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# PORTS AND MARITIME ADMINISTRATION ACT & PORT BOTANY LANDSIDE IMPROVEMENT STRATEGY

Submission to the Independent Review on behalf of Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA)

“KEEPING AUSTRALIA’S INTERNATIONAL TRADE MOVING”



Australian Peak Shippers  
Association Inc. (APSA)

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*DISCLAIMER: The data contained within this submission should be read as indicative of the magnitude of the cost rather than an exact figure. While Freight and Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) have used practical efforts to ensure that the estimates are reasonable, FTA / APSA do not warrant the accuracy, currency or completeness of the cost estimates. The cost estimates are based on historical and publicly available data. FTA has not verified the accuracy of the publicly available data.*



## ABOUT THE ALLIANCE

Freight & Trade Alliance (FTA) is the peak body for the international trade sector with a vision to establish a global benchmark of efficiency in Australian biosecurity, border related security, compliance and logistics activities. FTA represents 445 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). APSA is the peak body for Australia's containerised exporters and importers under Part X of the *Competition and Consumer Act 2010* as designated by the Federal Minister of Infrastructure and Transport.

APSA is also a member and has board representation on the Global Shippers Forum (GSF) that represents shippers' interests and that of their national and regional organisations in Asia, Europe, North and South America, Africa and Australasia.

FTA / APSA provide international trade and logistics advocacy to the following associations:

- Australian Cotton Shippers Association (ACSA);
- Australian Council for Wool Exporters and Processors;
- Australian Dairy Products Federation;
- Australian International Movers Association (AIMA);
- Australian Meat Industry Council (AMIC); and
- Australian Steel Association (ASA); and

The current APSA Officers and Committee of Management are listed below:

- Olga Harriton (Manildra Group) - APSA Chair
- Kurt Wilkinson (Fletcher International Exports) - APSA Vice Chair
- Flaminio Dondina (Casella) - Treasurer
- Paul Zalai - APSA Secretary
- Billy Davies (Australian Meat Industry Council)
- Peter Morgan (Australian Council for Wool Exporters and Processors)
- Brian Wright (Australian International Movers Association)
- Brian Thorpe (Visy)
- Justin Bond (SunRice)

A list of all members and further information about FTA / APSA is available at [www.FTAlliance.com.au](http://www.FTAlliance.com.au)

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## SUMMARY OF RECOMMENDATIONS

Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) see merit in the NSW Government commissioned review of the Ports and Maritime Administration Act (PAMA) 1995 and the Port Botany Landside Improvement Strategy (PBLIS).

New South Wales has world class manufacturers and producers who are supported by skilled customs brokers and freight forwarders and are ready to take advantage of the opportunities created by trade liberalisation measures and those economies recovering from COVID-19.

The PAMA and PBLIS have served the international trade sector well, however opportunities clearly exist for further reform to meet needs of the State's framework for ports and maritime management, tackle existing inefficiencies and support NSW industry and jobs growth.

FTA / APSA look forward to ongoing engagement to support positive outcomes from the review. To support this process, please refer to the below six (6) recommendations with supporting explanatory notes in the following submission.

**RECOMMENDATION 1 – (retention of road discipline regulations)** retain Port Botany Landside Improvement Strategy regulations that enforce two-way penalties between stevedores and road transport operators in the use of vehicle booking systems.

**RECOMMENDATION 2 – (establish a formal rail consultative forum)** a structured industry, port and government consultative forum is required to establish rail user requirements, operational needs, strategic goals and the establishment of regulation and standards on a need basis.

**RECOMMENDATION 3 – (extend free time of border and biosecurity held containers)** revise Section 17 (c) of the Port Botany Landside Improvement Strategy Mandatory Standards to ensure stevedores offer a minimum of 3 working days free storage after the container is free from border or biosecurity intervention.

**RECOMMENDATION 4 – (regulate the mandatory use of electronic messaging for container dehire processes)** regulate shipping lines to provide Electronic Delivery Order information to empty container park vehicle booking system providers for all import containers to facilitate improvements to transport logistics.

**RECOMMENDATION 5 – (regulation of container detention practices)** the need for regulation, similar to US Federal Maritime Commission (FMC), to ensure reasonable container detention policies are administered for the dehire of empty containers..

**RECOMMENDATION 6 - (regulation of Terminal Access Charges)** introduce regulation to force stevedores and empty container parks to cost recover directly against their commercial client (shipping line) rather than through vehicle booking systems used by third party transport operators.

## 1. ROAD

The Port Botany Landside Improvement Strategy (PBLIS) has delivered significant benefits to the international trade sector.

Prior to PBLIS implementation in 2010, it was common for container transport operators to wait several hours before reaching the stevedore's terminal gate. This would accrue extensive waiting time detention fees, which would be passed down the supply chain and ultimately paid by importers and exporters, as well as significantly impacting transport operator's fleet scheduling and road transport compliance.

The following You Tube clip<sup>1</sup> demonstrates a truck queue in Patrick Port Botany prior to the introduction of PBLIS.



In simple terms, PBLIS introduced an important two-way discipline in terms of use of the Vehicle Booking System (VBS). Penalties would be payable from the transport operator to the stevedore if they arrive (unauthorised) early or late for a nominated slot. In return, penalties would be paid from the stevedore to the transport sector if the truck turnaround time exceeded prescribed timeframes.

