2012 PORTS PRICING AND ACCESS REVIEW

ISSUES PAPER

February 2012

The Essential Services Commission of South Australia
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REQUEST FOR SUBMISSIONS

The Essential Services Commission of SA (the Commission) invites written submissions from interested parties in relation to the issues raised in this paper. Written comments should be provided by **23 March 2012**. It is highly desirable for an electronic copy of the submission to accompany any written submission.

It is Commission policy to make all submissions publicly available via its website (www.escosa.sa.gov.au), except where a submission either wholly or partly contains confidential or commercially sensitive information provided on a confidential basis and appropriate prior notice has been given.

The Commission may also exercise its discretion not to exhibit any submission based on their length or content (for example containing material that is defamatory, offensive or in breach of any law).

Responses to this paper should be directed to:

2012 Ports Pricing and Access Review

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Public Information about ESCOSA's activities

Information about the role and activities of the Commission, including copies of latest reports and submissions, can be found on the ESCOSA website at www.escosa.sa.gov.au.

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GLOSSARY OF TERMS

2007 REVIEW	2007 Ports Pricing and Access Review
THE REVIEW	2012 Ports Pricing and Access Review
ACCC	Australian Competition and Consumer Commission
ACCESS UNDERTAKING	Viterra's Port Terminal Services Access Undertaking
ARTPA ACT	The *AustralAsia Railway (Third Party Access) Act 1999*
GUIDELINE NO. 1	The Commission's Ports Industry Guideline No. 1 "Access Price Information"
CCA	*Competition and Consumer Act 2010* (Cth)
CIRA	Competition and Infrastructure Reform Agreement
CPA	Competition Principles Agreement
CPI	Consumer Price Index
COAG	Council of Australian Government
ESSENTIAL MARITIME SERVICES	Services defined under section 4 of the MSA Act and subject to price regulation
ESC ACT	*Essential Services Commission Act 2002*
THE COMMISSION	Essential Services Commission of South Australia
FLINDERS PORTS	Flinders Ports Pty Ltd
GHD	GHD Pty Ltd
MSA ACT	*Maritime Services (Access) Act 2000*
MEYRICK AND ASSOCIATES	Meyrick Consulting Group Pty Ltd
MINISTER	Minister for Transport and Infrastructure
NCC	National Competition Council
REGULATED SERVICES	Services defined by proclamation under section 4 of the MSA Act and subject to access regulation
VITERRA	Viterra Operations Limited

EXECUTIVE SUMMARY

The Essential Services Commission of South Australia (the Commission), established under the *Essential Services Commission Act 2002* (the ESC Act), is the economic regulator of proclaimed ports in South Australia. Under the ports pricing and access regimes established under the *Maritime Services (Access) Act 2000* (the MSA Act), the Commission regulates certain ports services.

The MSA Act requires the Commission to review the pricing and access regimes within a year prior to 30 October 2012, to examine whether or not continued regulation is necessary. The Commission's 2012 Ports Pricing and Access Review (the Review) is being conducted to meet this requirement. In particular, the Review will consider the following questions:

- Should the ports access regime continue for a further five-year period from 31 October 2012? If it is to continue, the Commission will also examine, pursuant to section 34 of the ESC Act, how its effectiveness could be improved; and
- Should price regulation for Essential Maritime Services continue for a further five-year period from 31 October 2012? If it is to continue, what form of price regulation should be adopted?

In undertaking this Review, the Commission will seek to determine whether or not there is sufficient justification to retaining the ports pricing and access regimes that currently apply. The Commission will examine if market or regulatory environments have changed since the time of the previous review, or are likely to change during the next five-year period, to determine whether or not the current arrangements remain appropriate. The Commission will also give close consideration to the views of stakeholders and their experiences with the regimes and expectations for the near future.

The release of this Issues Paper marks the first step in the Commission's process of public consultation on the Review. The purpose of this paper is to engage stakeholders in the identification of key issues that should be considered by the Commission as part of the Review. The Commission stresses that the purpose of this paper is not intended to limit the scope of the consultation; stakeholders are free to comment on any matter they see as relevant to the Review.

The Commission is particularly interested in receiving comments from stakeholders who have actual experience with the current regimes. This, for example, could be in the form of commenting on difficulties in gaining access to ports infrastructure or accessing information during commercial negotiations. The Commission seeks the involvement of all stakeholders in this Review to ensure that a wide range of views and experiences can be considered.

Comments received in response to this Issues Paper form an important input into the Commission's assessment of whether or not continued economic regulation of South Australian ports is necessary. If stakeholders believe continued regulation is necessary,

the Commission is interested in any views on how the regimes' effectiveness could be improved to promote the efficient use of South Australian ports.

1 INTRODUCTION

This chapter provides an overview of the regulatory framework applicable to the economic regulation of proclaimed ports and maritime services in South Australia.

1.1 Ports Access Regime

The framework for South Australian ports access is set out in Part 3 of the MSA Act and is summarised in Appendix 1 of this paper. The access regime provides for the negotiation of access to particular port services, defined in the MSA Act as Regulated Services, and provides for conciliation and arbitration to occur where an access dispute arises which cannot be otherwise resolved between the parties.

The access regime prescribed by the MSA Act applies to persons (regulated operators) who carry on a business of providing maritime services at a proclaimed port that are declared by proclamation to be regulated services. The ports currently proclaimed under the MSA Act and subject to the ports access regime are:

- Port Adelaide;
- Port Giles
- Wallaroo;
- Port Pirie;
- Port Lincoln; and
- Thevenard.[1]

Whilst all of these ports are operated by Flinders Ports Pty Ltd (Flinders Ports), some regulated services are provided by Viterra Operations Limited (Viterra). These regulated services are discussed below.

1.1.1 Regulated Services

Pursuant to section 10 of the MSA Act, maritime services falling within the scope of the port access regime are:

- channels;
- common user berths;
- bulk handling facilities[2] as defined in the *South Australian Ports (Bulk Handling Facilities) Act 1996* (operated by Viterra) but only in relation to conveyor belts (i.e. storage areas are not included);

[1] The Port of Ardrossan, previously also a proclaimed port, was removed from the coverage of the ports access regime in 2010 following a recommendation made by the Commission in the 2007 Ports Pricing and Access Review. Regulation of Ardrossan could be reinstated by proclamation under regulation in accordance with section 5 of the MSA Act.

- berths adjacent to bulk handling facilities;
- land providing access to maritime services; and
- the Outer Harbor bulk loader at Port Adelaide (operated by Viterra).

The Governor may, by proclamation, declare a maritime service to become a Regulated Service and be subject to the ports access regime.

In respect of negotiations relating to access, section 12 of the MSA Act also requires that a regulated operator must, at the request of an intending access seeker, provide the following preliminary information to assist the access seeker in preparing an access proposal:

- the extent to which the regulated operator's port facilities that are subject to the ports access regime are currently being utilised;
- technical requirements that have to be complied with by persons for whom the operator provides Regulated Services;
- the rules with which the intending proponent would be required to comply; and
- information about the price of Regulated Services provided by the operator that is required to be provided under guidelines issued by the Commission.[3]

1.1.2 Certification of Ports Access Regime

On 9 May 2011, the South Australian ports access regime was certified as an effective access regime pursuant to Part IIIA of the *Competition and Consumer Act 2010 (*Cth*)* (CCA)[4] for a period of ten years by the Commonwealth Minister (the Parliamentary Secretary to the Treasurer). The Minister's decision to certify the regime was consistent with the final recommendation made by the National Competition Council (NCC), following its assessment of the South Australian Government's application for certification. The NCC's assessment concluded that the regime is consistent with principles set out under both the Competition and Infrastructure Reform Agreement (CIRA) and Competition Principles Agreement (CPA), and accords with the objects of Part IIIA of the CCA Act.[5]

A consequence of this certification is that maritime services provided for under the ports access regime cannot be declared under the provisions of the national access

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2 These facilities are operated by Viterra.

3 The Commission's Ports Industry Guideline No. 1, Access Price Information, sets out the requirements for the price information that a regulated operator is to provide to an intending access seeker (refer http://www.escosa.sa.gov.au/ports-overview/codes-guidelines-rules.aspx#T87).

4 The *Trade Practices Amendment (Australian Consumer Law) Act (no 2. 2) 2010* (Cth) renamed the *Trade Practices Act 1974* (Cth) (TPA) the *Competition and Consumer Act 2010* (Cth) with effect from 1 January 2011.

5 Copies of the Minister's decision and statement of reasons and the NCC's final recommendation are available at: http://www.ncc.gov.au/index.php?/application/application_for_certification_of_the_south_australian_ports_access_regime/5.

regime or be made subject to an access undertaking to the Australian Competition and Consumer Commission (ACCC). Any party wishing to gain access to one of these Regulated Services must submit its interest direct to the regulated operator (Flinders Ports or Viterra) who will manage the access request in accordance with the MSA Act.

1.2 Ports Price Regime

The South Australian ports price regime established by the Commission is separate to, but complements the negotiate-arbitrate access framework. It allows a regulated port operator to adjust prices for maritime services subject to price regulation as it sees fit, subject to the requirement that it publish a pricing schedule and inform the Commission of changes to that schedule. Ports users are also encouraged to engage in commercial negotiations with ports operators over prices and service standards.

Under the present price monitoring regime, the Commission publishes annual ports price monitoring reports to provide information on prices, and commentary on factors underpinning price movements. The key focus for the Commission in the monitoring of ports charges is determining whether or not any above Consumer Price Index (CPI)[6] price increase is adequately justified and is not as a consequence of market power being misused by ports operators.

Whilst the current regime can be considered as relatively light-handed, the Commission is not prevented from introducing a more heavy-handed form of price regulation should it believe that information provided by ports operators does not adequately justify the real price increases or if there is any other reason to conclude that a heavier-handed form of price regulation is more appropriate.

1.2.1 Services subject to price regulation

There are currently two sets of ports maritime services covered by the price monitoring regulatory regime; essential maritime services and pilotage services.

Essential Maritime Services

Pursuant to section 4 of the MSA Act, Essential Maritime Services are defined as maritime services providing:

- or allowing for access of vessels to a proclaimed port; or
- ports facilities for loading or unloading vessels at a proclaimed port; or
- berths for vessels at a proclaimed port.

