



Submission to the Independent Reviewer

Review of the Ports and Maritime Administration Act 1995
and the Port Botany Landside Improvement Strategy

28 July 2022

EXECUTIVE SUMMARY

The National Road Transport Association (NatRoad) welcomes the chance to make a submission to the Independent Review of the Ports and Maritime Administration Act and Port Botany Landside Improvement Strategy (PBLIS).

NSW ports are a vital part of the logistics chain. We recognise that the State's three trading ports have grown to contribute more than \$6 billion to NSW's economy each year.

We also believe that a fundamental review of the port system, including landside port charges, is needed to increase the efficiency of port operations in Australia.

NatRoad strongly advocates the use of incentives rather than penalties to deal with landside inefficiencies at ports. A lessening of landside port charges where high productivity vehicles are used is preferable to these vehicles being subject to a "long vehicle" fee.

NatRoad does not believe the time is right to dismantle the PBLIS scheme, as it has delivered benefits on all port users and helped balance the undue market power held by stevedores.

Under PBLIS, regular penalty payments are made between stevedores and operators (when penalties are incurred). In addition, operators pay fees to the stevedores to access the terminals.

The Reviewer's Options Paper recognises that an alternative system could be adopted to administer stevedore fees and PBLIS penalties. This is NatRoad's preferred position with the aim of achieving simplification via incentives and rewards rather than the imposition of penalties.

The Options Paper has a more specific focus on adoption of an alternative: it could be a means to "simplify or reduce the effort involved in this transfer of funds between parties." In this context, it is proposed that a points system, a demerit points approach, or a less frequent reconciliation of penalties would replace the way the imposition of penalties currently works. We oppose the advance payment of fees which would provide the terminal operator with additional interest benefit that truck operators would lose if not compensated. This would also firmly swing back the balance of power to the stevedores.

Mere monitoring of port performance is a poor substitute for market intervention that balances market power to some extent, albeit the growth in landside port charges shows that the balance remains undeniably in favour of the stevedores.

NatRoad does seek a strengthening of the Minister for Ports' powers to approve rather than simply monitor port charges.

The alternative should be an authority which is responsible for all heavy vehicle charges, including landside port charges, Australia-wide.

INTRODUCTION

1. The National Road Transport Association (NatRoad) is pleased to provide a submission in response to the Options Paper¹ published during the independent review of the *Port and Maritime Administration Act, 1995 (NSW) (PAMA)* and the Port Botany landside improvement strategy (PBLIS).
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from subcontractors to large fleet operators, general freight, road trains, livestock, tippers, express, car carriers, as well as tankers and refrigerated freight operators.
3. NatRoad has a strong commitment to reform of Australia's ports, particularly capping or limiting the largely unconstrained increases in landside port charges that members have experienced over the last five years. In this context, NatRoad did not respond to the initial discussion paper² issued as part of the current review. NatRoad instead concentrated on providing a comprehensive submission to the Productivity Commission in relation to its Maritime Logistics System inquiry.³
4. NatRoad policy is that a fundamental review of the port system, including of landside port charges, is necessary to increase the efficiency of port operations in Australia. Therefore, NatRoad considers that any recommendations that emanate from the Productivity Commission's report should be considered by the NSW Government when assessing the Review's final recommendations, particularly having regard to the limitations on the scope of the review set out in the discussion paper, notably as follows:

*In addition, specific consideration of stevedore charges, beyond current references in relation to PBLIS penalties, will be out of scope for this review. In recognition of these charges as a national economic issue, the NSW Government has referred a request for their review to the Federal Government for consideration.*⁴

5. In addition, it is difficult to currently compare port performance. For example, the measurement of container logistics chain performance across all of Australia's capital city ports is not standardised or consistent. As with all ports in Australia other than the port of Fremantle, State Governments have moved away from direct involvement in the operation of ports through privatisation. In that context, and with the exclusion of the effects of privatisation on port performance from the current review's terms of reference, it is critical that NSW and all other jurisdictions develop improved, independent measurement indicators of logistics chain performance in each port and regularise the way landside port charges are imposed.