Whilst it is acknowledged that PBLIS may have caused other unintended consequences, regular refinement of regulations, based on industry engagement, appears to have continuously improved operations.

From an importer, exporter and freight forwarder perspective, it is essential that two-way disciplines remain between the transport sector and stevedores, making Port Botany Australia's only waiting time detention free port.

**RECOMMENDATION 1 – (retention of road discipline regulations)** retain Port Botany Landside Improvement Strategy regulations that enforce two-way penalties between stevedores and road transport operators in the use of vehicle booking systems.

<sup>1</sup> Truck queue Port Botany <https://youtu.be/FnK2SRHSzXM>

## 2. RAIL

### 2.1. Requirement for less rail track possessions

Sydney Trains are increasingly implementing more track possessions which regularly requires freight laden trains to be diverted or cancelled. On the South Coast and metro freight network to the port there are 12 planned possessions where shippers cannot access the port and a number of ad hoc possessions added to the list.

Feedback from APSA members suggest in the last 15 months alone, industry has lost the South Coast line on 17 occasions and most for 3 days at a time (circa 50 days in total) whereby rail is completely inaccessible. It is understood that Sydney will be implementing ASB possessions across their network. A need exists for Sydney Trains/Transport for NSW to increase engagement with shippers and rail operators in developing workable plans.

### 2.2. A need for better access and network flexibility

A Rail Operators' Group was established over three years ago, with Australian Competition and Consumer Commission (ACCC) authorisation, to negotiate a new Track Access Agreement. This followed an initial agreement issued 6 weeks from commencement, signed under duress with the concern that failure to do so would risk trains not being allowed to enter the network.

Shippers often have issues with transferring export containers through particular a stevedore party which results in a costly double handling exercise. In the last week, a major exporter of containerised freight via Port Botany had another example during February 2022 when wet weather caused the stevedore to declare a train window closed, meaning that containers missed the vessel cut offs and a failure to meet overseas customers contractual commitments.

### 2.3. Innovation on Rail

Above and beyond PBLIS efficiencies delivered to road transport operators, the sector has benefited with axle innovation, yet rail has not achieved similar efficiencies in order to remain competitive. Member feedback provided evidence of newly acquired assets, not used at that time elsewhere in the system, was stalled from operating until they pass a series of testing by Sydney Trains/Transport for NSW. This experience suggests that engineering conservatism is restricting innovation.

### 2.4. Train Efficiencies at the port

It is understood that stevedores and NSW Ports have implemented KPI reporting setting ratios in and out of the port. One stevedore introduced a minimum 108 lift windows, demanding trains must be 600 metres or smaller.

It is very difficult for regional train operators to be measured this way as they offload exports then must go to an empty park next door to load empty containers for the next cycle. The strong push for 600m metro shuttles poses a serious threat of increasing delays and costs for our regional exporters.

### 2.5. Cross jurisdiction

Port services frequently are required to cross multiple jurisdictions to travel to port. Effective communication between the parties frequently fails (lack of planning of possession with the adjoining network) leaving more than one corridor closed at any one time increasing difficulty to operate rail services.

### 2.6. Industry engagement

Whilst FTA / APSA engages regularly with TfNSW on general freight matters, a more formal and co-ordinated consultative forum is required following the termination of the Port Botany Rail Optimisation Group (PBROG) and the Rail Freight Industry Group (RFIG). As well as bringing together rail operators, it is essential that shipper representation be included to meet current end-to-end operational requirements and in the development of long term strategic outcomes.

**RECOMMENDATION 2 – (establish a formal rail consultative forum)** a structured industry, port and government consultative forum is required to establish rail user requirements, operational needs, strategic goals and the establishment of regulation and standards on a need basis.

### 3. CUSTOMS HOLDS

The Port Botany Container Examination Facility (CEF) utilises technology to enable the Australian Border Force (ABF) to fulfil its border protection role. The ABF has stated approximately 90% of containers selected for examination are x-rayed, released within 30 minutes and immediately returned to the stevedore. The remaining 10% may incur some form of delay as they are selected for more detailed physical examination.

Import consignments that are reported in accordance with statutory provisions require the stevedore to provide free storage for the day the container is returned from the CEF and for the next two days after that.

The Port Botany Landside Operations – Mandatory standards under the Ports and Maritime Administration Regulation 2021<sup>2</sup>, Part 6 / PART D outlines ‘Regulation of Charges’ with Section 17 referring to ‘Storage’.

Part (c) specifically states that stevedores must provide free storage for the day the container is returned from the CEF and for the next two days after that. Again, these extended storage arrangements are contingent on the above reporting / declaration requirements being satisfied.

If:

*(i) a Container stored at a Stevedore’s Terminal is required to be transported temporarily from the terminal for regulatory or other purposes not initiated by the owner or importer of the contents of that Container or any of their respective agents, employees, officers or representatives; and*

*(ii) that Container is not returned to the Stevedore’s Terminal and available for collection at least 48 hours prior to the time that storage charges will commence to apply in respect of that Container; and*

*(iii) all information that is required for import clearance of the Container from the Stevedore’s Terminal has been provided within the time that such information is required to be provided under applicable rules, regulations, procedures or other enforceable requirements,*

*then the Stevedore must not require the payment of any charge in respect of the storage of that Container for the day the Container is returned to the Stevedore’s Terminal and for the next 2 Working Days after that day.*

FTA / APSA is of the view that the additional 2 days; free storage should be extended to 3 days to align with broader provisions outlined in Section 17 (a) of the mandatory standards

**RECOMMENDATION 3 – (extend free time of border and biosecurity held containers)** revise Section 17 (c) of the Port Botany Landside Improvement Strategy Mandatory Standards to ensure stevedores offer a minimum of 3 working days free storage after the container is free from border or biosecurity intervention.

