

26 May 2021

Ms Julie-Anne Schafer  
President  
National Competition Council  
Level 17, Casselden  
2 Lonsdale Street  
MELBOURNE VIC 3000

Email: [info@ncc.gov.au](mailto:info@ncc.gov.au)

Dear Ms Schafer

**Re: Extension of certification of the South Australian Ports Access Regime**

I refer to your letter of 10 May 2021, Annexure A to that letter (**Annexure**) and the notice issued to Flinders Ports Pty Ltd (**Notice**) pursuant to section 44NAA(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

Thank you for the opportunity to provide further information to the Council on the matters that are the subject of the Annexure and the Notice.

Please see **enclosed** a submission from Flinders Ports addressing the questions asked by the Council as well as other matters relevant to its consideration of whether to recommend to the Commonwealth Treasurer that the South Australian Ports Access Regime should be re-certified under Part IIIA of the CCA.

In summary:

1. The matters that are the subject of the Annexure and the Notice are not relevant to, and must not be taken into account by, the Council (as required by section 44M(4) of the CCA).
2. In any event, the allegations made by Qube Ports Pty Ltd (**Qube**) in the Appendix to its submission dated 26 February 2021 and in relation to which the Council seeks a response from Flinders Ports are not true in all respects and are not supported by any evidence.
3. In order to ensure the re-certification process is consistent with the rules of natural justice and procedural fairness, the Council must ask Qube to provide evidentiary support for its baseless allegations before requesting Flinders Ports to respond to those allegations.
4. No complaints have been made by any other third party about the failure by Flinders Ports to provide access to regulated services.
5. No complaints have been made by any other third party about Flinders Ports charging excessive prices for regulated services.
6. In the ESCOSA Reviews, ESCOSA has found no evidence of the allegations made by Qube, any breach of the access regime or any misuse of market power.
7. There have been no other regulatory or legal matters relating to the allegations made by Qube.

8. There have been no other opposing submissions to certification.
9. There is strong evidence and data of investments in infrastructure by Flinders Ports and a consequent increase in innovation and downstream competition.

This letter is not confidential and can be published on the Council's website. The enclosed submission can also be published on the Council's website but not the confidential annexures to that submission.

Yours sincerely

A handwritten signature in black ink, consisting of several overlapping loops and a trailing line to the right.