6. The relevant exclusions from the current review are summarised in the Options Paper thus:

*Long-term lease arrangements applying to Port Botany, Port Kembla and the Port of Newcastle will only be considered within the context of those existing lease arrangements. Recognising that the matter of stevedore charges is a national economic issue, this has been referred for consideration by the Australian Government. As such, specific consideration of stevedore charges, beyond current references in relation to PBLIS penalties, will be out of scope for the Review.*⁵

¹ [PAMA Act and PBLIS Options Paper \(amazonaws.com\)](https://www.amazonaws.com); [The PAMA Act and PBLIS Independent Review | Your Say Transport for NSW](https://www.amazonaws.com)

² [Transport for New South Wales \(amazonaws.com\)](https://www.amazonaws.com)

³ [Australia's Maritime Logistics System - Public inquiry - Productivity Commission \(pc.gov.au\)](https://www.pc.gov.au) and [Submission 8 - National Road Transport Association \(NatRoad\) - Australia's Maritime Logistics System - Public inquiry \(pc.gov.au\)](https://www.natroad.com.au)

⁴ Above note 2 at p8

⁵ Above note 1 at p11

7. Across Australia, and at Port Botany, the issue of increasing landside charges imposed by stevedores is not just one of costs. Access constraints and congestion at ports, and on the access roads to ports, causes delays and inefficiencies in the supply chain. For example, long waiting times at port facilities to load and unload containers and cargo more generally place a very real strain on drivers, particularly owner operators. These delays should not be commonplace but are, unfortunately, many members lived experience. Unfavourable working conditions contribute to the ongoing Australian driver shortage.⁶ That driver shortage has been exacerbated by the current rapid spread of the Omicron variant of COVID-19⁷ with the situation of inadequate staff numbers being classed as generating a crisis for Australian industry.⁸
8. Further, waiting time eats into drivers' earnings and the time available to drive, so an opportunity cost arises. Demurrage⁹ is very infrequently paid to heavy vehicle operators. These factors add to the problems that have been generated in the supply chain by the influence of COVID-19 and the war in the Ukraine.¹⁰ But these influences have in turn underlined existing supply chain problems rather than causing them.¹¹
9. The factors set out in the prior paragraph, and the need for more systemic reform than encompassed by the current review, in part shape the NatRoad response to the Options Paper. NatRoad has not commented on recommendations that relate to the regulation of rail, shipping or waterside issues. We have concentrated, instead, on matters affecting members. In the main, the perspective adopted is in opposition to recommended greater penalties under current schemes or under proposed options. A reconsideration of some options to add incentives rather than to exact punishment is proposed by NatRoad (see paragraph 46 below for an example of incentives proposed).

Dangerous goods time limit penalty

10. The first option, labelled Option 1, in relation to possible changes to PAMA is the option to replace the current three tier dangerous goods in ports time-limit penalty structure with an ongoing daily offence penalty. NatRoad policy is that penalties must be proportionate to the harm caused by a breach and wherever possible a warning system should be put into place for first offenders or where the breaches have little or no impact on operations.
11. The Options Paper notes that currently penalties can apply to the dangerous goods cargo owner or the port facility operator if time limits are exceeded by less than 48 hours, between 48 and less than 96 hours, or 96 hours or more. It says: "Some dangerous goods containers have overstayed port facility time limits beyond the 96 hours (four days)."¹² The circumstances where this was experienced, who was fined and any harmful outcome that ensued are not addressed in the Options Paper. These are all factors that should be assessed, inclusive of awareness of the penalty amongst those parties who handle dangerous goods and an estimate of their effectiveness made. The Options Paper proceeds on the assumption that because of the potential risks these goods

⁶ For example see discussion here: <https://www.abc.net.au/news/2021-11-12/driver-shortage-hard-for-victorian-trucking-companies/100611784>

⁷ <https://theloadstar.com/omicron-outbreak-in-australia-wreaking-havoc-with-supply-chains/>

⁸ J Malcolm and M Maddison Crisis talks tackle staff shortages *The Australian* p 1 and p 4 12/1/22 and R Mizen Skills Mismatch Sparks Worsening Job Crisis AFR 1/7/22 p 3

⁹ We define demurrage in this submission to mean a charge for detaining a truck beyond an agreed or reasonable time.

¹⁰ See <https://fbe.unimelb.edu.au/newsroom/the-covid-19-shock-to-supply-chains> for a discussion of the seven types of supply chain risk that are at issue, inclusive of transportation risk.

