

16 July 2021



The Hon. Michaelia Cash  
Attorney-General for Australia | Minister for Industrial Relations

CC:

The Hon. Barnaby Joyce MP, Deputy Prime Minister of Australia | Minister for Infrastructure, Transport and Regional Development  
The Hon. Dan Tehan, Minister for Trade, Tourism and Investment of Australia  
Australian Peak Shippers Association (APSA) Committee of Management  
Tony Mahar, Chief Executive Officer, National Farmers' Federation

*Via Email*

Dear Attorney General,

I am writing to you on behalf of Freight & Trade Alliance (FTA) and the Australian Peak Shippers' Association (APSA) seeking intervention from the Federal Government in terms of the ongoing Protected Industrial Action (PIA) at our waterfront.

FTA is Australia's leading representative body for the international supply chain sector bringing together importers, exporters, customs brokers, freight forwarders, logistics service providers and industry groups.

FTA also manages the Secretariat for APSA being the peak body as designated by the Federal Minister of Infrastructure and Transport to protect the interests of Australia's cargo owners and shippers in respect to shipping and international logistics services.

As you are no doubt aware, we experienced a temporary reprieve from PIA at Patrick in October 2020 when the threat of a hearing from the Fair Work Commission (FWC) resulted in continued Enterprise Agreement negotiations. Following the agreed three month period of suspended PIA activity, a resumption of disruption directly associated with the PIA is again significantly affecting international trade operations.

Compounding concern is the escalated PIA by the MUA against Svitzer, a major provider of tug services managing berthing of international container vessels.

At this time during a global pandemic when measures are required to stimulate an economic recovery, we desperately need business continuity to allow shipping lines and shippers to:

- evacuate empty containers congesting port precincts,
- service surging import demands, and
- help farmers and rural communities get a bumper crop of agriculture commodities and other produce to export markets.

**REFER ATTACHED** – Extract of FTA / APSA submission to the Productivity Commission's current *Inquiry into Vulnerable Supply Chains*  
(full submission available at <https://www.ftalliance.com.au/news/22135>)

Freight & Trade Alliance (FTA) Pty Ltd

68 Brooker Ave Beacon Hill NSW 2100

02 99751878

[www.FTAlliance.com.au](http://www.FTAlliance.com.au)

[info@FTAlliance.com.au](mailto:info@FTAlliance.com.au)

ABN 59 160 523 384



While the Federal Government justifiably boasts about its diplomatic achievements in gaining access to Free Trade Agreements, the introduction of a Simplified Trade System and other opportunities to support Australian commerce, this counts for little by failing to take measures that guarantee that we have a reliable supply chain to facilitate import and export operations.

Federal Government intervention is required to ensure our port operations are treated as an essential service with permanent change to industrial relation law to ensure our trade gateways remain unimpeded.

As an interim measure, we hereby request that the Federal Government give immediate consideration in making an application to the Fair Work Commission (FWC) to terminate PIA currently being undertaken at Patrick ports nationally.

We understand that under section 424 of the Fair Work Act, the FWC is required to make an order suspending or terminating protected industrial action if it is satisfied that the action **has threatened, is threatening, or would threaten** to cause significant damage to the Australian economy or an important part of it.

We look forward to supporting the Federal Government on this approach and further engagement with you and your department to achieve longer term reform.

Please feel free to contact me direct on 02 9975 1878 / 0408280123 or [pzalai@FTAlliance.com.au](mailto:pzalai@FTAlliance.com.au)



**Pal Zalai**

Director, Freight & Trade Alliance (FTA)  
Secretariat, Australian Peak Shippers Association (APSA)  
Director, Global Shippers Forum (GSF)

## **Extract of FTA / APSA submission to the Productivity Commission's current *Inquiry into Vulnerable Supply Chains***

### **5. INDUSTRIAL ACTION**

#### **5.1. Sustained waterfront industrial action**

The Maritime Union of Australia (MUA) [and the Communications and Electrical Plumbing Union (CEPU) at DP World Australia (DPWA)] implemented a range of protected industrial actions at Australian ports, specifically during 2019 [DPWA and Hutchison Port Holdings (HPH)] and 2020 [DPW, HPH and Patrick Stevedoring] with the effect of significantly reducing the stevedores' ability to operate its normal operations as well as the flexibility to increase production in light of increased demand by the supply chain and assist reduce bottlenecks and congestion.

