



Review of Current Port Competition and Regulation in Queensland

Final Report
December 2007



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1.0 Executive summary

The Council of Australian Governments (COAG) Competition and Infrastructure Reform Agreement (CIRA) signed on the 10 February 2006 is intended to achieve a simpler and consistent national approach to the economic regulation of significant infrastructure.

The Parties to the CIRA have agreed to “*review the regulation of ports and port authority handling and storage facility operations at significant ports...to ensure they are consistent with the (agreed) principles*”. COAG agreed that the review of port regulation will be completed by the end of 2007.

In Queensland the ports nominated as ‘significant ports’ in terms of the review are the Port of Brisbane; Port of Gladstone; Port of Hay Point; Port of Mackay; Port of Abbot Point; Port of Townsville; and Port of Weipa.

The broad objectives of this review are to ensure that:

- *significant ports in Queensland are managed efficiently and, where appropriate, allow for competition in the provision of port and related infrastructure facility services;*
- *significant ports in Queensland maximise the opportunity for competition in up-stream and downstream markets, and do not misuse market power; and*
- *economic regulation is only introduced if there is a clear need, and only if these objectives cannot be achieved without regulation.*

Queensland currently has a framework for economic regulation of a port authority’s business activities. This framework allows for the authority’s commercial activities to be subject to economic regulation by the Queensland Competition Authority (QCA) under the provisions of the *Queensland Competition Authority Act 1997* (QCA Act).

Key points raised in this report include:

- » At a high level, the issues identified by stakeholders conform to the CIRA principles. Hence, no material changes to the legislative framework are necessary to satisfy the CIRA requirements.
- » Several stakeholders raised issues regarding the requirement for a whole of supply chain approach to be utilised in planning for future expansion of port facilities, and also in applying regulation where deemed necessary. These matters will be addressed by Government in consultation with industry.
- » Submissions received note a general desire for the existing business objectives of port authorities in Queensland to be more fully understood as one way of ensuring stakeholders are better prepared when entering commercial negotiations with port authorities.
- » Stakeholders have not identified any pressing need for ports to be further regulated as a way of promoting greater competition in other markets.
- » Stakeholders have not raised any concerns regarding the misuse of market power by port authorities in Queensland.
- » The current planning processes adopted by the port authorities generally deliver efficient outcomes for their customers.
- » Commercial charters (the Statement of Corporate Intent (SCI) in Queensland’s case) for port authorities should include guidance on seeking a commercial return while not exploiting monopoly powers.
- » In Queensland the Central Queensland Ports Authority (CQPA), responsible for the Port of Gladstone, is currently the only port owner and service provider which could be considered vertically integrated. It is both the port authority (including responsibility for the commercial scheduling of vessels) and the operator of two coal loading terminals. Stakeholders note that the operational practice of the CQPA, supplemented by its application of the necessary port rule, has not to date resulted in material detrimental impacts on the port users.





2.0 Introduction

3.0 Background

2.1 The role of ports in economic growth

There is strong public interest in ensuring that Queensland's ports operate efficiently and that fair and competitive services are provided. This public interest stems from the vital role that ports play in Queensland's logistics network as the principal gateways for the State's trade and commerce. With the globalisation of the world economy, Queensland's economic competitiveness is increasingly linked to its ability to effectively and efficiently manage the movement of both import and export commodities.

The Queensland coastline is host to twenty ports which are administered by six government-owned port authorities which principally operate under the provisions of the *Government Owned Corporations Act 1993* (GOC Act), the *Transport Infrastructure Act 1994* (TI Act) and the *Financial Administration and Audit Act 1977*. Each port authority provides a broad range of facilities that cater for the diverse land/sea interface requirements of their trade catchment areas. In many cases, they are responsible for the construction of essential port infrastructure, administration, and in some cases, the operation of port facilities.

However, there is no single model by which a port authority manages and administers its port. A port authority's degree of involvement in port operations, infrastructure and services is defined on a case by case basis, according to its history, needs and requirements of the various participants in the supply chain. Nevertheless, whichever port structure is in place, Australia's trade potential relies unquestionably on the efficiency and effectiveness of the ports through which most of Australia's trade moves.

3.1 Purpose of the review

Following on from reforms under the National Competition Policy (NCP) Review, COAG has agreed to a new National Reform Agenda (NRA).

The CIRA signed on the 10 February 2006 aims to achieve a simpler and consistent national approach to the economic regulation of significant infrastructure.

The Parties to the CIRA have agreed to "*review the regulation of ports and port authority handling and storage facility operations at significant ports...to ensure they are consistent with the (agreed) principles*". COAG has agreed that the review of port regulation will be completed by the end of 2007.

The COAG background paper, detailing the NCP Review (including the CIRA agreed principles) can be accessed at:

http://www.coag.gov.au/meetings/100206/attachment_b_ncp_review.pdf

The full version of the CIRA Implementation Plan, as agreed at the COAG meeting of 13 April 2007 can be accessed at:

http://www.coag.gov.au/meetings/130407/docs/coag_nra_competition_reforms.rtf

In relation to the port sector, two streams of the NRA are relevant – competition and regulatory reform. The third stream relating to human capital has not been addressed in this review.

The competition stream involves reforms in the areas of energy, transport and other export-oriented infrastructure, and its efficient use, by improving pricing and investment signals and establishing competitive markets.

The Productivity Commission's December 2006 "Report to the Council of Australian Governments on the Potential Benefits of the National Reform Agenda" outlines that the overarching aim of the competition stream is to foster competition in infrastructure industries by:

- Removing regulatory impediments to competition and new entrants;
- Delivering more effective and efficient regulatory oversight;
- Removing unwarranted barriers to investment; and
- Improving pricing and investment signals to owners, investors and consumers to promote the more efficient use of resources within the economy.

The regulatory reform stream comprises two distinct sets of initiatives. The first is designed to promote best-practice regulation making and review. The second focuses on reducing the regulatory burden in 'hot spots' where overlapping and inconsistent regulatory regimes are impeding economic activity.





4.0 The requirements under CIRA

The Parties to the CIRA have agreed to “review the regulation of ports and port authority handling and storage facility operations at significant ports...to ensure they are consistent with the (agreed) principles”.

According to the CIRA Implementation Plan “As part of the CIRA, jurisdictions will take specific measures to enhance regulatory outcomes for nationally significant ports.....This includes a commitment to review the regulation of ports and port authority, handling and storage facility operations at significant ports by end of 2007, with findings of the reviews to be implemented by each jurisdiction by the end of 2008.”

As part of the NRA, the Queensland Government has undertaken a review of current ‘significant port’ operations and commercial business practices for consistency with the principles set out in clauses 4.1 and 4.2 of the CIRA.

The overarching objective of the CIRA principles is to:

- Ensure that ports are only subject to economic regulation where it has been determined that there is a clear requirement for it in order to promote competition in upstream or downstream markets; or
- Prevent the misuse of market power.
- Where it is determined that the implementation of economic regulation is necessary for a particular port, the form of regulation applied should conform to a consistent national approach.

4.1 The CIRA principles in relation to port competition and regulation

4.1 Parties agreed that:

- a. Ports should only be subject to economic regulation where a clear need for it exists in the promotion of competition in upstream or downstream markets or to prevent the misuse of market power; and
- b. Where a Party decides that economic regulation of significant ports is warranted, it should conform to a consistent national approach based on the following principles:
 - i. wherever possible, third party access to services provided by means of ports and related infrastructure facilities should be on the basis of terms and conditions agreed between the operator of the facility and the person seeking access;
 - ii. where possible, commercial outcomes should be promoted by establishing competitive market frameworks that allow competition in and entry to port and related infrastructure services, including stevedoring, in preference to economic regulation;
 - iii. where regulatory oversight of prices is warranted pursuant to clause 2.3, this should be undertaken by an independent body which publishes relevant information; and
 - iv. where access regimes are required, and to maximise consistency, those regimes should be certified in accordance with the Trade Practices Act 1974 and the Competition Principles Agreement.

