2012 PORTS PRICING AND ACCESS REVIEW

FINAL REPORT

OCTOBER 2012

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GLOSSARY OF TERMS

2007 REVIEW	2007 Ports Pricing and Access Review
ACCC	Australian Competition and Consumer Commission
ASCIANO	Asciano Limited
CCA	*Competition and Consumer Act 2010*
CIRA	Competition and Infrastructure Reform Agreement
COMMISSION	Essential Services Commission of South Australia
CPI	Consumer Price Index
ESC ACT	*Essential Services Commission Act 2002*
ESSENTIAL MARITIME SERVICES	Services defined under section 4 of the MSA Act and subject to price regulation
FLINDERS PORTS	Flinders Ports Pty Ltd
GHD	GHD Pty Ltd
GUIDELINE NO. 1	The Commission's *Ports Industry Guideline* No. 1 "Access Price Information"
GUIDELINE NO. 2	The Commission's *Ports Industry Guideline No. 2 "Regulatory Accounts"*
MEYRICK AND ASSOCIATES	Meyrick Consulting Group Pty Ltd
MSA ACT	*Maritime Services (Access) Act 2002*
REGULATED SERVICES	Services defined by proclamation under section 4 of the MSA Act and subject to access regulation
REVIEW	2012 Ports Pricing and Access Review
ROA ACT	*Railways (Operations and Access) Act 1997*
RS ACT	*Rail Safety Act 2007*
SAL	Shipping Australia Limited
TEU	Twenty-foot Equivalent
VITERRA	Viterra Operations Limited

EXECUTIVE SUMMARY

The Essential Services Commission of South Australia (**Commission**) has finalised its 2012 Ports Pricing and Access Review (**Review**) in accordance with the requirements of the *Essential Services Commission Act 2002* (**ESC Act)** and the *Maritime Services (Access) Act 2000* (**MSA Act**). In conjunction with the Review, the Commission also completed an Inquiry, pursuant to section 34 of the ESC Act, into areas where the ports pricing and access regimes may be generally improved.

The Review and Inquiry have concluded that:

- price regulation of Essential Maritime Services should continue beyond 30 October 2012 for a further five-year regulatory period. The Commission recommends the continuation of a price monitoring form of regulation; and
- the ports access regime should continue beyond 30 October 2012 for a further five-year regulatory period in its current form.

Ports Price Review

The Commission has concluded that although there is the potential for market power to be exercised by ports operators in respect to the pricing of Essential Maritime Services, there is no evidence to suggest that ports operators are exercising such market power. The Commission has reached this conclusion after having regard to the following:

- the regulatory accounts of Flinders Ports Pty Ltd (**Flinders Ports**) and Viterra Limited (**Viterra**), which indicate they have not been earning excessive profits;
- the ports price benchmarking study conducted by GHD Pty Ltd (**GHD**), which shows that the rate of increase in ports charges during the current regulatory period has not been any greater than at other ports. Whilst South Australian ports charges continue to be higher relative to other large capital city ports, there has been a substantial narrowing between ports charges at South Australian ports relative to other Australian ports (from 17% higher than average non-SA port prices in 2006 to 1% higher in 2012);
- price movements of maritime services subject to price regulation over the current regulatory period have generally reflected Consumer Price Index (**CPI**)[1] increases except where special circumstances exist; and

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

- commercial information provided by Flinders Ports as well as the absence of any disputes. The information indicates that negotiations over ports charges have been occurring over the current regulatory period and that ports users have been successful in achieving pricing outcomes that are below the listed price schedule.

In light of the above, the Commission concluded that the current form of price regulation (price monitoring) is appropriate and should be maintained for a further five-year regulatory period on the basis that it produces the greatest net benefit compared with all other price regulation options. Submissions to the Commission's Draft Report generally supported this proposal.

To give effect to this conclusion, in conjunction with the release of this Final Report, the Commission has released a Final Price Determination to enable the existing ports price monitoring arrangements to continue from 31 October 2012 up to and including 30 October 2017. This price determination will replace the 2010 Ports (Variation) Price Determination, which expires on 30 October 2012.

Ports Access Review and Inquiry

Since many of the maritime services subject to price regulation are also subject to access regulation, the Commission similarly concluded that the access regime should continue for a further five-year regulatory period.

In relation to those services that fall within the access regime but are not price regulated (the provision of pilotage, bulk loading facilities and land), the Commission has also concluded that access regulation should continue. In order for access regulation to continue for a further five-year regulatory period, the South Australian Government must make a Regulation to extend the period of its operation prior to 30 October 2012.

With respect to the Inquiry on areas where the effectiveness of the access regime could be improved, the Commission has concluded that:

- while submissions to the Inquiry have suggested that the access regime should be extended to cover certain other services, such as non-grain at-port storage and intermodal services, the Commission has found no evidence to suggest that additional coverage to the access regime is warranted;

- the negotiation and information framework set out in Part 3 of the MSA Act and the Ports Industry Guideline 1: Access Price Information (**Guideline No. 1**) are adequate for facilitating access. Further, should commercial negotiations fail, the conciliation-arbitration process set out in Part 3 is sufficient for resolving access disputes; and

- no persuasive arguments for the introduction of a more intrusive form of ring-fencing arrangement going forward have been presented to the Commission.

Given the evidence received by the Commission in respect of the successful negotiation of access and the general support from stakeholders for the continuation of the existing regime, the Commission has concluded that the existing access regulatory framework (i.e. a negotiate-arbitrate framework) should continue for a further five-year regulatory period in its current form.

The continuation of the negotiate-arbitrate framework would allow third parties to engage in commercial negotiations with ports operators whilst also providing them with the safety net of an arbitration process, in the form set out in the MSA Act, should commercial negotiations fail.

The Commission also reiterates its recommendation for the South Australian Government to consider undertaking a broad review of the South Australian grain supply chain on the basis that it would allow for the specific circumstances of the grain industry to be appropriately considered and scrutinised. The Commission's Inquiry is necessarily limited to at-port services and many of the services envisaged as part of the broad review extend well beyond the port boundary.

1 INTRODUCTION

The Commission is the economic regulator of proclaimed ports in South Australia. Under the ports pricing and access regimes established under the MSA Act, the Commission regulates certain maritime services.

Pursuant to the MSA Act, the Commission is responsible for the regulation of pricing and access at proclaimed ports. The ports pricing and access regimes covers the following six commercial ports in South Australia[2], which are currently operated by Flinders Ports, namely:

- Port Adelaide;
- Port Giles;
- Wallaroo;
- Port Pirie;
- Port Lincoln; and
- Thevenard.

Whilst all of these ports are operated by Flinders Ports, some regulated services (i.e. bulk loader services) are provided by Viterra.

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 Review was conducted to meet this requirement.

The Review has considered the following questions:

- Should the ports access regime continue for a further five-year period from 31 October 2012?; 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 conjunction with the Review, the Commission has also conducted an Inquiry, pursuant to section 34 of the ESC Act, into areas where the ports pricing and access regimes could be generally improved, in terms of whether other activities or industries should be brought within their scope.

[2] 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.

1.1 Services Subject to Regulation

There are currently two sets of ports maritime services subjected to regulation; Essential Maritime Services and Regulated Services.

1.1.1 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.

There are differences between the types of services subject to price regulation across Australian ports. 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 the operator 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.

1.1.2 *Regulated Services*

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

- channels;
- common user berths;
- bulk handling facilities 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);
- 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 another maritime service to be a Regulated Service and be subject to the ports access regime.

1.2 Criteria for Determining the Continuation of Access and Price Regulation

The Commission's primary objective is to protect South Australian consumers' long-term interests with respect to price, quality and reliability of essential services. This objective guides all of the Commission's work, and is central to this Review.

In addition, both the ESC Act and MSA Act set out also a number of other objectives and factors that the Commission must or may have regard to in determining whether or not continued price and access regulation is necessary.

Based on a distillation of those objectives and factors, the Commission has used the following assessment criteria to undertake this Review. Submissions to the Review process did not raise any concerns with the assessment criteria.

The assessment criteria are:

1. Is there the potential for ports operators to exercise 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.

2. Is there any evidence of misuse of market power by ports operators

Where there is evidence that a port operator has misused market power (e.g. extracting monopoly rents), regulation is necessary to constrain the misuse of market power and promote 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.

3. Is there a net benefit to price regulation?

In a regulatory context, regulation should only be imposed where it can be shown 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 has determined 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.

4. Other factors

The Commission has also had regard to 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.

1.3 Review and Inquiry Process

The Review and Inquiry commenced in February 2012 with the release of an Issues Paper for public consultation.[3] The Issues Paper set out the Commission's key questions in relation to the need for continued price and access regulation, and key issues identified by the Commission that may be of relevance to the Review for comment by stakeholders.

[3] The Commission's 2012 Ports Pricing and Access Review – Issues Paper is available at the Commission's website at: http://www.escosa.sa.gov.au/Publications/DownloadPublication.aspx?id=2117&versionId=2207.

The Commission received eleven submissions[4] to the Issues Paper from the following parties[5]:

- Asciano Limited;
- Flinders Ports Pty Ltd;
- Grain Producers SA;
- Professor Malcolm Tull (Dean, Murdoch Business School) and Mr. Joel Meehan;
- Select Committee on the Grain Handling Industry;
- Shipping Australia Limited;
- The South Australian Government; and
- Viterra Limited.

Following the consideration of these submissions, the Commission released its Draft Report on the Review and Inquiry in June 2012. The Commission received seven submissions[6] to the Draft Report from the following parties[7]:

- Asciano Limited;
- Flinders Ports;
- Select Committee on the Grain Handling Industry;
- Shipping Australia Limited;
- South Australian Freight Council; and
- Viterra Limited.

The Commission's approach in respect of the Review and the Inquiry relied substantially on the expectations and experiences of stakeholders with the current ports pricing and access regimes. Submissions were therefore considered to be particularly important to the Review.

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[4] This total includes three supplementary submissions received from Flinders Ports, Asciano and Viterra. The supplementary submissions provided comments on submissions made by other parties.

[5] Submissions received in response to the 2012 Ports Pricing and Access Review – Issues Paper are available at the Commission's website at: http://www.escosa.sa.gov.au/projects/172/2012-ports-pricing-and-access-review.aspx#stage-list=1.

[6] This total includes one supplementary submission received from Asciano commenting on new information provided by Flinders Ports in relation to the rail siding at Inner Harbour Berth 29.

[7] Submissions received in response to the 2012 Ports Pricing and Access Review – Draft Report are available at the Commission's website at: http://www.escosa.sa.gov.au/projects/172/2012-ports-pricing-and-access-review.aspx#stage-list=4.

The Commission appreciates the contributions made by stakeholders making submissions throughout the Review and Inquiry process and acknowledges the valuable input that the submissions have provided into the preparation of this Final Report.

