participation’ refers only to participation in the Inquiry, and ‘discrimination’ only in reference to legislation, not the industry itself. This is a shocking omission for a report that overwhelmingly focuses its recommendations on a workforce that is only about 5% female. Only one page is spent on ‘a snapshot of the ports workforce’ based on a single ABS graph, with no demographic information, or consideration of how the recommendations would impact those demographics.

In all, 10 out of 14 draft recommendations in the report focus on punishing the stevedoring workforce, and four of these would punish the entire Australian workforce. These recommendations would also roll back efforts to improve gender equality in stevedoring workplaces and households. The recommendations are extraordinarily unbalanced, and an inaccurate reflection of the real challenges facing global supply chains, and the efforts the government could make to tackle how global shipping companies service Australia.

In August 2022, more than half of container ships were still arriving more than 5 days late for their designated slots to be serviced at port container terminals.[5] While this is an improvement,[6] it is still abysmal.

Australian ports and their workforce should be commended for how well they have coped with the challenge of coping with global delays and congestion while handling record freight volumes and dealing with covid safety measures that impacted labour availability and productivity,[7] for more than two years. If half of the stevedoring workforce arrived 5 days late for work, it would be a national scandal. Yet the Commission has not seen fit to make a single recommendation to require improved service levels for international shipping to Australia – they just want to blame the workforce that continued to show up to work and move international containers at all hours of the day and night, at considerable personal risk, while the Commissioners were no doubt all working from home.

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[4] See Budget Strategy and Outlook Budget Paper No.1 October 2022-3, p.11, p.14 Women’s Budget Statement October 2022-3, p.27

[5] Sea-Intelligence, Schedule reliability continues to improve in August 2022, 29 September 2022.

[6] Over the 18 months from August 2020 to January 2022, 83% of all the international container vessels arriving in Australia’s five major container ports arrived late for their allocated slot. Those late vessels were an average of almost 7 days late. See the MUA’s February 2022 submission to the inquiry.

[7] Covid safety measures that impacted productivity included restrictions on how many workers squeezed into vans for transport around the terminal, the allocation of short periods of time between shifts so that the virus would could not be transmitted between shifts, and drivers cleaning machinery before they handed them to the next operator. These measures ensured continuity of operations.

Key findings in the Commission's draft report that shows that Australian ports are generally working well include:

- Port productivity has increased over the last 30 years, notwithstanding productivity has slowed over the last 10 years - which we say is consistent with productivity trends in all industries (Draft finding 3.5)[8];
- An analysis on Australian port productivity derived from (i) an examination of metrics from *Waterline* and those from IHS Markit's Port Performance Program data; (ii) a deep analysis of the World Bank Container Port Performance Index (CPPI)[9] report findings; and (iii) the Commission's alternative way to benchmark container ports which estimates a production possibility frontier using data envelopment analysis (DEA) revealed that Australian ports perform well, notwithstanding there is considerable room for improvement, particularly in ship turnaround times, and there are a range of opportunities to improve turnaround times, mostly associated with improving capital productivity.
- There is no one aspect of Australian port operations that is inefficient to the point it can be clearly demonstrated to be affecting port productivity, but there is nevertheless considerable potential to improve efficiency in many aspects of port operations, and if improved, that could lead to improvements in productivity and savings for consumers (Draft finding 3.9). One of the several examples cited for efficiency improvement is that there is scope to improve crane rates i.e. crane capital productivity (Draft finding 3.4);
- No new regulation of ports is required (Draft finding 5.4), except for international shipping lines (Recommendation 6.1 and Draft finding 6.3);
- Investment is broadly in line with expected container growth forecasts (Draft findings 7.1 and 7.2);
- Port capacity planning is broadly on track (Draft finding 7.4); and
- Technological development is in line with international practice (Draft finding 11.1).

Furthermore Figure 3.1 from the Commission's Trade and assistance review 2020-21 shows that since the pandemic began, Australian goods imports and exports have grown. While imports, which mainly reflect the container trade grew more slowly than exports, there is an upward trend, indicating that container ports continued to facilitate strong trade growth, notwithstanding the challenges of the pandemic.

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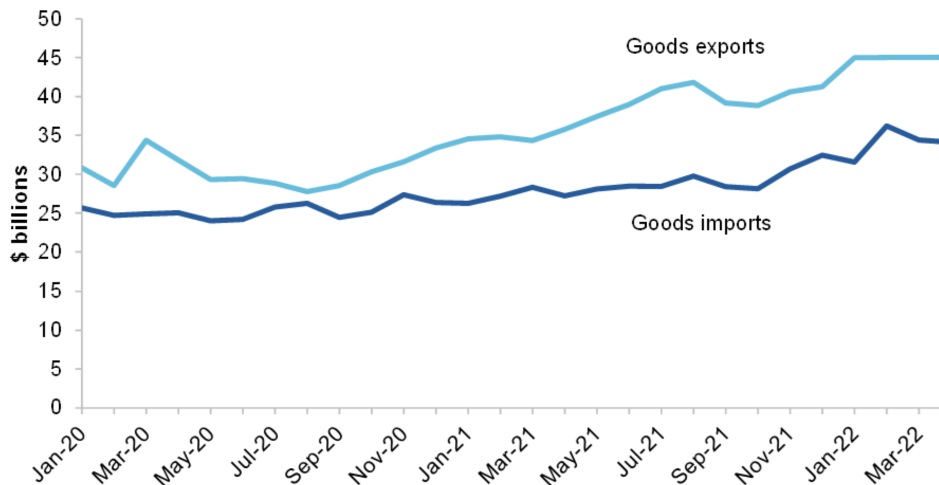
[8] Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, P89 - "*The quayside productivity of Australian container ports has risen since 1989 regardless of the measure chosen. Growth in crane and ship rates was strongest in the late 1990s following significant waterfront reforms. Since then, growth rates have been lower*."

[9] The World Bank, 2022, *The Container Port Performance Index (CPPI) 2021: A Comparable Assessment of Container Port Performance*, World Bank, Washington, DC



Source: Productivity Commission 2022, *Trade and assistance review 2020-21*, Annual report series, Canberra, p.59

The Commission has found that the estimated potential benefits of $605 million a year from improving ship turnaround times in Australia's five major container ports in line with the global average, if the resulting cost savings were passed on. This appears to us to be a very modest cost, particularly when compared to the combined value of Australia's seagoing international imports and exports which is over $600 billion per year (in 2017-2018).[10] This works out to $64.26 per TEU across Australia's five container ports. For a container of wine (with a retail value of $30 per bottle) this would save consumers just one third of one cent per bottle!

The reason why no smoking gun was found, or no silver bullet identified, derives from the motivation for the Coalition Government commissioning the inquiry, which apart from the ideological motivations, appears to have been driven by the Australian Competition and Consumer Commission's (ACCCs) flawed reporting on the World Bank/IHS Markit report - *The Container Port Performance Index 2020: A Comparable Assessment of Container Port Performance* - in its 2020-21 Container Stevedoring Monitoring Report of December 2021. The ACCC conclusions in that report, derived from a less than complete understanding of the World Bank methodologies and therefore its findings, nevertheless proceeded to emphasise alarmist headline findings which allegedly presented Australian ports in a poor light relative to a range of other ports.

That flawed reporting by the ACCC in its Container Stevedoring Monitoring Report of December 2021 was jumped on by all the usual self-interest lobby groups, again without a full understanding of the methodology of the World Bank report, or the honestly to draw attention to its own caveats, in order to grandstand in herd like behaviour about the need for a revolution in the operation of Australian ports, and to resolve the alleged domestic causes of supply chain disruption in Australia. Mistakenly, a large part of that grandstanding was addressed at the alleged impacts of the exercise

[10] Australian Naval Institute and Naval Studies Group, University of New South Wales (Canberra), *Protecting Australian Maritime Trade*, 2019, https://navalinstitute.com.au/wp-content/uploads/Protecting-Australian-Maritime-Trade-Report-March-2020.pdf

of workforce industrial rights and the actions of the labour union that represents the workforce, the MUA.

It is important to emphasise that the Commission concluded from its deep analysis of the World Bank CPPI report that "*Unpacking the results of the World Bank study revealed that Australia could improve turnaround times for large ships by reducing anchorage and, in particular, cargo handling times. It also revealed that Australian ports have similar gross crane rates to the average global port — in other words, Australia's major container ports do not rank poorly in the World Bank analysis because ports move fewer containers per crane while ships are being worked. And the Commission's benchmarking analysis showed that Australian container ports could utilise their physical inputs more intensively (and improve their technical efficiency), but data limitations mean the analysis cannot shed light on ways in which productivity might be improved in the short to medium term. The benchmarking also highlighted the role that capital can play in turnaround times."*[11]

The Commission noted that "*Some ports have an excessive level of investment for their current level of throughput. This over investment in costly capital is inefficient even if it means that they can turn ships around quickly.*"[12]

This is the cost of a competition focus rather than a customer focus in terms of the significant capital cost in an industry like stevedoring. The data shows that productivity is lower in the terminals of 3rd operators, all with low market share and comparatively low productivity due to their more highly automated operations.[13] Machinery utilisation is lower than optimal with hundreds of millions of dollars of equipment sitting idle at any one time due to excessive competition, and an inability to secure more market share when it is a derived demand industry.

The MUA view presented in its submission to the Commission in February 2022[14] is now vindicated by the Commission's draft report which has dissected and analysed port operations that present opportunities for improving port efficiency and productivity, and not one of those is within the control, alone, of the port workforce.

The Commission's draft report has helped clarify much of the misunderstanding about the World Bank report, and what it really reveals about Australia's relative port performance, to the extent that the Commission has posed what it regards as a better way to provide that benchmarking, and even then the Commission says that "*the potential efficiency gains suggested by the Commission's preliminary benchmarking exercise should be interpreted cautiously*".[15]

We note also that in the body of the report, the Commission correctly put Australia's recent port performance in the context of the global impact of the pandemic on supply chains. The Commission explained it this way: "*On the demand side, an increase in consumer spending on*

[11] Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, P140
[12] Ibid, P141
13 See Figure 10 in the Technical paper.
[14] MUA, *Submission: Inquiry into the Long-term productivity of Australia's maritime logistics system*, 22 February 2022
[15] Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, P138

household goods (for example, desks and computing equipment), and online shopping, along with the loss of air freight capacity on passenger flights, pushed up demand for in-bound services. On the supply side, COVID induced port shutdowns around the world and congestion at ports significantly disrupted global container shipping services."[16]

We note that the draft report has not identified any ground breaking reforms that are essential and urgent to improve Australia's container port performance. No recommendations are proposed to improve port performance.

Indeed the Commission has made just four recommendation for Government action which relate to competition and market power (apart from a package of labour relations recommendations, which we address separately). These are:

- Repeal Part X of the *Competition and Consumer Act 2010* (Draft recommendation 6.1);
- 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 (Draft Recommendation 6.2);
- Remove exemption for shipping contracts (Draft recommendation 6.3); and
- Amend coastal shipping laws to increase competition (Draft recommendation 12.1).

None of those has a focus on core port operations, and in any case such recommendations are quite predicable. The Commission consistently opposes arrangements that provide a regulatory or an industry assistance solution which deviates from orthodox neo-liberal economic policy and it consistently opposes sensible solutions requiring industry assistance (government intervention), no matter how important the objective in the national interest context. A scan of Commission reports reveals that it consistently refers to distortions allegedly caused by industry assistance measures, but invariably does not produce a cost benefit analysis, taking account of all costs, including costs to labour and households nor benefits like job creation with all its positive social impacts.

The Commission has never entertained an industrial policy or national interest solution to resolve the supply chain resilience weakness or national security/Defence support weakness from the nation's total reliance on foreign owned and foreign registered ships, in direct contravention of Australian foreign policy under the US alliance where the US Jones Act has commanded US bi-partisan support for decades. This is reflected in various Commission reports on maritime and supply chain issues going back years.[17] We address the national shipping issues separately.

Notwithstanding that the Commission has identified flaws in data collection, data reporting and data analysis that prohibits an objective analysis of Australian port performance on some aspects of the flow of containers to and from ships and through a container terminal, it has not made any recommendations for improvement. The Commission concluded that "*The Australian data does not enable a comprehensive assessment of overall container port productivity owing to its focus on the separate activities that ports undertake (marine, quayside and landside operations) and on*

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[16] Ibid, P3.

[17] Those Commission reports include:

- Report on its inquiry into Vulnerable Supply Chains - 13 August 2021.
- Report on its inquiry into Resources Sector Regulation – 10 December 2020.
- Report on its inquiry into National Transport Regulatory Reform - 1 October 2020.
- Report of its inquiry into Tasmanian Shipping and Freight - 24 June 2014.

partial measures of productivity. As a result, there are some important information gaps that are material to understanding port productivity, particularly in relation to labour productivity. The existing framework for assessing port performance could take a more holistic view on the time it takes to move containers through a port by expanding the time-based metrics collected. “[18]

We believe there could be merit in the container flow/time metrics approach advocated by the Commission in designing an Australian ‘index of port performance’ that measures the productivity of a port as outlined diagrammatically in Figures 2.1 (The chain links imports and export across three fields of operations) and 3.1 (The anatomy of a port call). However, we caution an overemphasis on ship turnaround time or port hours metric. While this ‘global’ metric is important to shipping lines, it is not as critical to terminal operators who are focussed on crane operations in the quayside/landside and transport operators/cargo owners (shippers) who are focussed primarily on the landside.

We hope that the Commission’s draft report ‘information requests’ will elicit sufficiently rich responses that will enable the Commission to make a one or more recommendations in its final report on data collection, reporting, analysis and on how collectively, industry stakeholders can assess and respond to data insights.

We address these issues in more detail elsewhere in this submission.

The draft report points to many opportunities to potentially improve efficiency in ports, most of which the key players like port operators, terminal operators and government regulators are continuously examining and responding to. We will examine some of those later in this submission.

We urge the Commission in its final report to acknowledge that labour, or workers, a key input to port operations, have rights, and are entitled to access and enjoy those rights like the right to organise and collectively bargain, the right to safe work (which the Commission has already acknowledged) and the right to a grievance mechanism. Likewise corporations, employers and managers of capital, have an obligation to confer those rights on workers, and identify aspects of their operations and business decisions which impact on those human rights and mitigate them.

Those fundamental rights given effect by instruments of the UN and codified in Australian laws and practice, must by necessity temper the solutions to alleged deficiencies in Australian port performance.

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[18] Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, P89.

Workforce arrangements: Power and general principles (Chapter 8)

Draft finding 8.1: Unions hold substantial bargaining power
Conditions in container terminal operations, together with the workplace relations framework, confer significant — and unbalanced — bargaining power on unions.

The text of the report clarifies that in relation to employers, 'employees hold greater bargaining power over the workplace arrangements in container terminals' (p.257).
The implication that workers and unions have more power than employers is simply not true, and we reject it entirely.

It is true that there is a higher level of union coverage in container terminals and other ports than in other sections of the economy, and that the MUA and its predecessor unions have effectively represented workers in ports. However the claim that this means that workers and union actually have more power than employers is a fantasy. The fact that the union is well organized and has strong support in the workforce is due to the *lack* of power of workers.

Workers know that union campaigns make the difference about whether they live or die on the job. The current lack of stevedoring workplace fatalities in Australia, particularly compared to New Zealand, is a direct result of union campaigns between 2007-2014, which were opposed by employers. Since our submission in February 2022, two more stevedoring workers have died on the job in New Zealand.

We would have 18 stevedoring fatalities a year in Australia if they took place at the same rate as the Auckland container terminal.

The Commission notes a culture of 'confrontation' on the waterfront. (p.87), and laments:

> cultural norms, that perpetuate historical workplace arrangements in container terminals, and which reflect power sitting with workers are strong. Many aspects of current workplace arrangements have a long history extending back to before containerisation in the 1960s. The industry also has a long history of industrial action being used as a tactic in workplace negotiations (box 8.3 and chapter 9). (p.255)

This statement betrays a fundamental understanding of the history of workplace conditions and organisation on the Australian waterfront.

Any confrontational culture on the waterfront certainly does not arise from 'power sitting with workers'. The opposite is true. It arises from the ongoing threat of injury and death, and the living memory of absolutely brutal working conditions and life-destroying exploitation, including workers being expected to work 24 hours straight with limited access to food or amenities. This is described well in a Sydney Morning Herald article we attach as an appendix.[19] A doctor's report on Sydney

[19] Blotting out the memory of Sydney's Hungry Mile, Sydney Morning Herald, 16 Sept 2006.

wharfies in 1940s described how a desperate daily search for a casual job, and 'feverish high tension work' in an effort to get hired the next time resulted in a 'shocking price of premature old age and physical calamity.' He described deformities in workers such as severe compound fractures, crippling wounds, spinal and head injuries, and respiratory diseases.[20] That was stevedoring work and it remains in the living memory of the current workforce.

Many of these conditions have been improved through efforts of workers and their unions, but the challenges of working around the clock in difficult and dangerous conditions remain. In many respects the dangers have increased with the general size of the cargo and equipment that moves it.

Employers have led many confrontations, implementing policies which led to high rates of stevedoring injuries and fatalities, historically and in the wake of the intensification of work after the 1998 lock-out. All the established industry employers opposed the safety reforms before they were finally introduced in 2014. The Patrick dispute was an employer lock-out.

Australian stevedoring companies are some of the world's largest multinational corporations. They include:

- Hutchison, with $36 billion in revenue in 2021
- DP World, with $11 billion in revenue in 2021
- Qube (bulk and general ports operator and joint owner of Patrick) had a revenue of $2.5 billion dollars in FY2022, and extensive political and media connections in Australia:
    - The Managing Director of Qube Maurice James was an Expert Panel Member of the National Freight and Supply Chain Inquiry.[21] No unions were invited to participate.
    - Qube worked with Treasury officials to manipulate JobKeeper rules to received more than $30 million in JobKeeper subsidies, despite little evidence that they were eligible, and substantial executive bonus payouts in the same period.[22] The Jobkeeper subsidies this one company secured in 2020 were larger than the MUA's annual budget. We have never been subsidised by government.
    - Qube solicited direct intervention by previous government and Prime Minister during last bargaining, using claims proven not to be true.[23] This is the same management which conspired with government to sack its entire Australian workforce in 1998, and train a replacement workforce in Dubai.
    - We have no doubt that Qube played a role in securing this Inquiry being called, as a way of targeting the MUA.

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[20] McQueen R. (1943), Report on the Medical Examination of Sydney Waterside Workers with Disability cards, Quoted in Margo Beasley, 1996, *Wharfies: The History of the Waterside Workers' Federation*, Halstead Press/Australian National Maritime Museum, p 119.

[21] Australian Government, Expert panel members – National Freight and Supply Chain Inquiry.

[22] Pat McGrath, JobKeeper messages between Qube Holdings and Treasury shed light on how ports giant qualified for subsidies, ABC, 3 Mar 2021; Gareth Hutchens, JobKeeper recipients paying millions in bonuses to their executives, research reveals, ABC, 10 Sep 2020; Callum Foote, https://michaelwest.com.au/bosskeeper-ports-giant-qube-bullies-its-way-into-jobkeeper-and-plush-bonuses/

[23] ABC RMIT Factcheck, Scott Morrison said 40 cargo ships were being prevented from delivering supplies to Australia by industrial action. Is that correct? 9 October 2020.

- ICTSI is the smallest Australian stevedoring company, with a revenue of $2 billion.

These companies make all decisions on capital investment, the structure and processes of work, and the hiring and firing of employees.

Lack of evidence: Bargaining, politics and the media

There is no evidence in the report to support a link between the workforce arrangements targeted in Chapters 8 and 9 and productivity. In fact, statistics provided by the Commission identify ongoing improvements in productivity. These have mainly been produced by the increases in labour productivity following the significant intensification of work in the wake of the 1998 Patrick lockout.

The Commission justifies the extensive focus on workforce arrangements as follows: 'The bulk of the evidence put to the inquiry focused on the workplace relations of container terminal operators and, to a lesser extent, towage services' (p.248). But just because 'many inquiry participants think workplace arrangements lower productivity' (p.22) does not constitute evidence of a systemic lowering or port productivity by the actions of port labour.
The 'evidence' in support of these statements appears to be largely:

- Complaints from 3rd parties, whose understanding of the real situation in container terminals is highly influenced by political campaigns and media coverage, straight from the Prime Minister and journalists with strong connections with stevedoring employers.
- Complaints from stevedoring employers, which is an effort by them to use the Commission to gain increased bargaining leverage.

The data analysis produced by the Commission has revealed that Australia does not have a measure of labour productivity. Yet the data shows that productivity is improving, and that capital productivity, which is being measured, shows only modest growth. We can conclude from this that labour productivity is positive and also improving, most likely at a faster rate than capital productivity. Of course, the productivity of a terminal will be affected on a day or during the hours that industrial action is being undertaken at a terminal. Blind Freddy knows that, so it did not require a 400+ page report from the Commission to reveal that. However, as we emphasise, Australia is a nation that is a signatory to a raft of Conventions from UN bodies such as the ILO that confer rights on citizens and workers, derived from the ILO Declaration on Fundamental Principles and Rights at Work.

We would urge the Commission to restrict their recommendations to matters they have real data and evidence for.

Gender equality and workforce participation

The Commission does not appear to be aware that the stevedoring industry has an extremely high level of industry segregation, with a workforce that is approximately 95% male. Or, if it is aware, it does not seem to think this is a problem worth discussing. Perhaps this is an issue with the Terms of Reference drafted by the previous government, whose record on women's equality is well-known. Whichever is the case, the result is that the words 'gender,' 'male,' 'female' or 'inequality'

do not appear anywhere in the 447-page report. 'Participation' refers only to participation in the Inquiry, and 'discrimination' only in reference to legislation, not the industry itself.

This is important to understand because the report attacks key Enterprise Agreement provisions that are part of the process of addressing gender inequality in the industry, both in stevedoring workplaces and in the households of stevedoring workers.

To give one example of how entrenched the problem is in the industry, Qube (bulk and general stevedoring operator and joint owner of Patrick) is an ASX listed company required to file reports under the Gender Equality Act. Their report shows

- 4% of their machinery operators and drivers are female
- 7% of their laborers are female
- 4% of their technicians and tradespeople are female
- 9% of the management are female[24]
- Until 2017 Qube had no women on its board of directors[25]

These figures are provided across the logistics sectors Qube operate in, and we would expect the figures for female participation to be even worse in their stevedoring divisions.

Key contributing factors to the very low level of women's participation in the stevedoring industry are:

- The extreme level of flexibility required of the workforce, which offers more flexibility to employers in allocating labour than any other industry – see discussion below in our response to Information Request 9.3. Not knowing when they expect to work makes it very hard for workers to be able to commit to household care work.
- Discrimination in hiring practices by employers, who historically required workers to pass physical tests that did not correspond to the actual job requirements. The MUA has consistently opposed the use of these tests.
- Male-dominated management, who tend to encourage and reward male-dominated workplace culture.