Stewart Lammin  
**Chief Executive Officer**



**FLINDERS PORTS PTY LIMITED (ACN 097 377 172)**

**RE-CERTIFICATION OF THE SOUTH AUSTRALIAN  
PORTS ACCESS REGIME**

**RESPONSE TO REQUEST FOR INFORMATION FROM THE  
NATIONAL COMPETITION COUNCIL DATED 10 MAY 2021**

**26 May 2021**

## GLOSSARY

Term	Definition
<b>ACCC</b>	Australian Competition and Consumer Commission
<b>Appendix A</b>	Appendix A to the Qube Submission
<b>Application</b>	Application for the extension of certification of the SA Ports Access Regime under section 44NA of the CCA by the State of South Australia dated 22 January 2021
<b>CCA</b>	<i>Competition and Consumer Act 2010 (Cth)</i>
<b>Council</b>	National Competition Council
<b>CPA</b>	Competition Principles Agreement – 11 April 1995 ( <i>As amended to 13 April 2007</i> )
<b>DBCT</b>	Dalrymple Bay Coal Terminal
<b>ESC Act</b>	<i>Essential Services Commission Act 2002 (SA)</i>
<b>ESCOSA</b>	Essential Services Commission of South Australia
<b>ESCOSA Guideline No 1</b>	ESCOSA, “ <i>Ports Industry Guideline No. 1: Access Price Information</i> ” May 2010
<b>ESCOSA Guideline No 2</b>	ESCOSA, “ <i>Ports Industry Guideline No. 2: Regulatory Accounts</i> ” May 2010
<b>ESCOSA Review 2012</b>	ESCOSA, “ <i>2012 Ports Pricing and Access Review: Final Report</i> ” October 2012
<b>ESCOSA Review 2017</b>	ESCOSA, “ <i>2017 Ports Access and Pricing Review: Final Report</i> ” September 2017
<b>ESCOSA Reviews</b>	ESCOSA Review 2012 and ESCOSA Review 2017
<b>FACT</b>	Flinders Adelaide Container Terminal Pty Ltd (ACN 004 898 828)
<b>Flinders Ports</b>	Flinders Ports Pty Limited (ACN 097 377 172)
<b>FLOG</b>	Flinders Logistics Pty Limited (ACN 125 368 014)
<b>FPH</b>	Flinders Port Holdings Pty Limited (ACN 117 687 313)
<b>FWD</b>	Flinders Warehousing & Distribution Pty Limited (ACN 629 184 685)
<b>Harper Review</b>	Ian Harper, Peter Anderson, Su McCluskey and Michael O’Bryan, “ <i>Competition Policy Review. Final Report</i> ” March 2015
<b>Hilmer Report</b>	Frederick Hilmer, Mark Rayner and Geoffrey Taperell, “ <i>National Competition Policy</i> ” August 1993
<b>MSA Act</b>	<i>Maritime Services (Access) Act 2000 (SA)</i>
<b>MSAR</b>	<i>Maritime Services (Access) Regulations 2012 (SA)</i>
<b>NCC Guidelines</b>	Council, “ <i>A guide to Certification under Part IIIA of the Competition and Consumer Act 2010 (Cth)</i> ” December 2017
<b>Previous Certification</b>	David Bradbury, Parliamentary Secretary to the Treasurer, “ <i>Statement of Reasons – Decision on the Effectiveness of the South Australian Ports Access Regime</i> ” 9 May 2011
<b>Previous Recommendation</b>	Council, “ <i>South Australian Ports Access Regime: Application for certification as an effective access regime – section 44M of the Trade Practices Act 1974 (Cth) (Final Recommendation)</i> ” 10 March 2011
<b>Price Determination 2007</b>	The price determination made by the Commission in relation to essential maritime services on 26 October 2007, pursuant to Part 3 of the ESC Act
<b>Proclaimed Ports</b>	Port Adelaide, Port Lincoln, Port Pirie, Thevenard, Port Giles and Wallaroo
<b>Qube</b>	Qube Ports Pty Ltd
<b>Qube Letter</b>	Qube’s response to Flinders Ports’ letter to the Council in relation to the Application, dated 17 March 2021

<b>Term</b>	<b>Definition</b>
<b>Qube Submission</b>	Submission to National Competition Council on the application for certification of the South Australian Ports Access Regime by Qube, dated 26 February 2021
<b>SA Ports Access Regime</b>	The access regime established by the MSA Act in relation to port services at proclaimed or declared South Australian ports
<b>SA Ports Price Monitoring Report</b>	The annual report published by ESCOSA that provides a summary of any price movements by port operators during a regulatory year and commentary on factors underpinning price movements, pursuant to the MSA Act and ESC Act

## PART A: BACKGROUND

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### FLINDERS PORTS

- 1 Flinders Ports is the operator of seven ports in South Australia.
- 2 These ports are located at Port Adelaide, Port Lincoln, Port Pirie, Thevenard, Port Giles, Wallaroo and Klein Point. Details on each of these ports are set out in the Application.
- 3 Flinders Ports is a subsidiary of FPH. FPH is also the ultimate parent company of the following entities:
  - (a) FLOG which commenced providing services in 2012 and provides logistics and stevedoring services, focussing on Australia's mineral and oil and gas resources sectors.<sup>1</sup>
  - (b) FACT which was acquired from DP World in 2012 (having previously been 40% owned by FPH) and provides terminal management and stevedoring services to international container shipping lines.<sup>2</sup>
  - (c) FWD which was established in 2019 and provides warehousing and distribution services.<sup>3</sup>

### SA PORTS ACCESS REGIME

#### Overview

- 4 The SA Ports Access Regime is established by the MSA Act.
- 5 The Proclaimed Ports are subject to the SA Ports Access Regime.<sup>4</sup>
- 6 The objects of the MSA Act are:<sup>5</sup>

- (a) *to provide access to maritime services on fair commercial terms;*
- (b) *to facilitate competitive markets in the provision of maritime services through the promotion of the economically efficient use and operation of, and investment, in those services;*

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<sup>1</sup> See: <https://www.flinderslogistics.com.au/about/overview/>.

<sup>2</sup> See: <https://www.flindersadelaidecontainerterminal.com.au/>.

<sup>3</sup> See: <https://www.flindersfwd.com.au/about/>.

