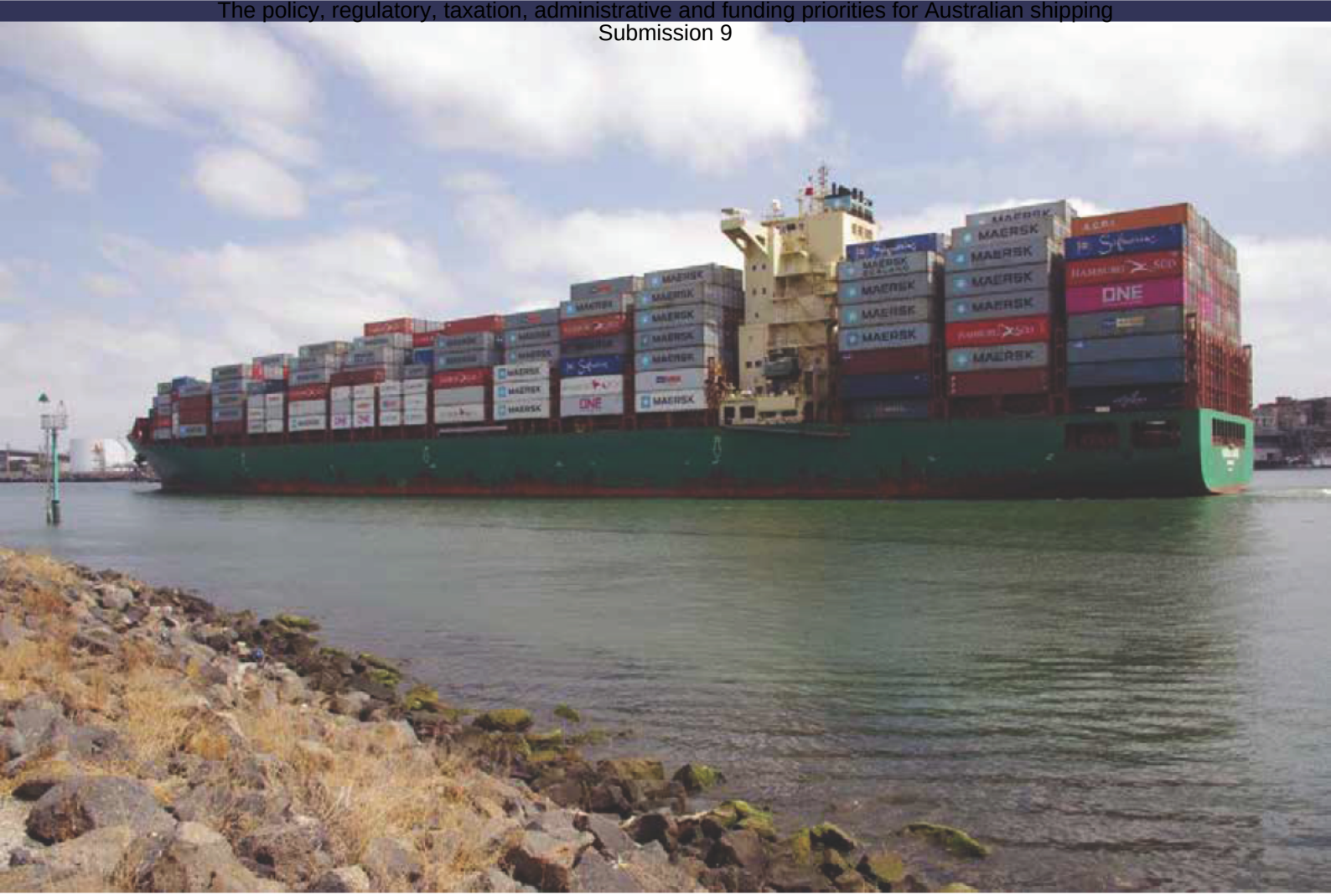

8 March 2019

Inquiry into the Policy, Regulatory, Taxation, Administrative and Funding Priorities for Australian Shipping

