BCA

Business Council of Australia

Review into Australia's Maritime Logistics System

Submission on Draft Report

October 2022

Contents

Introduction 2
- Shipping line consolidation 3
- Terminal access charges 3
- Container detention fees 3

Container port capacity and landside infrastructure 4
- Road and rail connections to ports 4
- Industrial land around ports 5

Workforce arrangements: Issues 6

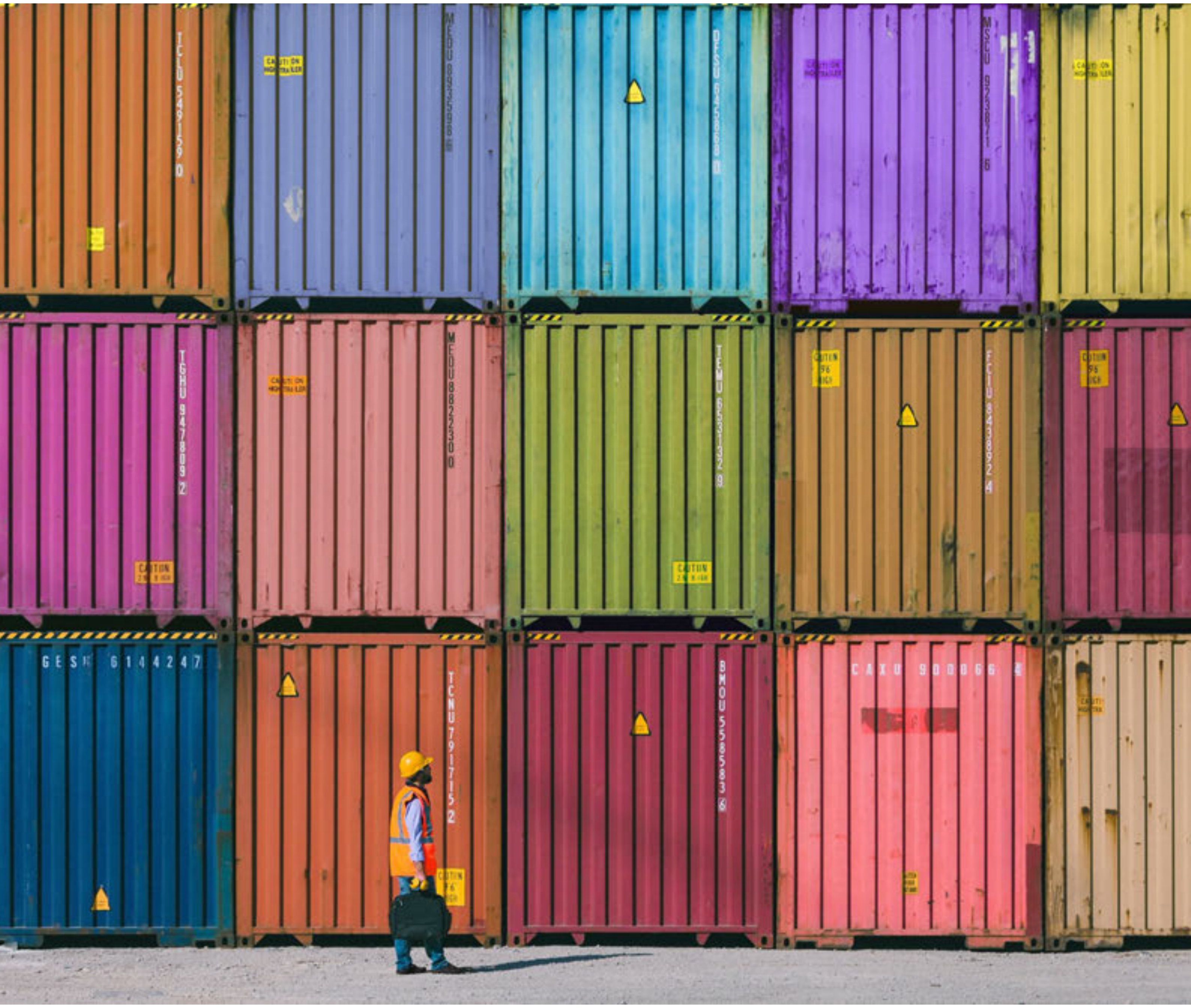
Technology and innovation 6
- Simplified Trade System 6

Australia's national shipping concerns 7
- Coastal shipping 7
- Australian Strategic Fleet 8

Introduction

The Business Council of Australia welcomes the Productivity Commission's draft report into Australia's Maritime Logistics System. Our members lead many of the largest companies in Australia, across a diverse cross section of the economy. This includes firms operating in the retail, manufacturing, trade, and freight industries, many of which are either users of the nation's container ports or major stakeholders.

