



PORTS PRICE REVIEW

FINAL REPORT

November 2003



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SUMMARY

The Essential Services Commission of South Australia (ESCOSA) has drawn its final conclusions in its review of price regulation of Essential Maritime Services in Proclaimed Ports, as is required under the *Maritime Services (Access) Act 2000* (MSA Act).

The two-stage review began with the release of the Discussion Paper “Should Price Regulation Continue?” in November 2002. Seven submissions were received in response. In May 2003, ESCOSA released a Progress Report and six submissions were received in response. In August 2003 ESCOSA released a Draft Report and eight submissions were received in response.

[Those earlier reports, and this Final Report, are available on the ESCOSA website at: www.escosa.sa.gov.au.]

The Essential Maritime Services to which price regulation applies at Proclaimed Ports are (mostly) the basic infrastructure services a ship operator or cargo importer/exporter (consignee / shipper) needs when using a port, such as channels, navigational aids, berths and wharves, but they exclude pilotage, towage and stevedoring. They are defined in the MSA Act as:

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

The first and third definitions relate to shipping services charged to the ship operator; the second relates to cargo services charged to the shipper.

There are seven Proclaimed Ports, as listed below.

▲ Port Adelaide	▲ Port Lincoln
▲ Port Giles	▲ Thevenard
▲ Wallaroo	▲ Ardrossan
▲ Port Pirie	

Flinders Ports Pty Ltd operates the first six ports. AusBulk Ltd operates the port at Ardrossan. These two companies are the “regulated operators” for the purposes of ports regulation. Price regulation began on 31 October 2001, following privatisation of the first six ports¹, which were formerly owned by the SA Ports Corporation.

¹ An additional port, Klein Point, was also sold but it is not a Proclaimed Port.

The first stage of the review process looked at whether price regulation should continue. Based on criteria derived directly from the legislative objectives, ESCOSA concluded that there are sufficient grounds to continue price regulation of Essential Maritime Services, but noted that the grounds vary between services, cargoes and even customers. ESCOSA's key concerns surround bulk grain cargoes, as these tend to have fewer or no viable alternatives.

While ESCOSA has identified the potential for regulated operators to misuse market power in a way that deprives port customers of sharing in the benefits of efficiencies in port operations, ESCOSA has also recognised that Essential Maritime Services generally form only a small proportion of costs in the context of supply chains and cargo values. Accordingly, while Essential Maritime Services may present a potential opportunity for the exercise of market power, ESCOSA has formed the view that the effects on economic efficiency of any misuse in this area would be limited. ESCOSA has also recognised that many port customers have reached commercial agreements for port use with the regulated operators, involving a variety of price and service combinations. ESCOSA would not wish to hinder such activity.

The second stage of the review process looked at which form of price regulation should apply. An appropriate form is one that addresses the concerns identified in the first stage.

ESCOSA has concluded that a more light-handed form of price regulation would be most appropriate for Essential Maritime Services. This will focus on removing the incentive for regulated operators to earn excess profits from that subset of customers over whom they may be able to exercise market power without applying undue regulation in other areas, and without unduly hindering the striking of commercial agreements between the parties.

A New Form of Ports Price Regulation

The new form of price regulation for Essential Maritime Services will involve 2 parts:

1. price monitoring of Essential Maritime Services for a three year period; and
2. negotiate/arbitrate arrangements in relation to grain berths² – achieved by extending the existing Ports Access Regime to cover cargo services at these berths.

Price monitoring allows regulated operators and their customers the freedom to negotiate commercial agreements, while the threat of re-regulation³ provides an ongoing deterrent against the misuse of market power by regulated operators.

The extension of the negotiate/arbitrate model of the Ports Access Regime will provide ongoing regulatory support to commercial negotiations in the areas subject to ESCOSA's greatest market power concerns (note that a negotiate/arbitrate model serves to facilitate access on fair commercial terms – it does not exist to hand out access).

ESCOSA will establish price monitoring on the basis of a three-year review cycle, aligning it with the Ports Access Regime cycle. Note that this new form of price regulation is dependent upon the Ports Access Regime continuing for a further three years beyond 31 October 2004. Whether the Ports Access Regime should continue is subject to a separate review by ESCOSA beginning in November 2003 and due for completion in March 2004. Should it happen that the Ports Access Regime does not continue following its review⁴, then ESCOSA would instead adopt an alternative price monitoring regime, which is outlined in the Final Report.

Implementation

Assuming the Ports Access Regime continues, and only after that is known, ESCOSA will recommend to the South Australian Minister for Infrastructure that the government extend that regime to cover the (cargo) service of “providing port facilities for loading or unloading vessels” at the grain berths identified in that regime. (The relationship between price regulation and the access regime is explained further in the Final Report). Note that the South Australian Government has indicated a general agreement with this approach (the South Australian Government submission is reproduced in Attachment 1 to Appendix A of the Final Report).

² Actually berths *adjacent* to certain bulk loaders – some of which are used for more than grain.

³ That is, the subsequent introduction of tighter, more intrusive regulation.

⁴ The review of the Ports Access Regime involves some issues that have not been addressed here.

ESCOSA will then make a price determination under Part 3 of the Essential Services Commission Act 2002, replacing the First Pricing Determination (FPD). This would set out a price monitoring regime across the full suite of Essential Maritime Services:

- ▲ allowing regulated operators to set their own prices for Essential Maritime Services from 31 October 2004 to 30 October 2007;
- ▲ obliging regulated operators to post a comprehensive (in coverage, not necessarily in size) price list (of their own design) for Essential Maritime Services throughout that period;
- ▲ allowing regulated operators and their customers to enter commercial arrangements involving price/service levels and structures that differ from the posted price list if both parties agree, or, for example, if the service demanded requires additional investment;
- ▲ obliging regulated operators to inform ESCOSA of the posted prices, any changes as may occur to them from time to time, and (on a confidential basis) in summary form, any other prices at which Essential Maritime Services are provided;
- ▲ allowing ESCOSA to monitor and report on Essential Maritime Services prices and associated performance through that period, including benchmarking against other relevant ports as appropriate; and
- ▲ having ESCOSA conduct a subsequent review to determine whether price regulation is warranted beyond 31 October 2007, and if so, in what form (the review would begin in 2006).

If the subsequent review found that the regulated operators had been, for example, misusing market power, then ESCOSA would be able to introduce new price regulation of any form from 31 October 2007. This provides a strong incentive for regulated operators to steer clear of misusing market power, as ESCOSA may, for example, choose to include clawback provisions in any future form of price regulation. The broad criteria for any decision to introduce new price regulation following the subsequent review are discussed below.

In accordance with the requirements of the FPD, the new price determination will also state that a regulated operator cannot implement a price increase in connection with an Excluded Asset (being the Port Giles, Wallaroo and Outer Harbour assets established or extended as per the ports sale). A breach of this obligation would be a contravention of the price determination.

ESCOSA will continue to collect financial and operational performance data from the regulated operators throughout the period stated above under the two existing Ports Industry Guidelines, which may be amended to reflect the new form of price regulation.

ESCOSA may publish summary performance reports periodically to inform port customers and the community about the performance of the regulated operators. ESCOSA expects to develop and include benchmark measures in these reports that would allow some comparison with ports elsewhere, and will work in collaboration with the regulated operators, port customers, and others, in developing these reports.

Subsequent Review

Under the new form of price regulation, ESCOSA will conduct a subsequent review of price regulation of Essential Maritime Services. In that review ESCOSA will determine whether price regulation should continue from 31 October 2007, and if so, in what form. ESCOSA expects that the review will begin in late 2006.

ESCOSA expects that key criteria for that review will involve observations of the actual behaviour of the regulated operators under the price monitoring regime. In particular:

- ▲ the timing and frequency of changes to the posted price list;
- ▲ the degree of transparency displayed;
- ▲ the incidence and outcome of disputes under the Ports Access Regime;
- ▲ successful negotiations;
- ▲ trends in service quality;
- ▲ price changes – in absolute terms and relative to other ports (noting, for example, that ESCOSA does not necessarily accept CPI as an appropriate basis for ongoing price rises);
- ▲ revenue / volume growth;
- ▲ levels of, and changes in, financial performance; and
- ▲ pricing patterns at regional ports – noting that some regional port users face ongoing cost and service pressures. ESCOSA will review the price and service performance at regional ports closely as this will have a major bearing on the conclusions of the subsequent review.

While the review will look at (then) past behaviour, ESCOSA expects that it will also consider whether other structural changes affect the outlook and hence, for example, the ongoing potential for misuse of market power. Upgrades at Ardrossan and other ports, rail infrastructure improvements that increase effective Victorian port competition, new port developments, etc are examples of the type of structural developments that ESCOSA expects it will consider.

These comments are provided for guidance. However, ESCOSA will not limit its future self in terms of what specific issues the subsequent review may cover.

Transitional arrangements

ESCOSA is aware that some port customers have contracts involving discounts or rebates linked directly to the prices established under the First Pricing Determination. ESCOSA will require each regulated operator to write to each of these contracted customers by the end of November 2003, to alert them to this change. This will ensure that those customers have had advance notice of the change in regulation (almost one year), and hence an opportunity to renegotiate/restructure their contracts.

1. INTRODUCTION

In November 2002 the Essential Services Commission of South Australia (ESCOSA) released a Discussion Paper “Should Price Regulation Continue?”. The Discussion Paper marked the beginning of the Ports Price Review, a review of the price regulation of Essential Maritime Services under the *Maritime Services (Access) Act 2000* (the MSA Act).

In May 2003 ESCOSA released a Progress Report, which set out ESCOSA’s preliminary conclusions on the first stage of the Ports Price Review: Should Price Regulation Continue? The Progress Report also summarised the rationale behind the conclusions. The next stage of the review was to consider the form of price regulation that should apply.

In August 2003 ESCOSA released a Draft Report, setting out ESCOSA’s draft conclusions on both questions: should price regulation continue, and if so, in what form? ESCOSA has further revised and now finalised that report, to produce this Final Report.

The submissions made to the reports above are listed in Appendix A.

The publication of this Final Report, setting out ESCOSA’s final conclusions, means that ESCOSA has fulfilled the review requirements under Section 7 of the MSA Act. In doing so, ESCOSA has had regard to its legislative objectives (see Chapter 5).

ESCOSA will next need to make a price determination under Part 3 of the *Essential Services Commission Act 2002* (ESC Act) to replace the current First Pricing Determination (FPD). Part 3 requires ESCOSA to work through a process for making a price determination – this can occur in 2004 after the completion of the Ports Access Review (see below). A new price determination can take effect on or after 31 October 2004.

1.1 Ports Access Review issues

The new form of price regulation set out in this report depends in part on the Ports Access Regime. Whether that regime should continue will be the subject of a separate review by ESCOSA beginning in November 2003 (the Ports Access Review). While there will be some areas of commonality between the Ports Price Review and the Ports Access Review, there will also be some new issues to be addressed in that later review.

Further, the Ports Access Review only considers services already covered by the Ports Access Regime; it will not consider whether additional services should be covered – one of the key elements of this review.

1.2 Structure of this Report

The remainder of this report is set out as follows.

Chapter 2 clarifies certain coverage issues for Essential Maritime Services.

Chapter 3 sets out ESCOSA's final conclusions on whether price regulation should continue.

Chapter 4 sets out ESCOSA's final conclusions on the most appropriate form of price regulation to apply to Essential Maritime Services.

Chapter 5 sets out how ESCOSA's conclusions satisfy the legislative objectives.

Chapter 6 sets out the next steps beyond this Ports Price Review.

Appendix A lists the submissions received.

Appendix B outlines ports price regulation in other jurisdictions.

Appendix C presents information in respect of estimates of the share of Essential Maritime Services in total cargo value and analysis of comparisons of Essential Maritime Services costs for grain at various ports around Australia.

2. COVERAGE ISSUES

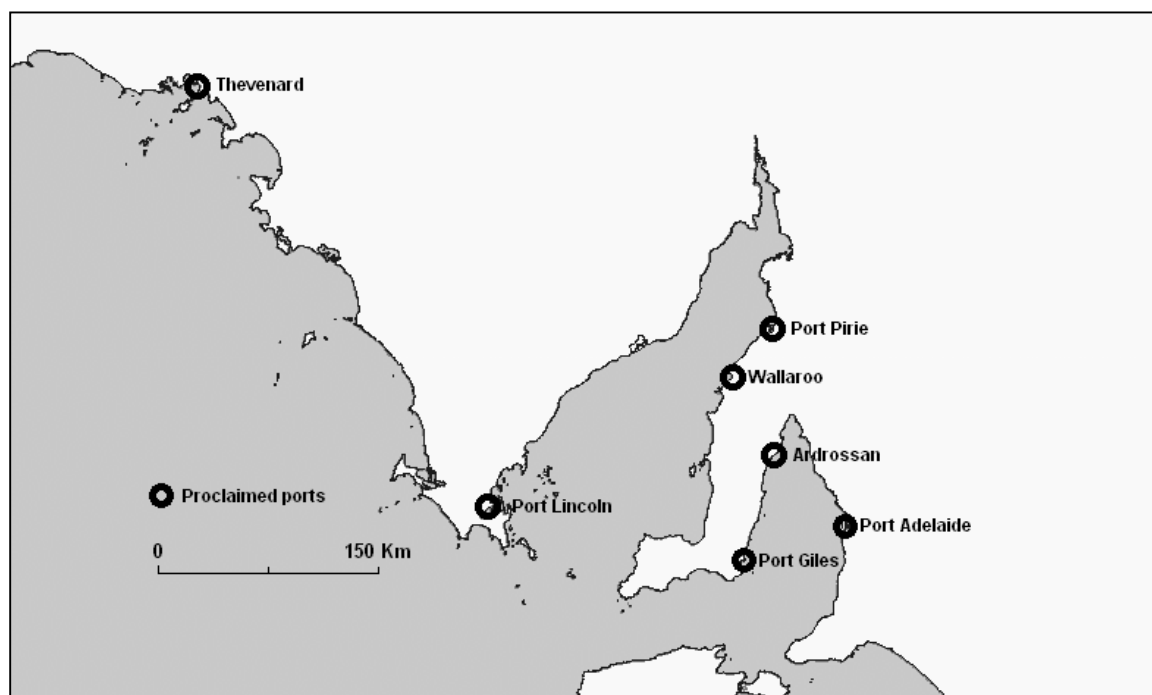
In the Progress Report, ESCOSA noted the doubt surrounding what services were included in Essential Maritime Services. ESCOSA has clarified these coverage issues.