<sup>2</sup> Port Botany Landside Operations – Mandatory standards under the Ports and Maritime Administration Regulation 2021, Part 6

### 3. INFRASTRUCTURE

#### 3.1. Lack of capacity – vessel space and equipment

Foreign shipping lines are profit driven and are understandably aiming for the best return on their assets. The use of an export grain container by one company for sometimes weeks (or months, considering the movements from the time of empty collection to the time of empty return at the point of destination), does not lend itself as an effective return on investment.

Members have advised that shipping lines are making decisions to reposition empty containers back to China for use on more 'rate' attractive trade lanes (China/ USA for example at approx. US\$15,000+ per container) placing extra pressure on equipment capacity. Export shipping rates are at records highs and space extremely difficult to secure. To put this in perspective, several grain exporters involved in an APSA case study during 2021 collectively have been impacted by an estimated additional cost of \$US37.5 million resulting in diminished financial returns to farmers and regional communities who are still recovering from years of drought, fire and the pandemic, only to face another economic crisis.

In terms of cost impacts, APSA case studies on affected NSW grain consignments have been \$20-\$100/mt (pending specific destinations, the further away from China the higher the ocean freight).

#### 3.2. Landside Logistics

Grain exports commonly travel to the port in containers via rail. The above referenced items only add to the inability to secure a train booking with any certainty that the vessel booked will match with the train arrival at the port. Failure to do so incurs excessive double handling costs.

Trains often operate on a take or pay method, meaning exporters either use the slot or pay for it anyway even if the slot remains empty. The decision for exporters then becomes whether to double handle the container at the port and pay for storage for the week or pay for the empty train slot and rail it again the following week.

Between three exporters interviewed by APSA, data revealed in excess of A\$2 million in double handling and staging costs was paid over a three month period (Impact on affected grain consignments \$12-\$15/mt noting double handling the container and paying for storage is a lesser cost than sending an empty train slot).

**RECOMMENDATION 3 (infrastructure investment)** – increase investment in infrastructure to address 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.



## 4. EMPTY CONTAINER PARKS

### 4.1. Charging regime

Transport operators are forced to dehire (return) empty containers to empty container parks (ECPs) nominated by the shipping line and as a result, have no influence over service or price.

In a similar model to that adopted by stevedores with the recovery of costs via Terminal Access Charges (refer Section 6 of this submission), ECP charges via vehicle booking systems have risen dramatically since its introduction in 2012. Over the past three years many ECPs have increased this charge by over 200% with charges nearing \$100 per booking.

These increases have not translated to distinct operational benefits to the transport industry with a limited increase in service benefits or extension of operating hours.

### 4.2. Electronic Delivery Orders

To help the transport industry and ECPs, the use of Electronic Delivery Order (EDO) information from shipping lines is critical in the process of dehiring import containers, minimising operational delays and futile trips.

This EDO information holds the key to electronically informing the transport company at the time of booking the notification as to where they are required to dehire any container and eliminates human error from the process by prepopulating information from the original VBS notification at the ECP gate.

Unfortunately, not all foreign owned shipping lines servicing Port Botany (or other Australian ports) provide EDO messaging via systems used by the ECPs.

**RECOMMENDATION 4 – (regulate the mandatory use of electronic messaging for container dehire processes)** regulate shipping lines to provide Electronic Delivery Order information to empty container park vehicle booking system providers for all import containers to facilitate improvements to transport logistics.



## 5. CONTAINER DETENTION

### 5.1. Incentivisation to return empty containers

Container detention is a charging practice deployed by shipping lines globally to incentivise the dehire of the empty container within contracted periods from the time of import. 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 an extended period from September 2019 to March 2021, a surplus of containers was imported versus those exported causing, at times, severe congestion at empty container parks contracted to shipping lines. In normal operating conditions, shipping lines would be proactive in commissioning 'sweeper vessels' to evacuate surplus empty containers for repositioning back to suppliers, primarily across Asia.

Limited opportunities for this action existed in 2020 with tight windows at stevedores utilised by shipping lines to discharge large volumes of imports and to service our export market recovering from drought and bushfires and finally having produce after much needed rain.

### 5.2. Logistics complexity in de-hiring containers

The congestion at empty container parks forced transport operators to store containers at their own premises and complete multiple lifts to access containers within stacks with no recompense from foreign owned shipping lines. Rather than offering blanket extensions to detention free periods, most shipping lines continued to issue detention penalties with the importer, transport operator, freight forwarder and / or customs broker having to demonstrate evidence of the inability to de-hire to seek a refund with assessment completed by shipping lines on a 'case-by-case' basis.

The charging of container detention in these circumstances is a totally unacceptable measure, only increasing the workload for industry to maintain data supporting the need for relief and then shipping line staff having to validate the claims. During this period, transport operators also reported 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 return a container to a certain empty container park, then changes the direction to a different empty container park).