<sup>4</sup> Proclamation made under sections 5 and 10 of the MSA Act (Gazette 25.10.2001 at p. 4686) as amended.

<sup>5</sup> Section 3 of the MSA Act.

- (c) *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*
- (d) *to ensure disputes about access are subject to an appropriate dispute resolution process.*

7 The SA Ports Access Regime covers the following three types of services provided by Flinders Ports:

- (a) “regulated services” which are the subject of access rules under the SA Ports Access Regime;
- (b) “essential maritime services” which are the subject of price regulation by ESCOSA; and
- (c) “maritime services” which are otherwise the subject of ESCOSA review.

8 The SA Ports Access Regime is currently due to expire on 31 October 2022.<sup>6</sup>

### **Regulated services**

9 Section 10 of the MSA Act provides that Flinders Ports will be subject to the SA Ports Access Regime to the extent that it “... carries on a business of providing maritime services at a proclaimed port that are declared by proclamation to be regulated services”.

10 Under the MSA Act, the following services are proclaimed as regulated services for the purposes of the SA Ports Access Regime:<sup>7</sup>

- (a) *providing, or allowing for, access of vessels to the port by means of channels;*
- (b) *pilotage services facilitating access to the port;*
- (c) *providing harbourage for vessels at the following common user berths:*
  - (i) *Port Adelaide Outer Harbour berths numbers 1 to 4 (inclusive), 16 to 20 (inclusive), and 29;*
  - (ii) *Wallaroo berths numbers 1 South and 2 South;*
  - (iii) *Port Pirie berths numbers 5 and 7;*
  - (iv) *Port Lincoln berths numbers 6 and 7;*
  - (v) *berths adjacent to the loading and unloading facilities referred to in paragraph (d);*

<sup>6</sup> Regulation 5 of the MSAR (made pursuant to section 47 of the MSA Act) provides that Part 3 of the MSA Act which relates to access to maritime services at proclaimed ports is in operation for a period of five years commencing 31 October 2017.

<sup>7</sup> Proclamation made under sections 5 and 10 of the MSA Act (Gazette 25.10.2001 at p. 4686) and amended

*(d) loading or unloading vessels by means of port facilities that:*

*(i) are bulk handling facilities as defined in the South Australian Ports (Bulk Handling Facilities) Act 1996; and*

*(ii) involve the use of conveyor belts;*

*(da) loading or unloading vessels by means of port facilities that are bulk handling facilities situated at Port Adelaide Outer Harbor berth number 8.*

*(e) providing access to land in connection with the provision of the above maritime services.*

11 In respect of the above “regulated services”, the SA Ports Access Regime requires Flinders Ports to provide access to third party access seekers to those services on fair commercial terms.<sup>8</sup> It also requires Flinders Ports to negotiate in good faith with third party access seekers to accommodate their requests for access.<sup>9</sup> If agreement cannot be achieved by negotiation, the terms of access will be determined by arbitration under the SA Ports Access Regime.<sup>10</sup>

12 In addition, Flinders Ports must maintain a schedule of pilotage charges and must provide a copy of, and explain any changes to, those charges to ESCOSA.<sup>11</sup>

13 Qube does not appear to acquire any of the regulated services from Flinders Ports.

### **Essential Maritime Services**

14 Section 4 of the MSA Act defines “essential maritime services” as:

*(a) providing or allowing for access of vessels to a proclaimed port; or*

*(b) providing port facilities for loading or unloading vessels at a proclaimed port; or*

*(c) providing berths for vessels at a proclaimed port.*

15 Under section 6 of the MSA Act, ESCOSA is authorised to make price determinations in respect of “essential maritime services”.<sup>12</sup>

### **Maritime Services**

16 Section 4 of the MSA Act defines “maritime services” as:

*(a) providing or allowing for access of vessels to a proclaimed port;*

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<sup>8</sup> Section 11 of the MSA Act.

<sup>9</sup> Section 14 of the MSA Act.

<sup>10</sup> Sections 15, 18, 23 and 26(1)(f) of the MSA Act.

<sup>11</sup> Section 8 of the MSA Act.

<sup>12</sup> Section 4 of the MSA defines “essential maritime industry” as an industry of providing an essential maritime service or essential maritime services.

