



Australian Government
The Treasury



Ministerial Submission
MS22-002879

FOR ACTION - Productivity Commission (PC) final report on Australia's maritime logistics system inquiry

TO: Treasurer - The Hon Jim Chalmers MP

CC: Assistant Minister for Competition, Charities and Treasury - The Hon Dr Andrew Leigh MP

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Signature	Date: / /2023
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KEY POINTS

- The Productivity Commission (PC) final inquiry report *Lifting productivity at Australia's container ports: between water, wharf and warehouse* ([Attachment A](#)) was handed to Government on 21 December. The Terms of Reference and background are at [Attachment C](#).
- The report covers a range of issues across the maritime logistics sector including workplace relations, competition and productivity. The report makes 14 recommendations, including nine related to workplace and industrial relations; three on competition reform; one on coastal trading; and one on strategic fleet.
- Overall, productivity at Australian container ports has risen since 1990, but higher productivity is achievable and could deliver direct cost savings of \$600 million a year to the Australian economy (for further detail on key findings, see [Attachment D](#)).
 - Australian ports do not compare well against international ports on measures of ship turnaround times, such as in analysis conducted by the World Bank.
 - However, this is partly because Australian ports use fewer cranes on average. Australian cranes, *when operating*, are as productive as those in the average international port. Use of more capital in Australian ports would reduce ship turnaround times but raise costs which would not necessarily be efficient.
 - The report suggests that workplace arrangements have adversely affected productivity. For example, the PC raises both the process of enterprise agreement bargaining (such as protracted industrial action) and the content of enterprise agreements (such as clauses that limit merit-based hiring and automation) as constraining performance.
 - Addressing these workforce issues could reduce variability in crane rates and achieve more consistent high crane rates.

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Competition reform

- The PC also recommends Treasury address rising terminal access charges and other “unfair” fees (raised by the landside freight and logistics industry). Recommendations include:
 - Develop a mandatory industry code under competition law to regulate terminal access charges, administered and enforced by the ACCC (Rec 6.2).
 - Remove shipping exemptions from unfair terms provisions in Australian Consumer Law (Rec 6.3)
- There are valid industry concerns around access charges and fees, however port regulation is usually a matter for the states and territories. Regardless, the report will build expectations within the freight and logistics sector that the Commonwealth should act.
- The PC also recommends the repeal of Part X of the *Competition and Consumer Act 2010*, which allows shipping lines to cooperate on ship use, schedules, and freight rates. This would leave shipping lines in the same position as other businesses, in that they could apply to the ACCC for a public interest exemption from competition law if they want existing arrangements to continue.
- There is opportunity for findings specific to Part X be considered in the context of the Government’s strategic fleet taskforce.

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CONSULTATION

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ATTACHMENTS

- A: Final Report: Lifting Productivity at Australia's container ports

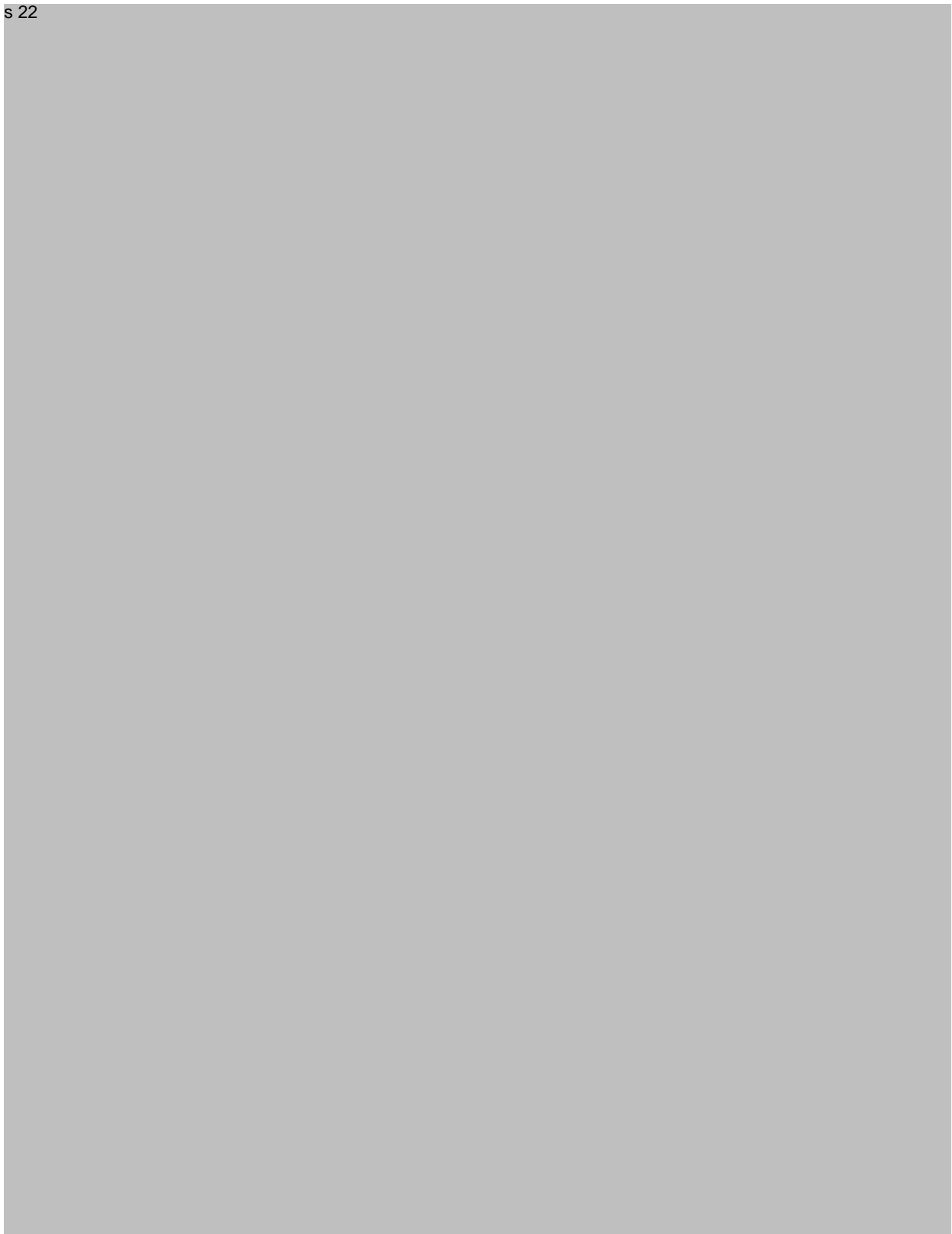
- B: Letter of Transmittal to President of the Senate
 - C: Background and terms of reference
 - D: Key findings and additional commentary
 - E: Summary of stakeholder positions and differences between draft and final reports
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ATTACHMENT C – TERMS OF REFERENCE AND BACKGROUND