¹¹ See for example discussion here: https://www.ey.com/en_au/supply-chain/how-covid-19-impacted-supply-chains-and-what-comes-next

¹² Above note 1 at p16

pose “and to maintain appropriate management of dangerous goods in ports”¹³, it is proposed to replace the current three-tier penalty structure with a daily penalty offence that applies to each day that dangerous goods are left at a port facility past the relevant time limit. A review of the level of penalty will follow but the extent of the penalty is not foreshadowed and therefore the utility of the option should be re-visited when the penalty levels are in play.

12. NatRoad does not believe that there is sufficient evidence expressed in the Options Paper to establish this change, nor any assessment of its impact on the appropriate management of dangerous goods or how an increase in penalty will be sufficient to ameliorate the prior circumstance set out of an “overstay” of port time limits. More research and background information and a measurement of the regulatory impact (having regard to the level of penalty proposed) should be in evidence before this option proceeds further.

Private Port Operator Directions

13. It is proposed that to “strengthen” enforcement of traffic controls at ports, the Government would introduce a criminal offence and PIN for breaching a private port operator direction. Under this option, the NSW Government would authorise the issuing of penalty infringement notices (PINs) by NSW Ports or Port of Newcastle staff that are “appropriately trained for issuing safety and security directions.”¹⁴ For serious or escalating breaches, the NSW Government would be able to commence criminal proceedings in court on behalf of the private port operators. The ability for private port operator staff to issue PINs would be limited to the port operator safety directions. But the boundaries around what is or is not a “safety direction” are not clear from the discussion of the option.
14. NatRoad is opposed to this option. The Options Paper asserts that the proposed change “would ensure effective enforcement of port operators’ traffic control directions, provide clarity for port users on their obligations in port areas and strengthen the safe operation of the ports of Botany, Kembla and Newcastle.”¹⁵ NatRoad notes that the provision of powers usually vested in Government’s should not be provided to private citizens, particularly where, as with the landside operation of NSW ports, there is already a power imbalance between stevedores and NatRoad members weighing heavily in favour of stevedores.
15. The rationale provided for the proposal is that: “The Cost Benefit Analysis of PBLIS noted enforcement of parking rules in the port precinct contributed to traffic decongestion at Port Botany.”¹⁶ But that is an argument for reducing congestion in port precincts and at ports, not for vesting in private operators powers that are now exercised by the Police. Where is the evidence of the failure of the current system that would be assisted by this measure? The issue is that, particularly at Port Botany, congestion is a function of many factors, including limited and inappropriate road access, the port facilities not keeping up with the growing freight task and stevedore operational inefficiencies. How would giving private operators the powers proposed assist with these systemic issues? The answer is they would not. Hence, the NatRoad opposition to this proposal, labelled as Option 5, is strong.

¹³ Ibid

¹⁴ Above note 1 at p19

¹⁵ Ibid

¹⁶ Ibid

Private port operator directions – reporting requirements

16. The proposal, labelled Option 6, is for a reduction in the notice period for private port operator directions from at least two weeks to at least one week. NatRoad does not object to this change. However, we proffer that support on the basis that the current methods for communicating the directions are improved. Presently, as noted in the Options Paper, directions are able to be communicated via signs posted in the port, given directly to people, or gazetted and published on the port operator’s website. Where there is a change that affects safety or introduces a new obligation or reverses a prior position, these changes must be provided directly to affected parties. We would seek that change if this option is implemented.

Extend liability for non-compliance with parking rules to the owner of the vehicle

17. Option 7 is opposed. The proposal is for the so-called “strengthening” of enforcement of parking offences. It is proposed to extend liability for failure to comply with section 41 of the Regulation to the owner of the vehicle. This is to allegedly cover the situation of where the driver “cannot be found.”
18. Frankly, increasing punishments and extending liabilities to owners won’t cure the problems with congestion, access and safety that abound currently. These are all systemic issues that require more fundamental, grass roots reforms not greater levels of fines, punishment or “cop-on-the beat” changes.

