INFLUENCE & POLICY

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The Australian Industry Group

Australian Ports: Discussion Paper

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Contents

About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak national employer organisation representing traditional, innovative and emerging industry sectors. We have been acting on behalf of businesses across Australia for nearly 150 years.

Ai Group is genuinely representative of Australian industry. Together with partner organisations we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our members are small and large businesses in sectors including manufacturing, construction, engineering, transport & logistics, labour hire, mining services, the defence industry, civil airlines and ICT.

Australian Industry Group Contacts

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Introduction

Australian port and shipping policy has been described as a 'wicked problem.'[1] While this language could certainly be contested, it is clear Australia has significant issues associated with our ports, which could undermine our resilience and competitiveness going forward, should we fail to address them.

As an island nation, 98% of Australia's trade goes through our ports and most Australian jobs rely on ports in some way through import/export trade[2]. Despite our dependence on them, Australia has followed many other countries by largely privatising our major ports to fund other state infrastructure projects and reduce debt. However, privatisation has brought risks: undervaluation of port assets, increasing port charges, competition issues, less port investment and less concern for long term public interest[3].

In 2012, Shipping Australia reported that Australia was 'losing ground' in terms of productivity and competitiveness in almost all areas of shipping[4]. They argued that key pinch points included sea/land interface (connections to/from ports, lack of harmonisation between states and territories, planning and space issues), lack of skilled labour and increasing port costs exacerbated by inadequate infrastructure[5].

Eight years on, similar concerns are still being raised and the issues appear exacerbated by instances of industrial action, like the acute pain being felt in Sydney. Similarly, the COVID-19 pandemic has created even more chaos, demonstrating a need to plan for disasters or unexpected global disruptions in all areas of the economy, including in our ports.

As nearly all our trade is through ports, these issues need close government attention and action where appropriate, to ensure Australia, and our supply chains, are competitive, productive and resilient into the future.

"In 2012, Shipping Australia reported that Australia was 'losing ground' in terms of productivity and competitiveness in almost all areas of shipping... Eight years on, similar concerns are still being raised."

[1] Ports & Shipping Policy in Australia in the 21st Century – a 'Wicked Problem', Macquarie Lighthouse lecture series (March 2019)
[2] Value of Ports, Ports Australia
[3] The latest trend in Australian port privatisation: Drivers, processes and impacts, Research in Transportation Business & Management, Chen et al. (2017)
[4] Shipping Australia's view on increasing productivity/competitiveness of the Australian maritime industry, Ken Fitzpatrick Chairman (August 2012)
[5] Ibid

Infrastructure

Ultra Large Container Vessels (ULCVs), those with capacity of more than 14,000 TEU (twenty-foot equivalent units), already make up around half of all newbuild capacity[6]. ULCVs can replace up to three conventional container ships, reducing costs and creating a very compelling case for use by shipping companies.

This trend towards the largest ships appears to be common sense, given they steeply reduce *slot cost* (the cost of shipping one container). In Europe, slot cost on a ULCV is around 50% lower than that of a 5000 TEU vessel[7] (a size commonly used in Australia). However, ULCVs may not be a silver bullet for freight costs.

There are practical and economic limits to how large container ships will be able to grow, reflecting physical constraints of port facilities, and the economic merits of using large container ships outside the largest ports[8]. These ships require ports that can withstand the significant pressure of these higher volumes. They need equipment, technology and skilled staff that can process many containers in a short amount of time. They also need significant infrastructure in and around them that can handle the congestion these volumes bring. Some ports may not have all the necessary characteristics to handle ULCVs effectively[9], and the negative consequences of the attempt could wind up erasing the economic benefits of using them in the first place.

Regardless of this, the trend towards larger ships is clear and many nations are investing in the infrastructure required to facilitate them.

Ports in Europe, East Asia and North America have responded to the increase in ULCVs with radical infrastructure investment, but Australia has lagged. Meanwhile, our closest neighbour, New Zealand, created a secondary port, which can efficiently service vessels of up to 11,500 TEUs presently. The port was built with expansion in mind, enabling it to keep up with customer expectations and market demands[10]. They have land holdings to expand, making it likely that it will service bigger ships in the future. This gives it an advantage against other ports with limited expansion options, like many of its Australian counterparts.