Submission to the Senate Committee on Rural and Regional Affairs and Transport on behalf of Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA)

"KEEPING AUSTRALIA'S INTERNATIONAL TRADE MOVING"

FTA
FREIGHT & TRADE ALLIANCE

Australian Peak Shippers Association Inc. (APSA)

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1. About the peak bodies and extent of representation

Freight & Trade Alliance (FTA) is a peak body for the international trade sector with a vision to establish a global benchmark of efficiency in Australian border related security, compliance and logistics activities. FTA represents more than 350 businesses including Australia's largest logistics service providers and major importers.

On 1 January 2017, FTA was appointed the Secretariat role for the Australian Peak Shippers Association (APSA).

The Australian Peak Shipper Association (APSA) is the peak body for Australia's containerised exporters designated under Part X of the Competition and Consumer Act 2010 and by the Federal Minister of Infrastructure and Transport of the Day. APSA plays an important role in representing Australia's major exporters, and other peak bodies, in respect to international logistics and trade policy matters.

APSA currently represents more than 600,000 standard containers on export annually and provides international trade and logistics advocacy to the Australian Horticultural Exporters and Importers Association, the Australian Cotton Shippers Association, the Australian Meat Industry Council, the Australian Council for Wool Exporters and Processors, the Australian International Movers Association, and others.

The current Chair of APSA is Sean Richards, EGM- Logistics for Visy Industries.

Board/Officers of the Association:

Chair: Mr. Sean Richards (EGM- Logistics, Visy Industries)

Vice-Chair: Olga Harriton (Global Logistics Manager – Manildra Group)

Eimear McDonagh (Director- Australian Cotton Shippers Association)

Patrick Hutchison (CEO- Australian Meat Industry Council)

Flaminio Dondina (General Manager Procurement- Casella Family Brands)

David Werner (Trade Execution Manager- Cargill)

Andrew Wilson (Director- Australian International Movers Association)

Kurt Wilkinson (Commodities & Logistics Manager- Fletcher International Exports / AMIC)

Peter Morgan (CEO- Australian Council for Wool Exporters and Processors)

While the Australian shipping debate has been dominated by infrastructure owners, shipping lines, and other commercial interests, APSA represents the voice of Australian exporters who are wholly dependent on regular, reliable and affordable international shipping line services.

2. International liner shipping regulation- the Australian shipper's perspective

As the Committee is aware, Australian containerised imports and exports are wholly dependent on foreign-owned international shipping lines, many of which, including COSCO / OOCL, are state-owned enterprises. The Australian National Line (ANL) was sold to French Giant CMA CGM in 1998.

The only guarantee of minimum levels of service (frequency of sailings to and from Australia, for example) our exporters have is through Part X of the Competition and Consumer Act 2010.

The purpose of Part X is set out in s.10.01(1) of the Act:

(a) to ensure that Australian exporters have continued access to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive; and

(b) to promote conditions in the international liner cargo shipping industry that encourage stable access to export markets for exporters in all States and Territories; and

(c) to ensure that efficient Australian flag shipping is not unreasonably hindered from normal commercial participation in any outwards liner cargo shipping trade; and

(d) as far as practicable, to extend to Australian importers in each State and Territory the protection given by this Part to Australian exporters.

2.1. Minimum Levels of Service, negotiable shipping arrangements and minimum notification periods

Whenever shipping lines enter into a conference agreement, s. 10.07 of the Act specifies that these agreements "must contain provisions specifying the minimum level of outwards liner cargo shipping services to be provided under the agreement". Parties to these agreements must negotiate these minimum levels of service with APSA – Australia's exporters- as a requirement under the Act.

