SEMAPHORE

Newsletter of the Maritime Law Association of Australia and New Zealand

Port Performance Directly Impacting Australian Businesses and Consumers

Australia is progressively becoming a less attractive destination for international shipping lines due to its container ports delivering relatively-poor performance levels and suffering ongoing operational disruptions.

Such is a key finding of the 106-page "Container stevedoring monitoring report 2020-21" published in October by the Australian Competition & Consumer Commission (ACCC).

The report opens by fully acknowledging the pandemic has "derailed the global container freight supply chain" and caused shipping line schedules that previously "worked like clockwork" to go out of sync.

As a consequence, it notes that shipper margins are being "squeezed" by rapidly-escalating freight rates. Furthermore, it states that Australian shippers are increasingly struggling to obtain cargo space in timely fashion and are in danger of failing contractual obligations.

However, in the midst of such circumstances, the report observes that the Maritime Union of Australia (MUA) has undertaken "protracted industrial actions" in the course of its Enterprise Bargaining negotiations with stevedores and other port operators.

"These actions have exacerbated congestion and delays at Australian container ports," states the report.

"As an example, during 2020-21, the MUA organised a number of industrial actions at Port Botany in Sydney. This contributed to shipping lines spending, on average, 21 hours waiting idly at Port Botany in 2020-21. A number of shipping lines skipped the port altogether, preferring to unload their cargo in Melbourne instead of waiting."

The report also notes that shipping lines, whom in the period following the Global Financial Crisis have faced relatively-low freight rates, have described a "poor experience" at Australian container ports over the past few years.

"Some shipping lines have described the Australian container shipping market as characterised by high costs and major disruptions at ports, container terminals and empty container parks. These comments are supported by international studies.

"A recent study by the World Bank and IHS Markit showed that even before the recent logistical issues caused by the pandemic, Australian container ports were relatively inefficient and well below international best practices. The study ranked Australia's largest container ports, Melbourne and Sydney, in the bottom 15% and 10%, respectively, of the 351 global ports in the study.

"Data published by the United Nations Conference on Trade and Development also shows that in 2019, the median in-port time for container ships visiting Australia was three-times longer than Japan, twice as long as China and 50% longer than Singapore or New Zealand."

The report relays that shipping lines are "particularly concerned" that they are spending significantly-more time waiting at Australian container ports, compared to their overseas counterparts.

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Key Insights and Conclusions

Among key industry insights and developments identified by the Australian Competition & Consumer Commission's "Container stevedoring monitoring report 2020-21":

- COVID-19 has caused major disruption to the global supply chain
- the global supply chain was transforming even before COVID-19
- productivity has stagnated at Australian container ports, despite substantial investment
- industrial relations are hurting Australian container ports
- domestic competition between stevedores has changed market dynamics
- the global shipping industry has been transformed
- current Australian port regulation is inadequate

The report concluded that Australia "needs to act" by:

- addressing industrial relations and restrictive work practices issues across the supply chain
- ensuring that privatised ports do not levy excessive rents and charges
- repealing Part X of the Competition and Consumer Act 2010
- investing in infrastructure to fix inefficiencies in the supply chain caused by larger ships, lack of rail access to Australian container ports and shortage of space in empty container parks

"As shipping lines employ larger vessels, the opportunity cost of vessels waiting at Australian container ports and missing their next schedule window is increasing. As a result, ongoing disruptions and delays at Australian ports are becoming unpalatable for shipping lines.

"Australian cargo owners informed the ACCC that some shipping lines have already started withdrawing services from Australia. It is critical for Australia to entice more shipping lines to provide services on Australian container trade routes, while also facilitating effective competition between them. This will influence the level of container freight rates that Australian cargo owners will face in the future."

To succeed in this aim, the report emphasises that Australia needs to take several notable actions – such as addressing "systemic industrial relations issues" – given the escalation in "restrictive work practices and industrial actions" observed over recent years.

" ... Stevedores' Enterprise Agreements contain provisions that limit their ability to automate, reduce labour costs and control their recruitment decisions. Over the past three years, the MUA has used protracted industrial actions to demand that stevedores accept such provisions. These issues are hampering productivity and increasing disruptions at the Australian container ports."

Another area of concern highlighted by the report was that privatised container ports do not levy excessive land rents and other charges.

"While privatisation of the four major container ports in Australia may have improved dynamism, the current level of regulation of these ports is inadequate.

"This is highlighted by a finding by the Essential Services Commission of Victoria (ESC) in 2020 that Port of Melbourne had exercised its market power in charging land rents to port operators.

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Key stevedoring results 2020-21

Revenues, costs, profits and returns

Total revenue
$1,665 m
▲14.8%

Total costs
$1,356 m
▲3.3%

Profit margin[a]
20.8%
▲10.9 pp

Investment (additions)
$50.6 m
▼28%

Tangible asset base
$1,671 m
▼8.7%

Return on average tangible assets
20.0%
▲12.4 pp

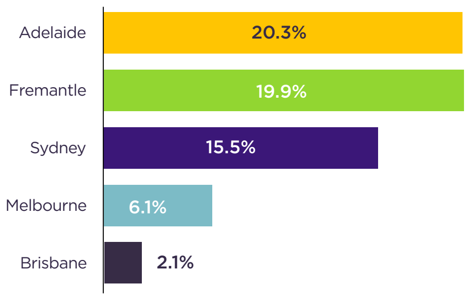
$316.4
▲6.6%
Revenues per lift

$195.0
▲1.4%
Quayside revenues per lift

$121.4
▲16.0%
Landside and other revenues per lift

Cost per lift
$257.7
▼4.1%

Freight on rail[b]



Total freight on rail
(5 ports)[b]
10.5%
▼1.1 pp

[a] Earnings before interest, tax and amortisation (EBITA) as a percentage of total revenue.
[b] Percentage of containers on rail.