[6] Under present ports price monitoring regime, the Commission does not collect any data on actual prices that have been negotiated between ports users and Flinders Ports. These commercially negotiated prices may be different to those published in the pricing schedule.

There are varying terms applying to Essential Maritime Services in ports around Australia. For the purposes of clarity, the range of port services covered by Essential Maritime Services as defined in the MSA Act include maritime services relating to the provision of: navigation aids, harbour control (but not pilotage or towage), channels, berths, wharves, cargo loading and unloading (marshaling) areas (but not loading and unloading itself), jetties, berth pockets, fenders, mooring structures, mooring and unmooring and provisioning connections (but not provisioning).

There are three charges that presently cover the provision of essential maritime services:

- Navigation Services charge;
- Harbour Services and Mooring charge; and
- Cargo Services charge.

These ports charges, in aggregate, cover the suite of Essential Maritime Services. They also correspond relatively well, though not exactly, with the three-part definition of Essential Maritime Services. There is no particular requirement for each charge to correspond to each part of the definition.

Pilotage Services

Although the provision of Pilotage Services is not an Essential Maritime Service, its charges are subject to a similar form of price regulation, as specified in section 8 of the MSA Act.

The price regulation regime requires ports operators of a proclaimed port to maintain a schedule of Pilotage Service charges and provide the Commission with a current schedule and notice of any proposed changes to these charges.

2 REQUIREMENTS FOR CONDUCTING THE REVIEW

The South Australian ports pricing and access regimes work on a five-yearly cycle. The MSA Act requires the Commission to review the regimes a year prior to their expiry, to examine whether or not there is an ongoing need for regulation of ports access and pricing.

This chapter sets out the legislative requirements and the process for the conduct of this Review.

2.1 Ports Access Regime Review

In undertaking the access review, there are two (and possibly three) distinct elements to the review process:

2.1.1 Ongoing applicability of the regime

Section 43 of the MSA Act specifies that the Commission must, within the last year of each regulatory period, conduct a review of the industries which are presently subject to the access regime to determine if the regime should continue to apply to those industries. This element of the review does not extend to a consideration of other industries which ought, in the Commission's view, to be subject to that access regime.

The Commission must make a recommendation to the South Australian Government on the ongoing applicability of the access regime. If it is determined that the access regime should continue, a regulation must be made extending the period of its operation accordingly.

If, however, the Commission recommends that ongoing access regulation is not necessary, and a regulation is not so made, then the access regime will expire.

2.1.2 Inquiry into other at-port industries

Whilst the first element of the review under section 43 of the MSA Act is limited in scope, the Commission may, after consultation with the Minister to whom the MSA Act is committed (at present the Minister for Transport and Infrastructure), also conduct an inquiry under section 34 of the ESC Act into any other industries which ought, in the Commission's view, to be subject to the access regime. The scope of such an inquiry would, however, necessarily be limited to matters which properly fall within the scope of the MSA Act already – issues such as "up country" facilities would be excluded from scope.

The result of any such inquiry will not per se result in the industries being brought within the access regime – that will depend on adoption of any such recommendation by the Government and subsequent legislative amendment.

2.1.3 Inquiry into broader matters

If referred by the Treasurer, the Commission may also conduct an Inquiry, pursuant to section 35(1) of the ESC Act, into broader matters (e.g. up-country grain storage and handling facilities and other supply chain matters).[7]

Without such a referral from the Treasurer, the Commission cannot consider such matters as part of this Review.

2.1.4 Process for Ports Access Regime Review

Section 43 of the MSA Act imposes several requirements on the Commission in the conduct of the ports access regime review. The requirements are as follows:

- ***Public consultation*** – the Commission must give reasonable notice that a review of the access regime is to take place and invite written submissions on the matters under review within a reasonable timeframe;[8]
- ***Assessment*** – the Commission must consider submissions made in response to the review and other submissions made in the course of other forms of public consultation undertaken by the Commission in connection with the review;[9] and
- ***Completion*** – the Commission must forward a report on the review to the Minister responsible for administering the MSA Act (currently the Minister for Infrastructure). The report must set out the conclusions reached by the Commission as a result of the review and, in particular, must recommend that the access regime continue for a further five-year cycle or that it expire at the end of the current regulatory period.[10]

If it is determined that the access regime should continue, a regulation must be made extending the period of its operation accordingly.[11]

2.2 Ports Price Regime Review

Under section 25(2) of the ESC Act, the Commission may only make a price determination if authorised to do so by a relevant industry regulation Act or by regulation under the ESC Act. Pursuant to regulation 3 of the *Essential Services Commission Regulations 2004*, the Commission is authorised to make a price determination in respect of essential maritime

7 The Treasurer is the only Minister with the power to refer an Inquiry into broader matters to the Commission.

8 Section 43(3) MSA Act 2000 (SA)

9 Section 43(4) MSA Act 2000 (SA)

10 Section 43(5) MSA Act 2000 (SA)

11 Section 43(7) MSA Act 2000 (SA)

industries, within the meaning of the MSA Act.[12] Part 3 of the ESC Act sets out the Commission's price regulation powers.

Part 2 of the MSA Act (regulation of maritime industries) details the Commission price regulation function in respect of Essential Maritime Services, which are regulated industries for the purposes of the ESC Act. Section 9 of the MSA Act specifies that the Commission must keep maritime industries under review with a view to determining whether regulation (or further regulation) is necessary. It is within this context that the Commission must determine whether or not price regulation should continue beyond the expiry of the current price regime (being 30 October 2012).

In the event that the Commission determines that the ports price regime should continue, a new price determination will be made. In making such a determination, the Commission must comply with the relevant provisions of the ESC Act.

2.2.1 MSA Act Objects Clause

Section 3 of the MSA Act states that the objects of the Act are:

- *To provide access to maritime services on fair commercial terms; and*
- *To facilitate competitive markets in the provision of maritime services through the promotion of the economically efficient use and operation of, and investment in, those services; and*
- *To promote the interests of users of Essential Maritime Services by ensuring that regulated prices are fair and reasonable having regard to the level of competition in, and efficiency of, the regulated industry; and*
- *To ensure that disputes about access are subject to an appropriate dispute resolution process.*

The objects provision is essentially a statement of intent as to how the MSA Act should operate and not, per se, a list of factors that the Commission must have regard to when exercising its functions (e.g. making a price determination).

The objects clause works to indicate to the Commission the intended purpose of the legislation and is therefore used by the Commission as an aid to interpreting the legislative provisions of the MSA Act.

2.2.2 Process for Ports Price Regime Review

Whilst the MSA Act does not set out mandatory requirements on how a review for industries subject to the ports price regime should be conducted, the Commission will publish a notice that a review is to take place and invite and consider submissions from stakeholders prior to making its decision on whether or not continued price

[12] Regulation 3 of the Essential Services Commission Regulations 2004.

regulation is required. This is consistent with the Commission's Charter of Consultation and Regulatory Practice.[13]

Section 26 of the ESC Act does, however, impose several requirements on the Commission in the making a price determination. Specifically, the ESC Act provides that:

- ***Draft price determination*** – the Commission may send a copy of the draft price determination to the Treasurer and the Minister responsible for administering the MSA Act, and to other relevant stakeholders;[14] and
- ***Final Price Determination*** – the Commission must send a copy of the price determination to the Treasurer and Minister for Infrastructure and to other relevant stakeholders. Further, notice of the making of the price determination must be published in the South Australian Government Gazette, *the Advertiser* and on the Commission's website.[15] The final price determination must include a summary of the information on which the determination is based and a statement of reasons for the making of the determination.

In the event that a further price determination is made as an outcome of this Review, it will take effect from 31 October 2012 and expire no later than 30 October 2017. A price determination made pursuant to the MSA Act has effect for five years from the date of commencement.[16]

2.3 Application of the ESC Act

In carrying out this Review, and in making any further price determination, the Commission will be performing a function under the ESC Act and therefore must comply with its statutory objectives as set out in the ESC Act.

Section 6 of the ESC Act states that the Commission must:

(a) Have as its primary objective protection of the long term interests of South Australian consumers with respect to the price quality and reliability of essential services; and

(b) At the same time, have regard to the need to:

(i) Promote competitive and fair market conduct;

(ii) Prevent misuse of monopoly or market power;

(iii) Facilitate entry into relevant markets;

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13 Refer: http://www.escosa.sa.gov.au/library/081217-CharterOfConsultRegPractice.pdf.

14 Section 26(1) ESC Act 2002 (SA)

15 Section 26(3) ESC Act 2002 (SA)

16 Section 3(2) ESC Regulations 2004

(iv) *Promote economic efficiency;*

(v) *Ensure consumers benefit from competition and efficiency;*

(vi) *Facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment; and*

(vii) *Promote consistency in regulation with other jurisdictions.*

In addition to having regard to the abovementioned statutory objectives in carrying out the Review, the Commission must also have regard to the factors set out in section 25(4) of the ESC Act when making a price determination, namely:

(a) The particular circumstances of the regulated industry and the goods and services for which the determination is being made;

(b) The costs of making, producing or supplying the goods or services;

(c) The costs of complying with laws or regulatory requirements;

(d) The return on assets in the regulated industry;

(e) Any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;

(f) The financial implications of the determination;

(g) Any factors specified by a relevant industry Act or by regulation under this Act; and

(h) Any other factors that the Commission considers relevant.

Further, under section 25(5) of the ESC Act, the Commission must also ensure that in making a price determination:

(a) Wherever possible the costs of regulation do not exceed the benefits; and

(b) The decision takes into account and clearly articulates any trade-off between costs and service standards.

At section 25(3), the ESC Act also specifies the range of regulatory approaches that the Commission can choose from in the making of a price determination, ranging from those that are not determinative in nature (e.g. price monitoring), to those that are considered more prescriptive (e.g. price setting).