Many of the Commission's decisions in this Final Report involve consideration of both confidential and non-confidential information provided by stakeholders. In order to maintain the confidentiality of particular information, this Final Report does not contain any confidential information. Nevertheless, the Commission has attempted to provide an appropriately detailed summary of the relevant issues and its analysis of such issues.

The following chapters of this Final Report set out the Commission's statement of reasons for the making of its Ports Price Determination, its conclusion that the current access regime should continue for a further five-year regulatory period and its findings with respect to the Inquiry it has undertaken.

2 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.[8] As part of the 2007 Ports Pricing and Access Review (**2007 Review**), the Commission also undertook an Inquiry into whether or not the access regime was consistent with certain principles agreed upon by the Council of Australian Government under the Competition Infrastructure Reform Agreement (**CIRA**).[9]

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

2.1 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 by the Governor to enable the regime to continue.

In recommending that the access regime continue beyond 2007, 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 regulation should continue The Commission found that services subject to the access regime generally exhibited natural monopoly characteristics. Despite the fact that market power existed, the Commission was not presented with evidence of the misuse of market power in the provision of Regulated Services during its 2007 Review.

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

[9] 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.

The Commission's 2007 Review also focused on two potential issues that the Commission considered might have impacted on the regime in the near future. Firstly, 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 regime than for its expiry. Secondly, 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.

In conjunction with the Commission's 2007 Review, a separate Inquiry was also undertaken by the Commission into the consistency between the access regime and clause 2 of CIRA. 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 all but one of the Commission's recommendations. The only recommendation not adopted by the South Australian Government was for the introduction of an "advice and directions" provision into the MSA Act.

The Commission also concluded in its 2007 Review that there was a prima facie case for regulating access to at-ports 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 South Australian Government, having regard to the whole of the grain supply chain. The ports access regime is limited to at-ports services and many of the services envisaged here extend well beyond the port boundary.

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

2.2 2007 Ports Price Review

The Commission's 2007 Review concluded that the ports price regulation 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 or not the access regime should continue.

The Commission found that, despite ports operators having the potential to exercise market power, there was no clear evidence presented to it that such power had been misused. The Commission reached this conclusion 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 ports charges;
- increases of Essential Maritime Services charges throughout the regulatory period, which indicated that port charges had generally moved in line with changes in CPI; and
- benchmarking of ports charges conducted by Meyrick Consulting Group Pty Ltd (**Meyrick and Associates**)[10] on behalf of the Commission, which showed that although ports charges 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 by the Commission in relation to access aspects of the 2007 Review, the Commission's major area of concern in respect of the pricing regime was in relation to grain exports, where Flinders Ports faced no direct competition in the provision of ports services used in the export of grain produced on the Eyre Peninsula.

The Commission concluded that the 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 charges in the subsequent regulatory period.

A new Ports Price Determination was subsequently made in October 2007 to allow the ports price regulation regime to continue. A subsequent Ports (Variation) Price Determination was made in September 2010 to reflect amendments to the MSA Act made by the South Australian Parliament.

[10] Meyrick and Associates was acquired by GHD in 2008.

2.3 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 charges and service standards. To encourage commercial outcomes, there is the requirement for negotiations to be conducted in good faith and with open and transparent information exchange between parties.

The following sections set out the Commission's current thinking on the effectiveness of the existing regulatory regimes during the current regulatory period.

2.3.1 Ports Price Regime

Commencing with the 2008/09 regulatory year, the Commission implemented a new ports price monitoring approach whereby it began monitoring trends in Essential Maritime Services charges. Where price monitoring reveals that an Essential Maritime Services charge has increased by more than the change in CPI, the Commission requests 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, are discussed in annual ports price monitoring reports released by the Commission.

The Commission notes that, since the release of the Draft Report, Flinders Ports has published its 2012/13 ports price schedule which shows that prices have generally been increased in line with Adelaide's annual CPI figure of 1.8% except for Navigation Service and Pilotage charges, which have increased by 2.8% and 3.0% respectively.

With respect to the 1.0% real increase in Navigational Service charges, the Commission understands that this was applied to allow Flinders Ports to recover the cost incurred as a result of the introduction of a new Vessel Tracking System in the second half of 2012. The introduction of such a navigational tracking system is to improve both the overall efficiency and safety of navigational operations at the ports.

Assuming shipping levels remain constant, the Commission understands that the additional income generated from the 1.0% real increase in Navigational Service charges will only partly off-set the cost of implementing this new navigational system in the first year. Further increases may therefore be required until such time that both the implementation and ongoing costs are completely offset by increased income generated from the provision of navigational services.

With respect to the 1.2% real increase in Pilotage Service charges, the Commission understands that this increase solely reflects Fair Work Australia's approval of the new three-year Enterprise Bargaining Agreement agreed between Flinders Ports and maritime unions. This agreement requires Flinders Ports to apply an annual increase of 4% to the salary and wages of marine pilots and boat crew.

Based on the information provided by Flinders Ports, the Commission understands that a CPI increase was applied to the remaining cost components of Pilotage Services (i.e. fuel and vessel engine overhaul). The impact of these increases results in an overall cost increase which is higher than that applied by Flinders Ports to its Pilotage Service charges. A lower price increase was therefore applied to reflect the spread of the capital costs over a longer period.

The Commission understands that ports users were consulted prior to the latest increases in ports charges and that no specific concerns were raised. Similarly, no concerns have been raised with the Commission over these increases in ports charges during this Review.

As a general observation, cumulative increases in Essential Maritime Services charges have exceeded the cumulative increase in CPI by 2.2% during the current regulatory period. The largest real increase was experienced in 2008/09, where average Essential Maritime Services charges rose by around 1.3% in real terms. That increase was primarily driven by a 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.[11]

Table 2-1 shows the average real increase in Essential Maritime Services charges during the current regulatory period. A more detailed table showing movements in all published port charges from 2008/09 to 2012/13 is set out in Appendix B: Published Charges for Ports Services 2008/09 – 2012/13.

Table 2-1: 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%
2012/13	0.4%
Overall increase above CPI	**2.2%**

Source: The Commission's Annual Ports Price Monitoring Reports[12] and Flinders Ports

[11] ESCOSA, *2008 Ports Price Monitoring Review*, October 2008, p. 10 (refer http://www.escosa.sa.gov.au/library/081007-PortPriceMonitoring_2008-Report.pdf).

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

Similarly, the Commission observes that cumulative increases in Pilotage Service charges have exceeded the cumulative increase in CPI by 9.9% 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 covering both marine pilots and boat crews. Those agreements led to significant increases in pilotage wages. Costs associated with the salary and wages of pilots and boat crews make up a high proportion of the costs associated with the provision of Pilotage Services.

The Commission understands that the upward pressure on the salaries of pilots and boat crew in recent years is due to a combination of factors, including the shortage of specialised expertise in water navigation and ship handling within the South Australian labour market.

Table 2-2 shows the average real increase in Pilotage Services charges during the current regulatory period.

Table 2-2: 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%
2012/13	1.2%
Overall increase above CPI	**9.9%**

Source: The Commission's Annual Ports Price Monitoring Reports and Flinders Ports

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

The current approach of monitoring port charges against changes in CPI was adopted following the 2007 Review on the basis that it was simple to administer and price trend analysis is a standard practice used by both port operators and regulators. Nevertheless, the Commission recognises that there may be some limitations to this approach. For example, whilst CPI is a broad-based index encompassing the cost of living for metropolitan households in Australia, it may not adequately reflect the rate of increase in cost inputs that a port operator faces (e.g. wage costs).

To identify if there are any alternative approaches which would enable the Commission to monitor movements in port charges more effectively, the Commission sought comment from stakeholders as part of the Review on whether or not an alternative price monitoring approach should be implemented. The Commission received several submissions as part of the Review which commented on the adequacy of the current price monitoring approach.

The Commission understands that the key concern raised in submissions commenting on this matter relates to whether or not the current price monitoring approach provides sufficient incentives for a port operator to improve both efficiency and productivity. To the extent that the South Australian ports industry operates in isolation, it could be argued that the current approach does not adequately incentivise as it allows for CPI increases without improvements in efficiency and/or productivity.

Given that South Australian ports face considerable competition from both interstate and overseas ports, the Commission considers that this limits the potential for market power to be exercise in the pricing of ports services and provides incentives for South Australian ports operators to continuously improve on both efficiency and productivity to remain competitive relative to other ports.

Whilst the Commission recognises that there are some inherent limitations to the current approach of monitoring ports charges against movements in CPI, it believes that such limitations equally apply to other indices (e.g. not adequately reflecting the rate of increase in cost inputs that a ports operator faces). As noted in the GHD benchmarking study, there are also a number of other factors that drive pricing outcomes, with many of those factors being difficult to quantify and unrelated to questions of market power.

Therefore, in light of the above positions of the Commission and, in the absence of any persuasive arguments in favour of an alternative reference index should replace CPI, the Commission considers that the current approach of monitoring ports charges with reference to movements in CPI should continue. The Commission will continue to review its approach to reporting on key drivers underpinning movements in ports charges over the forthcoming regulatory period to ensure that meaningful conclusions can be drawn.

2.3.2 *Ports Access Regime*

As a general observation, the Commission has found no evidence that would suggest that market power in the provision of Regulated Services was exercised 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.

3 SHOULD PRICE REGULATION CONTINUE?

The South Australian ports pricing regime works on a five-yearly cycle. The MSA Act requires the Commission to review the regime a year prior to its expiry, to examine if there is an ongoing need for price regulation of certain ports services or should the regime expire on 31 October 2012.

In determining whether or not price regulation should continue, the Commission has assessed the current price regulatory regime against the assessment criteria set out in Chapter 1.

This Chapter describes the current ports price regime and sets out the Commission's final conclusions on the key questions: should price regulation for Essential Maritime Services continue for a further five-year regulatory period, and if so, what form of price regulation should be adopted?

3.1 Legal Framework for the 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 industries, within the meaning of the MSA Act.[13] 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's price regulation function in respect of Essential Maritime Services. 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 ports price determination (being 30 October 2012).

In the event that the Commission determines that the ports price regulation regime should continue, a new price determination must be made. In undertaking the Review and making such a determination, the Commission must comply with its statutory objectives as set out in the ESC Act and have regard to the objects of the MSA Act.

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

3.1.1 *Application of 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;*

(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.*

Furthermore, 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.*

3.1.2 *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.*

It is important to note that the objects provision of the MSA Act is essentially a statement of intent as to how the legislation 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.

3.2 Operation of the Ports Price Regime

The 2007 Ports Price Determination established a system of price monitoring for Essential Maritime Services, which is separate to, but complements the negotiate-arbitrate access framework. It allows a regulated port operator to adjust charges 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 within 10 days of any changes to those ports charges. The emphasis of this approach is on achieving a basic level of price transparency.

