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CHAMBER OF COMMERCE AND INDUSTRY
WESTERN AUSTRALIA

27 May 2010

The Infrastructure Coordinator
Infrastructure Australia
GPO Box 594
CANBERRA 2601

To Whom it May Concern

Submission: Proposed National Ports Strategy

Thank you for providing the Chamber of Commerce and Industry of WA with the opportunity to comment on the *Proposed National Ports Strategy*.

The effective and efficient planning and operation of ports in Western Australian is of national importance, as WA exports accounted for 39.1 per cent of Australia's exports in 2009, according to the Australian Bureau of Statistics. It is essential that WA ports do not become a bottleneck to Western Australia's continued growth.

This submission provides general support for the establishment of a National Ports Strategy. It has raised additional matters for consideration including the role of the Commonwealth, the need for principles and guidelines, competition policy, planning and regulatory matters.

Ms Sharon Dignard, Senior Adviser Business Policy would be pleased to provide further detail on this submission. Ms Dignard can be contacted on (08) 9365 7531 or email Sharon.dignard@cciwa.com.

Yours sincerely

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National Ports Strategy

Submission

May 2010

Prepared by the Chamber of Commerce and Industry of Western Australia



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AND INDUSTRY
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About CCI

The Chamber of Commerce and Industry of Western Australia (CCI) is the leading business association in Western Australia.

It is the second largest organisation of its kind in Australia, with a membership of over 5,500 organisations in all sectors including manufacturing, resources, agriculture, transport, communications, retailing, hospitality, building and construction, community services and finance, among others.

Most members are private businesses, but CCI also has representation in the not-for-profit sector and the government sector. About 80 per cent of members are small businesses, and members are located in all geographical regions of WA.

Context

The Chamber of Commerce and Industry of Western Australia (CCI) is pleased to provide this submission in response to the National Transport Commission and Infrastructure Australia's public consultation on the *Preliminary National Ports Strategy* (Strategy) May 2010.

The effective and efficient planning and operation of ports in Western Australia is of national importance, as WA exports accounted for 39.1 per cent of Australia's exports in 2009, according to the Australian Bureau of Statistics. It is essential that WA ports do not become a bottleneck to Western Australia's continued growth.

This submission provides general support for the establishment of a National Ports Strategy. It has raised additional matters for consideration including the role of the Commonwealth, the need for principles and guidelines, competition policy, planning and regulatory matters.



Role of the Commonwealth

It is timely for the Australian Government to prepare this strategy in order to articulate its role in the planning, funding, operation and support for nationally significant ports throughout Australia. The Strategy notes that the Commonwealth's key functions involving the ports include defence, security, environment, biosecurity, competition policy and border control. It also finances specific freight infrastructure assets including certain railways and roads.

Every tier of government and multiple agencies have a role to play in the planning and operation of ports in Australia. This strategy needs to more clearly delineate the roles of each group and only make recommendations where a nationally consistent approach is warranted. These consistencies relate to issues such as, but not limited to, competition policy, national public investment, provision of national information on ports and where relevant nationally consistent regulations. The Strategy should also establish non-mandatory national best practice guidelines to assist with the State's long term planning of ports and the subsequent facilities and networks.

Clarity around each stakeholders' role would identify:

- port consumers' need for competitive pricing, efficiency, landside infrastructure and connected rail or road access;
- private investors' need for a commercial return;
- government regulators' pursuit of competition and other objectives;
- state planners' need for information; and
- local government's community obligations, among others.

Recommendation: *The Strategy should more clearly delineate the roles of each stakeholder and only make recommendations where a nationally consistent approach is warranted.*

Principles and Guidelines

This Strategy should have a greater focus on establishing a set of national principles and guidelines. These would provide the public and private sector with an enduring framework for port development and operation. The four priority areas of planning, protection, efficiency and reliability, and governance go some way to establishing this framework. The Strategy should include an additional



priority which provides guidance and information about securing the investment required from the public and private sectors.

Principles and guidelines could help guide state and local government decisions where the Commonwealth has no jurisdiction to deliver an outcome. For example, urban encroachment is an issue for all heavily used urban ports in Australia and can stifle the continued expansion of major ports and cities. To reduce the impact of urban encroachment the Commonwealth could assist State and Territory Governments in finding and endorsing options to address this issue. Such as best practice planning guidelines, support for the reclamation of land, support for the establishment of new ports, among other options. This would translate into tangible benefits for multiple jurisdictions dealing with this contentious issue.

It is evident that the Commonwealth, through Infrastructure Australia, is playing a more significant role in funding ports and the subsequent freight facilities and networks in Australia. The Strategy should recommend that the decision making criteria used by the Commonwealth to fund ports is transparent. This should require the establishment of a cost benefit analysis. This analysis would examine matters such as:

- whether a new port is required;
- a port's significance in terms of national exports and imports;
- whether public funding of a port is required;
- the delivery of a competitive outcome; and
- the level of public sector funding required on non-port land such as for infrastructure, roads or rail, among other matters.

As a result of geographic reasons, ports in Western Australia are not in competition with ports on the east coast. It is for this reason that future investment in local port infrastructure must take into account the unique needs of the region.

The expansion requirements outlined in the Strategy are significant and can not be funded entirely by the Commonwealth or States. Private sector funding of ports is necessary. It is essential that the Commonwealth and State Government garner an understanding of the levers and expectations required to induce private sector investment. For example, the return on investment proposition of private investors, banks lending considerations for port infrastructure, among other matters. This will avoid the establishment of recommendations that unintentionally inhibit private investment.



Recommendation: *The strategy should establish a set of national principles and guidelines that provide State and Local Governments as well as the private sector with an enduring framework for ports.*

The framework, established by the Strategy, should include an additional priority which provides guidance about the process for securing the investment required from the public and private sectors.