The MUA is committed to supporting women into the stevedoring industry. We are in favour of enforceable targets for the employment of women, and in a few cases have been able to get these into Enterprise Agreements. We have a Women's Officer who is part of the union's National Council. We have active national and local Women's Committees. We play a leadership role in the Women In Male-Dominated Industries and Occupations (WIMDOI) network, which provides national and local support networks for women in stevedoring and other industries.

When the new Hutchison terminals were established, we worked hard to ensure these new workforces included a better representation of the community. The Hutchison terminals presently have the most women employed as a percentage of the workforce of any Australian stevedore, as well as a considerable number of First Nations workers and workers from other groups underrepresented in the workforce.

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[24] Qube Holdings, 2022 Workplace Gender Equality Act Report, Appendix: Workplace Profile.
[25] Jenny Wiggins, Qube tees up Target for Moorebank freight hub as net profit falls 16 pc, *Australian Financial Review*, August 23 2017.

The order of pick and rostering arrangements which the Commission recommends be banned in the *Fair Work Act* (Draft Finding 9.2 and 9.3, Draft Recommendation 9.1) are workplace measures that act together to allow for some predictability and security in work. These measures:

- are critical to facilitating women being able to work on the waterfront
- facilitate more equality in care work in the households of the existing male-dominated workforce, by allowing workers to commit to care work because they know when they are working, and critically, when they are not working.

If male stevedoring workers are able to commit to playing a greater role in household care work, this allows their female partners to be able to better participate in the workforce, which has a broad economic benefit. If male stevedoring workers are on completely casualised work schedules and do not know when they will work until the afternoon of the day before, or cannot be certain that they will not be called into work, their female partners must make a much greater commitment to household care work, and in many cases are unable to participate in the workforce at all.

To give one example, the Hutchison roster for their permanent workforce offers workers considerably more predictability in their work. As described above, these terminals have a far more women working there than other stevedoring terminals.

The links between rostering and gender equality in the workplace and at home is recognised by the current government and was part of the priorities of the Jobs Summit, which included ‘embedding women’s economic participation and equality as a key economic imperative.’ Outcomes of the Summit included a suite of actions aimed at ‘Promoting Equal Opportunities and Reducing Barriers to Employment’, including to:

- Initiate a detailed consultation and research process considering the impact of workplace relations settings (such as rostering arrangements) on work and care, including childcare
- Put in place a Carer Friendly Workplace Framework which includes a self-assessment tool and learning modules, for businesses to be recognised as a carer friendly workplace
- Amendments to the Fair Work Act to ensure families can share work and caring responsibilities
- Strengthen existing reporting standards to require employers with 500 or more employees to commit to measurable targets to improve gender equality in their workplaces[26]

The rostering and order of pick arrangements reduce gender inequality and pay inequality, both in stevedoring and in other sections of the economy that the partners of stevedoring workers participate in. Removing these arrangements and reverting to fully casual work would increase gender inequality and pay inequality, in the stevedoring workforce and in the broader economy.

The transparent and objective criteria for promotion and training which the Commission recommends also be banned in the Fair Work Act (Draft Finding 9.1, Draft Recommendation 9.1) also reduce discrimination against women and people from other groups underrepresented in the workforce. They contribute to increasing labour force participation by allowing women and other underrepresented groups to be promoted to roles with more stable rostering arrangements.

[26] Australian Government Treasury, Jobs and Skills Summit September 2022 – Outcomes, September 2022, p.6,8,9,10.

Outcomes on key government priorities

The Commission's recommendations in Chapter 9 would go against key overarching government and Treasury policies, articulated through the Jobs Summit issues paper and outcomes paper, the Terms of Reference for the Employment White Paper, and the Budget papers. These include:

- Boosting job security. The Government has said it will make job security an object of the *Fair Work Act 2009*
- Lifting labour force participation and reducing barriers to employment, for women and other groups underrepresented in the workforce.
- Increasing pay equity and reducing the gender pay gap, including adding gender pay equity and job security into the objects of the Fair Work Act, and legislating a statutory equal remuneration principle to improve the way pay equity claims can be advanced under the Fair Work Act.[27]

The government has also introduced a commitment to 'measuring what matters' in the Budget, initially using the OECD Framework for Measuring Well-Being and Progress.[28] Many of the Commission's Chapter 9 recommendations would also go against improvements measured there, such as in:

- Life expectancy and premature mortality
- Gender wage gap
- Life satisfaction
- Long hours in paid work
- Social support

The Budget framework for Measuring what Matters shows that Australia is worse than the OECD average in:

- The gender wage gap
- Gender gap in hours worked
- Life satisfaction
- Social support
- 80/20 income share ratio, a measure of inequality that compares the income of the 20% richest to 20% poorest.[29]

Fundamental labour rights

The outcomes of the recommendations in Chapter 9, particularly those recycled from 2015, would go against basic human rights and key international commitments. Australia already has the most restrictive laws in the OECD on labour rights. This has resulted in growing inequality. Workplace rights must not be restricted further.

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[27] See Budget Strategy and Outlook Budget Paper No.1 October 2022-3, p.11, p.14 Women's Budget Statement October 2022-3, p.27. Australian Government Treasury, Jobs and Skills Summit September 2022 – Outcomes, September 2022. Australian Government Treasury, Terms of Reference, September 2022

[28] Budget Strategy and Outlook Budget Paper No.1 October 2022-3, p.119-142

[29] Budget Strategy and Outlook Budget Paper No.1 October 2022-3, p.130

Australia is a nation that is a signatory to a raft of Conventions from UN bodies such as the ILO that confer rights on citizens and workers, derived from the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998 and amended in 2022, which is an expression of commitment by governments, employers' and workers' organisations to uphold basic human values - values that are vital to our social and economic lives, and which affirms the obligations and commitments contained in Conventions of the ILO, including:

- Freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of discrimination in respect of employment and occupation; and
- A safe and healthy working environment.

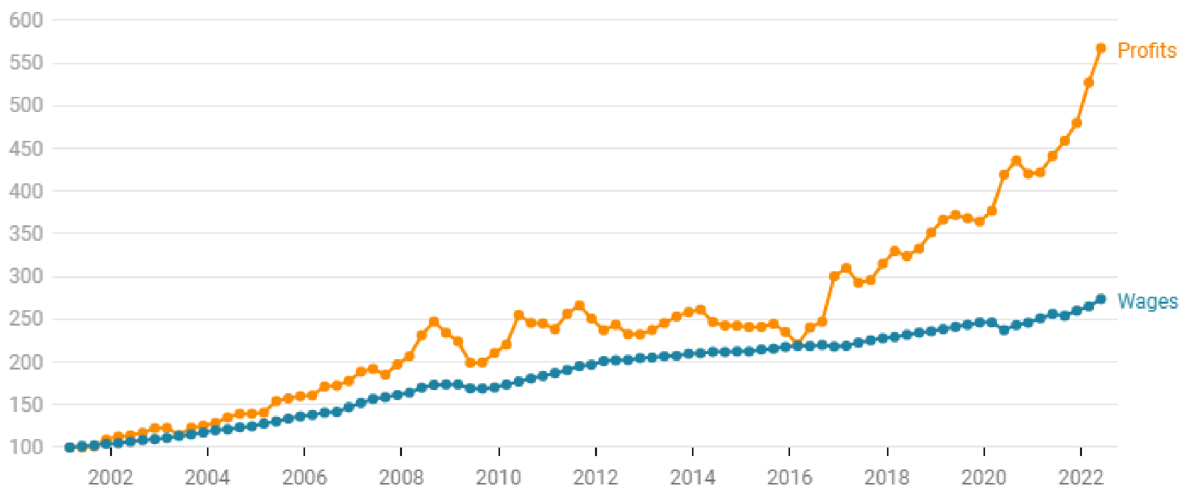
It is not the role of the Commission to reinterpret those fundamental rights and to propose discriminatory erosion of those rights through the raft of measures outlined in Chapter 9 of the draft report.

Current economic conditions

The Commission’s recommendations on workplace arrangements are astonishingly out of touch with the current state of Australia’s economy and workforce, and the lessons of the Covid pandemic. Large portions are to amend the entire Fair Work Act and are recycled from 2015. They would act to exacerbate the current problems of chronically stagnant wages not increasing in line with productivity or profits, growing inequality, and the damage of insecure work (Figures 1 and 2).

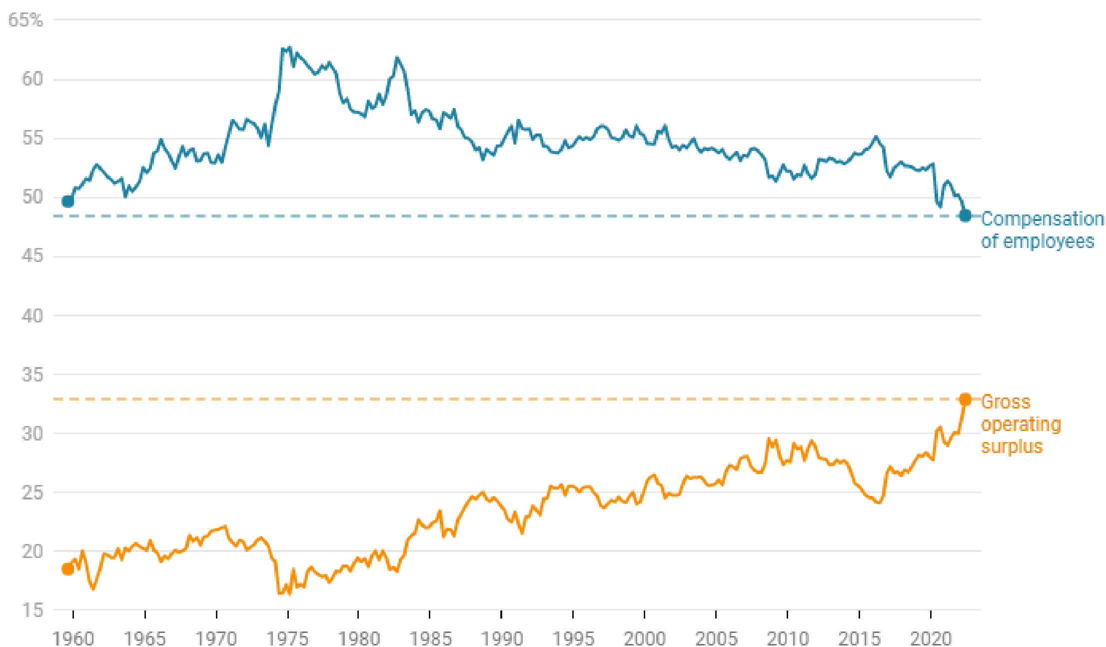
The Budget papers note that Australia is below the OECD average in inequality, as measured by the 80/20 income share ratio that compares the income of the 20% richest to 20% poorest.

Figure 1: Profits and wages in Australia



Source: Greg Jericho, Australians are spending hard, despite real wages falling. It's a fragile situation, 8 September 2022.

Figure 2: Share of income going to employees compared to company profits.



Source: Greg Jericho, Australians are spending hard, despite real wages falling. It's a fragile situation, 8 September 2022.

Workplace safety

The Commission comments that "WHS [Work health and safety] and workplace relations laws operate in separate spheres, however they can overlap" (p.252), and go on to discuss the separate legal regimes. What this fails to acknowledge is that both workplace relations and WHS legal regimes apply to the same worker, performing the same task at the same time.

Pressures to speed up production and reduction of workplace rights, such as the recommendations in Chapter 9, have fatal results for workers, as demonstrated in the terrible situation unfolding in New Zealand where dangerous work practices have been used to increase productivity.[30] Since our last submission to the Commission in February 2022, another two New Zealand stevedoring workers have been killed in fatal workplace incidents:

- 26 year old Atiroa Tuaiti died on the morning of Tuesday 19 April 2022 after he fell from a height while working on the Singaporean flagged container ship *Capitaine Tasman*. Atiroa was employed by the subcontracted labour hire company Wallace Investments.[31]
- Don Grant died on 25 April 2022 on board the vessel *ETG Aquarius* in Lyttleton.[32]

The New Zealand Workplace Relations and Safety Minister subsequently ordered an investigation into port safety and a number of other actions.[33] Safety reviews at 13 New Zealand ports released in October 2022 'highlighted worker concerns about the risk of fatigue-related accidents as commercial pressure grows to "get the job done."'[34]

With three deaths in a workforce of 270 people over 4 years, the fatality rate at the Port of Auckland would result in 18 deaths per year across the Australian stevedoring workforce of approximately 6,500 people. [35] In contrast, there have been no deaths of stevedoring workers in Australia since 2014.

New safety measures in New Zealand continue to result in a marked decline in productivity. In Auckland, the crane rate has fallen from a high of 37.3 containers per hour in 2016 Q1 to 25.3 containers per hour in 2022Q2. The national weighted average has had a similar sharp decline, as has the national weighted average ship rate.[36] These are now well below Australian rates.

In contrast, the Australian stevedoring industry has a remarkable record of increasing productivity *while maintaining worker safety*. As the Commission report shows in Figure 8.1, there are similar numbers of workers in ports today as there were in the 1980s, despite extraordinary increases in international trade since that time.

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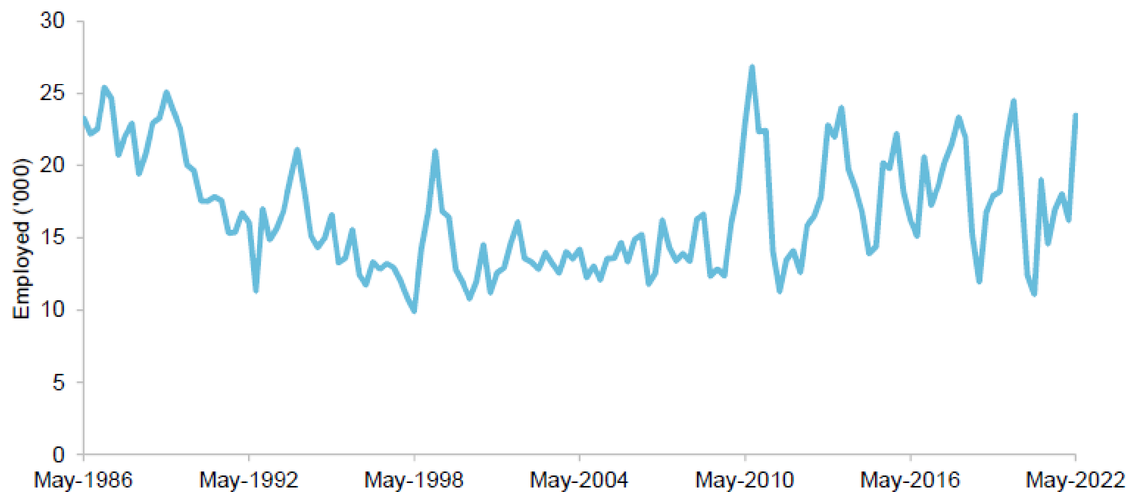
[30] See the Maritime Union of New Zealand submission to this inquiry in February 2022, and the Maritime Union of Australia submission to this inquiry February 2022.
[31] Mike Schuler, Union Calls for Inquiry After Stevedore Falls to Death at New Zealand's Auckland Port, Gcaptain, 19 April 2022.
[32] Maritime Union of New Zealand, Maritime Union statement on Lyttelton port death, 25 April 2022.
[33] Hon Michael Wood, Government puts port safety under the spotlight, 27 April 2022.
[34] Amanda Cropp, Safety reviews highlight port worker concerns, 10 October 2022.
[35] (3 deaths over 4 years)/270 workers per year in Auckland = 0.0028 deaths per worker per year in Auckland x 6,500 workers in Australia = 18 deaths per year for a workforce of 6,500 people.
[36] Te Manatu Waka Ministry of Transport, FIGS: Port container handling, Ship and vessel rates.

Figure 8.1 – Despite large fluctuations, employment in ports has held relatively steady for over 20 years[a]

People employed in water transport support services, 1986–2022



a. Water transport support services includes stevedoring, container terminal operations, bulk loader operations, mooring services, pilots, towage services, lighterage services, ship registration and salvage services. Note it includes people working in water passenger terminal operations. It does not include water freight transport.

Source: ABS (*Labour Force, Australia, Detailed, May 2022*, Cat. no. 6291.0.55.001).

Source: Productivity Commission, Lifting productivity at Australia's container ports: between water, wharf and warehouse, draft report, September 2022, p.250

There were a spate of workplace injuries and deaths following the increase in work intensity in the wake of the 1998 Patrick lockout. The Commission notes approvingly of the increase in productivity after 1998 without noting the risky way this was initially undertaken (p.124, 256). It took well-organised union campaigns over several years to arrive at ways of safely managing working at higher levels of productivity, initially through a legal action over the injuries workers sustained from very long hours driving straddle carrier,[37] and then through a union campaign that led to the tripartite development and implementation of the *Model Code of Practice: Managing Risks in Stevedoring*.

Harm to workers?

There are multiple references in the report to provisions in current enterprise agreements potentially harming workers. We reject this allegation entirely.

The Maritime Union of Australia has a democratic structure with robust and strongly contested elections in every container terminal to elect a site committee of workers, who are the primary representatives of the workforce in Enterprise Agreement negotiations with the company. Workers also elect the full-time union officials in their local union branch and in the union's national office

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[37] Quinlan, Michael, Philip Bohle and Felicity Lamm. 2010. *Managing Occupational Health and Safety: A Multidisciplinary Approach*, 3rd ed. South Yarra, Australia: Palgrave Macmillan, p. 493-494. The case was *Coombs v Patrick Stevedores Holdings Pty Ltd [2005].*

in elections that are also regular, robust and contested. Enterprise agreements are voted on by the workforce.

Union officials are accessible to the members 24 hours a day and 7 days a week if needed. The union has a practice of publishing the mobile telephone numbers of all officials on its website (see for example https://www.mua.org.au/branch/sydney-branch).

If provisions in Enterprise Agreements were harming workers, they would be voted down and the responsible site committee members and officials would be removed from office.

The union has a far more democratic and accountable structure than any other organisation on the Australian waterfront.

Workforce arrangements: specific recommendations (Chapter 9)

We reject all of the recommendations in this Chapter. This is because:

- They are based on incorrect assumptions about the balance of power in stevedoring workplaces (see response Chapter 8).
- We do not believe there is any evidence they would actually improve productivity
- They would erode fundamental workplace rights
- They would reverse efforts made to improve gender equality in stevedoring workplaces and families
- They would go against outcomes Government is seeking to improve pay equity, job security, workforce participation, and to reduce industry gender segregation, and discrimination
- They would make current economic challenges of stagnating wages and growing inequality worse
- They would make workplaces more unsafe, leading to more injuries and deaths, and poorer overall health.
- The Commission seems to be in favour of a completely casualised workforce. The Full Bench of the FWC has already found that 'the highly unusual nature of shift allocation systems for waterfront labour' results in 'a unique level of flexibility for employers', and 'greater demands on employees that contribute to a more intrusive availability requirement than in most other areas of employment.'[38]

Information request 9.1: *What role are modern awards playing in the ports? Given the prevalence of enterprise agreements in the sector, could changes to modern awards contribute to improved workplace relations or productivity? If so, in what way, and would there be benefit in the Fair Work Commission undertaking a review of the Stevedoring Award?*

The Award plays a minimal role in workplace relations and productivity, due to the predominance of Enterprise Agreements in the industry. We do not support a review of the Stevedoring Award at this time.

Information request 9.2: *Is tenure the deciding factor on who receives training in container terminals because so much training happens within the workplace? That is, it makes sense to train someone who has the required points for promotion because they are better placed to use that training.*

Draft finding 9.1 *Restrictions on merit based hiring and promotion harm workers and productivity*

There are substantial restrictions on merit based hiring, promotion and training within container terminal operations. These restrict fair and reasonable access for workers who are qualified, but not currently employed by the specific container terminal operator. They also harm existing terminal workers by

[38] Fair Work Commission Decision, Fair Work Act 2009 s.156 - 4 yearly review of modern awards, STEVEDORING INDUSTRY AWARD 2010 (AM2014/90), VICE PRESIDENT WATSON, DEPUTY PRESIDENT KOVACIC, COMMISSIONER ROE, 14 May 2015, para 55 and 65.

precluding them from jobs that best fit their skills and preferences, and create undue hurdles for potential container terminal workers. Overall, the clauses act to constrain productivity.

Tenure should properly described as "experience." This is a critical component in selection for training and operation of very large and high risk equipment in a very high paced, high risk environment.

However experience is only one component of the multiple factors used in selection criteria that container terminals use to determine access to training. We reject the formulation of draft Finding 9.1, and how it characterises the hiring, promotion, and training procedures in container terminal enterprise agreements.

We support the use of transparent and objective selection criteria in workplaces, which allows equitable and non-discriminatory access to training, and removes potential discrimination by individual managers, particularly against women, Aboriginal workers, and workers from non-English speaking backgrounds. A worker who volunteers to be a Health and Safety Representative or to serve on the union site committee should also not be discriminated against when it comes to access to training.

The use of clear, transparent, and objective criteria for accessing training aligns with the Government objective arising from the Jobs Summit to 'Provide stronger protections for workers against adverse action, discrimination, and harassment.'[39]

We note the Commission found limited evidence of restrictions on hiring, despite the furphy that the ACCC and some reporters generated on this issue with the focus this issue at Hutchison.

Information request 9.3 *The Commission is interested in further evidence on how container terminal enterprise agreements enable or restrict the flexible allocation of labour. To what extent do existing arrangements provide sufficient flexibility to employers to manage the allocation of labour given variable peaks and troughs in demand?*

Arguments about flexibility in the allocation of stevedoring labour (related to Recommendation 9.1) were tested in the FWC full-bench review of the Stevedoring Award in 2015.[40] The FWC Decision was written by Vice-President Graeme Watson, ex AMMA and Freehills, who subsequently worked as a Senior Advisor for multiple Coalition ministers in the last government. The decision accepted the extreme flexibility of labour allocation in stevedoring as follows:

> 'It is apparent from this evidence that the rostering arrangements in the stevedoring industry provide a unique level of flexibility for employers by allowing them, on the day before the shift, to confirm whether work is required and nominate the shift starting time. A corresponding consequence of this flexibility is a significant inconvenience for employees who, for the most part, cannot plan the precise work, recreational activities and other responsibilities more than a day in advance (para 55)

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[39] Australian Government, Jobs and Skills Summit September 2022 – Outcomes, p.8.

[40] Fair Work Commission Decision, Fair Work Act 2009 s.156 - 4 yearly review of modern awards, STEVEDORING INDUSTRY AWARD 2010 (AM2014/90), VICE PRESIDENT WATSON, DEPUTY PRESIDENT KOVACIC, COMMISSIONER ROE, 14 May 2015.