Whilst a regulated port operator can reach agreement with ports users for the provision of Essential Maritime Services at a price that is different to the published price, the port operator must inform, and give relevant details to, the Commission of any such agreements within 3 months after the end of the financial year in which the 2007 Ports Price Determination has effect.

Under the present price monitoring regime, the Commission also publishes annual ports price monitoring reports to provide information on ports charges, 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 CPI 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.

The Commission notes that it undertakes a detailed ports price benchmarking study as part of its five-yearly ports pricing and access reviews to inform itself of how prices have moved over the regulatory period and between different regulatory periods.

3.3 Summary of the Draft Report

The Commission's Draft Report set out its draft conclusions on whether or not price regulation should continue for a further five-year regulatory period. The conclusions reached were based on an examination of the assessment criteria set out in Chapter 1 and the consideration of submissions received in response to the Issues Paper. A summary of the Commission's draft conclusions are provided below.

3.3.1 *Is there the potential for ports operators to exercise market power?*

The Commission found that whilst there is little potential for the misuse of market power for containerised cargoes, there were some areas of concern. The Commission considered that possible developments in the South Australian resources industry, lack of credible alternatives for grain producers to using ports infrastructure owned by Flinders Ports on the Eyre Peninsula, and the absence of competitive entry within proclaimed ports[14], all gave rise to concerns over market power going forward.

The Commission therefore concluded that the structure for the market for Essential Maritime Services suggests that there is the potential for market power to exist

3.3.2 *Is there any evidence of misuse of market power by ports operators?*

Although the Commission concluded that there is the potential for ports operators to exercise market power, it found no evidence of such market power being exercised. The Commission reached this draft conclusion after having regard to the following:

- Flinders Ports' and Viterra's financial and operational information (i.e. return on assets, revenue, costs and ports activity data) which did not indicate that either were earning excessive profits, not were there any abnormal trends that were of concern to the Commission;
- the benchmarking of ports prices conducted by GHD Pty Ltd (**GHD**), which showed the rate of increase in ports charges during the current regulatory period not been any greater than at other ports. Whilst South Australian ports charges continued to be higher relative to other large capital city ports, there was a substantial narrowing between ports charges at South Australian ports relative to other Australian ports (from 17% higher than average non-SA port prices in 2006 to 1% higher in 2012)[15];

[14] Flinders Ports, the relevant ports operator, holds an exclusive Ports Operating Agreement with the Minister of Transport. This agreement gives Flinders Ports the exclusive right to provide, or manage the provision of, Essential Maritime Services across proclaimed ports in South Australia.

[15] The Commission understands that the narrowing between ports charges at South Australian ports relative to other Australian ports is due to several factors, including timing of investment decisions.

- price movements of Essential Maritime Services over the current regulatory period had generally reflected Consumer Price Index (**CPI**)[16] increases except where special circumstances exist. Where such circumstances existed, the Commission was satisfied that the price increase was justified by the increase in costs that Flinders Ports would incur in providing that service; and

- commercial information provided by Flinders Ports and the absence of any disputes. The information indicates that negotiations over ports charges were occurring over the current regulatory period and that ports users were successful in achieving pricing outcomes that were below the listed price schedule.

3.3.3 *Will price regulation produce a net benefit?*

Whilst there remains the potential for ports operators to exercise market power in the provision of Essential Maritime Services, the Commission found no evidence of such power being exercised. Accordingly, the Commission concluded that there was no justification for the introduction of a more heavy-handed form of price regulation than currently existed.

The Commission considered that the current form of light-handed price regulation (price monitoring) would produce the greatest net benefit compared to all other available options on the basis that it imposed minimal compliance costs and provided the desired level of transparency through the publication of a price list.

The Commission also raised the possibility of adopting an alternative approach to monitoring ports charges going forward, noting that there might be some limitations with the current approach of monitoring ports charges against movements in Adelaide's CPI (i.e. not reflective of the actual rate of increases in cost inputs incurred by a ports operator).

The Commission sought stakeholders' comment on whether or not an alternative ports price monitoring approach was necessary, and if so, requested stakeholders to provide information to substantiate their positions in submissions to the Draft Report.

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

3.4 Submissions to the Draft Report

Submissions to the Draft Report, which are summarised below, generally supported the continuation of price regulation of Essential Maritime Services for a further five-year regulatory period, and retaining price monitoring as the preferred form of price regulation.

With respect to the ongoing need for price regulation, both the Viterra[17] and South Australian Freight Council (**SAFC**)[18] submissions expressed support for the continuation of price regulation in the form of price monitoring. The Flinders Ports submission, however, commented that the outcomes achieved since the inception of price regulation (i.e. successful commercial negotiations), new port developments and the commercial maturity of the market all suggest that ongoing price regulation is not required.[19]

With respect to the need to adopt an alternative approach to monitoring ports charges, the SAFC submission noted that although it does not have a preference in terms of particular indices by which to monitor movements in ports charges, it believed that the Commission should undertake a thorough assessment of the appropriateness of the various indices available.[20] The Flinders Ports submission added that any alternative index needs to appropriately reflect the main cost components of operating a port (i.e. labour and materials).[21]

The Select Committee on the Grain Handling Industry submission also commented that monitoring ports charges with reference to movements in CPI does not encourage the continual improvement of operations to contain costs or search for efficiencies in order to retain a competitive position.[22]

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[17] Viterra, *Viterra's Submission to the 2012 Ports Pricing and Access Review – Draft Report*, 20 July 2012, p. 1 of unnumbered document.

[18] South Australian Freight Council, *South Australian Freight Council's Submission to the 2012 Ports Pricing and Access Review – Draft Report*, 20 July 2012, p. 1 of Attachment 1.

[19] Flinders Ports, *Flinders Ports' Submission to the 2012 Ports Pricing and Access Review – Draft Report*, 20 July 2012, p. 2 and 3.

[20] South Australian Freight Council, *South Australian Freight Council's Submission to the 2012 Ports Pricing and Access Review – Draft Report*, 20 July 2012, p. 2 of Attachment 1.

[21] Flinders Ports, *Flinders Ports' Submission to the 2012 Ports Pricing and Access Review – Draft Report*, 20 July 2012, p. 5.

[22] Select Committee on the Grain Handling Industry, *Select Committee's Submission to the 2012 Ports Pricing and Access Review – Draft Report,* 18 July 2012, p. 2.

3.5 Commission's Consideration

The Commission concurs with the view of Flinders Ports that new port developments may provide some level of competition and potentially provide an additional deterrent to the misuse of market power. However, the Commission is unable to properly assess the countervailing power of these alternatives as they have not yet commenced operations. The Commission therefore considers that such an assessment would be more relevant to the next regulatory review.

In the absence of any persuasive arguments in favour of alternative approaches that would constrain the potential for ports operators to exercise market power in the provision of Essential Maritime Services going forward, the Commission does not consider it justified to deviate from its stated position that the current price monitoring form of price regulation of Essential Maritime Services continue beyond 30 October 2012, for at least another five years.

Whilst the Commission recognises that there are some inherent limitations to the current approach of monitoring ports charges against movements in CPI, such limitations equally apply to other price indices. The Commission does not consider that there is an alternative index that is able to fully reflect changes in input costs faced by a ports operator. As noted, there are also a number of other factors that drive pricing outcomes, with many of those factors being difficult to quantify and unrelated to questions of market power.

In the absence of any superior price index to replace CPI at this point in time, the Commission's final conclusion is that the current approach of monitoring ports charges with reference to movements in CPI should continue. However, the Commission intends to undertake a review in the forthcoming regulatory period to explore in greater detail the possibility of using an alternative index.

The Commission will continue to review its approach to reporting on key drivers underpinning movements in ports charges over the forthcoming regulatory period to ensure that meaningful conclusions can be drawn. In addition, the Commission proposes to undertake another comprehensive ports price benchmarking study during the next five-year regulatory review, and may undertake it earlier should circumstances require it.

Final Report Conclusion

The Commission's final conclusion is to continue the current price monitoring form of price regulation for the forthcoming regulatory period. This will require ports operators to publish price lists and notify the Commission of any changes in ports charges. It will also allow the Commission to publish annual ports price monitoring reports.

4 SHOULD ACCESS REGULATION CONTINUE?

The South Australian ports access regime similarly works on a five-yearly cycle. The MSA Act requires the Commission to review the regime a year prior to its expiry, to examine if there is an ongoing need for access regulation or whether the regime should expire on 31 October 2012.

Consistent with the approach taken for the review of the price regulation regime, the Commission has assessed the current access regulatory regime against the criteria it set out in Chapter 1.

This Chapter sets out the Commission's conclusions in respect of whether or not continued access regulation is necessary.

4.1 Legal framework for the Review

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, however, 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 by the Governor in order for the regime to be extended accordingly.

In the event that the Commission recommends that ongoing access regulation is not necessary, and subsequently a regulation is not made, then the access regime will expire.

4.2 Operation of the Ports Access Regime

The framework for the South Australian ports access regime is summarised in Appendix A of this Final Report. 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 access regime has been certified as an effective state-based access regime pursuant to Part IIIA of the *Competition and Consumer Act 2010 (*Cth*)* (**CCA**)[23] for a period of ten years. 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 regime or be made subject to an access undertaking made by the Australian Competition and Consumer Commission (**ACCC**).

Any party wishing to gain access to one of these Regulated Services must submit its interest directly to the regulated operator (Flinders Ports or Viterra) who will manage the access request in accordance with the MSA Act.

4.3 Summary of the Draft Report

The Commission used the same assessment criteria set out in Chapter 1 of this Final Report to examine whether or not access regulation should continue.

For those services that are both Regulated Services and Essential Maritime Services, the Commission's consideration of the continuation of access and price regulation produced the same conclusion, given that it was based on the same assessment criteria. The Commission concluded that while there is the potential for the exercise of market power, it found no evidence of the actual misuse of such power by a ports operator.

Given the ongoing concerns over the potential for market power to be exercised in relation to grain services and mining developments, the Commission considered that access regulation should continue to play an important role in addressing those concerns by providing ports users with an additional safety net in the form of a formal dispute resolution process in addition to retaining price monitoring. The Commission also formed the view that there is an ongoing risk that Regulated Services could be subject to a declaration, pursuant to Part IIIA of the CCA, in the absence of access regulation under a certified state-based access regime.

The Commission's focus in the Draft Report therefore centered on whether or not it is appropriate to remove access regulation for Regulated Services that are not Essential Maritime Services, namely: pilotage, bulk loaders and access to land. The Commission's draft conclusions in respect to these three maritime services are summarised below.

[23] 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.

4.3.1 *Is there the potential for ports operators to exercise market power?*

The Commission concluded that the market structures for Regulated Services that are not Essential Maritime Services suggest that there is the potential for market power to exist. The Commission reached this conclusion after having regard to the following.