We appreciate that many of the issues faced by our members as customers of the container freight shipping system have been captured by the draft report. This submission will seek to address items in the draft report that are directly relevant to the Business Council's members.



Market power

Shipping line consolidation

While it is noted that the Productivity Commission was of the view that *"[t]here appears to be robust competition in the shipping line market"*, a number of our members dealing with the market have expressed concern around the formation of alliances between shipping lines. In their experience this has resulted in higher prices and less competition.

For that reason, and to provide a fair and consistent legal playing field for companies, the draft recommendation to repeal Part X of the Competition and Consumer Act appears sensible at face value. This would at least provide a level of regulatory oversight to these arrangements, which do not currently exist.

Support actions to improve competition between shipping lines, such as draft recommendation 6.1, to repeal Part X of the *Competition and Consumer Act 2010 (Cth).*

Terminal access charges

One of the other key pricing issues raised by Business Council members relates to Terminal Access Fees charged by stevedores. As the Productivity Commission has identified, these fees are not subject to competitive tension due to the structure of the market, whereby shipping lines select the stevedore used but the fee is charged to land transport providers that have no input into this selection. Fixing this competitive disconnect was one of the recommendations made in the Business Council's initial submission to this inquiry.

To that end, we support the proposal that would restrict fixed fees being charged by stevedores to land transport providers, so they are instead levied directly onto shipping lines. This could then form part of the prices tendered between lines and their customers directly. At face value this would incentivise shipping lines to factor price into their decision on which stevedore to use, adding a competitive tension to these fees where none currently exists.

Any variable fees charged to land transport providers that are retained should be proportionate to the cost impact that is trying to be avoided (for example, the reasonable cost impact to the stevedore of a transport provider missing their schedule time slot). That way, they act as an appropriate signal to ensure efficient running of the port operation, but not as a separate profit centre for stevedores.

Support draft recommendation 6.2 to which proposes 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.

Additionally, any variable fees retained must be proportionate to the actual cost incurred.

Container detention fees

In line with issues identified in the draft report, Business Council members have also reported facing container detention fees when they have been unable to return containers due to disruptions elsewhere in the supply chain or when the relevant Empty Container Park has reached capacity.

The Productivity Commission's proposal to address this issue is the removal of the exemption of shipping contracts from unfair contract terms provisions in Australian Consumer Law. While this approach is not likely to provide remedy for Business Council members directly, if small businesses are similarly impacted and the ACCC supports action it may provide broader resolution for industry.

Support approaches to address container detention fee contract provisions, such as the proposal raised in draft recommendation 6.3 to remove the exemption for shipping contracts from the unfair terms provisions in Australian Consumer Law.

Container port capacity and landside infrastructure

Road and rail connections to ports

The Business Council recognises and acknowledges the issues that the Productivity Commission has identified with the use of rail to move containers to and from ports. Double handling of containers, shared passenger infrastructure, and the limits of flexibility of rail when compared to trucks are all well-understood and longstanding issues in terms of rail freight.

As the Draft Report acknowledges however, the overall port freight task is growing and cannot be solely accommodated by road transport. At Australia's two largest container ports:

- Port of Melbourne currently handles around 2.9 million TEU per annum. Infrastructure Victoria reports it is believed to have an optimum capacity of 8 million TEU, likely to be reached over the next 30 years.[1]
- Port Botany currently handles around 2.7 million TEU per annum. With the existing three terminals, it is likely to be able to handle up to 7 million TEU per annum, which is expected to satisfy demand until at least 2040.[2]

Even with the improvements in productivity in terms of trucking (such as through increases in truck length), it is unclear how current landside infrastructure will be capable of handling these increases in intensity, particularly if it is focused on the road network. Additionally, truck driver shortages, which have been a growing feature of the industry for a number of years, further restrict the ability of road freight to scale to the task.

Instead, coordinated warehousing and intermodal precincts connected by separated freight rail infrastructure will help facilitate a more effective movement of containers out of the ports to distribution centres via rail.

Unlike urban passenger rail, freight rail is a shared responsibility between the State and Federal Government. There are immediate term improvements to rail freight infrastructure in the major cities funded by both Federal and state governments. Many states have also invested in extensive infrastructure planning. The current Draft Report identifies and discusses rail mode share issues, and separately, planning work for future waterside port infrastructure. A key component that should be added is confirming the landside infrastructure is being adequately planned to support the expansion of the existing ports.

The Commonwealth needs to articulate its long-term investment focus for freight rail. Current investment priorities appear to be piecemeal and limited to projects underway. This issue includes both port rail services and interstate freight rail. The Federal Government, through the Australian Rail Track Corporation, operates a substantial portion of the nation's freight rail infrastructure and the lack of a long-term investment plan should be remedied.