- (b) *a pilotage service facilitating access to a proclaimed port;*
  - (c) *providing berths for vessels at a proclaimed port;*
  - (d) *providing port facilities for loading or unloading vessels at a proclaimed port;*
  - (e) *providing for the storage of goods at a proclaimed port;*
  - (f) *providing access to land in connection with the provision of services of any of the kinds mentioned above,*
- but does not include any of the following:*
- (g) *a towage service for facilitating access to a proclaimed port;*
  - (h) *a bunkering service provided at a proclaimed port;*
  - (i) *a service for the provisioning of vessels (including the supply of electricity and water) within a proclaimed port;*
  - (j) *a service for the removal of waste from vessels at a proclaimed port.*

17 Under the MSA Act, ESCOSA is required to review the supply of “maritime services” under review by Flinders Ports to determine whether any further regulation is required.<sup>13</sup> ESCOSA can also develop and issue standards which Flinders Ports must comply with in the provision of maritime services.<sup>14</sup>

18 ESCOSA has published two standards to date: ESCOSA Guideline 1 and ESCOSA Guidelines 2.<sup>15</sup>

19 ESCOSA Guideline 1 regulates the information Flinders Ports must provide to a third party access seeker seeking access to all regulated services provided at the Proclaimed Ports. Flinders Ports must develop a price information kit which contains:<sup>16</sup>

- (a) A statement of the regulated services that Flinders Ports provides at each of the Proclaimed Ports;
- (b) The current price list (as required under the Price Determination 2007) for those regulated services that are also essential maritime services;
- (c) The current schedule of pilotage charges;

<sup>13</sup> Section 9(1) of the MSA Act.

<sup>13</sup> Section 9(2) of the MSA Act. “Maritime Services” are defined in section 4 and are wider than Regulated Services or “essential maritime services”.

<sup>13</sup> ESCOSA, *Codes & Guidelines*, <https://www.escosa.sa.gov.au/industry/ports/codes-guidelines>

<sup>13</sup> ESCOSA Guideline 1, paragraph 3.2.2.

- (d) A statement as to Flinders Ports' general pricing policies for any other regulated services, including indicative price ranges where appropriate; and
- (e) A statement informing potential access seekers that if their requests involve new capital investments then the price information provided may require adjustment to reflect those additional capital costs, and noting that both parties will need to discuss such requests further in good faith.

20 ESCOSA Guideline 2 sets out detailed rules for the collection, allocation and recording of information by Flinders Ports for the purposes of providing such information to ESCOSA, so that ESCOSA can undertake a review of the maritime services provided by Flinders Ports.

## ESCOSA

21 The SA Ports Access Regime is monitored and enforced by ESCOSA.<sup>17</sup>

22 Under section 6 of the ESC Act, ESCOSA must in performing its functions:

*(a) have as its primary objective protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services; and*

*(b) at the same time, have regard to the need to—*

*(i) promote competitive and fair market conduct; and*

*(ii) prevent misuse of monopoly or market power; and*

*(iii) facilitate entry into relevant markets; and*

*(iv) promote economic efficiency; and*

*(v) ensure consumers benefit from competition and efficiency; and*

*(vi) facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment; and*

*(vii) promote consistency in regulation with other jurisdictions.*

23 ESCOSA is independent from the influence of any government ministers in the performance of its functions.<sup>18</sup>

24 Section 29 of the ESC Act sets out that ESCOSA may issue a written requirement to a person to give ESCOSA information which ESCOSA reasonably requires to perform its functions.

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<sup>18</sup> Section 7 of the ESC Act.

Non-compliance with a requirement issued under this section attracts a maximum penalty of \$20,000 or 2 years' imprisonment.

25 Section 43(2) of the MSA Act requires that ESCOSA must conduct a review of the essential maritime industries subject to the SA Ports Access Regime every five years. Since the SA Ports Access Regime was certified in 2011, ESCOSA has completed the ESCOSA Reviews.