Section 25(3) of the ESC Act provides that:

A price determination may regulate prices, conditions relating to prices or price-fixing factors in a regulated industry in any manner the Commission considers appropriate, including:

(a) Fixing a price or the rate of increase or decrease in a price;

(b) Fixing a maximum price or maximum rate of increase or minimum rate of decrease in a maximum price;

(c) *Fixing an average price for specified goods or services or an average rate of increase or decrease in an average price;*

(d) *Specifying pricing policies or principles;*

(e) *Specifying an amount determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;*

(f) *Specifying an amount determined by reference to quantity, location period or other specified factor relevant to the supply of goods or services;*

(g) *Fixing a maximum average revenue, or maximum rate of increase or minimum rate of decrease in maximum average revenue, in relation to specified goods or services; and*

(h) *Monitoring the price levels of specified goods or services.*

2.4 Criteria for determining the continuation of the price and access regimes

Given the number of objectives and factors that the Commission must or may have regard to in determining whether or not continued price and access regulation is necessary, the Commission has established the following assessment criteria, based on a distillation of those objectives and factors pursuant to which it will undertake this Review.

The assessment criteria are:

1. Market power

Market power is said to exist when the provision of a certain service is supplied by a firm with the ability to raise prices above competitive levels. Misuse of market power can lead to economically inefficient outcomes and be detrimental to the long-term interests of consumers and the South Australian economic wellbeing.

Economic regulation of ports services has therefore been justified on the grounds that ports exhibit natural monopoly characteristics since it will not be economically feasible to duplicate ports infrastructure facilities to meet market demand. It is seen as an important tool in protecting the interests of parties seeking access to the services provided by these essential facilities by facilitating the development of a more competitive market, or by constraining the ability of a port operator to misuse market power, in order to achieve outcomes that are more consistent with the operation of a competitive market.

Where there is evidence that a port operator has misused market power (e.g. extracting monopoly rents), regulation is necessary where it constrains the misuse of market power and provides for greater economic efficiency.

Similarly, regulation may be necessary to provide an ongoing deterrent against misuse of market power in situations where market power exists and there is a potential for it to be misused by ports operators.

2. Is there a net benefit to regulation

In a regulatory context, regulation should only be imposed where it can be clearly demonstrated that it is able to achieve outcomes more efficiently than would be achieved by alternatives (including no regulation), bringing the greatest net benefit to the community.

In undertaking this Review, the Commission will need to determine whether the costs associated with any market failure (e.g. misuse of market power) that might arise in the absence of regulation would exceed the regulatory costs that would be imposed on regulated entities as a result of continued regulation.

3. Other factors

The Commission would need to understand the impacts of any recent changes in the market or possible changes in the near future that may impact on the Commission's review of the need for continued regulation.

2.5 Review Process

The Commission's review into the ports pricing and access regimes commences with the release of this Issues Paper. As part of the consultative process to be undertaken, the Commission invites written submissions from all stakeholders on matters that are relevant to the Review and strongly encourages suggestions of changes that would enhance the effectiveness of the regimes, should there be a need for continued regulation. The Commission may also engage independent consultants to assist it in undertaking this Review.

The Commission will release a Draft Report in May 2012, including all written submissions received from stakeholders in response to this Issues Paper to further encourage stakeholder engagement with the Review process. The Draft Report will contain the Commission's draft conclusion on whether or not continued regulation is necessary. In the event that the Commission's draft conclusion is that there is an ongoing need for access and price regulation, the Commission will also, where possible, identify areas where the effectiveness of the regimes could be further improved. Stakeholders will be provided with opportunities to comment on the Draft Report as part of the consultation process.

The Commission intends to release its Final Report and Final Price Determination in September 2012. The Final Report will set out the conclusions reached by the Commission as a result of the Review and will, if necessary, specify the form of price regulation that would apply to Essential Maritime Services over the next regulatory period.

An indicative timetable of this Review is set out below in Table 2-1

Details on how to make written submissions are provided at the beginning of this Issues Paper.

Table 2-1: Indicative timetable for the 2012 Ports Pricing and Access Review

ACTION	DATE
Release of Issues Paper	17 February 2012
1st round stakeholder submissions due	23 March 2012
Release of Draft Report	30 May 2012
2nd round stakeholder submissions due	4 July 2012
Release of Final Report and Price Determination	28 September 2012
Commencement of new pricing and access regulatory period	31 October 2012

3 REGULATION OF PORTS: 2007-2012

In 2007, as required under the MSA Act, the Commission conducted a similar review into the South Australian ports pricing and access regimes, to determine whether or not continued regulation was necessary.[17] As part of the 2007 Ports Pricing and Access Review (the 2007 Review), the Commission also undertook an Inquiry into whether or not the access regime was consistent with certain principles agreed upon by Council of Australian Government (COAG) under CIRA.[18]

The Commission's conclusions in the 2007 Review are summarised below.

3.1 2007 Ports Access Review

The Commission recommended that the ports access regime should continue for a further regulatory period on the basis that there was the potential for the exercise of market power in the provision of Regulated Services and that it was appropriate to retain the safety net provided by access regulation. Following this recommendation, a regulation was made under the MSA Act to enable the regime to continue.

In recommending that the access regime should continue, the Commission assessed the regime against the following assessment criteria:

- Is there the potential for the port operator to exercise market power?;
- Is there any evidence of misuse of market power by the port operator?; and
- Will regulation produce a net benefit?

Determining the extent to which a port operator can misuse market power was central to the question of whether or not to regulate. The Commission found that services subject to the access regime generally displayed natural monopoly characteristics. Despite the fact that market power existed, the Commission found no evidence of misuse of market power in the provision of Regulated Services.

The Commission's review of the access regime also focused on two potential issues that the Commission considered might have an impact on the regime in the near future. First, whilst the Commission recognised that there was uncertainty surrounding the impact that grain exports might have on the access regime, following deregulation of barley exporting and potential changes to wheat exporting, the Commission formed the view that those changes were more likely to support the argument for the continuation of the access

[17] Documents relating to the Commission's 2007 Ports Pricing and Access Review are available at: http://www.escosa.sa.gov.au/projects/24/2007-ports-pricing-and-access-review.aspx.

[18] The CIRA is available at the Council of Australian Government's website at: http://www.coag.gov.au/coag_meeting_outcomes/2006-02-10/index.cfm. This agreement aims to establish a simpler and consistent national approach to the economic regulation of significant infrastructure, thereby promoting efficient investment in and use of these infrastructure.

regime than for its expiry. Second, the Commission also formed the view that significant potential expansion of the minerals sector provided sufficient justification for continuing the access regime, noting that the negotiate-arbitrate framework underpinning the regime provided the necessary incentives for commercial negotiations to meet the specific infrastructure requirements of the minerals expansion.

The above findings led the Commission to the conclusion that it was appropriate for the access regime to continue, but that only light-handed regulation would be necessary to deter the misuse of market power by ports operators. The negotiate-arbitrate framework underpinning the access regime was considered to be appropriate for the provision of Regulated Services. The Commission also recommended that the coverage of the regime should be extended to the new bulk loader at Port Adelaide (Outer Harbor) and be removed from the Port of Ardrossan. The former was recommended to ensure greater consistency in the regulation of bulk loaders. The latter was recommended on the basis that there was only one main user at the port, with established long-term arrangements in place, and little potential for additional port access in the near future.

As part of the Commission's review of the access regime, a separate Inquiry into the consistency between the access regime and clause 2 of CIRA was also conducted. The Inquiry concluded that whilst the regime was generally consistent with the relevant CIRA principles, there were some improvements that could be made to enhance the overall effectiveness of the regime.

Amendments to the MSA Act were subsequently enacted by the South Australian Parliament to implement many of the Commission's recommendations.

The Commission also concluded in its review that there was a prima facie case for regulating access to at-port grain storage and bulk handling facilities given the existence of market power, but that it was appropriate for any regulatory scheme to be considered in a broader context by the State Government, having regard to the whole of the grain supply chain. The ports access regime is limited to at-port services and many of the services envisaged here extend well beyond the port boundary.

It is noted that no such review has been undertaken by the South Australian Government.

3.2 2007 Ports Price Review

The Commission's 2007 Ports Price Review concluded that the ports price regime should continue for a further regulatory period on the basis that there was scope for the misuse of market power in the provision of Essential Maritime Services. The assessment criteria used by the Commission in reaching this conclusion were consistent with those used for assessing whether the access regime should continue.

The Commission found that despite ports operators having the potential to exercise market power, there was no clear evidence that they had misused market power. The Commission's conclusion was reached after having regard to:

- Regulatory Accounts submitted by Flinders Ports, which indicated that they had not been earning excessive profits;
- Information provided by Flinders Ports, which indicated that ports users had been successfully negotiating contracts below the published prices;
- Price increases of Essential Maritime Services throughout the regulatory period, which indicated that port charges had generally moved in line with changes in CPI; and
- Benchmarking of ports prices as conducted by Meyrick Consulting Group Pty Ltd (Meyrick and Associates)[19] on behalf of the Commission, which showed that although ports prices in South Australia are generally more expensive compared to other Australian ports, greater economies of scale in other ports were considered to be a major factor explaining this difference, rather than the misuse of market power by South Australian ports operators.

Similar to the conclusions reached in the access review, the Commission's major area of concern was in relation to grain exports, where Flinders Ports faced no direct competition in the export of grain produced on the Eyre Peninsula.

The Commission concluded that the light-handed price monitoring regime should continue to provide flexibility for ports operators and users to negotiate commercial arrangements, but indicated that it would examine alternative approaches to reporting ports prices in the subsequent regulatory period.

A new Ports Price Determination was subsequently made in October 2007 to give effect to the new ports price regulation regime. A subsequent Ports (Variation) Price Determination was made in September 2010 to reflect amendments made to the MSA Act.

3.3 The Commission's Observations

The ports pricing and access regimes are ultimately underpinned by a negotiate-arbitrate framework, where ports users are encouraged to engage in commercial negotiations with ports operators over prices and service standards. To encourage commercial outcomes, there is the requirement for negotiations to be conducted in good faith, with open and transparent information exchange between parties.

This section sets out the Commission's current thinking on the effectiveness of the existing regulatory regimes during the current regulatory period.

[19] Meyrick and Associates was acquired by GHD Pty Ltd (GHD) in 2008.

