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Chamber of Commerce and Industry WA

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Athena Wicks
Productivity Commission
Level 8, Two Melbourne Quarter
697 Collins Street
Docklands VIC 3008

Dear Ms Wicks

Inquiry into the long-term productivity of Australia's maritime logistics system

I write to provide comments to inform the Productivity Commission's inquiry into this important issue.

CCIWA is the peak body advancing trade and commerce in Western Australia. We want the best for communities across the State.

We work hard to understand what's happening in our economy and tell that story to government, businesses, and the broader community. We're fundamentally committed to using our insights to develop and advocate for public policies that advance trade and commerce, and that reflect the needs of all our stakeholders.

One of the biggest challenges facing the WA community over the past 6 months has been supply chain pressures. In December 2021, around three in five WA businesses reported that supply chain disruptions were a barrier to growth:

- Nearly two-thirds were suffering higher costs.
- Nearly half were experiencing delayed delivery of end products to consumers.
- One third were suffering production setbacks driven by shortages in inputs.

We also identified supply chain issues were causing mental health concerns for employees, lost sales and reputational damage.

Most WA businesses (92 per cent) do not expect these pressures will alleviate any time soon, as COVID spreads throughout the WA community for the first time.

There are features of WA's maritime logistics system which mean that — even once short-term supply chain pressures resolve — the system will continue to under-perform. These include:

- The disproportionate impact of industrial action within the maritime industry on the broader economy (outlined further below).
- A lack of coordination and governance across multiple transport agencies, as well as the State's commercialised port authorities — these bodies sometimes operate with unaligned objectives, limiting the strategic development of WA's transport system.

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- Escalating fees and charges — while some level of increase in fees and charges could be justified if driven by investments that improve service delivery, there is a lack of transparency over the costs of these investments, revenues from fees and charges and the efficiency gains associated with the improvements.

These issues, and the long-term productivity of WA's maritime logistics system, will be affected by decisions about WA's new metropolitan container port ('Westport'), which the State Government has commenced detailed planning for. Westport's development will significantly influence the broader metropolitan freight supply chain, including optimal investments in road, rail and intermodal terminals. Further, from the WA business community's perspective, it will be important to ensure the risks of the investment (particularly when it comes to container trade forecasts) are not shifted onto WA businesses in the form of ever-increasing fees and charges.

The rest of this submission focuses on the first of the features listed above — industrial relations.

Industrial relations in WA's maritime logistics system

The Western Australian economy is highly reliant upon the maritime sector for the export and import of products and commodities. The strategic nature of the maritime industry is well understood by the relevant unions, resulting in significant use of industrial disputation to increase labour costs and reduce innovation and investment.

The capacity for a relatively small number of employees to hold the WA and national economy to ransom has resulted not only in extremely generous wages and conditions of employment, but the maintenance of outdated employment arrangements which has prevented the industry from taking advantage of new technology aimed at improving productivity within the sector. It is the latter which is the most concerning as it puts the bargaining power of a few ahead of the national interest.

The recent disputes hampering ports across Australia has highlighted the potential impact that industrial action can have on supply chains, particularly when they are already stretched because of the COVID-19 pandemic. This impact is compounded when a dispute with one employer is finalised, only for the same port to be damaged by a dispute involving a different group of workers covered by the same union.

This recently occurred in industrial disputation at Fremantle Port, in which approximately two weeks after long running industrial action involving a stevedoring company Qube was resolved, the same union notified the Fremantle Port Authority of proposed industrial action which would have resulted in a ban on the mooring and unmooring of ships targeted by the union.[1] The use of rolling industrial action increases pressure on employers to resolve disputes in a manner that is favourable to the union.

[1] Bremmer, J (27 October 2021. Fremantle Port: Maritime Union of Australia announces new mooring bans. The West Australia.

Under the current provisions of the *Fair Work Act 2009* (FW Act), the threshold for taking lawful industrial action is low. By contrast, industrial action is very difficult to stop. The FW Act only allows for protected industrial action to be suspended or terminated where it is:

- Causing (or threatening to cause) significant economic harm to the employers and employees covered by the agreement;
- Threatening the life, safety or welfare of the population or part of it;
- Threatening to cause significant economic harm to the Australian economy; or
- Causing (or threatening to cause) significant economic harm to a third party.

In considering the definition of significant economic harm, the Fair Work Commission has established a very high bar which makes such applications difficult to establish in all but the most extreme of situations.

This was highlighted in the 2011 Qantas dispute. In this matter prolonged industrial action by three unions which had *"affected 70,000 passengers, led to the cancellation of 600 flights, the grounding of 7 aircraft, $70 million in damage"* was not considered likely to cause significant damage to the economy, even when taken together. It was not until Qantas was forced to shut down its entire operations, costing Qantas $20 million per day and threatening to cause even greater damage to the tourism and air transport industries, that the definition of significant economic harm was met.[2]

This approach clearly fails to align with the views of the business community and indeed the broader community.

To help manage the damage of industrial disputes for the wider economy, we recommend:

- Industrial action should only be an option of last resort after genuine negotiations on reasonable claims. When seeking a protected action ballot order unions should be required to demonstrate that:
  - they have engaged in genuine negotiations with the other party and have genuinely considered and responded to their claims;
  - the claims being pursued are reasonable when compared to the terms and conditions of employment applicable to that industry, or the circumstances of that enterprise; and
  - the proposed protected industrial action is reasonable and proportionate having regard to the matters in dispute and the likely effect of the proposed industrial action on the employees, the employer and other persons.
- The definition of serious economic harm within the *Fair Work Act 2009* (Cth) should be interpreted as "important or of consequence".
- The content of enterprise agreements should be limited to terms and conditions of employment. This will limit the capacity for unions to initiate industrial action over ancillary matters that do not directly relate to employment entitlements, eg whether unions should have a role in hiring decisions.

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[2] *Minister for Tertiary Educations, Skills, Jobs and Workplace Relations [2011] FWAFB 7444.*

- State and federal governments should be prepared to utilise their right to take steps to stop industrial action that damages the broader economy. This includes state governments initiating applications to suspend or terminate industrial action and the relevant Federal Minister utilising their discretion to terminate strike action.

Please take this letter as our initial submission to the inquiry. We look forward to engaging further once a draft report is published.

Yours faithfully



Chris Rodwell
Chief Executive Officer