- The Review was commissioned by the former Treasurer in December 2021 to examine long-term structural issues affecting the productivity of Australia’s maritime logistics system. This followed a period of global supply chain disruption, significant increases in shipping costs and reports that Australia’s ports were falling behind.
- It followed the ACCC’s 2021 Container Stevedoring Monitoring Report, which found Australian ports had poor performance and high levels of disruption from industrial disputes compared to other ports outside Australia.
- This review was called on by many stakeholders, including state governments and industry. They acknowledged that many of the challenges were global but there were also domestic issues impacting maritime logistics.
- Consultation on the draft report was extensive. Participants included ports, terminal operators, shipping lines, small businesses, importers and exporters, major retailers, industry groups, unions and government agencies at the local, state and Commonwealth level.
- The Review has broad Terms of Reference including:
 - Examine the long-term trends, structural changes, and impediments that impact the efficiency and dependability of the maritime logistics system;
 - Determine the broader economic impact of the maritime logistics sector, and assess the sectors’ operating model and any structural impediments, on consumers, business, and industry;
 - Examine workforce issues, including industrial relations, labour supply and skills, and any structural shifts in the nature and type of work in the maritime logistics sector;
 - Assess infrastructure needs and constraints, including options to enhance the efficiency of ports and connected landside supply chains and the interactions between decisions of different levels of government;
 - Research mechanisms to help improve the sector’s resilience and efficiency;
 - Have regard to the interlinkages and dependencies between the maritime logistics sector and other logistics systems, such as air freight and landside supply chains; and
 - Have regard to existing reports, including the ACCC’s container stevedoring monitoring report, the National Freight and Supply Chain Strategy, and the Harper Review recommendation to repeal Part X of the *Competition and Consumer Act 2010*.