26 Since 2013, ESCOSA has published an annual SA Ports Price Monitoring Report.

## PART B: RESPONSE TO ANNEXURE A

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### THE COUNCIL'S QUESTIONS

27 The Council asks the following questions:

#### **Question 1: Vertical Integration and Effectiveness of the Access Regime**

- (a) Does the Access Regime address the risk of vertically integrated facility operators providing preferential treatment to related businesses, or using confidential information obtained from access seekers to obtain competitive advantages in upstream or downstream markets?
- (b) Does the Essential Services Commission of South Australia (ESCOSA) or an arbitrator of an access dispute under the Access Regime have the ability to:
  - (i) address the risk of vertically integrated facility operators providing preferential treatment to related businesses, or
  - (ii) prevent providers of regulated services from using confidential information obtained from access seekers to give a competitive advantage to related entities in upstream or downstream markets?
- (c) Are these considerations relevant to the decision the Council must make in accordance with section 44M(4) of the CCA as to whether to recommend to the Commonwealth Minister that the Access Regime is an effective access regime, and if so how?

28 Section 44M(4) of the CCA makes it expressly clear that the issues raised in questions (a) and (b) above are not only irrelevant to the Council's consideration of this matter but they are not to be considered by the Council in determining whether the SA Ports Access Regime is re-certified.

29 For this reason, Flinders Ports addresses the question in paragraph (c) first.

### RESPONSE TO PARAGRAPH (C) OF ANNEXURE A

#### **The relevant test for re-certification**

30 When the responsible Minister for a State or Territory has made an application to the Council under section 44NA(2) of the CCA to recommend that a state or territory access regime that has been certified as an effective access regime under section 44N(1) should continue to be certified as an effective access regime, the Council must, under section 44NA(4) of the CCA, assess whether the state or territory access regime should continue to be certified as an effective access regime in accordance with the requirements of section 44M(4) of the CCA.

31 Under section 44NA(5) of the CCA, if the Council is satisfied that an effective access regime should continue to be certified, it must make that recommendation to the Commonwealth Minister including the period of time for which the certification should continue.

32 Section 44M(4) of the CCA provides:<sup>19</sup>

*In deciding what recommendation it should make, the Council:*

*(a) must, subject to subsection (4A), assess whether the access regime is an effective access regime by applying the relevant principles set out in the Competition Principles Agreement; and*

*(aa) must have regard to the objects of this Part; and*

*(b) must, subject to section 44DA, not consider any other matters.*

33 For the purposes of applying section 44M(4):

(a) Section 44M(4A) is irrelevant to the Application because it relates to the National Gas Law.

(b) Section 44DA(1)(c) of the CCA provides that, in applying the relevant principles set out in the CPA, the Council “*must treat each individual relevant principle as having the status of a guideline rather than a binding rule*”.

(c) Section 44DA(2) of the CCA provides that “*an effective access regime may contain additional matters that are not inconsistent with [CPA] principles*.”

(d) Other than the relevant principles of the CPA and the objects of Part IIIA of the CCA, the Council must “not consider any other matters” in recommending to the Commonwealth Minister that an effective access regime should continue to be certified. This is consistent with paragraph 2.15 of the NCC Guidelines.

### **Applying the relevant principles of the CPA**

34 In addition to section 44DA(1)(c) of the CCA which provides that the Council “*must treat each individual relevant principle as having the status of a guideline rather than a binding rule*”, clause 6(3) of the CPA itself provides:<sup>20</sup>

*“For a State or Territory access regime to conform to the principles set out in this clause, it should: ...*

*(b) reasonably incorporate each of the principles referred to in subclause (4) ...*

<sup>19</sup> Section 44M of the CCA.

<sup>20</sup> Clause 6(3)(b) of the CPA.

*There may be a range of approaches available to a State or Territory Party to incorporate each principle. Provided the approach adopted in a State or Territory access regime represents a reasonable approach to the incorporation of a principle in subclause (4) or (5), the regime can be taken to have reasonably incorporated that principle for the purposes of paragraph (b)."*

35 The ordinary meaning of the word "incorporate" means contain or include.

36 The NCC Guidelines provide the following additional clarity on whether a state or territory access regime "reasonably incorporates" the relevant principles of CPA:<sup>21</sup>

*"While an effective access regime needs to reflect each of the clause 6 principles, the assessment of an access regime against the clause 6 principles is not a matter of applying a binary test of compliance. Section 44DA gives the Council and the Commonwealth Minister considerable flexibility in applying the clause 6 principles. It provides that each clause 6 principle is to be treated as a guideline rather than a binding rule and that state or territory regimes may contain additional matters as long as they are not inconsistent with the clause 6 principles. Further, clause 6(3) of the CPA requires only that a state or territory regime takes a reasonable approach to incorporating the principles in clauses 6(4) and (5) and there may be a range of approaches available to state or territory governments. In this regard, the Council recognises that a range of regulatory arrangements are capable of delivering efficient outcomes. The Council also assesses the incorporation of the clause 6 principles by an access regime as a whole, recognising that there will often be significant interdependencies between one aspect of a regime and another."*