4.2 The Parties agree to allow for competition in the provision of port and related infrastructure facility services, unless a transparent public review by the relevant Party indicates that the benefits of restricting competition outweigh the costs to the community, including through the implementation of the following:

- a. port planning should, consistent with the efficient use of port infrastructure, facilitate the entry of new suppliers of port and related infrastructure services;
- b. where third party access to port facilities is provided, that access should be provided on a competitively neutral basis;
- c. commercial charters for port authorities should include guidance to seek a commercial return while not exploiting monopoly powers; and
- d. any conflicts of interest between port owners, operators or service providers as a result of vertically integrated structures should be addressed by the relevant Party on a case by case basis with a view to facilitating competition.

4.3 Each Party will review the regulation of ports and port authority, handling and storage facility operations at significant ports within its jurisdiction to ensure they are consistent with the principles set out in clauses 4.1 and 4.2.



Significant ports include:

- i. Major capital city ports and port facilities at these ports;
- ii. Major bulk commodity export ports and port facilities, except those considered part of integrated production processes; and
- iii. Major regional ports catering to agricultural and other exports.

5.0 Queensland's Terms of Reference for the review

According to the Terms of Reference (TOR), the broad objectives of this review are to ensure that:

- significant ports in Queensland are managed efficiently and, where appropriate, allow for competition in the provision of port and related infrastructure facility services;
- significant ports in Queensland maximise the opportunity for competition in up-stream and downstream markets, and do not misuse market power; and
- economic regulation is only introduced if there is a clear need, and only if these objectives cannot be achieved without regulation.

Specifically, the key objectives for the review of each port are to:

- a. Assess competition in relation to the provision of key port and port-related infrastructure facility services, with a particular emphasis on:
 - i. the impact of planning practices on potential new service providers;
 - ii. competitive neutrality in the provision of third-party access to services;
 - iii. returns earned by port authorities; and
 - iv. conflicts of interest in vertically-integrated operations.
- b. Determine any deficiencies in current structures and practices of each port that are inconsistent with clauses 4.1 and 4.2 of the CIRA, and whether these can be modified to comply without the need for economic regulation.
- c. Determine the need for economic regulation on the basis of:
 - i. promoting competition in up-stream or downstream markets; and
 - ii. preventing the misuse of market power.
- d. Where economic regulation is deemed appropriate, consider how nationally-consistent regulatory principles can be applied.
- e. Develop recommendations to the individual port authorities and to the Queensland Government in respect of changes required in structures and practices to ensure compliance with clauses 4.1 and 4.2 of the CIRA.
- f. Where it is proposed that a restriction on competition is appropriate and is recommended to be maintained, undertake a public benefits test to justify this position.
- g. Develop recommendations to the Queensland Government for reform to the regulatory framework as it presently applies to Queensland's significant ports, to ensure that it is consistent with clauses 4.1 and 4.2 of the CIRA.

In Queensland the ports nominated as 'significant ports' in terms of the review are the Port of Brisbane; Port of Gladstone; Port of Hay Point; Port of Mackay; Port of Abbot Point; Port of Townsville; and Port of Weipa.



6.0 Review process

A Port Competition Review Committee (PRC) comprising four senior representatives of Queensland Transport (QT), Queensland Treasury (Treasury), and the Department of the Premier and Cabinet (DPC) was established. The PRC was responsible for overseeing the review and making recommendations to the Queensland Government in respect of any changes required in the current arrangements and practices, to ensure conformance with the CIRA principles.

The PRC produced a TOR for the review, which were approved by the relevant Ministers.

The port authorities responsible for the ports identified as significant for the purpose of this review provided formal responses to the questions raised by the PRC and provided information on current port activities and commercial arrangements in respect of the CIRA principles.

QT, in consultation with Treasury and DPC, developed a discussion paper and an addendum to the discussion paper which presented pertinent issues for which public opinion was required.

The discussion paper was released for public consultation on 13 September 2007. The paper was distributed to all identified key stakeholders. In addition, the papers were made available on the QT website. Submissions on the discussion paper and addendum closed on Wednesday, 17 October 2007. Thirteen submissions were received in response to the discussion paper.

This report was prepared by QT, in consultation with Treasury and DPC, and gives consideration to issues raised by stakeholders in their submissions. This report was reviewed by an external consultant from Clayton Utz in Melbourne specialising in areas including Competition Law, Trade Practices, National Competition Policy, and Regulatory Affairs.

The PRC approved this report on 20 December 2007, meeting the CIRA requirement for the review to be finalised the end of 2007.

Submissions were received from:

- » Asciano Limited (Asciano);
- » BHP Billiton Mitsubishi Alliance (BMA);
- » Central Queensland Ports Authority (CQPA);
- » Mackay Port Authority (MPA);
- » Maritime Union of Australia (MUA);
- » National Bulk Commodities Group Inc (NBCG);
- » Port of Brisbane Corporation Limited (PBC);
- » Ports Corporation of Queensland Limited (PCQ);
- » QR Limited (QR);
- » Queensland Competition Authority (QCA);
- » Queensland Resources Council (QRC);
- » Shipping Australia Limited (SAL); and
- » Westfarmers Coal (Westfarmers).





7.0 Overview of Queensland ports

7.1 The Port of Brisbane

The Port of Brisbane is Queensland's largest multi-user general cargo and bulk commodity port. Port activities are centralised at Fisherman Islands located at the mouth of the Brisbane River. However, some port operations are still conducted at facilities as far upstream as Hamilton, which is approximately 13 kilometres up river.

PBC can be considered a landlord port authority in that it acts largely as a strategic manager and facilitator to the port. Port operations, such as stevedoring, loading and unloading cargo, towage, and pilotage transfer are primarily carried out by private companies.

The berths owned by PBC are predominantly controlled by contractual licences which are associated with leases of adjoining land upon which terminal operations are conducted by third party operators. Certain berths are multi-user (for example, the coal berth shares spare capacity with cement cargoes) and others are common user (for example, the Pinkenba Wharf and wharves 1, 2, and 3 at Fisherman Islands). Access to the common user wharves is either managed directly or overseen by PBC.

Total throughput for the Port of Brisbane has increased over the past five years by an average of 3.9% per annum, from 24.6 million tonnes (Mt) in 2002-03 to 28.1 Mt in 2006-07. Container trade through the port has increased on average by 12.75% per annum over the same period, with 875,069 twenty-foot equivalent units shipped in 2006-07.

Expansion projects to be undertaken by PBC include:

- Hamilton Relocation and Site Redevelopment - relocation of port operations from the Hamilton Precinct to Fisherman Islands, and construction of Wharf 10 at Fisherman Islands;
- Construction of a new General Purpose Berth at Fisherman Islands and extension to the existing Grain Wharf;
- Fisherman Islands expansion - reclamation of 230 hectares of land and associated earthworks required; and
- Construction of Berths 11 and 12 at Fisherman Islands for a new container terminal.

7.2 The Port of Gladstone

The Port of Gladstone is Queensland's largest multi-cargo port and the fifth largest port in Australia. The port's facilities cater for the import of raw material and the export of finished product associated with major industries in the region. Multi-user facilities cater for the export of the region's coal, mineral and agricultural resources.

The CQPA not only conducts the functions of a landlord for the port, but also owns and operates some of the cargo handling facilities in the port, including two dedicated coal terminals, RG Tanna Coal Terminal (RGCT) and Barney Point Coal Terminal (BPCT).

Total throughput for the Port of Gladstone for 2006-07 was 74.2 Mt, representing an average growth of 6.68% per annum over the last five years from the 2002-03 throughput of 54.5 Mt. Coal shipped through the port has increased by an average of 6.66% per annum from 38.2 Mt in 2002-03 to 51.5 Mt in 2006-07.