ATTACHMENT D – KEY FINDINGS AND ADDITIONAL COMMENTARY

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- **Market Power and Competition** – the PC finds that container ports – with the exception of Melbourne – are not exercising market power. It suggests that issues with the Port of Melbourne be addressed in a Victorian Government review scheduled for 2025.
- The PC does, however, identify competition issues in related markets.
 - In particular, it finds that charges imposed by container terminals on land transport operators (e.g. trucks) have risen steeply in recent years. It recommends that the Commonwealth develop a mandatory code of conduct under Part IVB of the *Competition and Consumer Act 2010* to address pricing concerns. However, existing codes, such as the wheat port code, do not directly regulate prices but rather require, for example, good faith dealings, fair access to ports, and transparency of port operations.
 - The PC recommends repealing Part X of the CCA, which permits collaboration between shipping lines on prices, capacity and schedules. If Part X was repealed, shipping lines could obtain a class exemption from the ACCC. Broadly, the ACCC may grant exemptions from competition law where the detriment from anti-competitive conduct is offset by a public benefit.
 - Following a similar recommendation in the 2015 Harper Competition Review, the ACCC issued a discussion paper on a possible ocean shipping class exemption in late 2019, but this work was put on hold during COVID, and is now on hold pending the release of the PC’s inquiry report into Australia’s maritime logistics system (this report).
 - The report also argues that provisions around unfair contracts in the Australian Consumer Law should apply to shipping contracts, which are currently excluded. Legislation to strengthen unfair contract terms (UCTs) protections will commence from 10 November 2023. The provisions include making the inclusion and reliance of UCTs unlawful, giving courts the power to impose a civil penalty, and expanding the eligibility thresholds. But the changes will not remove the shipping contract exemption. The mandated review of the UCTs provisions two years after commencement (2025) would provide an opportunity to consider whether the exemption for shipping contracts should be removed.
- **Port Performance** –the report suggests that productivity at Australia’s container ports has risen since 1990. However, importers and exporters could directly save around \$600 million per year in costs from improvements to port inefficiencies including turnaround times.

- Productivity appears to be improving in Australian ports at a slow rate. The report notes that Australian ports perform at reduced speed compared to international levels, but that the reasons for this were not immediately clear beyond workplace relations concerns.
- The report notes that there is limited data available on port performance in Australia and proposes (but does not go so far as to recommend) a new framework for data collection and sharing among Government and private sector port users.
- **Other Areas** – the report finds Australia’s ports and logistics services are working well and in line with international standards. These include in skills and training of maritime workers, technological adoption and maritime infrastructure and planning. The report also mentions the various tax incentives for the Australian shipping industry introduced in 2012 but makes no recommendations as to their practical operation.



DIFFERENCES BETWEEN DRAFT AND FINAL REPORTS

The final report consolidated findings and recommendations from the draft report. It also has additional content based on insights coming from the consultation on the draft, including:

- Recommendation 6.2 (page 43): Treasury to develop and implement a mandatory container terminal operator code to regulate landside fees like terminal access charges. The code to be administered and enforced by the ACCC and evaluated after 5 years by an independent body.
 - The draft report had advocated for regulation of terminal access charges and other fixed fees so container terminal operators could only charge these once to shipping lines and not to transport operators. However, the Commission sees a risk that container terminal operators could find a way to raise revenues from incentive charges if fixed charges could not be levied on transport operators. It sees the mandatory industry code as less explicit regulatory regime that may have better results.
- Finding 9.5 (page 46): The final report references the recent changes to the Fair Work Act 2009 (Cth) in December 2022. It notes these changes seek to address protracted bargaining across the economy through additional intervention by the Fair Work Commission. In

particular, the changes seek to assist with enterprise agreement dispute resolution and arbitration, if the Commission views the bargaining crossing time thresholds and being intractable.

- Recommendation 9.2 (page 47): The Australian Government should amend the Fair work Act 2009 (Cth) to increase the maximum penalties for unlawful industrial action. Federal Courts would then have the discretion to impose penalties reflective of the costs inflicted on employers and the community. The Commission found evidence of unlawful industrial action in container ports and that the current penalties, which have increased over time, are unlikely to provide sufficient deterrent. It is therefore recommending further increases through amendments to the Fair Work Act.
- Finding 9.8 (page 47): Employer responses to highly disruptive negotiations are limited to lockouts. Information request 9.12 in the Draft report asked for information on actions that employers can use in response to industrial action that are in addition to the ones mentioned in recommendation 9.3. There were mixed views from participants on whether broader or graduated employer responses to industrial action are practical. However, the Commission confirmed through a formal Finding in the final report that the changes to the Fair Work Act mean that employees can only use lockouts during industrial action.
- Recommendation 12.2 (page 51): The PC doesn't find a need for a government-supported commercial strategic fleet. It indicates there are more cost-effective ways to address issues around maritime capacity and shortages of skilled seafarers. However, if a strategic fleet is established, the government should also set up frameworks for periodic review against its objectives covering: performance, labour supply issues, ongoing level of subsidy and regulatory settings. Reviews should be performed at least once every two years.
 - The draft report had indicated that the establishment of a strategic fleet required further evaluation but had not included recommended action on its review if the Government pursued it.

The new findings and recommendations also meant a couple of deletions including:

- Recognition of the changes already made in the Fair Work Act (Finding 9.5 in the final report) meant that Draft Recommendation 9.2 is no longer put forward in the final. That recommendation advocated for changes to the Fair Work Act 2009 (Cth) to create a requirement for the Fair Work Commission intervention when certain thresholds in bargaining activity in the ports are reached, from conciliation to termination of bargaining and arbitration for lengthy and intractable disputes.
- Draft recommendation 9.4 around 'increase disincentives for employees to notify and then abort protected industrial action' was not included in the final given mixed responses by inquiry participants on whether this was a practical change (page 347 of the final report).

Page 12 is outside the scope of the request and has been deleted.