Again, without any level of compensation provided by shipping lines, the issue reached a crisis point where Australian transport operators applied an industrywide broad surcharge to recover costs of related inefficiencies (futile truck trips, more truck kms travelled, extra handling costs, etc.)

### 5.3. Unfair penalty imposition

Detention charges caused by ABF imposed 'border holds', or containers being inspected at the CEF, are a major and recurring issue for importers, freight forwarders and customs brokers. While the 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 importer, freight forwarder or customs broker has no control over the container during that time.

If container detention and demurrage practices were 'just and reasonable', the container detention clock would start from the time the container becomes available after CEF processing, not from the time the container is discharged from the vessel. The US Federal Maritime Commission (FMC) has recently launched a formal investigation into the shipping lines use of 'unfair and unreasonable' practices imposed on importers and exporters in relation to empty container returns and shipping line container demurrage - detention charges. FTA / APSA had the privilege of interviewing<sup>3</sup> Commissioner Rebecca Dye on 8 April 2021 who has responsibility for leading the FMC investigation.

The Commissioner noted: "there are good charges and bad charges"; "We are no longer going to allow the ocean carriers and the ports to push-off port inefficiencies to shippers, truckers and intermediaries"; and "And if a trucker attempts to return an empty container within the time allocated, and is prevented by congestion from returning it, then he doesn't pay."

Administering container detention penalties in situations where the shipping line contracted ECP is closed or is at full capacity should not be permitted. To impose these charges and then expect the importer to justify a claim for refund adds unnecessary administration both on the importer and the shipping line.

<sup>3</sup> FTA / APSA podcast with Rebecca Dye (Commissioner US Federal Maritime Commission)

In line with this position, the Commissioner noted during the recent congestion at Los Angeles – Long Beach USA, a major shipping line waived all detention and demurrage charges with the rationale “they understand it is unreasonable to impose charges in situations of such extreme congestion”

It is disappointing that during the recent congestion issues at ECPs and the difficulties being faced by the transport sector in response to the Omicron COVID-19 outbreak significantly affecting Australian east coast port logistics operations, that no foreign owned shipping lines have applied a general waiver of this nature and instead imposed a more rigorous regime of applying a case-by-case basis of review for refund of container detention charges imposed.

FTA / APSA see the need for regulation to enforce the following rules:

- shipping lines to start the container detention clock from the time that the import container is physically available to collect from the stevedore (some currently commence the detention clock from when the container is discharged from the import vessel);
- shipping lines to provide a minimum of seven days to de-hire containers to facilitate staged movements of containers (extended periods to be available and negotiated on a commercial basis);
- the detention clock to apply only after border and biosecurity intervention have been completed (in prescribed circumstances when the importer has completed all necessary pre-arrival regulatory requirements);
- the detention clock to stop on week-ends and public holidays when many nominated de-hire locations are unavailable; and
- the detention clock to stop in the event that the nominated dehire location is at capacity and not physically able take receipt of the container.

**RECOMMENDATION 5 – (regulation of container detention practices)** the need for regulation, similar to US Federal Maritime Commission (FMC), to ensure reasonable container detention policies are administered for the dehire of empty containers..



## 6. TERMINAL ACCESS CHARGES

### 6.1. Deviation away from charging commercial clients

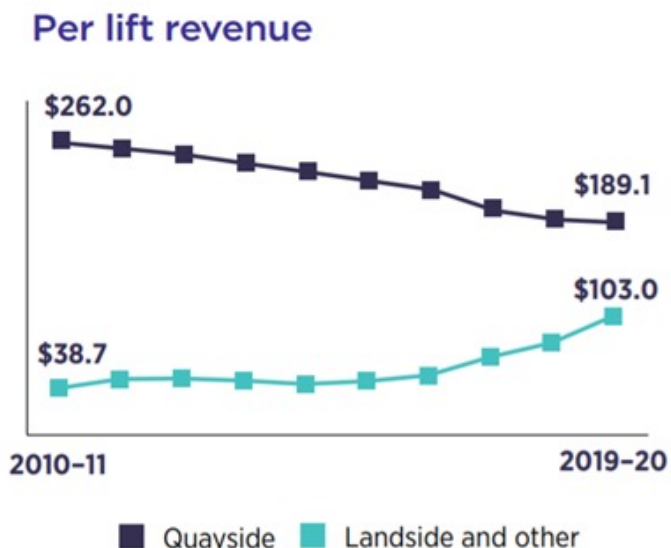
All businesses face a dilemma of how to deal with unavoidable costs such as rent, infrastructure, labour and power. Those same businesses are then forced to either absorb these costs or pass them on to their commercial clients. Similarly, stevedores and empty container parks should be forced to either absorb operating costs or pass these on to their commercial client (shipping lines). Shipping lines then have the choice to absorb or pass those costs onto exporters, importers and freight forwarders through negotiated freight rates and associated charges.

In contrast to the above, transport operators (road and rail) do not have the ability to negotiate and cannot elect to use a different stevedore or empty container park. They must deliver or collect goods from the entity contracted by the relevant foreign owned shipping line. This means that transport operators are forced to pay an Infrastructure Surcharge to collect and deliver containers – this aligns to an appropriate renaming of the surcharge by some stevedores as a ‘Terminal Access Charge’. Stevedores and empty container parks know that transport operators are trapped into using their services and have consistently increased infrastructure / terminal access charges without negotiation and with little justification.