Draft findings 7.2 (that most container ports are planning substantial investments in rail infrastructure) and 7.4 (that long term planning for ports appears to be adequate) are noted.

[1] Advice on Securing Victoria's Ports Capacity, Infrastructure Victoria
[2] Port Botany, Heartbeat of NSW Economy: Parliamentary Inquiry Submission, NSW Ports

The Productivity Commission should confirm sufficient planning and investment is underwork to service expanded transport demand on the landside.

The Federal Government should develop a long-term investment plan for freight rail, including port rail and related intermodal investment, given that it has shared responsibility in this space. This work is currently lacking.

In addition to the issue of freight rail, the Productivity Commission has touched on the matter of delivery curfews for truck operations. The removal of these curfews in non-residential areas are a low-cost way to improve productivity for freight in the immediate term, facilitating flexibility in operations.

It is encouraging to see some jurisdictions, such as NSW, amend these restrictions at a state level in areas where it has been appropriate to do so (i.e., in industrial and business areas away from residences). Conversely, it is disappointing that other states, such as Queensland, have reinstated curfews without any due consideration of the productivity benefits that could have been retained.

The Productivity Commission should recommend States permanently lift delivery curfews where there is unlikely to be a direct impact on residences.

Industrial land around ports

The issue of reallocation of land from industrial to other uses is one raised by a number of Business Council members. As a general principle, the Business Council holds the view that land should be allocated to its highest use value, and as noted in our submission there is generally a premium to be paid for land adjacent to ports for port users.

However, there are broader agglomeration benefits, such as reduced truck movements, which accrue to the broader community and economy through the location of industrial land adjacent to ports. This may not be captured in the value assigned to land by individual actors. This is recognised in the Draft Report but not in the findings.

Additionally, the operational impacts of allowing urban encroachment around ports, including their future potential to interfere with port operations and reduce productivity, needs to be taken into consideration. This is particularly the case given the large-scale capital investment from both the private sector and the taxpayer in infrastructure that fixes a port in a particular location.

In 2021 the NSW Productivity Commission recommended a review into Sydney's industrial land policy, as referenced in the Draft Report. However, the Draft Report does not reflect some of the key commentary from the NSW Productivity Commission, which stated that "*… there are strong grounds for land to be retained against encroachment from competing and incompatible uses. The Sydney Airport and Port Botany facilities, for example, will serve the State's growing freight task, which is projected to increase from 443 Mt per year in 2018 to 569 Mt per year in 2038*".[3]

The State's Greater Cities Commission undertook this recommended review. It also recognised the importance of industrial land adjacent to trade gateways (in Sydney's case, both Port Botany and Sydney Airport, which are adjacent) in successfully serving the freight needs of the State.[4]

As such, the Business Council does not support the finding as stated in the Draft Report, and a more nuanced approach is necessary that recognises there are broader matters that should be factored into this consideration.

---

[3] NSW Productivity Commission White Paper 2021

[4] Industrial Lands 'Retain and Manage' Policy Review, Greater Cities Commission, 2022

Do not support draft finding 7.3 as written. There needs to be broader economic and operational lenses applied, which are not recognised in the current finding.

Workforce arrangements: Issues

The Productivity Commission has highlighted a number of industrial issues that at face value are concerning in terms of the productivity of the nation's ports. This includes disruptions across the nation's port system caused by industrial action and productivity limiting clauses in industrial instruments.

The Draft Report illustrates the unique position of the nation's container ports as being a cornerstone for the movements of goods necessary to support the economy and society, with limited alternatives in terms of competition, and with a union that exercises significant power in a way that has resulted in economic impact to third parties over a sustained period.

A number of Business Council members that are users of the nation's container ports for the import or export of product have experienced disruption caused by industrial action at the waterfront. This has not solely manifest as full stoppages, but also other industrial action that has impacted the overall productivity of port operations. This leads to reduced reliability of supply chains, and in particular has compounded issues already playing out due to COVID and natural disasters over the last several years. These disruptions have occurred over a prolonged period rather than over a short timeframe. As the Commission makes clear, the downstream impact of these actions not only impacts importers and exporters, but also consumers, who face disruption to supply and higher costs.

As a general principle, the Business Council supports the fair bargaining between a business and its workers as part of an Enterprise Bargaining process.

In the context outlined however, the process is not working as it should, given the time taken and the level of third-party disruption caused. Furthermore, the inclusion of retrograde clauses in industrial agreements which serve to limit flexibility and productivity not only bind the employers in question but may also have broader productivity impacts on the Australian economy given the central role these specific employers play in the movement in goods.