2.1 Essential Maritime Services

Section 4 of the MSA Act defines Essential Maritime Services as consisting of:

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

Figure 2.1 Proclaimed Ports



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There are seven Proclaimed Ports, as shown in Figure 2.1 above:

- ▲ Port Adelaide;
- ▲ Port Giles;
- ▲ Wallaroo;

- ▲ Port Pirie;
- ▲ Port Lincoln;
- ▲ Thevenard; and
- ▲ Ardrossan.

Flinders Ports Pty Ltd operates the first six ports. AusBulk Ltd operates the port at Ardrossan.

At present 3 port charges cover these Essential Maritime Services, being the:

- ▲ Navigation Services Charge;
- ▲ Harbour Services & Mooring Charge; and
- ▲ Cargo Services Charge.

The three 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. However, there is no particular requirement for each charge to correspond to each component of the definition. Indeed, the FPD notwithstanding, the regulated operators could have one, two, three or more component charges if they so wished.

Essential Maritime Services are defined in the MSA Act and it is not ESCOSA's role to seek to redefine them. Further, it is apparent to ESCOSA that there are varying terms applying to the same services in ports around Australia and that the creation of a complete and exhaustive list of services covered by Essential Maritime Services is not feasible. However, for the purpose of clarity, it can be said that they include the services of, or provided by:

- ▲ navigational aids;
- ▲ harbour control⁵ (but not pilotage or towage);
- ▲ channels;
- ▲ berths;
- ▲ wharves;
- ▲ cargo loading and unloading (marshalling) areas (but not loading or unloading itself);
- ▲ jetties;
- ▲ berth pockets;
- ▲ fenders;
- ▲ mooring structures;
- ▲ mooring and unmooring (see below); and
- ▲ provisioning connections (but not provisioning).

⁵ ABB Grain used the words "efficient and safe rotation of vessels into and out of Port" to describe their understanding of this part of the service (ABB Grain, 1st submission, p.2).

Note that not all of the services above are infrastructure services. The definition of Essential Maritime Services is not limited to infrastructure and hence that cannot be used as a basis for excluding services from the definition.

2.2 Mooring

Mooring and unmooring services are Essential Maritime Services as they are a necessary part of providing or allowing for access of vessels to a proclaimed port. That is, access is only meaningful when a ship is safely berthed at its allocated wharf (and able to be unberthed) and this requires mooring/unmooring services. Mooring and unmooring are currently included in the Harbour Services & Mooring Charge and are therefore also currently regulated.

Whether mooring/unmooring services should continue to be subject to price regulation is discussed later (along with other Essential Maritime Services).

2.3 Storage

ESCOSA explained in the Progress Report that the definitions in Section 4 of the MSA Act makes it clear that storage is not an Essential Maritime Service, and hence price regulation cannot apply to storage.

Currently, the payment of a Cargo Services Charge may include the use of some limited storage capacity at the port for up to three days. However, this relates to a marshalling area service, which is a necessary part of loading or unloading operations. Indeed, the provision of port facilities for loading or unloading vessels at a proclaimed port would be meaningless without marshalling areas. As such a marshalling area service is an Essential Maritime Service.

3. SHOULD PRICE REGULATION CONTINUE?

ESCOSA set out its preliminary views on whether price regulation should continue in the Progress Report. These views were based on an examination of Essential Maritime Services against the assessment criteria set out in the Discussion Paper and developed further in the Progress Report. The assessment criteria are derived from the legislative objectives in the MSA Act and the ESC Act, ensuring that ESCOSA's conclusions are consistent with those objectives.

ESCOSA restates the assessment criteria below, and then sets out its final conclusions in respect of each. Note that mooring services are discussed separately.

3.1 Assessment criteria

The assessment criteria applied were:

- ▲ Does the structure of the market for Essential Maritime Services suggest market power could exist?
- ▲ Is market power being misused or is the potential there for it to be misused?⁶
- ▲ Do customers have alternative routes for their goods (indirect competition)?
- ▲ Is competitive entry possible?
- ▲ Does the answer vary between proclaimed ports and between the goods being moved (for example is the situation in grain different to that for container traffic)?
- ▲ Are Essential Maritime Services of sufficient importance to the South Australian economy to warrant economic efficiency concerns? This could occur either because Essential Maritime Services themselves are a significant industry or because they have a significant impact on the economics of other industries.
- ▲ Can price regulation fix the above matters or will it impose excessive additional costs and risks?

ESCOSA removed the second criteria used in the Progress Report, which was “Does monopoly or market power exist?” as it became evident that the assessment and any conclusions reached merely duplicated those from the first two criteria already set out above.

ESCOSA notes that in considering these criteria it has adopted a broad view of the markets in which Essential Maritime Services are provided. In particular, ESCOSA has adopted a supply chain view as this provides a more accurate representation of the drivers of Essential Maritime Services consumption decisions. Therefore, ESCOSA has considered supply chain competition.

⁶ Note that this is not necessarily the same as misuse of market power that would lead the Australian Competition and Consumer Commission to take action under the *Trade Practices Act 1974*.

ESCOSA also explained in the Draft and Progress Reports that it would consider the merits of seeking consistency with regulation in other jurisdictions. In Appendix B, ESCOSA has listed the approach to ports price regulation and control in other Australian jurisdictions. This matter is taken up in the next chapter.

3.2 Does the structure of the market for Essential Maritime Services suggest market power could exist?

In the seven Proclaimed Ports, the relevant port operator holds an exclusive Port Operating Agreement (POA) with the Minister for Transport. The effect of a POA is to give the port operator the sole right to provide, or manage the provision of, Essential Maritime Services in that Proclaimed Port.

Any ship or shipper using a port can only do so by using Essential Maritime Services as provided by the port operator – it is not possible to use a port without using Essential Maritime Services. Therefore, structurally, each port operator is a sole provider. This structure suggests that market power could exist in the delivery of Essential Maritime Services.

However, ESCOSA does not consider it correct to view the market for Essential Maritime Services as existing within any one port only. The market for Essential Maritime Services reflects the range of port choices that a ship or shipper might have, and may reflect the broader choices available, including not sending goods through any port. Consumption decisions concerning ports are commonly made as part of overall supply chain decisions; indeed the choice of port may be only a very small and even inconsequential (for the shipper) part of that consumption decision.

Note though that these broader considerations do not mean that market power cannot exist. Some cargoes have no feasible alternative provider of Essential Maritime Services irrespective of how broadly markets are defined.

Final conclusion

The structure of the market for Essential Maritime Services suggests that market power could exist.

3.3 Is market power being misused or is the potential there for it to be misused?

For the purposes of ESCOSA's legislative objectives, the misuse of market power refers not merely to the existence of market power but more particularly to its use by a service provider in

a fashion that involves a sustained, and possibly deliberate, over-pricing and/or under provision of services. While there may be a variety of different reasons for a service provider to engage in such behaviour, it is the outcomes of that behaviour that are of most concern to ESCOSA, especially:

- ▲ negative effects on economic efficiency; and
- ▲ the failure to share with customers the benefits of any efficiencies generated in service provision, as would occur in a competitive market.

Actual misuse

Given the previous conclusion that market structure suggests market power could exist, misuse of market power would be best evidenced by the behaviour of the service providers in question. That is, for example:

- ▲ pricing above competitive levels;
- ▲ earning excessive returns;
- ▲ providing poor service; or
- ▲ over-investing in service provision.

ESCOSA was presented with no specific suggestion from port users that the regulated operators were exercising market power in a malicious way. Grain customers noted that attempts at negotiating grain charges had been unsuccessful, although these referred to discussions with the previous government port owner, not current owners.

Both regulated operators make heavy use of commercially negotiated contracts, often involving volume rebates or other discounts. Although grain is the exception to this, many other bulk or low unit value commodities are covered under such arrangements. Flinders Ports published its standard price list on its website before being required to do so under any ESCOSA guideline.⁷ Further, Flinders Ports has not raised its standard prices to the extent allowed under the FPD, choosing, so far, to forgo the CPI rise allowed as of 1 July 2002.

Grain customers indicated that port costs for grain in South Australia are higher than elsewhere in Australia, with the obvious suggestion that this might relate to market power problems. ESCOSA has examined these claims.

The headline port charge for grain is the Cargo Services Charge. This is often known as wharfage or a tonnage charge at other ports. Set at \$1.50 per tonne in South Australia, it is

⁷ AusBulk had not published a price list for Ardrossan until required as it was already fully contracted with OneSteel at that port.

certainly higher than per tonne rates at other ports examined (see Appendix C) and as indicated by ABB Grain and AWB Limited in their submissions.

However, port charges involve a combination of cargo and ship based charges, and this combination can vary between ports. As Meyrick and Associates explain in a report to the Victorian ESC⁸, it is difficult to settle on a correct balance in these charges. Therefore, ESCOSA has sought to compare grain charges at ports around Australia by comparing bundles of port costs that equate to all Essential Maritime Services.

Table 3.1 Essential Maritime Services grain cost comparison*

Port	Essential Maritime Services or equivalent (\$/tonne)	
	Panamax	Handymax
Wallaroo / Port Lincoln* (2 port loading)	1.91	1.96
Port Adelaide / Port Giles* (2 port loading)	1.97	2.03
Geraldton**	1.03	1.04
Portland	1.49	1.54
Geelong	1.69	1.49
Melbourne	1.20	1.22
Newcastle	1.27	1.28
Brisbane	2.15	2.17

*Costs are weighted average \$ per tonne for a full load from a two-port rotation. Separate results for each port in the rotation are presented in Appendix C.

**Note the difficulty in comparing Geraldton due to charge bundling at that port: see comments Appendix C. The price here will be understated.

Table 3.1 above summarises the results of the analysis (full results are in Appendix C). This is based on two notional vessels (panamax and handymax classes) visiting various ports for the same grain load. The analysis for South Australia is complicated by the usual pattern of two port loading between Port Adelaide & Port Giles, and between Wallaroo & Port Lincoln, that often occurs because of draft restrictions.

⁸ Meyrick and Associates 2002, *Channel Pricing – Issues & Practices*, Prepared for Essential Services Commission, Meyrick and Associates, Wollongong.

As set out in Appendix C, certain assumptions are used to develop the above table of results. Results will vary slightly depending upon the notional vessels selected, loading rates, time taken to complete documentation, load shares, etc. Notably, not all of those parameters are under the direct control of the port operator. For example, berth hire costs depend upon the loading rate, which is under the control of the bulk loader operator, not the port. Similarly, time costs can relate to customs and quarantine clearance, agent timeliness and even shipper timeliness with cargo deliveries or removals.

The comparison shows that per grain tonne port costs in South Australia are higher than the other ports selected, except for the Port of Brisbane. However, these costs reflect the additional costs (eg. extra berth time) of two-port loading in South Australia. Therefore, ESCOSA undertook another comparison, assuming one port loading were possible and desirable at Port Lincoln and Port Adelaide for both vessels.

Table 3.2 One port loading assumed (\$ per tonne)

Port	Panamax	Handymax
Port Lincoln	1.74	1.77
Port Adelaide	1.96	1.95

Costs fall under this assumption. The results are still higher than the other selected ports in Table 3.1 earlier (except for Brisbane), but by a lesser margin. This shows that two port loading in South Australia could explain some part of the higher costs.

Essential Maritime Services charges for grain appear to be higher, in general, than those interstate. Further, the Cargo Services Charge for grain is higher than that for several other bulk commodities (\$1.50 per tonne compared to \$1.24 per tonne for salt, gypsum, limestone and dolomite), although lower than the \$3.02 maximum charge for “other” bulk⁹. ESCOSA also notes the absence of significant contractual arrangements (including volume rebates) for grain customers. As South Australian grain is a bulk cargo that has only limited domestic or alternative port options, these outcomes could indicate the exercise of market power.

However, this is not sufficient proof of the misuse of market power. Against these observations ESCOSA must also weigh that:

⁹ The figures reported here are the approved maximum prices caps. Flinders Ports has chosen to set lower price caps for itself at this time (except for grain).

- ▲ South Australia has more grain ports than other states, which results in lower volumes per port and hence could explain higher per tonne costs;
- ▲ some of the South Australian grain ports are heavily exposed to grain, or dedicated entirely to grain, meaning that the port owner faces significant volume risks (drought, production shifts, domestic prices) in respect of those particular assets;
- ▲ higher port costs are offset by lower road transport costs made possible by having more ports available – a deliberate choice in past grain policy decisions;
- ▲ South Australia’s regional ports have been built to handle grain, and charges for other commodities may reflect the smaller share of port infrastructure dedicated to or demanded by those commodities; and
- ▲ the absence of contracts partly reflects the historical situation for grain pricing in ports, where solutions tended to be handled at the political level. The fixing of the current \$1.50 Cargo Services Charge without CPI adjustment, and the requirement for the new owner to undertake certain grain related investments, are examples of this.

In respect of the latter point, ESCOSA has been variously informed that efforts are now underway to open negotiations between parties in respect of prices and services for grain – reflecting the new commercial environment. Of course, ESCOSA also recognises that the striking of contracts itself does not imply an absence of market power – the terms and conditions of any contract may reflect market power imbalances.

The evidence collected reinforces ESCOSA’s earlier conclusions that the market structure suggests that market power could exist, but does not provide definitive proof of its misuse.