3.3.1 Ports Price Regime

Commencing with the 2008/09 regulatory year, the Commission implemented a new ports price monitoring approach whereby it would monitor trends in the prices of Essential Maritime Services. Where price monitoring reveals that an Essential Maritime Services charge has increased by more than the change in CPI, the Commission will request the ports operator to provide the Commission with justification for such a change. The Commission's considerations of any real price increase, and the justifications provided, will be discussed in annual ports price monitoring reports released by the Commission.

As a general observation, cumulative increases in Essential Maritime Services charges have exceeded the cumulative increase in CPI by 1.8% during the first four years of the current regulatory period. The largest real increase was experienced in 2008/09, where average prices of Essential Maritime Services rose by around 1.3% in real terms. That increase was primarily driven by the 10% increase in Cargo Services charges, which was applied to enable Flinders Ports to recover the capital expenditure associated with the extension and strengthening of its container berth at Port Adelaide.[20] Aside from 2008/09, the Commission notes that port charges for Essential Maritime Services have generally moved in line with CPI.

Table 3-1 shows the average real increase in Essential Maritime Services charges during the first four years of the current regulatory period. A more detailed table showing movements in all published port charges from 2008/09 to 2011/12 is set out in Appendix 2.

Table 3-1: Average increase in Essential Maritime Services charges

Financial Year	Above CPI Increase
2008/09	1.3%
2009/10	0.4%
2010/11	0.1%
2011/12	0%
Overall increase above CPI	1.8%

Source: The Commission's Annual Ports Price Monitoring Reports[21]

The Commission observes that cumulative increases in Pilotage Services have exceeded the cumulative increase in CPI by 8.7% over the same period. In 2008/09 and 2011/12 there were notable real increases in Pilotage Services charges, primarily as a result of enterprise bargaining agreements (EBA) covering both marine pilots and

[20] ESCOSA, 2008 Ports Price Monitoring Review, Final Report, p10, October 2008.

[21] Refer http://www.escosa.sa.gov.au/ports-overview/pricing-access/ports-price-monitoring.aspx.

boat crews. Those agreements led to significant increases in pilotage wages. Costs associated with the salary and wages of pilots and boat crews generally make up a high proportion of the costs associated with the provision of Pilotage Services.

Table 3-2 shows the average real increase in Pilotage Services charges during the first four years of the current regulatory period.

Table 3-2 - Average increase in Pilotage Services charges

Financial Year	Above CPI Increase
2008/09	5.5%
2009/10	0%
2010/11	0.9%
2011/12	2.3%
Overall increase above CPI	8.7%

Source: The Commission's Annual Ports Price Monitoring Reports

The Commission's examination of information put forward by Flinders Ports to justify any real price increase is central to the effectiveness of the current ports price monitoring regime. Ports users rely on the Commission to scrutinise the information provided to ensure ports prices are cost-reflective and that any real price increases are not as a result of market power being misused.

In general, the Commission's assessments of the information provided by Flinders Ports to justify the real increases in both Essential Maritime Services and Pilotage Services charges during the current regulatory period have found no particular areas of concern. Price movements have generally reflected CPI increases except where special circumstances exist.

In those circumstances, the Commission's assessments of information provided by Flinders Ports suggest that that the magnitudes of those real increases were reflective of the cost increases that would be incurred by Flinders Ports. The Commission notes that no concerns over increases in ports charges and pricing disputes had been raised with the Commission during the current regulatory period.

3.3.2 Ports Access Regime

As a general observation, the Commission has found no evidence of misuse of market power in the provision of Regulated Services during the current regulatory period. The Commission has neither been required to activate the formal dispute resolution process provided for under the MSA Act nor has it been provided with any positive

evidence that would suggest that market power has been misused in the provision of Regulated Services.

Whilst a request for conciliation was referred to the Commission during the current regulatory period, the Commission's role was limited to gathering information from parties to better understand the nature of the disagreement and directing the exchange of information to facilitate commercial negotiations. The formal dispute resolution provisions provided for under the MSA Act were not activated as both parties ultimately reached commercial agreement.

The Commission believes that the best possible commercial outcomes are reached when negotiations are conducted in good faith, with open and transparent information exchange between parties. The abovementioned example demonstrates the merit of an informal "advice and directions" role for the Commission to facilitate commercial negotiations by directing the exchange of relevant information. The Commission believes that this would encourage the resolution of disputes at an informal level in the first instance and would make low cost dispute resolution more accessible for negotiation matters.

The Commission invites the views of stakeholders on outcomes/effectiveness of the ports pricing and access regimes over the 2007 – 2012 regulatory period.

4 ISSUES RELATING TO WHETHER OR NOT REGULATION SHOULD CONTINUE

In principle, regulation should only be imposed where there is a net benefit. Whilst there are clear benefits associated with regulating industries to prevent the misuse of market power, regulation also imposes costs which are ultimately passed on to end users. In that context, the Commission must make a judgment on whether the costs and risks associated with market failure in the absence of regulation would exceed those under continued regulation.

In undertaking this Review, the Commission will adopt an "incremental approach" to determine whether or not there is sufficient justification for changing the ports pricing and access regimes that currently apply. The Commission will examine if market or regulatory environments have changed since the time of the 2007 Review, or are likely to change during the next five-year period, to determine whether or not the current arrangements remain appropriate. The Commission will also give close consideration to the views of stakeholders and their experiences with the regimes and expectations for the near future.

4.1 Industry Developments

The Commission is interested in understanding the impact of any recent developments, or likely future developments, that may have an impact on the ports pricing and access regimes, particularly where such developments have an influence on the market power of ports operators. Some of the key issues identified by the Commission are:

4.1.1 Access Undertaking

On 28 September 2011, the ACCC, pursuant to Division 6 of Part IIIA of the CCA, approved the Port Terminal Services Access Undertaking (the Access Undertaking) submitted by Viterra relating to the provision of access to services for the export of Bulk Wheat[22] at the six grain terminals operated by Viterra in South Australia.[23] The Access Undertaking sets out the terms and conditions on which Viterra will provide access to those services.

In general, the Access Undertaking imposes the following obligations on Viterra:

- Viterra must not discriminate or hinder access to port terminal services;
- clear and transparent port loading protocols for managing demand for the port terminal services;

[22] Bulk Wheat means wheat for export from Australia other than wheat that is exported in a bag or a container that is capable of holding not more than 50 tonnes of wheat.

[23] ACCC's acceptance of the access undertaking is a condition of Viterra's accreditation under the Commonwealth's *Wheat Export Marketing Act 2008*.

- Viterra must negotiate in good faith with eligible wheat exporters for access to port terminal services; and
- wheat exporters to have access to dispute mediation or arbitration on terms of access.

The Commission notes that the accepted Access Undertaking does not apply to any maritime and railway services that are subject to the South Australian ports and railways access regimes. This is in accordance with Part IIIA of the CCA Act, which specifies that a Part IIIA access undertaking cannot apply to any services that are regulated under a certified State-Based access regime.[24] Further, it covers only at-port grain handling facilities and not upcountry facilities.[25]

Due to the interface between the Access Undertaking and South Australian rail and ports access regimes, the Commission is mindful that there is the potential for inconsistency or unnecessary duplication to arise. This is because any entity seeking access to Viterra's grain terminals is also likely to require access to railway and ports services provided by Genesee & Wyoming Australia and Flinders Ports. The potential for interface issues therefore requires the Commission to ensure consistency between the various access frameworks, and to avoid imposing any unnecessary regulatory burden.

Further, the Commission notes that the Access Undertaking does not apply to the export of other grain types and non-grain commodities and will lapse after September 2014, part way through the subsequent regulatory period. The Commission therefore welcomes any stakeholders' views on the implications of these arrangements on the access regime.

What are the possible implications for the ports access regimes as a result of Viterra's approved Access Undertaking?

4.1.2 Containers

Port Adelaide is South Australia's largest ports facility and is the only port capable of handling significant volumes of containers. There is presently no intra-port and intra-terminal competition within the port for container facilities.[26] The only competition to Port Adelaide comes from interstate ports (e.g. Port of Melbourne). In 2010/11, the Port Adelaide Container Terminal handled around 3.5 million mass tonnes of

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24 Both the South Australian ports and railways access regimes have been certified as effective access regimes by the responsible Commonwealth Minister.

25 All documents relating to Viterra's accepted access undertaking are available on the ACCC's website at: http://www.accc.gov.au/content/index.phtml/itemId/868800.

26 An agreement exist between the Minister for Infrastructure, DP World and Flinders Ports to not permit another container terminal to be operated at Outer Harbor until the current facility's throughout exceeds 225,000 TEU of full container movements per annum.

container trade, representing around 5.7% of Australia's total container volumes.[27] Strong growth in container trade is expected to continue in the longer term, and is underpinning Flinders Ports' plans for expansion at Port Adelaide.

Whilst the commencement of the Tarcoola-Darwin railway was intended to provide an efficient transport link through the central corridor of Australia and increase the volume of containers moving from South Australia to Darwin's East Arm Port, container volumes transported along the railway remain low with significant spare capacity. This suggests that Darwin's East Arm Port has not yet developed into a genuine competitor to Port Adelaide as was originally envisaged.

Noting that such ports infrastructure is uneconomic to duplicate and that the volume of the container trade in South Australia is lower compared to other major Australian ports, the Commission believes that there remains significant barriers to competitive entry to the container trade market for the foreseeable future. The Commission is therefore seeking to understand if there have been any significant changes in container movements, or if there are likely to be any changes in the near future, that would suggest there is sufficient competition between ports for container volumes to constrain the degree of market power held by Flinders Ports.

How has competition between ports for container volumes developed?

To what extent does Flinders Ports hold market power in providing container facilities?

4.1.3 Minerals

Although the South Australian resources industry has experienced a rapid period of growth, it is envisaged that exploration and mining developments will continue to grow strongly, supported by continued strong demand from other nations.