Expansion projects for the Port of Gladstone include:

- RGCT Expansion – increase (nominal) capacity of terminal from 40 to 68 Mt per annum (Mtpa), including construction of a third rail inloading station, third shiploader, fourth berth and additional stockpiles. Works on this project are to be completed in early 2008;
- Auckland Point/BPCT upgrades and expansions; and
- Environmental Impact Statement for the new coal export terminal at Wiggins Island with ultimate capacity throughput of 75 - 90 Mtpa.

7.3 The Port of Hay Point

The Port of Hay Point is the second largest coal export port in the world with two dedicated coal loading terminals – the Dalrymple Bay Coal Terminal (DBCT) and the Hay Point Services Coal Terminal (HPSCT).

HPSCT is owned and operated by BHP Billiton/Mitsubishi Alliance (BMA) and only provides coal handling services to mines operated by BMA in the northern Bowen Basin. DBCT is a common user terminal, owned by the Queensland Government through DBCT Holdings Pty Ltd. Babcock and Brown Infrastructure (BBI) have a long-term lease arrangement for DBCT, and the asset is managed by BBI (DBCT) Management Pty Ltd. DBCT Pty Ltd, comprising of a number of the terminal users, is responsible for direct terminal operations and maintenance functions under a contractual arrangement with BBI.

PCQ is effectively a landlord for the port, owning (or perpetually leasing) the channel, the seabed and land surrounding the port area. PCQ earns revenue for the provision of its services through port charges on tonnage of coal exported, a charge on cargo ship volume and a port security charge.

Coal shipments through the Port of Hay Point has increased on average 4.15% per annum from 74.7 Mt in 2002-03 to 86.2 Mt in 2006-07.



Capital works at the Port of Hay Point and the two private coal terminals include:

- Hay Point Departure Path – finalise dredging program to deepen the channel to 14.9 metres during 2008-09 to allow better movement of fully loaded ships departing the port;
- HPSCT Expansion - BMA expanded the HPSCT from 40 Mtpa to 44 Mtpa. This expansion included the construction of a second new stacker reclaimer machine; and
- DBCT Expansion - BBI is progressing its DBCT Stage 7X - Phase 1 expansion which will increase capacity from 60 Mtpa to 68 Mtpa, with expected completion by early 2008. Further expansions (Phase 2/3) will increase capacity at DBCT to 85 Mtpa by late 2008/early 2009. The expansion program includes modifications and enhancements to all major terminal elements of inloading, stockyard and outloading.

7.4 The Port of Mackay

The Port of Mackay is operated by the Mackay Port Authority (MPA). MPA has responsibility for the overall management of port infrastructure including the four berths. The seaport is situated in a breakwater harbour approximately 5 kilometres to the north of the Mackay central business district. The seaport's major cargo is bulk sugar, but it also facilitates trade in commodities such as grain, petroleum products, chemicals, minerals and general freight.

Total throughput for the Port of Mackay in 2006-07 was 2.3 Mt, representing an average growth of 2.89% per annum over the last five years from the 2002-03 throughput of 1.9 Mt.

7.5 The Port of Abbot Point

The Port of Abbot Point is Australia's most northerly coal port, located approximately 25 kilometres north of Bowen. It consists of one coal terminal, the Abbot Point Coal Terminal

(APCT), and an offshore berth serviced by a conveyor and shiploader. The terminal is owned by PCQ and managed by Abbot Point Bulkcoal Pty Ltd, which is part of the Newlands-Collinsville-Abbot Point (NCA) Project. The NCA Project is 25% owned by Itochu Coal Resources Australia Pty Ltd and 75% by Xstrata. PCQ is the port authority responsible for the Port of Abbot Point.

Coal shipments through the Port of Abbot Point have decreased on average 1.05% per annum from 12.8 Mt in 2002-03 to 11.2 Mt in 2006-07.

The Abbot Point Stage X21 Expansion was completed in October 2007, and increased the throughput of the terminal from 15 Mtpa to 21 Mtpa. This expansion included construction of two additional stockpiles, a new stacker reclaimer, and increasing the speed of conveyor systems. PCQ are currently undertaking further expansion of the APCT to 25 Mtpa and additional stockyard renewal projects.

7.6 The Port of Townsville

The Port of Townsville is a breakwater harbour located at the mouth of Ross Creek in Cleveland Bay and in close proximity to the central business district of the City of Townsville. The Townsville Port Authority (TPA) operates as a landlord port authority, with responsibility for the overall management of port infrastructure at the Port of Townsville. The Port of Townsville has grown to be Queensland's third largest industrial port.

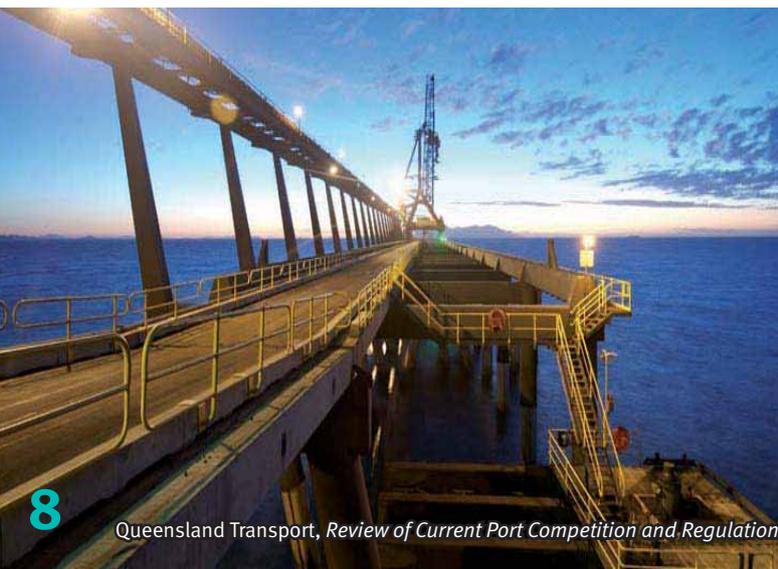
Total throughput for the Port of Townsville has increased on average 0.71% per annum for the five year period from 2002-03 to 2006-07 (9.6 Mt throughput).

7.7 The Port of Weipa

The Port of Weipa is located on the north-west coast of Cape York Peninsula and is principally involved in the export of bauxite from the nearby Rio Tinto Aluminium Limited (Comalco) mine, together with small quantities of fuel and general cargo. Comalco constructed a number of the original port facilities in the early 1960's, which were subsequently sold to PCQ and leased back to Comalco.

PCQ is the port authority, whilst Comalco operates the port facilities and has on-shore bauxite handling, processing and stockpiling facilities and conveyors running to Lorim Point Wharf for shiploading. Other port facilities include general purpose and fuel wharves and tugs operated by Weipa Tug Services Pty Ltd.

Total throughput for the Port of Weipa in 2006-07 was 19.7 Mt representing average growth of 9.18% per annum over the last five years from the 2002-03 throughput of 12.9 Mt. The growth in shipping of bauxite from 12.9 Mt in 2002-03 to 19.5 Mt in 2006-07 (average of 9.22% increase per annum) accounts for the majority of this increase.





8.0 The current regulatory framework in Queensland

8.1 Economic regulation of ports in Queensland

Under the State-based economic regulation framework, a Queensland port authority's business activities could be subject to economic regulation by the QCA under the provisions of the *Queensland Competition Authority Act 1997* (QCA Act).

Generally, business activities provided by a port authority could be regulated under either the Monopoly Prices Oversight regime (Part 3) or the Third Party Access Regime (Part 5) in the QCA Act.

At present, the DBCT facility at the Port of Hay Point, declared under the State's Third Party Access Regime (Part 5), is the only port in Queensland that is subject to economic regulation.

8.1.1 Monopoly prices oversight

The monopoly prices oversight regime is a recommendatory regime that allows the QCA to investigate the pricing practices of monopoly businesses that are considered to have substantial market power.