Pilotage Services

Given that Flinders Ports remains the dominant provider of such services at proclaimed ports in South Australia and there is limited scope for competitive entry, the Commission considered that there is the potential for Flinders Ports to exercise market power in providing Pilotage Services.

Bulk Loaders Services

The Commission considered that the seven bulk loaders operating at proclaimed ports in South Australia all display monopolistic characteristics and that Viterra is both the predominant provider of at-ports grain storage and handling at proclaimed ports in South Australia and a grain exporter in its own right.

The Commission therefore concluded that this sole integrated provider structure gives rise to the potential and incentive for market power to be exercised in the provision of bulk loading services.

Land

As access to land is clearly limited to land necessary to enable meaningful access to other Regulated Services, the Commission concluded that the same conclusions on questions of market power equally apply to access to land.

4.3.2 *Is there any evidence of misuse of market power by ports operators?*

Similar to conclusions reached in the Draft Report with respect to Essential Maritime Services, the Commission concluded that there was no evidence to suggest market power had been exercised by ports operators in the provision of Regulated Services that are not Essential Maritime Services over the current regulatory period. The Commission reached this conclusion after having regard to the following.

Pilotage Services

Whilst there was a real cumulative increase in Pilotage Services charges between 2008/09 and 2011/12 (8.7%), the Commission noted that its assessments of the information submitted by Flinders Ports to justify those real increases did not find any particular areas of concern or inconsistency.

The Commission also noted that the 2012 Ports Price Benchmarking Study undertaken by GHD revealed that South Australia's Pilotage Services charges continue to be in line with charges at comparable interstate ports.

In light of the above, and in the absence of any disputes around Pilotage Services charges over the current regulatory period, the Commission concluded that there was no evidence of misuse of market power in the provision of Pilotage Services.

Bulk Loaders Services

The Commission noted that its assessments of the financial and operational performance information reported by Viterra pursuant to the Commission's Ports Industry Guideline No. 2: Regulatory Accounts **(Guideline No. 2)**[24] during the regulatory period found no evidence to suggest market power was being exercised.

Land

The Commission noted that there had been no access disputes in relation to gaining access to land in connection with the provision of other Regulated Services nor had it been presented with any specific evidence from ports users that market power was being exercised in this regard.

The Commission therefore concluded that there was no evidence of misuse of market power in gaining access to land in connection with the provision of other Regulated Services.

4.3.3 *Will access regulation produce a net benefit?*

The Commission concluded that ongoing access regulation for Pilotage Services, bulk loaders and access to land are necessary on the basis that there remains the potential for market power to be exercised in respect to those services. It considered that the benefits of retaining access regulation outweigh the regulatory costs that are imposed on regulated operators through annual regulatory accounts and quarterly reporting obligations.

The Commission also noted that continued access regulation provides both a safety net to ports users in relation to gaining third-party access to infrastructure with natural monopoly characteristics on fair commercial terms and the greatest level of regulatory certainty to all stakeholders over how access is regulated. In the absence of access regulation under a certified state-based access regime, the Commission also noted that there is an ongoing risk that Regulated Services could be subjected to a declaration pursuant to Part IIIA of the CCA.

[24] The Ports Industry Guideline No. 2: Regulatory Accounts is available on the Commission's website at: http://www.escosa.sa.gov.au/library/100415-PortsGuidelineNo2-RegulatoryAccounts.pdf.

4.4 Submissions to the Draft Report

Whilst submissions to the Draft Report generally supported the continuation of the ports access regime, the Flinders Ports submission expressed a contrary view.

With respect to maritime services that are both Essential Maritime Services and Regulated Services, the Flinders Ports submission acknowledged the advantages that a certified state-based access regime provides over other third-party access options. However, it commented that continued access regulation is not required on the basis that there are both short and long-term commercial imperatives to ensure appropriate access arrangements are negotiated between ports users and ports operator.[25]

With respect to maritime services that are subject to access regulation but are not price regulated, the Flinders Ports submission similarly expressed the view that ongoing access regulation is not required. It argued that there are no barriers to the provision of Pilotage Services across South Australian ports as evidenced by the private Pilotage Service that is operating in direct competition to the services provided by Flinders Ports at the port of Whyalla.[26] Flinders Ports also commented that it is not in its interest to restrict land access as it is a fundamental component of ensuring the efficient movement of cargo through the port.[27]

4.5 Commission's Consideration

Whilst the Commission notes the comment made by Flinders Ports in relation to commercial imperatives, it does not necessarily accept that a company with market power has an imperative to maximise volume throughput as it faces a price/volume trade off. However, the Commission believes that ongoing access regulation is appropriate for the following reasons.

Firstly, the Commission's final conclusions about the necessity for continued price regulation apply equally in the context of access regulation for maritime services that are both Regulated Services and Essential Maritime Services. That is, while the potential for the exercise of market power still exists, it has found no evidence of such power being exercised. Accordingly, it is the Commission's view that a light-handed form of regulation remains appropriate.

Secondly, the Commission reiterates that ongoing access regulation plays a very important role in both addressing concern over market power being exercised and by providing certainty to all market participants in relation to third-party access to infrastructure with natural monopoly characteristics.

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[25] Flinders Ports, *Flinders Ports' Submission to the 2012 Ports Pricing and Access Review – Draft Report,* 20 July 2012, p. 6.

[26] Flinders Ports, *Flinders Ports' Submission to the 2012 Ports Pricing and Access Review – Draft Report,* 20 July 2012, p. 7.

[27] Ibid, p. 8.

Lastly, the Commission believes that there is a net benefit to ongoing access regulation. Whilst the Commission recognises that access regulation imposes regulatory costs on regulated operators (e.g. annual regulatory reporting), it notes that these costs are a relatively minor component of the overall costs associated with the provision of Regulated Services.

Final Report Conclusion

The access regime provided for under Part 3 of the MSA Act should continue beyond 30 October 2012 for a further five-year regulatory period.

5 THE COMMISSION'S INQUIRY INTO THE PORTS ACCESS REGIME

Assuming that access regulation continues for a further five-year regulatory period, an important issue for the Commission to consider is how the effectiveness of the access regime could be improved. As previously noted in this Final Report, in conjunction with the Review, the Commission also conducted an Inquiry, pursuant to section 34 of the ESC Act, into areas in which the access regime could be generally improved.[28]

In undertaking its Inquiry, the Commission has placed substantial weight on the experience of stakeholders who have had involvement 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.

This Chapter sets out the Commission's final recommendations in respect of areas where it considers the regime could be improved, having regard to comments raised in submissions and by drawing on the Commission's own experiences with the administration of the regime.

5.1 Legal Framework for the Inquiry

The Commission is permitted to undertake an Inquiry pursuant to section 34 of the ESC Act into any other industries which, in the Commission's view, ought to be subject to the access regime. Such an Inquiry must be preceded by consultation with the Treasurer and be linked to matters which properly fall within the scope of the MSA Act already.

By way of a letter to the Treasurer, the Commission consulted with the Treasurer and informed him that the Commission intended to conduct an Inquiry, pursuant to section 34 of the ESC Act, into areas where the ports access regime could be extended or generally improved. The Commission noted that its Inquiry was being undertaken as it considered it critical for ensuring the ongoing effectiveness of South Australian ports access regime. It also noted that the public consultation processes undertaken as part of the 2012 Review would provide an opportune time for stakeholders to provide comment on how the regime could be improved based on their actual experience with the current regime.

It is important to note that the outcomes of the Inquiry or any recommendation resulting from it will not necessarily result in any changes to the access regime – that will depend on the adoption of any of the recommendations by the South Australian Government and subsequent legislative amendment.

[28] Section 34 of the ESC Act provides that the Commission may, after consultation with the Treasurer, conduct an inquiry if the Commission considers an inquiry is necessary or desirable for the purposes of carrying out the Commission's functions.

5.2 Summary of the Draft Report

5.2.1 Coverage

Grain Supply Chain

Viterra is the predominant provider of at-ports grain storage and handling facilities in South Australia and it also has a significant presence in both upstream[29] and downstream[30] markets. Given this structure, the Commission was of the view that Viterra has significant market power and inefficient economic outcomes could result should that power be misused.

Although several submissions expressed concern over market power and the absence of regulatory oversight in both the upstream and downstream markets of the South Australian grain handling industry, the Commission noted that it was beyond the scope of the Inquiry to consider such matters in light of such matters not being ones that currently fall within the scope of the MSA Act. While the Commission could undertake a broad review of the South Australian grain supply chain, it must be referred to the Commission by the Treasurer, pursuant to section 35(1) of the ESC Act.31 In the absence of such a referral from the Treasurer, the Commission cannot consider broader matters as part of its Inquiry process.

To appropriately address concerns over the South Australian grain supply chain, the Commission reiterated the importance for the South Australian Government to reconsider the merit of undertaking a broad review of the entire grain supply chain. Such a review would allow for the specific circumstances of the grain industry (i.e. interface between different modes of transport and regulatory regimes) to be appropriately considered and scrutinised.

Rail Facilities

As part of the ongoing development of Port Adelaide, a rail siding was constructed to connect Inner Harbour Berth 29 with the standard gauge rail network running into Port Adelaide.[32] This rail infrastructure is an important component of the intermodal facility developed by Flinders Ports at Berth 29.

[29] Viterra owns and operates up-country storage and handling facilities (i.e. grain silos).

[30] Viterra is a grain marketer and exporter in its own right in respect to grain exports. Therefore, Viterra competes with other grain marketers who use its bulk loader service in the grain export market.

[31] Section 35(1) of the ESC Act requires the Commission to conduct an inquiry into any matter that the Treasurer may, by written notice, refer to the Commission.

[32] Whilst the rail siding is owned by Flinders Ports, it is operated by Genesee & Wyoming Australia Pty Ltd.

Following the consideration of issues raised by stakeholders in relation to this intermodal facility, the Commission made the following draft conclusions.

Firstly, based on information provided in submissions from Flinders Ports, Commission concluded that the rail siding at Inner Harbour Berth 29 was subject to access regulation under the South Australian rail access regime as set out under Parts 3 to 8 of the *Railway (Operations and Access) Act 1997* (**ROA Act**).

Secondly, the Commission concluded that there were no impediments to ports users accessing information in respect to individual cost components of the service provided by the intermodal facility. It also concluded that price transparency was not an issue on the basis that it is Flinders Ports' ongoing practice to accommodate the information request of potential users insofar as is reasonable and practicable to do so to reach commercial outcomes.

Lastly, the Commission concluded that there were no persuasive arguments to suggest that access regulation should apply to the provision of loading and unloading services at the intermodal facility. The Commission reached this conclusion after establishing that the potential for market power to be exercised is constrained by the availability of alternatives to ports users (i.e. use of containers that can be transported into the port by trucks).