Whilst there are a number of South Australian ports with infrastructure that is capable of loading minerals for export, it is likely that substantial capital expenditure would be required in the near future to address longer-term infrastructure requirements as more mines commence productions. The Commission notes that uncertainty relating to access and capacity of existing, new and proposed ports infrastructure in South Australia was identified by survey respondents as an area of major concern in the 2011 Infrastructure Demand Study commissioned by the South Australian Government's advisory body the Resources and Energy Sector Infrastructure Council.[28]

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27 Refer http://www.portsaustralia.com.au/tradestats/?id=4&period=11.

28 Refer http://www.pir.sa.gov.au/__data/assets/pdf_file/0006/163374/11-0656-09-2161807A_Volume_1.pdf.

The Commission therefore welcomes any stakeholders' views on the adequacy of the ports access regime to deal with developments in the South Australian resources industry.

Is the existing ports access regime capable of dealing with developments in the South Australian resources industry?

4.2 Market Power

One of the major conclusions reached by the Commission in the 2007 Review was that whilst market power exists for Regulated Services and Essential Maritime Services, there was no evidence of misuse of market power. The assessment of market power was a central theme to previous ports pricing and access reviews, and is fundamental to the question as to whether or not continued regulation is necessary. Here, it is not just a question of actual misuse of market power, but rather the potential for market power to be misused. Possible factors that may deter the misuse of market power include the following:

- ***Competition*** – where a user has alternatives to using a particular port service, the ability of the port operator to extract monopoly rents is reduced. These alternatives could include using a different port, different modes of transport or supplying to the domestic market rather than exporting;
- ***Barriers to entry*** – if entry barriers are low, market power may be constrained if the genuine threat of new entry provides an effective deterrent against market power being misused;
- ***Countervailing bargaining power*** – where a user is able a exert credible threat and pressure to bear on a port operator to prevent the earning of monopoly rents; and
- ***Overall cargo value*** – where port charges make up a major component of total cargo value, users are more sensitive to changes in port charges and are more likely to seek out a more commercially viable alternative (e.g. another mode of transport).

4.2.1 Price Monitoring of Ports Charges

The Commission urges caution in comparing South Australian ports charges against other comparable ports in Australia as there are a number of factors that could influence prices. South Australian ports, for example, are smaller on average relative to interstate ports, and are therefore unable to capitalise on the efficiencies that come from economies of scale. Further, price increases cannot be considered in isolation, and appropriate consideration should be given to longer-term infrastructure requirements. In that context, price increases above CPI cannot necessarily be viewed as a consequence of the misuse of market power by ports operators.

In regards to movements in ports charges during the current regulatory period, the Commission's annual monitoring of Essential Maritime Services charges has not revealed any areas of concern. Ports charges have generally been increased in line with changes in CPI except where special circumstances exist. In addition, no disputes have been notified to the Commission. Both of these observations might suggest that there has not been any misuse of market power.

The Commission will undertake a detailed ports price benchmarking study as part of this Review. Such a study will help inform the Commission of ports charges in South Australia relative to those of other Australian ports, and factors contributing to price differentials between ports.

Has the Commission's present form of price regulation (i.e. price monitoring) been appropriate and effective in deterring market power from being misused?

How do prices compare relative to other comparable ports in Australia having regard to factors such as economies of scale and longer-term ports infrastructure requirement?

4.2.2 Commercial Negotiations

An important feature of the present ports regulatory regime is that, while requiring ports operators to publish reference prices, ports users are encouraged to engage in commercial negotiations with ports operators over ports charges and service standards. The requirement for all parties to negotiate in good faith is an important principle underpinning the regime.

The Commission is seeking comment on whether or not ports users and prospective ports customers have been able to successfully negotiate prices and access to ports facilities on terms that are different to those published by the ports operator. The ability of ports users to actively negotiate prices on a case-by-case basis with service providers may indicate that there is no misuse of market power by ports operators.

Is it still the case that there is the potential for misuse of market power, or is there evidence of actual misuse of market power in the provision of Regulated Services and Essential Maritime Services?

To what extent have commercial negotiations over access to ports facilities been successful?

To what extent are negotiated prices different to the reference prices and how should this be taken into account in this Review?

4.3 Is there a net benefit to regulation

Even if the Commission were to conclude that there is still the potential for market power to be misused, the Commission will need to be satisfied that there is a net benefit associated with use of regulation as a means of addressing market power concerns. Where regulation is necessary, the Commission will seek to implement the option that would maximise the net benefit to the consumers. This is consistent with the Commission's primary objective under the ESC Act.

The benefits associated with regulation will depend on the extent of market power that can be exercised by ports operators, and the consequences associated with that market power being exercised. For example, it could be argued that there are significant benefits to continued regulation, if the misuse of market power would result in monopoly rents, economic inefficiencies and distortions in other parts of the supply chain.

Regulation, however, also imposes costs to regulated business and, ultimately, to consumers. The extent of those costs will ultimately depend on the form and scope of regulation imposed. In its Research Report on Identifying and Evaluating Regulation Reforms[29], the Productivity Commission identified five types of regulatory costs:

- ***Administration cost to regulators*** – such as costs associated with administering regulatory regimes;
- ***Administrative cost to businesses*** – such as reporting time;
- ***Substantive compliance costs*** – such as investment in regulatory reporting systems;
- ***Economic costs to business*** – such as lower investment and reduced innovation; and
- ***Other distortions*** – such as unintended effects of regulation and benefits foregone if regulation is ineffective.

[29] Refer http://www.pc.gov.au/projects/study/regulation-reforms/report.

In undertaking this Review, the Commission will assess the costs and benefits of the current ports access regime (which is fixed as a negotiate-arbitrate model) to determine if continued access regulation is necessary.

In regards to price regulation, the Commission currently implements a low cost price monitoring regime, but will examine if there is a net benefit in having no price regulation relative to having any form of price regulation.

Is there a net benefit associated with retaining the current negotiate-arbitrate ports access regime?

Is there a net benefit associated with retaining price regulation (of any form) for the ports price regime?

4.4 Other Factors

The Commission welcomes comments from stakeholders on any recent changes in the market or possible changes in the near future that may impact on the Commission's review of the need for continued price and access regulation. The Commission is interested in any views on the quality of ports services, the impact of changes in volumes by cargo types, and any other region or cargo specific issues that may be of relevance to this Review.

Stakeholders may also wish to comment on the further consolidation of participants within the transport industry and whether or not this has any impact on the need for continued ports regulation.

Have there been any developments over the current regulatory period that should be taken into account by the Commission when reviewing the need for continued regulation?

Are there likely to be any developments over the next regulatory period that should also be taken into account by the Commission?

Are there any region or cargo specific issues that are relevant to this Review?

Are there any other factors that the Commission should have regard to when reviewing the need for continued regulation?

5 ISSUES RELATING TO THE EFFECTIVENESS OF THE PORTS ACCESS REGIME

Assuming that access regulation continues, an important issue for the Commission to consider is how the effectiveness of the access regime could be improved. This review will be undertaken pursuant to section 34 of the ESC Act.

In considering any possible changes, the Commission believes it is important to receive input from stakeholders who have had experience with the regime, or are expecting to utilise the regime at a future date. The practical application of the access regime in facilitating commercial negotiation of access to Regulated Services is a key area of concern for the Commission.

In that context, the Commission welcomes comments from stakeholders based on past experiences in negotiating access, and whether or not there are any future issues that need to be considered in assessing the effectiveness of the regime. The Commission has identified some key issues that it believes may be of relevance to the access regime review.

5.1 Coverage

Ensuring that an access regime has sufficient coverage over the supply chain to include all areas where competition is currently not effective is an important aspect to supporting competition. As discussed, the ports access regime only applies to the provision of Regulated Services at proclaimed ports in South Australia. The coverage of the regime, however, can be varied by the Governor though proclamation to either include or remove certain ports or maritime services.[30]

The Commission is mindful that effective competition cannot occur if access seekers are unable to gain access to certain maritime services, or can only do so subject to monopoly prices. In this respect, the Commission's principal view is that coverage should be extended to ports and ports infrastructure where it is necessary for meaningful access to occur and where it would be uneconomic to develop alternative facilities to provide the same services.

Whilst certain ports services such as at-port facilities for storage, loading and unloading are not defined as a Regulated Services, they are captured within the definition of Maritime Services and could therefore be brought within the scope of the access regime by proclamation. The appropriateness of such action would depend on the potential for, or actual misuse of, market power by the service provider and the costs and benefits of imposing access regulation.

[30] Following recommendations made by the Commission in the 2007 Review, the coverage of the regime was varied to remove the Port of Ardrossan and include the bulk loader at Outer Harbor at Port Adelaide.

Whilst the Commission recognises that access to at-ports services is of little value if access in other parts of the supply chain is doubtful, the scope of this access review is limited to at-ports services and does not extend to non-ports access issues.

Are there any ports or maritime services to which coverage of the access regime should be extended or revoked? If so, what are the arguments for doing so?

5.2 Negotiation

Part 3 of the MSA Act provides a framework for the negotiation of access between an access provider and access seeker. The intention behind establishing such a framework is to allow sufficient flexibility such that parties can tailor the terms and conditions of an access contract to cover both the price and non-price arrangements for the use of Regulated Services.

5.2.1 Basis of Access

Division 2 requires a regulated operator to use all reasonable endeavours to accommodate the requirements of an access seeker with a view to reaching agreement on whether the requirements could be reasonably met and, if so, how the terms and conditions of the access contract should reflect this. The requirement for parties to negotiate in good faith is an important principle underpinning the framework.

The Commission believes that an access regime, where possible, should not constrain the process of commercial negotiations, which is critical to facilitating investment in and promoting the efficient use of ports infrastructure. Stakeholders are encouraged to provide comments based on past experiences of any instances where the Part 3 framework has created difficulties in negotiating access. The Commission is also interested in receiving comments from stakeholders on whether the framework can be improved to further facilitate commercial negotiations.

Have there been any instances whereby an access seeker and access provider have encountered difficulties in negotiating access to port infrastructure, due to the current regulatory framework? If so, what were the impediments?

Is the negotiate process set out in Part 3 of the MSA Act adequate for facilitating commercial negotiation of access? If not, how can the process be improved?

5.2.2 Negotiation of Access

Division 3 requires that a regulated operator must provide an access seeker with information reasonably requested about technical requirements, access rules and capacity utilisation, to assist the access seeker in preparing an access proposal, and

any other information required to be provided under guidelines issued by the Commission.