Of course, it is also the case that the regulated operators are currently subject to price regulation in the form of price caps and their scope to misuse market power is already limited. Therefore, the potential for the misuse of market power must also be of concern to ESCOSA.

Potential misuse

A significant indicator of the potential for the misuse of market power is the responsiveness of port customers to price changes. If responsiveness is low (low elasticity of demand), then the port operator may be able to raise prices and gouge revenues from customers.

ESCOSA noted earlier that port service consumption decisions are often just a small part of supply chain decisions. Even if a broader market definition is adopted, and the scope for market power reduces, the ability to exercise any market power that remains may increase.

The demand for Essential Maritime Services is a derived demand, based on the demand for the goods being exported or imported. If Essential Maritime Services are only a small fraction of the value of that good, then it may be possible for a provider to raise prices without being noticed.

The Victorian Essential Services Commission, in its final report on channel access¹⁰, set out its analysis of the demand for channel services in Melbourne. That analysis found that as channel charges were such a small proportion of the value of cargo, they showed a very inelastic demand. This suggested that the provider of those services may be able to raise prices without prompting much loss of custom.

The situation is the same for South Australian ports, even though Essential Maritime Services are a broader set of services, and hence charges, than channels. In the Draft and Progress Reports, ESCOSA showed some indicative shares of Essential Maritime Services costs in some South Australian cargoes. As the table below shows, the shares are very small other than for Gypsum, which is a very low value product on a per tonne basis.

Table 3.3 Essential Maritime Services cost shares*

Product	Indicative Cargo Value	Essential Services costs	Maritime Cost share
Wine cartons	\$160 per carton	8.6 cents per carton	0.05%
Vehicles	\$30,000 per vehicle	\$48.38 per vehicle	0.16%
Grain	\$250 per tonne	\$1.95 per tonne**	0.78%
Gypsum	\$16 per tonne	\$1.58 per tonne	9.9%

*Note that the costs are based on notional (not necessarily average) load types, load rates and ship type, etc and are for indicative purposes only. The analysis also assumes full list rates are paid. Details are included in Appendix C. Cargo values are indicative only, they are not exact selling prices for any particular producer.

**As shown in Appendix C Essential Maritime Services cost estimates for grain vary between ports, \$1.95 per tonne is representative of the results.

Of course, the percentages above apply to gross values. Essential Maritime Services, and any other supply chain cost component, would account for a larger share of profit margins.

Based on such an analysis, there would be some concern for most products as all but the lowest value bulk commodities would have low resulting elasticities and hence be suggestive of the scope to apply market power, if it exists.

¹⁰ Essential Services Commission (2003) *Inquiry into Port Channel Access in Victoria*, Final Report, May 2003.

However, the use of derived demand estimates is only satisfactory if assumptions are already made that the service provider holds some market power. As Flinders Ports commented:

A low elasticity could make the exercise of market power less obvious, but not increase the probability that it exists in the first place. (Flinders Ports, 2nd sub, p.6)

If alternatives exist to that provider then it will not be able to make much use of the low elasticity. Hence the veracity of this approach is limited if there is uncertainty surrounding the initial assumptions.

While Essential Maritime Services may form only a small part of the total cargo value, they may form more significant proportions of the cost structure of parts of the supply chain. For example, the Harbour Services & Mooring Charge and Navigation Services Charge are levied on shipping lines and hence form part of shipping fees. Unless these providers are able to pass on charges as they like, they will have a direct interest in the level of port fees charged by a port operator.

Further, many shippers have logistics divisions or use specialist logistics firms to manage some or all of their supply chains. Port costs would amount to a larger proportion of their area of operations and hence surreptitious price rises would be less likely (indeed some of these divisions or businesses will know more about port cost relativities and supply chain dynamics than a port operator). For example, ABB Grain commented that it certainly takes notice of the Cargo Services Charge for grain and other smaller charges, stating that it:

...represents nearly 20% of the FOB grain export charge. (ABB Grain, 2nd sub, p.6)

The Productivity Commission raised similar issues in its examination of the regulation of airport services¹¹. While recognising that each service formed a very small part of total air travel costs, hence giving rise to the low elasticity problem, that report recommended against continued price regulation for many charges.

The combination of indicators of market power, the evidence on grain prices and the generally low elasticity of demand have led ESCOSA to conclude that there are some concerns over the potential for regulated operators to misuse market power. This arises in respect of the concern that sustained price rises (or equivalent) would deny consumers from sharing in the benefits of efficiencies. However, the overall impact on economic efficiency is expected to be less significant (see 3.7 below). As these concerns relate to the potential for misuse, rather than current misuse, some uncertainty attaches to them.

¹¹ Productivity Commission 2002, *Price Regulation of Airport Services*, Report no. 19, AusInfo, Canberra.

Final conclusion

There is some potential for the misuse of market power.

3.4 Do customers have alternative routes for their goods (indirect competition)?

Earlier it was noted that a port user has no alternative to using the Essential Maritime Services supplied by the port operator – in that port. However, a port user, whether a ship or shipper, will often have a choice of port, or indeed a choice of whether to use a port at all. The alternatives arise in various forms:

- ▲ Containers are designed for mobility and can be readily moved by rail and truck, opening the possibility for movement to Melbourne, Fremantle and elsewhere. For example, Patrick Corporation offers a container service in Adelaide, using its own train to its container terminal at the Port of Melbourne. ESCOSA notes that container traffic dynamics may be affected by cross ownership of container operations at competing ports. In this case, the current container stevedore at Outer Harbour (CSX World Terminals) does not have similar operations at competing ports – resulting in a competitive outlook. Were a stevedore with competing operations to take over the Outer Harbour operation at some time in the future, then ESCOSA would need to reassess its conclusion at that time.
- ▲ Container services tend to be shipping line driven rather than cargo driven, meaning that the port operator (and stevedore) need to attract shipping services to attract cargoes. This results in active competition for a desirable mix of shipping liner calls into port. Flinders Ports recently attracted a North American service, enabling it to capture container volumes that had been moving from South Australia through the Port of Melbourne.
- ▲ Many port customers are large corporations, sometimes with significant knowledge about logistics and commonly with significant volumes of traffic on offer. Indeed, a significant proportion of Flinders Ports' Essential Maritime Services revenue is subject to various forms of contractual arrangements, sometimes involving volume rebates, that have been entered into with major customers.
- ▲ As the port is only a small part of any supply chain, the choice of port may be driven by other aspects of the supply chain, meaning that the port operator may be a relatively passive player in the choice of port decision. Customers can also make their own locational decisions, affecting port choice.
- ▲ Some products can be moved onto the domestic market instead of exported.
- ▲ Should a port operator, or anyone else in the supply chain, seek to price gouge, some operators will cease production. For example, gypsum and some other minerals are low unit value, globally traded commodities. Operating on low margins, any move to price gouge would soon risk ceasing production – and the loss of all volume to the port.

The feasible alternatives tend to arise in high unit value, mobile cargoes, such as containers and vehicles. Bulk commodities have fewer options in most cases, although grain from areas near the Victorian border could, for example, be moved through Victorian ports. The existence of alternatives operates as a constraint on the exercise of any market power.

ESCOSA sought more specific comment from ABB Grain and AWB about their ability to use border region grain as leverage with Flinders Ports. For example, a threat to divert significant volumes from South Australia could be used to encourage a port operator to revisit their pricing.

ABB Grain commented in its 2nd submission that this was possible, but not necessarily practical or cost efficient. AWB controls more significant volumes in that region, and could pose a more substantial threat. However, in their 2nd submission they state that substantial transport costs would undermine the benefits of that approach. AWB also noted that their charter requires them to move along least cost paths (though whether this would preclude them from taking such action as a “strategic investment” is not clear).

ESCOSA also recognises that some port users have fixed assets at, or near, particular ports. Thus while port choice may exist in concept for such users, cost practicalities would make any switch more difficult in the short to medium term.

Notably, most of the input ESCOSA received to this review was in respect of grain, with some informal discussions in respect of other bulk commodities. This may indicate a lack of concern from the high unit value shippers who have ready alternatives to South Australian ports. Indeed, this was confirmed verbally in discussions with some high unit value shippers.

Final conclusion

Some port customers have economically feasible alternatives, but some bulk shippers, especially grain, are limited in this regard.
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3.5 Is competitive entry possible?

ESCOSA noted earlier that competitive entry is not possible within a port, as the port operator has sole right to offer (or control the delivery of) Essential Maritime Services within its port.

It is possible to enter the market by building a new port, assuming that a site can be found and regulatory approval obtained. AWB Ltd is considering such a move at Myponie Point on the Yorke Peninsula, although the feasibility of that project is unknown. In general, new entry through a new port is unlikely to occur on a significant scale.

An existing port could expand the range of cargoes offered under Essential Maritime Services. For example, AusBulk has announced a panamax capable upgrade to Ardrossan to recommence grain movements. If that occurs, then there would be competition on the Yorke Peninsula for grain. Indeed this upgrade, together with developments at Port Adelaide, could have a significant effect on Port Giles and Port Pirie. Additionally, AWB and ABB Grain have sought, unsuccessfully, to develop grain facilities at Port Stanvac (currently a fuel terminal).

Flinders Ports argued in its 2nd submission that the above developments, together with the mothballing of the Port Stanvac refinery, indicate a very dynamic ports environment. ESCOSA agrees that dynamism is apparent, although the Ardrossan upgrade appears likely to be the only development that will offer sustained competitive pressure, if it occurs. Indeed, once Ardrossan developments are clearly underway, ESCOSA expects that the need for continued regulation of the Yorke Peninsula ports may be reduced.

The mothballed Port Stanvac would still be a competitive backdrop for fuel into Port Adelaide.

Final conclusion

Scope for entry into Essential Maritime Services is limited.
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3.6 Does the answer vary between proclaimed ports and between the goods being moved (for example is the situation in grain different to that for container traffic)?

One of the most significant observations that ESCOSA has made thus far is the variation that exists between cargo types, especially between the high value containers (and automobiles), and the lower value and less mobile bulk commodities.

It is also the case that alternatives reduce further west, as distance reduces the feasibility of finding alternative transport options. Eyre Peninsula port users have little alternative, with only limited transport options, a very small local market and the two Proclaimed Ports owned by the one regulated operator.

The Port Pirie Regional Development Board (PPRDB) also commented on the risk that a regulated operator might let maintenance and upgrades at some ports lapse. Pasma Port Pirie Smelter, a major port user at Port Pirie, also noted its dependence upon the continuity of port services there. This enters more generally into the issue of port continuity. At the outset it needs to be said that economic regulation cannot turn an uneconomic port into an economic port. Further, ESCOSA understands that the regulated operators have considerable obligations under their POAs and that the terms of Flinders Ports' purchase agreements include some

protections against the sort of behaviour that the PPRDB raises. However, ESCOSA will focus on pricing and service quality behaviour at regional ports in any new form of price regulation.

The implication is that the need for price regulation can vary by port, cargo type and even customer. In the Progress Report ESCOSA mentioned that its concerns were more with bulk commodities and the Eyre Peninsula. The conclusion below identifies bulk commodities, especially grain, only, as this captures already the key issue on the Eyre Peninsula and the regional ports more generally.

Final conclusion

There is significant variation between ports and cargoes and customers. Greater market power concerns arise in respect of bulk cargoes, especially grain.

3.7 Are Essential Maritime Services of sufficient importance to the South Australian economy to warrant economic efficiency concerns? This could occur either because Essential Maritime Services themselves are a significant industry or because they have a significant impact on the economics of other industries.

Essential Maritime Services in South Australia account for around \$40 million of revenue annually, making it a very small industry in itself. Bulk commodities account for only part of this total, for example grain accounts for \$12-\$15 million, depending upon the season.

However, the Proclaimed Ports are involved in the export and import of billions of dollars worth of goods each year. For example, South Australia exported over \$9.1 billion worth of goods in 2002 and imported over \$5.6 billion¹². According to trade data supplied by Transport SA, over \$6 billion of the exported goods moved through Proclaimed Ports.

This gives Essential Maritime Services some reflective significance, which arouses interest in the cost of Essential Maritime Services and the potential need for price regulation. However, their low value in the context of whole supply chains implies a low elasticity (as per the analysis in 3.3 above). This also suggests that the economic efficiency concerns are low as incremental changes in port charges are unlikely to have a significant effect on total imports or exports and hence are unlikely to significantly effect resource allocation.

¹² Australian Bureau of Statistics 2003, *International Merchandise Trade*, December Quarter 2002, Cat. No. 5422.0, 20 February 2003, Canberra.

Final conclusion

Essential Maritime Services themselves are a small part of the South Australian economy, but have some reflective significance through their link to the import and export of billions of dollars worth of cargoes annually.

However, the economic efficiency effects of Essential Maritime Services are limited.

3.8 Can price regulation fix the above matters or will it impose excessive additional costs and risks?

Whether price regulation can address the matters above depends on:

- ▲ estimation of whether the observed market power issues are sufficiently significant to warrant action; and
- ▲ consideration of whether any particular form of price regulation can address those issues in a way that produces a net benefit (as required under the ESC Act when making a price determination).

These matters are reflected more in the next chapter. However, it is clear that as the quantum of funds involved is relatively small in the context of supply chains, ESCOSA will need to ensure it applies a form of price regulation in proportion to both the concerns raised and the quantum.

Table 3.4 Essential Maritime Services and other costs*

Product	Essential Maritime Services costs	Other port costs
Wine cartons	8.6 cents per carton	2.1 cents per carton
Vehicles	\$48.38 per vehicle	\$30.90 per vehicle
Grain**	\$1.95 per tonne	\$1.60 per tonne (approx)
Gypsum	\$1.58 per tonne	\$0.88 per tonne

*Note that the costs are based on notional (not necessarily average) load types, load rates and ship type, etc and are for indicative purposes only. Details are included in Appendix C.