Port price monitoring scheme – reporting requirements

19. Under the port price monitoring scheme in PAMA, the Minister is responsible for monitoring the prices port operators charge to users. But the Minister does not regulate or approve port charges. Considering NatRoad’s concerns about escalating landside port charges, expressed earlier, and their effects on members, we believe that the Minister should have the power to approve port charges. In the alternative there should be an authority which is responsible for all heavy vehicle charges, including landside port charges, Australia wide.
20. In the Options Paper, it is proposed that port operators provide longer than the current 20 business days’ notice of changes to their charges. Option 9 would see the notice period move from at least 20 business days to at least 40 business days prior to the change. In the absence of more systemic reform, this option is supported.

PBLIS - General

21. The Options Paper says that PBLIS has “addressed the landside congestion and some of the inefficiency issues that were originally identified.”¹⁷ NatRoad is of the view, based on member feedback, that PBLIS has worked because it has ameliorated the disproportionate market power of the stevedore companies. It has done this by imposing financial penalties for poor terminal performance that delays road transport operators unduly or for non-service events. The other side of that coin is that PBLIS regulates the imposition of financial penalties on transport operators for poor arrival performance and “no shows.”
22. The perspective expressed in the last paragraph is not reflected in what the Options Paper summarises the related cost benefits analysis (CBA) of PBLIS as showing:

¹⁷ Above note 1 at p28

The CBA found the key benefits of PBLIS arise from traffic decongestion and reduced emissions resulting from the removal of heavy vehicles from roads around the port. This is achieved mainly through the provision of the Truck Marshalling Area and enforcement of service lines at terminals and, to a lesser extent, parking rules in the port precinct.¹⁸

NatRoad notes that retention of the current scheme unchanged or its abolition have both been rejected.

Option A1 -Apply late penalties per truck trip rather than per container

23. NatRoad agrees that the potential for incurring multiple late arrival penalties is one factor (but not the main factor) creating a disincentive to utilise trucks with higher capacity (like A doubles) and therefore may not be supporting overall port supply chain efficiency. In addition, the narrative around this option speaks to an A double delivering and then collecting containers in the same trip. However, the Container Transport Alliance Australia, in its submission¹⁹ to the Productivity Commission on the maritime reference referred to earlier indicates that:

The worst performing port for truck backloading was Sydney (Port Botany) at just 5.7%, while the best performing was Adelaide with 22.9%.²⁰

24. We note the observation in the Options Paper that “Applying late arrival penalties per truck rather than per booking would reduce potential penalties for transport operators with multiple containers on each truck and support increased container density, leading to less truck trips overall.”²¹ Whilst fewer truck trips are welcomed, we would like to see incentives built into PBLIS arrangements to support backloading and to incentivise the use of high productivity freight vehicles. In other words, positive payments or a “reward” system of some sort would be a better incentive than the undue emphasis on penalising heavy vehicle operators, a perspective that reinforces the comments made on the options discussed earlier in this submission.

Option A2 – Investigate options for stevedore impacted trucks

25. A stevedore impacted truck is defined as a truck affected by the failure of a stevedore to service the truck within the set truck turnaround time (TTT).²² When this happens between 4pm and 4am on a weekday or during a weekend, the operator of the affected truck is not penalised for being late for subsequent bookings at the same stevedore.

26. The policy rationale for this rule is described in the Options Paper as:

This ensures that road carriers are not unfairly penalised for late arrivals resulting from a previous failure to service by the stevedore during off-peak periods. It is also intended to incentivise off-peak port utilisation.²³

27. As identified in the Options Paper, a major flaw with this policy is that the lifting of penalties does not have port wide application. NatRoad strongly supports an extension of the policy port wide. Further, the policy should apply 24 hours a day, 7 days a week. Operators should not be penalised for a failure by a stevedore i.e. the flow on effect from the first failure to meet the TTT should be that no penalty is issued. In addition, that change will assist with the backloading issue

¹⁸ Ibid

¹⁹ [Submission 50 - Container Transport Alliance Australia \(CTAA\) - Australia's Maritime Logistics System - Public inquiry \(pc.gov.au\)](#)

²⁰ Id at p5

²¹ Above note 1 at p31

²² Above note 1 at p32

²³ Ibid

mentioned earlier, a matter alluded to in the Options Paper where it is said that extending the current arrangements for stevedore impacted trucks to another stevedore “may improve overall port efficiency by supporting port wide visits to multiple stevedores, reducing the number of separate trips into the port.”²⁴

28. The Options Paper outlines some issues with the extension of the policy, as supported by NatRoad. These “challenges” where overcome would add to port efficiency, particularly the issue of there currently being no IT communication system between stevedores that would enable them to notify each other of which trucks are stevedore impacted trucks. The institution of such a system would also facilitate the backloading issue, especially where information relevant to the collection of containers/cargo was shared with truck operators. A new IT system with the required effect should be implemented at the same time as the no-penalty flow on policy is introduced.