We need a port system that functions well, where any industrial action is measured and weighed in the context of broader economic impacts, and where productivity enhancing improvements that would benefit the whole supply chain are not blocked due to provisions in an industrial instrument.

The Business Council also notes that the Fair Work Commission must be properly resourced and equipped to do its job. It is already facing the task of taking over workplace regulation of the building industry from the Australian Building and Construction Commission without any indication that additional resourcing will be provided.

Technology and innovation

Simplified Trade System

The Business Council has strongly supported the transition to a 'simplified trade system' or 'single trade window' approach for the paperwork that is required to import or export goods or commodities to or from Australia.

The current regulatory system for trade lacks coordination, is complex, and is often not fully digitised or automated. This is a significant impediment to cross border trade, and an impost in terms of time and cost for business.

Many of the areas touched on in the Productivity Commission's report are directly the domain of either state government or private enterprise. But this is an area where the Federal Government must take the role of coordinating the 28 agencies across Federal and state governments involved in the cross-border trade system. There is an opportunity here to advance the processes and systems to deliver improvements for the cross-border movement of goods and commodities.

We acknowledge that there is work underway here through the Simplified Trade System taskforce. The Government must reaffirm and accelerate its commitment to this work, which started last year.

Support draft finding 11.3 to continue to overall the nation's cargo clearance systems.

Australia's national shipping concerns

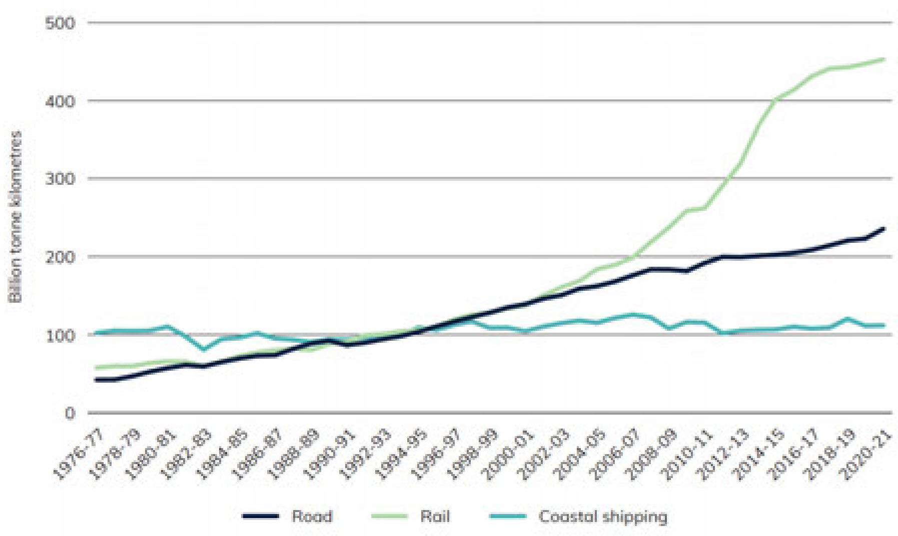
Coastal shipping

The Business Council has consistently supported the reform of coast shipping and cabotage provisions, including the 2015 and 2017 reforms proposed by the former government. An efficient coastal shipping sector is important for lifting the competitiveness of Australian businesses that use coastal shipping in their supply chains.

Cabotage attempts to protect a dwindling local industry, at the expense of other Australian firms that are reliant on these transport services. It locks in uncompetitive shipping rates and imposes excessively high regulatory costs on business. The current regulations make coastal shipping more costly, thereby making it less competitive in relation to other transport options.

On routes where coastal shipping is the only viable option such as between the mainland and Tasmania service quality is often hampered by limited options and limited competition. This poses a challenge to customers seeking to keep operations in Tasmania supplied, with reports of either significant price premiums or poor service performance.

This is borne out by the fact coastal shipping usage remains largely stagnant while rail and road usage continue increase their proportion of the freight task.



Source: BITRE Estimates, 2021

Support draft recommendation 12.1 to amend coastal shipping laws to increase competition.

Australian Strategic Fleet

The Business Council acknowledges that the Government was elected with a policy to establish an Australian Strategic Fleet. We also note the finding of the Productivity Commission in respect to an Australian Strategic Fleet and agree with the basic concern that a strategic fleet may simply not fix the issues it intends to address.

More critically, we are concerned that in that in establishing any such fleet, there should not be any new and unnecessary regulatory burdens placed on Australian businesses under the guise of supporting the operation of that fleet.

If the Government chooses to pursue a Strategic Fleet, it must not be accompanied by further regulation that would impact business costs and reduce productivity.

BUSINESS COUNCIL OF AUSTRALIA

42/120 Collins Street Melbourne 3000 T 03 8664 2664 F 03 8664 2666 www.bca.com.au

BCA

Business Council of Australia