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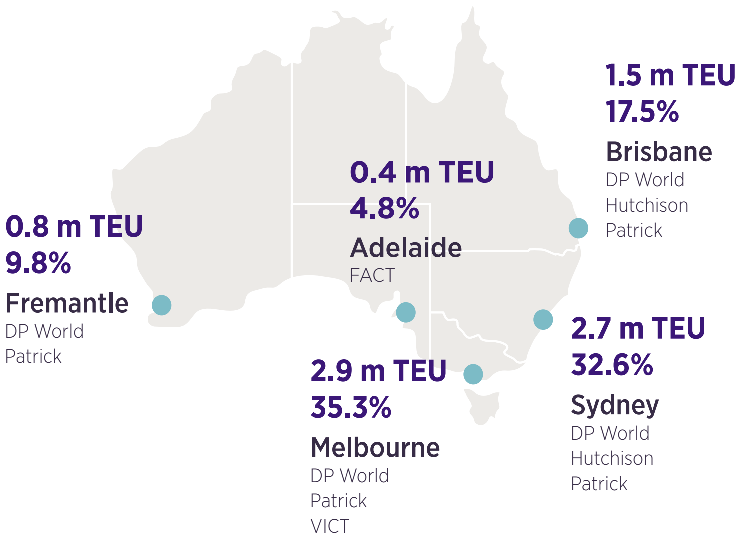
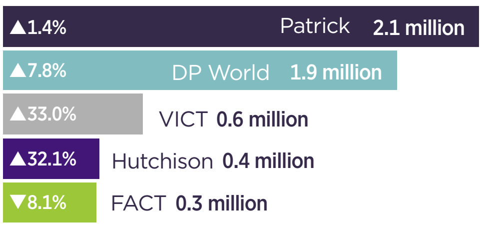
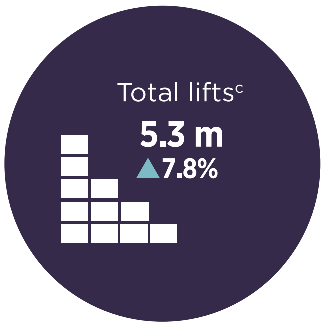
Total TEU (by port[c]) and stevedore's locations

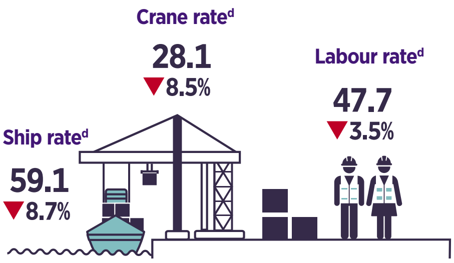


Lifts per stevedore[c]

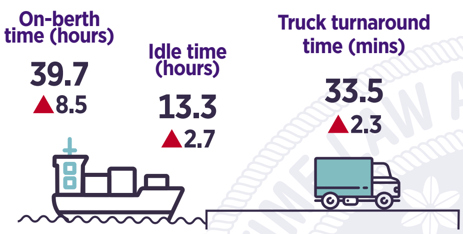




Container terminal productivity



Waiting and turnaround time



[c] Includes international container terminal volumes only.
[d] Containers per hour.

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"To address this, the ESC recommended introduction of an enhanced negotiate-mediate-arbitrate framework independently oversighted by the ESC."

The document states it is also time to repeal Part X of the Competition and Consumer Act 2010.

"Part X permits shipping lines to collaborate on prices, capacity and schedules, among other things, which would otherwise be considered as anti-competitive conduct.

"There does not appear to be evidence of shipping lines charging excessive freight rates before the pandemic. However, the shipping industry has become more concentrated over the past decade, so there is a growing risk that shipping lines could use Part X to artificially elevate freight rates in the future.

"Several other countries have already scaled back or removed equivalent exemptions. The ACCC is proposing to develop a class exemption, in place of Part X, which would allow for a more limited form of collaboration that would likely be in the public interest."

Furthermore, the report states that both industry and government need to make a range of investments in infrastructure to address broader inefficiencies in the supply chain caused by larger ships, lack of rail access to Australian container ports and shortage of space in empty container parks.

"The COVID-19 pandemic has illustrated the importance of the container freight supply chain to Australia. The cost of not addressing these issues is likely to be significant for many Australian businesses and the Australian economy as a whole."

Without undertaking that prescribed range of actions, the report warns that Australia "may end up being serviced by fewer shipping lines than would otherwise be the case".

"This would mean less competitive tension between shipping lines and freight rates on Australian trade routes would likely be higher than they would otherwise be.

"As a result, Australian exporters would be less competitive in overseas markets, and Australian businesses and consumers would pay higher prices for imported goods. The cost of not addressing these issues is likely to be significant for many Australian businesses, consumers and the Australian economy as a whole."

The ACCC has confirmed that it will continue to monitor stevedores' performance and charging practices, as well as broader developments in the supply chain to inform governments' container freight policy and provide transparency to industry participants.

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