**Note the variability in grain costs due to two port loading – above figures are representative of results.

Also, as Table 3.4 above shows, Essential Maritime Services are only a component of total port costs, let alone supply chain costs. For some cargoes, towage and pilotage may even amount to greater per unit costs than Essential Maritime Services, and stevedoring or loading costs are

over and above those. Hence the benefits that might be derived from regulating Essential Maritime Services must be placed in context.

Final conclusion

Essential Maritime Services charges make up a small part of total supply chain costs – any price regulation must be in proportion to the significance of these costs.

3.9 Mooring services

Mooring services are part of Essential Maritime Services, and are currently included in the Harbour Services & Mooring Charge. However, unlike most of the services included in Essential Maritime Services, mooring is neither an infrastructure service nor a service critically linked to infrastructure ownership.

In the Progress Report ESCOSA suggested that mooring not be subject to price regulation as it should be a contestable service, although noting that there may be regulatory barriers to contestability.

In its submission to the Progress Report, Flinders Ports agreed that mooring is contestable. It suggested that third party providers be allowed to operate under licence to the port, ensuring that any new mooring service provider complied with relevant safety and procedural obligations. It is reasonable that a regulated operator, or indeed any port operator, should ensure that service providers operating within its port comply with relevant standards. ABB Grain also pointed out in its final submission that port operators are subject to increasing security obligations, which will require further control over third party activities in their port areas.

ESCOSA understands that a regulated operator is responsible for ensuring that mooring services are provided, but need not provide the services themselves. As such, mooring is an economically contestable service and can also be contestable from a regulatory perspective.

However, the port licensing arrangements mean that a regulated operator could, if it wished, act to discourage entry into this area. These arrangements exist in the POAs between the Minister for Transport and the regulated operators, and in the *Harbors and Navigation Act 1993*. If the arrangements act to preclude mooring contestability then that issue should be taken up, in the first instance, by the parties to those licensing arrangements.

As a result ESCOSA would prefer that price regulation not apply to mooring services at all. However, as there may be scope for a regulated operator to raise a regulatory barrier to entry, it would be appropriate for ESCOSA to maintain a monitoring role in this area. Should problems

arise, ESCOSA would first bring these to the attention of the Minister for Transport for resolution within the context of the POAs.

Failing that, ESCOSA would need to be convinced that regulatory barriers were being used by a regulated operator to deter entry for market power reasons before it would apply any form of price regulation beyond monitoring.

Final conclusion

Mooring services should be subject to monitoring, as regulatory barriers could deter entry to third party providers.

3.10 Final conclusion

ESCOSA's overall final conclusion is that there are sufficient grounds to continue price regulation of Essential Maritime Services, but the grounds vary between services, cargoes and even customers. ESCOSA's key concerns surround bulk commodity cargoes, particularly grain, as these tend to have fewer or no viable alternatives.

While ESCOSA has identified the potential for regulated operators to misuse market power in a way that deprives port customers of sharing in the benefits of efficiencies in port operations, ESCOSA has also recognised that Essential Maritime Services generally form only a small proportion of costs in the context of supply chains and cargo values. Accordingly, while Essential Maritime Services may present a potential opportunity for the exercise of market power, ESCOSA has formed the view that the effects on economic efficiency of any misuse in this area would be limited. ESCOSA has also recognised that many port customers have reached commercial agreements for port use with the regulated operators, involving a variety of price and service combinations. ESCOSA would not wish to hinder such activity.

Final conclusion

There are sufficient grounds to continue price regulation of Essential Maritime Services.

4. WHICH FORM OF PRICE REGULATION?

The second stage of this review considered which form of price regulation should apply to Essential Maritime Services from 31 October 2004.

4.1 *Forms of price regulation*

ESCOSA's price regulation powers arise under Part 3 of the ESC Act. Specifically, under Section 25(3), ESCOSA may make a price determination that regulates prices, conditions relating to prices or price-fixing factors in any manner it considers appropriate. This means that there is no particular limit to the form of price regulation that might apply. The section sets out some examples of what ESCOSA might do in a price determination:

- ▲ fixing a price or the rate of increase or decrease in a price;
- ▲ fixing a maximum price or maximum rate of increase or minimum rate of decrease in a maximum price;
- ▲ fixing an average price for specified goods or services or an average rate of increase or decrease in an average price;
- ▲ specifying pricing policies or principles;
- ▲ 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;
- ▲ specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the supply of goods or services;
- ▲ 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/or
- ▲ monitoring the price levels of specified goods and services.

Section 25(4) sets out further that ESCOSA must have regard to (in addition to its general objectives as discussed in the Discussion Paper):

- ▲ the particular circumstances of the regulated industry and the goods and services for which the determination is being made;
- ▲ the costs of making, producing or supplying the goods or services;
- ▲ the costs of complying with laws or regulatory requirements;
- ▲ the return on assets in the regulated industry;
- ▲ any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;
- ▲ the financial implications of the determination;
- ▲ any factors specified by a relevant industry regulation Act or by regulation under this Act; and
- ▲ any other factors that the Commission considers relevant.

Section 25(5) requires ESCOSA to also ensure that in making a price determination:

- ▲ wherever possible the costs of regulation do not exceed the benefits; and
- ▲ the decision takes into account and clearly articulates any trade-off between costs and service standards.

This latter point will be addressed more specifically in the making of a price determination, as ESCOSA is required to publish a summary of information and a statement of reasons for the determination. ESCOSA will draw upon this Final Report in complying with these obligations.

Collectively, these provisions give ESCOSA a very broad discretion in its choice of a form of price regulation. The examples included in the ESC Act range from very intrusive price fixing through to very light handed price monitoring. In some cases ESCOSA's discretion may be constrained by an industry regulation Act. For example, an industry regulation Act may require that ESCOSA use only a certain form of price regulation. The MSA Act (the relevant industry regulation Act here) sets no such restrictions for Essential Maritime Services. However, the FPD does set out one requirement in relation to Excluded Assets, which is addressed later.

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

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

4.2 Stakeholder comments

Each of the five public submissions to the Progress Report commented on the forms of price regulation that could or should apply to Essential Maritime Services. These comments are summarised below.

1. The PPRDB suggested that price control remain for a further three years, after which it could be relaxed if no evidence of unfair pricing emerged.
2. AusBulk suggested a form of price regulation that gave regulated operators a degree of freedom to manage the format and prices of Essential Maritime Services. ESCOSA could then undertake surveillance, retaining the ability to intervene if misuse of market power is evident.

3. AWB suggested a dual system, with benchmarking of ship based Essential Maritime Services charges and cost-based price capping of cargo based charges.
4. ABB Grain suggested it would support ESCOSA setting maximum prices or a maximum rate of increase, together with pricing policies and/or principles, and suggested the current Victorian system as an example. ABB Grain reiterated this in its final submission.
5. Flinders Ports suggested no form of price regulation be applied, but indicated that if it were to occur a light handed approach would be preferable. A form of price monitoring was described, involving the ultimate threat of re-regulation.

4.3 Selecting forms

Selecting a form of price regulation involves working through the options listed above and matching the form that will best address the reasons for continuing price regulation. Forms of price regulation can be sorted according to their characteristics – what do they achieve, what risks do they pose, how costly are they? ESCOSA has assessed the forms available against the following four general criteria:

- ▲ Incentive impact – this considers whether the form of price regulation provides an ongoing incentive for the regulated businesses to seek out efficiency gains, or better ways to operate. This is more likely to happen under a form that allows the regulated business to capture a proportion of those gains (assuming that they can be generated at all).
- ▲ Regulatory risk – refers to the risk both of under-regulating and over-regulating. Under regulation occurs where the form of price regulation does not limit the market power of the regulated business and allows them to capture any benefits from that. Over-regulation can result in a regulated business being starved of sufficient revenue, thus driving it toward financial difficulty or, at best, it is regulation that achieves nothing, generating administration and compliance costs for no benefit.
- ▲ Information and administration costs – refer to the costs that any form of price regulation imposes through the need for the regulator, the regulated businesses, customers and governments to administer and comply with the regulation. Every form of regulation involves some costs, and these tend to increase with the complexity of the form. Key costs can arise from the need for a regulator to collect and analyse detailed financial information under some forms of regulation. This criterion relates to the benefit cost question asked in Section 25(5) of the ESC Act.
- ▲ Robustness – refers to the ability of a form of price regulation to respond to changes in the markets and industries involved. This might involve new entrants, new technologies, unanticipated growth, etc that affects both the initial reasons for regulating, and the ability of the regulated business to respond to changes.

The key concerns that have led ESCOSA to conclude that price regulation should continue relate to the potential for regulated operators to misuse market power, as this would deprive

consumers of the benefits of efficiencies generated in port operations. Economic efficiency was of limited concern, and ESCOSA also wishes to avoid unduly hindering the process of commercial negotiation that occurs between many of the regulated operators and their customers. ESCOSA also noted that Essential Maritime Services accounts for a small quantum of funds overall.

This has led ESCOSA to consider only the lighter handed forms of price regulation. That is, the strength of the conclusions in Chapter 3 alone means that ESCOSA cannot justify the use of more intrusive forms. ESCOSA has therefore focussed on pricing principles and price monitoring approaches.

Pricing principles

Pricing principles refers to a form of price regulation where the regulator does not set prices *per se*, but sets out principles with which the regulated business must comply. Compliance can be checked through a periodic approvals process, or on a dispute or complaints basis.

One of the more common pricing principles arrangements uses reference tariffs. In ports this model would most likely involve ESCOSA setting pricing principles and the regulated operators proposing, for approval, a set of reference tariffs (with justifications) for their key regulated services. Customers could then accept those tariffs or choose to negotiate around them.

In practice this model can quickly devolve into a more intrusive cost-based form of price regulation. The risk inherent in an approvals process also tends to encourage the regulated business to aim for higher reference tariffs than otherwise might occur. Further, once reference tariffs are set, the likelihood of meaningful commercial negotiations being entered into may be reduced. ESCOSA does not prefer this form of price regulation for ports, although notes that it may be applicable to grain. Even in grain, ESCOSA would be reticent to curtail the recent small but positive developments in respect of commercial negotiation.

Another pricing principles arrangement is the negotiate/arbitrate model, which exists already in the Ports Access Regime and is used widely in rail regulation. This model focuses on commercial negotiation, but places some bounds on outcomes. In particular, it establishes a right to negotiate for access to covered services and ultimately a right to have an access dispute resolved by an arbitrator. In arbitrating the dispute, the arbitrator must follow established pricing principles to ensure that fair commercial terms are reached.

With relevant safeguards to avoid abuse, this model can be used in an environment characterised by commercial negotiations, which tends to occur where there are fewer parties involved. This is the case, for example, in rail and ports but not in energy regulation where hundreds of thousands of separate household and business customers are involved. Ideally a

negotiate/arbitrate model is never activated: the threat of activation should ensure that most potential disputes are resolved by the parties.

As this model shows some relevance for ports, ESCOSA further considered its applicability against the four criteria:

- ▲ Incentive – the negotiate/arbitrate model provides ongoing incentive for a regulated business to generate efficiencies as it should be able to retain some share of those benefits. However, if a large number of disputes arise then the arbitration process can move toward cost based regulation. Hence care needs to be taken in its application. Under the Ports Access Regime no disputes have occurred as yet; thus this form may be applicable to ports.
- ▲ Risk – the negotiate/arbitrate model exposes the regulated business to the risk of arbitrated outcomes, if a dispute occurs. The safeguards on these regimes are usually designed to ensure frivolous or vexatious disputes do not proceed. As the model is activated only in real dispute situations, there is less risk of regulating unnecessarily. As was noted by the Victorian Essential Services Commission¹³, this model is also not applicable when access is opportunistic or time sensitive, due to the time required for the dispute resolution process. However, while individual shipments may be opportunistic and/or time sensitive, the bulk trades in regional ports tend to involve longer term volumes and customers.
- ▲ Costs – the negotiate/arbitrate model tends to operate as a background regime, only activating when a dispute occurs. This can make it a lower cost model, unless a significant number of disputes arise. The cost structure of this model also focuses the costs on those using the regime, rather than other customers. However, it is not a free form of price regulation. The regulator will need to collect some detailed information on an ongoing basis in order to administer the regime.
- ▲ Robustness – the negotiate/arbitrate model is very robust as each dispute can be managed on its own merits, to the degree necessary and in response to the situation at the time.

ESCOSA considers that an arbitrate/negotiate model would have some applicability to Essential Maritime Services, particularly in relation to the key concerns with bulk grain.

Price monitoring

Price monitoring refers to a series of models in which the regulator steps back from regulating prices directly and allows the regulated business to set their own prices. However, they do this in the context of the regulator monitoring their behaviour and threatening to re-regulate.

Two general variants on this model are:

¹³ Essential Services Commission (2003) *Inquiry into Port Channel Access in Victoria*, Final Report, May 2003.

- ▲ set period monitoring – where the regulator reviews behaviour after a certain known period (as applies to airport regulation in Australia, with a five year set period); and
- ▲ trigger point monitoring – where the regulator will re-regulate if certain trigger points are breached.

The main difference between the two is the nature of certainty given to the regulated business. In the former, the regulated business knows the period applying but may not be fully certain of the criteria for reintroduction. In the latter, the period is unknown but the criteria are (or should be) clearly known. A combination of the two could also occur. In either case, but particularly the former, the threat of re-regulation could be combined with the threat of clawback. Hence not only would the regulated business suffer regulatory intervention (likely heavy handed at that), but it would also lose any excessive profits it generated in the meantime.