Section 12(1)(b) of the MSA Act requires a regulated operator to provide information about the price of Regulated Services in accordance with guidelines issued by the Commission. The *Ports Industry Guideline 1: Access Price Information* (Guideline No. 1) sets out the Commission's requirements for the price information that a regulated operator must provide.

The proponent requirements may also be expressed through a written proposal detailing the proposed terms and conditions (including modification of ports facilities and establishment of additional port facilities) for the provision of maritime services to be carried out by the regulated operator. Further, if required by the operator, the proponent must provide additional information regarding the proposal that the operator reasonably requires.

Stakeholders are encouraged to provide comments on whether or not the information requirements set out in Part 3 of the MSA Act and Guideline No. 1 are adequate as a basis for commercial negotiations. The principal function of these information requirements is to provide a starting point for meaningful commercial negotiations, and is not intended to limit the extent or scope of information being exchanged in the process. It is therefore reasonable to expect specific cost and price information would only be provided following the receipt of an access application where the specific requirements are known.

In respect to the information requirements set out under Guideline No. 1, the Commission proposes a separate review of the guideline in parallel with this Review to provide stakeholders with the opportunity for meaningful input. The Commission intends to use this Review process as a vehicle to canvass views from stakeholders on whether or not the access price information requirements, in respect to Regulated Services as set out under Guideline No. 1, are adequate to provide a starting point for meaningful commercial negotiations.

Are the information requirements set out under Part 3 of the MSA Act and Guideline No. 1 adequate for facilitating the negotiation of access? Do access seekers need additional information in order to make an informed decision about obtaining access?

5.3 Dispute Resolution

Division 4 and 5 of the MSA Act provide a framework for the conciliation or arbitration of access disputes. In the event that commercial negotiations between an access provider, the proponent or any interested third party cannot be negotiated, a dispute exists.[31] A party to the dispute may then refer the dispute to the Commission for resolution.

The Commission, in the first instance, would attempt to resolve the dispute by conciliation. If, however, the Commission fails to resolve the dispute by conciliation after making reasonable attempts to do so, the Commission must then, if warranted, appoint an arbitrator and refer the dispute to arbitration.

The Commission believes that a transparent and effective dispute resolution process is important to the overall effectiveness of the access regime as it provides a safety net to access seekers and access providers should commercial negotiations fail. The Commission would therefore welcome comments from stakeholders on whether or not the dispute resolution framework set out under the MSA Act is adequate for resolving access disputes. If not, are there any ways in which the process could be enhanced should an access dispute arises.

This, for example, could be in the form of the Commission performing an informal "advice and directions" role to facilitate commercial negotiations, without the formal dispute resolution process being triggered in the first instance.[32] The *AustralAsia Railway (Third Party Access) Act 1999* (ARTPA Act) contains such an advice and directions provision. Section 12(B) of the ARTPA Act provides that:

> *(1) An access seeker, the access provider or any other respondent to an access proposal may request the regulator to consider and, if appropriate, to give advice or directions with respect to any matter that has arisen in connection with the operation of this Division in order to facilitate the conduct of negotiations under this Division;*
>
> *(2) A person making a request under subclause (1) must comply with any requirement published by the regulator for the purpose of this clause;*
>
> *(3) The regulator may decline to consider or act on a request under subclause (1) for any reasonable clause;*
>
> *(4) The regulator may, if the regulator thinks fit, give a general direction to the access provider under subclause (1) in respect of a particular matter under this Division;*

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31 Under the MSA Act a dispute is recognised as a 30 day period where the operator, proponent and any interested third party cannot agree on the terms for the provision of the proposed service.

32 The Commission notes that Section 12(B) of the *AustralAsia Railway (Third Party Access) Act 1999* (ARTPA Act) provides a provision for an informal form of dispute resolution to occur before the formal processes of conciliation and arbitration are called upon. The informal process requires the Commission to give advice and directions to the relevant parties regarding any matter that has arisen as a result of negotiations.

(5) A person must not, without reasonable excuse, contravene or fail to comply with a direction given by the regulator under this clause

Penalty: $10,000.

(6) This clause does not limit or affect the ability of an access seeker at any time to request that an access dispute be referred to arbitration under Division 2.

The Commission is of the view that a similar provision under the MSA Act is likely to encourage the resolution of disputes at an informal level and would make low cost dispute resolution more accessible for negotiation matters.

Do stakeholders consider that there would be a benefit from incorporating into the MSA Act an informal resolution process similar to the one outlined in Section 12(B) of the ARTPA Act?

Is the conciliation/arbitration process set out in Part 3 of the MSA Act adequate for resolving access disputes? If the process is not considered to be sufficient, how can the process be improved?

6 ISSUES RELATING TO THE FORM OF PRICE REGULATION

Assuming price regulation is to continue for another regulatory period, the Commission is required by the MSA Act to determine the form of price regulation. As discussed, the Commission has implemented a light-handed ports price monitoring approach for the current regulatory period.

The 2007 Review concluded that a price monitoring approach was appropriate on the basis that it would allow ports users the opportunity to engage in commercial negotiations with ports operators, while at the same time provide an ongoing deterrent against the misuse of market power by regulated operators through the threat of re-regulation.[33]

6.1 Forms of Price Regulation

The Commission's price regulation powers arise under Part 3 of the ESC Act. Section 25 of the ESC Act specifies that the Commission may make a price determination that regulates prices, conditions relating to prices and price-fixing factors in any manner it considers appropriate. This means that there is no particular limit to the form of price regulation that might apply.

Section 25(3) of the ESC Act specifies a range of regulatory approaches the Commission can utilise in a price determination. The options range from light-handed measures such as price monitoring, to more prescriptive or "heavy-handed" approaches such as price controls. Whilst the Commission's discretions as to the form of price regulation may be constrained by an industry regulation Act[34], the MSA Act (being the relevant industry regulation Act here) sets no such restrictions for Essential Maritime Services.

In a broad sense, the forms of price regulation available fall into several different categories (each with different variants) including:

- revenue or price movement control;
- revenue controls on prices;
- pricing principles based regulation;
- benchmark regulation;
- price notification and
- price monitoring.

[33] That is, the subsequent introduction of tighter, more intrusive regulation.

[34] An industry regulation Act may require the Commission use only a particular form of price regulation.

Each form of price regulation differs significantly in terms of the extent of information required by the regulator, the costs involved in complying with the regime and the degree to which prices are determined by the regulator. In a regulatory context, a more intrusive form of price regulation should only be imposed where there is the potential for significant inefficiencies to arise from the misuse of market power.

In a heavy-handed approach (i.e. direct control being imposed on prices and related terms and conditions of service supply), the regulator plays a more intrusive role in the price-setting process and will require more information from the regulated operator. Price regulation of this form therefore imposes a greater level of compliance costs on the regulated operator, which is ultimately passed on to ports users in the form of high prices.

A light-handed approach (i.e. price monitoring) does not require the regulator to control prices directly but emphasises commercial negotiation or information transparency with recourse to a dispute resolution process (e.g. arbitration). Further, it relies on the threat of re-regulation to act as an ongoing deterrent against the misuse of market power. Price regulation of this form imposes less compliance costs on the regulated operator as less information is required by the regulator.

6.2 Is an alternative form of price regulation necessary?

The form of price regulation that should apply is dependent on the specific characteristics of the ports industry and, more importantly, should be commensurate with the degree of market power that is involved. The chosen form of price regulation should be one which, in achieving its goal[35], produces the greatest net benefit compared with all other available options.

The Commission's decision in the 2007 Review to implement a negotiate-arbitrate access regime while implementing a price monitoring approach under price regulation was made on the basis that its assessment of the regulatory regime and information submitted by ports operators had found no clear evidence of market power being misused, despite the potential to do so.

Should there be a need for an alternative form of price regulation, the Commission will need to satisfy itself that the current ports access and price regulation has led to undesirable outcomes, and therefore, requires a different approach. To assess whether or not this is the case, a number of matters need to be considered that can assist in defining the success or otherwise of the current regime. The following outcome measures are provided as a list for discussion:

- ***Change in Published Prices*** - the current regime requires the regulated operator to publish its annual regulated prices. The change in these prices relative to CPI, and the reasons for the change, provide the Commission with

[35] That is, the Commission's statutory objectives under the ESC Act.

useful insight into the success or otherwise of the current form of price control.

- ***Negotiated outcomes*** - under the negotiate-arbitrate framework underpinning the regimes, ports users are also encouraged to engage in commercial negotiations with ports operators over prices and service standards. In deciding if the current price regime has helped or hindered effective price regulation, the Commission intends to explore the process behind the negotiation of contracts, and in particular, changes and additions to the contracts since the last review.

- ***Annual Profitability*** - an indication of whether or not the current form of regulation is appropriate is the level of profitability of the regulated operator. Increasing returns may be indicative of monopoly rents, although high returns can equally be due to seasonal effects or increasing efficiency – a desirable outcome of incentive regulation. In any case, the level of annual returns and its underlying cause should be assessed by the Commission.

- ***Compliance Cost*** - the cost of complying must be less than the benefit gained from regulation. This principle is at the core of the Commission's decision to use a 'light- handed' form of regulation. The main data gathered from Flinders Ports are the annual financial statements. The main requirement imposed on Flinders Ports is to publish the price list on its web site. The Commission is keen to receive some feedback on whether or not the compliance cost imposed is reasonable.

- ***Number of disputes*** - an indicator of the effectiveness of the current form of regulation is a low and reduced number of access and pricing related disputes between the regulated operator and its users. The reducing number of reported disputes may also be due to reasons other than a good regulatory regime. The Commission invites respondents, and in particular the users, to provide feedback on issues or difficulties they may have faced in commercial negotiations.

- ***Number of access seekers*** - an increasing number of access seekers could be used as another indicator of a regulatory regime that is effective in protecting the interests of ports users. The Commission invites comments on whether or not this measure is relevant in determining the effectiveness, or otherwise, of the current form of regulation.