Option A3 – Apply unforeseen events to terminal sections

29. NatRoad supports applying a stevedore unforeseen event to only part of the terminal rather than the whole terminal. This would allow partial closure of a stevedore terminal for an impacted time zone and would increase efficiency where it was possible for part of the terminal to operate as against all of the terminal being closed. The major benefit is that this option would allow port users not affected by the unforeseen event to continue operational functions such as on time running and TTT.

Option A4 – Change carrier cancellation rules to ‘take or pay’

30. This option is designed to discourage or eliminate “slot hoarding.” We oppose the option. Whilst the current situation enables some slots to be held and then returned to the system for others to book, there are often other reasons than “slot hoarding” that a truck operator may have for cancelling a booking for a slot, especially in times of increasing supply chain disruption.
31. The Option proposed is that an operator would incur a penalty for a returned booking if the slot were not re-booked by another carrier, up to 12 hours prior to the start of the time zone. The Options Paper says that “this would effectively remove the ‘free’ 24-hour period where a carrier can retain a booking and return it to the system without penalty.” But the imposition of a penalty could mean that many operators’ planning for efficient delivery would be disrupted, and the option does not take account of supply chain pressures. Hence, NatRoad is opposed.

Option A5 – Remove large and small carrier classifications

32. NatRoad represents all categories of operator and therefore we do not comment on this option.

Option A6 – Change penalty amounts

33. As noted earlier, the penalty system applies to stevedores and to operators. In this sense, it balances the power relationship where stevedores have much greater power than operators, particularly in terms of fee setting for landside port charges and controlling the use of port infrastructure.
34. Whilst NatRoad supports the use of reciprocal penalties to balance that power relationship, we do not support an increase in the penalties applying to members. We reject the proposition that

²⁴ Above note 1 p33

penalties have been taken into account in truck operators' costs of doing business. The industry is extremely competitive and, especially for small operators, even the level of penalty established in 2011 is a substantial deterrent to non-compliance. The comment from the CBA noted in the Options Paper as follows is rejected as overly speculative:

*The CBA further notes that this "may also indicate that the dollar values of the penalties are not enough of a deterrent to change behaviour."*²⁵

35. As is evident from other feedback in this submission, NatRoad would like to see design elements of the scheme that promoted incentives rather than the use of penalties. But we definitely do not support an increase in the current penalties for truck operators.

Option A7 - Improve road data transparency

36. NatRoad supports this option. Increasing information available publicly on stevedore and truck performance at Port Botany would provide greater visibility for industry of this part of the port supply chain. Our support is qualified only by the fact that data should be aggregated, its collection low cost and that it be published in a timely manner. Wherever possible, the data should be nationally consistent so as to enable the comparison of port performance, currently absent as is set out at paragraph 5 of this submission.

Option A8 – Remove the broad power for regulating stevedore charges

37. In line with the NatRoad view, the Options Paper expresses the policy position that the Australian Government is best placed to consider the Australia wide regulation of stevedore landside charges. We mentioned our submission to the Productivity Commission earlier where the NatRoad position on this issue is set out at length.
38. Because the Options paper adopts the position that this is a national issue, the option proposed is for the NSW Minister to no longer have power to regulate the prices charged by stevedores. Whilst we agree that the issue of stevedore price regulation is currently being considered at a federal level, we would urge the reviewer to in fact move 180 degrees from the propositions that removing this broad power provides clarity of government responsibilities and provides certainty for industry that price regulation will not be applied. NatRoad believes that the National Transport Commission guidelines on stevedore charges²⁶ should be mandated and mandated at the State Government level. This is because such regulation would be within the plenary power of the NSW government and because landside port charges have grown unfairly and inequitably over the last five years, an issue set out in the NatRoad Productivity Commission submission referred to earlier.²⁷ Whilst this proposition appears to be out-of-scope for the inquiry, in the current context it is highly pertinent as another perspective from the "vacate the field" position adopted in the Options Paper, which we reject.