As this model shows some relevance for ports, ESCOSA further considered its applicability against the four criteria:

- ▲ Incentive – prices monitoring provides ongoing incentive for a regulated business to generate efficiencies as it should be able to retain some share of those benefits. However, if the regulated business does not share those benefits in some way with its customers then it risks re-regulation. The trigger approach requires the regulator to undertake some detailed analysis before implementation to determine appropriate trigger measures and points – this introduces some possibility of the regulated business gaming those criteria, which may undermine the incentive power. It also requires the regulator to determine those trigger points before the nature of market behaviour under price monitoring is known.
- ▲ Risk – prices monitoring has little risk of over-regulation. However, the set period approach risks under-regulation as the regulated business could misuse market power through the period. This would be a concern in the case of bulk commodities, especially grain.
- ▲ Costs – prices monitoring is a lower cost form as it does not require intensive investigation by the regulator. However, it is not free as it will require the regulator to monitor and review performance.
- ▲ Robustness – prices monitoring is very robust as it provides no specific constraint on the way in which a regulated business responds to its customers and markets.

ESCOSA considers that prices monitoring would have some applicability to Essential Maritime Services, although it would allow a regulated operator to misuse market power (were it able) for a period before corrective action could be taken. The set period model, with a clear clawback threat, is preferred as this provides more certainty to the regulated business and allows the regulator to make a future assessment based on actual behaviour, rather than having to set triggers before the form of price regulation is applied. However, it is reasonable that a regulator should provide an indication of what it expects it will consider in the subsequent review.

ESCOSA also observes that even were it to conclude that no form of price regulation should apply to Essential Maritime Services, in the absence of legislative change, a *de facto* form of

price monitoring would still apply. This is because the power to apply price regulation to Essential Maritime Services would still exist in the MSA Act and ESCOSA could re-introduce regulation at any time (with reason). Further, Section 9 of the MSA Act requires ESCOSA to review all Maritime Services (which are defined in the MSA Act and include Essential Maritime Services) on an ongoing basis with a view to determining whether regulation or further regulation is required under the ESC Act.

Overall

ESCOSA is of the view that a pricing principles (negotiate/arbitrate) model, focussing on commercial negotiation, would be appropriate for the area of key concern: bulk grain. From a practical perspective, developing such an arrangement anew can be a relatively complex and time consuming task. However, an operational model already exists – the Ports Access Regime as set out in Part 3 of the MSA Act.

The areas of most concern to ESCOSA are already partly covered under the Ports Access Regime, which operates separately to any price regulation. At present, the Ports Access Regime focuses on the grain and some common-user berths, but only in relation to shipping services (access into/out of port and berth use), not cargo services (the provision of facilities for loading or unloading vessels).

Whether the Ports Access Regime should continue will be subject to a separate review by ESCOSA beginning in November 2003. If the regime continues, then ESCOSA proposes that the relevant legislative objectives in respect of price regulation will be met by:

- ▲ adding cargo services at grain berths to the Ports Access Regime (which would need to be undertaken by the Minister for Infrastructure); and
- ▲ applying price monitoring to Essential Maritime Services.

Price monitoring would allow regulated operators and their customers the freedom to negotiate commercial agreements, while the threat of re-regulation¹⁴ would provide an ongoing deterrent against the misuse of market power by regulated operators.

Under the approach, ESCOSA would establish price monitoring on the basis of a three-year review cycle, aligning it with the Ports Access Regime cycle.

If the Ports Access Regime does not continue following its review¹⁵, or if the Minister does not agree to include cargo services within the regime, then ESCOSA would instead adopt the alternative model outlined later.

¹⁴ That is, the subsequent introduction of tighter, more intrusive regulation.

4.4 Excluded assets

Flinders Ports is required to undertake three grain related port investments as part of its ports purchase agreement with the South Australian Government. These investments were laid out to all bidders, so that respective bids could be adjusted to take account of these obligations. In essence, the government accepted lower bids to fund these investments.

Clause 2.6 of the FPD sets out a process by which a regulated operator could seek to have new investment related price rises pre-approved for application after 31 October 2004. However, Sub-clause 2.6.3 of the FPD makes clear that this is not to apply to Excluded Assets – these being the three investment projects referred to above and defined in the FPD. The effect is to ensure that Flinders Ports should not raise prices to cover the costs of these investments – those costs already having been funded by government through an adjusted bid price. This includes both capital costs and any ongoing operating/maintenance costs.

This is a common treatment in regulated businesses for contributed or gifted assets; that is, assets paid for by parties other than the regulated business. This makes good sense from a regulatory policy perspective as it avoids customers paying for assets twice. It is also required in this case in accordance with the FPD.

Therefore, ESCOSA will carry the Excluded Asset obligation into the next price determination, with a requirement that a regulated operator not raise prices in connection with an Excluded Asset. Were a regulated operator to do so, it would be in breach of the new price determination, which is an offence as set out in Section 27 of the ESC Act.

4.5 Jurisdictional consistency

ESCOSA has had regard to promoting jurisdictional consistency, which means seeking to avoid the emergence of varying and disjointed regulatory systems across Australia (and beyond). This also means streamlining regulation where possible, appropriate and allowable in law. This can be important for the businesses involved in regulated industries as it can be confusing to comply with different systems in different states (and countries).

In Australia, only Victoria and Queensland, other than South Australia, apply economic regulation to ports. Queensland applies an access negotiation system to private ports, akin to the Ports Access Regime. Victoria applies a more heavy handed form of price regulation at present, although a review of those arrangements has now begun.

¹⁵ The review of the Ports Access Regime will involve issues that have not been addressed in this review.

As set out in Appendix B the other jurisdictions apply no economic regulation, but ports are subject to various degrees and types of government control. Thus it has been difficult for ESCOSA to determine that any form of price regulation would make a significant contribution to jurisdictional consistency.

4.6 A New Form of Ports Price Regulation

The new form of price regulation for Essential Maritime Services will involve 2 parts:

1. price monitoring of Essential Maritime Services for a three year period; and
2. negotiate/arbitrate arrangements in relation to grain berths¹⁶ – achieved by extending the existing Ports Access Regime to cover cargo services at these berths.

Price monitoring allows regulated operators and their customers the freedom to negotiate commercial agreements, while the threat of re-regulation¹⁷ provides an ongoing deterrent against the misuse of market power by regulated operators.

The extension of the negotiate/arbitrate model of the Ports Access Regime will provide more immediate regulatory support to commercial negotiations in the areas subject to greater market power concerns (note that a negotiate/arbitrate model serves to facilitate access on fair commercial terms – it does not exist to hand out access).

ESCOSA will establish price monitoring on the basis of a three-year review cycle, aligning it with the Ports Access Regime cycle. Note that this new form of price regulation is dependent upon the Ports Access Regime continuing for a further three years beyond 31 October 2004. Whether the Ports Access Regime should continue is subject to a separate review by ESCOSA beginning in November 2003 and due for completion in March 2004. Should it happen that the Ports Access Regime does not continue following its review, then ESCOSA would instead adopt an alternative price monitoring regime outlined later.

Implementation

Assuming the Ports Access Regime continues, and only after that is known, ESCOSA will recommend to the South Australian Minister for Infrastructure that the government extend it to cover the (cargo) service of “providing port facilities for loading or unloading vessels” at the grain berths identified in that regime. The South Australian Government indicated a general

¹⁶ The access regime actually identifies berths *adjacent* to certain bulk loaders – some of these berths are used for more than grain. The extension of coverage will not be limited to grain at these berths.

¹⁷ That is, the subsequent introduction of tighter, more intrusive regulation.

agreement with this approach in its submission (reproduced in Attachment 1 to Appendix A). The relationship between price regulation and the access regime is described in Box 4.1 below.

Box 4.1: Price regulation and the Ports Access Regime

Price regulation of Essential Maritime Services is enabled under Part 2 of the MSA Act. ESCOSA is proposing here a pricing principles (negotiate/arbitrate) model of price regulation for some services. Such a model already exists in Part 3 of the MSA Act – the Ports Access Regime.

The Ports Access Regime provides for a system of negotiation, conciliation and arbitration of access to a group of services called Regulated Services. Any Maritime Service (as defined in the MSA Act) can be proclaimed to be a Regulated Service. As all Essential Maritime Services are Maritime Services, it is possible for any Essential Maritime Services to be proclaimed a Regulated Service.

Some Essential Maritime Services have been proclaimed to be Regulated Services and hence are already covered by the Ports Access Regime. These are (in summary form) the services of:

- ▲ access into/out of port; and
- ▲ berth use at nominated berths (grain berths and some common user berths).

Hence for the grain berths, two out of the three parts of the Essential Maritime Services definition are covered under the Ports Access Regime. These are the two shipping related services, but cargo services are not included. The ESCOSA approach will include all three services at grain berths.

Clearly, the arrangements for price regulation and the Ports Access Regime do not fully accord with each other. They were developed during the ports sale process and establish a transitional regulatory package. From a legislative perspective they are fully separate systems. Neither necessarily relies on the other. However, from a regulatory policy sense they both form part of South Australia's system of economic regulation of ports.

Further information about the Ports Access Regime and price regulation can be found in the ESCOSA Information Paper "Port Regulation in South Australia", available on the ESCOSA website on www.escosa.sa.gov.au.

ESCOSA will then make a price determination under Part 3 of the ESC Act 2002, replacing the FPD. This would set out a price monitoring regime across the full suite of Essential Maritime Services:

- ▲ allowing regulated operators to set their own prices for Essential Maritime Services from 31 October 2004 to 30 October 2007;
- ▲ obliging regulated operators to post a comprehensive (in coverage, not necessarily in size) price list (of their own design) for Essential Maritime Services throughout that period;

- ▲ allowing regulated operators and their customers to enter commercial arrangements involving price/service levels and structures that differ from the posted price list if both parties agree, or if the service demanded requires additional investment;
- ▲ obliging regulated operators to inform ESCOSA of the posted prices, any changes as may occur from time to time, and (on a confidential basis) in summary form, any other prices at which Essential Maritime Services are provided;
- ▲ allowing ESCOSA to monitor and report on Essential Maritime Services prices and associated performance through that period, including benchmarking against other relevant ports as appropriate; and
- ▲ having ESCOSA conduct a subsequent review with a view to determining whether price regulation is warranted beyond 31 October 2007, and if so, in what form. While this provides a three year period of price monitoring, the review should begin in late 2006 such that the outcome of the review will be known before the three year period has concluded.

If the subsequent review found that the regulated operators had been, for example, misusing market power, then ESCOSA would be able to introduce new price regulation of any form from 31 October 2007. This would provide a strong incentive for regulated operators to steer clear of misusing market power, as ESCOSA could, for example, choose to include clawback provisions in any future form of price regulation. The broad criteria for any decision to introduce new price regulation following the subsequent review are discussed below.

As discussed above the new price determination would also state that a regulated operator cannot implement a price increase in connection with an Excluded Asset (being the Port Giles, Wallaroo and Outer Harbour assets established or extended as per the ports sale). A breach of this obligation would be a contravention of the price determination.

ESCOSA will continue to collect financial and operational performance data from the regulated operators throughout the period stated above under the two existing Ports Industry Guidelines, which may be amended to reflect the new form of price regulation.

ESCOSA may publish summary performance reports periodically to inform port customers and the community about the performance of the regulated operators. ESCOSA expects to develop and include benchmark measures in these reports that would allow some comparison with ports elsewhere, and will work in collaboration with the regulated operators, port customers, and others in developing these reports. ESCOSA notes the comment from the South Australian Freight Council's submission that the ability to benchmark against other ports will be limited by the availability of accurate pricing data from other ports. ESCOSA will also ensure that it makes use of existing ports information already available from other agencies to avoid unnecessary duplication of effort.

4.7 Alternative model

The new form of price regulation above requires the continuation of the Ports Access Regime and the inclusion of cargo services. If, however, the Ports Access Regime does not continue following its review, then ESCOSA will implement an alternative model, still utilising price monitoring but also:

- ▲ addressing grain concerns by approving a reference tariff for the Cargo Services Charge (or its equivalent) for grain on a pricing principles basis for the three year period; and
- ▲ disallowing changes in the other Essential Maritime Services charges that are grain specific, or directed toward grain traffic, and have the effect of undermining the setting of a reference tariff for the Cargo Services Charge (or its equivalent) for grain.

This model maintains the incentive for regulated operators to avoid misusing market power through the threat of re-regulation as in the previous model, but also addresses ESCOSA's concerns about the potential for the misuse of market power in the grains sector. ESCOSA would consult on the basis for setting the reference tariff for the Cargo Services Charge for grain as part of its price determination making process.

4.8 Subsequent review criteria

Under the new form of price regulation (and under the alternative model), ESCOSA will conduct a subsequent review of price regulation of Essential Maritime Services. In that review ESCOSA would determine whether price regulation should continue from 31 October 2007, and if so in what form. ESCOSA expects that the review will begin in late 2006.

ESCOSA expects that key criteria for that review will involve observations of the actual behaviour of the regulated operators under the price monitoring regime. In particular:

- ▲ the timing and frequency of changes to the posted price list;
- ▲ the degree of transparency displayed;
- ▲ the incidence of and outcome of disputes under the Ports Access Regime;
- ▲ successful negotiations;
- ▲ trends in service quality;
- ▲ price changes – in absolute terms and relative to other ports (noting, for example, that ESCOSA does not necessarily accept CPI as an appropriate basis for ongoing price rises);
- ▲ revenue / volume growth;
- ▲ levels of and changes in financial performance; and
- ▲ pricing patterns at regional ports – noting that some regional port users face ongoing cost and service pressures. ESCOSA will review the price and service performance at regional ports closely as this will have a major bearing on the conclusions of the subsequent review.

While the review will look at (then) past behaviour, ESCOSA expects it would also consider whether other structural changes affect the outlook and hence, for example, the ongoing potential for misuse of market power. Upgrades at Ardrossan and other ports, rail infrastructure improvements that increase effective Victorian port competition, new port developments, etc are examples of the type of structural developments that ESCOSA expects it may consider.

These comments are provided for guidance. However, ESCOSA will not bind its future self in terms of what specific issues the subsequent review may cover.