Transport operators will in most cases pass these charges onto their customers (the exporter, importer or freight forwarder). In addition, many transport operators have included administration fees to manage cash flow associated with these charges resulting in cascading costs flowing through the supply chain. Ultimately, Australian exporters and importers pay further inflated prices.

### 6.2. Duplication of fees

In a stevedore container monitoring report<sup>4</sup>, the Australian Competition and Consumer Commission (ACCC) highlighted that stevedore ‘landside and other’ revenue is significantly increasing; however, this quantum is largely being offset by a correlating reduction in ‘quayside’ revenue.



This brings into question whether exporters and importers are paying duplicate landside stevedoring fees; once via sustained high Terminal Handling Charges (THCs) administered by many shipping lines; and twice via Terminal Access Charges (TACs) and vehicle booking system fees administered by shipping line contracted parties.

The bottom line is that vulnerable Australian supply chain participants are currently paying an additional \$500M+ per year direct to stevedores and empty container parks.

<sup>4</sup> ACCC Container stevedoring report 2019-20

### 6.3. The evolution of TACs

The spreadsheet in **ATTACHMENT A** shows the evolution and timeline (nationally) for increases of TACs.

The below summary indicates, in the main, when charges were initially instigated and justification for price rises.

2010 – July

Patrick terminal (Brisbane) commenced reference to the terminology “Infrastructure Surcharge” and collection of this fee via the VBS – reference was made to infrastructure costs, in particular lease fees and that these costs could not be continued to be absorbed.

Full correspondence at **ATTACHMENT B**

2013 – March

DP World terminal Brisbane advise “following receipt of our Market Rent review from the Port of Brisbane Pty Ltd” a change (\$28.00) to the infrastructure charge (initially \$4.95) was applied.

Full correspondence at **ATTACHMENT C**

2014 – March

Patrick terminals in Melbourne advise “Rent and rates charges at the Port of Melbourne have increased considerably in the last few years and throughout our current tenancy at East Swanson Dock (ESD).” “From the 10th of March 2014, we will apply an infrastructure surcharge at the Patrick ESD Terminal as part of the basis on which access to the Terminal is granted” – this was explained due to a large part of their terminal being dedicated to servicing road transport

Full correspondence at **ATTACHMENT D**

2017 – July

Patrick terminals Sydney & Fremantle - advice of infrastructure charges to be commenced citing rent, land tax and council rate increases along with rising terminal infrastructure maintenance costs. This is contrary to advice from NSW Ports that rents had not increased.

Full correspondence at **ATTACHMENT E**

2019 – March

VICT terminal in Melbourne advise an increase to \$85 of the infrastructure fee (initially imposed in March 2018 at \$48.00) – reference was also made to “market pricing shifts” towards splitting waterside and landside.

Full correspondence at **ATTACHMENT F**

2020 – March / May

In March and May respectively Patrick and DP World made similar announcements of adjustments to their infrastructure fees - whilst focusing on a lowering (DPW dropped their export fee by 10 – 18% depending on the port) or maintaining (Patrick kept theirs the same with exception of Fremantle which jumped 233.33%) both operators increased their import fees 23 – 27% and 47-53% respectively.

### 6.4. The rapid escalation in TACs

TACs nationally have significantly increased since implementation. The ACCC reported in 2017-2018<sup>5</sup>, stevedore revenue from infrastructure charges as being \$100 million. It is important to note that this was the first full year of the expanded use of charges.

According to the ACCC, the charges again significantly increased in 2018-2019 to \$167 million.

TACS continue to significantly increase year on year. Revenue from this stream for stevedores has increased some 27% (2021 v 2020).

<sup>5</sup> ACCC Container stevedoring report 2017-18



	2019	2020	2021
Total number of Import Containers	2,335,654	2,369,258	2,496,872
Total number of Export Containers	1,336,087	1,256,200	1,412,802,
Infrastructure costs on imports	\$139,717,288	\$219,256,343	\$284,119,031
Infrastructure costs on exports	\$75,344,228	\$92,555,986	\$112,963,070
Total Infrastructure costs on imports / exports	\$215,061,517	\$311,812,329	\$397,082,101

*DISCLAIMER: The data contained within the above table should be read as indicative of the magnitude of the cost rather than an exact figure. While FTA / APSA have used practical efforts to ensure that the estimates are reasonable, FTA / APSA do not warrant the accuracy, currency or completeness of the cost estimates. The cost estimates are based on historical and publicly available data. FTA has not verified the accuracy of the publicly available data.*

*NOTE: the above referenced TACs are commonly marked-up by transport and logistics operators to cover administration and cash flow costs. This in effect means that costs paid by exporters and importers currently conservatively exceed \$400m per annum.*

## 6.5. Trial of voluntary performance models

An FTA / APSA executive delegation met with the former NSW Minister for Transport and Roads on 12 August 2019 specifically addressing concerns about TACs.

The Minister referred FTA / APSA to the NSW Productivity Commissioner providing an opportunity to discuss this matter at length. Disappointingly, to date there has been not any meaningful action..

As outlined in the Deputy Prime Minister's response to our May 2020 formal submission<sup>6</sup> and by the ACCC<sup>2</sup> in November 2020, a position was noted that the onus is on state governments to act.