These outcome measures would provide guidance to the Commission on whether or not changes to the current form of regulation are required, and if so, to what extent, i.e. does the form of regulation require some 'fine-tuning' or does it require major changes to address any problems identified.

The Commission invites comments on the issues addressed above, and any other issues that stakeholders consider necessary for the Commission to address in deciding on the most appropriate form of price regulation that should apply for the next regulatory period.

7 NEXT STEPS

The Commission welcomes any comments on the issues raised in this paper or on any other matters in relation to the ports pricing and access regimes that stakeholders believe the Commission should consider in this Review. As noted, The Commission will undertake a detailed ports price benchmarking study as part of this Review.

The Commission has set out an indicative timetable for the Review in Chapter 2 of this paper. Comments in response to the Issues Paper are to be provided to the Commission by 23 March 2012.

The Commission will consider all comments received and will prepare a Draft Report for further public consultation in May 2012 before a Final Report and Price Determination is released in September 2012.

APPENDIX 1: OPERATION OF THE PORTS ACCESS REGIME

The access regime set out in Part 3 of the MSA Act operates under a negotiate-arbitrate framework. The regime is summarised as follows:

Basis of access (Division 2)

Access is to occur on fair commercial terms, which covers both the price and non-price arrangements for the use of Regulated Services. This means that a regulated operator (port operator) is to provide Regulated Services on terms:

- agreed to between the regulated operator and the customer; or
- as determined by arbitration.

Where the price of a Regulated Service is already regulated under an ESC Act price determination, then that price is to be regarded as a fair commercial term. This covers those Regulated Services that are also Essential Maritime Services. However, under price monitoring of Essential Maritime Services, this link does not have any effect as the Commission is not regulating those prices (under price monitoring the Commission will only be regulating conditions relating to prices).

Negotiation of access (Division 3)

Division 3 sets out the information that a regulated operator must provide to a person that is considering seeking an access request.

It also requires an access seeker to make a written proposal to the regulated operator setting out its proposed terms and conditions for the provision of the maritime service.

Once the proposal (or amended proposal) is lodged, the regulated operator has one month to:

- give written notice of the proposal to the Commission;
- give written notice to any other person whose rights would be affected by the proposal (an affected third party);
- advise the proponent of the name and address of any affected third party; and
- advise the proponent of its preliminary response to the proposal, including whether:
  - it would be prepared to provide the services, and on what terms and conditions; and

- any facilities changes required and the acceptability and terms and conditions of those changes.

If an affected third party indicates its interest in the negotiations, it becomes an interested third party. At this stage, the preference is for the parties to use the information available to reach a commercial agreement. The parties must negotiate in good faith on the basis that the proponent's reasonable requirements are to be accommodated as far as practicable. However, if no agreement is reached within 30 days of the proposal being lodged, then a Dispute exists, and thereafter any party may refer the Dispute to the Commission.

Conciliation (Division 4)

Conciliation is the first stage of direct intervention. When a Dispute is referred to the Commission, it must first seek to resolve it by conciliation, unless, in the Commission's view:

- the subject matter is trivial, misconceived or lacking in substance; or
- the parties have not negotiated in good faith.

The Commission may choose to call voluntary or compulsory conferences.

Reference of Dispute to Arbitration (Division 5)

If conciliation fails, or if the Commission decides it is unlikely to succeed, or, in any event if the dispute is not resolved within 6 months after the referral of the dispute to the Commission under Division 4, the Commission may refer the Dispute to arbitration, unless, in the Commission's view:

- the subject matter is trivial, misconceived or lacking in substance;
- the parties have not negotiated in good faith; or
- there are other good reasons why it should not.

The Commission will select the arbitrator after consultation with the various parties. The Commission may elect to act as the arbitrator. The *Commercial Arbitration Act 1986* applies to a ports access arbitration, to the extent that it may operate consistently with the MSA Act.

Parties to Arbitration (Division 6)

The parties to an arbitration are the proponent, the regulated operator and any interested third parties. The arbitrator may also join additional parties whose interests are materially affected. Parties may elect to be represented by a lawyer, or another representative if the arbitrator so permits. The Commission may also participate in an arbitration, calling evidence and making representations on the matters in the arbitration.

Conduct of Arbitration (Division 7)

The arbitrator is obliged to act expeditiously, meaning that the process should be as quick as possible given the need to conduct the arbitration properly. The MSA Act provides a range of powers for the arbitrator to make the collection of evidence quick and relevant, leaving out or altering some procedural strictures that are unnecessary for an access arbitration. For example:

- the power to obtain information in writing, by telephone, video link or measures other than oral evidence;
- the power to sit at any time or place; and
- the power to refer a matter to an expert for report, and accept the expert's report in evidence.

The arbitrator may also conduct two or more arbitrations on related matters together. This might arise where the access proposal involves services from more than one regulated operator.

The arbitrator has various powers to obtain information relevant to the arbitration from any party to the arbitration or from other people. Any information collected can be kept confidential in whole or in part. Confidentiality must be requested and will be determined by the arbitrator.

Proceedings must be conducted in private unless all parties agree to public proceedings. To ensure the maintenance of commercial confidentiality, the arbitrator is entitled to determine who should attend any private hearing.

While the proceedings may be private, the arbitrator may publish the outcome of an arbitration if they consider it to be in the public interest. The arbitrator may engage a lawyer for advice on conduct and drafting an award. A proponent may elect to terminate an arbitration at any time before an outcome – terminating the Dispute and withdrawing the proposal. An early withdrawal does not preclude the proponent from pursuing a similar proposal at another time.

The arbitrator may also elect to terminate an arbitration if, in the arbitrator's view:

- the subject matter is trivial, misconceived or lacking in substance;
- the proponent has not engaged in negotiation in good faith; or
- an existing contract or award should apply.

The Commission can make representations on a termination.

Awards (Division 8)

The outcome of an arbitration is known as an Award, which must be made within the period of 6 months from the date on which the dispute is referred to arbitration. An Award contains the terms and conditions upon which access may occur. It should take into account:

- the regulated operator's legitimate business interest and investment in the port or port facilities;
- the costs to the operator of providing the service (including the costs of any necessary modification to, or extension of, a port facility) but not costs associated with losses arising from increased competition in upstream or downstream markets;
- the economic value to the operator of any additional investment that the proponent or the operator has agreed to undertake;
- the interests of all parties holding contracts for use of any relevant port facility;
- firm and binding contractual obligations of the operator or other persons (or both) already using any relevant port facility;
- the operational and technical requirements necessary for the safe and reliable provision of the service;
- the economically efficient operation of any relevant port facility; and
- the benefit to the public from having competitive markets.

An Award must:

- be in writing;
- set out its reasoning; and
- specify the period for which it remains in force.

Once an Award is made, the arbitrator must give a copy to each party and the Commission. An Award may affect the existing legal rights of other port facility customers. This is allowable so long as those customers' needs can continue to be met or they are compensated. The parties to an Award may change it by agreement between all the parties to the Award. A variation could include terms and conditions, or may extend its duration.

A proponent may choose to withdraw from an Award up to seven days after its making (or longer if the Commission so permits), by notice in writing to the Commission. In this case the Commission must notify the regulated operator and other parties within seven days. However, if a proponent chooses this course, then

they are precluded from making a similar proposal for two years from the date of notice – unless the regulated operator or the Commission agrees.

Enforcement of Awards (Division 9)

An Award is binding on the parties to it in the same way as a contract. As a result, the parties to an Award may seek injunctive remedies and compensation through the Supreme Court.

Appeals and Costs (Division 10)

There is provision for appeal to the Supreme Court in respect of an Award (or a decision to not make an Award) on questions of law only. The Supreme Court may:

- vary the Award or decision;
- revoke the Award or decision;
- make an Award or decision that should have been made;
- remit the matter to the arbitrator for further or re-consideration; and
- make incidental and ancillary orders.

The costs of an arbitration are to be borne by the parties either:

- in proportions decided by the arbitrator (for example if one party had not negotiated in good faith, the arbitrator may award costs against that party); or in the absence of that
- in equal proportions.

If a proponent terminates an arbitration or withdraws from an Award, they are liable for all costs. The arbitrator will decide how to define costs – it could include a party's internal costs.