> 'While employees may be rostered to work on particular days in a roster cycle, the rosters are different to most other rosters that operate in other industries. The rosters do not guarantee work on the rostered days. Rather employees are expected to make themselves available on those days (subject to a limited number of refusals) and will not be rostered work on all of the days when they are effectively required, by virtue of their roster, to make themselves available. Allocation of labour at container terminals is typically performed on a day to day basis and is dependent on shipping schedules, actual shipping movements and the progress of unloading and loading activities.' (para 59)

Summing up the decision Watson noted:

> 'the highly unusual nature of shift allocation systems for waterfront labour' which resulted in 'Greater demands on employees that contribute to a more intrusive availability requirement than in most other areas of employment' (para 65)

Draft finding 9.2 *Limits to the number of workers with flexible rosters is inefficient*

Limits on the number of casual workers and other workers with flexible rosters (permanent guaranteed wage employees) who can be employed in container terminals create barriers to the efficient allocation of labour, which will flow through to the productivity of container terminals.

Draft finding 9.3 *'Order of pick' rules limit backfilling and restrict productivity*

Strict rules determining the 'order of pick' which specify which workers can be engaged first for a task are limiting terminal operators' capacity to backfill positions. This impedes operators' ability to allocate labour to its most productive use and can mean one absence has an outsized effect on the productivity of a terminal.

Draft recommendation 9.1 *Prohibit enterprise agreement content that imposes excessive constraints on productivity in the ports and costs on the supply chain*

The Australian Government should amend the Fair Work Act 2009 (Cth) to introduce a short list of unlawful terms in enterprise agreements in the ports. The list should aim to prohibit excessive constraints on:

- *merit based hiring, promotion and training*
- *the number of casual workers and other workers with flexible rosters*
- *strict rules determining the 'order of pick'*
- *innovation and workplace change.*

We oppose these recommendations. With these recommendations, the Commission appears to be advocating for an entirely casualised workplace, which would have devastating consequences for the quality of life of stevedoring workers, as well as reversing the small steps of progress that have been made on improving gender equality in the industry. See the detailed discussion in the section above on Gender equality and workforce participation.

The Commission observes that 'a likely reason for variations (in gross crane rates for each terminal operator over time, and between terminal operators) is restrictive work practices that make it less likely that each job in a container terminal is filled by the most appropriate person'[41]

That observation is not supported by any evidence presented in the draft report, and in any event demonstrates a lack of understanding of (i) workforce recruitment practices; (ii) labour allocation arrangements; (iii) the skills and capabilities of the workforce.

Gross crane rates are far more likely to be affected by overall terminal workflow planning, as discussed in the following sections.

Draft finding 9.4 *Container terminal enterprise agreements distort operators' ability to automate*

Container terminal enterprise agreements contain terms which substantially restrict or disincentivise operators from introducing further automation. These clauses, reflected in mandated consultation lengths and, for some operators, the requirement for employee or third party (such as an independent panel or Fair Work Commission) consent, appear to go beyond equivalent clauses in other industries or the model consultation term in the Fair Work Act 2009 (Cth).

We disagree with this finding. We note that one of the Draft Findings of the report is that 'Technology use at Australia's major container ports is in line with international practice' (Draft Finding 11.1).

There is no evidence that provisions in enterprise bargaining agreements act as brake on investment.

Automation results in huge impacts across the maritime industry. in the workforce, and port communities, including reductions in productivity, and impacts on the interface with road transport and logistics industry.

The process of automation is a fair and proper subject for consultation and EA negotiation. It changes roles and responsibilities, its changes the nature and structure of jobs and potentially eliminates huge numbers of jobs. There is not one single waterfront EBA that prevents a company automating. The agreed automation outcomes arrived at through bargaining seek to deal with how such a huge workplace change is introduced and provide job security provisions or introduce mitigating measures, in the face of mass redundancies.

The Commission asks 'how the most restrictive content in agreements could be curtailed without limiting the rights of workers to be consulted on issues including major workplace change' (Information request 9.8 and p.345).

Curtailing consultation clauses in agreements does limit workers' right to be meaningfully consulted, and critically, to be able to influence the outcome and find ways of implementing new technologies while mitigating the effect on the workforce. It is true that that the MUA has achieved more effective consultation clauses than are required by the Fair Work Act (see p.280). However,

[41] Ibid, P13

the standard Fair Work Act consultation clauses allow total managerial prerogative, and the narrowest forms of consultation to occur. Employers can effectively implement any decision, regardless of the effect on the workforce or community.

The Fair Work Act model clauses regularly result in thousands of workers being made redundant and dumped on the scrap heap. Major changes and restructures in other industries typically result in only one-third of workers retaining equivalent work, with one-third remaining underemployed and one third never working again.[42] These kinds of decisions have contributed to growing inequality in Australia.

Terminal operators are also required to have regard to the provisions of the UN Guiding Principles on Business and Human Rights,[43] which requires business enterprises to respect human rights, avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur. Changes to workers' employment and jobs, including possible loss of employment is an adverse human right impact, and it is entirely legitimate that agreements reached between employers and workers seek to mitigate those adverse human rights impacts.

Information request 9.4 *Do restrictions on subcontracting of labour in enterprise agreements in the ports limit competition in the labour market? And if so, what is the effect of this?*

We stand by our comments in our original submission that outsourcing maintenance functions is a critical safety issue.

More broadly, any subcontracting of work is a workplace relations issue that deeply affect the current workforce. The workforce has a right to have a say on such matters. The Commission appears to understand this, by reference to the WorkChoices-era provisions that made restriction on contractors and labour hire prohibited content in agreements (p.280).

We reject the attempts in this 'information request' to invoke the Harper Review and make outsourcing an issue of 'competition.' Workplace relations are not a competition matter. Workers have rights as human beings. We have a workplace relations system that recognises the rights of workers, and their right to bargain collectively due to the power imbalance they experience with employers. Any attempt to move bargaining out of the workplace relations framework and into the realm of competition law is an attack on collective bargaining and workers' rights to be treated as human beings.

Information request 9.6 *What would be the benefits and drawbacks of classifying the ports as an 'essential service' under the Fair Work Act 2009 (Cth)? What rights and obligations should follow if the ports were classified in that way?*

We reject the proposition that ports be classified as an essential service, put forward by Qube. This removes workers' fundamental right to withdraw their labour, and is another attempt by employers to use this process to increase their bargaining power over our union.

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[42] ACTU, Sharing the challenges and opportunities of a clean energy economy: Policy discussion paper A Just Transition for coal-fired electricity sector workers and communities, 2016.
[43] Ibid, P28

Information request 9.7 *To what extent are side deals being used in the ports and how influential is their content? What would be the consequences if side deals were used more?*

If employers and employees wish to make an agreement about something, the government should not stand in the way.

Draft finding 9.5 *Existing Fair Work Act mechanisms have not prevented lengthy bargaining in container terminals*

Draft finding 9.6 *Additional or improved mechanisms are needed to help address excessively lengthy bargaining and its costs in container terminals*

Draft recommendation 9.2 *Improving bargaining practices in the ports*

The Australian Government should amend the Fair Work Act 2009 (Cth) to create a mandatory requirement for Fair Work Commission (FWC) intervention when certain thresholds in bargaining activity in the ports are reached (these could include time limits and/or thresholds linked to the number or scale of protected industrial actions).

The interventions should scale from FWC conciliation as a first step, to termination of bargaining and arbitration by the FWC for lengthy and intractable disputes.

Draft finding 9.7 *Extensive protected industrial action in the ports during recent bargaining caused disruption and impacted productivity in container terminals*

Disruption and, to some extent, reduced productivity are an expected consequence for bargaining parties of protected industrial action. But high levels of protected industrial action in the ports over an extended period during the recent bargaining round translated into markedly lower productivity at affected container terminal operators.

We believe the Commission is already aware that the most recent round of bargaining occurred during a global pandemic, which resulted in governments making unprecedented public health restrictions on people's movement and ability to meet each other.

Until March 2020, bargaining for stevedoring Enterprise Agreements took place with physical meetings between workers and branch officials from each national workplace physically meeting with employers' representatives. Such meetings abruptly became impossible from March 2020 onwards. It took some time to be able to convene such meetings online and ensure that democratic participation, in line with union Rules, was in place. West Australia's borders were closed for travel related to enterprise bargaining for two years, and the major stevedoring operators have workplaces in that state which needed to be included.

In addition to the practical challenges of meeting, and coming to agreement online on complex issues, the initial economic slowdown meant that many employers abruptly changed their bargaining position. They changed their position on claims which were already agreed, and made new claims to roll back basic employment conditions in an effort to cut costs. However, it rapidly became apparent that the pandemic would result in record revenues for many employers.

Enterprise Agreements must be voted on by the workforce, and workers were not inclined to agree to cost cutting measures when they could see they were handling record numbers of containers.

The Commission makes the observation that 'reaching agreement was particularly time consuming the recent round' (p.25). We agree, but this was directly related to pandemic impacts on a collective process that is required to include several thousand people across multiple states coming to an agreement on the structure of a complex document that significantly impacts their daily life – in the midst of extreme uncertainty and change.

We strongly object to the proposition that changes should be made to workplace laws and rights as a result of the impact of the pandemic on this process.

Draft finding 9.8 *Protected industrial action in the ports caused substantial disruption and economic costs to third parties in the supply chain*

The integration of container terminal operators in the supply chain means that protected industrial action in the ports has an outsized impact on importers, exporters and other third parties. The extent and seriousness of protected industrial action seen during recent bargaining in the ports resulted in substantial economic harm to these third parties.

Workers have a fundamental right to withdraw their labour. Virtually any worker withdrawing their labour will impact others – for example recent strikes by teachers, early childhood workers, train operators and bus drivers have all had a substantial impact on others. However, the evidence shows that most companies are unlikely to share their profits with their workforce unless workers take strike action. Likewise government have been reluctant to fairly compensate female-dominated workforces if they feel it is politically easier for them to avoid raising the necessary revenue. This is a major reason for growing inequality in Australia, and the smaller and smaller portion of profits being allocated to wages. Refer to Figures 1 and 2 above.

Information request 9.10 *Is the current level of penalties providing effective deterrence of unlawful or unprotected industrial action in the ports? If not, what level of penalties would achieve this outcome?*

Yes. Current penalties are extremely onerous.

Information request 9.11 *Part IV, division 2 of the Competition and Consumer Act 2010 (Cth) prohibits secondary boycotts, other than in prescribed circumstances. Are changes needed to these provisions, or supporting compliance and enforcement activities, to ensure secondary boycott conduct is appropriately regulated in the ports?*

No. Current penalties are extremely onerous.

Draft recommendation 9.5 *Make it easier for employers in the ports to extend the notice period for protected industrial action*

The Australian Government should amend the Fair Work Act 2009 (Cth) to lower the threshold for applications to extend the mandatory three day notice period for protected industrial action to seven days for operators in the ports to enable employers to better prepare for industrial action.

We oppose this recommendation as it reduces the fundamental rights that workers have to withdraw their labour.

The notice period for industrial action in ports has already been extended to five days, which in practice means seven days because the Fair Work Commission only operates five days per week. Unlike stevedoring workers.

Draft recommendation 9.7 *Allow a broader range of third parties to apply to terminate protected industrial action occurring in the ports.*

We oppose this recommendation. Allowing third parties to take action against workers in the Fair Work Commission would unduly restrict workers' fundamental rights to withdraw their labour.

Third parties in the logistics chain should use their relationships and leverage with stevedoring employers to encourage them to reach agreement with their employees, rather than becoming another player on the employer's team and adding to the already huge imbalance in bargaining that the employers enjoy under the current industrial relations system.

Draft recommendation 9.3 *Add options for protected industrial action by employers to the Fair Work Act.*

The Australian Government should amend the Fair Work Act 2009 (Cth) to allow employers to engage in more graduated forms of protected industrial action in response to employee industrial action. Forms of employer response action that should be permitted could include:

- *instituting limits or bans on overtime (analogous to employee overtime bans)*
- *directing employees to only perform a particular subset of their normal work functions and adjusting their wages accordingly (analogous to employee partial work bans)*
- *reducing hours of work (analogous to employee work stoppages).*

Employers should also be able to choose to either deduct wages or continue to pay employees for protected industrial action which lasts for less than 15 minutes.

Where an employer restricts employees' work duties or hours of work, employees should be permitted in response to refuse to perform any work (as is currently the case for employers with respect to employee partial work bans).

Graduated forms of protected industrial action by an employer would still count as employer response action and be subject to employee response action and potential suspension or termination by the Fair Work Commission.

Draft recommendation 9.4 *Increase disincentives for employees to notify and then abort protected industrial action*

The Australian Government should amend the Fair Work Act 2009 (Cth) so that where a group of employees have withdrawn notice of industrial action, employers that have implemented a reasonable contingency plan

in response to the notice of industrial action may stand down the relevant employees, without pay, for the duration of the employer's contingency response.

Draft recommendation 9.6 *Make it possible to suspend or terminate industrial action that could cause 'important or consequential' economic harm*

The Australian Government should amend the Fair Work Act 2009 (Cth) to clarify that when determining whether to suspend or terminate industrial action under s. 423, s. 424 or s. 426, the Fair Work Commission should interpret the word 'significant' as 'important or of consequence'.

Draft recommendation 9.8 *Enable protected industrial action to be suspended or terminated when it is causing harm to either party, rather than both*

The Australian Government should amend s. 423(2) of the Fair Work Act 2009 (Cth) such that the Fair Work Commission may suspend or terminate protected industrial action where it is causing, or threatening to cause, significant economic harm to the employer or the employees who will be covered by the agreement, rather than harm to both parties (as is currently the case).

These zombie recommendations from the 2015 Commission review of Workplace Relations must be rejected. They appear to be intended to affect all workers, not just port workers. They would increase inequality and reduce workers' rights at a time when urgent action is needed to address wage stagnation.

Draft recommendation 9.9 *Equip the Fair Work Commission for an extended role in the ports*

To enable the Fair Work Commission to perform an enhanced role in supervising bargaining on the ports, it should (supported by amendments to the Fair Work Act 2009 (Cth) where necessary):

- *establish a fast track process for dealing with applications involving port employers and employees and their representatives*
- *ensure members with requisite skills, experience and standing are available to deal with cases in the ports fast track stream*
- *enable more decision making by full benches to assist consistency of decision making*
- *be resourced appropriately to give effect to these draft recommendations.*

The Fair Work Act should also be amended to allow input from employers and employee representatives in the selection of Fair Work Commission members dealing with port matters, with the objective of identifying nominees who have the confidence of employers and employees.

We oppose the recommendation to give the FWC an enhanced role in supervising bargaining. It is clear from this report that that the motivation for this recommendation is to restrict workers' fundamental right to withdraw their labour. Australia already has some of the most restrictive industrial laws in the OECD, which make it extremely difficult to take industrial action.

In our experience, restrictions on workers' industrial rights embolden employers to make unreasonable claims against their workforce and unions, which leads to protracted industrial disputation.

Container Port Performance and Productivity Benchmarking

This section responds to the following draft findings and information requests:

- ***Draft finding 3.1 -*** *The elapsed labour rate is not a measure of labour productivity*
- ***Draft finding 3.2-*** *Data gaps limit assessment of port performance*
- ***Draft finding 3.3 -*** *The framework for measuring Australian container port performance could be enhanced*
- ***Information request 3.3***
- ***Draft finding 3.4*** *- There is scope to improve crane rates*
- ***Draft finding 3.5*** *- Container port productivity has increased in the last 30 years*
- ***Draft finding 3.6*** *- Each Australian container port has different strengths*
- ***Draft finding 3.7*** *- Australian container ports take longer to turn ships around than many international ports*
- ***Draft finding 3.8*** *- International evidence also suggests that Australian ports could lift their productivity*
- ***Draft finding 3.9*** *- Improving container port productivity would deliver significant benefits*
- ***Information request 3.4*** *– The proposed methodology for benchmarking Australia's ports.*

We agree with the following observations made by the Commission, with qualifications:

Data gaps limit assessment
'That data gaps limit assessment of port performance and that a comprehensive framework for measuring port performance that includes data on the time taken to move containers through each of the steps involved in marineside, quayside and landside operations (as outlined in Figures 2.1 and 3.1 of the draft report) would be valuable'.[44]

We agree with the statement, assuming those data gaps can be filled and the organisations that hold the data are willing to voluntarily provide the data (and it is cost effective to supply such data) and provided a government agency has the resources and appropriate mandate to collect and report the data in a timely manner, and provided (i) there is consensus on the organisation that has the responsibility to analyse the data, and (ii) it has the confidence of industry stakeholders to objectively analyse the data, provide insights and identify initiatives that would improve port efficiency and productivity.

'Comparison of time-based metrics across ports would reveal where operations in a port are relatively inefficient, and that other performance measures could then be used to understand why these relative inefficiencies exist'.[45]

We agree with the statement, provided the data, which the Commission has noted does not currently exist to support a comprehensive analysis of this type, is of an acceptable quality and consistency, is provided and reported in a timely manner and includes a time series, and most importantly, provided that there is a consultative process available to enable all relevant stakeholders to participate in determining the available and cost-effective solutions required to address any inefficiencies that may be revealed.

Understanding how container ports operate

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[44] Ibid, P9
[45] Ibid, P8

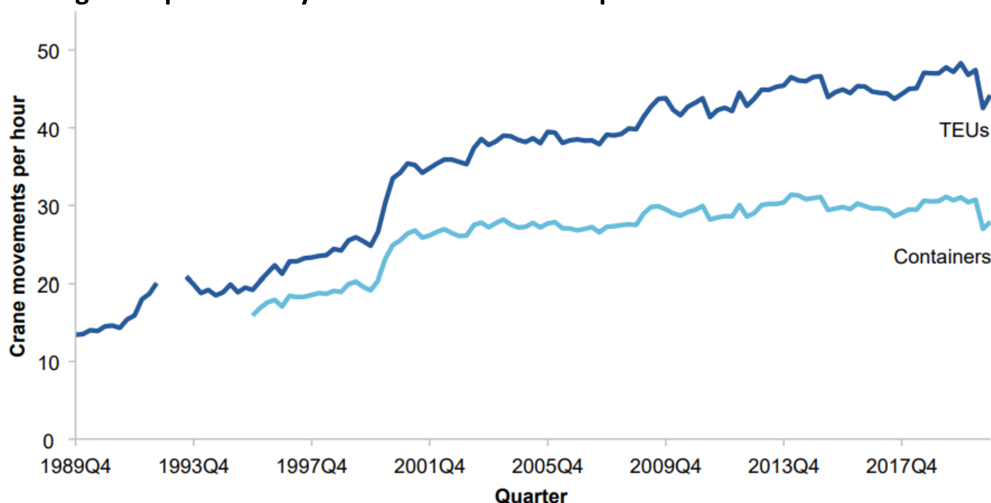
'That there is no one overall measure of port performance. Instead, port performance needs to be assessed using a range of different metrics'.[46]

We agree with the statement, and submit that given that reality, it would be helpful in future if there was a process, which we believe should be managed by the Federal Government, that coordinates the key stakeholders, to help understand the implications of data, once Australia has a reliable and consistent set of port performance metrics.

Data suggests productivity has risen over the long term
That 'data suggests productivity has risen over the long term' (p.10) as measured by net crane rates (container movements per crane per hour of operation) as shown in Figure 3.

We submit that this is a really central finding in the Commission's report, and is one that the MUA has been pointing out for years. It is important that government bodies take stock of this central fact when commentating on port performance, which is especially important now the Commission has revealed that the 'elapsed labour rate' reported in *Waterline* is not a measure of labour productivity. Until there is consensus on a measure of labour productivity, and a full understanding of the contribution of labour to overall productivity growth, it is not possible to have a calm conversation about ways to improve labour productivity. One thing can be certain however, a concentration on attacking the labour rights and labour standards of port workers is not conducive to continuous improvement in labour productivity. Furthermore, it remains entirely legitimate for port workers to have an expectation that they share in the benefits of that improved productivity, and that that the workforce participates in decision making on how capital is deployed in ports.

Figure 3: – Long-term productivity has risen in Australia's ports



Source: Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, Figure 4, p.10.

Performance variations point to significant scope to lift productivity
'That the considerable variations in gross crane rates for each terminal operator over time, and between terminal operators requires further consideration'.[47]

The MUA advises that it wishes to be part of any process established to consider that matter, noting that unless the workforce, through its representative organisation, is involved, then the process will be

[46] Ibid, P100
[47] Ibid, P13

unrepresentative and any solutions will lack credibility. Genuine social dialogue is critical to addressing all the matters raised in the draft report.

'That the data suggest that Australian terminal operators have significant scope to improve ship turnaround times without making any changes to crane intensity'.[48]

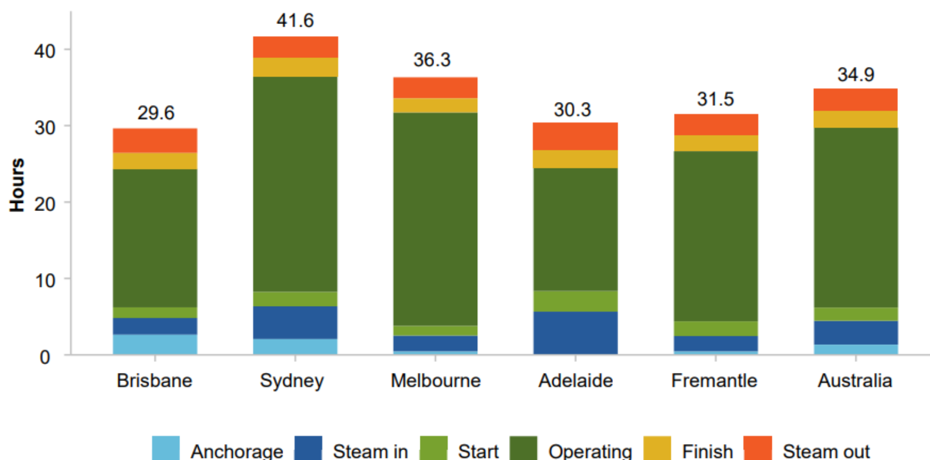
We acknowledge that there may be opportunities to improve ship turnaround time at Australian ports though it will be important that there is a much better understanding about quay crane utilisation including quay crane age and capacity, actual crane utilisation and the reasons why certain terminal operators are not utilising all available quay cranes.

A framework for assessing port performance

An Australian index of port performance
The MUA supports the development of an Australian index of port performance as proposed by the Commission.

If such an index produces data that results in data presentation such as in Figure 3.4 of the draft report, that is indicative of what we believe would be helpful for all stakeholders. Once that can be provided as a time series, then trends can be revealed, and where trending in the wrong direction, can be addressed.

Figure 3.4 – The average container ship spent 35 hours in port[a]
Total port hours by component, 2019



a. Observations with arrival hours greater than 72 hours are removed from the sample because of data cleaning advice provided by IHS Markit. Observations with data on all time-based metrics are included in the sample. They represent 85 per cent of the full sample.

Source: IHS Markit's Port Performance Program data.

We agree that such an index should be based on container movement times at each stage of the import movement of a container from the arrival of a ship at the port anchorage point to departure of the container from the port landside boundary (and vice versa for exports).