Essentially, this process is the only accountability that international shipping lines have in the provision of vital services to the Australian market. Without Part X, international shipping lines, acting purely on commercial drivers, may, for example, decide to withdraw capacity, without notice, from the Australian market, or they may decide to unreasonably increase freight rates, and there would be no recourse to challenge those behaviours. An example is that Europe and North America, by virtue of their container volumes, will always have weekly shipping line services to and from key international markets. The only thing that provides some level of assurance to Australian shippers, in a low volume market, that we will receive weekly services, is that international shipping lines are parties to registered conference agreements and within those agreements they have guaranteed the frequency of those services.

Minimum notification periods are also an essential protection for Australian shippers. Section 10.41(2) of Part X of the Competition and Consumer Act 2010 mandates that shipping lines who are party to registered conference agreements must provide the designated shipper body (APSA) with "at least 30 days' notice of any change in negotiable shipping arrangements". "Negotiable shipping arrangements" is defined in section 10.41 (3) (a) to include "freight rates, charges for inter-terminal transport services, frequency of sailings and ports of call".

This section of Australian law is similar but different to regulation in the U.S. under the Federal Maritime Commission (FMC) where the Commissioner requires that increases in rates, charges or surcharges (including new rates, charges or surcharges, as in the case of Low Sulphur Surcharges) must be published in a common carrier's tariff at least 30 days in advance of its effective date:

46 CFR § 520.8 Effective dates.

(a) General.
(1) No new or initial rate, charge, or change in an existing rate, that results in an increased cost to a shipper may become effective earlier than thirty (30) calendar days after publication.

(2) An amendment which deletes a specific commodity and applicable rate from a tariff, thereby resulting in a higher "cargo n.o.s." or similar general cargo rate, is a rate increase requiring a 30-day notice period.

(3) Rates for the transportation of cargo for the U.S. Department of Defense may be effective upon publication.

(4) Changes in rates, charges, rules, regulations or other tariff provisions resulting in a decrease in cost to a shipper may become effective upon publication.

2.2. Is Part X giving Australian shippers the intended protections?

Part X does not currently provide Australian shippers with the level of protection that it intends.

Examples of the ineffectiveness of Part X are included below:

- In the last three years APSA has not been provided with a single notice of changes in 'negotiable shipping arrangements', even though there have been innumerable and material changes to key services, changes to rates and introductions of new surcharges and pricing mechanisms.

- In addition to not being notified of these service changes, APSA has identified a significant number of instances where shipping lines provided less than 30 days' notice to Australian shippers when changes are announced. In one recent case, the rollout of the Emergency Bunker Surcharge, U.S. shippers (with the strength of their regulation under the FMC), were given a 30 days minimum notification period and therefore extra time to comply, whereas Australian shipper received 4 days notification. See: http://www.anl.com.au/news/701/anl-announces-the-implementation-of-emergency-bunker-recovery-measures

- The 'negotiations' that APSA has participated in have not been a genuine form of engagement. While the Act requires shipping lines to negotiate, it does not compel them to agree. We have found that there is no appetite from the shipping lines to consider genuine protections for Australian shippers in these

negotiations. APSA members have an interest in allowing these services to operate, therefore blocking the registration of these services is not an option.

- Even though shipping lines may take weeks or months in preparing a conference agreement, both APSA and the Registrar for Shipping only have 14 days to approve the application once received. These are often large and complex legal documents. In some instances, they represent the only direct sea freight service to certain markets for Australian exporters. It is risible that this short time period exists for the review, approval and negotiation of minimum levels of service.