APPENDIX 2: PUBLISHED PRICES FOR PORTS SERVICES 2008/09 – 2011/12

Cargo Services Charges (Ex GST)	2011/12		2010/11		2009/10		2008/09	
	(CPI 3.63%)		(CPI 2.6%)		(CPI 2.3%)		(CPI 4.48%)	
		% change from prev. yr.		% change from prev. yr.		% change from prev. yr.		% change from prev. yr.
Bulk Cargo								
Salt ($/tonne)	$ 1.54	3.36%	$ 1.49	2.76%	$ 1.45	3.57%	$ 1.40	4.48%
Gypsum ($/tonne)	$ 1.54	3.36%	$ 1.49	2.76%	$ 1.45	3.57%	$ 1.40	4.48%
Limestone ($/tonne)	$ 1.54	3.36%	$ 1.49	2.76%	$ 1.45	3.57%	$ 1.40	4.48%
Dolomite ($/tonne)	-	-	-	-	-	-	$ 1.40	4.48%
Grain ($/tonne)	$ 1.90	3.83%	$ 1.83	2.81%	$ 1.78	3.49%	$ 1.72	4.24%
Flour ($/tonne)	$ 2.01	3.61%	$ 1.94	2.65%	$ 1.89	3.28%	$ 1.83	4.57%
Liquids ($/Kilolitre)	$ 5.19	3.59%	$ 5.01	2.66%	$ 4.88	3.39%	$ 4.72	4.42%
All other products ($/tonne)	$ 3.74	3.60%	$ 3.61	2.56%	$ 3.52	3.23%	$ 3.41	4.60%
Other Non-Containerised Cargo								
Live sheep ($/head)	$ 0.2915	3.59%	$ 0.2814	2.59%	$ 0.2743	3.31%	$ 0.2655	4.49%
Live goats ($/head)	$ 0.2915	3.59%	$ 0.2814	2.59%	$ 0.2743	3.31%	$ 0.2655	4.49%
Live Cattle ($/head)	$ 2.03	3.57%	$ 1.96	2.62%	$ 1.91	3.24%	$ 1.85	4.52%
Bagged Grain/Flour ($/tonne)	$ 2.01	3.61%	$ 1.94	2.65%	$ 1.89	3.28%	$ 1.83	4.57%
All other products ($/tonne or cubic metre, whichever is the greater)	$ 3.74	3.60%	$ 3.61	2.56%	$ 3.52	3.23%	$ 3.41	4.60%
Motor Vehicles Completely Built								
Volume <10m3 ($/unit)	$ 23.97	3.59%	$ 23.14	2.62%	$ 22.55	3.30%	$ 21.83	4.50%
Volume 10m3 < 15m3 ($/unit)	$ 34.61	3.59%	$ 33.41	2.61%	$ 32.56	3.30%	$ 31.52	4.51%
Volume > 15m3 ($/unit)	$ 55.90	3.60%	$ 53.96	2.61%	$ 52.59	3.30%	$ 50.91	4.50%
Containerised Cargo								
20' Container ($/unit)	$ 70.70	3.51%	$ 68.30	2.55%	$ 66.60	3.32%	$ 64.46	10.26%
40' Container ($/unit)	$ 129.80	3.59%	$ 125.30	2.62%	$ 122.10	3.28%	$ 118.22	11.30%
Channel Levy (Ex GST)								
Levies apply to Port Adelaide only								
Grain Levy Port Adelaide ($/tonne)	$ 0.4043	2.59%	$ 0.3941	2.50%	$ 0.3845	4.20%	$ 0.3690	2.50%
Grain Levy Port Adelaide (applicable from 1 January)	$ 0.4189	3.61%	$ 0.4043	2.59%	$ 0.3941	2.50%	$ 0.3845	-
20' Container Levy ($/unit)	$ 5.80	3.57%	$ 5.60	1.82%	$ 5.50	3.09%	$ 5.34	6.70%
40' Container Levy ($/unit)	$ 11.60	3.57%	$ 11.20	1.82%	$ 11.00	3.09%	$ 10.67	6.70%

Harbour Service Charges (Ex GST)	2011/12		2010/11		2009/10		2008/09	
	(CPI 3.63%)		(CPI 2.6%)		(CPI 2.3%)		(CPI 4.48%)	
		% change from prev. yr.		% change from prev. yr.		% change from prev. yr.		% change from prev. yr.
Port Adelaide (includes mooring)								
Base charge ($ per ship visit)	$ 3,427.33	3.60%	$ 3,308.23	2.60%	$ 3,224.40	2.30%	$ 3,151.91	4.50%
Variable charge ($ per gross registered tonne ("GRT") per hour)	$ 0.0056	3.70%	$ 0.0054	1.89%	$ 0.0053	1.92%	$ 0.0052	4.00%
Other Ports (includes mooring)								
Base charge ($ per ship visit)	$ 2,946.19	3.60%	$ 2,843.81	2.60%	$ 2,771.74	2.30%	$ 2,709.42	4.50%
Variable charge ($ per GRT per hour)	$ 0.0054	3.85%	$ 0.0052	1.96%	$ 0.0051	2.00%	$ 0.0050	4.17%
State Trader (all Proclaimed Ports)								
>40 GRT and <50 GRT	$ 101.77	3.60%	$ 98.23	2.60%	$ 95.74	2.30%	$ 93.59	4.50%
>50 GRT and <100 GRT	$ 160.95	3.60%	$ 155.36	2.60%	$ 151.42	2.30%	$ 148.02	4.50%
>100 GRT and <200 GRT	$ 245.77	3.60%	$ 237.23	2.60%	$ 231.22	2.30%	$ 226.02	4.50%
>200 GRT and <500 GRT (Base charge)	$ 245.77	3.60%	$ 237.23	2.16%	$ 232.22	2.74%	$ 226.02	4.50%
Variable charge ($ per GRT)	$ 0.7085	3.60%	$ 0.6839	2.60%	$ 0.6666	2.30%	$ 0.6516	4.51%
>500 GRT and <1000 GRT (Base charge)	$ 465.21	3.60%	$ 449.04	2.60%	$ 437.66	2.30%	$ 427.82	4.50%
Variable charge ($ per GRT)	$ 3.7100	3.63%	$ 3.5800	2.58%	$ 3.4900	2.35%	$ 3.4100	4.60%
>1000 GRT ($ per GRT)	$ 7.00	3.55%	$ 6.76	2.58%	$ 6.59	2.33%	$ 6.44	4.55%
Fishing Vessels								
<40 GRT	$ 135.20	-	-	-		-	-	-
>40 GRT and <50 GRT	$ 152.37	3.60%	$ 147.08	2.60%	$ 143.35	2.30%	$ 140.13	4.50%
>50 GRT and <100 GRT	$ 240.85	3.60%	$ 232.48	2.60%	$ 226.59	2.30%	$ 221.50	4.50%
>100 GRT and <200 GRT	$ 367.90	3.60%	$ 355.12	2.60%	$ 346.12	2.30%	$ 338.34	4.50%
>200 GRT and <500 GRT (Base charge)	$ 367.90	3.60%	$ 355.12	2.60%	$ 346.12	2.30%	$ 338.34	4.50%
Variable charge ($ per GRT)	$ 1.0600	3.92%	$ 1.0200	2.48%	$ 0.9953	2.30%	$ 0.9729	4.50%
>500 GRT and <1000 GRT (Base charge)	$ 696.41	3.60%	$ 672.21	2.60%	$ 655.18	2.30%	$ 640.45	4.50%
Variable charge ($ per GRT)	$ 5.4100	3.64%	$ 5.2200	2.55%	$ 5.0900	2.21%	$ 4.9800	4.40%
>1000 GRT ($ per GRT)	$ 10.45	3.57%	$ 10.09	2.64%	$ 9.83	2.29%	$ 9.61	4.46%
Port Lincoln Fishing Industry Facilities (Levies apply to Port Lincoln only)								
<50 GRT (quarterly charge)	$ 410.04	2.80%	$ 398.87	1.30%	$ 393.75	5.00%	$ 375.00	-
>50 GRT and <100 GRT (quarterly charge)	$ 546.72	2.80%	$ 531.83	1.30%	$ 525.00	5.00%	$ 500.00	-
>100 GRT and <200 GRT (quarterly charge)	$ 820.08	2.80%	$ 797.74	1.30%	$ 787.50	5.00%	$ 750.00	-
>200 GRT and <500 GRT (quarterly charge)	$ 1,093.43	2.80%	$ 1,063.65	1.30%	$ 1,050.00	5.00%	$ 1,000.00	-
>500 GRT and <1000 GRT (quarterly charge)	$ 1,366.79	2.80%	$ 1,329.56	1.30%	$ 1,312.50	5.00%	$ 1,250.00	-
>1000 GRT (quarterly charge)	$ 2,733.59	2.80%	$ 2,659.13	1.30%	$ 2,625.00	5.00%	$ 2,500.00	-

Navigation Service Charges (Ex GST)	2011/12		2010/11		2009/10		2008/09	
	(CPI 3.63%)		(CPI 2.6%)		(CPI 2.3%)		(CPI 4.48%)	
		% change from prev. yr.		% change from prev. yr.		% change from prev. yr.		% change from prev. yr.
1st Visit (All Proclaimed Ports)								
Base charge ($ per ship visit)	$ 1,094.12	3.60%	$ 1,056.10	2.60%	$ 1,029.34	2.30%	$ 1,006.20	4.50%
Variable charge ($ per GRT per visit)	$ 0.1208	3.60%	$ 0.1166	2.64%	$ 0.1136	2.34%	$ 0.1110	4.52%
2nd Visit (All Proclaimed Ports)								
Base charge ($ per ship visit)	$ 820.59	3.60%	$ 792.08	2.60%	$ 772.01	2.30%	$ 754.65	4.50%
Variable charge ($ per GRT per visit)	$ 0.0906	3.54%	$ 0.0875	2.70%	$ 0.0852	2.28%	$ 0.0833	4.52%
3rd Visit (All Proclaimed Ports)								
Base charge ($ per ship visit)	$ 547.06	3.60%	$ 528.05	2.60%	$ 514.67	2.30%	$ 503.10	4.50%
Variable charge ($ per GRT per visit)	$ 0.0604	3.60%	$ 0.0583	2.64%	$ 0.0568	2.34%	$ 0.0555	4.52%
4th Visit (All Proclaimed Ports)								
Base charge ($ per ship visit)	$ 273.53	3.60%	$ 264.03	2.60%	$ 257.34	2.30%	$ 251.55	4.50%
Variable charge ($ per GRT per visit)	$ 0.0302	3.42%	$ 0.0292	2.82%	$ 0.0284	2.16%	$ 0.0278	4.51%
Frequent Caller								
Base charge	$ 2,516.45	3.60%	$ 2,429.01	2.60%	$ 2,367.46	2.30%	$ 2,314.23	4.50%
Variable charge ($ per GRT per visit)	$ 0.2774	3.58%	$ 0.2678	2.61%	$ 0.2610	2.31%	$ 0.2551	4.51%
State Trader								
Charge ($ per GRT per visit)	$ 0.4012	3.59%	$ 0.3873	2.60%	$ 0.3775	2.30%	$ 0.3690	4.50%

Pilotage Charges (Ex GST)	2011/12		2010/11		2009/10		2008/09	
	(CPI 3.63%)		(CPI 2.6%)		(CPI 2.3%)		(CPI 4.48%)	
		% change from prev. yr.		% change from prev. yr.		% change from prev. yr.		% change from prev. yr.
All Ports								
A	$ 2,511.21	5.90%	$ 2,371.30	3.50%	$ 2,291.11	2.30%	$ 2,239.60	10.00%
B	$ 1,619.73	5.90%	$ 1,529.49	3.50%	$ 1,477.77	2.30%	$ 1,444.54	10.00%
C	$ 1,349.77	5.90%	$ 1,274.57	3.50%	$ 1,231.47	2.30%	$ 1,203.79	10.00%

Pilotage Charges Movement details:

A - Boarding Station or Anchorage to or from Berth

B - Boarding Station to or from Anchorage

C - Removal from one Berth to another in a harbor and warping by Pilot