We note however, that the Commission has not proposed the development of metrics within all functions in what is described as 'operating' time, which we think needs to be addressed. This is because the operating

[48] Ibid, P13

time includes both the performance of the quay cranes and performance of the yard cranes. The performance of the yard cranes is to some extent determined by the yard configuration and yard size, while container reshuffling and stacking in the yard area can have a knock-on effect on the performance of the quay cranes. No data is currently available or published on yard crane performance. We say that metrics on yard cranes should be developed and published. We note that the Commission has stated that "*Over the longer term, however, many of Australia's major ports will face capacity constraints — often driven by geographic (space) constraints. Demand for port services is growing (chapter 2) and ports will need to grow their footprint to meet this demand, which will be problematic without the ability to create new land*."[49] That new land could include not just land for new container terminals but additional land for existing container terminals, which of course is highly constrained by port configurations. New stacking technologies such as multi-storey container stacking systems that can stack higher than conventional stacks and where every container can be accessed without a shuffle move may become cost effective at some point when the yard becomes the constraint. We note however that in Melbourne, the Black Quay Container Capacity Review report for Port of Melbourne, identifies the berth as the key capacity constraint at this point in time, which probably holds true for most terminals in most ports.[50]

Having metrics for yard crane performance (in addition to quay crane performance), in our view is particularly important given that the Commission, in considering why Australian ports appeared not to perform well in the World Bank report, concluded that this poorer performance is because Australian ports take longer to load and unload ships. That is, the aspect of total ship turnaround time where Australia seems to not perform well is ship operating time i.e. the combination of the performance of the quay cranes integrated with the performance of the yard cranes, both of which are also influenced by ship call sizes or exchanges and the number of quay cranes allocated to each ship (crane intensity).

It is instructive to note that the Commission determined that a key explanation for Australian ports' slow operating times is that they used fewer cranes to service ships than the average international port. The Commission said this is particularly noticeable for the medium and larger ship sizes. For example, for medium sized ships (capacity 5001–8500 TEUs), Australian ports used almost one less crane than the international average port to service ships.

That is of course a matter entirely within the prerogative of the terminal operator and has nothing to do with labour productivity.

We agree that the index should incorporate time-based metrics from marine, quayside and landside operations and, importantly, these time components should be able to be disaggregated into subcomponents, such as anchorage, operating time and container dwell time as proposed – and as we say also for both quay cranes and yad cranes.

We agree that such an index should be feasible for Australian container ports if:

- Gaps in the existing data can be filled without undue cost by the data providing entities;
- The government agency that receives, assembles and publishes the raw data is adequately resourced by government for the task and importantly that it publishes the date in a timely manner, and is provided with a clear mandate on expectations from the relevant Minister as to its task and performance standards:
    - We believe BITRE should continue to be the data receival, assemblage and publishing body, but we agree with the Commission that "*Not all data would need to be published in Waterline. Some data could be released in the additional electronic data tables that accompany the*

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[49] Ibid, P163

[50] Black Quay Maritime Consulting Pty Ltd, *Port of Melbourne: Container Capacity Review, Final Report*, 7 September 2022, Figure 3, P11

Waterline publication. For example, information on underlying distributions could be aggregated for publication (such as providing the mean, median and standard deviation). This would also help to maintain presentability and confidentiality. More detailed data could be released in electronic data tables or made available on request";

- Clear definitions for each stage of the movement of a container from ship to port boundary can be agreed, such as a definition of a ship port arrival point, what is, and is not, included in a net and gross crane operating time indicator etc;
- Clear understandings about what the measures in a new index actually measure can be agreed, to avoid in future, revelations as made by the Commission that the elapsed labour rate, which hitherto had been regarded by government and stakeholders as a measure of port labour productivity, actually reveals nothing about labour productivity.

However, the cost and effort of supplying, assembling and publishing data will only be worthwhile if the analysis of the data and the insights it reveals about port operations, including about efficiency and productivity, is collectively considered with the objective of assisting key stakeholders to respond to that analysis and insight.

We submit that the mechanism for that collective assessment should be established by Commonwealth and state/NT Ministers through the Infrastructure and Transport Ministers meeting. We propose that the National Transport Commission, advised by a port stakeholder advisory body, be considered as the body that provides the umbrella for data analysis and collective insight scoping, and for identifying potential actions for the attention of key stakeholders.

We agree that the missing metrics on labour, ships times, dwell times and gross productivity measures should be addressed. We agree that the measurement issues identified should be addressed.

We agree that the missing information on underlying distributions should be resolved and that more disaggregated data on ship sizes/ship call exchanges and at the terminal operator level, subject to commerciality and confidentiality considerations, would be helpful. However, data sets disaggregated to the terminal level need to be qualified by an explanation of the technology used by each terminal operator at the quay line and in the yard. That is necessary to understand if objective analysis of such disaggregated data is to be accurate and useful.

Even with that additional explanatory understanding, the absence of a metric on labour cost per TEU per hour will not allow a full productivity assessment of terminal operator performance. We suggest that such a metric be included in the Australian index of port performance as being proposed by the Commission.

For all future container ports, a condition of lease or purchase by the port operator must include a clause in the deed that it provide agreed data, while a condition of lease for a new terminal operator must also be provision of agreed data.

How productive are Australian container ports?

We note the conclusions reached from the Commission's analysis on how productive Australian container ports are, derived from an examination of metrics from *Waterline* and those from IHS Markit's Port Performance Program data. The key points we have noted are:

- That ship service reliability has declined markedly over the past three years. Ships missing berthing slot windows has clearly become a significant problem worldwide following the onset of the COVID-19 pandemic:
    - And accordingly, public access to data on shipping schedules and movements would enable an assessment of short or long-term trends in the reliability of ships servicing Australian ports:

  - ❖ We propose that BITRE subscribe to data sources such as Sea-Intelligence and publish relevant data sets as the Commission suggests.
- The acknowledgement by the Commission that speed of operations needs to be balanced against safety and safe operations, and that therefore the guidelines and regulations that ensure the safety of Australian workers should not be compromised for speed.[51]
- In relation to the marine operations aspect of port performance, reducing anchorage time is a key way to improve performance, whereas steam-in and steam-out times are likely more difficult to reduce because they should only reflect the sailing of ships within a port.
- That berth hours account for almost 80 per cent of port hours on average and encompass start and finish times, and cargo operating time. Improving performance in these time components could help to turn ships around faster. This is especially true for cargo operations which account for the bulk of a ship's time spent in port.
- Giving terminal operators access to a ship once it has berthed allows them to start container handling operations as soon as possible. Terminal operators are not able to unload containers until the ship or its cargo have undergone a clearance procedure or before containers are unlashed by dock workers.
- Cargo operating time is the largest single component of port hours. On average in Australia, operating time accounts for almost 68 per cent of port hours.
- The key influences on operating time are (i) call size - the number of containers un/loaded on each ship visit); and (ii) the number of quay cranes used to handle containers and the productivity of those cranes.
- There are 'economies of scale' in the time it takes to un/load ships i.e. the larger the call size the fewer minutes on average it takes to load or unload a container, although port hours are longer. There are two dimensions to understanding this: (i) the number of cranes used increases as call sizes increase and is part of the reason why the time taken to move containers (operating minutes per move) is less in some ports; and (ii) time that is relatively 'fixed' per ship (such as arrival, start and finish, and departure times), and not as closely related to the call size, is spread over more containers moved resulting in lower minutes per container moved (port hours per move).
- The data suggest that Australian terminal operators have significant scope to improve ship turnaround times without making any changes to crane intensity:
  - ➢ We note that the Commission says there is evidence of considerable variations in gross crane rates for each terminal operator over time, and between terminal operators, and this requires further consideration. In our view, there is no single explanation for variations among terminal operators in the same port, and between ports, as there are a multitude of factors which can influence terminal performance. However, it is our assessment that one significant factor is terminal operator management decision making, which is highly variable – even where technologies in use are similar. For example, decisions on machinery maintenance can impact on the number of operating yard cranes at any one time, decisions on whether to allocate older and slower quay cranes to a particular ship varies (just because a terminal operator has X number of quay cranes does not mean X number of cranes are always allocated to a ship), the quality of yard flow planning e.g. whether manual straddles are permitted one way or two way flow to the stacks, the skill of planners which can affect the number of shuffle moves and hence slow down the feed to the quay cranes and the way labour is allocated. Management often make decisions on the quantum of labour allocated e.g. the number of lashers and/or yard machinery allocated to support the quay cranes in order to save cost, which comes at the expense of quay side productivity.
  - ➢ A second factor relates to the use of different technologies. We have already outlined in detail to the Commission, and this has since been reinforced in consultation, that the automated

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[51] Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, P115

straddle cranes cannot keep pace with the quay cranes. The literature including manufacturer advice, reinforces that view.

- Regardless of the technology used, terminal operators have an incentive to utilise their cranes as efficiently as possible to reduce their per unit costs. Higher rates of crane productivity imply higher rates of asset utilisation. Given the substantial fixed costs involved in purchasing quay cranes, the cost per container moved declines as the number of containers handled by a crane increases (referred to as 'economies of scale'). The irregular nature of ship arrivals and variations in call sizes that are outside the control of terminal operators means that achieving high rates of crane utilisation may not always be possible. This observation also applies to other assets such as berths and, on the landside, container yard area. And one downside to high capital utilisation is that there may be limited capacity to handle any future growth in throughput without further investment.
- Crane rates can vary significantly across terminal operators within the same port and over time within the same terminal operator. More consistent attainment of high crane rates would lift productivity.
- Container port productivity has increased in the last 30 years. Measured by crane rates (container movements per hour that cranes are operating), productivity at Australia's major container ports (Brisbane, Sydney, Melbourne, Adelaide and Fremantle) rose strongly in the late 1990s following significant waterfront reforms, and continued to grow at a slow pace over the following two decades.
- Quayside productivity varied across terminal operators within a port and, for each operator, over time. This suggests that there is scope for all terminal operators to improve the consistency of their performance.

Arising from these conclusions by the Commission, there may be room to improve efficiency in the following segments of the chain from anchorage to release of the container from the yard:

- Time spent at anchorage, which is primarily a shipping line ship management matter (though we propose later in this submission that shipping line service standards should be regulated by the ACCC) because anchorage is usually only required if the ship does not arrive close to the time of its allocated berthing window;
- Time between commencement of steam in and commencement of operations, which involves harbourmaster approvals, the availability and efficiency of pilotage, towage and mooring, the availability and efficiency of customs and other clearance agencies, the availability of and operation of lashing gangs (where invariably it is the maintenance of the ship (unsafe hazards), the containers (damaged twist locks) and the hatch covers that determines time;
- Optimising cargo operational time, which is determined by (i) the number of quay cranes allocated/crane intensity, (ii) the number and type of yard stacking cranes allocated; (iii) the yard configuration and optimisation of container stacking to reduce shuffling, overlaid by crane manufacturers specifications, quality of crane maintenance, labour allocation and labour skill;
- Government agency clearance such as customs and quarantine; and
- Optimising pick-ups and deliveries by trucks or trains, combined with terminal gate efficiency.

Each of these requires consideration to determine port efficiency and productivity improvement opportunities.

Importantly, each one of those segments needs to be performed safely in accordance with work health and safety laws, regulations and codes of practice, and terminal level agreements and well as being conducted in conformity with negotiated enterprise bargaining agreements.

But the key point to make is that across all those segments the movement of a container from ship to terminal gate, the workforce has only minimalist influence on efficiency and productivity. The overwhelming influence derives from capital allocation, efficiency and productivity and the quality of

management. Further all that needs to be considered in the context of the Commission's finding that data limitations mean the current available methodologies for analysing port performance cannot shed light on ways in which productivity might be improved in the short to medium term.[52]

This is why it is extraordinary that of the 14 recommendations in the report 10 are focussed on constraining the workforce, and not a single recommendation seeks to constrain management or managerial prerogative, or to improve management performance and practice. That appears unbalanced in our view.

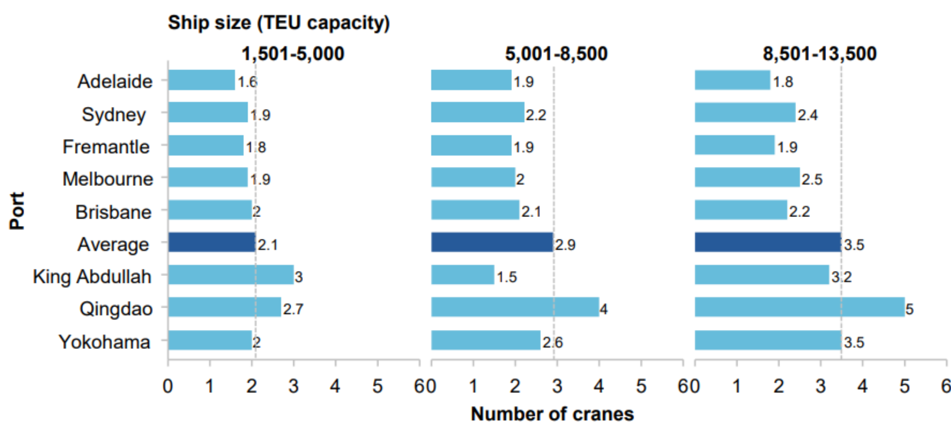
Benchmarking of Australian ports with international ports

We acknowledge and note the work of the Commission in analysing the World Bank CPPI report to understand why Australian ports are ranked relatively poorly using the World Bank CPPI methodology. We note the result of that analysis which shows that:

- Most of the difference in the relatively poor performance reflects longer operating times — Australian ports take longer to load and unload ships, bearing in mind that operating times are influenced by call sizes and the number (crane intensity) and productivity (gross crane rates) of the quay cranes used to handle containers.
- The productivity of Australian cranes also does not seem to explain the longer than average operating times. Australian ports had similar gross crane rates to the average international port, but lagged some of the top performers — notably Yokohama and King Abdullah both of which have some twin-lift quay cranes (that is, cranes that can handle two forty-foot containers at once).
- A key explanation for Australian ports' slower operating times is that they used fewer cranes to service ships than the average international port (Figure 3.16). This is particularly noticeable for the medium and larger ship sizes.
- Australian cranes are just as productive as those in the average international port.

Figure 3.16 – Australian ports use fewer cranes to handle medium and large ships[a,b]

Crane intensity by ship size, selected ports and global average, 2019-20



a. Crane intensity is calculated as gross crane hours divided by operating hours. Ships with capacity less than 1500 TEUs are excluded because of missing gross crane hours data for Australian ports. **b.** King Abdullah, Qingdao and Yokohama were the top performers in the World Bank's 2021 study of 351 ports.

Source: IHS Markit's Port Performance Program data.

- Ships are getting larger and Australian ports need to find ways to handle these larger ships more efficiently. This could involve reducing anchorage times or deploying more cranes to each ship to un/load containers more quickly. However, a port involves a series of interconnected operations.

[52] Ibid, P40

Improving the performance of one part of the process without also considering other port operations may not improve overall efficiency. For example, it is not clear that terminal operators would have sufficient spare capacity to handle ships if anchorage were reduced or eliminated. Thus, unloading ships faster could result in congestion in the container yard, which would not improve the efficiency of the maritime logistics system and instead shift problems along the supply chain.

An alternative way to benchmark container ports

We note the Commission's alternative way to benchmark container ports which it says uses a more conventional approach to benchmark the technical efficiency of international container ports, by estimating a production possibility frontier using data envelopment analysis (DEA) and assessing where Australia's ports sit relative to that frontier.

We note the Commission's advice that:

- A range of factors impact on the usefulness of any benchmarking exercise, including:
  - The difficulty in ensuring that comparisons are being made between like-with-like ports;
  - The availability, accuracy, integrity and timeliness of the data used in the analysis; and
  - That lower observed performance may not actually equate with inefficiency. For example, it may be optimal to operate at 60 per cent to 70 per cent of full capacity utilisation to prevent congestion in the port and retain spare capacity to cope with peaks in trade.
- Finding suitable benchmarking partners is a challenging exercise. There are many factors that distinguish Australian ports from each other (such as the level of throughput, frequency of ship visits, port infrastructure and operations and restrictions on vessel height and size). The same applies to international ports (such as Australia's small market size, multi-port ship calls and destination orientation). Given these differences, ports should be benchmarked against 'reasonably similar' ports to ensure that the results are meaningful. Nevertheless, care still needs to be exercised to ensure that differences in port characteristics that cannot be replicated are not driving the results.
- Australian ports may never be able to achieve the same levels of efficiency as transhipment ports, which handle large volumes of containers from very large ships and move significant numbers of containers from ship to ship. Nor might Australia achieve the economies of scale present at larger ports.
- Having regard to methodological issues, the Commission's like with like port selection process identified 166 ports as being broadly comparable to those in Australia, including ports in North America (for example, Montreal, Vancouver, Halifax, Charleston, Houston), South America (Callao, San Antonio, Santos), New Zealand (Tauranga, Auckland), Europe (Felixstowe, London, Valencia, La Spezia, Le Havre), Asia (Shantou, Yokohama, Tokyo) and Africa (Durban, Lomé).
- The data envelopment analysis (DEA) was used to estimate a production possibility frontier (that is, the maximum output that can be achieved for different combinations of inputs) and to generate a summary 'technical efficiency score' for each port. Ports that maximise their output given their input use are identified as being on the 'best practice frontier'.
- Ports on the frontier were then given a score of one. Ports inside it (those less efficient than the best) were given scores of less than one that indicate how far they are behind the best. A port with a score of 0.8, for example, is 20 per cent below the frontier, meaning that it used 20 per cent more inputs than the most efficient port did to process the same number of containers. The following assumptions were used:
  - There is only one output (throughput in TEUs); and
  - That ports used the following inputs:
    - Number of terminals — a proxy for terminal-level competition within the port;
    - Number of berths — a proxy for the number of ships a port can service;
    - Total length of berths — a proxy for the size of ships a port can handle;

- ❖ Maximum draft — a proxy for the weight and depth of ships that a port can service;
- ❖ The number of container cranes (separated into quay, mobile and other cranes to allow for technology differences across ports) — a key resource for increasing container throughput.

We note that the Commissions DEA analysis revealed the following results:

- Most Australian ports have substantial scope to improve the efficiency of their operations (Table 3.7).
- Adelaide is found to be fully technically efficient; the other ports are not;
- Melbourne is 10 per cent from the frontier, while Sydney, Brisbane and Fremantle are between 21 and 25 per cent from the frontier.
- Most Australian ports could reduce their capital inputs and achieve the same level of output; Alternatively, most Australian ports should be able to cope with an increase in throughput by using their inputs more efficiently (Figure 3.17 — the vertical distance between the port and the frontier). But this interpretation depends on the ability of marine operations and the landside to cope with increased container traffic (more ships or larger call sizes).
- The potential efficiency gains suggested by the Commission's preliminary benchmarking exercise should be interpreted cautiously.

Table 3.7 – Most Australian ports have scope for improvement[a]

Technical efficiency scores for Australian ports

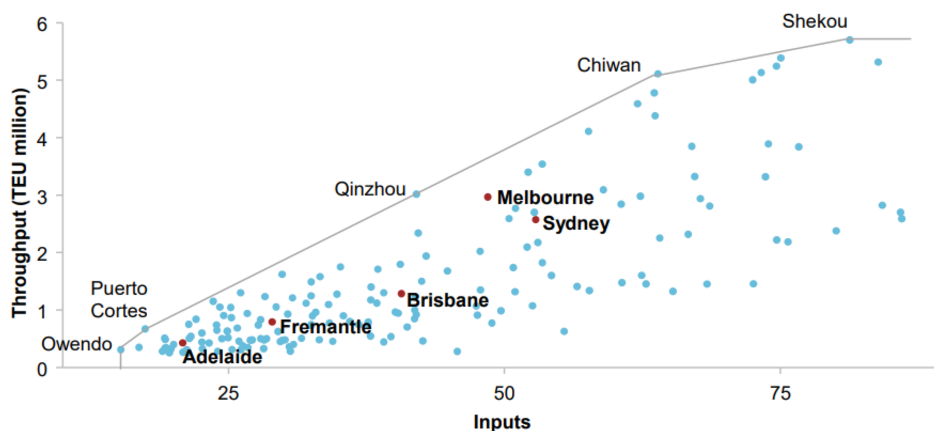
Port	Technical efficiency score	Rank (percentile)[b]	Peers
Adelaide	1.00	1 (0.01)	Batangas, Douala, Posorja
Melbourne	0.90	101 (0.61)	Davao, Puerto Cortes, Chiwan, Qinzhou, Cat Lai
Sydney	0.75	125 (0.75)	Douala, Qinzhou, Cat Lai
Fremantle	0.73	128 (0.77)	Douala, Puerto Cortes, Chiwan, Taipei, Posorja
Brisbane	0.71	135 (0.81)	Douala, Qinzhou, Cat Lai

a. A variable returns to scale model was used to account for differences in throughput levels and economies of scale. **b.** There were 87 ports out of the 166 ports in the sample that received a technical efficiency score of one, indicating the port was fully efficient. So, even though Melbourne has quite a high technical efficiency score, their percentile rank is in the bottom 60 per cent.

Source: Commission estimates usina IHS Markit's Port Characteristics data.

Figure 3.17 – Scope exists for most Australian container ports to improve their productivity[a,b]

The two-dimensional estimated productivity possibility frontier



a. Adelaide is estimated to be technically efficient (on the frontier), but the two-dimensional nature of this chart depicts Adelaide within the frontier. The production possibility frontier has multiple dimensions that cannot be depicted in a simple chart. **b.** 'Inputs' in the figure is the sum of all input variables in the model.

Source: Commission estimates using IHS Markit's Port Characteristics data.

The Commission says its benchmarking exercise differs from the World Bank's and, as such, the performance ranking of Australian ports does too. For example:

- Adelaide is ranked in the top 1 per cent for technical efficiency but bottom 25 per cent in the World Bank study.
- Critically, the World Bank's benchmarking analysis did not account for the fact that some ports use relatively more inputs and can, therefore, turn ships around faster (while the Commission's analysis did not take time into account).

We are not convinced that the DEA methodology is sufficiently robust and reliable as to form the basis for considering port stakeholder remedial actions.

The port of Yokohama

We note the following points the Commission has made about Yokohama port:

- Yokohama, which topped the World Bank rankings, had a technical efficiency score (0.65) — lower than the score achieved by all five Australian ports.
- While Yokohama had the fastest ship turnaround times as indicated by the World Bank CPPI and higher gross crane rates, they also had five container terminals, about 5.5 km of berths and about 40 quay cranes. In comparison, Melbourne and Sydney each had three terminals, about 2.5 to 3.6 km of berths and about 20 quay cranes each.
- Given Yokohama had similar throughput to Melbourne and Sydney, Yokohama's capital utilisation was much lower. This reduced their technical efficiency but helped them achieve faster turnaround times (and might enable them to better cope with any significant increase in the volume of containerized trade).
- In other words, Yokohama has an excessive level of investment for their current level of throughput. This over investment in costly capital is inefficient even if it means that they can turn ships around quickly.

The MUA has established through its own investigations that:

- Yokohama is not automated, which supports the Commission's research[53] and also its finding that automation per se is unlikely to be a factor in creating a high performing port; and
- The speed of cargo handling and the setting of appropriate staffing levels are agreed matters in the labour union negotiated collective bargaining agreement at Yokohama port, which indicates that the presence of a union collective bargaining agreement that addresses such issues, particularly labour utilisation, cannot per se be identified as a barrier to high port performance, which is contrary to the Commission's core position on managerial prerogative addressed in Chapter 10 of the draft report.