Option B9 – No booking until discharge

39. This option further considers the systems used by stevedore terminals to manage truck bookings for container pick-up and delivery. The option further considers "slot hoarding" discussed in paragraph 30 of this submission. Stack runs are discussed as one method of coping with a large volume of containers arriving for collection:

²⁵ Above note 1 at p36

²⁶ [National voluntary guidelines for landside stevedore charges | National Transport Commission \(ntc.gov.au\)](https://www.ntc.gov.au/national-voluntary-guidelines-for-landside-stevedore-charges)

²⁷ Above note 3

*Stack runs are provided based on a set number of containers over a specified time period, usually a number of hours. Carriers are provided with any container destined for that carrier, rather than specifying which container they want to pick up first.*²⁸

40. The Options Paper discusses an advanced booking system used at other ports. This system requires that the container must have landed at the terminal (i.e. been unloaded from the vessel) before it can be booked for pick up. The Options Paper states that this means that containers become available for booking over the time it takes to unload the entire vessel, not all at one time.
41. NatRoad agrees that the system as outlined is more efficient than the current system and would facilitate more backloading. This is because when containers are discharged the carrier is able to book a container directly to an available slot and the operator would then have the choice to pick up multiple containers within a single module as well as being able to drop off containers on the same trip. A further benefit for operators is they would only book slots when required and not in expectation that the containers will be ready for collection.
42. Offset against these benefits are the challenges noted in the Options Paper:
 - *The time between a container being ready and the next available slot might be longer than preferred, especially during peak times, with containers potentially spending longer on the terminal.*
 - *Carriers cannot swap containers between slots that are in different modules or from any position in the terminal (if an advanced booking system is applied in an ASC-based terminal).*²⁹
43. NatRoad therefore prefers to defer a recommendation in relation to this option until the detail of how it would work is assessed by users of Port Botany and whether any costs associated with the new system would be passed to truck operators. That latter point will be critical; the introduction of a more efficient booking system should not be a trigger for further landside port charges.

Option B10 – Points systems

44. As noted in the Options paper, under PBLIS, regular penalty payments are made between stevedores and operators (when penalties are incurred). In addition, operators pay fees to the stevedores to access the terminals.
45. The Options Paper recognises that an alternative system could be adopted to administer stevedore fees and PBLIS penalties. This is NatRoad’s preferred position with the aim of achieving simplification via incentives and rewards rather than the imposition of penalties. The Options Paper has a more specific focus on adoption of an alternative: it could be a means to “simplify or reduce the effort involved in this transfer of funds between parties.”³⁰ In this context, it is proposed that a points system, a demerit points approach, or a less frequent reconciliation of penalties would replace the way the imposition of penalties currently works. We oppose the advance payment of fees which would provide the terminal operator with additional interest benefit that truck operators would lose if not compensated. This would also firmly swing back the balance of power to the stevedores.
46. The Options Paper also notes that stakeholder feedback was that to reduce administration of the penalty system “a system of performance reviews conducted over a longer periodic timeframe” could be introduced. This is close to the preferred NatRoad model with incentives applying (such

²⁸ Above note 1 at p44

²⁹ Above note 1 at 45

³⁰ Id p46

as reduction of or elimination of landside port fees) where certain KPIs are met by truck operators. This proposal would obviously depend on some element of price control and a more radical approach to the penalty system than is currently within scope of the review. But it remains NatRoad's preferred position.

47. Despite the comments in the prior paragraph, and having regard to the options proposed, a longer period over which penalties were reconciled would reduce the administrative burden of all parties and is therefore supported.

Option B11 – Differential pricing of time zones

48. This option would introduce different prices for different times of the day.

49. The Options Paper quotes the CBA as follows:

*The CBA shows there has been a very limited shift towards 24/7 port logistic chain operations, noting that bottlenecks outside of the port contribute to the significant demand for peak hour slots, such as local council regulations and working hours of other parties in the supply chain.*³¹

50. There are various issues with truck curfews, overtime rates for work outside of ordinary hours and community pressure to limit night deliveries that are critical elements of an examination of this issue. The process of auctioning the relevant spots will obviously drive-up costs of time slots that are "auctioned" as proposed, to the extent of where these financial and operational disadvantages do not apply. In other words the costs of "peak" slots will be costed up to the additional cost incurred by the operator in off-peak operations. It is noted in the Options Paper that an auction system may cause price uncertainty and system complexity, as per feedback from stakeholders. We agree.