Storage and Handling Facilities

Whilst the provision of at-ports storage and handling facilities other than Viterra's bulk loaders is not defined as a Regulated Service under the MSA Act, the Commission noted that it is captured within the definition of Maritime Services and could therefore be brought within the scope of the access regime by proclamation. However, the appropriateness of such action would depend on the potential for, or actual misuse of, market power and the net benefit to imposing regulation.

The Commission concluded that the potential for market power to be exercised in the provision of non-grain at-ports storage and handling facilities is constrained by the availability of alternatives to ports users (i.e. utilising non-port storage facilities). The Commission also concluded that there were no impediments for third parties to seek access to land either from Flinders Ports (for land within the port boundary)[33] or the South Australian Government (for land outside the Berth 29 precinct) should they wish to develop their own storage facilities.

Towage

On the basis that section 4(1)(g) of the MSA Act specifically excludes towage services from the definition of maritime services, the Commission concluded that expanding the access regime to cover towage services was outside the scope of the Inquiry, and was a separate matter for the South Australian Government to consider.

[33] Information provided by Flinders Ports to the Commission indicated that active lease agreements with third parties were negotiated during the current regulatory period.

New Ports

The Commission noted that there were several new ports developments occurring in South Australia as a result of developments in the resources industry and highlighted the potential impact that these developments might have on the access regime.

While new port development was highlighted, the Commission noted that the application of price and access regulation to new port developments was outside the scope of the Inquiry as the application of the MSA Act is limited to ports that have been proclaimed by the Governor. Accordingly, unless a port has been proclaimed for the purposes of the MSA Act, the pricing and access regulatory regimes do not apply.

The Commission's draft conclusion therefore was that any consideration to expand the access regime to cover new ports is a separate matter that would need to be dealt with on a case-by-case basis by the South Australian Government.

5.2.2 *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 associated with Regulated Services.

Whilst the Commission sought stakeholders' comment on the adequacy of the negotiation framework set out in Part 3 of the MSA Act and areas where the framework could be improved, the Commission did not receive any submissions on these particular matters.

In the absence of submissions from ports users in respect of any deficiencies with the existing framework and, given the evidence presented to the Commission that ports users have generally been successful in negotiating access over the current regulatory period, the Commission concluded that:

- there were no impediments to negotiating access to ports infrastructure under the current regulatory framework;
- the negotiation process set out in Part 3 of the MSA Act is sufficient in terms of facilitating commercial negotiation of access; and
- the information requirements set out under Part 3 of the MSA Act and Guideline No. 1 are adequate for facilitating the negotiation of access.

5.2.3 *Dispute Resolution*

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.

Part 3 of the MSA Act establishes 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.[34] A party to the dispute may then refer the dispute to the Commission for resolution.

Given submissions in response to the Issues Paper uniformly agree that the dispute resolution process set out under Part 3 of the MSA Act is sufficient, the Commission's draft conclusion was that the dispute resolution process is adequate for resolving access disputes and should therefore be maintained in its current form.

5.2.4 *Ring-Fencing*

The issue of the appropriateness of the current ring-fencing arrangements was also raised as a matter that the Commission was seeking stakeholders' comment on as part of the Inquiry.

The ports access regime currently imposes accounting ring-fencing arrangements and requires a regulated ports operator to keep accounts and records relating to the provision of Regulated Services separate. The Commission's Guideline No. 2 sets out how the obligations and requirements of regulated operators are to be met.

Whilst an allegation was made that Flinders Ports, which is a vertically integrated ports operator, was engaging in anti-competitive behaviour by leveraging market power from the non-contestable markets to other contestable markets, the Commission's was not presented with clear evidence to substantiate this allegation.

Accordingly, the Commission concluded that there were no persuasive arguments for the introduction of more intrusive ring-fencing arrangements (e.g. operational separation of Flinders Ports). It also noted that such a change in the regulatory framework, if necessary, is ultimately a separate matter for the South Australian Government as it would require legislative amendment to the MSA Act.

5.3 Submissions to the Draft Report

Submissions to the Issues Paper from stakeholders raised a number of issues which were discussed in the Draft Report. In response to the Commission's Draft Report some of these issues have resurfaced due to a number of recent developments or stakeholders have requested further consideration or information from the Commission.

5.3.1 *Coverage*

Grain Supply Chain

The Commission received three submissions in response to its recommendation for the South Australian Government to reconsider the merit of undertaking a broad review of the South Australian grain supply chain.

The Select Committee on the Grain Handling Industry (**Select Committee**) submission expressed concern over the relevance of access regulation under the MSA Act given developments at the national level. Specifically, the Select Committee commented that any duplication of regulatory roles would simply impose unnecessary compliance cost on the South Australian grain industry.[35]

The SAFC submission stated that it had not seen any evidence of any significant issues in the grain supply chain that would warrant an investigation from the Commission or the South Australian Government and that any proposal to review the grain supply chain was premature given the expiration of the *Wheat Export Marketing Act* (2008) in 2014.[36]

The Viterra submission did not comment explicitly on the Commission's draft conclusion on this matter but made two specific comments in respect of its role in the grain supply chain.[37]

Firstly, Viterra commented that it does not control rail access in South Australia, reiterating that rail access is governed by relevant legislation and access arrangements. Secondly, Viterra restated that it does not engage in discriminatory behaviour and noted that not only is such behaviour prohibited under the Port Terminal Services Access Undertaking (**Access Undertaking**) but that the ACCC has the power to investigate such allegations and, if necessary, impose penalties.

Viterra therefore emphasised that in the absence of any credible evidence to suggest increased regulation was required, any form of further regulation would simply increase compliance costs and decrease South Australia's competitiveness in grain exporting.

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[35] Select Committee on the Grain Handling Industry, *Select Committee on the Grain Handling Industry's Submission to the 2012 Ports Pricing and Access Review – Draft Report,* 18 July 2012, p. 3.

[36] South Australian Freight Council, *South Australian Freight Council's Submission to the 2012 Ports Pricing and Access Review – Draft Report*, 20 July 2012, p. 3 of Attachment 1.

[37] Viterra, *Viterra's Submission to the 2012 Ports Pricing and Access Review – Draft Report*, 20 July 2012, p. 3 of unnumbered document.

Rail Facilities

The Commission received three submissions in response to its draft conclusions concerning the intermodal rail facility at Inner Harbour Berth 29.

The Flinders Port submission raised the following issues.[38] Firstly, it disagreed with the Commission's draft conclusion that the rail siding at Inner Harbour Berth 29 was subject to access regulation under the ROA Act. It disagreed with this finding on the basis that it considered the rail siding fell within the definition of "Freight Terminal" which is a facility expressly exempted from the access regulation regime established under the ROA Act. Secondly, it noted that this intermodal rail facility exists only as a result of the substantial investment made by Flinders Ports. Flinders Ports therefore considers that it has the right to protect its investment from "free-riding" by downstream competitors. Lastly, it agreed with the Commission's draft conclusion that there were no persuasive arguments coming out of submissions to suggest that the provision of loading and unloading services at the intermodal rail facility should be subject to access regulation.

The SAFC submission supported the Commission's draft conclusion that there were no persuasive arguments arising from submissions to suggest that services provided at the intermodal rail facility should be subject to access regulation.[39]

In contrast, the Asciano submission stated its disagreement with the Commission's draft conclusion concerning the provision of loading and unloading services at the intermodal rail facility, commenting that the Draft Report did not fully consider the viability of alternatives to the services provided by Flinders Ports. Asciano argued that weight limits on road vehicles travelling on public roads and the distance of the alternatives to the port both affect the commercial viability of the available alternatives and hence confer a degree of market power on Flinders Ports.[40] The submission therefore argued that the regulatory status of these rail loading and unloading services should be reconsidered.

Storage and Handling Facilities

Both the Flinders Ports and SAFC submissions supported the Commission's draft conclusion that no persuasive evidence had been submitted to suggest that the provision of non-grain at-ports storage and handling facilities should be brought within the coverage of the access regime.

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[38] Flinders Ports, *Flinders Ports' Submission to the 2012 Ports Pricing and Access Review – Draft Report,* 20 July 2012, p. 9.

[39] South Australian Freight Council, *South Australian Freight Council's Submission to the 2012 Ports Pricing and Access Review – Draft Report*, 20 July 2012, p. 3 of Attachment 1.

[40] Asciano, *Asciano's Submission to the 2012 Ports Pricing and Access Review – Draft Report,* 20 July 2012, p. 5 of unnumbered document.

The SAFC submission did, however, express the view that the Commission should take regulatory action if its monitoring finds evidence that market power in the provision of such services was being exercised in a malicious way.

In contrast, the Asciano submission disagreed with the Commission's draft conclusion on this matter, continuing to submit that there are few alternatives to using Flinders Ports' storage facilities.[41] Asciano argued that there is the potential for market power to be exercised in the provision of such services in the absence of access regulation.

The Asciano submission also noted the weighting placed by the Commission on the absence of disputes in making its draft conclusion on this matter, commenting that such a matter should be based on factors such as industry and market structures and not on the basis of the existence or non-existence of commercial disputes.[42]

Towage

The Shipping Australia Limited (**SAL**) submission expanded on its previous submission to the Commission's Issues Paper by again expressing concern in relation to the positions of incumbent towage companies which it considered had the potential to exercise market power.[43]

New Ports

Whilst the Flinders Ports submission recognised that the application of access regulation to new ports is outside the scope of the Inquiry, it noted that the development of new ports would further diminish the potential for market power to exist and, therefore, the need for regulation.[44]

The SAFC submission supported the Commission's draft conclusion that the application of access regulation to new ports is ultimately a separate matter for consideration by the South Australian Government. However, the submission commented that the Commission should highlight the ongoing risk of a new port being subject to a declaration under the provisions of the National Access Regime in the absence of access regulation under a certified state-based regime.[45]

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[41] Asciano, *Asciano's Submission to the 2012 Ports Pricing and Access Review – Draft Report,* 20 July 2012, p. 5 of unnumbered document.

[42] Ibid, p. 5 of unnumbered document.

[43] Shipping Australia Limited, *Shipping Australia Limited's Submission to the 2012 Ports Pricing and Access Review – Draft Report,* 10 July 2012, p. 1 of unnumbered document.

[44] Flinders Ports, *Flinders Ports' Submission to the 2012 Ports Pricing and Access Review – Draft Report,* 20 July 2012, p. 10.

[45] Select Committee on the Grain Handling Industry, *Select Committee on the Grain Handling Industry's Submission to the 2012 Ports Pricing and Access Review – Draft Report,* 18 July 2012, p. 3.

5.3.2 *Negotiation*

Both the SAFC and Flinders Ports submissions commented that the negotiation framework should continue into the next regulatory period in its current form.

The SAFC submission expressed the view that the arbitration aspect of the access regime provided an incentive to a port operator to ensure access rates were set on a fair and reasonable basis.[46] The submission also suggested that the Commission further consider the merit of introducing an "advice and directions" provision into the MSA Act and examine the merits of those arguments that run counter to the Commission on this point.