Competition Policy

Competition is essential for efficient ports, and the government's regulatory environment should maintain a framework that supports and encourages competition. It is essential that Government establish a clear understanding of how competition will change in the marketplace as long-term demand for port infrastructure grows. This includes the regulations required to control negative behaviours associated with monopoly infrastructure, of which a number of WA ports provide monopoly infrastructure. It should also consider any trends in the size of port infrastructure such as greater economies of scale that would increase volumes of cargo exchange and reduce overheads. Competition must provide the foundation for any national ports strategy and should be made explicit.

The Strategy identified the need to improve efficiency, but has failed to recognise that competition is a market driven solution to deal with these issues. Effective competition gives businesses the incentive to ensure that goods and services are delivered as efficiently as possible, to improve the quality, quantity and efficiency of their operations and to innovate.

The application of competition policy in ports applies in multiple situations, each leading to long term benefits for the efficiency of a port. It may relate to the establishment of direct competition, particularly relevant during planning for the expansion of ports. It also relates to the control of market power from a vertically integrated supply chain. It is important to continue to expose public ports to private sector practices which induce efficiency. The privatisation of ports and the establishment of port authorities as government trading enterprises is a step in the right direction.

It is positive that Australia's Transport Ministers, as part of the National Transport Policy Framework in 2008, endorsed guiding principles for transport that encourage market based solutions. This includes principles concerning infrastructure pricing, competitive markets and private sector involvement. These principles should not be left in the Strategy's appendix but stated up front in the strategy.



It is necessary to consider the competitive dynamics of port authorities being responsible for port planning. Port Authorities, both public and private, have the potential to exhibit negative monopoly behaviours such as limiting supply in order to garner higher returns.

Government Trading Enterprises, such as public port authorities, are in a position to use their connection with government to limit their exposure to competitive forces. This risk should be minimised by continuing to regulate industry to strike the right balance between facilitating trade and maximising profits. These regulations are important when a new port may be required that would directly compete with an existing port. Although port authorities should play a central role in planning for port expansion, their inherent conflict of interest should be taken into consideration when allocating responsibility for planning.

Recommendation: *The Strategy should explicitly endorse competition as a primary objective of the Government concerning ports.*

Although port authorities should play a central role in planning for port expansion, their inherent conflict of interest should be taken into consideration when allocating responsibility for planning.

Planning

Adequate long term planning for ports and the supporting intermodal facilities and transport networks should be a fundamental requirement in any port strategy. Planning should extend to 50 years given the high capital cost and the fixed nature of the infrastructure. The Strategy correctly identified that long term planning is necessary to provide public and private investors with confidence to invest.

A key outcome in effective long term planning should be to help remove the politics associated with allocating funding to support key projects. This has the potential to delay projects and generate poor outcomes that don't match industry's long term needs.

The Commonwealth's role in planning should be clearly articulated in the strategy, given it has no jurisdictional authority to achieve the outcomes recommended, nor should it. Additional planning and approval processes required by the Commonwealth may negatively impact and delay the industry's ability to meet demand. The Strategy needs to consider and prevent the potential negative impacts associated with introducing another layer of bureaucracy.

The protection of land associated with the future expansion of ports is a primary concern for long term planning. The Strategy has identified this as a concern but provided limited guidance into the options to address subsequent issues such as



urban encroachment and competition. A range of quantified solutions to address urban encroachment and protect land are needed immediately. This could include the reclamation of land, planning for additional competitive ports, double stacking on rail networks, the protection of easements for road corridors, among others.

The importance of planning goes beyond the port and should include planning and protection of land to support the expansion of intermodal facilities and road and rail corridors. The Strategy touches on freight corridors associated with road, but has provided limited guidance on the role of rail networks into the future or the facilities and warehousing required for intermodal facilities. There is continued uncertainty about the role of road versus rail networks and the future of user road charges.

Recommendation: *The Strategy should extend the planning timeframe from 20 years to 50 years.*

The Strategy should articulate how it intends to minimise the potential negative impacts, associated with introducing another layer of bureaucracy.

The Strategy needs to provide greater guidance on requirements of rail networks, and intermodal facilities into the future.

Regulation

The Strategy recommends the establishment of nationally consistent legislation and regulations. The objective of regulation is to address market failure. This is achieved by prohibiting certain behaviour (anti-competitive conduct), restricting or requiring certain practices, and reducing the risk of harm (safety/environmental controls).

The establishment of additional national regulations is not needed and would impose an additional layer of bureaucracy that could unnecessarily delay development. The Commonwealth should only investigate regulatory harmonisation where a justified benefit could be obtained by streamlining the process. For example, a consistent process for dredging regulations may be relevant. It is not necessary or efficient for the Commonwealth to review or impose regulations about the operational workings of individual ports.

Changes in regulations must provide a reasonable balance between protection and compliance and administration costs. The Strategy should recommend that principles of regulatory best practice are followed. CCI articulated key principles to shape regulatory activity in *Regulation and Compliance: A Discussion Paper November 2006*. They include the following.



- Government intervention – should be minimal and the least preferred option for achieving policy outcomes.
- Nationally consistent framework – should encourage efficiency, competition and innovation.
- Mutual recognition – where national harmonisation is required agreement amongst all jurisdictions should be achieved.
- Outcome based – requiring regulations to specify outcomes rather than process.
- Prescription limited – to certain minimum requirements such as health exposure levels, speed limits etc.
- Sound social and economic purpose – requiring governments to undertake a regulatory impact statement, which among other things, proves there is a demonstrated need for regulatory intervention.
- Removal of redundant regulation – requiring governments to establish a regulatory monitoring and review program.

Recommendation: *The Strategy should recommend that regulatory best practice be followed when transitioning to national consistent regulations.*