Unpacking the results of the World Bank study

The Commission noted that this revealed that:

- Australia could improve turnaround times for large ships by reducing anchorage and, in particular, cargo handling times.
- Australian ports have similar gross crane rates to the average global port — in other words, Australia's major container ports do not rank poorly in the World Bank analysis because ports move fewer containers per crane while ships are being worked.

The Commission's benchmarking analysis

The Commission analysis showed that:

- Australian container ports could utilise their physical inputs more intensively (and improve their technical efficiency).

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[53] Ibid, P352

- Data limitations mean the analysis cannot shed light on ways in which productivity might be improved in the short to medium term.
- The benchmarking also highlighted the role that capital can play in turnaround times.

Market power in ports and shipping (Chapters 5 and 6)

This section responds to the following draft findings and information requests

- ***Draft finding 5.2*** - *Privatisation in New South Wales has impeded efficient outcomes*
- ***Draft finding 5.3***
- ***Draft finding 5.4*** - *No case has been found for further regulation*
- ***Draft finding 6.2*** - *Competition is a constraint in the shipping line market*
- ***Draft finding 6.3*** - *Shipping lines have increasing bargaining power*
- ***Information request 6.1*** - *The Commission seeks information on why container terminal operators do not charge shipping lines fees for arriving outside their windows.*
- ***Information request 6.2*** - *The Commission is seeking information on why landside fees charged by container terminal operators have increased substantially since 2017 and not earlier.*

The market power of shipping lines

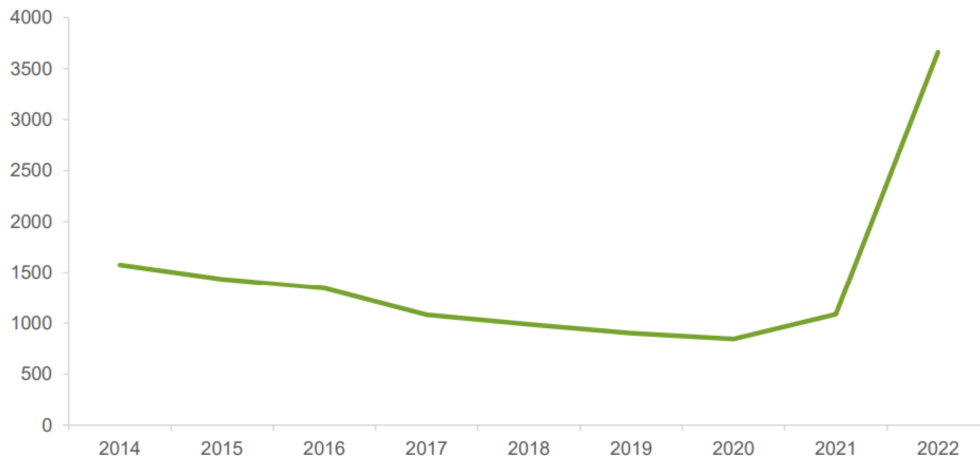
On our reading of the draft report the Commission has found that shipping lines can and do exercise market power, exemplified by:

- Shipping lines skip port calls to the detriment of the cargo owner who is left to arrange for the return of the container to its intended destination, and in some cases having to pay for this final leg of the journey, notwithstanding the Commission reporting that it has seen no evidence of shipping lines choosing to skip a port to bargain down port charges. The Commission nevertheless said that "*when it comes to Australian ports, the shipping lines buy services from both port operators and container terminal operators, and while the port operators remain relatively protected by their monopoly status, the same cannot be said for container terminal operators*"[54];
- The ability of shipping lines to easily switch terminal operators (subject only to the 1–2-year contracts with terminal operators), noting the Commission has found switching has become increasingly prevalent, and noting that container terminal operators have no protection against this in ports where there is more than one terminal operator (all Australian ports except Adelaide);
- The unfettered ability of shipping lines to raise freight rates given the atomisation of their customer (cargo owner) market which rely on the spot market (coordinated by freight forwarders, who are price takers). The vast majority of cargo owners can exert virtually zero bargaining power (with the exception of just a few very large volume customers who enter into contracts) i.e. adopting a price gouging practice that has led to excessive rent extraction in the form of super profits that are not returned to the nation in which the profits are made through taxation arrangements – as depicted in Figure 6.2:
    - ➢ Extraordinarily, the Commission described this situation as reflecting "the market at work"[55];

[54] Ibid, P169
[55] Ibid, P179

Figure 6.2 – Shipping rates were relatively low and decreasing prior to the COVID-19 pandemic

Average blue-water rate (real $US) of shipping a 20' container from Europe to Sydney, 2014–2022



a. These are contracted rates for a medium-sized importer.

Source: confidential data.

- The unfettered ability of shipping lines to introduce larger ships into Australian ports without notice, which has resulted in severe disruption at container terminals where the quay line cannot accommodate large vessels simultaneously, effectively converting a two-berth terminal into a one berth terminal for the duration of the berthing time of large ships, or a 9-berth port into a 6-berth port, without any penalty. Additionally, the Commission has noted that a potential unpriced effect from the use of bigger ships is an increase in road congestion costs — because the marginal cost of congestion increases as a function of total traffic, moving a given number of containers using a smaller number of ship visits could increase the total cost of congestion overall[56];
- The unfettered ability of shipping lines to fail to meet berthing windows without penalty, as depicted in Figure 3.3. The Commission found that service reliability has declined markedly over the past three years.

[56] Ibid, Footnote 4, P219

Figure 3.3 – Reliability of ships arriving on schedule has declined

Per cent of container ships arriving on time, 2019–2022

Source: MUA Supplementary Submission (sub. 72, p. 1).

- The increased bargaining power of the shipping lines which they are using to pay lower charges and failing to pass on those lower costs to cargo owners (the CCA [s. 10.24A] allows shipping lines to collectively bargain with container terminal operators). There has been a steady decline since about 2005 in the terminal handling charge imposed by terminal operators (as depicted in Figure A2 and 6.3 (on p.50 and 51 of this submission);
- The increased level of shipping line vertical integration in the freight and logistics supply chain[57];
- Their lobbying power and veiled threats to disrupt the Australian supply chain, resulting in a continued exemption from key provisions of the CCA enabling the shipping lines to engage in behaviour that is normally regarded as anti-competitive conduct, not available to any other sector in the Australian economy; and
- The propensity for shipping companies, include container shipping lines to engage in wage underpayment, as evidenced in the Australia Institute/Centre for Future Work *Robbed at Sea* report, whereby as the report says, the practice becomes part of a business model, also demonstrate that shipping companies exert market power and are able to flit domestic and international labour laws.[58]

We note that the Commission has clearly acknowledged the market power of shipping lines (and its ability to exercise that market power) because one of the rationales for its 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, is that "*if the fixed charges are unreasonable, the shipping lines are able to push back against these charges, unlike the transport operators*."[59]

Notwithstanding those findings, the Commission concluded that current market competition is a sufficient constraint on international container shipping lines and no action is necessary to temper their market behaviour other than advocating the repeal of Part X of the CCA, and raising the question as to whether port

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[57] Ibid, P185

[58] Australia Institute/Centre for Future Work, *Robbed at Sea: Endemic Wage Theft from Seafarers in Australian Waters*, September 2022

[59] Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, P200

authorities that manage the harbourmaster functions in a port could have some responsibility for any late arrivals or are in a position to charge fees to incentivise more timely arrivals.[60]

We note that the Commission did not address other examples of the exercise of market power exhibited by shipping lines which the MUA outlined in its February 2022 submission to the Commission, such as unilateral imposition of port congestion fees, rolling over cargo (to a later voyage), cancelling bookings; and imposing move count restrictions on vessel exchanges, none of which attract a penalty.

We conclude from our analysis of the Commission's findings that neither the terminal operators nor cargo owners can exercise countervailing power, to temper the market power of shipping lines and that the shipping lines face almost no barriers to entry and exit and therefore regulation of the market power of shipping lines is the only available option.

Draft recommendation 6.1 *Repeal Part X*
The Australian Government should repeal Part X of the Competition and Consumer Act 2010 (Cth) (CCA).
- *No other industry has an exemption like Part X, even though there are industries with similar characteristics to the shipping industry.*
- *Shipping lines should show that their agreements provide a net public benefit.*
- *Either a class exemption or the existing provisions under Part VII of the CCA could deal with shipping line agreements under a net public benefit test once Part X is repealed.*

The MUA supports the Commission's recommendation 6.1 that the Australian Government should repeal Part X of the *Competition and Consumer Act 2010* (C'th) (CCA).

However, the MUA view is that Part X be replaced by a limited form of class exemption so that the only matter that in future would be exempted in a liner conference agreement be the opportunity to collude and reach agreement between container shipping lines for the exchange, selling, hiring, or leasing (or subleasing) spaces (slots) on vessels.

Shipping line competition: Repeal of Part X isn't enough

Our view is that the repeal of Part X should be replaced by a limited form of class exemption so that the only matter that in future be exempted in a liner conference agreement be the opportunity to collude and reach agreement between container shipping lines for the exchange, selling, hiring, or leasing (or subleasing) spaces (slots) on vessels.

Additionally, repeal of Part X could mean fewer liner conference agreements being registered under current arrangements given that agreement registration enables access to the Part X exemptions, which would have the effect of reducing the ability of the Peak Shippers Association (the current designated shipper body under the CCA Act that represents the interests of Australian shippers) to negotiate service provision 'standards' or 'conditions' on international shipping lines, on matters such as minimum levels of shipping services they will provide; and specification of notice period for changes to freight rates and surcharges.

We therefore propose that the CCA be simultaneously strengthened by requiring container shipping lines to adhere to specified service standards and service levels, or face pecuniary penalties for failure to comply with those minimum standards.

It is our view that the specified standards should include an obligation on shipping lines to:

[60] Ibid, P191

- Maintain capacity over blocks of time of no less than three years, thus constraining a diversion of services from Australia to higher value routes and volumes; the practice of rolling over cargo (to a later voyage), and unilateral booking cancellations;
- Maintain pricing stability to eliminate excessive increase in freight rates and arbitrary imposition of congestion charges without transparent justification and provision of reasonable notice periods;
- Maintain port schedules and to meet berthing slot windows, thus eliminating diversion of vessels to alternative ports and schedule sliding or face a penalty as alluded to by the Commission;
- Minimise imposition of demurrage charges, and to provide transparency on demurrage charges;
- Provide a minimum of two years notice of the intention to introduce a substantially larger TEU capacity ship in a trade (substantially larger meaning by 1,000 or more TEUs);
- Ensure that seafarers on liner ships are covered by a current collective bargaining agreement approved by the International Transport Workers Federation (ITF);
- Comply with the International Labour Organisation (ILO) Maritime Labour Convention 2006 (as amended) to the standards required by the ITF; and
- Comply with the Neptune Declaration on Seafarer Wellbeing and Crew Change, International Maritime Organisation (IMO) Protocols for addressing seafarer crew changes and seafarer COVID-19 vaccination programs.

Terminal Access Charges

Draft recommendation 6.2 *Terminal access charges and other fixed fees for delivering or collecting a container from a terminal should be regulated so that they can only be charged to shipping lines and not to transport operators*
Regulations should be established that prevent container terminal operators from charging transport operators any fixed fees associated with delivering or collecting a container. Container terminal operators would not be prevented from charging these fees to shipping lines. This reform should be complemented by state and territory government regulators being empowered to monitor flexible fees charged to transport operators by container terminal operators to ensure that these fees are being used to create efficient incentives for transport operators and are not being used to offset any lost revenue from fixed fees.

We do not support the Commission’s preferred option to prevent container terminal operators from charging fixed fees, such as terminal access charges, to transport operators, and instead, transfer all fixed charges associated with container collection to the shipping lines:

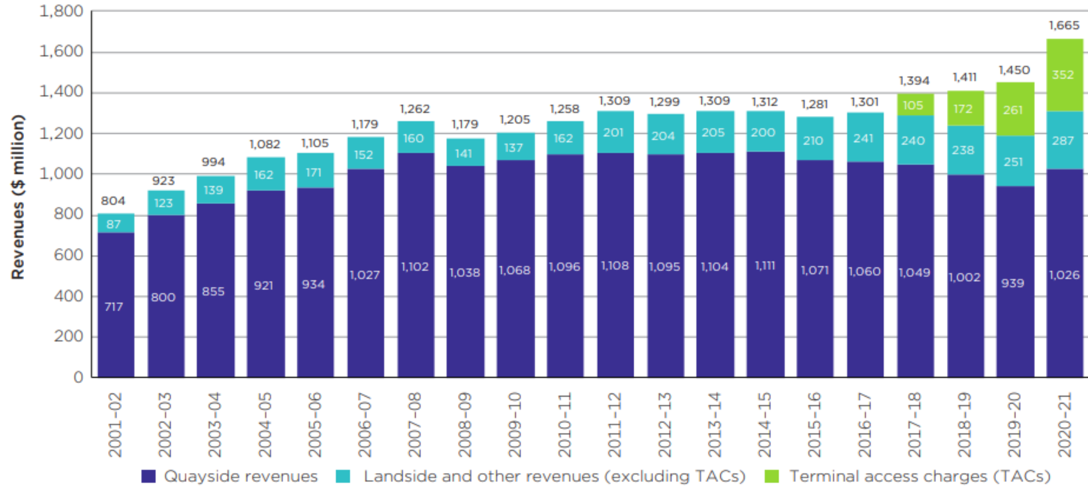
That proposition would have disastrous consequences for port efficiency because shipping lines remain almost totally deregulated and would be provided with another avenue through which to exercise their excessive market power in their commercial relationship with container terminal operators.

If terminal operators were required to collect TACs from shipping lines rather than from transport operators, the shipping lines would inevitably use their market power to recover those charges, so cargo owners, and ultimately consumers would be no better off.

But the more insidious outcome would be the impact on port efficiency and port productivity because shipping lines would use their market power to choose which terminal operator in a port they contract with, which would lead to regular contract switching as shipping lines seek to drive down the TACs by forcing the terminal operators to lower TACs to maintain market share, which is relatively evenly balanced across ports at present. Loss of contracts leading to loss of revenue, and or loss of revenue through lower TACs would impact on the return on capital already sunk by terminal operators in terms of terminal infrastructure (which is directly linked to port productivity). It would also impact on future infrastructure investment, including in other port infrastructure such as rail access and quay line extensions etc which is funded by a

combination of government and port operator capital. Shipping lines are already driving down the quayside revenues received by terminal operators as shown in Figure A2 in the ACCC Container Stevedoring monitoring report 2020-21 (see the dark blue bar).[61] The Commission's solution would result in a significant squeezing of terminal operator revenue and profitability, which could ultimately impact of their commercial sustainability. It would most definitely disrupt the investment plans of terminal operators.

Figure A2: Total revenues in real terms: 2001–02 to 2020–21

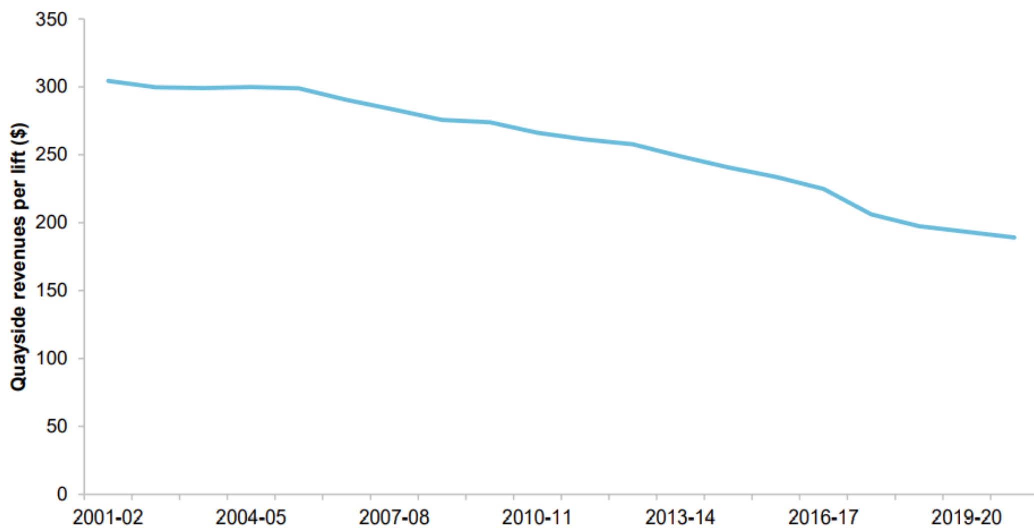


Source: ACCC analysis of information received from stevedores as part of the monitoring regime.

Note: TACs have been collected by container stevedores at some ports since 2011–12 and aggregated under landside and other revenues until 2016–17. Real values in 2020–21 dollars.

Figure 6.3 – Quayside revenue has been decreasing

Aggregated quayside revenue per lift for Patrick, DP World and FACT, 2002–2021



Source: ACCC (2021a, fig. 5.2).

[61] ACCC, *Container stevedoring monitoring report – 2020–21*, P74

Additionally, shipping lines that did not like the TAC charges in a particular port could bypass that port altogether, or offer more limited services to that port, thus disrupting Australia's supply chain logistics system. The shipping lines have already demonstrated they are willing to take that action (as evidenced in the Commission's report), at great cost to cargo owners and ultimately consumers:

A far better alternative than that proposed by the Commission is that the major beneficiaries of the products transported by containers i.e. the importers such as retailers and exporters like manufacturers (cargo owners or shippers) be required through an appropriate tribunal, to oversee and help settle contract rates for engaging trucking and rail companies that not only ensures the sustainability of those transport operators and a fair return on their investment in trucks and trains, but ensures the trucking and rail workforce are paid decent wages.[62] Such a supply chain approach is consistent with that applying to mandatory human rights and environmental due diligence, for example under Australia's Safeguard Mechanism. This approach would provide the capacity that would enable the transport companies to more effectively manage TACs because it eliminates the 'race to the bottom' strategy adopted by companies under competitive pressure, thus eliminating the business model based on driving down labour costs and cutting corners on safety, that results in practices such as wage theft, use of platform workforce engagement technologies, higher rates of casualisation and insecure work, under-skilling, and higher injury and mortality rates, and which limits the capacity to invest for the future.

In the meantime, we believe the National voluntary guidelines for landside stevedore charges developed under the auspices of Infrastructure and Transport Ministers by the National Transport Commission, and approved by Ministers in March 2022 (and being commenced in each state according to that state's timetable) should be given time to operate and be independently evaluated, say in three years from date of commencement. We note that the National voluntary guidelines for landside stevedore charges were based on the Victorian voluntary guidelines, which emerged after a Deloitte report for the Victorian Government found that container terminal operators are not using their market power unfairly to inflate prices and profits.[63] The Commission also noted the ACCC finding that there is no evidence of excessive profitability for container terminal operators.[64]

Container port capacity and landside infrastructure (Chapter 7)

- Draft finding 7.1 - Port expansions to accommodate bigger container ships do not need taxpayer funding
- Draft finding 7.2 - Most container ports are planning substantial investments in rail infrastructure
- Draft finding 7.3 - Planning systems should allocate land around ports to highest value uses
- Draft finding 7.4 - Long term planning appears to be adequate

It should be noted that productivity of landside and road connections are significantly impacted by container terminal management decisions by about the introduction of new technologies, and how to organise work allocate labour and machinery. In our response to Chapter 11 in the section 'Effects of automation on landside productivity' we detail examples of these impacts.

[62] The former Road Safety Remuneration Tribunal (RSRT) established by the Gillard Labor Government in 2012 to oversee the road transport industry in Australia, operating under the *Road Safety Remuneration Act 2012,* (Cth) is one such example. The RSRT was dismantled by the Abbot Coalition Government as part of its war on workers, but Labor is considering reestablishment of such a tribunal.

[63] Deloitte Access Economics, Port of Melbourne Pricing & Access Review, 2020

[64] Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, P201

We agree with the following observations made by the Commission, with qualifications:

Container port capacity and landside infrastructure
The Commission observes that: 'bigger ships increase costs in the maritime logistics system because they may need deeper and wider channels, higher bridges and bigger and more cranes, and they make the landside freight task 'lumpier', with peaks requiring more flexible labour and potentially adding to urban congestion;[65]and 'That there is no clear need for government intervention to fund or otherwise coordinate investment to encourage the use of bigger ships'.[66]

It is the MUA view that in order to address the implications for port operations of the trend towards bigger container ships, that Australian port operators and terminal operators should be in a collective dialogue with international shipping lines servicing Australian ports, in conjunction with the Australian Peak Shippers Association as the designated peak shipper body granted status by the Federal Minister for Infrastructure and Transport under Part X of the CCA aimed at reaching agreement on the phased introduction of bigger ships.

We believe such a dialogue should take place in conjunction with a new class exemption approach to replace a repealed Part X, and that simultaneously the CCA be amended to include minimum standards and service levels for international liner shipping, one of which should be that container shipping lines provide a minimum of two years notice of the intention to introduce a substantially larger TEU capacity ship in a trade (substantially larger meaning by 1,000 or more TEUs). It is untenable that international container shipping lines can unilaterally and with no advance warning introduce larger ships that do not match the available berth infrastructure at the ports they serve. In contrast, on the landside, trucking operators have been required to undertake a long process of assessment and trialling to assess the implications of new technology such as B-doubles, before approval of the introduction of larger trucks and have been required to meet a raft of regulatory hurdles. Why should it be any different for container shipping lines?

We disagree with the following observations made by the Commission, with qualifications:

Long-term planning appears to be adequate
The Commission observes that 'long-term planning to accommodate the expected growth in container freight appears to be adequate'[67]:

While this may be a reasonable observation for Victoria and the smaller TEU volume port states/NT, we do not believe it is accurate for NSW (Port Botany, Newcastle Port, Port Kembla), and to a lesser extent, Qld (Port of Brisbane and some Qld regional ports).

In relation to NSW, we note that the Commission has said that there may be a 'Sydney and Newcastle market for container port services', if shipping lines consider the services offered at Ports Botany, Kembla and Newcastle to be effective substitutes, and that port privatisation processes have entrenched the market power of port operators in Sydney by combining the ownership of Port Botany and Port Kembla and penalising any development of container capacity at the Port of Newcastle.

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[65] Ibid, P19 and 211
[66] Ibid, P19 and 211
[67] Ibid, P32

The inclusion in the Port Commitment Deed for the new owner of Port Botany/Port Kembla of a clause that the State will compensate the port operator (NSW Ports) if container volumes through the Port of Newcastle exceeded 30,000 TEU per annum and similarly the Port of Newcastle Port Commitment Deed requires that if the State must compensate Port Botany or Port Kembla, then recompense will be sought from the Port of Newcastle, an imposition that applies for the first 50 years of the Newcastle lease, means that irrespective of NSW container capacity needs, the Newcastle Port is effectively prohibited from providing that additional container capacity. We note that the ACCC has stated that this has made it 'uneconomical to develop a container terminal at the Port of Newcastle for the 50-year term of the deed' and effectively limits the possibility of the most likely competitor to Port Botany (i.e. Newcastle) entering the container market in NSW.