Whilst Flinders Ports agreed that the negotiate-arbitrate framework underpinning the regime had been successful in achieving a wide range of acceptable outcomes, it commented that the absence of any access disputes over the entire period of access regulation was primarily due to the commercial maturity of the market, sophistication of the ports users and availability of alternative options.[47]

5.3.3 *Dispute Resolution*

The Flinders Ports submission noted that whilst the formal dispute resolution process available under the MSA Act had never been formally tested, it regards the process as adequate and one that would be appropriate for resolving disputes in any commercial process.[48]

5.3.4 *Ring Fencing*

The Commission received two submissions in response to its draft conclusion that no persuasive evidence has been presented to support a more intrusive form of ring-fencing arrangement being introduced.

The Flinders Ports submission argued that the absence of commercial disputes as well as the lack of evidence presented to illustrate the actual misuse of market power over the current period of economic regulation strongly supported the Commission's draft conclusion on this matter.

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[46] South Australian Freight Council, *South Australian Freight Council's Submission to the 2012 Ports Pricing and Access Review – Draft Report*, 20 July 2012, p. 4 of Attachment 1.

[47] Flinders Ports, *Flinders Ports' Submission to the 2012 Ports Pricing and Access Review – Draft Report,* 20 July 2012, p. 11.

[48] Ibid, p. 11.

In contrast, the Asciano submission disagreed with the Commission's draft conclusion, arguing that Flinders Ports' position as both a monopoly supplier to and competitor of stevedoring companies justified the imposition of more stringent ring-fencing arrangements and the need to re-examine the vertical separation of Flinders Ports.

The submission went on to express concern over the Commission's regulatory approach of placing the onus on a third party to produce evidence of actual misuse of market power, emphasising a well-designed regulatory regime should be based on establishing processes to deter market power from being exercised in the first place.

Further, the Asciano submission expressed general concern over the potential of anti-competitive cost-shifting and cross-subsidisation and the inadequacy of the current accounting ring-fencing arrangements to deal with anti-competitive behaviour. Asciano provided the example of the potential for Flinders Ports to use returns earned in the non-contestable markets to set prices in the contestable markets with the intention of disadvantaging competitors. Asciano therefore recommended that regulatory account information should be subject to independent audits.

5.4 Commission's Consideration

5.4.1 Coverage

Grain Supply Chain

The Commission notes the concerns expressed by the Select Committee in relation to the potential duplication of regulatory oversight by regulators and timing of a possible broader review of the entire grain supply chain and wishes to make the following clarifications.

Firstly, the Access Undertaking accepted by the ACCC does not apply to any maritime or railway services that are subject to the South Australian ports and railways access regimes.[49] This is consistent with Part IIIA of the CCA, which specifies that an Access Undertaking cannot apply to any services that are regulated under a certified state-based regime. The Access Undertaking does not, however, apply to the export of other grain types and non-grain commodities, and upcountry facilities.

Secondly, the Commission recognises that the *Wheat Export Marketing Act 2008* will expire in 2014, with access to port terminal services to be governed by a voluntary code of conduct. The Commission considers it prudent to conduct a grain supply chain review before the expiration of this legislation to ensure that any learning is reflected in the development of the code of conduct and to address any concerns over the potential misuse of market power and the absence of regulatory oversight in the upstream and downstream markets of the South Australian grain supply chain.

[49] The Access Undertaking sets out the terms and conditions on which Viterra will provide access to services for the export of Bulk Wheat at the six Viterra-operated grain terminals in South Australia.

Such concerns were expressed by the ACCC in a hearing before the Senate in which it commented that competition is less effective in South Australia.[50]

The Commission envisages that such a broad review would encompass the examination of non-access issues such as adequacy of logistic resources and, upcountry storage and handling services. Such issues will continue to play an important role in the future shape of the South Australian grain industry.

The Commission therefore continues to see merit to undertaking such a broad review of the South Australian grain supply chain.

Intermodal Rail Facility

As part of the development of Port Adelaide, Flinders Ports recently finalised the construction of a new intermodal rail facility at Inner Harbour Berth 29. This facility encompasses both a rail siding to connect the berth with the standard gauge rail network running into Port Adelaide and a terminal where the train loading/unloading services occur.

Since the release of the Draft Report, Flinders Ports has provided new information on a confidential basis to the Commission that suggests that this rail siding is not a private siding but falls within the definition of a "freight terminal" set out in a proclamation gazetted on 7 May 1998. The proclamation specifies that all of the provisions of the rail access regime apply to any railway services, but exclude certain services and railway infrastructure. A freight terminal is one of those excluded services.[51]

Following the receipt of this new information from Flinders Ports, the Commission has reconsidered its position on this matter and is persuaded by Flinders Ports' argument that the rail siding at Berth 29 falls within the definition of a freight terminal and is therefore excluded from access regulation under the South Australian rail access regime. The Commission recognises that this is contrary to the conclusion reached in the Draft Report, where it concluded that the rail siding was subject to regulation under the rail access regime.[52]

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[50] Australian Federal Parliament, *Senate Committee Rural Affairs and Transport References Committee – Operational Issues in Export Grain Networks*, 16 November 2011, p. 7.

[51] A freight terminal is defined as an area set aside for transferring goods to a train from another transport service (including another service provided by train), or from a train to another transport service (including another service provided by train), whether or not the goods are held, kept or stored at the terminal for a period of time pending transfer to the train or to the other transport service.

[52] Asciano was offered the opportunity to make a supplementary submission in response to this new development.

In light of the new information provided by Flinders Ports in respect of the categorisation of the rail facility as a freight terminal, which has been accepted by the Commission, the Commission recognises that it has to reconsider Asciano's initial comments regarding whether or not this intermodal rail facility should be subject to any form of regulatory oversight. Rather than examining the rail and loading/unloading train services separately, the Commission has considered the issues raised by Asciano in the context of the whole intermodal rail facility. This is because access to the loading/unloading services can only be achieved if access is also granted to the rail siding that connects the facility with the standard gauge rail network.

In examining whether or not the intermodal rail facility should be subject to any form of regulation, the Commission has applied the same assessment criteria set out in Chapter 1. The Commission's assessment of this matter is set out in Table 5-1 below.

Table 5-1: Commission's Assessment of the need for Access Regulation to Flinders Ports' Intermodal Rail Facility at Port Adelaide

ASSESSMENT CRITERIA	COMMISSION'S ASSESSMENT
Is there the potential for Flinders Ports to exercise market power?	The Commission is of the view that the market for logistic services provided at Port Adelaide indicates that any market power that Flinders Ports might have is constrained for the following reasons. Firstly, there are a number of viable alternatives to using the logistic services provided by Flinders Ports at the intermodal rail facility and these alternatives have existed prior to the development of Flinders Ports' intermodal facilities. These alternatives sufficiently constrain Flinders Ports' ability to exercise market power. For example, the Commission understands that both Mackenzie Hillibrand and Kerry Logistics operate loading/unloading services at various rail facilities at Port Adelaide.[53] Secondly, there are no impediments to a port user seeking to use non-rail alternatives such as the use of containers that can be transported into the port by trucks. Despite Asciano's argument concerning strict load limits on public roads, the Commission considers that the current utilisation of this option by several port users suggest that it still offers a degree of viable competition to the intermodal services provided by Flinders Ports. The Commission also understands that there are no real impediments to Asciano building its own rail siding.

[53] The Commission also notes that Asciano has utilised the Kerry Logistic facility to service its logistic agreements with ports users for the past few years.

	Lastly, the Commission also considers that Flinders Ports has no incentive to engage in any form of anti-competitive behaviour in relation to services provided at this intermodal rail facility. Any attempt to do so would have the adverse effect of encouraging port users to utilise alternatives such as other modes of transport. Flinders Ports therefore has the incentive to provide a competitive service to earn an appropriate return on its investment in respect of this infrastructure and to prevent the asset from becoming stranded. In light of the above, the Commission does not consider that the intermodal rail facility exhibits natural monopoly characteristics and that there is little potential for Flinders Ports to exercise market power.
Is there any evidence of misuse of market power by Flinders Ports?	The Commission would also emphasise that any price differential between the services provided by Flinders Ports and alternatives cannot, by itself, be considered an example of market power being exercised. The Commission understands that Flinders Ports develops its prices for services provided at the intermodal rail facility in accordance with a number of parameters, such as term of contract, volume of cargoes and compliance costs in relation to environmental standards. This is consistent with the price-setting process in any other commercial environments. In addition to the fact that the Commission considers there is little potential for Flinders Ports to exercise market power in relation to services provided at the intermodal rail facility due to the availability of alternatives, it is also not aware of any disputes concerning access and/or pricing in relation to this intermodal rail facility since its development. No evidence has been presented to either the Commission or the South Australian Government that would suggest Flinders Ports is engaging in any form of anti-competitive behaviour (e.g. price discrimination assuming all things else being equal). The Commission is therefore of the view that Flinders Ports is not exercising market power in the provision of services at the intermodal rail facility at Berth 29.

	In light of the above, the Commission does not believe that there is sufficient justification for imposing access regulation in respect of the intermodal rail facility at Berth 29. The Commission considers that regulatory intervention should only occur if there is a net benefit in doing so and should not be imposed solely for the reason of preventing market power from being exercised.
Is there a net benefit to regulation?	In the absence of evidence which suggests that the potential for market power to be exercised and/or market failure, the Commission notes that regulatory intervention without a sound basis may create perverse effects. For example, the threat of regulatory intervention with no clear justification creates uncertainty for businesses and forecloses welfare enhancing investments. This is because the decision to invest depends on, amongst other considerations, the probability of regulation and its assumed impact on investment returns.

In light of the above, the Commission concludes that there are no persuasive arguments to suggest that the intermodal rail facility at Inner Harbour Berth 29 should be subject to access regulation. The Commission emphasises that this is also consistent with the key principles specified in the CIRA, which specifies that economic regulation should only be considered where there is a clear need for it. Further, in most circumstances, commercial outcomes should be promoted in preference to economic regulation.

On the basis that commercial negotiations between Flinders Ports and Asciano concerning the access to services provided at this intermodal rail facility are still at a preliminary stage, the Commission continues to encourage both parties to negotiate in good faith and accommodate each party's information requests which should be reasonable and practicable. Regulatory intervention should remain a last resort, not the first point of call.

Notwithstanding its final conclusion on this matter, the Commission notes that it is still possible for Asciano or any party to seek either the South Australian Government[54] or ACCC[55] to intervene should they have any evidence market power has been misused. The Commission's conclusion on this matter is therefore not locked in per se for the next five years in any event.

[54] The South Australian Government can vary the coverage of the ports access regime at any point in time should it believes such action is necessary.