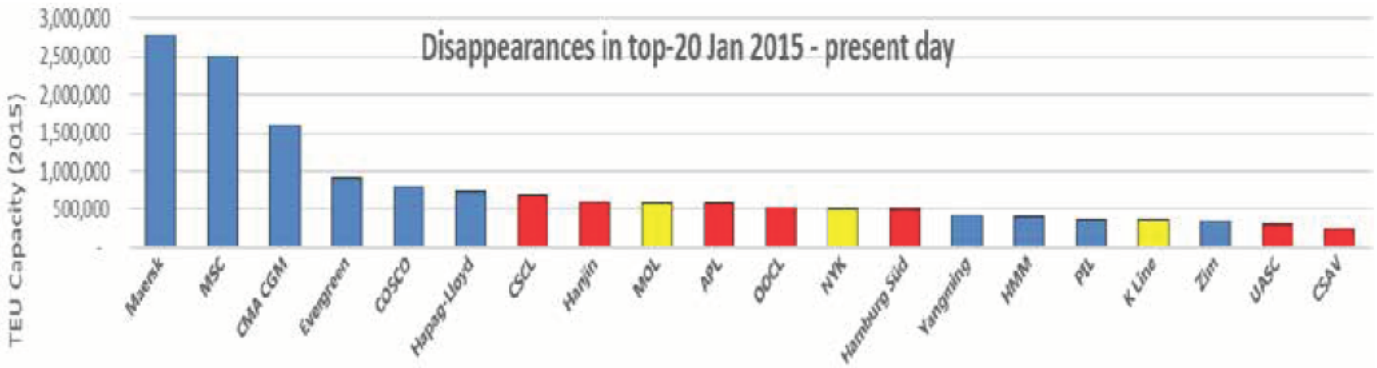
In addition to the above, the consolidation of the liner shipping market is creating a situation where many of these major shipping lines, by virtue of acquiring their competitors, are bypassing the need to register under Part X. In short, there is no need to form a consortium with your competitors if you are acquiring them. Unfortunately, this leaves Australian shippers utterly exposed, with shipping lines operating outside of Part X and not required to commit to or negotiate minimum levels of service.

2.3. The international liner shipping market is rapidly consolidating

The current period of consolidation in the liner shipping market is unprecedented. The 7 largest carriers now operate around 80% of global capacity, compared with a little over 10% in 1998 and, according to Drewry, the top 7 carriers now have a market share of 80%.[1]

Major recent consolidation events have included:

- the acquisition of Hamburg Sud by Maersk;
- the acquisition of OOCL by Cosco;
- the exit of NYK from Australian Services; and
- the collapse of Hanjin.



Credit: SeaIntel Maritime Analysis

Australian shippers fear that increased consolidation may mean fewer carrier choices and less competition, making it harder for Australian shippers to negotiate rates and service levels.

The other impact of consolidation is that shipping lines are no longer captured under Part X protections. In the last 24 months, APSA has seen the dissolution of two out of the three major Discussion Agreements (DA) registered under Part X.

So, while 99% of Australia's trade by volume is carried via sea freight, there are significant gaps in the protections we are affording our exporters, despite the best intentions of the Act.

While the Australian Competition and Consumer Commission (ACCC) has recommended the repeal of Part X, Australia's major exporters are clear in their view that Part X protections (minimum service levels and minimum notification periods, in particular) are critical to the functioning of our export economy.