Following this advice, FTA / APSA again wrote to relevant state ministers during 2020 reiterating a position that stevedores and empty container parks should be forced to either absorb operating costs or pass these on to their commercial client (shipping lines). This outcome would give shipping lines the choice to absorb costs or pass these onto shippers (exporters, importers and freight forwarders) through negotiated freight rates and associated charges.

As determined by the Ministers at the Infrastructure and Transport Ministers meeting held on Friday 20 November, the National Transport Commission (NTC) was tasked to lead reform and the development of 'voluntary national guidelines' to apply to stevedore infrastructure and access charges (both their introduction and increase) at Australia's container ports.

Recent events are fuelling our scepticism as to whether a 'voluntary' arrangement will adequately protect the interest of the international trade sector, adding resolve to our advocacy that regulation is required to wind back and eradicate TACs, leaving market forces to determine price and service between commercially contracted entities.

During the last twelve (12) months, FTA/APSA have written to each container stevedore operating at the Port of Melbourne in line with the Voluntary Port Performance Model (VPPM).

On each occasion when DP World, Victorian International Container Terminal (VICT) and Patrick have announced TAC increases, prescriptive detail has been sought as to whether increases are a measure to offset a further a reduction in quayside rates to the stevedore's commercial client shipping lines and / or necessitated by other specific operational factors.

<sup>6</sup> Status report - Container Stevedore Imposition of Terminal Access Charges

<sup>7</sup> Container stevedoring monitoring report 2019-20

In the absence of any commercial ability to influence the quantum of the TAC (being a ‘take it or leave it’ proposition as referenced by the ACCC) and in line with the intent of the VPPM, FTA / APSA also requested a further detailed explanation for the increases including disclosure, supporting information and data justifying the full cost structure of the total fees.

While constructive meetings were subsequently held with stevedore executives, follow up correspondence did not provide the specific data requested, instead provided a general commentary with a broad reference to activities and capital expenses.

FTA / APSA again wrote to The Hon Melissa Horne (Victorian Minister for Ports and Freight) expressing serious concerns that the VPPM or any similar voluntary monitoring process will mean that stevedores will continue to receive revenue from the transport sector with the minor inconvenience in the form of another level of bureaucracy before implementing each increase.

FTA/ APSA also specifically referenced formal correspondence received from the Minister on 23 April 2020, at a time when the VPPM concept was in its infancy, stating:

*“In January 2020, when I released the summary of our Port Pricing and Access Review to stakeholders, I advised stakeholders that the Victorian Government was not intending to move towards heavy-handed regulation, but would instead work towards establishing a new Voluntary Port Performance Model for the Port of Melbourne in partnership with all port users. I also said that if voluntary standards didn’t improve pricing transparency, it was open to the Victorian Government to consider mandatory standards.”*

Continuation of such voluntary performance arrangements poses the significant risk of giving tacit approval to this unwarranted cost recovery method on third parties. Furthermore, this matter is not confined to stevedores. Empty container parks, also contracted by shipping lines, and now LCL Depots are also continuing to significantly increase their charges on transport operators.

Aligned to our ongoing discussions, FTA / APSA have tested and proven the futile nature of a voluntary approach. FTA / APSA has again urged the Minister, ideally in partnership with other state ministers, to move towards regulation to force stevedores to cost recover directly against their commercial client (shipping line).

In a submission<sup>8</sup> to the Productivity Commission review into Australia’s maritime logistics system, FTA / APSA made a recommendation for the scope of the NTC review of Terminal Access Charges be expanded to examine the potential of regulation to force stevedores (and empty container parks) to cost recover directly against their commercial client (shipping line) rather than via third party transport operators.

### **Opportunity for NSW to take a lead via PBLIS**

FTA / APSA understand the heads of power in the Ports and Maritime Administration Act Schedule 4<sup>9</sup> provide a broad sweeping power to allow the Minister to regulate these charges without limitation.

### **Supply chain charges**

*Regulating (or authorising the Minister to regulate) the charges (supply chain charges) that may be imposed for or in connection with the operation or provision of facilities or services of the port-related supply chain at a port or supply chain facility, including (without limitation):*

- (a) setting maximum supply chain charges, and*
- (b) regulating the manner in which supply chain charges are to be set or determined (for example, by providing for charges to be set by means of an auction or other market-based pricing mechanism), and*
- (c) specifying or otherwise determining the persons by whom supply chain charges are payable, and*
- (d) regulating the collection and recovery of supply chain charges, and*
- (e) prohibiting the imposition, collection or recovery of supply chain charges contrary to the regulations.*

**RECOMMENDATION 6 - (regulation of Terminal Access Charges)** introduce regulation to force stevedores and empty container parks to cost recover directly against their commercial client (shipping line) rather than through vehicle booking systems used by third party transport operators.