While the monopoly prices oversight regime does not contain any price control powers, it does provide for the responsible Ministers i.e. the Premier and the Treasurer, to direct the QCA to assess and publicly report on the pricing practices (e.g. prices, costs, or service quality standards) of a monopoly business. For a government business, the Ministers then have one month to accept or reject the QCA's report recommendations.

For the business activities of a port authority to be subject to regulation under this regime, it would firstly need to be 'declared' as a monopoly business activity (i.e. would need to satisfy legislated criteria that showed it possessed market power) and secondly 'referred' by Ministers to the QCA for a full pricing investigation (i.e. this step is usually undertaken if Ministers believe the monopoly business activity is actually exercising its market power).

As part of the CIRA, the States also agreed to provide regulatory options that are more 'light-handed' than some of the traditional forms of regulation. On this basis, the Queensland Government is currently developing amendments to the monopoly prices oversight regime of the QCA Act to allow 'price monitoring' regulation. Price monitoring will allow the QCA to collect pricing related data where a monopoly business may have scope to exercise market power but where more intrusive regulation (i.e. full pricing investigation) is not considered warranted.

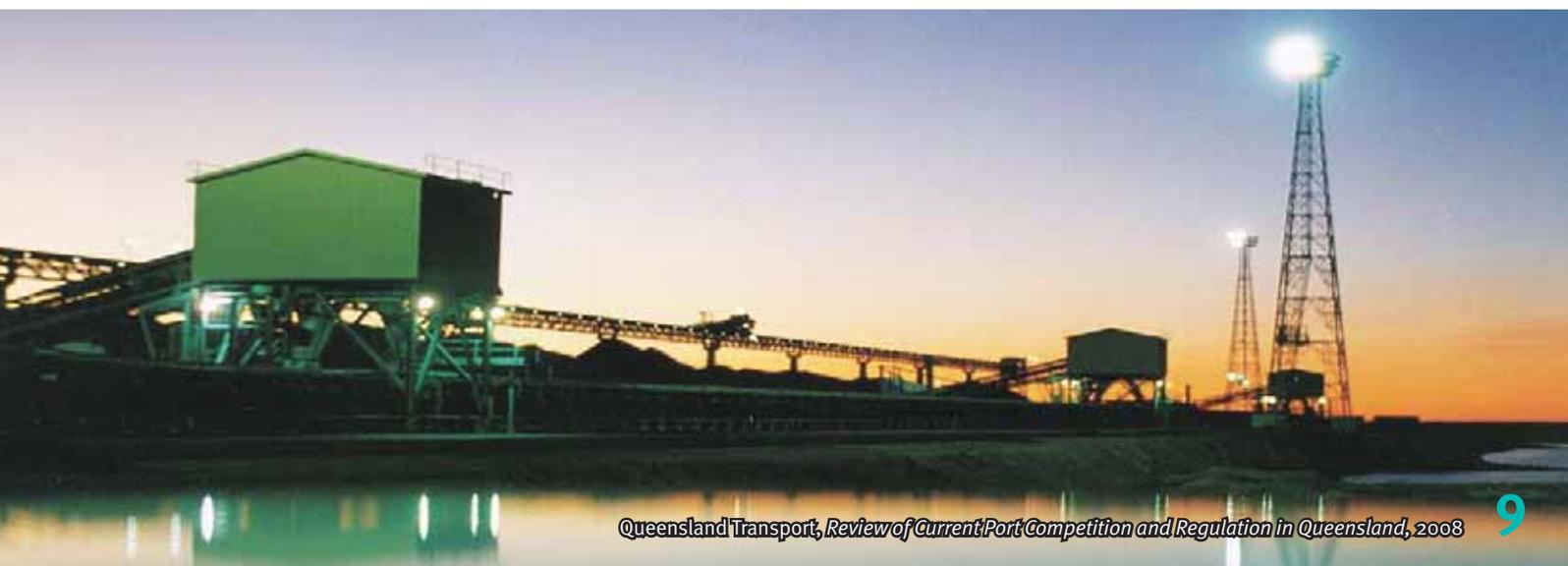
8.1.2 Third party access

The third party access regime establishes a legal right for competing firms to share access to essential infrastructure which cannot be economically duplicated. Infrastructure which may meet these criteria could potentially include port channels.

Infrastructure can be declared through a Ministerial declaration or a regulation based declaration. To be eligible for Ministerial declaration, a service must satisfy certain legislated 'declaration criteria'. This means that competition would be enhanced through allowing access and that the infrastructure providing the service cannot be economically duplicated. The process of assessing whether a service should be declared is usually undertaken by the QCA via extensive consultation, but the final decision rests with Ministers.

Under the third party access regime, the QCA can provide binding dispute resolution between 'declared' infrastructure operators and an access seeker that are unable to agree on the terms and conditions for access. In addition, the QCA can also assess and approve access undertakings provided by infrastructure operators and enforce breaches of access obligations.

In Queensland, third party access is currently available to the below rail infrastructure of QR and the coal handling facility at the DBCT.





9.0 Synopsis of issues/comments raised by Stakeholders

Overall, feedback from the submissions regarding the questions raised in the discussion paper was supportive of the current arrangements. For example:

- Government ownership has assisted in ensuring ports take a broader focus – not just financial returns to be achieved but also taking a role in assisting economic growth of regions.
- There is no demonstrated need for further regulation of any ports in Queensland, as the benefits gained would not outweigh the potential costs if further regulation was implemented.
- The threat of regulation has the effect of limiting the use of monopoly power. If it is required in future, this should initially be light-handed regulation, for example, price monitoring.
- There is strong support for industry members entering into commercial arrangements, achieved by negotiations between parties and port authorities for use of terminals/ port facilities.
- Better coordination between supply chain participants is best achieved by cooperation amongst participants, not through regulation or direction of government.
- The CQPA's current structure does not pose any issues as long as transparency is maintained in their operations and pricing decisions.

Some concerns raised include:

- More integration is required in planning infrastructure across the Central Queensland coal systems as a whole.
- Ministerial approval for strategic port land (SPL) should be extended to projects directly related to port activities irrespective of private sector or port authority ownership of the land or lease arrangements.
- Where a facility or service displays the characteristics of a natural monopoly, there needs to be some form of competitive tension to ensure neutrality is maintained.
- It is critical to ensure services are provided in cost effective way – this would promote greater customer confidence through transparency and efficiency.

- The regulatory framework must adopt a broader whole of supply chain perspective instead of optimising distinct regulated assets, and regulation must be flexible enough to allow industry to respond to market challenges.

9.1 Competition and regulation in provision of key port services

9.1.1 Impact of planning practices on potential new service providers

In Queensland, developing a project on SPL may expedite the approval process. The significant ports are subject to provisions under the TI Act which provide the processes and procedures for the allocation, development and expansion of SPL.

Under the TI Act, port authorities are required to prepare a Land Use Plan (LUP) at least every 8 years for the management and assessment of development of SPL (section 285 of the TI Act). Amendments to the TI Act in 2005 introduced new and expanded procedures for the preparation of LUPs. These amendments require LUPs to incorporate provisions that are more reflective of the State's overall planning philosophy as outlined in the *Integrated Planning Act 1997*.

In preparing LUPs, port authorities must prepare a statement of proposal which is released for public consultation. After taking account of issues raised in the consultation process, port authorities must prepare a draft LUP. The draft plan must be provided for comment to the local government for the local area within which the port area is situated.

After receiving Ministerial approval, land covered by a LUP is treated as SPL until the LUP is amended or replaced. Under Section 287 of the TI Act, SPL is not subject to local government planning schemes. Thus the LUP becomes the formal land planning document for SPL with the port authority acting as the assessment manager. However this provision only applies to land held by the port authority and does not apply to land held (either under lease or freehold) by non-port authority interests.