As a result we say that long-term planning to accommodate the expected growth in container freight in NSW is inadequate, and that there needs to be an all-party agreed resolution to the barrier to Newcastle Port investing in a container port as a matter of high national priority. The outcome of the ACCC appeal against the Federal Court's decision to dismiss the ACCC's proceedings against NSW Ports Operations Hold Co Pty Ltd and its subsidiaries Port Botany Operations Pty Ltd and Port Kembla Operations Pty Ltd (together, NSW Ports) as well as the landing on the Port of Newcastle (Extinguishment of Liability) Bill 2022 currently being debated in the NSW Parliament will be instructive on this issue.

In relation to Qld, the MUA is concerned about the impact the inland rail project will have on Qld container freight logistics, export container distribution among Qld ports, particularly given the Qld Government inquiry about extending the inland rail line to Gladstone, uncertainties over the Acacia Ridge to Port of Brisbane rail link and generally about the utility of the inland rail project, given its weak business case and the pre-existing availability of a perfectly functional and efficient sea freight option to meet the N-S-N container movement requirements along the east coast. All this raises questions about the inadequacies of the planning of an efficient container freight system on the eastern seaboard.

It is the MUAs view that the Federal Government should revisit and revamp the National Freight and Supply Chain Strategy to enable a fresh look at the key components of an Australian freight and logistics system and where priority investment and policy change is required in a decarbonising world.

Skills, Training and Labour supply (Chapter 10)

Draft finding 10.1: *Port workers appear to acquire the skills they need*

We disagree with this finding, and the observation that 'skills and training raise few productivity concerns' (p.29 and 51).

The lack of formalised skills and training should raise productivity concerns.

The Commission notes that container terminals rely more on onsite, unaccredited training which it says reflects workplace relations arrangements and site-specific needs. However, this appears to contradict the 5-year Productivity Inquiry: *From learning to growth* Interim report, where the Commission stated that there is compelling evidence that education plays an important role in productivity growth.

It seems to us that making such a finding about unaccredited company training that does not lead to an approved VET qualification would require the Commission to actually analyse the stevedoring training programs for relevance, educational and technical content and quality, for matching to the requirements of actual job roles and to its application to the capital technology that the workforce operates.

When so much of the draft report is focussed on the attribution of the less than adequate productivity performance of ports to the workforce, it seems very incongruous to us that the Commission has been willing to make such a finding without a proper examination of the actual skills and training the workforce currently receives.

It is unclear from the draft report if the skills and foundation education of the workforce, or the skill requirements for entry to container terminal occupations, could be a factor that requires attention in improving workforce efficiency and productivity.

Information request 10.2 *Do employers and employees in the ports receive the outcomes they are seeking from the VET system?*

Information request 10.3 *What are the costs and benefits of formalising qualifications and licensing for heavy equipment that is unique to ports? Are there health and safety grounds for doing so?*

Information request 10.4 *What is the mix of accredited, unaccredited and informal training at container terminals?*
What are the costs and benefits of that mix?
What costs and benefits would be created by a greater reliance on formal training?
Does credit for recognised prior learning occur and, if so, in what context?

We support the suggestions in Information Requests 10.2 10.3, 10.4 that there should be a greater use of formal qualifications, both high-risk work licencing and the VET system. The union has always supported this, but unfortunately this has generally been opposed by employers.

A lack of formal qualifications (in the quayside workforce) could be a barrier to labour mobility between container terminal operators if prior experience is not recognised at another company or port, noting that container terminals rely more on onsite, unaccredited training (which the Commission says reflects workplace relations arrangements and site-specific needs)[68]

High-risk Work Licencing

High-risk work licencing should be extended to cover ship's cranes, auto stacking cranes, straddle carriers, rail track gantry cranes and other container handling equipment.

This will have positive health and safety implications. In particular, a high-risk work licence should be introduced for straddle carriers. These are mobile cranes which carry containers, and are used in multiple container terminals around Australia. They may also be used in intermodal terminals.

[68] Ibid, P29 and 317

Straddle carriers are one of the most dangerous areas of operations for stevedoring workers. In April 2018, a collision between straddle carriers at the Hutchison terminal in Port Botany resulted in a worker falling seven metres from the cabin to the concrete terminal surface. The worker survived, but only after surgery, an induced coma, and an extended period of time in a critical condition. In September 2018 a worker in the Port of Auckland died after their straddle carrier tipped over.[69]

Straddle carriers have also been linked to significant musculoskeletal injuries. A safety campaign by workers and a legal case by the MUA on behalf of injured workers[70] resulted in better maintenance of terminal pavement surfaces and strict time limits being placed on the time that each worker can drive a straddle carrier. It is important to be vigilant about these hazards.

A high-risk work licence should also be introduced for ship's cranes. Wharfies are required to hold a High Risk Work Licence to operate a crane loading or discharging a ship that is installed on a wharf. Yet no licence is required to perform the same task if the crane is installed on a vessel – even if it is a larger crane. This is a major gap in the licencing structure that applies to a significant portion of Bulk and General stevedoring operations, in more than 20 ports around Australia.[71]

Cranes installed on vessels are significantly higher risk. They are constantly exposed to salt water and are usually installed on Flag of Convenience ships travelling internationally. Australian stevedoring workers regularly board these vessels for the first time when they prepare to operate the crane, yet cannot be confident about the crane's maintenance history or current status. Therefore a very thorough inspection of each crane is required before operation.

Crane operators must also deal with the listing of the ship during the lift. Dual crane lifting using ship's cranes also takes place regularly, see Figure 4.

[69] Worksafe Mahi Haumaru Aotearoa, Ports of Auckland sentenced following 2018 fatality, 9 December 2020.
[70] Quinlan, Michael, Philip Bohle and Felicity Lamm. 2010. *Managing Occupational Health and Safety: A Multidisciplinary Approach*, 3rd ed. South Yarra, Australia: Palgrave Macmillan, p. 493-494. The case was *Coombs v Patrick Stevedores Holdings Pty Ltd [2005].*
[71] Ship's cranes are also described as vessel-mounted cranes by Safe Work Australia. See Safe Work Australia, Cranes, Accessed June 2022.

Figure 4: Wharfies in Geelong perform a dual lift of a 100 tonne wind turbine blade using two ship's cranes. The blades were transported to onshore wind projects in western Victoria.

Credit: David Ball

There are a variety of ship's crane types that include cargo winches and derricks, gantry type cranes and slewing jib cranes. Stevedoring operations using ships cranes commonly handle heavy lifts from 20T to over 100T.

Employers commonly use the excuse that there is no 'ships crane license 'as an excuse to not train an employee for any High Risk crane license before requiring them to operate the ships crane – not even a comparable slewing mobile crane licence. Workers often receive only a simple crane induction before starting to operate a ship's crane. Not only is this a risk to workers, it is also a risk to the high-value cargo they shift – particularly wind turbine blades.

There are no wind turbine blade manufacturers in Australia, and very limited tower manufacturing. This means that virtually all components of large wind turbines are imported to Australia on ships. Rotor blades can be in excess of 100 tonnes in weight and require complex dual lifting from ship's cranes, as illustrated in Figure 4. There is zero tolerance for damage to a wind turbine blade, and no facility in Australia to manufacture or carry out significant repairs to blades.

While ship's cranes have been used on Australian wharves for a very long time, there is a growing number of complex heavy lifting requirements. This is partly based on the development of renewable energy in Australia.

The construction of renewable energy is expected to accelerate in the coming years, across ports all round Australia. Once the construction of offshore wind projects begin, the components will be even larger.

VET system training

We support making much better use of the VET AQF qualifications for terminal operations in the Transport and Logistics Training Package (primarily comprising a three-level hierarchy of VET qualifications, being a Certificate II in Stevedoring; Certificate III in Stevedoring; and Certificate IV in Stevedoring Operations). A stronger commitment needs to be made by all parties to better use of these qualifications.

The Stevedoring Training Package does need a thorough review to ensure that it remains contemporary. and reflects the appropriate job roles they are intended to support. Efforts must also be made to ensure the current suite of VET qualifications covers the full span of occupations required for modern container terminal operations.

Mechanisms should also be put in place to ensure greater take-up. We would like to see agreement on a process to ensure that (i) over a two-year period the entire current workforce holds an appropriate VET qualification topped up by approved Skill Sets for specialist functions/job roles; and (ii) all new entrants be required to gain an appropriate entry level VET qualification derived from the Transport and Logistics Training Package within the initial 6 months of employment.

This needs to be addressed collectively between employers and the union.

Information request 10.5 *How does workplace relations influence training, including the content of training, who provides the training, who is trained and when they are trained in the maritime logistics system?*

There used to be much better industry training arrangements in place, but these were lost with the onset of enterprise employment. Before starting work on the waterfront, all stevedoring workers used to attend the Waterfront Training Centre, run by the Association of Employers of Waterfront Labour (AEWL), which was industry employer prior to the beginning of enterprise employment. Workers were required to attend for about 6 weeks, and received training on current types of waterfront equipment. The equipment was available onsite for training purposes.

At the end of the training, workers received a AEWL training book that showed the training components completed, and contained multiple high risk work licences for a heavy forklift, light forklift and ship's cranes. These were Victorian licences due to the location of the training centre, which were then converted to the licences in other states as necessary.

Industry employment arrangements meant that there was a free flow of labour between stevedoring operators as needed. However when enterprise employment began in about 1991-2, the AEWL folded. Employers were not interested in finding ways to maintain the Waterfront Training Centre, and training was taken in house to company training arrangements. Employers were also concerned that their in-house training could be used to advantage of another employer.

Other countries have maintained and updated their training centres for stevedoring workers. The best examples we are aware of are in Belgium and the Netherlands. See more detailed descriptions of these standards and centres in Appendix 3.

In approximately 2011 the union secured commitments in a number of Enterprise Agreements that employers would make greater use of the Stevedoring Training Package. However employers generally still refused to make use of this training package, and refused to train anyone higher than Certificate III.

***Information request 10.6** Would greater use of merit based hiring and promotion in container terminal operations result in greater labour mobility?*
Would recognition of prior learning, mutual recognition of occupational licencing and/or use of accredited training need to be expanded if there was a greater reliance on merit based promotion systems?
Which occupational licences used in the ports are not mutually recognised across all states and territories?
What are the costs to businesses and firms from these arrangements?
Is there more labour mobility in bulk and general stevedoring compared to container stevedoring?
Are there more standard qualifications for bulk equipment operators that foster mobility?

The end of industry employment meant the end of labour mobility between stevedoring employers. Employers were not prepared to give labour they had trained to their competitors.

The segregation of workers between employers has also resulted in higher levels of casualisation and churn of casual workers due to inability to make a living wage at a single terminal. Pooled casual labour would ensure skills and experience are enhanced and retained within the industry which benefits productivity.

We reject the suggestion that merit-based hiring and promotion does not take place in the industry.

This question makes incorrect assumptions about the links between promotion policies and labour mobility. A stronger system of national qualifications and high-risk work licencing would make a much greater and genuine contribution to labour mobility, far more than changing individual company promotion policies.

The poor state of national industry-wide licencing and training is just as bad in bulk and general stevedoring as it is with container terminals. It could be considered worse, as bulk and general stevedores do a great deal of their work using ship's cranes, which are excluded from the high-risk work crane licencing regime. Portainer crane operators in container terminals are required to be licenced because those cranes are located onshore.

Labour supply

***Draft finding 10.2:** If they arise, skills shortages for seafarers can be solved through immigration and industry led solutions such as cadetships*

There is no strong evidence of skills shortages in the maritime logistics system.

Skills shortages can, and have been, solved through targeted immigration and industry led initiatives such as cadetships, without the need for a strategic fleet.

Information request 10.1
Are there any skills or labour supply issues in Australia's ports that are not identified in this chapter, and which should be addressed?

This finding is correct about stevedoring workforce, but not about the labour supply challenges for seafarers and port management roles.

The evidence in the draft report confirms that there is a good supply of stevedoring labour, and labour shortages in the workforce are rare, where secure permanent jobs are offered. These jobs are perceived as good jobs by the Australia workforce so there are generally multiple suitable applicants for vacancies and employers rarely have difficulty filling positions. This is a positive reflection on the good terms and conditions in most stevedoring EAs – the very terms the Commission is seeking to undermine.

In January 2022 it was reported that 'staff shortages that are now crippling economic activity' in Australia. Bjorn Jarvis, head of the Australian Bureau of Statistics' labour statistics unit, commented that 'ongoing labour shortages' were 'particularly in lower-paying industries.[72] Table 1 below shows the extraordinary increase in job vacancies in transport and warehousing, along with other blue-collar industries that might compete with the maritime industry for labour.

The economy-wide labour shortages are impacting on the availability of casual employees. Multiple stevedoring employers are reporting that it is currently hard to find and retain casual employees due to the irregularity of shift work at short notice and very irregular income, sometimes going for weeks without work. This is being exacerbated by low unemployment levels, meaning that it is more likely that workers can find more regular full-time work elsewhere.

Table 1: Increase in job vacancies from February 2020 to August 2022.

Industry	Per cent increase
Transport, postal, warehousing	136%
Manufacturing	131%
Electricity, gas, water and waste	108%
Construction	101%
Mining	63%

Source: Australian Bureau of Statistics, Job Vacancies, Australia, August 2022.

Despite these shortages, in 2022 there is no issue with unfilled vacancies for workers in stevedoring and in areas of MUA coverage in ports, allowing those workplaces and supply chains to function much more effectively than many others.[73] Provisions in MUA agreements that provide for security of employment have functioned to keep workers on the waterfront.

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[72] Peter Hannam and Ben Butler, Job vacancies surge in Australia as Covid labour shortages choke supply chains, Wed 12 Jan 2022
[73]

Employers may have difficulty filling positions that are casual with no other entitlements, or are poorly paid.

If the recommendations in Chapter 9 of this report were implemented, we are confident that stevedoring would suffer from the same labour supply issues as other Australian blue-collar industries.

There is a skills supply issue in higher level port management roles due to the decimation of the Australian shipping industry which historically provided highly qualified workers for these roles.

Labour supply in shipping

The Commission has not recognised the acute labour supply issues for seafarers, initially caused by the severe impact of border closures on this national workforce and now the recent increase in oil and gas project work. The MUA and government are working to address this issue. The problem cannot be solved by immigration, or cadetships which are only for officer roles.

Technology and data (Chapter 11)

Draft finding 11.1
Technology use at Australia's major container ports is in line with international practice
There is no 'best' level of automation and ICT adoption for container terminal productivity and Australia's major container terminals have implemented varying degrees of both automation and ICT adoption, in line with internationally comparable ports.
However, automation can lead to a range of benefits including improved safety, reliability and consistency of terminal operations.

Australia's ports are highly automated by global standards, particularly considering the smaller throughput than many global automated ports.

The Commission observes that 'it is not clear from examining gross crane rates at the major container terminals that there is any correlation with levels of automation and that there is no simple argument that more automation moves more containers in an hour'.[74]

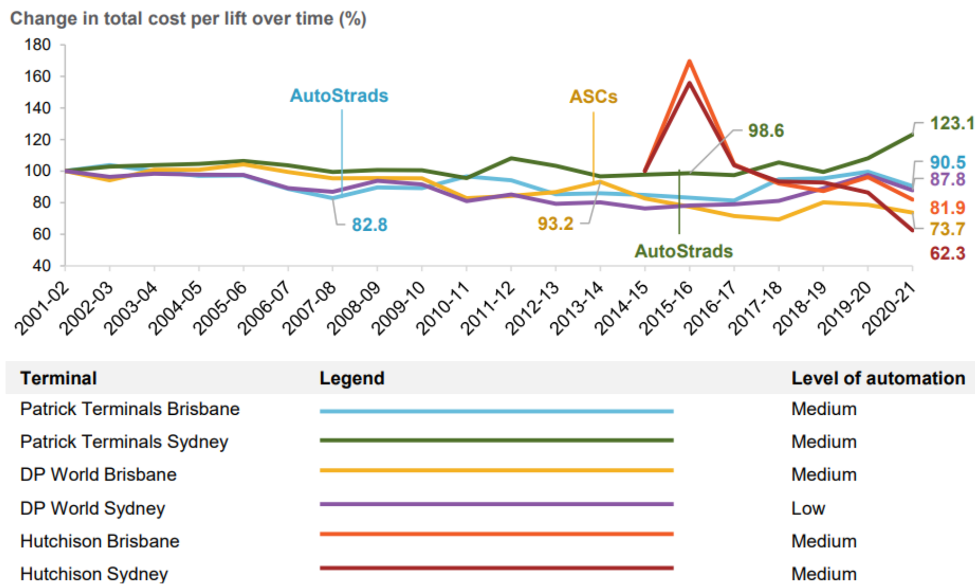
We agree. If the evidence were inconvertible that more automation results in more container moves per hour, it would be expected that Australian terminal operators would have invested in fully or partially automated quay cranes (only one terminal operator in one terminal has made such an investment, and even then, that investment is in partially automated quay cranes) and in automated stacking cranes in the yard (but only some operators in some terminals have done so).

If one of the side benefits of automation is to reduce the number of workers required in container yards by automating equipment which the Commission says can reduce or alleviate instances

[74] Ibid, P31

where humans would otherwise be put at physical risk, we think the Commission should identify a labour cost reduction metric for its proposed Australian index of port performance that will enable a comparison of the cost of moving a container between selected points in a container port operation between manual operations and automated operations. That data could then be tracked against terminal operator revenue and profit to assess who is receiving the benefits of any labour cost reduction. Metrics such as those in Figure 11.6 – Change in costs per lift at Brisbane and Sydney terminals[75], may be useful. We note that the data presented for just two ports, showing the change in total cost per lift over time, reveals that results are mixed.

Extract from the Commission's Figure 11.6



a. The cost information expresses changes in costs per lift up to financial year 2020-21 as a percentage compared against a baseline year (financial year 2014-15 for Hutchison and 2001-02 for Patrick and DP World).
Source: ACCC (2021a), supplementary tables.

We note the submission of a representative of one of the globe's main terminal equipment manufacturers that "*Industry experts in port automation, Kalmar, recognised there is a myth behind automation; that it will give higher productivity, reduce overall costs and have faster performance. In reality, automation brings consistency, predictability, reduces damages, improves planning and delivers accuracy. All of these factors provide a safer work place with less damage to equipment*. (Desira 2018)".[76] We hope the ACCC reads the Commission's findings on automation at p.347-352 of the draft report and in future does not publish unqualified statements such as "*an increase in labour productivity or capital productivity can be attributable to improvements in labour deployment, and/or technological advances such as automation*"[77] when there is no evidence for such a claim.

We stand by our submission to the Commission in February 2022 that in some cases, terminal operator experimentation with various technological applications in landside infrastructure and

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[75] Ibid, P353
[76] Ibid, P352
[77] ACCC, *Container stevedoring monitoring report – 2020–21*, P58

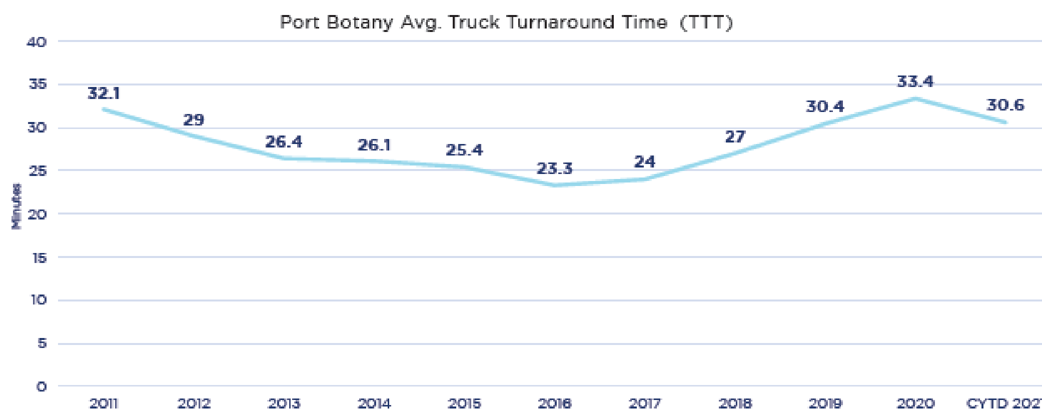
work processes has the aim of cutting costs and concentrating managerial power and that this has led to work intensification, outsourcing of new functions and a lack of investment in training and upskilling of the workforce.

Effects of automation on landside productivity

While there has been quite a lot of discussion on the impact of automation on quayside productivity, the impact on landside productivity must also be considered.

An Independent Review of the Port Botany Landside Improvement Strategy in March 2022 highlighted significant increases in truck turnaround times and decreasing Stevedore Service Levels[78] since 2016 (Figures 3 and 4 from the Independent review, pasted below). The MUA's perspective was that different automation strategies by companies made a substantial difference to truck turnaround times at different terminals. Problematic operational decisions taken by some stevedoring companies as they introduced automated equipment reduced the quality of landside services they provide, particularly to trucks.

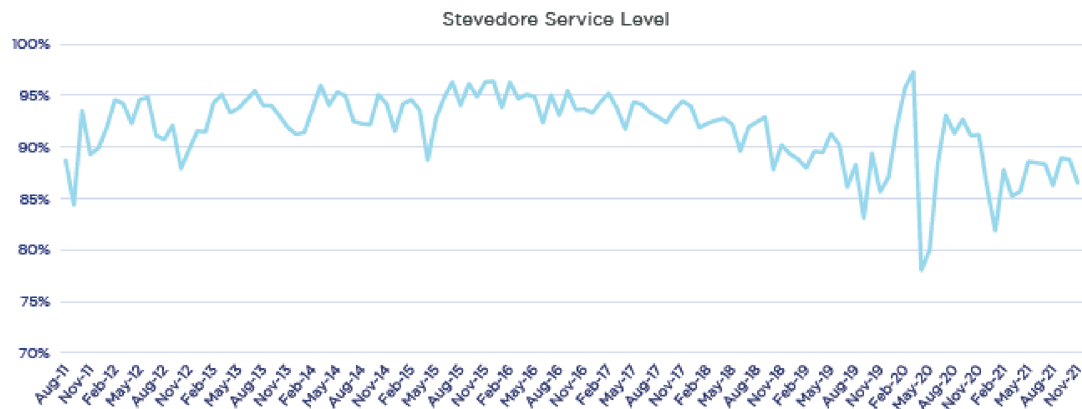
Figure 3: Aggregated stevedore average truck turnaround time Source: Transport for NSW



[78] Stevedore service level is a measure of the percentage of trucks that stevedores service within the specified time frame

Figure 4: Monthly stevedore servicing levels

Source: Transport for NSW



Source: Ed Willett, Independent Reviewer, Ports and Maritime Administration Act 1995 & Port Botany Landside Improvement Strategy, Discussion Paper, December 2021.