4.9 Transitional arrangements

ESCOSA is aware that some port customers have contracts involving discounts or rebates linked directly to the prices established under the FPD. ESCOSA will require each regulated operator to write to each of these contracted customers by the end of November 2003, to alert them to this change. This will ensure that those customers have had advance notice of the change in price regulation (almost one year), and hence an opportunity to renegotiate/restructure their contracts.

5. LEGISLATIVE OBJECTIVES

In undertaking this review ESCOSA is obliged to comply with the provisions of the ESC Act and of the MSA Act. This means that ESCOSA's conclusions have been designed to satisfy the relevant legislative objectives in both Acts.

5.1 Objectives

Section 3 of the MSA Act provides four objectives for the whole Act, not just its price regulation aspects. The four are:

- ▲ to provide access to maritime services on fair commercial terms;
- ▲ to facilitate competitive markets in the provision of maritime services;
- ▲ to protect 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.

Section 6 of the ESC Act provides that ESCOSA must:

- ▲ have as its primary objective the protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services; and
- ▲ at the same time, have regard to the need to—
 - ▲ promote competitive and fair market conduct;
 - ▲ prevent misuse of monopoly or market power;
 - ▲ facilitate entry into relevant markets;
 - ▲ promote economic efficiency;
 - ▲ ensure consumers benefit from competition and efficiency;
 - ▲ facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment; and
 - ▲ promote consistency in regulation with other jurisdictions.

ESCOSA is to have regard to these additional objectives. This means that ESCOSA must consider each, although recognising that it may have to balance them against each other in order to achieve the primary objective.

5.2 Discussion

ESCOSA's final conclusions and proposed form of regulation are designed in accordance with these objectives. The assessment criteria used were derived from the objectives – as was set out in the November 2002 Discussion Paper.

5.2.1 Facilitate competitive markets in the provision of Maritime Services

This objective applies to the MSA Act generally, of which the price regulation of Essential Maritime Services (which are also Maritime Services) is only one part. The main message from this objective, for this review, is to avoid “over regulation”, which stifles competitive markets.

The new form of price regulation is a light handed form of price regulation that has a very low risk of stifling competitive markets because it allows regulated operators and their customers to seek out their own preferred arrangements for the supply of Essential Maritime Services.

5.2.2 Protect 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

This objective is specific to price regulation of Essential Maritime Services and identifies the need for regulated prices to be “fair and reasonable”. It also identifies competition and efficiency as key considerations. This objective goes to the heart of the selection of an appropriate form of regulation. ESCOSA is adopting price monitoring because it provides an incentive for regulated operators to avoid misusing market power, and to share the benefits of efficiencies achieved, but recognises the various competitive pressures that regulated operators are already under.

5.2.3 ESCOSA must have as its primary objective the protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services

The primary objective of the ESC Act requires ESCOSA to look beyond the short-term interests of port customers (which might presumably be the lowest possible price) and consider instead how an ESCOSA decision might impact on price, quality and reliability of Essential Maritime Services¹⁸ in the longer term (the next few years or even decades). This includes the need to ensure that they:

- ▲ continue to be available;

¹⁸ Note that the Act refers to essential services, as the objective applies to the full range of services regulated by ESCOSA, but in this instance it is Essential Maritime Services.

- ▲ are delivered efficiently;
- ▲ are delivered to appropriate standards; and
- ▲ keep up with changes in demand, technology and preferences over time.

The focus on long-term interests ensures that the consumer protection aspect of price regulation is not used to force short-term, but unsustainable, price reductions.

Price monitoring supports the long-term delivery of Essential Maritime Services, as it provides incentives for the regulated operators to continue to invest in and provide those services. However, the threat of re-regulation also ensures that the regulated operators do not use their position to deliver inefficient, outdated, poor or excessively priced services.

5.2.4 Have regard to the need to promote competitive and fair market conduct

Promoting competitive and fair market conduct says that price regulation should seek to:

- ▲ encourage competitive conduct by avoiding excessive price outcomes (while leaving room for competition to evolve) or predatory pricing;
- ▲ encourage fair conduct by improving price transparency and having an informed market; and
- ▲ have regulated prices and conditions reflect those that would arise in a competitive market.

ESCOSA has examined levels of competition and conduct in the market for Essential Maritime Services and concluded that there is significant competitive behaviour in some areas, but less so in others. The purpose of price monitoring is to provide an incentive for regulated operators to act in a competitive manner in those areas with less competitive pressure.

5.2.5 Have regard to the need to prevent misuse of monopoly or market power

This objective focuses on avoiding the downside or costs of monopoly markets, and is one of the most basic premises for price regulation. That is, that prices should only be regulated where effective competition cannot be achieved and monopoly or market power exists and is being misused or has the potential to be misused.

ESCOSA has concluded that there are some areas in which there is potential for the misuse of monopoly or market power – although there is some uncertainty over the degree to which any misuse might occur. Price monitoring is designed to reduce this potential. The extension of the Ports Access Regime further mitigates against this.

5.2.6 Have regard to the need to facilitate entry into relevant markets

Some of the objectives above have dealt with promoting competitive markets. One means of achieving this is to facilitate entry into relevant markets. This can work in two ways.

ESCOSA has noted that entry into Essential Maritime Services in existing ports is unlikely, with the possible exception of mooring services. Price regulation of any form is unlikely to overcome this situation.

As Essential Maritime Services are such a small component of most supply chain costs, price regulation of them in any form is unlikely to have more than a marginal effect on port throughput. Hence related market entry is also unlikely to be impacted – at the very least, price monitoring is unlikely to hinder entry into related markets.

5.2.7 Have regard to the need to promote economic efficiency

Economic efficiency is a complex concept that looks at the broad dynamics of markets, economies, businesses and consumers, and the way economic resources are allocated. Efficiency means an economy using the right mix of resources, producing the right goods and services and keeping this up over time.

ESCOSA has shown that the efficiency effects of Essential Maritime Services prices are minor. However, there would be some efficiency costs associated with the misuse of market power. By providing a disincentive for such behaviour, price monitoring will promote economic efficiency.

5.2.8 Have regard to the need to ensure consumers benefit from competition and efficiency

This objective requires that the benefits of competitive and efficient markets flow through to customers and are not captured solely by regulated operators. This means that if price regulation is used, it should be designed to encourage the distribution and sharing of benefits.

This is a key consideration in the case of Essential Maritime Services, for while the efficiency costs may be small, the exercise of market power in Essential Maritime Services could result in consumers missing out on the benefits of port efficiencies.

Price monitoring provides a disincentive to engage in such practices where market power exists, and hence will assist in ensuring that customers can benefit from efficiency gains.

5.2.9 Have regard to the need to facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment

This requires that price regulation should not squeeze prices so far as to threaten the financial viability of the provider of Essential Maritime Services. Further, it recognises the need for an appropriate return on investment if the industry is to continue to invest in its operations and deliver services to customers over time.

As a light handed form of regulation, price monitoring provides considerable freedom to regulated operators to price in a manner that will maintain viability and investment levels.

5.2.10 Have regard to the need to promote consistency in regulation with other jurisdictions

This objective seeks to avoid the emergence of varying and disjointed regulatory systems across Australia (and beyond). It is not a call for foolish consistency, but rather seeks to streamline regulation where possible, appropriate and allowable in law. This can be important for the businesses involved in regulated industries as it can be confusing to comply with different systems in different states (and countries).

In Australia, only Victoria and Queensland other than South Australia apply economic regulation to ports. Queensland applies an access negotiation system to private ports, akin to the Ports Access Regime. Victoria applies a more heavy handed form of price regulation at present, although a review of those arrangements has now begun.

As set out in Appendix B the other jurisdictions apply no economic regulation, but ports are subject to various degrees of government control. Thus it is difficult to identify any form of price regulation as achieving consistency.

5.3 Price determination factors

In making a price determination to implement the proposed form of price regulation, ESCOSA will also have regard to the various factors set out in Section 25(4) and Section 25(5) of the ESC Act. These factors will be discussed more fully when a price determination is made. However, a pertinent factor is 25(5)(a), which requires ESCOSA to ensure that wherever possible the costs of regulation do not exceed the benefits.

This has been a significant issue in this review, as the revenue from delivering Essential Maritime Services in total amounts to around \$40 million per annum, and only around half of that is derived from those areas where market power concerns are most significant. Essential Maritime Services are an important but very small part of total supply chain costs, and it is not appropriate to incur large regulatory costs in managing the regulatory regime.

Price monitoring and pricing principles, as light handed forms of price regulation, provide significant advantages in this respect as the administrative and compliance costs associated with them are generally lower than the costs of more intrusive regulation. However, they are not free forms of price regulation and it is important to ensure that the regulatory costs are reflective of the quantum of funds being regulated.

6. NEXT STEPS

The release of this Final Report denotes the completion of the Ports Price Review in accordance with the obligations under Section 7 of the MSA Act.

However, the Final Report does not mark the end of ESCOSA's activities on this matter. ESCOSA will next need to make a price determination under Part 3 of the ESC Act for Essential Maritime Services, to replace the FPD on or after 31 October 2004.

The nature of the price determination depends upon the outcome of the Ports Access Review. If ESCOSA recommends its continuation and if the South Australian Government makes a regulation to ensure its continuation, then ESCOSA will make a price determination mid-2004 to give effect to the new form of price regulation. If the Ports Access Regime does not continue then ESCOSA will make a price determination mid-2004 to give effect to its alternative model.

ESCOSA notes that the South Australian Government's submission to the Draft Report (reproduced in Attachment 1 to Appendix A) indicates its acceptance of the approaches ESCOSA laid out in that report.

APPENDIX A: SUBMISSIONS

ESCOSA received eight submissions on the Draft Report.

1. AusBulk Ltd
2. Port Pirie Regional Development Board Ltd
3. Pasminco Port Pirie Smelter
4. AWB Limited
5. ABB Grain Ltd
6. Flinders Ports Pty Ltd
7. South Australian Freight Council Inc
8. South Australian Government (whole of government response via the Deputy Premier / Treasurer of South Australia) – reproduced in Attachment 1 below.

ESCOSA received six submissions on the Progress Report.

1. Port Pirie Regional Development Board Ltd
2. AusBulk Ltd
3. AWB Limited
4. ABB Grain Ltd
5. Flinders Ports Pty Ltd
6. Perilya Broken Hill Limited (Confidential submission)

ESCOSA received seven submissions on the Discussion Paper.

1. Shipping Australia Ltd
2. AusBulk Ltd
3. Transport SA
4. ABB Grain Ltd
5. Flinders Ports Pty Ltd (including a confidential companion submission)
6. Dale Cole and Associates Pty Ltd
7. AWB Limited

All non-confidential submissions are available on the ESCOSA website: www.escosa.sa.gov.au under “Publications” – “Ports Publications”.

ATTACHMENT 1

South Australian Government submission to the Draft Report.



Hon Kevin Foley MP

Deputy Premier

Treasurer

Minister Assisting the Premier in Economic Development

Minister for Police

Minister for Federal/State Relations

TF03D06395
TRS03D1569

Date: 13 OCT 2005

Mr Lew Owens
Chairperson
Essential Services Commission of South Australia
GPO Box 2605
ADELAIDE SA 5001

Dear Mr Owens

Thank you for providing me with a copy of ESCOSA's Ports Price Review – Draft Report. Please consider this letter a whole-of-Government response to the Draft Report's findings and recommendations.

I note ESCOSA's draft findings in relation to likely market power held by South Australia's regulated port operators. Given those draft findings, I agree that light-handed prices regulation of essential maritime services, via prices monitoring, would be an appropriate approach to continue prices regulation under the Maritime Services Act, subject to review by ESCOSA at the end of another three year period.

I also agree with ESCOSA's draft finding that bulk goods (principally grain) are likely to be subject to greater risk of uneconomic pricing than other goods as a result of regulated port operators exercising market power.

A negotiation/arbitration prices regulatory framework for cargo services seems appropriate in light of ESCOSA's draft findings in relation to market power. Further, adding cargo services (provision of wharves and marshalling areas) for bulk goods to the services regulated by the Ports Access Regime would appear to be the most efficient way to institute a negotiation/arbitration framework for those services.

Yours sincerely

Kevin Foley MP
DEPUTY PREMIER
TREASURER
MINISTER ASSISTING THE PREMIER IN ECONOMIC DEVELOPMENT
MINISTER FOR POLICE
MINISTER FOR FEDERAL/STATE RELATIONS

APPENDIX B: REGULATION IN OTHER JURISDICTIONS

There are a variety of forms of control over commercial port prices in other Australian jurisdictions, as listed below (major ports only).

Table B1: Port price controls in other jurisdictions

Jurisdiction	Price control system
Queensland	<p>Prices set by Port Authority Boards. Returns must comply with State Government investment criteria. State can over-ride a Board's pricing but must table the direction in Parliament and in the Port Authority's annual report.</p> <p>Ports may become subject to access regulation under the Queensland Competition Authority Act. The QCA has received a draft access undertaking to cover access negotiations for the Dalrymple Bay Coal Terminal.</p>
New South Wales	Prices set by the relevant port authority, subject to Ministerial over-ride. Prices to be commercially based, not by reference to CPI.
Tasmania	Public ports corporatised in 1997. Minister retains power to regulate prices but has not done so to date. Private ports not regulated.
Western Australia	Public ports required to structure prices to meet government stated rates of return. The level of return varies between ports. The Minister can vary prices when each port submits their annual statement of corporate intent. The rationale for any such intervention to be tabled by the Minister in Parliament. Private ports not regulated.
Northern Territory	Price rises subject to Territory Government consent and limited to CPI.
Victoria	Prices subject to independent regulation under the Victorian Essential Services Commission.

Note: ports are potentially subject to regulation under Part IIIA of the *Trade Practices Act 1974*.

APPENDIX C: PORT COST COMPARISONS

C1 Wine, vehicle and gypsum costs

This analysis examines Essential Maritime Services and other port costs for notional (not average) vessels carrying wine (in containers), vehicles and gypsum.

**ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA
SUMMARY OF PORT COSTS
FOR SHIPMENTS OF
WINE IN CONTAINERS
FROM PORT ADELAIDE**

Vessel: "Notional Container Ship"

GT: 50,300

NT: 27,000

DWT: 40,800

Departure Draft: F: 9.50m A: 10.50m

Total Number of Containers (Wine) Loaded in 2002: 17,060

Total Number of Container Ship calls in 2002: 226

Average Number of Containers of Wine Loaded each Voyage: 75

Average Number of Wine Cartons in each t.e.u.: 1,250

Estimation of the Value of Wine in each t.e.u.: >\$A200,000 - \$A160.00 per carton

Average Berth Time to load 75 t.e.u. Wine: 3 hours

Average Berth Time per Vessel Call: 15 hours

Thruster: Vessel fitted with bow thruster - pilots "normally" use two tugs "in", one "out"

Port Activity	Adelaide Export Wine
MSA Act - Included Essential Maritime Services:	
Harbour Services Charge	\$3,419.61
Navigation Service Charge	\$679.21
Cargo Service Charge	\$3,975.00
Total	\$8,073.82
Average Included EMS Costs per t.e.u. Wine	\$107.65
Average Included EMS Costs per Carton of Wine	\$0.0861
Average Cost as a percentage of Value of one Carton	0.05%
MSA Act - Excluded Essential Maritime Services:	
Towage	\$12,033.00
Pilotage	\$4,290.00
Refuse Removal	\$60.00
Total	\$16,383.00
Average Excluded EMS Costs per t.e.u. Wine	\$26.00
Average Excluded EMS Costs per Carton of Wine	\$0.0208
Average Cost as a percentage of Value of one Carton	0.01%
Total port costs per t.e.u. Wine	\$133.66
Average Cost per Carton of Wine	\$0.1069
Average Cost as a percentage of Value of one Carton	0.06%

Notes and/or Assumptions:

- All charges and rates are GST exclusive
- The port time at Port Adelaide is considered reasonable for the average number of containers handled
- Tug usage is considered reasonable - two tugs "in" and one tug "out"
- Not all a vessel's port costs are listed above - outstanding charges include: agency fees, water, fuel
- The "Notional Container Ship" has had its particulars rounded and is similar to an "average" container ship
- Stevedoring costs have not been included
- Assumptions: Client vessel pays the published tariff - no allowance for volume rebates/discounts
 - All wine cartons are exported on container ships
 - None of the >23,000 unclassified export containers contain wine
 - The vessel has an "average" container exchange of 630 units
 - 25 containers handled per hour
 - Average Berth Time - 25 hours
 - All wine is loaded in teus

**ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA
SUMMARY OF PORT COSTS
FOR SHIPMENTS OF
MOTOR VEHICLE EXPORTS
FROM PORT ADELAIDE**

Vessel: "Notional Vehicle Carrier"

GT: 49,800

NT: 28,000

DWT: 15,500

Departure Draft: F: 8.25m A: 8.25m

Total Number of Units loaded in 2002: 52,468

Total Number of Car Carrier calls in 2002: 135

Average Number of Vehicles Loaded per Voyage: 389 units

Average Number of Vehicles Loaded for this ship size: 538 units

Volume of Individual Vehicles: 457 x (10 to <15) cubic meters & 81 x >15m cubic meters

Berth Time: 7 hours

Thruster: Vessel fitted with bow thruster - pilots "normally" use two tugs "in", one "out"

Port Activity	Adelaide Export Motor Vehicles
MSA Act - Included Essential Maritime Services:	
Harbour Services Charge	\$4,323.10
Navigation Service Charge	\$5,657.28
Cargo Service Charge	\$16,048.20
Total	\$26,028.58
Average Included EMS Costs per vehicle unit	\$48.38
MSA Act - Excluded Essential Maritime Services:	
Towage	\$12,033.00
Pilotage	\$4,290.00
Refuse Removal	\$300.00
Total	\$16,623.00
Average Excluded EMS Costs per vehicle unit	\$30.90
Total port costs per vehicle unit	\$79.28

Notes and/or Assumptions:

1. All charges and rates are GST exclusive
2. The port time at Port Adelaide is considered reasonable for the average number of vehicles loaded
3. Tug usage is considered reasonable - two tugs "in" and one tug "out"
4. Not all a vessel's port costs are listed above - outstanding charges include: agency fees, water, fuel
5. The separation of vehicles on a cubic capacity basis mirrors the separation in 2002
6. The "Notional Vehicle Carrier" has had its particulars rounded and is similar to an "average" car carrier
7. Stevedoring costs have not been included
8. The above table assumes the client vessel pays the published tariff - no allowance for volume rebates/discounts
9. The above table assumes all export vehicles are shipped on car carriers.

ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA
PORT COSTS AGGREGATE
SHIP LOADING GYPSUM AT
THEVENARD

Vessel: "Notional Handymax"

GT: 17,900

NT: 12,700

DWT: 23,500

Departure Draft: F: 9.25m A: 9.25m

Cargo Loaded: 20,000 tonnes

Berth Time: 32 hours

Port Activity	Thevenard Gypsum
MSA Act - Included Essential Maritime Services:	
Harbour Services Charge	\$4,867.07
Navigation Service Charge	\$2,591.69
Cargo Service Charge	\$24,200.00
Total	\$31,658.76
Included EMS Costs per tonne of Gypsum loaded	\$1.58
MSA Act - Excluded Essential Maritime Services:	
Towage	\$11,190.00
Pilotage	\$2,486.00
Radio Pratique	\$830.00
Refuse Removal	\$300.00
Surveys	\$2,800.00
Total	\$17,606.00
Excluded EMS Costs per tonne of Gypsum loaded	\$0.88
Total port costs per tonne Gypsum loaded	\$2.46

Notes and/or Assumptions:

1. All charges and rates are GST exclusive
2. The loading rate at Thevenard for Gypsum is 800 tonnes per hour
3. Port time at Thevenard is considered to be a reasonable average, but in reality varies from ship to ship
4. The quantity of Gypsum loaded represents an "average" cargo of Gypsum loaded at Thevenard
5. Towage charge based on the client vessel using one tug "in" and "out"
6. Not all a vessel's port costs are listed above - outstanding charges include: agency fees, water, fuel
7. The above table assumes the client vessel pays the published tariff - no allowance for volume rebates/discounts
8. Above table assumes cargo is sold FOB - there are no stevedoring costs
9. If cargo is sold FOB shipper/consignee maybe responsible for the cargo service charge

C2 Comparative grain costs

This analysis examines Essential Maritime Services and other port costs for notional panamax and handymax grain vessels at various Australian ports.

ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA PORT COSTS COMPARISON AT NOMINATED AUSTRALIAN PORTS

Vessel: "Notional Panamax"
GT: 30,300
NT: 22,000
DWT: 55,000
Loaded Departure Draft: F: 12.00m A: 12.00m
Total Cargo Loaded: 48,000 tonnes

Port	Walleroo	Port Lincoln	Adelaide	Port Giles	Geraldton	Portland	Geelong	Melbourne	Newcastle	Brisbane
Tonnage Loaded at Nominated Port	25,000	23,000	27,000	21,000	48,000	48,000	48,000	48,000	48,000	48,000
Port Rotation	First	Second	First	Second	One Port	One Port	One Port	One Port	One Port	One Port
Loading Rate	8,400 tpd	28,000 tpd	750 tph	12,600 tpd	24,000 tpd	11,200 tpd	16,800 tpd	11,200 tpd	24,000 tpd	28,000 tpd
Berth Time - Loading	62 hours	12 hours	56 hours	33 hours	38 hours	100 hours	60 hours	100 hours	38 hours	34 hours
Berth Time - Survey, Documentation & Tidal Delay	8 hours	3 hours	8 hours	3 hours	8 hours	8 hours	8 hours	8 hours	8 hours	8 hours
Number of Tug Movements per Ship Visit	3 tugs	3 tugs	5 tugs	3 tugs	4 tugs	3 tugs	4 tugs	4 tugs	4 tugs	4 tugs
Cargo	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat
MSA Act - Included Essential Maritime Services:										
Harbour Services Charge	\$11,679.15	\$4,346.55	\$11,592.14	\$7,146.27						
Navigation Service Charge	\$3,783.33	\$0.00	\$3,783.33	\$0.00						
Cargo Service Charge	\$37,500.00	\$34,500.00	\$40,500.00	\$31,500.00						
Harbour Dues						\$16,849.83				\$48,000.00
Tonnage Dues					\$47,040.00	\$32,160.00	\$40,320.00	\$41,760.00	\$11,270.00	
Berthage/Wharfage						\$20,636.64	\$6,188.00	\$6,264.00	\$34,320.00	\$48,000.00
Tonnage Rates (Channel Charge)							\$8,241.60	\$8,241.60		
Draft Surcharge (Geelong only)							\$24,300.00			
Navigation Service Charge									\$11,877.60	
State Light Dues										\$4,350.47
Mooring/Unmooring					\$2,499.75	\$2,034.00	\$1,200.00	\$1,100.00	\$3,284.00	\$2,450.00
Lines Launch							\$996.00			\$374.00
Total	\$52,962.48	\$38,846.55	\$55,875.47	\$38,646.27	\$49,539.75	\$71,680.47	\$81,245.60	\$57,365.60	\$60,751.60	\$103,174.47
Included EMS Costs per tonne of Wheat loaded	\$2.12	\$1.69	\$2.07	\$1.84	\$1.03	\$1.49	\$1.69	\$1.20	\$1.27	\$2.15
MSA Act - Excluded Essential Maritime Services:										
Towage	\$34,620.00	\$35,020.00	\$18,065.00	\$43,636.32	\$12,520.00	\$13,281.00	\$12,692.00	\$14,240.00	\$11,584.00	\$13,656.00
Pilotage	\$3,036.00	\$3,036.00	\$3,146.00	\$3,036.00	\$2,375.00	\$3,906.00	\$7,250.90	\$7,250.90	\$4,452.00	\$7,602.00
Ship Charge (Geraldton)					\$31,512.00					
Radio Pratique	\$830.00	\$0.00	\$830.00	\$0.00	\$680.00	\$680.00	\$680.00	\$680.00	\$680.00	\$810.00
Refuse Removal	\$600.00	\$0.00	\$200.00	\$0.00	\$0.00	\$636.00	\$386.00	\$205.00	\$300.00	\$100.00
Surveys	\$2,500.00	\$0.00	\$2,500.00	\$0.00	\$2,000.00	\$2,500.00	\$1,300.00	\$1,200.00	\$2,500.00	\$2,000.00
Total	\$41,586.00	\$38,056.00	\$24,741.00	\$46,672.32	\$49,087.00	\$21,003.00	\$22,308.90	\$23,575.90	\$19,516.00	\$24,168.00
Excluded EMS Costs per tonne of Wheat loaded	\$1.66	\$1.65	\$0.92	\$2.22	\$1.02	\$0.44	\$0.46	\$0.49	\$0.41	\$0.50
Total port costs per tonne of Wheat loaded	\$3.78	\$3.34	\$2.99	\$4.06	\$2.05	\$1.93	\$2.16	\$1.69	\$1.67	\$2.65

Notes and/or Assumptions:

- All charges and rates are GST exclusive
- Berth times are considered reasonable, but in reality vary from ship to ship
- The quantity of Wheat loaded is an "average" load for a vessel of 55,000 DWT
- Tug usage is considered reasonable. Port Giles tugs (ex Adelaide) return to Port Giles for each movement
- Not all a vessel's port costs are listed above - outstanding charges include: agency fees, water, fuel
- The above table assumes the client vessel pays the published tariff - no allowance for volume rebates/discounts
- Cargo shipped as per an Australian Wheat Charter 1990 - loading costs shipper's responsibility
- "Normally" all charges and dues levied on the cargo shall be for charterer's account and those levied on the vessel howsoever assessed shall be for owner's account
- Geraldton Ship Charge includes - Berthage, Pilotage, Lines Launch and Refuse Collection
- Where a daily loading rate is shown the ports operate on a 14 hour per day basis. The hourly rates indicate the port may load on a 24 hour per day basis
- The Panamax used in this model is typical of the Panamax vessels, which call at South Australian ports for wheat
- The Berth Time - Loading at Adelaide is based on the ship working one 14 hour shift in each 24 hours.

ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA
PORT COSTS COMPARISON AT NOMINATED AUSTRALIAN PORTS

Vessel: "Notional Handymax"
GT: 28,500
NT: 20,000
DWT: 45,000
Loaded Departure Draft: F: 11.25m A: 11.25m
Total Cargo Loaded: 40,000 tonnes

Port	Wallaroo	Port Lincoln	Adelaide	Port Giles	Geraldton	Portland	Geelong	Melbourne	Newcastle	Brisbane
Tonnage Loaded at Nominated Port	25,000	15,000	35,000	5,000	40,000	40,000	40,000	40,000	40,000	40,000
Port Rotation	First	Second	First	Second	One Port	One Port	One Port	One Port	One Port	One Port
Loading Rate	8,400 tpd	28,000 tpd	750 tph	12,600 tpd	24,000 tpd	11,200 tpd	16,800 tpd	11,200 tpd	24,000 tpd	28,000 tpd
Berth Time - Loading	62 hours	8 hours	77 hours	6 hours	33 hours	80 hours	53 hours	80 hours	33 hours	30 hours
Berth Time - Survey, Documentation & Tidal Delay	8 hours	3 hours	8 hours	3 hours	8 hours	8 hours	8 hours	8 hours	8 hours	8 hours
Number of Tug Movements per Ship Visit	3 tugs	3 tugs	5 tugs	1 tug	4 tugs	3 tugs	4 tugs	4 tugs	4 tugs	4 tugs
Cargo	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat
MSA Act - Included Essential Maritime Services:										
Harbour Services Charge	\$11,124.75	\$3,726.15	\$13,800.83	\$3,475.35						
Navigation Service Charge	\$3,610.35	\$0.00	\$3,610.35	\$0.00						
Cargo Service Charge	\$37,500.00	\$22,500.00	\$52,500.00	\$7,500.00						
Harbour Dues						\$15,848.85				\$40,000.00
Tonnage Dues					\$39,200.00	\$26,800.00	\$33,600.00	\$34,800.00	\$9,660.00	
Berthage/Wharfage						\$16,815.04	\$5,551.00	\$5,104.00	\$28,600.00	\$40,000.00
Tonnage Rates (Channel Charge)							\$7,752.00	\$7,752.00		
Draft Surcharge (Geelong only)							\$10,500.00			
Navigation Service Charge									\$11,172.00	
State Light Dues										\$4,092.03
Mooring/Unmooring					\$2,351.25	\$2,034.00	\$1,200.00	\$1,100.00	\$1,736.00	\$2,450.00
Lines Launch							\$996.00			\$374.00
Total	\$52,235.10	\$26,226.15	\$69,911.18	\$10,975.35	\$41,551.25	\$61,497.89	\$59,599.00	\$48,756.00	\$51,168.00	\$86,916.03
Included EMS Costs per tonne of Wheat loaded	\$2.09	\$1.75	\$2.00	\$2.20	\$1.04	\$1.54	\$1.49	\$1.22	\$1.28	\$2.17
MSA Act - Excluded Essential Maritime Services:										
Towage	\$14,620.00	\$15,020.00	\$13,520.00	\$14,545.44	\$12,520.00	\$13,128.00	\$11,072.00	\$12,656.00	\$6,440.00	\$12,340.00
Pilotage	\$3,036.00	\$3,036.00	\$3,146.00	\$3,036.00		\$3,402.00	\$7,134.00	\$7,134.00	\$1,626.00	\$7,368.00
Ship Charge (Geraldton)					\$29,640.00					
Radio Pratigue	\$830.00	\$0.00	\$830.00	\$0.00	\$680.00	\$680.00	\$680.00	\$680.00	\$680.00	\$810.00
Refuse Removal	\$300.00	\$0.00	\$300.00	\$0.00	\$0.00	\$455.00	\$386.00	\$205.00	\$300.00	\$100.00
Surveys	\$2,500.00	\$0.00	\$2,500.00	\$0.00	\$2,000.00	\$2,500.00	\$1,300.00	\$1,200.00	\$2,500.00	\$2,000.00
Total	\$21,286.00	\$18,056.00	\$20,296.00	\$17,581.44	\$44,840.00	\$20,165.00	\$20,572.00	\$21,875.00	\$11,546.00	\$22,618.00
Excluded EMS Costs per tonne of Wheat loaded	\$0.85	\$1.20	\$0.58	\$3.52	\$1.12	\$0.50	\$0.51	\$0.55	\$0.29	\$0.57
Total port costs per tonne of Wheat loaded	\$2.94	\$2.95	\$2.58	\$5.71	\$2.16	\$2.04	\$2.00	\$1.77	\$1.57	\$2.74

Notes and/or Assumptions:

- All charges and rates are GST exclusive
- Berth times are considered reasonable, but in reality vary from ship to ship
- The quantity of Wheat loaded is an "average" load for a vessel of 45,000 DWT
- Tug usage is considered reasonable.
- Not all a vessel's port costs are listed above - outstanding charges include: agency fees, water, fuel
- The above table assumes the client vessel pays the published tariff - no allowance for volume rebates/discounts
- Cargo shipped as per an Australian Wheat Charter 1990 - loading costs shipper's responsibility
- "Normally" all charges and dues levied on the cargo shall be for charterer's account and those levied on the vessel howsoever assessed shall be for owner's account
- Geraldton Ship Charge includes - Berthage, Pilotage, Lines Launch and Refuse Collection
- Where a daily loading rate is shown the ports operate on a 14 hour per day basis. The hourly rates indicate the port may load on a 24 hour per day basis
- The Berth Time - Loading at Adelaide is based on the ship working one 14 hour shift in each 24 hours.

C3 Single visit grain costs

This analysis examines Essential Maritime Services and other port costs for notional grain vessel at various ports – assuming single port loading. This assumption is for comparison only, ESCOSA is aware that single port loading is not possible for some vessels at some ports.

ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA PORT COSTS COMPARISON AT NOMINATED AUSTRALIAN PORTS

Vessel: "Notional Panamax"
GT: 30,300
NT: 22,000
DWT: 55,000
Loaded Departure Draft: F: 12.00m A: 12.00m
Total Cargo Loaded: 48,000 tonnes

Port	Port Lincoln	Adelaide	Geraldton	Portland	Geelong	Melbourne	Newcastle	Brisbane
Tonnage Loaded at Nominated Port	48,000	48,000	48,000	48,000	48,000	48,000	48,000	48,000
Port Rotation	One Port	One Port	One Port	One Port	One Port	One Port	One Port	One Port
Loading Rate	28,000 tpd	10,500 tpd	24,000 tpd	11,200 tpd	16,800 tpd	11,200 tpd	24,000 tpd	28,000 tpd
Berth Time - Loading	34 Hours	104 Hours	38 Hours	100 Hours	60 Hours	100 Hours	38 Hours	34 Hours
Berth Time - Survey, Documentation & Tidal Delay	8 Hours	8 Hours	8 Hours	8 Hours	8 Hours	8 Hours	8 Hours	8 Hours
Number of Tug Movements per Ship Visit	3 tugs	5 tugs	4 tugs	3 tugs	4 tugs	4 tugs	4 tugs	4 tugs
Cargo	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat
MSA Act - Included Essential Maritime Services:								
Harbour Services Charge	\$7,946.19	\$18,238.75						
Navigation Service Charge	\$3,783.33	\$3,783.33						
Cargo Service Charge	\$72,000.00	\$72,000.00						
Harbour Dues				\$16,849.83				\$48,000.00
Tonnage Dues			\$47,040.00	\$32,160.00	\$40,320.00	\$41,760.00	\$11,270.00	
Berthage/Wharfage				\$20,636.64	\$6,188.00	\$6,264.00	\$34,320.00	\$48,000.00
Tonnage Rates (Channel Charge)					\$8,241.60	\$8,241.60		
Draft Surcharge (Geelong only)					\$24,300.00			
Navigation Service Charge							\$11,877.60	
State Light Dues								\$4,350.47
Mooring/Unmooring			\$2,499.75	\$2,034.00	\$1,200.00	\$1,100.00	\$3,284.00	\$2,450.00
Lines Launch					\$996.00			\$374.00
Total	\$83,729.52	\$94,022.08	\$49,539.75	\$71,680.47	\$81,245.60	\$57,365.60	\$60,751.60	\$103,174.47
Included EMS Costs per tonne of Wheat loaded	\$1.74	\$1.96	\$1.03	\$1.49	\$1.69	\$1.20	\$1.27	\$2.15
MSA Act - Excluded Essential Maritime Services:								
Towage	\$35,020.00	\$18,065.00	\$12,520.00	\$13,281.00	\$12,692.00	\$14,240.00	\$11,584.00	\$13,656.00
Pilotage	\$3,036.00	\$3,146.00	\$2,375.00	\$3,906.00	\$7,250.90	\$7,250.90	\$4,452.00	\$7,602.00
Ship Charge (Geraldton)			\$31,512.00					
Radio Pratigue	\$0.00	\$830.00	\$680.00	\$680.00	\$680.00	\$680.00	\$680.00	\$810.00
Refuse Removal	\$0.00	\$200.00	\$0.00	\$636.00	\$386.00	\$205.00	\$300.00	\$100.00
Surveys	\$0.00	\$2,500.00	\$2,000.00	\$2,500.00	\$1,300.00	\$1,200.00	\$2,500.00	\$2,000.00
Total	\$38,056.00	\$24,741.00	\$49,087.00	\$21,003.00	\$22,308.90	\$23,575.90	\$19,516.00	\$24,168.00
Excluded EMS Costs per tonne of Wheat loaded	\$0.79	\$0.52	\$1.02	\$0.44	\$0.46	\$0.49	\$0.41	\$0.50
Total port costs per tonne of Wheat loaded	\$2.54	\$2.47	\$2.05	\$1.93	\$2.16	\$1.69	\$1.67	\$2.65

Notes and/or Assumptions:

- All charges and rates are GST exclusive
- Berth times are considered reasonable, but in reality vary from ship to ship
- The quantity of Wheat loaded is an "average" load for a vessel of 55,000 DWT
- Tug usage is considered reasonable
- Not all a vessel's port costs are listed above - outstanding charges include: agency fees, water, fuel
- The above table assumes the client vessel pays the published tariff - no allowance for volume rebates/discounts
- Cargo shipped as per an Australian Wheat Charter 1990 - loading costs shipper's responsibility
- "Normally" all charges and dues levied on the cargo shall be for charterer's account and those levied on the vessel howsoever assessed shall be for owner's account
- Geraldton Ship Charge includes - Berthage, Pilotage, Lines Launch and Refuse Collection
- The loading hours of work at all ports is "normally" 14 hours in each 24 hour period. However, loading at Port Adelaide can be extended
- The Panamax used in this model is typical of the Panamax vessels, which call at South Australian ports for wheat

ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA
PORT COSTS COMPARISON AT NOMINATED AUSTRALIAN PORTS

Vessel: "Notional Handymax"
GT: 28,500
NT: 20,000
DWT: 45,000
Loaded Departure Draft: F: 11.25m A: 11.25m
Total Cargo Loaded: 40,000 tonnes

Port	Port Lincoln	Adelaide	Geraldton	Portland	Geelong	Melbourne	Newcastle	Brisbane
Tonnage Loaded at Nominated Port	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000
Port Rotation	One Port	One Port	One Port	One Port	One Port	One Port	One Port	One Port
Loading Rate	28,000 tpd	10,500 tpd	24,000 tpd	11,200 tpd	16,800 tpd	11,200 tpd	24,000 tpd	28,000 tpd
Berth Time - Loading	30 Hours	83 Hours	33 Hours	80 Hours	53 Hours	80 Hours	33 Hours	30 Hours
Berth Time - Survey, Documentation & Tidal Delay	8 Hours	8 Hours	8 Hours	8 Hours	8 Hours	8 Hours	8 Hours	8 Hours
Number of Tug Movements per Ship Visit	2 tugs	5 tugs	4 tugs	3 tugs	4 tugs	4 tugs	4 tugs	4 tugs
Cargo	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat	Wheat
MSA Act - Included Essential Maritime Services:								
Harbour Services Charge	\$7,111.95	\$14,582.30						
Navigation Service Charge	\$3,610.35	\$3,610.35						
Cargo Service Charge	\$60,000.00	\$60,000.00						
Harbour Dues				\$15,848.85				\$40,000.00
Tonnage Dues			\$39,200.00		\$33,600.00	\$34,800.00	\$9,660.00	
Berthage/Wharfage				\$16,815.04	\$5,551.00	\$5,104.00	\$28,600.00	\$40,000.00
Tonnage Rates (Channel Charge)					\$7,752.00	\$7,752.00		
Draft Surcharge (Geelong only)					\$10,500.00			
Navigation Service Charge							\$11,172.00	
State Light Dues								\$4,092.03
Mooring/Unmooring			\$2,351.25	\$2,034.00	\$1,200.00	\$1,100.00	\$1,736.00	\$2,450.00
Lines Launch					\$996.00			\$374.00
Total	\$70,722.30	\$78,192.65	\$41,551.25	\$61,497.89	\$59,599.00	\$48,756.00	\$51,168.00	\$86,916.03
Included EMS Costs per tonne of Wheat loaded	\$1.77	\$1.95	\$1.04	\$1.54	\$1.49	\$1.22	\$1.28	\$2.17
MSA Act - Excluded Essential Maritime Services:								
Towage	\$15,020.00	\$13,520.00	\$12,520.00	\$13,128.00	\$11,072.00	\$12,656.00	\$6,440.00	\$12,340.00
Pilotage	\$3,036.00	\$3,146.00		\$3,402.00	\$7,134.00	\$7,134.00	\$1,626.00	\$7,368.00
Ship Charge (Geraldton)			\$29,640.00					
Radio Pratique	\$0.00	\$830.00	\$680.00	\$680.00	\$680.00	\$680.00	\$680.00	\$810.00
Refuse Removal	\$0.00	\$300.00	\$0.00	\$455.00	\$386.00	\$205.00	\$300.00	\$100.00
Surveys	\$0.00	\$2,500.00	\$2,000.00	\$2,500.00	\$1,300.00	\$1,200.00	\$2,500.00	\$2,000.00
Total	\$18,056.00	\$20,296.00	\$44,840.00	\$20,165.00	\$20,572.00	\$21,875.00	\$11,546.00	\$22,618.00
Excluded EMS Costs per tonne of Wheat loaded	\$0.45	\$0.51	\$1.12	\$0.50	\$0.51	\$0.55	\$0.29	\$0.57
Total port costs per tonne of Wheat loaded	\$2.22	\$2.46	\$2.16	\$2.04	\$2.00	\$1.77	\$1.57	\$2.74

Notes and/or Assumptions:

- All charges and rates are GST exclusive
- Berth times are considered reasonable, but in reality vary from ship to ship
- The quantity of Wheat loaded is an "average" load for a vessel of 45,000 DWT
- Tug usage is considered reasonable
- Not all a vessel's port costs are listed above - outstanding charges include: agency fees, water, fuel
- The above table assumes the client vessel pays the published tariff - no allowance for volume rebates/discounts
- Cargo shipped as per an Australian Wheat Charter 1990 - loading costs shipper's responsibility
- "Normally" all charges and dues levied on the cargo shall be for charterer's account and those levied on the vessel howsoever assessed shall be for owner's account
- Geraldton Ship Charge includes - Berthage, Pilotage, Lines Launch and Refuse Collection
- The loading hours of work at all ports is "normally" 14 hours in each 24 hour period. However, loading at Port Adelaide can be extended