Standards of development and also procedural requirements may differ between developments administered by port authorities and the local government authorities adjoining the port's SPL.

Port authority master plans normally have 25 year horizons and aim to align planning with business growth, and identify infrastructure needs and the optimum timing for providing the infrastructure to support strategic growth opportunities.





9.1.1.1 Comments from submissions

» *Port planning should, consistent with the efficient use of port infrastructure, facilitate the entry of new suppliers of port and related infrastructure services (COAG agreement 4.2a). Does the strategic port land model as used in Queensland assist in achieving that aim?*

In general, comments received are in favour of the current model of SPL used in Queensland. However, some stakeholders raised concerns regarding the land use planning for areas adjoining SPL, and processes in place for protection and preservation of infrastructure corridors to access the port precincts¹.

The NBCG raised a concern that there needs to be public consultation undertaken to reduce regulatory requirements and ensure consistency in the administration of SPL. It also noted that government needs to give more strategic consideration to the long term impacts prior to allowing residential developments to encroach on or take over land formally allocated for port activities. These developments can have a detrimental effect on the port's operations, economic wellbeing and ability to increase future trade.

The MUA noted that principles for determining opportunities to facilitate new entrants to participate in service delivery can best be established based on sound planning and commercial principles taking account of minimum efficient scale, port configuration, and sea/road/rail access.

In addition, the QRC, noted that the approval process under the SPL framework is only relevant for project developments in which the port authority is the land owner. It is suggested that the approval process currently used for SPL be extended to projects directly related to port activities which are completed by private sector interests, or in other words, to be applied equally irrespective of the infrastructure developer, land tenure arrangements or lessee involved in the project².

» *Please identify any areas where there is scope to streamline the current planning process including reducing regulatory requirements and ensuring consistency in the administration of strategic port land.*

Positive feedback was received from stakeholders regarding the planning practices adopted by CQPA for the expansion of the RGCT.

¹ PCQ, NBCG, MPA

² QRC

³ BMA, Asciano, QR

However, other comments noted the need for a whole of supply chain approach to be taken when planning for future growth to ensure these chains achieve their maximum effective capacity³. These issues fall outside the scope of this review so will not be considered further in this forum. Nevertheless, Government will pursue these issues and consider them through processes external to the current review.

9.1.1.2 Conclusions

The current process for allocation of land and infrastructure to new services is sufficient to support the facilitation of new entry into the ports within Queensland.

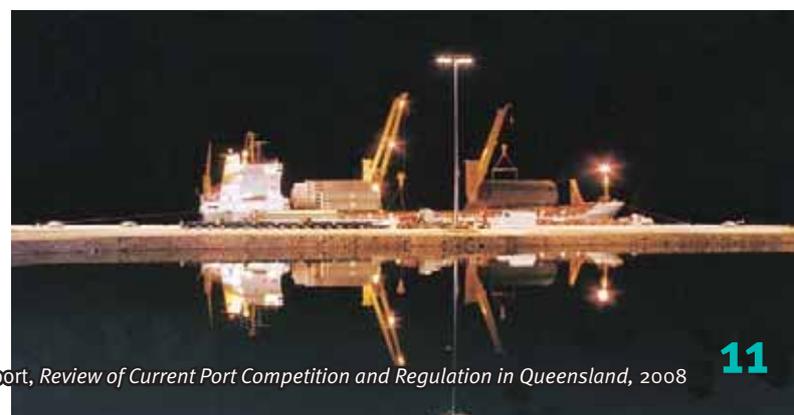
To achieve maximum efficiency in the export supply chains within Queensland, and to ensure preparation for expansions are aligned with plans for other players in the supply chain, individual stakeholders need to work together to achieve the best outcome for the greater good which will overtime extend to both State and private sector interests. These issues will be pursued further by Government through processes external to this review.

9.1.2 Competitive neutrality in the provision of third party access to services

Where a facility owner is preventing or hindering access to its facility, economic regulation may be necessary to promote access (i.e. by declaring the service under the Third Party Access Regime in either the *Trade Practices Act 1974* (TP Act) or the QCA Act).

Nationally, there are currently no access regimes for port infrastructure which have been certified as 'effective', and no ports have been declared under the National Access Regime, set out under Part IIIA of the TP Act. However, state-based access regimes do apply at DBCT in Queensland, which is regulated under Part 5 of the QCA Act, at seven prescribed commercial ports in South Australia (Port Adelaide, Port Giles, Wallaroo, Port Pirie, Port Lincoln, Thevenard and Ardrossan), and in Victoria at the commercial seaports of Melbourne, Geelong, Portland and Hastings.

In Queensland, the facilitation of new entrants and competitively neutral access conditions differ between the significant ports. However, there are mechanisms in place to assist with the provision of equitable access where feasible.





The arrangements currently in place include:

- Multi-user access policies;
- Port Services Agreements with existing users containing provisions which deal with the issue of new user access;
- The identification and selection of operator(s) of berths and terminals through a Public Request for Proposals process;
- The utilisation of Management Agreements to encourage the entry of new stevedores;
- Voluntary access undertakings which outline the terms and conditions which must be adhered to when granting access to access seekers for services provided;
- Providing additional capacity to meet demand subject to constraints on the availability of suitable land for extending or building new facilities; and
- Port rules and protocols for the prioritisation of ship movements in the channels.

9.1.2.1 Comments from submissions

» *Are there aspects of port operations in Queensland which need to be addressed to ensure equitable third party access to infrastructure and services?*

No suggestions were provided in submissions regarding specific aspects of port operations in Queensland which need to be amended to ensure equitable access to infrastructure in the ports.

Overall comments indicate that competition policy and third party access requirements have reduced the costs to industry, in particular in transportation and handling, energy and water services. In contrast, the MUA notes that the current competition law acts as a barrier to development of port infrastructure.

Stakeholders also indicated that where requests for additional access to port capacity have been made, in general these have been facilitated. BMA's submission indicated that that a formal third party access regime was not required at the CQPA ports because the access arrangements currently in place were agreed, transparent, equitable and contained appropriate pricing. Similarly, Asciano's submission noted that the threat of regulation was sufficient and that it has

reached acceptable outcomes under the current regime. This suggests that the current mechanisms adopted in Queensland for facilitation of new entrants in provision of port services results in fair access⁴.

Submissions were received that indicated if the Government imposes economic regulation to ensure third party access to services, this could potentially delay expansion processes and produce no economic advantages⁵. However, the submissions also noted that access must be provided on a competitively neutral basis so markets are not distorted, as if it is not this could result in undesirable consequences for all operators⁶. Services should be provided in the most cost effective way, as this will promote customer confidence through transparency and efficiency of operations. This includes ensuring that terms and conditions offered to both incumbents and new operators are competitively neutral⁷. All agreements need to be transparent, at least in relation to the criteria used to decide on terms of the agreements and the performance criteria specified in agreements⁸.

» *Where applicable, provide examples of any issues arising in the significant ports in Queensland where access has not been or was perceived not to be, provided in a competitively neutral manner.*

One example raised by QR of where the perception of competitive neutrality may be questioned is in regard to access to port services via rail. QR note that rail-port services from inland terminals can be commercially sustained as long as competitive neutrality (particularly in pricing and other agreements applying to freight handling charges) exists between road and rail. More specifically, due to perceived subsidised pricing for the road infrastructure versus the return required to be earned for rail assets; rail is seen as being at a disadvantage as a choice of transport⁹. At present, support for competitive neutrality between transport modes is not strongly evident given the current terminal configurations in Queensland.

9.1.2.2 Conclusions

The submissions support the conclusion that the commercial arrangements currently operational at Queensland ports facilitate third party access. It should be noted that if a new entrant was unable to negotiate commercial access to the relevant port infrastructure, the new entrant is able to seek access either under Part IIIA of the TP Act or under Part 5 of the QCA Act.

Therefore, the current regulatory framework in Queensland is sufficient to ensure new entrants can access port infrastructure on a competitively neutral basis.