The idea is simple enough. A larger port means bigger boats, cheaper slot costs, and a better deal for industry and consumers locally. In the case of New Zealand, they recognised their current port could not deliver this, therefore determined it to be appropriate to build a new one[11].

Currently, the largest container ships that the Port of Melbourne, Port Botany and the Port of Brisbane can accommodate are in the range of 8,000 TEU to 10,000 TEU, fully loaded[12]. It's clear that Australian ports have limitations for visiting ship sizes, constraining our ability to obtain lower shipping cost

[6] 'Australia's ports infrastructure stuck in no man's land', Infrastructure Magazine (2020)
[7] Ports & Shipping Policy in Australia in the 21st Century – a 'Wicked Problem', Macquarie Lighthouse lecture series (March 2019)
[8] 'Containerised trade trends and implications for Australian ports,' HoustonKemp (January 2019)
[9] Ibid
[10] 'About Port of Tauranga,' Port of Tauranga
[11] Ports & Shipping Policy in Australia in the 21st Century – a 'Wicked Problem', Macquarie Lighthouse lecture series (March 2019)
[12] 'Containerised trade trends and implications for Australian ports,' HoustonKemp (January 2019)

benefits from larger ship sizes as containerised trade continues to grow into the future[13].

If we decide to expand our capability, there are three key factors in servicing ships of this size:

1. The cost of creating and maintaining channel depth;
2. Wharf side investment so infrastructure can withstand higher volumes; and
3. Landside factors (like integrated and uncongested access to national railway and heavy vehicle road networks)[14].

In order to prepare Australia for higher volumes and bigger vessels, all three of these factors will need to be addressed by the ports themselves, as well as state and federal governments.

It's clear the cost of freight is already a major competitive challenge for Australian businesses (particularly exporters with low margins). With foreign competitors increasing their use of cheaper freight via ULCVs, we run the risk of losing competitiveness if we fail to keep up with the world class ports being established around the globe.

[13] Ibid

[14] Ports & Shipping Policy in Australia in the 21st Century – a 'Wicked Problem', Macquarie Lighthouse lecture series (March 2019)

Port Pricing: Is It Competitive?

Ai Group members are reporting that, in some ports at least, prices charged are becoming increasingly uncompetitive.

Concerns have been raised about additional congestion fees charged by numerous shipping companies. Shipping company Maersk recently introduced a congestion fee of $350 USD per TEU to cover additional operational costs caused by port congestion and delays[15]which has caused concern amongst businesses incurring the additional fees.

Members have also reported that forwarders are adding other surcharges for the increased costs of returning empty containers due to congestion. Container detention fees are a daily charge imposed by a carrier on a party for the use of a shipping container. Shipping lines allow a 7 to 10-day period without charge for the container to be returned at a designated depot. After this, a daily rate is charged[16]. Neil Chambers, director of the Container Transport Alliance Australia has pointed out that there is a lack of empty storage capacity in Sydney to handle peaks, despite some added capacity coming on stream recently. His view is that if a customer can't de-hire a container in a timely manner because empty parks are at capacity, it may be inappropriate for shipping lines to charge high container detention fees for late de-hire.[17]

In addition to incurring daily fees due to their containers having to be diverted to empty parks, businesses also report being charged transfer fees to move the containers.

Though some have argued that the detention times should be extended or fees waived due to the circumstances at the port, Shipping Australia counter that waiving these fees could create an incentive to delay the return of empty containers back into circulation (enabling more import and export from Australia)[18].

Finally, rent and ancillary fees have risen considerably at ports around the country. The stevedores have justified higher charges by reference to sustained increases in property related costs and the need to raise funds to enable them to more efficiently service the larger container ships increasingly being deployed to Australian ports and/or improve terminal landside handling capacity[19].

Stevedores have tried to re-balance costs by passing them to transport operators (rather than shipping lines), but road and rail land transport operators have raised concerns with the imposition of the charges given that they are not a product of commercial negotiation. The transport operators must go to the stevedore to which they are directed and therefore have no means to move their business in order to avoid price increases[20].