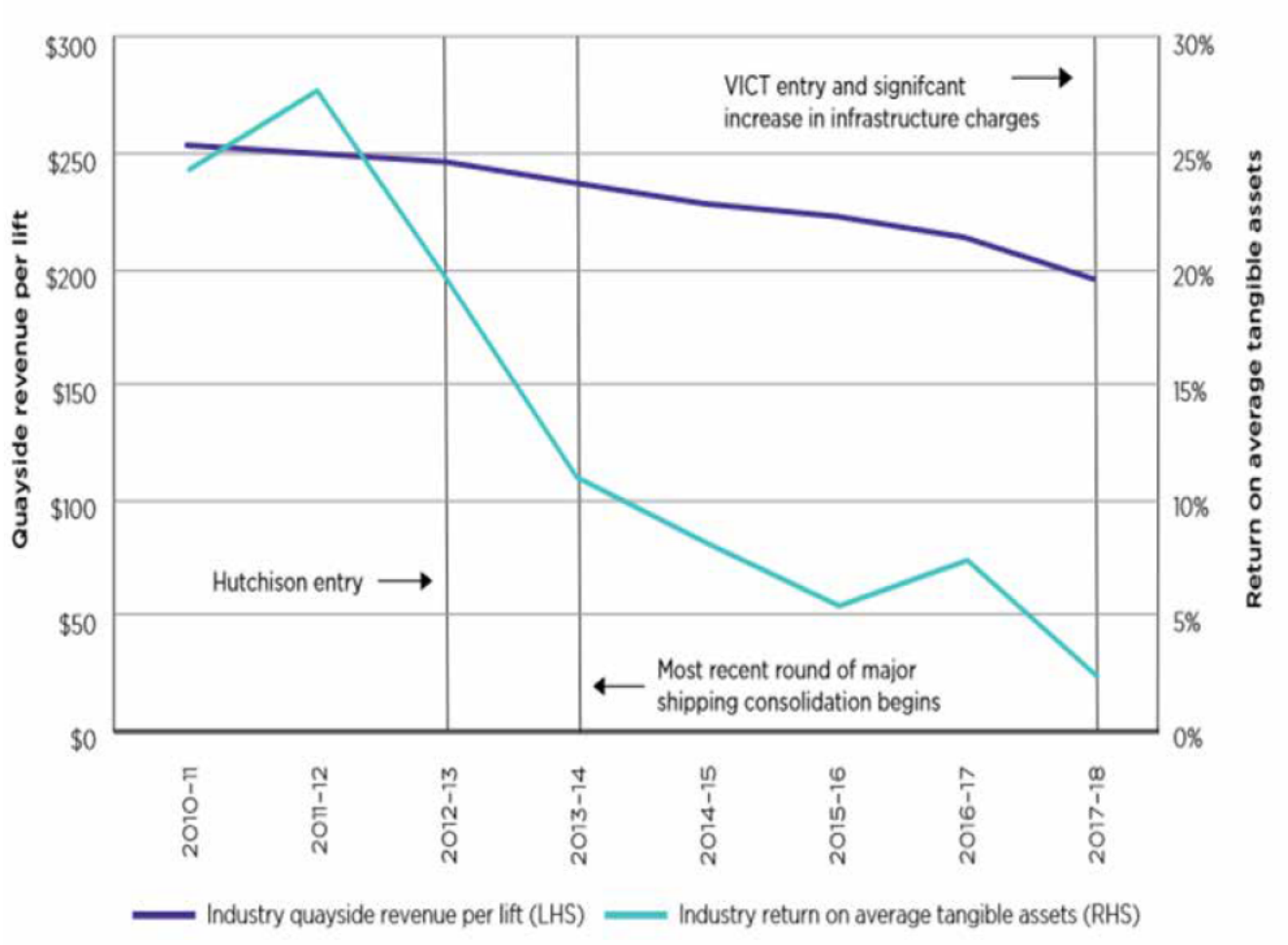
Part X should not be repealed without first achieving equivalent and strengthened protections for Australian exporters in respect to international sea freight services. To repeal the only protections that exist for our exporters, without first having equivalent protections in place, would be foolhardy and dangerous to our national interests.

[1] https://www.joc.com/maritime-news/trade-lanes/top-carriers-consolidate-control-container-shipping-market_20180115.html

3. Infrastructure charges and Terminal Handling Charges (THCs)

The addition of a third stevedore in Sydney, Melbourne and Brisbane has added competition at a time when the number of stevedore clients, international shipping lines, has significantly reduced due to consolidation.

The combination of increased competition with a greatly reduced client base has caused a restructure in terminal pricing.



Credit: ACCC Container Stevedoring Monitoring Report 2017-2018

Competition has resulted in stevedores reducing the prices they charge shipping lines to attract or retain business. That lost revenue has then been recovered via landside charges, or “infrastructure charges”, an unregulated charge for access to international container terminals.