51. We also agree with the conclusion that "it is not expected at this time that an auction approach would be suitable."³² Instead the Options Paper proposes that voluntary adoption by stevedores of a differential pricing approach occurs. We do not support such an approach because it would lead to the setting of higher fees for peak period slots. The assumption that discounting off-peak charges to incentivise 24/7 operations would occur, as indicated in the Options Paper, is challenged. There is no evidence that this would be the case.

52. Before leaving this topic, we must also question the proposition in the Options Paper thus:

*Additional costs may be associated with off-peak labour, but some labour is already employed off-peak and is currently under-utilised.*³³

53. That proposition does not apply to truck drivers. There is a large truck driver labour shortage.³⁴ There is no under-utilisation of truck drivers. The current market is one where labour shortages abound. We therefore challenge the accuracy of the quoted statement in the prior paragraph.

Option B12 – Certified transport operators

54. The Options Paper notes that other jurisdictions adopt a certification requirement or Truck Licensing System (TLS) to truck operators to obtain port access. It is asserted that introducing a certified transport operator requirement could support port efficiency by ensuring truck operators meet performance standards. In fact, on current indications, the opposite may be the case; for example, higher productivity heavy vehicles are currently penalised where infrastructure

³¹ Id p48

³² Id p50

³³ Id p51

³⁴ Discussed for example here: [Truck driver workforce shortages: A perfect storm - News - Labourforce Australia](#)

requirements do not suit their loading and unloading. A long vehicle fee is charged by Patrick at Port Botany.³⁵ This fee stands at \$50.00 per vehicle.³⁶ It is counterproductive and denies the efficiency that use of higher productivity vehicles brings.

55. We note that the Options Paper records stakeholder feedback that Performance Based Standards (PBS) vehicles be promoted as the road freight vehicle of choice in Port Botany, for their safety, environmental and productivity benefits. But the long vehicle fee stands in the way of such usage.
56. Until this issue is sorted out, as well as costs and benefits being better assessed, NatRoad is opposed to the recommendation to introduce a certification/licensing requirement.

Option B13 – Empty container storage facility data transparency

57. This option discusses an issue that causes difficulties for NatRoad members. Because of a surplus number of empty containers, with increasing frequency the empty container parks at Port Botany become full, leading to issues for transport operators trying to return empty containers to the park they are directed to by shipping lines. One of the factors that is also a drag on operating 24/7 is the limited operational hours of empty container parks, a factor that reinforces our arguments at paragraphs 48-53 of this submission. For systemic reform, these opening hours must be extended.
58. The Options Paper says that government should require empty container storage facility data and make this publicly available and require empty container redirections in EDI format. We agree with these suggestions but believe that more fundamental reform is required. This is especially the case with hours of operation. We reinforce that extending empty container park operating hours will add to supply chain efficiency.

Option B14 – Freight Community System (FCS)

59. In essence, this option covers formalising data sharing between NSW freight businesses.
60. We note the proposition that the data standards that are used in the NSW FCS need to be widely acceptable, implementable, and applicable for users in other jurisdictions. Subject to this caveat, we support the option that calls for the further development of an FCS Strategic Business Case and, if positive, development of a phased implementation plan. Whether or not this development is accorded a high priority as proposed in the Options Paper is, in NatRoad's view, only something that can be decided once the business case work has been completed.

Option B15 – Second Truck Marshalling Area (TMA)

61. NatRoad agrees with the statements in the Options Paper that:

A possible location of the second TMA closer to the Patrick and Hutchison terminals could reduce travel distances within the port precinct for early arriving trucks accessing the Patrick and Hutchison terminals, leading to potential reductions in congestion on roads surrounding the port precinct. It would also provide greater flexibility for road carriers to manage their fleet.³⁷

62. The Options Paper is, however, cautious in its approach and proposes that further investigation of the need and timing for a second truck marshalling area be undertaken. The Options Paper then

³⁵ [Container stevedoring monitoring report 2020-21.pdf \(acc.gov.au\)](#) p52

³⁶ Ibid

³⁷ Above note 1 p61

says that, if required, options for its development should be considered. NatRoad believes that this is a high priority issue and that the investigations proposed should be fast tracked.

