

28 October 2022

Dear Sir/Madam

Re: Productivity Commission's Lifting Productivity at Australian Container Ports: Between Water, Wharf and Warehouse

TAC's

Road Freight NSW supports draft recommendation 6.2 of the Draft Report and specifically that terminal access charges (earlier described as infrastructure surcharges by stevedores) 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 transport operators.

Additionally, we would submit that other Terminal Access Fees (however described) should not be charged on road freight operators. Road Freight NSW agrees with your proposed summation and proposal.

The recent work by the NTC review on Terminal Access Charges was an exercise of form over substance.

Unfair Contracts and TCAA's

Road Freight NSW notes the information request at 6.3 regarding unfair contracts and submits that Terminal Carrier Access Agreements (TCAA's) have been manifestly unfair for NSW based landside carriers. At times, landside carriers have been provided TCAA's on a Thursday or Friday with the expectation of completion over a weekend or on same day. If not completed then potential access to the port facility could have been limited on the following Monday for their business. In those circumstances, the ability to seek legal assistance with the contract is severely limited; if it all. Bargaining power of the landside operator presented with a fait accompli take it or leave it TCAA means some road freight operators feel compelled to complete agreements; even if executing the agreement is to the landside trucking operators material disbenefit.

We note recent legislative reform on this front in relation to now described, and in short form, illegal contracts.

PBLIS drives Port Productivity

Road Freight NSW notes your unchallenged point that Australian port productivity has increased over the course of the last 20-30 years in draft finding 3.5. In NSW, port

productivity has increased as a result of the Port Botany Landside Improvement Strategy (PBLIS). We note on page 197 of the full report that some industry participants are strongly supportive of PBLIS like AiGroup and IFCBAA. Road Freight NSW and the Australian Trucking Association (**ATA**) are also strongly supportive of the continuation of PBLIS in its current with some minor improvements. RFNSW takes the view that any sale or administration by a third party would potentially undermine productivity PBLIS improvements. PBLIS in NSW drives productive and equitable outcomes for the supply chain and broader economy.

Empty Container Parks

This has been also identified correctly in your report and applies to empty containers and the sometime operation of the empty container parks. Sydney's empty container parks struggled significantly through the pandemic with capacity issues. However, we note that there was some proactivity regarding return of empty containers at Port Botany through the ECWG, NSW Government and also through the NSW Empty Container Incentive Scheme.

However, as you note in your report "detention fees continue to be charged in instances where empty containers cannot be returned.... The commission is concerned by these fees." Our members concur that shipper contracts should not be exempt from the unfair trade provisions in Australian consumer law.

Repeal of Part X

Repealing Part X of the Competition and Consumer Act 2010 (Cth) is appropriate and endorsed by Road Freight NSW. The statement at Draft finding 6.3 is correct and shippers should not be exempt from the Australian Consumer Law.

Urban Encroachment

Road Freight NSW has worked with NSW Ports and other stakeholders on issues relevant to draft finding 7.3 and urban encroachment remains a real issue for Australian ports and the supply chain.

Fair Work Commission – Return to Compulsory Arbitration in Essential Industries

Road Freight NSW endorses draft recommendation 9.9 in relation to the Fair Work Commission. Road Freight NSW would add that additional aspects of the Workplace Relations Act (1996) may be useful for the resolution of disputes in essential services like ports. That is, that there should be recourse to a dispute – whether in bargaining

periods or not – that leads to speedy compulsory arbitration and enforceable orders from the Fair Work Commission. Prolonged industrial dispute and one or both sides playing ducks and drakes in a critical part of the supply chain like Australia's ports require fast resolution and equitable remedy.

Road Freight NSW proposes that a working group of Port stakeholders, including from the road freight sector convene under the auspices of the FWC.

Are Software charges the new TAC's?

In relation to software providers, while they deliver some productivity improvements, software systems come at a cost for landside operators and appear to have their own burgeoning fee structures that encumber road freight operators with additional and now increasing costs that seem difficult to justify. Competition is essential in this service provision and requires vigilance.

Separately, Road Freight NSW endorses your draft finding 3.2 in relation to data.

Laissez Faire approach to Privatisation of Port Botany

The approach and negotiations relating to the privatisation of Port Botany appear prima facie laissez faire and appeared to limit other port operators. The privatisation of essential utilities like Port Botany need to be not only structured to ensure that the taxpayer gets the best benefit from the transaction; but that the national and state interest is part of the matrix of decisions.

Strategic Fleet

Road Freight NSW believes that the reports that Australia has 21 days of diesel are inflated. It is likely half that amount.

Road Freight NSW believes we have a need for a strategic fleet to mitigate our risks in the supply chain for gas and fuel with a strategic fleet and some complementary component of container ships.

Pallets

The pallet hire system is a huge impost on the transport industry and makes maritime and supply chain logistics operations more complex than it needs to be and conceivably anti-competitive.

As one of our members notes:

The ownership of goods on a pallet are not transferred to the transport operator and under conditions of carriage the operator is not responsible for same. Yet in many instances the full responsibility of the actual pallets are on the transport operator. There are situations where pallets are delivered to end customers and there are agreements that the end customer does not pay for their use for a number of weeks and by default the transport Operator gets charged during this time.

There are ways of creating such a difficult situation in trying to get pallets back that it becomes impossible to do so and yet again the transport operator gets to either continue to pay for the hiring or pays the cost of the pallets.

We suggest that as the transport operator who has no part in the brand of pallets used or agreements that customers have with end users that pallets should never be the responsibility of any transport operator if the deliveries have been completed.

Trying to keep track of pallets when not in a transport operators depot or truck is to say the least very difficult. There are situations where pallets are to be exchanged on delivery but not always available to do the exchange and difficult to follow up. Some clients have a transfer system but the transfer can be rejected and if enough time passes while the transaction is being questioned the rejection is permanent and the cost is on the transport operator. We suspect that a number of pallets are being paid for by a number of different customers at the same time without having the use of them due to the current system.

The sender of goods who uses pallets to pack and ship to the end user and the end user must be responsible for this cost of doing business and not transport operators.”

Thank you for the opportunity of making this submission.

Your Sincerely

Simon O’Hara
CEO
Road Freight NSW