[55] The CCA has specific provisions prohibiting powerful players from abusing their market power. Section 46 of the Act prohibits firms with market power from taking advantage of that power for a prohibited purpose.

Storage and Handling Facilities

Whilst the Commission recognises that the absence of disputes is not sufficient evidence to suggest that further regulation is not required, it strongly rejects Asciano's assertion that its draft conclusion was not reached based on good economic regulatory practice.

As noted in the Draft Report, the absence of disputes over third-party access land and/or attaining a lease agreement with Flinders Ports to utilise its non-grain at-ports storage facilities is only one element in the consideration of this matter. The Commission also gave careful consideration to the market structure for the provision of such services. However, to avoid any further ambiguity regarding its examination of this matter, the Commission wishes to reiterate the following key points.

Firstly, the Commission notes that not all cargoes are stored using non-grain at-ports storage facilities provided by Flinders Ports due to alternatives from non-ports storage facilities. For example, the Commission understands that there are a number of fertiliser importers currently utilising storage facilities located outside of Port Adelaide. This suggests that there are viable alternatives and a degree of competition between at-ports and non-port storage facilities.

Secondly, the Commission understands that there are no impediments to a port user seeking to lease land parcels outside Port Adelaide from the South Australian Government on a commercial basis for the purposes of building its own dedicated storage facilities as an alternative to the services provided by Flinders Ports. For example, the Commission understands that there is a considerable land parcel adjacent to Berth 29 and in close proximity to the Kerry Logistic rail terminal site which is available for lease or acquisition from the Urban Renewal Authority.

Lastly, there are no impediments to a port user seeking access to land from Flinders Ports to build its own dedicated storage facilities on the basis that access to land within the port boundary is a Regulated Service. The Commission also understands that some users are also leasing land from Flinders Ports to store containerised goods as an alternative to building storage facilities.

Providing that there are no impediments stopping a port user from accessing land (both at-ports and non-port) or the port (i.e. using non-port storage facilities and transporting goods from outside the port boundary), Flinders Ports' market power in the provision of non-grain at-ports storage services is appropriately constrained.

In light of the above, the Commission does not consider that these non-grain at-ports storage facilities exhibit natural monopoly characteristics and rejects Asciano's assertion that there are no viable alternative to services provided by Flinders Ports.

The Commission's view on this matter is also supported by the SAFC submission and the fact that there have been no complaints about third-party access to these services made to either the Commission or the South Australian Government. No evidence or comments were also provided to the Commission during the Inquiry to suggest that Flinders Ports had exercised market power in the provision of such services.

In the absence of any convincing evidence that suggests market power has been exercised in respect to non-grain at-ports storage and handling facilities, the Commission reaffirms its draft conclusion that it does not consider access regulation of such facilities to be necessary. This is consistent with sound regulatory practice, which requires that economic regulation should only be imposed where there is a clear need to prevent the misuse of market power and there is a clear net benefit in doing so.

Towage

As noted in the Draft Report, towage services are specifically excluded from the definition of maritime services and are therefore not captured by the current scope of the pricing or access regime.

The Commission notes the concerns expressed in the SAL submission in relation to the potential for market power to be exercised by incumbent towage companies, but reiterates that this is ultimately a separate matter for the South Australian Government. For access regulation to apply to towage services, it will require both legislative amendment to the MSA Act and subsequent proclamation by the Governor.

In any case, the Commission notes that it is possible for SAL or any party to request that the ACCC intervene, pursuant to section 46 of the CCA Act, if they have any evidence that suggests towage providers are abusing their market power.

Given that towage services are outside the scope of this Inquiry, the Commission reaffirms its draft conclusion that any consideration of this issue is a separate matter for the South Australian Government to address.

New Ports

The Commission agrees with the point raised by Flinders Ports in its submission that it is important to monitor new port developments in South Australia and the impact that those developments might have on the regulatory environment. However, it is difficult for the Commission to draw any clear conclusions on the countervailing power of new port developments as they have not yet commenced operations. Accordingly, the Commission will continue to monitor this matter going forward in order to be able to properly ascertain the impact of such developments on market activities.

Given that new ports are outside the scope of this Inquiry, the Commission reaffirms its draft conclusion that any consideration of this issue is a separate matter for the South Australian Government to address.

Final Report Conclusion

The Commission recommends that the South Australian Government consider undertaking a broader review of the South Australian grain supply chain.

There are no persuasive arguments to suggest that the intermodal rail facility at Inner Harbour Berth 29 should be subject to access regulation.

There are no persuasive arguments to suggest that the provision of non-grain at-ports storage facilities should be subject to access regulation.

Any consideration to expand the access regime to cover towage services is a separate matter for the South Australian Government.

Any consideration to expand the access regime to cover new ports is a separate matter that will be dealt with on a case-by-case basis by the South Australian Government.

5.4.2 *Negotiation*

In response to the comments made in the Select Committee submission, the Commission retains the view that there is merit to introducing an "advice and directions" provision into the MSA Act on the basis that it 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.

In a practical sense, the introduction of such a provision would allow the Commission to give advice and directions to the relevant parties regarding any matter that has arisen as a result of negotiations before the formal dispute resolution processes are activated.

As the South Australian Government's counter arguments to the Commission's recommendation in the 2007 Review for the introduction of such an "advice and directions" provision into the MSA Act were not provided to the Commission, it is unable to examine the merits of those counter arguments.

However, given that stakeholders generally supported the continuation of the negotiation framework in its current form, the Commission has no reason to deviate from its draft conclusion in this Final Report.

Final Report Conclusion

There are no impediments to negotiating access to ports infrastructure, due to the current regulatory framework.

The negotiation process set out in Part 3 of the MSA Act is adequate for facilitating commercial negotiation of access.

The information requirements set out under Part 3 of the MSA Act and Guideline No. 1 are adequate for facilitating the negotiation of access.

5.4.3 *Dispute Resolution*

Given that the only submission on this matter supports the retention of the current dispute resolution process, the Commission does not consider that there are any valid reasons for it to deviate from its draft conclusion that this process be retained.

Final Report Conclusion

The conciliation/arbitration process set out in Part 3 of the MSA Act is adequate for resolving access disputes, and should continue beyond 30 October 2012 in its current form.

5.4.4 *Ring-Fencing*

The Asciano submission expressed several concerns with the vertically integrated nature of Flinders Ports' operation. These concerns arose because Flinders Ports is increasingly expanding its ports operations to compete in contestable markets such as stevedoring and port logistics while at the same time supplying monopoly ports services to competitors in the contestable markets.

The Commission's responses to those concerns are set out below.

Vertical Separation

As Flinders Ports is developing a vertically integrated model by integrating different segments of the ports logistic services into its operation (i.e. provision of rail intermodal, berth and stevedoring services), the Asciano submission recommended that the option of the vertical separation of Flinders Ports be given strong consideration.

The Commission notes that the ring-fencing arrangement imposed on a ports operator subject to the access regime is mandated in the MSA Act. Accordingly, any move to depart from the current ring-fencing arrangement and introduce a more intrusive form of ring-fencing is therefore a matter for the South Australian Government to address as any changes require legislative amendment to the MSA Act. Notwithstanding this fact, the Commission would make two overarching comments.

Firstly, the benefits from structural separation need to be weighed carefully against the potential costs. Whilst the Commission recognises that the vertically integrated nature of Flinders Ports may give rise to the potential for it to engage in anti-competitive behaviour by using regulated profits to cross-subsidise its other contestable activities, there are economic gains to vertical integration (i.e. economies of scale and reduced transaction costs). Enforcing vertical separation without a sound basis therefore imposes unwarranted regulatory costs and may create unintended and perverse consequences (i.e. preventing ports users from accessing and benefitting from an integrated logistic solution).

Secondly, vertical separation is not the only option to address concerns over vertical integration. Rather, every attempt should be made to ensure that these concerns are addressed within the existing regulatory framework in the first instance. In this regard, the Commission considers that Asciano's concerns could be first addressed by making improvements to the existing accounting ring-fencing arrangements.

The Commission does not support the implementation of more intrusive forms of ring-fencing arrangements in the absence of evidence that demonstrates a clear net benefit in doing so.

Accounting Separation Requirements

The Asciano submission expressed concerns over the adequacy of the current accounting ring-fencing arrangement to deal with anti-competitive behaviour. For example, Asciano questioned whether the current arrangement is sufficient enough to prevent Flinders Ports from using returns earned in the non-contestable markets to set prices in the contestable markets with the intention of disadvantaging competitors.

With respect to Asciano's first concern, the Commission notes that its Guideline No. 2 already specifies the manner in which costs are to be allocated and sets out disclosure requirements for all third-party transactions in order to prevent practices such as cost-shifting between the contestable and non-contestable businesses. Whilst the Commission considers that the requirement for regulatory account reports to be accompanied by a director's responsibility statement and regulatory audit report already provides a considerable level of assurance, it sees merit to Asciano's proposal for an independent audit of a port operators regulatory accounting practises, albeit not on an annual basis.

The Commission is therefore committing to undertaking such an independent regulatory audit in 2013/14 to provide an additional level of assurance to itself and industry participants that the ring-fencing principles set out in Guideline No. 2 are being correctly applied and the desired outcomes are achieved. The key findings of the audit will be reported as part of the Commission's annual ports pricing monitoring reports during the next regulatory period.

Should the audit reveal any deficiencies with Guideline No 2 or a port operator's regulatory reporting system, the Commission will consider how those deficiencies could be appropriately addressed going forward (either through making amendments to the Guideline No. 2 or making recommendations to the South Australian Government for amendments to be made to the MSA Act).

With respect to Asciano's second concern, the Commission considers that any form of anti-competitive behaviour (i.e. predatory pricing) is best addressed through section 46 of the CCA, which specifies that such behaviour is illegal if it is:

- eliminating or substantially damaging a competitor;
- preventing the entry of a person into that or any other market; or
- deterring or preventing a person from engaging in competitive conduct in any market.

Should Asciano or any third party have credible evidence that Flinders Ports has engaged in such conduct, the Commission would strongly encourage them to seek the intervention of ACCC.

Final Report Conclusion

There is no evidence to suggest that a more intrusive form of ring-fencing arrangement is required.

6 NEXT STEPS

The Commission has recommended that the pricing and access regimes continue beyond 30 October 2012 for a further five-year regulatory period.

To give effect to the pricing regime, the Commission must make a price determination under Part 3 of the ESC Act and pursuant to the Essential Services Commission Regulations 2004. The Commission has developed a Ports Price Determination, which accompanies this Final Report. The Commission will publish notice of its Final Price Determination so that it takes effect prior to 30 October 2012.

In order for the access regime to continue, the SA Government must accept the Commission's recommendation that it to continue and make the requisite Regulation under the *Maritime Services Access Act 2000* prior to 30 October 2012.