Between November 2020 and January 2021 the MUA also initiated protected industrial action against Svitzer and their towage operations which included bans on overtime; use of Svitzer Australia's planned maintenance system; use of Svitzer Australia's online training courses; and bans on the performance of work on selected shipping line vessels.

In 2021 Victorian International Container Terminal (VICT) experienced similar stoppages and work bans from the MUA [and the Communications and Electrical Plumbing Union (CEPU) and Australian Maritime Officers Union (AMOU)], it was only stopped when the matter was raised to the Fair Work Commission and an interim order was set for no industrial actions for a period of two months.

#### **5.2. Protected Industrial Action and operational impacts**

The range of actions across the ports has included one or more of the following with stevedores reporting the following impacts:

- Bans on shift extensions: if a vessel or task is not completed within a shift, there is no ability to extend the shift in order to finish the task – this causes major disruption on the planning of the next shift, where labour and equipment must be redeployed;
- Ban on overtime: restricts the ability to resource additional labour at short notice due to unexpected disruptions in production. This results in the inability to deploy additional crane gangs to vessel delays, train delays and the road program that may have fallen behind for numerous reasons. This action causes particular hurdles on the weekend but is also a restriction during weekdays;
- Various stoppages: disruptions of one, two, four, eight and twenty four hours. At DPWA in Melbourne there was an example of a 96 hour stoppage. These restrictions apply across all equipment, placing a significant limitation on available crane hours and also affecting vessels and road transport. One and two hour stoppages per shift appear to have been designed to cause maximum damage to the supply chain whilst still providing income to employees participating in the industrial action. At VICT this consisted of one, four and 12 hour stoppages. A 4 and 12 hour stoppage occurred prior to the Fair Work Commission interim order, without the interim order there was plans for a complete stoppage at the terminal for 36 hours having significant impact to the supply chain and shelf life for imports and exports;

- Bans on the performance of upgraded positions: this has the effect of significantly reducing the ability to deploy skilled labour to operating equipment. In some cases, 50% of the workforce cannot be deployed to equipment required to be used to perform a normal shift.
- New PIA measures: disruption implemented against nominated vessels and sub-contracted vessels to and from other stevedores. These bans have been approved by the FWC and have the effect of stopping any work on vessels being performed by stevedores. These types of bans appear to be designed to have the same effect as stoppages but attempt to preserve earnings for employees allocated to a shift;
- Vessel bans: where nominated vessels have not been worked by stevedores for a nominated period of time; and
- Bans on working subcontracted vessels: where vessels that are subject to subcontracting arrangements from competing stevedores;
- Bans on interacting with parties outside of Australia: where certain Union members will not communicate with customers or parties that are located outside of Australia.

### 5.3. Impacts of industrial action on trade

Feedback received from container stevedores is that normal planned production is significantly affected, reducing capacity to increase production which enables recovery for delayed vessels or normal interruptions in the production cycle. However, the cumulative consequence of disruptions can snowball if the outturn disruptions exceed stevedore's ability to catch up, and that it can take several months to recover from a major disruption.

Shipping lines reported other impacts including reduced capacity as a result of vessel sliding to recover schedule delay, container shortages due to increased container turn-time and restrictions to reposition empty containers to demand locations as a result of reduced terminal productivity and vessel waiting times of up to 19 days.

This was evident during the period from September 2020 whereby several shipping lines in quick succession administered a 'Port Botany Container Surcharge' ranging from US\$285 to \$350 per TEU. It is conservatively estimated that this surcharge alone cost exporters and importers in excess of A\$330 million.

While the above provides some indication of the impacts of industrial action, the reputational damage and supply chain costs remains unquantified. Importantly, APSA has provided a submission to the Australian International Trade & Transport Industry Development Fund Ltd (AITTIDF) to fund an economic assessment of the impact of 'disruptive events'. As well as supporting advocacy for business continuity, the consultation, research and paper will also be a vital resource should industry representatives be called as an expert witness to quantify economic impacts of waterfront industrial action before the FWC.

**RECOMMENDATION 5** (waterfront industrial relations reform) – the Federal Government to initiate a formal waterfront industrial relations review to provide immediate and continued business continuity for what is an 'essential service' and our international gateway for major supply chains.