<sup>8</sup> Productivity Commission review into Australia’s maritime logistics system

<sup>9</sup> Ports and Maritime Administration Act Schedule 4



ATTACHMENT A

DATE	SYDNEY		MELBOURNE		BRISBANE		FREMANTLE		ADELAIDE	
	DPW Imports	PATRICK Exports	DPW Imports	PATRICK Exports	DPW Imports	PATRICK Exports	DPW Imports	PATRICK Exports	Imports	Exports
23/08/2010										
1/10/2010										
1/07/2011										
4/03/2013										
10/03/2014										
23/02/2015										
11/01/2016										
1/07/2016										
1/01/2017										
3/04/2017										
10/7/2017										
1/1/2018										
12/3/2018										
11/2018										
1/1/2019										
4/3/2019										
19/8/2019										
18/11/2019										
1/1/2020										
9/3/2020										
8/5/2020										
1/7/2020										
27/7/2020										
1/8/2020										
8/9/2020										
1/1/2021										
1/3/2021										
1/5/2021										
1/7/2021										
1/1/2022										
7/3/2022										
1/4/2022										
Increase \$ on original	110.44	84.74	116.00	116.00	76.45	125.20			84.00	51.00
% Increase on original	521.93	400.47	455.80	455.80	300.39	1198.09			294.74	178.95

DPW differentiated export rates on 8 May 2020  
 Patrick differentiated export rates on 9 March 2020  
 AAT Brisbane differentiated export rates on 1 July 2021  
 Flinders Ports will differentiate export rates on 1 April 2022





**Patrick Terminals**

Patrick Stevedores  
Operations Pty Limited  
ABN 33 065 375 840

PO Box 734, Wynnum QLD 4178  
Berth 10 Curlew Street  
Port of Brisbane QLD 4178

Tel: 07 3895 5000  
Fax: 07 3895 5199

**Patrick Brisbane Autostrad Terminal – Infrastructure Surcharge**

On 21 July, 2010 the Divisional General Manager of Patrick Container Ports, Mr Paul Garaty, wrote to clients in relation to unsustainable cost increases in the Port of Brisbane. This correspondence was subsequently circulated locally under cover of Patrick Brisbane Client Advice No. 9 of 22 July 2010 and broadcast to the road transport industry by the Queensland Trucking Association via their Waterfront Carriers News Brief No. 5 of 28 July 2010.

Through this correspondence Patrick indicated that the level of increase it had sustained in infrastructure costs, principally lease costs, could no longer be absorbed within operating margins and as such an infrastructure surcharge was under active consideration.

It is a fact that our lease costs per square metre have risen 400% since December 2005, a rate of increase which is excessive relative to other Australian ports and, notwithstanding the Company's efforts to offset this by way of productivity and efficiency enhancements, beyond our capacity to bear.

The ACCC endorsed Independent Price Expert in the recently completed review of Terminal Operator AAT's pricing at Fisherman Islands, made the following observations in regard to property values at the Port of Brisbane;

*"As a result of the May 2008 review PBC claimed that the value of these assets, and hence the base on which the rent is calculated, increased by 390%"*

Accordingly it has been decided to include an infrastructure surcharge at the Patrick Brisbane Autostrad Terminal from 1 October 2010 as part of the basis on which access to the Terminal is granted.

The infrastructure surcharge will be applied to road transport operators for all full container movements, both import and export, made at the Terminal. The rate of the infrastructure surcharge will be \$17.75 per container which will be invoiced electronically via One Stop. The surcharge will be covered by the existing terms and conditions of the Vehicle Booking System, including payment terms, with ongoing access to the Terminal conditional upon prompt settlement. It is important to note that a substantial part of our Terminal, including our dedicated Truck Marshalling Area, is devoted to the servicing of road transport and that the cost of providing this specialist infrastructure has, like the Terminal as a whole, been subject to the level of increase indicated above.

All full containerised cargo moving to and from the Terminal will be subject to the infrastructure surcharge. This includes under the VBS system, bulk runs of full containers and transfers of containers from Cargolink and the Brisbane Multimodal Terminal.

Patrick sincerely regrets that this action has become necessary however it is important to realise that we have borne increases in infrastructure costs for several years and that we are no longer in a



## **ATTACHMENT B - continued**

position to do so. Accordingly the increased cost of container terminal infrastructure in the Port of Brisbane needs to be passed on through the transport chain.

The Patrick Yard Management staff and I are happy to provide clarification in relation to this development as necessary.

**Yours sincerely**

Matt Hollamby  
Terminal Manager - Brisbane



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Port of Brisbane QLD 4178  
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Wynnum QLD 4178

19<sup>th</sup> February 2013

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Fax: +61 7 3895 1221  
[www.dpworld.com](http://www.dpworld.com)

## NOTICE TO DP WORLD CUSTOMERS

By e-mail

Dear Customer,

### Re: Infrastructure Surcharge

DP World Brisbane provides notification to all customers of a change to the Infrastructure Surcharge with effect 4<sup>th</sup> March 2013 following receipt of our Market Rent review from the Port of Brisbane Pty Ltd.

The Infrastructure Surcharge will be \$28.00 (excluding GST) per full container and will be applicable to all container movements handled via gate operations. Charges shall continue to be levied via the Vehicle Booking System and covered by the existing Carrier Access Arrangements including payment terms.

DP World Brisbane regrets the increase in the Surcharge, however have been left with no alternative but to pass on the increases we have experienced following this review.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mark Hulme", written over a horizontal line.

Mark Hulme  
Director and General Manager  
DP World Brisbane





## Patrick Terminals

**Patrick Stevedores Operations  
Pty Limited**  
ABN 33 065 375 840

Level 6, 15 Blue Street  
North Sydney NSW 2060  
Telephone: 61 2 8484 8000

### **New Infrastructure Surcharge East Swanson Dock from 10 March 2014**

Rent and rates charges at the Port of Melbourne have increased considerably in the last few years and throughout our current tenancy at East Swanson Dock (ESD). Since 2006, the combined cost of land tax, rental and council rates at ESD has increased in excess of 90%. Whilst we have implemented a number of initiatives to improve efficiency and productivity in order to avoid the imposition of additional costs on the supply chain, we can no longer absorb all of these excessive charges.