⁴ MUA

⁵ Westfarmers, BMA

⁶ Asciano, QRC

⁷ Asciano

⁸ MUA

⁹ QR



9.1.3 Right to earn a commercial return without exploiting monopoly power

As mentioned above, in Queensland, the significant ports (with the exception of DBCT located in the Port of Hay Point) being reviewed are not currently subject to economic regulation. However, should the Queensland Ministers responsible for the QCA Act (i.e. the Premier and the Treasurer) make an assessment that a port is excessively misusing any market power it may have the port could be declared for a pricing investigation (under Part 3 of the QCA Act) or subsequent ongoing price and access regulation by the QCA (under Part 5 of the QCA Act). It is often argued that this implicit ‘threat of regulation’ provides sufficient discipline on the ports to prevent any temptation to behave in this manner.

9.1.3.1 Comments from submissions

» *Is there potential for increasing competition in the provision of port and related infrastructure facility services?*

There is potential to increase competition between port infrastructure and service providers. However, in general stakeholders do not believe this is necessary in the current climate. Increased competition could escalate to the point where ports are pressured to accept sub-commercial returns as has reportedly occurred in the New Zealand market¹⁰.

Stakeholders believe that there is no need to introduce alternative operators for coal export as this would not facilitate competition, and may actually be detrimental for the system¹¹.

In particular, the MUA note that there is no significant benefit to be gained from inter-port competition within the

state as these ports have different roles, and markets and form part of national freight transport network within the global supply chain.

» *Assuming there is the potential to increase competition, will this be sufficient to ensure port authorities earn commercial returns that are consistent with those that would apply in a competitive market? Please provide examples where this could be achieved.*

No comments provided in the submissions.

» *Do you consider there would be benefit to introducing price monitoring for port authorities as a first step where price regulation may be required?*

Stakeholders support the use of price monitoring as a form of economic regulation¹², and offered the suggestion that the regulation of prices for the DBCT should move towards a price monitoring framework¹³.

» *Does the threat of regulation act to constrain any market power?*

Stakeholders support the idea that the threat of regulation provides a sufficient incentive for port authorities to apply discipline in their pricing behaviours and to discourage the misuse of market power¹⁴.

QRC notes that the current range of regulatory options, (including economic regulation if required) current ownership structures and single and multi user facilities is supported, and advocates that regulatory outcomes need to align with the interests of industry.

¹⁰ MPA

¹¹ Asciano, BMA, NBCG, PCQ

¹² SAL, NBCG, MUA, MPA

¹³ SAL

¹⁴ SAL, PCQ, Asciano



» *Are the pricing principles utilised by the significant ports covered by this review sufficient to ensure that the pricing mechanisms used by port authorities do not result in price discrimination, cross subsidisation or any other anti-competitive results? Can you provide examples where the pricing principles:*

- *Achieve the desired outcome; or*
- *Do not achieve the desired outcome.*

Government owned ports generally adopt pricing principles which aim to maximise volume throughput for the ports. Competitive and commercially focussed frameworks best promote efficient performance of supply chains. Coordination and communication in supply chains is of particular interest to industry.

According to the MUA, port authorities need to:

- Coordinate, clarify and quantify service expectations;
- Communicate expectations to all whose interests are vitally affected by them;
- Monitor performance against them; and
- Disseminate the results of this monitoring fully and frankly to all affected parties.

Stakeholders noted that the CQPA's new pricing framework for coal customers represents a step towards a more transparent operating methodology, which will assist in ensuring a commercial risk adjusted rate of return is earned for the infrastructure provided¹⁵. The new charging framework introduces a formal 'continuous improvement project' for CQPA, with the objective of enhancing service, and improving costs and efficiency.

Stakeholders strongly support the development of commercial arrangements between port authorities and customers to provide efficient and effective outcomes for all market participants. They note that commercial negotiations should continue to provide the initial framework. However, some improvements can be made to ensure commercial negotiations are carried out in a consistent manner between all port authorities¹⁶. As such, the QRC recommends that the following management principles should be implemented:

- Recognition of existing contractual arrangements;
- Fair and transparent contracting/capacity allocation;

- Efficient costs, based on international benchmark;
- Performance focus – providing certainty and predictability in costs and service quality;
- Transparency in basis of charges for common user facilities; and
- Fair and transparent decision making processes.

In addition, the MUA notes that countervailing power is required through the adoption of competition or market based principles, but also through accountability and transparency mechanisms, underpinned by collaboration. These mechanisms should include:

- Cross referencing of port corporation board policy and strategy to ensure they are consistent with Government's approach;
- Consistency of port and port environs planning principles across states and the entire Australian ports sector;
- Consistency of principles for tender criteria used to award service provision rights, including contract duration and performance criteria for access to quayline for container and other single user stevedoring contracts;
- Mechanisms for direct stakeholder communication with board/senior management of port corporations;
- Publication of performance agreements made between ministerial shareholders and port corporations;
- Opportunity for public comment on development of Community Service Obligations (CSO) and publication of CSOs required of any party and reporting on compliance with CSOs;
- Publication of key performance indicators required of any party contracting with a port corporation; and
- Reporting of performance against agreed or imposed performance indicators by commercial parties.

Submissions also indicated that where significant price increases are considered, customers should be consulted to ensure the increase is warranted, to provide transparency in the process, and to enable customers to make timely adjustments to contractual arrangements¹⁷.

The QCA is concerned that that there is a presumption that 'negotiated' agreements between monopoly service providers and users will result in economically efficient outcomes. It argues that before regulation DBCT users were in part not satisfied with pre-existing prices or with how they were negotiated. As such, the QCA encourages the government to give a more probing consideration to evidence of whether existing arrangements generate best outcomes for all involved.

¹⁵ Westfarmers, BMA

¹⁶ QRC, NBCG

¹⁷ NBCG



» *Would guidance in the commercial charters for port authorities be sufficient to ensure they earn a commercial rate of return while not exploiting any monopoly powers?*

In the Queensland context, the commercial charters for the government owned port authorities are represented by the SCI and the Corporate Plan.

Prescribing rates of return should be based on considered assessment of risks and characteristics of port business achieved through a transparent process¹⁸ The NBCG suggests that this could include having the rate of return determined by an independent authority (QCA or Australian Competition and Consumer Commission), with the resulting tariffs to be subject to industry consultation prior to being finalised and implemented. QRC recommends that commercial charters for the port authorities should contain:

- Prices based on efficient and transparent costs;
- Restrictions on ability to cross-subsidise operations;
- Transparent decision making process and appropriate accountability mechanisms;
- Mandatory auditing process for cost and service performance disclosure; and
- Pricing principles.

The MPA notes that it is developing a building block pricing model which will establish an acceptable range of commercial prices between the fully distributed cost approach and the stand-alone cost approach. This new methodology will achieve the desired outcomes of transparency in pricing and negotiations.

9.1.3.2 Conclusions

CIRA specifically provides that “...where possible, commercial outcomes should be promoted by establishing competitive market frameworks that allow competition in and entry to port ... in preference to economic regulation...”

The pricing framework currently used by the port authorities is transparent and stakeholders are satisfied with the performance of the authorities in their contract negotiations.

Hence, while the comments from the QCA may be valid in the context of the regulation of the DBCT, there is little support for the consideration of further regulation covering the operation of other ports within Queensland. It is noted that if, in the future, an access seeker is unhappy with the commercial outcomes then it may seek access to port infrastructure under

either Part IIIA of the TP Act or Part 5 of the QCA Act.

However, in light of some of the issues raised, it is intended that future SCI documents for the port authorities will include the requirement that corporations are to earn a commercial rate of return whilst ensuring there is no exploitation of monopoly power. The SCI should also include the pricing principles used in generating prices for provision of services and infrastructure.