APPENDIX A: 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 charges (under price monitoring the Commission will only be regulating conditions relating to charges).

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 B: PUBLISHED CHARGES FOR PORTS SERVICES 2008/09 – 2012/13

Cargo Services Charges (Ex GST)	2012/13		2011/12		2010/11		2009/10		2008/09	
	(CPI 1.8%)		(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.		% change from prev. yr.
Bulk Cargo										
Salt ($/tonne)	$ 1.57	1.95%	$ 1.54	3.36%	$ 1.49	2.76%	$ 1.45	3.57%	$ 1.40	4.48%
Gypsum ($/tonne)	$ 1.57	1.95%	$ 1.54	3.36%	$ 1.49	2.76%	$ 1.45	3.57%	$ 1.40	4.48%
Limestone ($/tonne)	$ 1.57	1.95%	$ 1.54	3.36%	$ 1.49	2.76%	$ 1.45	3.57%	$ 1.40	4.48%
Dolomite ($/tonne)		-		-		-		-	$ 1.40	4.48%
Grain ($/tonne)	$ 1.93	1.58%	$ 1.90	3.83%	$ 1.83	2.81%	$ 1.78	3.49%	$ 1.72	4.24%
Flour ($/tonne)	$ 2.05	1.99%	$ 2.01	3.61%	$ 1.94	2.65%	$ 1.89	3.28%	$ 1.83	4.57%
Liquids ($/Kilolitre)	$ 5.28	1.73%	$ 5.19	3.59%	$ 5.01	2.66%	$ 4.88	3.39%	$ 4.72	4.42%
All other products ($/tonne)	$ 3.81	1.87%	$ 3.74	3.60%	$ 3.61	2.56%	$ 3.52	3.23%	$ 3.41	4.60%
Other Non-Containerised Cargo										
Live sheep ($/head)	$ 0.2967	1.78%	$ 0.2915	3.59%	$ 0.2814	2.59%	$ 0.2743	3.31%	$ 0.2655	4.49%
Live goats ($/head)	$ 0.2967	1.78%	$ 0.2915	3.59%	$ 0.2814	2.59%	$ 0.2743	3.31%	$ 0.2655	4.49%
Live Cattle ($/head)	$ 2.07	1.97%	$ 2.03	3.57%	$ 1.96	2.62%	$ 1.91	3.24%	$ 1.85	4.52%
Bagged Grain/Flour ($/tonne)	$ 2.05	1.99%	$ 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)	$ 3.81	1.87%	$ 3.74	3.60%	$ 3.61	2.56%	$ 3.52	3.23%	$ 3.41	4.60%
Motor Vehicles Completely Built										
Volume <10m3 ($/unit)	$ 24.40	1.79%	$ 23.97	3.59%	$ 23.14	2.62%	$ 22.55	3.30%	$ 21.83	4.50%
Volume 10m3 < 15m3 ($/unit)	$ 35.23	1.79%	$ 34.61	3.59%	$ 33.41	2.61%	$ 32.56	3.30%	$ 31.52	4.51%
Volume > 15m3 ($/unit)	$ 56.91	1.81%	$ 55.90	3.60%	$ 53.96	2.61%	$ 52.59	3.30%	$ 50.91	4.50%
Containerised Cargo										
20' Container ($/unit)	$ 72.00	1.84%	$ 70.70	3.51%	$ 68.30	2.55%	$ 66.60	3.32%	$ 64.46	10.26%
40' Container ($/unit)	$ 132.10	1.77%	$ 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)	$ 0.4189	3.61%	$ 0.4043	2.59%	$ 0.3941	2.50%	$ 0.3845	4.20%	$ 0.3690	2.50%
Grain Levy Port Adelaide (applicable from 1 January)	$ 0.4264	1.79%	$ 0.4189	3.61%	$ 0.4043	2.59%	$ 0.3941	2.50%	$ 0.3845	-
20' Container Levy ($/unit)	$ 5.9000	1.72%	$ 5.80	3.57%	$ 5.60	1.82%	$ 5.50	3.09%	$ 5.34	6.70%
40' Container Levy ($/unit)	$ 11.8000	1.72%	$ 11.60	3.57%	$ 11.20	1.82%	$ 11.00	3.09%	$ 10.67	6.70%

Harbour Service Charges (Ex GST)	2012/13		2011/12		2010/11		2009/10		2008/09	
	(CPI 1.8%)		(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.		% change from prev. yr.	
Port Adelaide (includes mooring)										
Base charge ($ per ship visit)	$ 3,489.02	1.80%	$ 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)	$ 0.0057	1.79%	$ 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)	$ 2,999.22	1.80%	$ 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)	$ 0.0055	1.85%	$ 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	$ 103.60	1.80%	$ 101.77	3.60%	$ 98.23	2.60%	$ 95.74	2.30%	$ 93.59	4.50%
>50 GRT and <100 GRT	$ 163.85	1.80%	$ 160.95	3.60%	$ 155.36	2.60%	$ 151.42	2.30%	$ 148.02	4.50%
>100 GRT and <200 GRT	$ 250.19	1.80%	$ 245.77	3.60%	$ 237.23	2.60%	$ 231.22	2.30%	$ 226.02	4.50%
>200 GRT and <500 GRT (Base charge)	$ 250.19	1.80%	$ 245.77	3.60%	$ 237.23	2.16%	$ 232.22	2.74%	$ 226.02	4.50%
Variable charge ($ per GRT)	$ 0.7213	1.81%	$ 0.7085	3.60%	$ 0.6839	2.60%	$ 0.6666	2.30%	$ 0.6516	4.51%
>500 GRT and <1000 GRT (Base charge)	$ 473.58	1.80%	$ 465.21	3.60%	$ 449.04	2.60%	$ 437.66	2.30%	$ 427.82	4.50%
Variable charge ($ per GRT)	$ 3.7800	1.89%	$ 3.7100	3.63%	$ 3.5800	2.58%	$ 3.4900	2.35%	$ 3.4100	4.60%
>1000 GRT ($ per GRT)	$ 7.13	1.86%	$ 7.00	3.55%	$ 6.76	2.58%	$ 6.59	2.33%	$ 6.44	4.55%
Fishing Vessels										
<40 GRT	$ 137.63	1.80%	$ 135.20	-	-	-		-	-	-
>40 GRT and <50 GRT	$ 155.11	1.80%	$ 152.37	3.60%	$ 147.08	2.60%	$ 143.35	2.30%	$ 140.13	4.50%
>50 GRT and <100 GRT	$ 245.19	1.80%	$ 240.85	3.60%	$ 232.48	2.60%	$ 226.59	2.30%	$ 221.50	4.50%
>100 GRT and <200 GRT	$ 374.52	1.80%	$ 367.90	3.60%	$ 355.12	2.60%	$ 346.12	2.30%	$ 338.34	4.50%
>200 GRT and <500 GRT (Base charge)	$ 374.52	1.80%	$ 367.90	3.60%	$ 355.12	2.60%	$ 346.12	2.30%	$ 338.34	4.50%
Variable charge ($ per GRT)	$ 1.0800	1.89%	$ 1.0600	3.92%	$ 1.0200	2.48%	$ 0.9953	2.30%	$ 0.9729	4.50%
>500 GRT and <1000 GRT (Base charge)	$ 708.95	1.80%	$ 696.41	3.60%	$ 672.21	2.60%	$ 655.18	2.30%	$ 640.45	4.50%
Variable charge ($ per GRT)	$ 5.5100	1.85%	$ 5.4100	3.64%	$ 5.2200	2.55%	$ 5.0900	2.21%	$ 4.9800	4.40%
>1000 GRT ($ per GRT)	$ 10.64	1.82%	$ 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)	$ 424.39	3.50%	$ 410.04	2.80%	$ 398.87	1.30%	$ 393.75	5.00%	$ 375.00	-
>50 GRT and <100 GRT (quarterly charge)	$ 565.86	3.50%	$ 546.72	2.80%	$ 531.83	1.30%	$ 525.00	5.00%	$ 500.00	-
>100 GRT and <200 GRT (quarterly charge)	$ 848.78	3.50%	$ 820.08	2.80%	$ 797.74	1.30%	$ 787.50	5.00%	$ 750.00	-
>200 GRT and <500 GRT (quarterly charge)	$ 1,131.70	3.50%	$ 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)	$ 1,414.63	3.50%	$ 1,366.79	2.80%	$ 1,329.56	1.30%	$ 1,312.50	5.00%	$ 1,250.00	-
>1000 GRT (quarterly charge)	$ 2,829.27	3.50%	$ 2,733.59	2.80%	$ 2,659.13	1.30%	$ 2,625.00	5.00%	$ 2,500.00	-

Navigation Service Charges (Ex GST)	2012/13		2011/12		2010/11		2009/10		2008/09	
	(CPI 1.8%)		(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.		% change from prev. yr.
1st Visit (All Proclaimed Ports)										
Base charge ($ per ship visit)	$ 1,124.76	2.80%	$ 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)	$ 0.1242	2.81%	$ 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)	$ 842.97	2.73%	$ 820.59	3.60%	$ 792.08	2.60%	$ 772.01	2.30%	$ 754.65	4.50%
Variable charge ($ per GRT per visit)	$ 0.0932	2.87%	$ 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)	$ 562.38	2.80%	$ 547.06	3.60%	$ 528.05	2.60%	$ 514.67	2.30%	$ 503.10	4.50%
Variable charge ($ per GRT per visit)	$ 0.0621	2.81%	$ 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)	$ 281.19	2.80%	$ 273.53	3.60%	$ 264.03	2.60%	$ 257.34	2.30%	$ 251.55	4.50%
Variable charge ($ per GRT per visit)	$ 0.0311	2.98%	$ 0.0302	3.42%	$ 0.0292	2.82%	$ 0.0284	2.16%	$ 0.0278	4.51%
Frequent Caller										
Base charge	$ 2,586.91	2.80%	$ 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)	$ 0.2852	2.81%	$ 0.2774	3.58%	$ 0.2678	2.61%	$ 0.2610	2.31%	$ 0.2551	4.51%
State Trader										
Charge ($ per GRT per visit)	$ 0.4124	2.79%	$ 0.4012	3.59%	$ 0.3873	2.60%	$ 0.3775	2.30%	$ 0.3690	4.50%

Pilotage Charges (Ex GST)	2012/13		2011/12		2010/11		2009/10		2008/09	
	(CPI 1.8%)		(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.		% change from prev. yr.
All Ports										
A	$ 2,586.55	3.00%	$ 2,511.21	5.90%	$ 2,371.30	3.50%	$ 2,291.11	2.30%	$ 2,239.60	10.00%
B	$ 1,668.32	3.00%	$ 1,619.73	5.90%	$ 1,529.49	3.50%	$ 1,477.77	2.30%	$ 1,444.54	10.00%
C	$ 1,390.26	3.00%	$ 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

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