



Maritime inquiry — briefing note

Main issues in the draft report

- Lack of **competition** in some parts of the maritime logistics system hurts consumers.
 - Transport operators have no choice about which terminal they use when picking up or dropping off a container, so must pay whatever fixed charge a terminal operator sets. These charges rapidly increased from 2017. Terminal operators could levy the charges on shipping lines, who can choose which terminal to use (draft recommendation 6.2).
 - Transport operators and cargo owners are paying fees to shipping lines for the late return of containers even where the delay is due to full empty container parks. The exemption for shipping contracts, which means that these fees fall outside the scope of the Australian consumer law, should be removed (draft recommendation 6.3).
- **Workplace arrangements** lower productivity — incremental changes to the Fair Work Act are needed.
 - Disruptions during recent bargaining imposed large costs on businesses dependent on maritime freight. More effective remedies are needed to limit unreasonably protracted bargaining and industrial action (draft recommendations 9.2–9.3).
 - Limits should be placed on clauses in container terminal operators' enterprise agreements that are highly restrictive and constrain the ways that workers and equipment can be deployed (draft recommendation 9.1).
- Higher **productivity** at Australia's container ports is achievable.
 - Performance varies markedly between container terminal operators and within operators across time. Consistently achieving world average ship turnaround times could save the economy an estimated \$600 million a year.
 - The World Bank's Container Port Performance Index ranked Australia's major container ports in the bottom 30% of global ports. Australia's cranes were just as productive as the average international crane. However, Australian ports used fewer cranes than an average international port to unload ships, causing the lower rankings.
- A **strategic fleet** may not significantly mitigate shipping capacity issues and concerns about training may be better resolved by other means.
 - Disruptions can occur to different types of shipping at different times. A strategic fleet would be unlikely to cover all of these disruptions with sufficient capacity.
 - The strategic fleet would likely face the same disruptions as other commercial shipping operations, such as congestion during the COVID-19 pandemic.
 - Capacity could be acquired as needed from the international market without the costs involved in supporting a national strategic fleet.
 - Australian flagged vessels are not a prerequisite to meeting maritime skill requirements. Cadetships and skilled migration are less costly solutions.

Responses to the draft report

- Most feedback has focused on the Commission's recommendation that container terminal operators cannot charge transport operators any fixed charges for dropping off or collecting containers (including terminal access charges). These charges could be charged to shipping lines (draft recommendation 6.2).

- Feedback on workplace relations has been more muted and has reflected pre-existing positions of stakeholders.
- There has been substantial media attention on and stakeholder engagement about the finding that privatisation in New South Wales has impeded efficient outcomes (draft finding 5.2), particularly from groups that support a container port in Newcastle.
 - When the government privatised Port Botany and Port Kembla as a package, it put in the lease that the State will compensate the winning bidder if: container numbers at the Port of Newcastle exceeded a set threshold; and caused a reduction in containers moved through Port Botany or Port Kembla. The Port of Newcastle must recompense the State if this occurs. This effectively limits the possibility of Newcastle entering the container market in New South Wales.
 - There is currently a private members bill before the NSW Parliament addressing these issues and the ACCC is appealing a decision by the Federal Court that these arrangements did not have an ‘anti-competitive purpose or effect’.

Other points from the draft report

- The Commission acknowledged issues with **industry specific regulation in workplace relations**.
 - On balance, the damaging effects of agreement content on the productivity of container terminals and the costs of industrial disputes to the rest of the supply chain mean an exception is justified.
 - Feedback was sought on how these issues might be best addressed so outcomes at the ports improve for the benefit of all Australians.
- The Commission did not examine **multi-employer bargaining** because it is not occurring on the ports. One submission (from the Australian Maritime Officers Union) supported industry-wide bargaining.
 - The potential benefits and drawbacks of multi-employer bargaining were discussed in the productivity review’s interim report.
- To help to resolve **lengthy negotiations over enterprise agreements**, the Commission has taken a targeted approach of mandatory involvement by the Fair Work Commission in lengthy or highly disputed bargaining in the ports. This would scale from conciliation to arbitration (draft recommendation 9.2).
 - The Commission has also recommended the Fair Work Commission has members with requisite skills, experience and standing are available to deal with cases in the ports (draft recommendation 9.9).