Several of the suggestions raised in submissions require further consideration, for example ensuring greater consistency in port planning, tender criteria and methods of reporting to ensure stakeholders are comfortable with the transparency and accountability of a port authority's operations.

9.1.4 Conflicts of interest arising from operations of port infrastructure by port authorities

The potential for a conflict of interest for port owners, terminal operators and service providers may result from:

- port owners (the access provider) competing with operators in such activities as stevedoring, warehousing, and other port operations; and
- terminal operators and service providers participating in other up-stream or downstream logistics chain operations.

Port owners competing with other operators can have an unfair competitive advantage with their ability to impose penalties on other operators in their capacity as the port authority. Acting as both the port authority and a competitor, as outlined above, may create a potential conflict of interest.

Port authorities enter into various contractual arrangements with terminal operators and service providers, develop terminal regulations and put in place management arrangements to ensure equitable access for all users. Given the range of agreements in place, a case by case approach may be appropriate for dealing with conflicts of interest relating to non-price barriers to use terminals and other infrastructure. This includes the use of shipping channels.

It should be noted that all of the business activities of the PBC (Port of Brisbane and Port of Bundaberg), the PCQ, the MPA, the TPA and the CQPA (Port of Gladstone and Port of Rockhampton) have been declared as ‘significant businesses’ under the QCA Act for competitive neutrality purposes (e.g. tax equivalents, dividend payment policies etc). This means that at any time the QCA may investigate complaints that the ports have a competitive advantage resulting from government ownership.

Conflicts may arise due to port authorities having a vertically integrated structure or because of port authorities being

¹⁸ Asciano, QRC, NBCG



both a landlord or transport service provider and exercising regulatory powers for shipping movements and scheduling under the TI Act.

9.1.4.1 Comments from submissions

» *Do you have concerns regarding potential conflicts of interest in relation to vertically integrated structures or port authorities exercising their regulatory powers, which should be addressed on a case by case basis with a view to facilitating competition? Are you able to provide examples?*

Stakeholders agree that no single organisational or regulatory model is appropriate for all ports, and do not support the imposition of a unilateral single regulatory approach to all ports¹⁹. Economic efficiency is more likely to be achieved where the interests of supply chain participants are aligned. Efficiency would be reduced if a “one size fits all” approach for regulation was imposed.

The CQPA believes that its operational structure is not an impediment to upstream or downstream competition and no benefits will be gained by changing the structure. Further, the CQPA model for coal terminals is considered to be the best organisational structure for delivery of services, and provides significant benefits including:

- Risk sharing;

- Planning for investments; and
- Greater flexibility, including having the ability to respond where required in altering schedules, or recovering from accidents/incidents for examples. This results in an increased ability to ensure maximisation of throughput.

The MUA notes that the consolidation of vertical integration strategies where a party can influence cost and delivery of a product from the overseas supplier to the Australian end user (and vice versa) may deliver better economic outcomes.

The BMA indicate that vertical integration of CQPA is not an impediment to up-stream or downstream competition and no significant benefits will be gained by changing the structure. Asciano also note that it has no concerns about any potential conflicts of interest arising in the operation of the Port of Gladstone by the CQPA.

The QRC supports ownership structures which best promote efficient service delivery, and has a preference for port and terminal operations to be controlled by entities having interests aligned with those of its customers. It notes that if efficient outcomes of transparency, efficiency and promoting competition can be achieved, there is no reason to exclude vertical integration.

» *Is it necessary to promote/improve competition in upstream and/or downstream markets for any of the significant ports in Queensland which are covered by this review?*

The preference from stakeholders is for port and terminal operations to be controlled by entities having interests aligned with those of customers²⁰. If efficient outcomes of transparency, efficiency and promoting competition can be achieved through the current structure, there is no reason to exclude vertical integration as an operating model for ports in Queensland. Hence, it is unlikely that structural reform will result in benefits. Where vertical integration strategies deliver value and service benefits to the supply chain, competition policy should not limit or impede this development²¹.

9.1.4.2 Conclusions

The submissions do not raise any concerns with the current port structure in Queensland and support the conclusion that any vertical integration in Queensland ports is not resulting in discriminatory behaviour by the port authorities. Therefore, there are no significant benefits to be gained from reviewing the operational structure of any of the port authorities in Queensland.

¹⁹ BMA, QRC

²⁰ CQPA, QRC, BMA

²¹ MUA





9.2 Additional comments

9.2.1 Comments from submissions

- » *Briefly outline any other specific issues relating to the role of Queensland's port authorities which are aligned with the scope of this review but not addressed elsewhere in this paper.*

Stakeholders noted that the regulatory framework must adopt a broader whole of supply chain perspective instead of optimising distinct regulated assets. Consideration needs to be given to consequential impacts on actual commercial operations of integrated supply chains when making decisions and establishing regulatory frameworks²². Other comments include:

- Regulation must be flexible enough to allow the industry to respond to market challenges;
- Different pricing practices between competing ports could arise where one port is regulated and the other is not; and
- Regulation should not place an entity at competitive disadvantage.

The QRC does not support extending regulation unless required to promote greater coordination in complex supply chain systems. The need for competition and regulation should reflect needs of the customers and characteristics of the supply chain in question and overall economic efficiency of port operations. It also notes that when infrastructure providers are faced with demand growth, the regulatory framework should provide for:

- Adequate investment in capacity so it does not constrain supply;
- Focus on continual improvement to operating performance; and
- Timely approval processes for investments and project commencements.

The QRC believes that there is a genuine role for Government to reduce delays to investment decisions in commercial projects by facilitating planning, design and preliminary engineering. Pricing for new infrastructure should be assisted by Government through the adoption of a 'pure user pays' rather than a 'first user pays' approach to infrastructure expansions to allow all users to pay efficient costs for their access to the infrastructure.

The NBCG submission highlights its desire to have an impartial umpire identified who will step in where disputes arise. This would help ensure timeliness and consistency of decisions. The NBCG suggests that the Productivity Commission be given a countervailing role in the maintenance of competitive tension in ports by conducting a review of all major port charges every 5 years. In addition, the NBCG suggests that there is a need to 'codify' port charges to allow benchmarking to be completed more easily. This could be achieved by adopting naming conventions where port charges are identified by the same name in all Queensland ports.

9.2.2 Conclusions

As highlighted by the recent supply chain issues in the Goonyella Coal chain in Central Queensland, it is important for all parties to a supply chain to cooperate to ensure efficiency in operation and maximum throughput is achieved. This ideology also should extend to the regulation of individual components of the supply chain, taking into consideration what will be the best outcome for all participants.

While these comments are valid, they are not directly relevant to the scope of this review. Hence, they will be pursued in processes external to this review.



²² QR, QRC



10.0 Changes required to satisfy CIRA principles

In Queensland there is a system of ports, port facilities and port services provided through government owned corporation structures.

These facilities and services directly support Queensland's export and import industries, operating through commercially based contracts and agreements. For example, APCT and RGCT have recently finalised substantive investment programs to expand terminal capacities. These investments were based on commercial agreements, arrived at by direct bargaining in good faith, between the terminal owner (i.e. the port authority) and coal producers. Stakeholders were consulted during the planning of the expansion works, and were kept informed of major milestones and expected reductions in operational capacity as a result of the construction works.

At a high level, the issues identified by stakeholders conform to the CIRA principles 4.1 and 4.2. Hence, no major changes are required to satisfy the CIRA requirements.

Specific issues raised regarding the requirement for whole of supply chain planning, and approach to regulation, while of a significant nature, fall outside of the scope of this review. Hence, these will be pursued in a more suitable forum with interested stakeholders.

A consistent theme from all stakeholders is the desire for the existing practices to become more transparent and hence understandable. This will ensure stakeholders are better prepared when entering into commercial negotiations with port authorities for access to and pricing of infrastructure.

The ownership and operation of the RGCT by the CQPA is the only example in Queensland of a vertically integrated structure of operation for a port. However, stakeholders have not identified any issues with this structure, and no requests to review or change this structure were made.