37 The NCC Guidelines also consider that where a state or territory access regime mirrors or copies a relevant principle of the CPA, this is sufficient to constitute the regime reasonably incorporating that principle. For example, in respect of clauses 6(4)(e) and 6(4)(m) of the CPA, the Council considers that a state or territory access regime will reasonably incorporate these clauses if it does so explicitly or the regime contains provisions to the same effect.<sup>22</sup>

38 That different access regimes may have different methods of incorporating the relevant principles of the CPA is reflected in the Revised Explanatory Memorandum to the *Trade Practices Amendment (National Access Regime) Bill 2005* which states:

*"Part IIIA provides a framework to guide, rather than prescribe, the requirements of state and territory industry regimes, and that the design and operation of state and territory access regimes is a matter for each relevant jurisdiction."*

### **The objects of Part IIIA of the CCA**

39 Section 44AA of the CCA provides that:

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<sup>21</sup> NCC Guidelines, paragraph 3.3.

<sup>22</sup> NCC Guidelines, paragraphs 5.6 and 5.68.

*The objects of this Part are to:*

*(a) promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and*

*(b) provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry.*

40 Clause 6(5)(a) of the CPA reflects sub-paragraph (a) of section 44AA of the CCA and requires a state or territory access regime to incorporate:

*“objects clauses that promote the economically efficient use of, operation and investment in, significant infrastructure thereby promoting effective competition in upstream or downstream markets.”*

41 The phrase “economically efficient” is to be interpreted in accordance with its recognised meaning within the discipline of economics.<sup>23</sup> It is well understood that this includes productive, allocative and dynamic efficiency.<sup>24</sup>

### **The SA Ports Access Regime satisfies the test for re-certification**

***The relevant principles of the CPA are reasonably incorporated into the SA Ports Access Regime***

42 Flinders Ports agrees with and supports the reasons set out the Application as to why the SA Ports Access Regime reasonably incorporates the principles referred to in clauses 6(4)(a)–(c), (e), (f), (i), (k), (n), 6(5)(a) and (b) of the CPA.

43 Flinders Ports does not propose to repeat that reasoning in this submission.

### ***Qube’s interpretation of the relevant test for re-certification is wrong and misleading***

#### **Qube misinterprets the meaning of “effective”**

44 The Qube Submission clearly misinterprets the word “effective” as it is used in Part IIIA of the CCA. Qube’s Submission uses the word in an operational sense,<sup>25</sup> rather than the correct meaning which is whether the State or Territory regime properly incorporates the required CPA principles.

45 This is supported by the NCC Guidelines which state:<sup>26</sup>

<sup>23</sup> *Glencore Coal Assets Australia Pty Ltd v Australian Competition Tribunal* [2020] FCAFC 145, 66 [236].

<sup>24</sup> *Re Michael; ex parte Epic Energy* (2002) 25 WAR 511, 553.

<sup>25</sup> For example, see Qube Submission, paragraphs 85-87, 92, 94, 95 and 101.

<sup>26</sup> NCC Guidelines, paragraph 1.2.

*“Governments also agreed that states and territories would retain the ability to regulate access to services within their jurisdiction and that the national access regime would not apply to services covered by effective state or territory regimes. An effective regime is one that conforms to the set of principles set out in clause 6 of the CPA ... ”*

Qube almost entirely relies on matters that must not be taken into account

46 Paragraph 62 of the Qube Submission purports to set out the relevant test for certification but it fails to include the limb under section 44M(4)(b) which states that the Council “*must ... not consider any other matters*” other than the relevant principles of the CPA and the objects clause of Part IIIA.

47 However, in advancing its reasons for why the Council should not recommend to the Commonwealth Minister that the SA Ports Access Regime should be certified as an effective access regime under section 44NA of the CCA, the Qube Submission almost entirely relies upon matters that section 44M(4)(b) expressly states must not be taken into account.