The ACCC argue that it is understandable for stevedores to seek to recover some costs from landside transport operators given that these operators benefit from the investment that the stevedores undertake in their facilities. However, the use of infrastructure charges means that stevedores are

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[15] 'Port Congestion Surcharge – Sydney,' Maersk (September 2020)
[16] 'Current legal position on container detention in Australia,' Freight and Trade Alliance
[17] 'Already-stretched Australian supply chains hit by container park congestion,' The Load Star (September 2020)
[18] Already-stretched Australian supply chains hit by container park congestion,' The Load Star (September 2020)
[19] ACCC, Container stevedoring monitoring report—October 2019, p.19
[20] Ibid, p.21

earning a growing proportion of their revenues from customers that are more limited in being able to respond to those charges, in contrast to the competitive market in which stevedores provide services to shipping lines. The outcome of this may be that importers and exporters will pay higher charges to ship their goods than otherwise[21].

In all these areas, the underlying concern is that private port operators essentially have the market power of unregulated monopolies.

Rod Sims, ACCC Chairman, has articulated the view that state government privatisations have increasingly been shaped to maximise capital returns at the risk of long-term economic harm. This can mean that prospective bidders are willing to submit a higher bid for ports for which they will be able to charge monopolistic prices. In this case the government privatising the port may be the beneficiary of the market power conferred on the new owner.

Current competition law gives the ACCC little power over the conduct of former state monopolies like ports, though Sims has urged the states to consider regulation to help prevent unconstrained exercise of monopoly power[22]. Any regulatory arrangement should be made clear to potential purchasers.

The ACCC manage a container stevedoring monitoring program but note that they do not consider a price monitoring framework without a credible threat of regulation to be an effective constraint on market power, though it is useful for other reasons[23].

Privatisation of Australia's ports is not new and has been going on since the mid-1990s. There are three major features of the Australian port privatisation approach[24]:

- Long-term lease sale
- Private equity owners
- Foreign ownership

[21] Ibid, p.22
[22] 'Port privatisation forces price inflation on Australian importers and exports,' Australian Financial Review (June 2017)
[23] ACCC, Container stevedoring monitoring report—October 2019, p.16
[24] The latest trend in Australian port privatisation: Drivers, processes and impacts, Research in Transportation Business & Management, Chen et al. (2017)

Reliance and Security

In addition to concerns about price and competition, the now high concentration of foreign ownership of Australian port assets has given rise to additional community concerns regarding Australia's national security and interest.

Given that nearly all our physical trade is connected to a port, private port operators are custodians of infrastructure assets of key national significance[25]. These operators may now determine the infrastructure and asset needs of Australian importers and exporters into the future – but as private businesses, their objectives are not necessarily aligned with those of other Australian businesses. This could be of concern to our members, most of whom depend on ports for survival, whether directly or indirectly.

The Federal Government introduced laws to govern the security of critical infrastructure, including ports, in 2018[26] and is currently seeking to strengthen and broaden that legislation[27] and to introduce new national security scrutiny to Australia's existing foreign investment review processes[28]. Ai Group has expressed caution about the latest reforms, which have potentially substantial impacts on business certainty and costs.

However, the resilience issue is significant. The fate of our import/export trade, which impacts all Australians, is largely in the hands of private enterprise who may avoid difficult decisions that would be in the long-term strategic interest of Australia's trade competitiveness.

[25] Ports & Shipping Policy in Australia in the 21st Century – a 'Wicked Problem', Macquarie Lighthouse lecture series (March 2019)
[26] Security of Critical Infrastructure Act 2018.
[27] Protecting Critical Infrastructure and Systems of National Significance, Department of Home Affairs.
[28] Major reforms to the Foreign Investment Review Framework, Australian Treasury.

Industrial Relations

Industrial relations disputes on the waterfront are typically very costly and disruptive as highlighted by the recent dispute at Port Botany in September 2020 over enterprise bargaining negotiations between Patrick and the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU).