The ability of truck drivers to access timely assistance is critical to improving truck turn around times. Unfortunately stevedoring companies are doing the opposite: removing intercom systems that allow truck drivers to safety communicate with terminal staff, removing staff roles whose function is to communicate and provide assistance to trucks and trains, and requiring most problems to be escalated to management, which increases response time. Factors that caused the increase in truck turnaround time from 2016 to the present include:

- The automation of operations at Patrick Stevedores, which handles about half of the freight through Port Botany.
- The decision by some stevedoring companies to reduce the number of workers whose job it is to facilitate better truck turn around times, and also to require virtually every problem with a truck to be escalated to a management level.
- The decision by some stevedoring companies to make it difficult for truck drivers to communicate their problems to the container terminal by removing intercom systems and requiring truck drivers to walk across multiple lanes of truck traffic to get help.
- The increasing market consolidation and power of container shipping companies, particularly since 2015.
- Decreased reliability of container vessel arrival times since 2019, and especially since August 2020. In January 2021, only 26% of container vessels arrived on time for their container terminal slots in Port Botany. The 74% of vessels that were delayed were delayed by over 8 days on average.
- Increasing volumes of containers causing more congestion in some container terminals.

We have seen this pattern in other ports as well. At DPW Fremantle, truck turnaround was reduced to 15 minutes. Management stated we were overservicing the roadside, with the targeted benchmark being 30 mins, so they reduced the allocation of machinery and workers to this task, which resulted in a doubling of truck turn times from 15 mins to 30 mins.

Patrick: Increased automation and reduced landside servicing

The automation of the yard and container stacks of the Patrick Port Botany container terminal yard took place in mid-2015. Human drivers were removed from container straddle carriers, and replaced with an automated driverless system of individual container straddle carriers. The impact of this on truck turnaround was generally slower movement of containers around the terminal. Each straddle carrier needs to retain a buffer around itself to prevent collision, and at particular choke points around the yard straddle carriers become congested. When this takes places multiple straddle carriers come to a complete stop while the computer determines how to resolve the issue.

For trucks, the outcome of automation at Patrick is that the retrieval of each container takes longer, as the AutoStrads move more slowly through the container terminal. The process of retrieving a container only starts where the truck arrives at the terminal gate, so this has a direct impact on truck turn around time.

In 2015, the ACCC reported the automation of the Patrick Port Botany terminal 'includes a new truck ramp entry point and new semi-automated truck grids.' Patrick also reported that it was 'implementing an optical camera recognition (OCR) system across some terminals with the aim of streamlining entry conditions and reducing truck turn-around times. Patrick is assessing its remaining terminals for suitability for installation of the OCR system'.[79] The following year, Patrick reported that it 'has continued investment in truck entry systems across its terminals to streamline entry conditions and reduce truck turn-around times.'[80]

However, the evidence from PBLIS is that these new technologies have not reduced truck turn-around times.

The evidence shows the opposite effect – truck turn around times increasing with the introduction of OCR and the semi-automated tuck grids.

Why?

We believe the answer lies in the way in which Patrick introduced OCR and the semi-automated tuck grids. While OCR is an effective technology on a clean surface, containers and their OCR labels are often damaged or covered in crane grease or mud. In addition, there are a multitude of other issues which might require the automated OCR and gate system to not work. MUA members estimate that in addition to the more general delay caused by the automated straddle carriers, there are at least 5-10 problems requiring human assistance and intervention from a container terminal worker per 8-hour shift.

Patrick has implemented this automated technology in such a way so as to place the burden and delay of solving these problems on the truck driver, and made it increasingly more difficult for truck drivers to contact anyone in the container terminal for assistance. These issues include:

- Removing the role of 'truck marshall', a container terminal worker who was located in or around the truck grid to assist truck drivers.

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[79] ACCC, *Container stevedoring monitoring report* No17, October 2015, p.8-9.
[80] ACCC, *Container stevedoring monitoring report No 18*, October 2016, p.22.

- Removing the intercoms that used to be present in each lane of the truck grid that allowed truck drivers to contact someone in the terminal for assistance.
- Requiring virtually all issues raised by truck drivers to be directed to the terminal Production Manager for resolution. This person has an oversight role over the entire terminal, and is not focussed on assisting truck drivers. Workers are only allowed to deal with minor issues such as with MSIC cards, registration, and containers that are not present. The Production Manager is solely responsible for directing trucks from lanes and for the timing of completing any of these tasks for drivers.

There are now only two ways for truck drivers calling at Patrick to contact the terminal:

- If they are alerted to the problem when they come in the gate, they can park their truck and use the Help Kiosk telephone to call the Clerk upstairs. The Clerk is not empowered to solve the problem, they must go to the Production Manager located in a separate office to find a resolution.
- If the problem arises while the truck is in their lane in the truck grid, their only way of contacting the terminal is to walk across a portion of the 22 lane grid among other trucks to locate a Teleops worker. This is a person whose task it is remotely operate the automated straddle as it lands the box on a truck. If the truck driver gets the attention of a Teleops worker, that worker must stop their task and telephone the Production Manager.
- However as of October 2022, management are seeking to remove the Teleops role.

As noted above, the Production Manager who handles complaints from trucks oversees the entire terminal operations, and due to the commercial pressures outlined above, they are far more focussed on faster ship turn around than faster truck turnaround.

Instead of being used to increase landside efficiency, the new technologies of OCR and semi-automated truck grids have been used to reduce labour costs and insulate the company from dealing with complaints from truck drivers and companies. It appears that Patrick have made a commercial decision that they would rather allow truck turn around time to increase and pay the PBLIS fines, than allocate terminal resources to improving landside efficiency.

The terminal also does not offer truck drivers proper amenities. They have access to a portaloo-style toilet, and another small toilet. There is no room they can rest or eat in.

Hutchison: Automation while retaining a better (but deteriorating) level of landside services

Hutchison is a semi-automated terminal adjacent to Patrick. It uses a different type of automation: 12 large Automated Stacking Cranes (ASCs) which are gantry cranes which work at each end of 6 large blocks of containers – at the ship side and the land side. While this type of automation also poses challenges for landside efficiency, the work systems at the terminal are much more amenable and accessible to truck drivers.

At Hutchison, there are multiple places where a truck driver has the opportunity to seek assistance and resolve their problem:

- The initial entry gate has a voice box linking to workers in the terminal

- There is an amenities building for truck drivers where they can use the toilet, and there is a manifest kiosk there where they can deal with any paperwork issues relating to the containers. There is an intercom there where they can also speak to a clerk.
- There is an Exception Area, where trucks go if there are issues flagged at the initial entry gate, and there is usually a Team Leader available here to speak to the driver and solve issues.
- There is a worker acting as a spotter for side loading tucks to assist the workers at the ASC remote control station. They have direct radio contact with the team leader if a truck driver needs assistance.
- There is an intercom linking to the clerk at the Yard Entry Point

The ASC cranes do pose some problems for facilitating truck turn around:
- There is no GPS tracking on containers (as there is at Patrick) so it can take longer to locate them
- If an ASC is dealing with two 20-foot containers at the same time, it is not uncommon for the one on the left and right to get mixed up
- A truck must go to a particular ASC block to pick up their container and it is not really possible for them to move between blocks. This can create a challenge if they are picking up multiple containers which happen to be located in different blocks. In this case, the container must be retrieved by the ship side of the ASC, and then transferred by straddle carrier to the other block.
- There are two gantry cranes per block, for a total of 12 gantry cranes. It is not unusual for one of them to be out of order, which significantly reduces the capacity on that block.
- The collection of refrigerated containers can take extra time, as they need to be located and manually unplugged. The terminal only does this on notification that the truck has arrived so these containers can take longer to retrieve, particularly if they are at the bottom of a 4-high stack.

While virtually all truck issues at Patrick are escalated to the Production Manager, at Hutchison the clerk receiving calls on the intercom from truck drivers is empowered to solve those problems. Management only plays a role when a decision has to be made that a truck cannot be serviced. This allows routine problems to be dealt with more efficiently.

Despite the good features of landside work organisation at Hutchison, there are also operational changes there affecting landside efficiency.

In the most recent Enterprise Agreement signed in 2021, the company sought to reduce the number of clerks managing the landside and playing a critical role in landside efficiency. The previous Agreement required the company to allocate a Senior Clerk for both the rail side and the yard if there were more than 26 boxes on the rail. However the company pursued a change that increased this threshold so that both Clerks are only required if there are 54 or more boxes or 3 or more trains.

The new EA also reduced the number of workers monitoring refrigerated containers from 2 down to one designated worker and one taken ad-hoc from other roles. The ad-hoc role is usually filled from one of the ASC operators. This impacts truck turn around times for both refrigerated containers and other containers.

The fact that companies are seeking to make changes such as this which have the real potential to increase truck turnaround times is a clear demonstration that the current PBLIS penalties are too low to seriously influence company decision making.

Data sharing

The Commission observes that: ‘data sharing has enabled innovation and it could provide additional value, noting that the public sector has the potential to aid maritime data sharing by opening access to data held by government agencies, for example statistics on port and terminal performance (held by port authorities), the flow of goods into and out of Australia (Australian Bureau of Statistics and Australian Border Force) or freight and use of transport infrastructure (State and Commonwealth transport Departments)’.[81]

We particularly support the observation that benefit could also be provided through the creation and maintenance of systems through which stakeholders interact with government and access data insights. The MUA would value the opportunity to be part of a process that enables stakeholders to collectively access data insights.

The Commission observes that: ‘the National Freight Data Hub (NFDH) being developed by the Australian Government is one example of data sharing innovation that could assist stakeholders’.[82]

We disagree with this observation. Our view is that based on its work to date on its Container Data project, which it says is to provide more up-to-date data to assist industry and government's understanding of the national container supply chain and that strategic level data will support evidence-based policy and investment decisions, we are not confident that it will deliver such outcomes.

As we noted in or original submission, neither the NFDH nor the Bureau of Infrastructure and Transport Research Economics (BITRE), which we understand is managing the project, has consulted the MUA on its freight data projects. No consultation means no credibility.

Draft finding 11.3: *Government should continue to overhaul cargo clearance systems*
The Australian Government’s cargo and vessel clearance systems are currently convoluted and challenging for stakeholders to use, with repetition in data entry and outdated ICT systems. A government taskforce is working to address these issues. Successful reform will require the elimination of duplicative application processes, adequate resourcing for the departments performing clearances and a stable ‘single window’ ICT platform that can integrate with privately operated port community systems

We support this finding, and agree with the observations made by the Commission that ‘Cargo and vessel clearance systems are a work in progress’ and that ‘there is frustration with some biosecurity and customs procedures, including extensive delays in inspection appointments and

[81] Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, P31
[82] Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, P31

approvals and that cargo and vessel clearance systems are convoluted and challenging for stakeholders to use'.[83]

We note that these systemic inadequacies, which may be exacerbated by workforce shortages in the inspection agencies, have implications for container dwell time and for the management of container picking and placement in the yard stacks, slowing down the quay cranes, being serviced by the yard straddle cranes.

Unfortunately, the MUA has not been consulted by the taskforce established by the Australian Government which the Commission noted is working to address these issues through a suite of reforms, nor had any input into those reforms, despite the workforce represented by the MUA having detailed insight into the implications of those inadequacies in biosecurity and customs procedures.

[83] Ibid, P32

Australia's national shipping concerns (Chapter 12)

This section responds to the Commission's:

- ***Draft finding 12.1*** *Coastal shipping regulation impedes competition.*
- ***Draft finding 12.2*** *A strategic fleet requires further evaluation as on present evidence it is not the best remedy for concerns about domestic shipping capacity and training.*
- ***Draft recommendation 12.1*** *Amend coastal shipping laws to increase competition.*

The key point we wish to make about the Commission's findings and recommendation is that Governments have policy choices and there are motivations other than pure competition issues, as narrowly defined by the Commission, in making those policy choices. Some of those policy choices are motivated by alternative national interest considerations, by national Defence and national security considerations, geo-political considerations, by employment and regional impact considerations.

All those considerations underpin the case for Government assistance to the Australian shipping industry. Those same considerations have motivated the 91 United Nations member states, out of 140 investigated in 2018 that have cabotage laws, representing 80 per cent of the world's coastal UN maritime states i.e. that nearly two-thirds of the maritime states of the United Nations, covering every geographic region of the world, provide some degree of industry assistance for their respective maritime cabotage trades that provides a level of preferential treatment to each nation's domestic trading ships. This was a central finding in the ITF commissioned Seafarer Rights International (SRI) report on the status of global cabotage, *Cabotage Laws of the World*, published in 2018.[84]

Some of the key findings of the study include:

- Cabotage laws are diverse, with a range of approaches taken by different countries.
- There is great diversity in the interpretation, administration and enforcement of cabotage laws;
- The stated objectives of cabotage include, to: maintain national security; promote fair competition; develop human capacity; create jobs; enhance marine environmental protection; promote ship ownership; increase safety and security of ships in port; and preserve maritime knowledge and technology;
- Cabotage laws have endured for centuries, but continue to evolve;
- Cabotage is not subject to a single definition accepted as binding on all states under international law; and
- Regional and national definitions of cabotage vary widely.

For countries that depend on the sea for their trade, cabotage safeguards their own strategic interests as maritime nations, bringing added economic value while also protecting national security and the environment. Cabotage provides jobs for a nation's seafarers and also safeguards foreign seafarers against exploitation posed by liberalisation of the global shipping industry, preventing a race to the bottom. Without strong cabotage rules, local seafarers are required to compete on an uneven playing field with much cheaper, exploited non-national labour, primarily on flag-of-convenience (FOC) vessels, the owners of which usually pay substandard wages, flout safety laws, and do not pay tax in the jurisdiction in which profits are earned.

We note that the Commission has restated its views on cabotage, as an industry protection measure, which makes the following points:

- Protecting an industry to preserve jobs is not justified; and

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[84] Seafarer Rights International (SRI), *Cabotage Laws of the World*, 2018

- Protecting an industry from competition not only harms consumers but also reduces the incentives of the protected industry to improve its efficiency and competitiveness. Over time, the protected industry falls further behind foreign competitors, requiring ever more protection and increasing the cost to consumers and the community in general.[85]

The Commission seems to view industry assistance from a narrow perspective, that has little regard to wider national interest considerations. We wonder what the Australian economy would look like if all $16.2 billion in annual industry assistance reported in the Commission's Trade and assistance review 2020-21[86] was removed, much of it targeted to assist Australian industry sectors, some sectors being far less strategically important than sea transportation, and to support domestic employment.

The Commission has not acknowledged that all Australian industries would be uncompetitive if their labour costs were considered against the lowest cost labour supply nations globally. For example, if the Commission examined the Australian steel or aluminium industry, arguing that they should be able to employ labour from say India at Indian rates of pay and with Indian conditions of employment, it would be a 'lay down mesire' that the Australian steel and aluminium industries as currently exist, would be found by the Commission, adopting the same measures used for the Australian shipping industry, as uncompetitive, should be allowed to wither away and for Australia to import all its steel and aluminium from other nations. That is what the Commission is advocating for the Australian shipping industry.

That is absurd. Furthermore, the Commission provided no cost benefit analysis within the Australian domestic context to show that Australian ships are uncompetitive with trucks and trains – their domestic competitors – given that cabotage, by definition is about reserving coastal shipping for Australian ships in domestic trade, noting of course the ease of substitution by foreign registered ships based on the Government's current application of Australian cabotage law[87]. Again, using the steel industry example, if an Indian steel maker were allowed to set up a floating steel plant off the coast of Wollongong, using Indian labour being paid Indian rates of pay, providing ease of substitution, the Commission, on its logic, would conclude the BlueScope steel plant is uncompetitive and should be shut down.

Similarly, on the Commission's logic, no industry should be entitled to any form of Government assistance because it distorts competition. But in the case domestic shipping, the comparator used by the Commission is wrong. It has tested competition is the wrong market.

We wonder if the Commission is advocating against nations reconsidering their sourcing of semi-conductors given their importance in electronics necessary for so many industry sectors and given the current location of major global semi-conductor suppliers, due to global geopolitical tensions. Again, on the Commission's logic, if the product can be produced more cheaply in Taiwan, then there is no case for the US or Australian government to provide industry policy support for the development of a local semi-conductor industry if it can be produced more cheaply in say Taiwan. The Commission's advice on competition would be considered a joke in the US where it puts national interest considerations ahead of inane competition theory. For example, on 7 October 2022, the US Department of Commerce's Bureau of Industry and Security (BIS) issued two Interim Final Rules that significantly enhance US export controls as applied to

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[85] Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, P385
[86] Productivity Commission 2022, Trade and assistance review 2020-21, Annual report series, Canberra
[87] It is important to note that while the Federal Court has found that the Object of the Coastal Trading Act provides overlapping objectives, it nevertheless contains provisions that unambiguously supports Australian shipping e.g. s(3)(1) (a) promotes a viable shipping industry that contributes to the broader Australian economy; (b) facilitates the long term growth of the Australian shipping industry; (c) enhances the efficiency and reliability of Australian shipping as part of the national transport system; (d) maximises the use of vessels registered in the Australian General Shipping Register in coastal trading.

advanced integrated circuit (IC) products, related manufacturing equipment and technology, and supercomputers where the destination or ultimate end use is China. The US acts in its national interest.

We note that on coastal trading regulation that the Commission concluded that 'Coastal trading regulation is not delivering competitive shipping services for Australian consumers and that cargo owners find the current regime for cabotage burdensome and inflexible, reducing the attractiveness of shipping as an option'.[88]

We accept that those frustrations expressed by shippers in part identify the problem, but we advocate a far more effective solution that proposes a more streamlined Coastal Trading Act, that would deliver a core fleet of Australian registered ships in domestic trade supplemented by foreign registered ships in limited circumstances to expedite and facilitate continuity of trade, and where the securing of ships under a General Licence or a Temporary Licence is determined by the usual commercial ship chartering arrangements and not by Departmental officials making commercial decisions on which they have no commercial shipping expertise.

We note that the Commission has also concluded that that 'Coastal trading regulation should be amended to allow increased competition between Australian and international vessels'[89.]

We do not agree because we do not accept the premise behind the proposal. Australian coastal shipping should be able to compete on a level playing field in the domestic freight market, but rail and road, its domestic competitors, are highly subsidised, while shipping is not. Road transport in particular is not required to pay the full cost of the public infrastructure that supports its operations, unlike shipping which pays full cost recovery for use of shipping channels, ports and other services that support its operations. Furthermore, coastal shipping is already disadvantaged relative to international shipping because international shipping, is permitted unfettered access to coastal trading – there are no barriers to entry - but worse, international shipping is advantaged by Australian laws such as:

- Labour relations law – international shipping companies in domestic trade are not required to pay their crew Australian domestic wages nor conform with Australian working conditions as provided in enterprise bargaining agreements in coastal trading, unlike Australian owners of Australian registered ships;
- Visa requirements are much more favourable for international seafarers relative to visa requirements for other imported temporary skilled labour;
- Corporate taxation and customs duty laws applying to ships are more favourable for owners of foreign registered ships relative to owners of Australian ships operating in domestic trading; and
- Seafarer taxation laws (in most other nations) are more favourable for foreign seafarers than Australian seafarers, when employed in domestic sea freight trade.

The Commission appears to have disregarded those facts in its orthodox approach to competition and the Commission is factually wrong when it attributed part of the cost differential between operating an Australian registered ships V a foreign registered to "*higher crewing levels per vessel*"[90] on Australian ships. To the contrary, Australian crewing levels are the lowest in the world, and significantly lower than a typical international trading ship – 17 crew in Australia compared to around 21-22 on an international ship.

Furthermore, for a report about productivity in the maritime industry, the Commission made no mention of the productivity of Australian ships in domestic trade, where it could be expected that the Commission

88 Productivity Commission, *Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report*, 9 September 2022, Key points P375

89 Productivity Commission 2022, Lifting productivity at Australia's container ports: between water, wharf and warehouse, Draft Report, Canberra, September, P375

[90] Ibid, P386

would have undertaken some analysis of domestic shipping productivity relative to road and rail mode productivity. We contend that output per worker per hour on a cargo volume or cargo value basis would show that ships have the best productivity performance of any transport mode in the contested freight markets in which they operate domestically.

That would also hold true when comparing the productivity of an Australian registered ship V a foreign registered ship in coastal trade where a foreign ship operates on a temporary licence, due to the lower crewing levels of Australian ships.

Furthermore, the Commission has referenced two bills to reform coastal trading regulations that have been put before parliament (in 2015 and 2017) noting that neither has passed, which says a lot about the inadequacy of the Bills. The Commission referenced modelling of the changes proposed in the 2015 bill which indicated potential economic benefits worth $667 million over twenty years had the bill passed. However, it appears the Commission has been deliberately selective in its referencing because that economic benefit figure related to Option 4 (the preferred option) in the Regulation Impact Statement that accompanied the bill.

The Commission's recommendation to amend coastal shipping laws to increase competition, by inter alia 'retaining, but limiting, the ability for Australian vessel operators to contest the granting of licences to foreign vessels' when not one Australian registered ship has been granted a licence in preference to a foreign registered ship in the decade since the Coastal Trading Act commenced in 2012, means the Commission must actually be advocating the complete removal of cabotage laws in Australia.

The same modelling the Commission refers to also modelled Option 1 which was "*the removal of all regulation of access to coastal trading by repealing the Coastal Trading Act*"[91], i.e. the Commission's preferred position, which showed this would come at an economic cost of approximately $2.5 billion over a 20-year period.

It is extraordinary that the Commission is actually proposing a reform that will cost the Australian taxpayer some $2.5 billion.

Furthermore, the very modelling the Commission cites contained two important flaws.

Firstly, its foreign ship cost factors[92] omitted to account for the cost of purchase of foreign shipping services to Australia, estimated as A$12.9 billion in 2020-21.[93] Freight services are Australia's largest services import by value and the 4th largest of all Australian imports by value. A materially significant amount of that is for purchasing shipping services for transporting coastal sea freight, which BITRE reports makes up 6.4 per cent of Australia's sea freight task by volume.[94] 6.4 per cent of $12.9 billion is close to $0.825 billion.

Secondly, the modelling acknowledged, but did not quantify, the loss of maritime skills, that Australia is now importing at a cost higher than the cost of Australian seafarers in the ship's officer occupations, with stranded investment in training facilities, notwithstanding it noted that "*As Australian tonnage continues on*

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[91] *Coastal Trading (Revitalising Australian Shipping) Act 2012*

[92] Parliament of Australia, House of Representatives, Shipping Legislation Amendment Bill 2015, *Explanatory Memorandum, Regulation impact statement*, (Report from Predictive Analytics Group (PAG)), P130, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5495_ems_d26159f7-ed95-407e-ab4c-3ea6eebedde0/upload_pdf/503083.pdf;fileType=application%2Fpdf

[93] Department of Foreign Affairs and Trade, *Australia's Top 25 Imports, Goods & Services*, https://www.dfat.gov.au/sites/default/files/australias-goods-services-by-top-25-imports-2020-21.pdf

[94] Bureau of Infrastructure and Transport Research Economics (BITRE) 2021, *Australian sea freight 2018–19*, Canberra, Piii, https://www.bitre.gov.au/sites/default/files/documents/asf-2018-19.pdf

a long-term declining trend, the availability of positions will decrease. Like other industries, landside operators will likely need to seek skills in an increasingly globalised market and at globally competitive wage rates."[95] That outcome comes at a cost to Australia and must be factored in to any serious cost-benefit analysis.