From the 10<sup>th</sup> of March 2014, we will apply an infrastructure surcharge at the Patrick ESD Terminal as part of the basis on which access to the Terminal is granted. The surcharge will be applied to road transport operators for all full container movements (VBS and Bulk Runs), both import and export, handled at the Terminal. The surcharge of \$3.50 per container will be invoiced electronically via One Stop.

The surcharge will be covered by the existing terms and conditions of the Vehicle Booking System, including payment terms. Ongoing access to the Terminal will be conditional on payment of the charges as per our conditions. It is important to note that a substantial part of our Terminal, including our dedicated Truck Marshalling Area, is devoted to the servicing of road transport and that the cost of providing this specialist infrastructure has, like the Terminal as a whole, been subject to the cost increases indicated above.

It is important to note that we have absorbed previous increases in infrastructure costs for several years however this is no longer sustainable. Patrick will apply the surcharge to all road transport operators on exactly the same basis. The charge will be reviewed annually along with our other terms and conditions.

Patrick will continue to strive to maintain exemplary service to all transport operators ensuring rapid turnaround of trucks.

Please contact Chris Brewster on (03) 9688 5680 with any queries.

Regards

Peter Nash

GM, Sales and Marketing


Terminals and Logistics

#### **Head Office**

Level 6, Blue St  
North Sydney 2060

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

ABN 44 007 427 652

Part of the  group of companies, Australia's largest national rail freight and ports operator



### Patrick Terminals – Infrastructure Surcharge and Ancillary Charges: effective 10 July 2017

Rent, land tax and Council rates continue to increase considerably across Patrick's Terminals. We have been notified of rental increases within our property portfolio of over 140%, with some being backdated to 1 July 2015. These increases place a significant additional cost burden on our operations. The new management at Patrick has rigorously pursued a number of initiatives to improve efficiency and productivity but, faced with the current market conditions and the ongoing consequences of the port privatisations, we can no longer absorb these excessive charges over and above CPI within our operating margins.

In addition to the below charges, Patrick also incurs rising Terminal infrastructure maintenance costs relating to the landside interface operations. This maintenance is essential to continue to provide our customers with superior service levels. Since 2015, Patrick's investment in dedicated landside infrastructure of over \$285m across all of our Terminals has resulted in material improvements in the efficiency of the landside operations including reduced truck turn-around times and congestion. To date, none of these investment costs have been passed on to our customers.

Accordingly, from 10 July 2017, it has been decided to:

- introduce an infrastructure surcharge at the Sydney and Fremantle Terminals; and
- increase the existing infrastructure surcharge at Fisherman Islands and East Swanson Dock Terminals,

as part of the basis on which access to the Terminals is granted. The new surcharge at Sydney and Fremantle brings these Terminals into line with Patrick's other Terminals.

The infrastructure surcharge will be applied to both road and rail transport operators for all full container movements, both import and export, made at the Terminals. Road operators will be invoiced electronically via 1-Stop while rail operators will have the surcharge separately itemised on their rail invoice. Patrick recognises these charges may impact our transport and logistic customers' working capital requirements. We will, therefore, be extending the credit terms for all Patrick 1-stop charges (including VBS and Infrastructure surcharges) from the current 7 day terms to 30 day terms for all customers. Ongoing access to the Terminals is conditional upon prompt payment in accordance with Patrick's conditions.

The rates of the surcharges are as follows:

- Sydney \$25.45 per box
- Fremantle \$4.76 per box
- Fisherman Islands \$32.55 per box
- East Swanson Dock \$32.00 per box

Furthermore, increased labour and energy costs have forced us to increase all Ancillary Charges from 10 July 2017. The new rates have been published on Patrick's website ([www.patrick.com.au](http://www.patrick.com.au)).

We regret this change to our cost structure but without sacrificing infrastructure investment and further performance improvements, we have been left with no alternative.

Please contact your Patrick representative should you wish to discuss these changes.

Yours sincerely

Ashley Dinning  
Chief Commercial Officer

Port Botany  
Gate B105a Penrhyn Road  
Port Botany NSW 2019  
PO Box 695, Matraville  
NSW 2036

[patrick.com.au](http://patrick.com.au)

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**Victoria International Container Terminal Limited**

78 Webb Dock Drive, Port Melbourne, VIC, 3207  
PO BOX 5032, Garden City, VIC, 3207

## VICT Landside Update

Issued: 30<sup>th</sup> January 16:25hrs

Customers are advised that from 1 March 2019, VICT will be increasing the Infrastructure Surcharge to \$85.00 per container (exclusive of GST) and will apply to all full containers, received or delivered to VICT.

As market pricing shifts towards split waterside and landside tariffs, the Infrastructure Surcharge will be revised accordingly. The rebalancing allows VICT to remain competitive in the market, whilst continuing to provide shipping lines and shippers with leading service levels and a viable alternative container terminal in Melbourne. Ongoing access to VICT will be conditional on payment of these charges as per our terms and conditions.

Please contact the VICT Commercial team on 03 8547 9700 should you wish to discuss these changes further.

To subscribe to these notifications please go to [www.vict.com.au/#/subscription](http://www.vict.com.au/#/subscription)