The bitter 1998 Waterfront Dispute between Patrick and the Maritime Union of Australia is a major event in Australia's industrial relations history. The dispute still provokes some strong views about whether the actions of Patrick and the then Federal Government were justified. Despite this, the dispute led to major productivity improvements on the waterfront and, fortunately, over the past 22 years Australia has not seen another industrial dispute of this magnitude.

The CFMMEU has an excessive amount of power in enterprise bargaining negotiations due to:

- The costly nature of waterfront disputes;
- The restrictive terms of legacy enterprise agreements that apply to the Stevedoring companies including major restrictions on automation and outsourcing;
- The militancy of the union.

While there are various provisions in the *Fair Work Act* that can be of assistance to employers in addressing unproductive terms in legacy enterprise agreements and protecting the community from industrial action that harms the economy, none of the options are easy if there is strong opposition from employees and unions.

What Next?

As nearly all our trade is connected to ports, the issues highlighted in this paper need close government attention and action where appropriate, to ensure Australia is competitive, productive and resilient into the future.

This section seeks to highlight a few options for action and further exploration. Ai Group are not making recommendations currently.

Port Modernisation

Government(s) could conduct detailed investigations (involving port owners and other stakeholders) on what port infrastructure will be needed to keep us globally competitive into the future. In some cases, it may be determined that Australia needs to invest in new technology and upgrade or build new infrastructure, and this may require both public and private funding arrangements.

Skills

Skills are an essential component to the smooth operation of ports. As ports modernise and adapt to new technology, the skills required will become more sophisticated. Germany is a world leader in logistics, ranked #1 three times in a row by World Bank's bi-annual Logistics Performance Index (LPI) rating of 160 countries[29]. Given these results, it is unsurprising that Germany is also a global leader in logistics higher education[30]. If Australia wishes to develop a truly world class port system, logistics higher education and skills more broadly will be an essential component.

Regulation

Community Service Obligation (CSO)

A Community Service Obligation is a specific requirement by government of a business or businesses to carry out activities with identified public benefit objectives, which they may not otherwise choose to do so on a commercial basis alone[31]. CSOs exist as an option for Government to address a policy objective[32]. The circumstances where CSOs can be requested range from market failure to a response to a social issue.[33]

CSOs could be an option for use by governments to ensure that our port infrastructure operates to public benefit.

ACCC Perspective

Rod Sims of the ACCC has said that, "there is currently no or little regulation of monopoly privately-owned ports. When these were government-owned political pressure on Ministers kept prices reasonable. But the ports were sold, usually with no control over their pricing in order to maximise the

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[29] 'Logistics Industry,' Germany Trade and Invest
[30] Ibid
[31] Community Service Obligations: Policies and Practices of Australian Governments, Industry Commission (1997)
[32] Guidelines for Community Service Obligations, NSW Treasury (January 2019)
[33] Ibid

proceeds of sale. The resulting unfettered market power of some ports is costing our nation dearly.[34]

In the same speech, he went on to recommend a "new 'Part IIIB' monopoly regulation regime that would see owners of significant infrastructure with market power subject to some form of price regulation," as properly priced infrastructure is essential to the economy.

USA Style Federal Maritime Commission

The Federal Maritime Commission (FMC) is the independent federal agency responsible for regulating the U.S. international ocean transportation system for the benefit of U.S. exporters, importers, and the U.S. consumer[35]. The FMC reviews tariffs, rates, and rules of carriers to ensure fairness and to keep the industry competitive.

Some are of the opinion that Australia might benefit from this approach regarding our own port and shipping situation.

Regulatory Interaction with Existing Arrangements

If new regulatory regimes are to be imposed on existing ports, consideration will need to be given to federal harmonisation, interaction with existing contract arrangements and investment impacts. Ai Group are seeking member and stakeholder feedback on transition of existing arrangements. Other
Ai Group are currently seeking views from members and other stakeholders on possible options to help alleviate issues in Australia's port and shipping landscape that are negatively impacting Australian businesses.

If you are an Ai Group member, port or stakeholder and want to discuss port issues and/solutions, contact:
Industry.Policy@aigroup.com.au

[34] 'Tackling market power in the COVID-19 era,' Rod Simms, ACCC (21 October, 2020)
[35] 'About the Federal Maritime Commission', US Federal Maritime Commission