The result has been a disaster for Australian exporters, who have, in some cases, such as Melbourne, experienced price increases of over 2,000%, in only a few short years.

To make matters worse, while the international shipping lines are receiving more competitive quayside rates, they are not passing on those savings to their shippers.

In fact, in many cases, shipping lines have increased the Terminal Handling Charges that they are charging shippers, at a time when Australian shippers are now also paying the stevedores for the same in-terminal services via landside “infrastructure charges”.

Shippers are paying twice for the same services, and both of those prices are increasing.

It is unsustainable, it is without international parallel, and it requires the urgent intervention of the Australian Government.

3.1. Impact of the broken system

For one major Australian exporter of flour, starch, gluten and stockfeed, shipping 22,140 containers in 2018, these new charges cost them $833,571 in extra costs. With infrastructure charges increasing again in 2019 (the Patrick Stevedore increase of 75% taking effect on Monday 4 March 2019), this will increase the annual impact on their business to $1,595,000 in 2019.

For one major Australian exporter of paper and recyclables, shipping 42,122 containers in 2018, these new charges cost them $1,585,893.30. That number will increase to $3,062,400 in 2019.

For one major Australian exporter of grain and meat, shipping 18,016 containers in 2018, these new charges cost them $678,302. At a time of drought, even with softer export volumes, the 2019 increases will see them paying $893,200 in extra charges.

This is a crisis for Australian exporters.

4. Container detention and demurrage practices

Container detention and demurrage practices (how shipping lines recover costs for the use of their equipment) is becoming an increasing issue in Australia and other parts of the world.

Unlike Australia, however, U.S. regulators are proactively responding to the needs of industry.

Last year, the U.S. FMC conducted an investigation into "Conditions and practices relating to detention, demurrage, and free time in international oceanborne commerce". During the investigation the FMC served twenty-three ocean carriers and forty-four marine terminal operators with interview questions and document requests. The investigation was a result of a petition by a coalition of 26 organisations, including local shippers, freight forwarders and customs agents, calling for the adoption of a formal position by the U.S. regulator on what constitutes "just and reasonable rules and practices".

Common issues identified by U.S. shippers in their testimony included "delays involved with U.S. government holds", "labour issues" and "unclear demurrage and detention billing and dispute resolution systems." Each of these concerns apply to the Australian context.

While shipping lines have every right to be recompensed for extended equipment use, shippers should not be forced to pay for events that are outside of their control. In Australia, that issue was particularly pronounced when reports were received that Australian shippers were slapped with detention invoices during the Victoria International Container Terminal (VICT)-MUA industrial dispute in 2018. The Maritime Union of Australia (MUA) blockaded Melbourne's Webb Dock terminal in December 2017. No containers entered or left the terminal for over two weeks. While the terminal itself did the honourable thing and did not attempt to recover storage charges, some lines have since pursued container detention for the full period of the dispute. Even though it was impossible to collect a container during that time. Any reasonable observer would agree that the detention clock should have only started when the picket was lifted and the gate was opened.

Container detention on Christmas day has been another subject of ongoing contention. Last year, Maersk Line issued extra import and export container demurrage and detention free days in recognition of the limited working hours during the year end public holiday period. Christmas and New Year were both announced as free time. Other lines did not, with lines continuing to treat Christmas day as the first day of availability for container detention and charging accordingly. Even though stevedores had limited operations on Christmas day, many empty container parks and container freight stations were closed, many transport operators were closed, Customs was in full shutdown and biosecurity was in partial shutdown. Their reasoning? The first free day starts from the date of container discharge, as per global company policy.

Another important issue is the lack of clarity in how detention and demurrage policies are applied and how disputes are settled. For many shipping lines disputes are resolved on a "case-by-case" basis, with several carriers having no written policy on how to handle disputed invoices and no clear policy or process in how they should be managed.