4.1 (a) Ports should only be subject to economic regulation where a clear need for it exists in the promotion of competition in upstream or downstream markets or to prevent the misuse of market power; and

Stakeholders have not identified any need for ports to be regulated to further promote competition in other markets. Additionally, stakeholders have not raised any concerns regarding the misuse of market power by port authorities in Queensland. In light of the fact that Queensland already has a third party access regime which can be applied to port infrastructure, there is no need for any reform in this area.

4.1 (b) Where a Party decides that economic regulation of significant ports is warranted, it should conform to a consistent national approach based on the following principles...

No further economic regulation has been identified as necessary or desirable by stakeholders.



4.2 The Parties agree to allow for competition in the provision of port and related infrastructure facility services, unless a transparent public review by the relevant Party indicates that the benefits of restricting competition outweigh the costs to the community, including through the implementation of the following:

(a) Port planning should, consistent with the efficient use of port infrastructure, facilitate the entry of new suppliers of port and related infrastructure services;

The current planning processes adopted by the port authorities deliver efficient outcomes for their customers. However, the approval process under the SPL framework is only relevant for project developments in which the port authority is the land owner. Hence, there is scope for the approval process currently used for SPL to be extended to projects directly related to any port activities irrespective of the infrastructure developer, port owner or lessee involved in the project. However, this issue is not directly related to the topic for the current review. Hence, this will need to be considered in alternative processes external to the current review.

(b) Where third party access to port facilities is provided, that access should be provided on a competitively neutral basis;

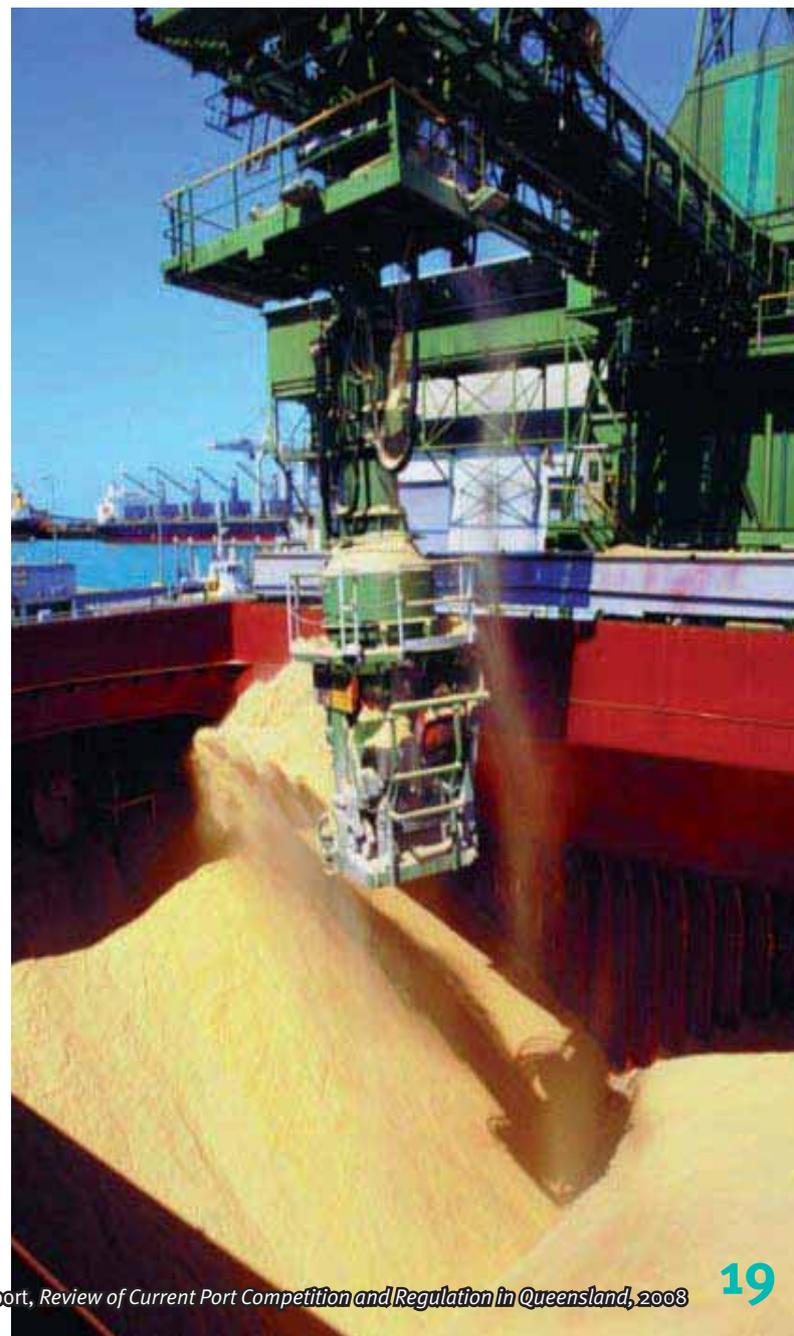
The commercial arrangements currently operational at Queensland ports facilitate third party access. If a new entrant was unable to negotiate commercial access to the relevant port infrastructure, the new entrant is able to seek access either under Part IIIA of the TP Act or under Part 5 of the QCA Act.

(c) Commercial charters for port authorities should include guidance to seek commercial return while not exploiting monopoly powers; and

Stakeholders agree with this principle. To implement this principle, future SCI documents for the port authorities will include the requirement that corporations are to earn a commercial rate of return whilst ensuring there is no exploitation of monopoly power. The SCI will also include the pricing principles used in generating prices for provision of services and infrastructure.

(d) Any conflicts of interest between port owners, operators or service providers as a result of vertically integrated structures should be addressed by the relevant Party on a case by case basis with a view to facilitating competition.

In Queensland the CQPA is currently the only port owner and service provider which could be considered vertically integrated. Stakeholders note that the operational configuration of the CQPA has not resulted in detrimental effects to the users of the infrastructure, and there is no requirement to alter the structure.





11.0 Acronyms

APCT	Abbot Point Coal Terminal
Asciano	Asciano Limited
BBI	Babcock and Brown Infrastructure
BMA	BHP Biliton Mitsubishi Alliance
BPCT	Barney Point Coal Terminal
CIRA	Competition and Infrastructure Reform Agreement
COAG	Council of Australian Governments
CQPA	Central Queensland Ports Authority
CSO	Community Service Obligations
DBCT	Dalrymple Bay Coal Terminal
DPC	Department of the Premier and Cabinet
GOC Act	<i>Government Owned Corporations Act 1993</i>
HPSCT	Hay Point Services Coal Terminal
LUP	Land Use Plan
MPA	Mackay Port Authority
Mt	Million tonnes
Mtpa	Million tonnes per annum
MUA	Maritime Union of Australia
NBCG	National Bulk Commodities Group Inc
NCA	Newlands-Collinsville-Abbot Point
NCP	National Competition Policy
NRA	National Reform Agenda
PBC	Port of Brisbane Corporation Limited
PCQ	Ports Corporation of Queensland Limited
PRC	Port Competition Review Committee
QCA	Queensland Competition Authority
QCA Act	<i>Queensland Competition Authority Act 1997</i>
QR	QR Limited
QRC	Queensland Resources Council
QT	Queensland Transport
RGCT	RG Tanna Coal Terminal
SAL	Shipping Australia Limited
SCI	Statement of Corporate Intent
SPL	Strategic Port Land
TI Act	<i>Transport Infrastructure Act 1994</i>
TOR	Terms of Reference
TP Act	<i>Trade Practices Act 1974</i>
Treasury	Queensland Treasury
Westfarmers	Westfarmers Coal

Images courtesy of Central Queensland Ports Authority, Mackay Port Authority, Ports Corporation of Queensland, Port of Brisbane Corporation and Townsville Port Authority



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