Other conclusions reached by the Commission are that:

- Concerns raised about domestic shipping capacity and training may be better resolved by means other than a strategic fleet.
- Australian-flagged vessels are not a prerequisite to meeting maritime skill requirements.
- Calls for a national fleet raise complex matters which might be further evaluated and examined by the Taskforce proposed by the Government in its policy position prior to the election.

We note that the Commission made the observation that it had not been presented with conclusive evidence that the current supply of seafarers is materially restricting Australia's shipping operations. We make the following points.

Firstly, the key point relating to supply of seafarers is not about whether supply is meeting current needs, but whether it geared to meet future needs.

Secondly, while the Commission reported that there are an estimated 66,000 domestically certified seafarers that work across all maritime activities, the Commission seems to misunderstand that it is only 'internationally' qualified seafarers whose qualifications conform with the IMO International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, as amended, (STCW) standards that can work on trading ships which are the subject of its section of the draft report on Australia's national shipping concerns (and which would be part of a future strategic fleet). Seafarers qualified to the STCW standard (i) make up only a tiny proportion of that 66,000 pool of certified seafarers; and (ii) that such seafarers can only become VET qualified and AMSA licenced (certified) if they undertake sea time as part of their training, on ships where they can be supervised by STCW licenced seafarers, which again is only a tiny proportion of that pool of seafarers the Commission refers to.

The Commission reported that as of May 2022 there were only fifteen Australian flagged major trading vessels – the main vessels which are suitable for sea time for seafarers undertaking STCW training. While the Commission noted there are a range of non-trading Australian flagged vessels that could provide sea time opportunities and that there is no prohibition on Australian seafarers working or training on foreign-flagged trading vessels which are Australian crewed, there are very few such ships operating in Australian waters.

In relation to the strategic fleet, we note that the Government announced the formation of the Strategic Fleet Taskforce, and its terms of reference, on 20 October 2022, and it will now address the issues raised by the Commission, in conforming with the Government's policy commitments on revitalising Australian coastal shipping.

Irrespective of the Commission's views, the democratically elected Government has made a policy choice to establish a strategic fleet, for a wide range of economic, national security, environmental and supply chain resilience reasons, as can be inferred from the terms of reference for the Strategic Fleet Taskforce.

That is democracy at work.

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[95] Parliament of Australia, House of Representatives, Shipping Legislation Amendment Bill 2015, *Explanatory Memorandum, Regulation impact statement*, P51

Appendix 1: The history of Australian wharfies: Sydney's Hungry Mile

Below is the text of this article: Blotting out the history of Sydney Hungry Mile, *Sydney Morning Herald*, September 16 2006.

ON A good day, Arthur Brown was "lucky enough" to heave bags of sugar and flour weighing 75 kilograms - 10 kilograms heavier than himself - onto his back and haul them for 24 hours straight. On a bad day he might go hungry.

As he worked, he didn't have the time or luxury to worry about his premature arthritis, stabbing back pain, ulcers and high blood pressure; nor the fact soda ash, sulfur and salt penetrated the deep lacerations on his "broken and bashed fingers"; nor the persistent, nagging urge to sleep.

This was work. And on the Hungry Mile in the late 1930s and early '40s, when Mr Brown was one of thousands of desperate wharfies scrambling for a job, it was as good as it got.
"To be honest, sometimes it felt like you were going over bloody Mount Everest," Mr Brown, 91, says of his early days on the wharves west of Sydney's CBD. "But we considered ourselves lucky enough to get more than two shifts like that a week. The rest had to go home hungry, there were no jobs for them. The bosses picked the bulls - the strong blokes who were known - the rest had to hope like hell.

"We'd get into the ship holds and lift out these bloody enormous loads of wool, pig iron, soda ash, asbestos - that's another one. They've dropped like flies, the old wharfies - dozens of them. They all got asbestosis. That was their reward."

From the latter half of the 19th century, much of Sydney's wharf labour was carried out along the waterfront at Sussex Street, from Hickson Road down as far as Bathurst Street. At the time of the Depression, and possibly earlier, it was known as the Hungry Mile.

Alan Oliver, a 76-year-old who worked on the wharves in the 1950s, says "You could get in a cab anywhere around Sydney and say, 'Take me to the Hungry Mile' and they'd know exactly where to go."

Like so much of Sydney's gritty history, however, the memory of hard toil along the wharves will soon be cauterised by developers hired to build multimillion-dollar apartments, offices and parkland.

The last major tract of undeveloped foreshore on the harbour will house as many as 25,000 office workers and between 600 and 750 apartments.

Until recently, retired wharfies like Tommy Orchard assured themselves that "at the very least" the famous name might remain as a reminder of their hardship, and a link to a remarkable chapter in the harbour's history. No longer.

A panel created by the NSW Minister for Planning, Frank Sartor, to judge 1600 possible names for the 22-hectare site admitted this week that the Hungry Mile was "not even discussed" for a shortlist of seven. More prosaic options, such as Waratah Bay and Mariners Cove, made the cut.

"It's just bloody ridiculous," says Mr Orchard, 71, whose years on the wharves left him with plaques on his lungs. "The people who lived, worked and slaved down there, who hauled bags in thick clouds of asbestos particles day in, day out, they should be the ones who get to name it, not some yuppies or bureaucrats.

"We worked in asbestos so thick it was like it was snowing. For morning tea you'd sit on hessian sacks full of the asbestos - you ended up chewing the bloody stuff. Eight out of 10 blokes on those wharves have got the asbestos plaques, mesothelioma, or died."

One panel member, the former prime minister Paul Keating, is thought to be strongly opposed to the Hungry Mile name. Another, the Museum of Contemporary Art director, Elizabeth Ann Macgregor, said this week: "Would you want to live somewhere called the Hungry Mile? I thought we wanted something that … looked to the future."

A poll of more than 1500 people on the *Herald* website this week found that almost 80 per cent supported the name.

The historian Margo Beasley, who has written several books on the early days of maritime unionism in Sydney, believes the panel's attitude ignores the "enormous contribution" of wharf labour to the city's make-up.

In the Depression, she says, as many as 8000 hungry workers would tramp the length of the strip, through horse manure, soot, and asbestos, occasionally fighting over the metal work tokens that foremen tossed into their midst.

Many did 24-hour shifts, lifting bags weighing more than 100 kilograms. Some went for twice as long without a proper break. "What these guys did was simply astonishing - most people today just wouldn't believe what they went through. Their role in the city's history is so important," Dr Beasley says.

A 1943 report by a Macquarie Street specialist, Dr Ronald McQueen, found that many suffered deformities from severe compound fractures and crippling wounds, spinal and head injuries, multiple fractures of various bones, finger amputations, spondylitis, arthritis, several respiratory diseases including tuberculosis, and other ailments.
In the early decades of the last century, Dr Beasley says, "many men were hospitalised because their ribs overlapped and many could leave work unaware of their condition and later die".

It was only in the 1940s, when a union official, Stan Moran, famously declared "the nights were made for love" - to roars of delight from workers - that 24-hour shifts were abolished. Even in the 1950s conditions were unbearable for all but the toughest. Len Donaldson, 78, recalls "being covered with soda rash from lifting soda all day and night. But I had a young family to feed, so I kept at it."

As miserable as it all was - or perhaps because of it - retired wharfies are determined to retain some sort of ownership over the famous strip, even if only in name.

Says Mr Oliver: "All of the things the common man has at some point end up belonging to the wealthy. Let them have their million-dollar squats on the harbour, just leave us the name. At least leave us the bloody name."

Appendix 2: Decision, FWC 2015 Stevedoring Award Review

In 2014 and 2015 the Fair Work Commission undertook a lengthy full-bench review of the Stevedoring Award 2009, which considered proposals to change the Award from both employers and the union. Detailed evidence was sought and submissions made from all relevant parties.

One issue the full bench considered was the flexibilities allowed to stevedoring employers in allocating labour, in relation to ship scheduling. This was considered because employers sought to remove the 35-hour week from the Award. The union argued that this provision was made in return for the flexibility employers had in allocating labour. The Full Bench accepted the union's arguments about the disproportionate flexibility stevedoring employers required of their workforce compared to other industries.

Below are excerpts from: Fair Work Commission Decision, Fair Work Act 2009 s.156 - 4 yearly review of modern awards, STEVEDORING INDUSTRY AWARD 2010 (AM2014/90), VICE PRESIDENT WATSON, DEPUTY PRESIDENT KOVACIC, COMMISSIONER ROE, 14 May 2015.

[55] Evidence was led from a shift work expert, Mr James Huemmer on comparable industries in relation to hours of work, rostering, patterns of work, overtime and work on weekends and public holidays. The rostering and work allocation practices of stevedoring employers were explained by Mr Greg Nugent (Qube) and Mr Greg Muscat (DP World). It is apparent from this evidence that the rostering arrangements in the stevedoring industry provide a unique level of flexibility for employers by allowing them, on the day before the shift, to confirm whether work is required and nominate the shift starting time. A corresponding consequence of this flexibility is a significant inconvenience for employees who, for the most part, cannot plan the precise work, recreational activities and other responsibilities more than a day in advance.

…

[58] The circumstances of the industry including the other award provisions are relevant to this proposal. Australia remains highly dependent on sea-based transportation of cargo. New technology such as containerisation and automated wharf operations is designed to bring about significant productivity and efficiency improvements. Stevedoring labour must be sufficiently flexible to meet variable shipping movements.

[59] While employees may be rostered to work on particular days in a roster cycle, the rosters are different to most other rosters that operate in other industries. The rosters do not guarantee work on the rostered days. Rather employees are expected to make themselves available on those days (subject to a limited number of refusals) and will not be rostered work on all of the days when they are effectively required, by virtue of their roster, to make themselves available. Allocation of labour at container terminals is typically performed on a day-to-day basis and is dependent on shipping schedules, actual shipping movements and the progress of unloading and loading activities.

[60] When rostered for work on a particular day, there is often no advanced notice of the time a shift is to be worked on that day until the day before. Employees are required to telephone an

automated allocation system each day. They are then told whether they are rostered for work on the following day, and the time at which their shift will commence. Shift start times vary. For example, a day shift employee may be advised that the next day shift will start at 5,6,7 or 8 am. Evening shift starts may be 12,1,2,3 or 4 pm. Night shifts may start at 9,10 or 11 pm. They are usually not told the particular role they will be required to perform on that shift until the commencement of that shift. Fixed Salary Employees (FSEs) are usually rostered to perform their primary skill. Shifts can be extended at short notice.

[61] Rosters may nominate "I" which means that the actual shift required to be worked may be day, evening or night or the employee may not be required to work that day at all. According to Mr Warren Smith, the only stevedoring workers who have rosters where more than 50% of the shifts are predictable are the permanent workers at the larger container terminals in Sydney, Melbourne and Adelaide.

[62] These procedures vary dependent on the type of employee concerned. FSEs work an average of 35 ordinary hours per week. They are usually rostered to a particular panel in the roster. They are told the usual shift length, which is often 8 hours, but this can be extended by up to 4 hours. Variable salary employees (VSEs) are effectively part-time employees. They have a minimum salary guarantee and are required to work a certain number of hours and a mix of shifts to make up that guarantee. They must also be reasonably available to meet the needs of the business by being available to work shifts on an irregular basis. Supplementary employees are similar to casual employees. They are not rostered to a particular panel. They work shifts when required and are used to supplement other categories of labour when needed.

[63] Stevedoring work is required to be performed on weekends and public holidays. Normally FSEs are rostered a standard number of Saturdays and Sundays. For example, at DP World Brisbane this is 29 Saturdays and/or Sundays a year. Other categories work a variable number of weekend days. The type of shifts is usually organised in a particular way. At DP World Brisbane approximately 1/3 of shifts are day shifts,1/3 are evening shifts (similar to what are termed afternoon shifts in other industries) and 1/3 are night shifts. The starting time of the shift may vary from day to day.

[64] Stevedoring work is performed in accordance with enterprise agreements that provide for better terms and conditions than the Award. In particular the rate of pay under agreements is considerably higher than the Award rate. There is no evidence of any enterprise agreement adjusting the 35 hour week or trading off longer ordinary hours for the higher rate of pay. The 35 hour week means that employees receive the weekly rate of pay for working 35 hours - rather than 38, and overtime payments are payable after 35 hours are worked. This amounts to approximately an additional 8.5% increase on the hourly rate of the 35 hourly week worker compared to a 38 hourly week worker. The significance of a change in the number of ordinary hours arises at the time of renegotiation of enterprise agreements and the application of the better off overall test. If working under the Award, an employee would need to work an additional three hours work without additional payment and overtime would not be payable until more than 38 hours is worked. The Stevedoring Employers submitted that an appropriate adjustment to the weekly wage rates in the Award might also be contemplated if its application is granted.

[65] I am not satisfied that the Stevedoring Employers have established a sufficient case for the variation or that the variation is necessary to meet the modern awards objective. A 35 hour week is

present in some awards for the similar historical reasons as the stevedoring industry. There is nothing inherently contrary to the modern awards objective in the continuation of this prescription. Further the highly unusual nature of shift allocation systems for waterfront labour warrant a swings and roundabout approach to award entitlements. Greater demands on employees that contribute to a more intrusive availability requirement than in most other areas of employment warrant a more generous ordinary hours prescription. This provides compensation for the inconvenience of the rostering arrangements in the stevedoring industry. The allocation practices arising from the need for flexible labour requirements obviously contributed to the unique structure of the award hours provisions and remain relevant today. I would not grant the variation sought.

Appendix 3: International dockworker training centres and standards

The information below is an excerpt from an MUA report completed in 2010 on global training standards and training centres for dockworkers. The aim was to find global best practices with the aim of improving training standards and practices in Australia. The report found good standards in place in Belgium and the Netherlands. We have excerpted those sections below.

Belgium (Antwerp)

There is a high level of National Skills Training for the waterfront in Belgium. It is however not linked to a compulsory legal framework. Training for the skills standards are a negotiated outcome on a tri-partite basis and exceed national standards for the waterfront.

While there is no specific legislation requiring training there is a strong social and political commitment to it. The over-arching legislation (Port Labour Act 1972) deals with dockworkers and their political and industrial rights but does not specifically deal with safety or training issues. It does confer considerable political and industrial clout to the union to ensure ongoing training and its high standards are maintained. It also ensures that employers fulfil their obligations to the training of dockworkers.

The skills training components in Belgium (Antwerp) are outlined below.

Course	Length of course
Basic Training	3 weeks
Dock engine driver*	4 weeks
Signalman/hatchman	2 weeks
Lasher	3 weeks
Tally clerk	6 weeks
Straddle	4 weeks
Gantry crane	6 weeks
Gottwald	6 weeks

* Consists of Forklift, reach stacker and ITV.

The training applicant had a three-month period to finalise the training.

Similar training outcomes are required in the following Belgian ports:

- Zeebruges
- Ghent
- Ostend-Nieuwpoort
- Brussels-Vilvoorde

Induction training in Belgium consists of a three week basic training course which consists of 80% safety and 20% operational.

Training generally in Belgium is run on a tri-partite basis. The training facility is funded by Government and employers. It is owned by the Government. The type of training is widespread and world class. It is practical and deals with stevedoring tasks and functions in a comprehensive and thorough manner. This includes theoretical and practical applications via simulator and through the provision of waterfront machinery of a wide range of types. There is a land ship and a simulated deck ideal for training in the loading and unloading of containers on pins and twistlocks in a practical manner off a real ship but with the appropriate degree of reality to make it realistic. The Belgian school is the best example of a training school that we seen in the entire trip. All stevedoring functions are able to be carried out in this realistic facility.

The trainers in the facility are registered dockworkers and the certification of workers is carried out by independent inspectors.

It was the view of the delegation that the Belgian training model was the best that we came across by a long way. It is the model to be strived for in terms of world's best practice.

This structured training process has been carried out since November 1980. It was initially instituted because of the high level of fatalities and incidents on the waterfront. The training has been shown to significantly reduce waterfront accidents and fatalities.

Figure 5: Antwerp crane simulator

Figure 6: Antwerp portainer crane simulator

Figure 7: Antwerp straddle simulator

Figure 8: Antwerp Training School – A ship's deck replica

Figure 9: Ship's crane at the Antwerp Training Centre

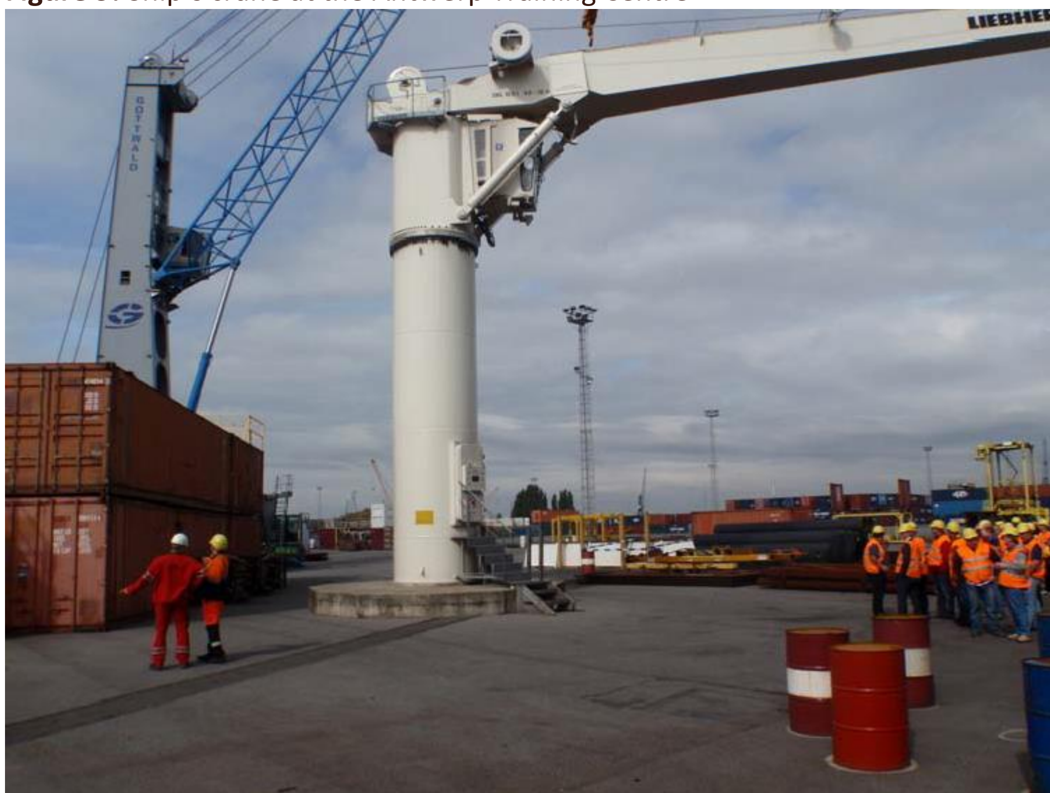
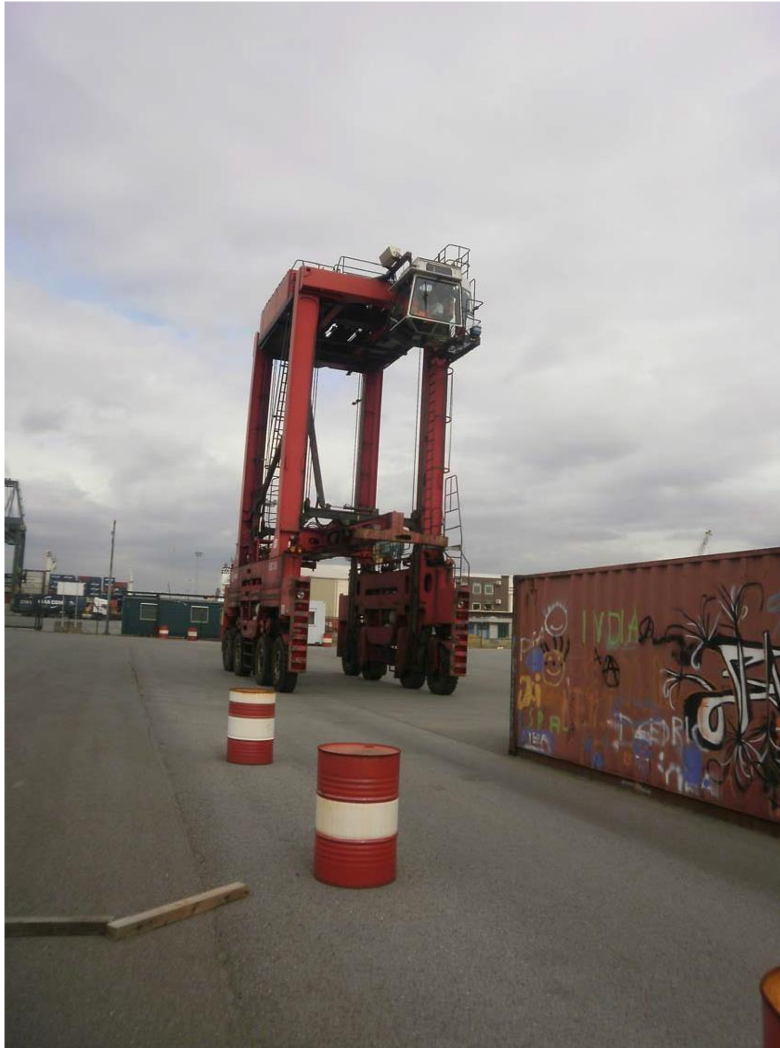


Figure 10: A training straddle at the Antwerp Training Centre



Netherlands (Rotterdam – Amsterdam)

Skill levels for dockers in the Netherlands are very high and come with a certification recognised on the waterfront. It is generally higher than community standards. Training is generally on the job but they have high tech modern simulator programs and facilities at the Netherlands Maritime University in Rotterdam.

Educational programs for dockworkers in the Netherlands can start as early as 12 years of age and the secondary schooling curriculum is tailored to comprise vocational training in dockworker functions. This training is provided through the Netherland Maritime University which is a modern schooling facility regulated and maintained by private interests and the Dutch Government.

Dockworkers must have the appropriate certification to work on the waterfront.

Induction training in the Netherlands is based upon various company requirements and is not general to the industry. Those courses vary from site to site. They consist of basic safety training and mechanical aptitude as well as the inductees meeting with the works council which is a legislated body similar in design to the Australian Consultative Committee.

Training in the Netherlands is largely on the job but accompanied by simulator activity at the Netherlands Maritime University. The employers determine who and how many people get trained according to operational requirements. The training centre is privately owned but is part of the Dutch education system and is regulated according to Dutch educational laws.

The trainers are professional educators and not dockworkers.

Figure 11: Dutch dockwork training simulators