4.1. Containers subject to border holds

In Australia, detention charges caused by "border holds", or containers being inspected at the Container Examination Facility (CEF), are a major and recurring issue for our shippers.

While the Australian Border Force (ABF) has arrangements in place with stevedores to offer free storage arrangements if the cargo report was lodged within statutory timeframes, shipping lines will still apply detention fees for late container de-hire, even though the shipper or freight forwarder has no control over the container during that time. If container detention and demurrage practices were "just and reasonable", the container detention clock should start from the time the container becomes available after CEF processing, not from the time the container is discharged from the vessel.

Container detention and demurrage practices remain a major issue in Australia. Some detention, demurrage, and per diem fees are unfair because our ability to receive cargo and return equipment is out of our control.

Australian shippers strongly believe that regulators should follow the lead of the U.S. to develop standard and transparent industry practices.

4.2. Empty container management

Transport operators are reporting a growing number of issues in respect to the way shipping lines are managing empty container movements, with a surge of "re-direction" notices (where the shipping line instructs a transport operator to pick up or return a container to a certain depot, then changes the direction). The issue has reached a crisis point where Australian transport operators have now applied an industry-wide broad surcharge to recover costs of related inefficiencies (futile truck trips, more truck kms travelled, extra handling costs, etc.)

In what is a reasonable request from the Australian transport industry, they are now asking shipping lines for a minimum 24-hour notice period for re-directions. To date, the shipping lines have not agreed to any such basic standards.

This issue is symptomatic of a larger issue, where key decisions are now being made offshore by foreign shipping lines, with inadequate controls, understanding, or oversight, from relevant Australia regulators, despite our country being totally dependent on shipping line services.

5. Summary of Recommendations:

FTA / APSA would like to propose the following recommendations for the Committee's consideration.

Recommendation 1: Strengthen service protections

That Australia strengthens minimum levels of service and minimum notification period requirements for all international shipping line services in Australia.

This should include a non-negotiable minimum notification period for the introduction of new rates and charges, or changes to existing rates and charges. This is equivalent to the protections that already exist in the U.S. for their shippers.

These protections must be enforceable.

Given the non-use of Part X by many shipping lines (due to consolidation), these requirements should also sit outside of the Part X regime.

Recommendation 2: Terminal Handling Charges / infrastructure charges

That the Government takes urgent action to address unregulated and spiralling infrastructure charges. This may include the regulation of Terminal Handling Charges (THC) and other surcharges.

While shipping lines have been the beneficiaries of increased competition in stevedoring, Australian shippers have not seen any of those benefits and now are paying twice for container terminal services. It is an unsustainable situation, it is damaging to our economy, and it will only worsen if there is no intervention.

Recommendation 3: Stronger oversight of the sea freight supply chain

State and Federal Governments need to take a more proactive role to develop standard industry practices in relation to detention and demurrage, empty container management and other sea freight supply chain activities.

While NSW has a level of control over the port-supply chain under the Port Botany Landside Improvement Strategy mandatory standards, Victoria, Queensland, South Australia, and other States, have inadequate oversight and control.

6. Conclusion

Australian shippers face significant headwinds in 2019. The shipping line market is rapidly consolidating, supply chain costs are increasing, and there are significant concerns regarding the effectiveness of Part X in being able to achieve basic protections.

APSA strongly believes that the Government needs to work with industry in strengthening the protections that exist for our exporters in respect to sea freight services. This can be achieved via collaborating with APSA and other relevant industry bodies in identifying what protections are required.

It is a rapidly evolving industry and we fear that the existing legislation has already been left behind.

Overwhelmingly, State and Federal Governments need to take a more active role in Australia's sea freight supply chain. Our economy, and the ability of our exporters to compete in international markets, depends on it.

Kindest Regards,

Travis Brooks-Garrett
Secretariat, Australian Peak Shippers Association (APSA)
Director, Global Shippers Forum (GSF)