Option B16 – Non-government implementation of PBLIS

63. The Options Paper says that:

The administration of PBLIS requires close involvement in and oversight of the operations of the port landside logistics supply chain. Due to its highly operational nature, the administration of PBLIS may be more appropriately undertaken by the port operator NSW Ports, given its strong focus on port operational efficiency

64. We disagree. There is no evidence that private sector administration of the system will increase efficiencies. The fact that there is no price regulation of landside port charges or administration charges that could be applied by a private corporation, weighs in this consideration. We do not agree that the vesting of this responsibility in the private sector would lead to better working conditions and lower costs for truck operators. Therefore, in the absence of evidence, compelling or otherwise, we oppose enabling NSW Ports to administer PBLIS and TfNSW contracting NSW Ports to manage the TMA and ANPR cameras.

Option C17 – Transition away from PBLIS but retain oversight

65. NatRoad, as a general policy position, holds to the view expressed in the Options Paper that “it is preferable wherever possible for government to not intervene in private markets to avoid unintended consequences such as impeding market flexibility or driving inefficient behaviours.”³⁸ But governments should intervene where the power imbalance between parties causes market distortions. We agree with the following comments on PBLIS:

Arguably, PBLIS has been successful in improving the road transport interface with the three international container terminals at Port Botany, leading to a relatively consistent truck turnaround time (TTT). PBLIS has also balanced to a degree the disproportionate “market power” of the stevedore companies by imposing financial penalties for poor terminal performance that delays road transport operators unduly or for non-service events. In addition, it regulates the imposition of financial penalties on transport operators for poor arrival performance and “no shows”³⁹

66. Mere monitoring of port performance is a poor substitute for market intervention that balances market power to some extent, albeit the growth in landside port charges shows that the balance remains undeniably in favour of the stevedores.

67. We do not agree that the PBLIS regulation should be removed in a phased transition with retention of performance monitoring and the potential to re-introduce PBLIS should port performance deteriorate. Port performance measurements need to take account of the increase in landside port charges and, as we have proposed to the Productivity Commission, become subject to price regulation. Those port performance measures must, as we argued earlier, be consistent Australia wide and permit comparisons with other ports’ operations.

³⁸ Above note 1 p66

³⁹ Above note 19 p3

Option C18 – Oversight of access arrangements

68. It is proposed that in the context of the situation brought about by the implementation of Option C17, oversight of the commercial contractual arrangements between stevedores and truck operators that would replace the PBLIS rules could be provided to support a transition process. This is proposed to: “introduce appropriate arrangements to ensure equitable access to the port.”
69. With respect, this is another way of regulating an imbalance of market power. In this context, the process is similar to, but goes further than the provisions of the now defunct Bill⁴⁰ that would have introduced a strengthened unfair contracts regime for small business, also a measure to equalise differences in market power.
70. The Options Paper indicates that “each stevedore would consult with truck operators before submitting its standard form agreement to an appropriate entity, or independent organisation such as a pricing regulator (possibly IPART or the ACCC), for approval.”⁴¹
71. The proposed mechanism has utility and is supported no matter the other reforms introduced. Accordingly, whilst the option proposed is for regulatory oversight of industry access arrangements to support the transition away from PBLIS, NatRoad submits that the proposed oversight of contracts should occur as part of any ongoing regulatory system, as a check on the power imbalance referred to throughout this submission.

Option D

72. Option D considers the performance of rail and its impacts on the Port Botany container task. Accordingly, NatRoad offers no comment on Option D.

Conclusion

73. NatRoad believes that especially for truck operators, there should be further investigation of how incentives may assist with port efficiencies e.g., through a lessening of landside port charges where high productivity vehicles are used rather than these vehicles being subject to a “long vehicle” fee.
74. NatRoad does not believe the time is right to dismantle the PBLIS scheme, as it has conferred benefits on all port users and assisted to balance the undue market power held by stevedores.

⁴⁰ Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022

⁴¹ Above note 1 p68