48 For example, the Qube Submission relies on the following “irrelevant” matters in assessing whether the SA Ports Access Regime reasonably contains or includes the relevant principles of the CPA and has regards to the objects of Part IIIA:

- (a) *“the [alleged] day to day commercial experiences of port stakeholders such as Qube over last decade”*;<sup>27</sup>
- (b) *“the relevant market environment, and commercial context”* which Qube alleges has substantially changed since 2011;<sup>28</sup>
- (c) vertical integration across entities owned by FPH and a lack of ring fencing or separation between those entities;<sup>29</sup>
- (d) *“The history of the Flinders Group ...”*;<sup>30</sup>
- (e) *“the history and wider experience of anti-competitive conduct by privatised port operators over the last decade, and the absence of effective state-based regulation, which has been publicly acknowledged by the ACCC and has resulted in Qube itself taking substantial private litigation under section 46 of the CCA”*;<sup>31</sup>
- (f) The lack of legislative amendments to the SA Ports Access Regime;<sup>32</sup>

<sup>27</sup> Qube Submission, paragraphs 4, 12, 44, 58, 89, 136, 140; Appendix A.

<sup>28</sup> Qube Submission, paragraphs 39 and 64.

<sup>29</sup> Qube Submission, paragraphs 7, 8, 9, 13, 26, 40, 42, 44, 46, 48, 49, 50, 53, 89, 90, 91, 134, 135 and 141; Qube Letter, pages 1-2.

<sup>30</sup> Qube Submission, paragraph 26.

<sup>31</sup> Qube Submission, paragraph 42.

<sup>32</sup> Qube Submission, paragraphs 52 and 134.

- (g) A comment voiced by the ACCC and supported by an association with which Qube is affiliated about the lack of pricing regulation following the privatisation of state assets;<sup>33</sup>
- (h) Conduct by container terminal operators in unilaterally increasing rents;<sup>34</sup>
- (i) The acceptance of behavioural remedies by the ACCC to alleviate competition concerns relating to acquisitions of port terminals in circumstances where no access regime was otherwise applicable;<sup>35</sup>
- (j) A number of different Federal Court proceedings commenced by the ACCC and Qube for breaches of competition law by various other companies in the port services industry;<sup>36</sup>
- (k) “*regulatory experience over the last decade at privatised Australian ports and the important lessons that this history offers of the need to ensure a certified port regime provides real, transparent and effective protection against discriminatory conduct ...*”;<sup>37</sup>
- (l) “*the access regime applicable under the QCA Act to the Dalrymple Bay Coal Terminal*” including the number of pages over which that regime is recorded compared to the SA Ports Access Regime and the number of pages over which the latter is recorded;<sup>38</sup>
- (m) “*the nature of the various South Australian port facilities covered by the regime and any related supply chain and/or markets*”;<sup>39</sup> and
- (n) “*the operational structure of the operator*”.<sup>40</sup>

49 The Qube Letter also states that “*Qube’s public submission is more than twice the length and detail of the access regime itself and more than ten times longer than the submission made in this process by Flinders Ports*”.

50 The law expressly states that these matters must not be considered by the Council for the purposes of determining whether the SA Ports Access Regime should be certified under Part IIIA of the CCA.

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<sup>33</sup> Qube Submission, paragraphs 54 and 55.

<sup>34</sup> Qube Submission, paragraph 56.

<sup>35</sup> Qube Submission, paragraph 57.

<sup>36</sup> Qube Submission, paragraph 57.

<sup>37</sup> Qube Submission, paragraph 59.

<sup>38</sup> Qube Submission, paragraph 60.

<sup>39</sup> Qube Submission, paragraph 89.

<sup>40</sup> Qube Submission, paragraph 89.

51 In addition, many of the allegations made by the Qube Submission are manifestly untrue (in fact) and in some cases prove the very point Qube is arguing against. Part C of this submission addresses these allegations in more detail.

52 None of the allegations contained in the Qube Submission relate to an access dispute. The complaints made by Qube in respect of alleged misuse of commercially sensitive information by Flinders Ports are outside of the scope of the SA Ports Access Regime, as they have no relevance to the acquisition or attempted acquisition of regulated services by Qube.

#### Qube conflates the regulated services with other operations of FPH

53 The Qube Submission fails to understand that the only services that are the subject of the SA Ports Access Regime are the regulated services, essential maritime services and maritime services.

54 Rather, Qube considers that any form of vertical integration by FPH should be addressed by the SA Ports Access Regime and if such operations are not captured, it will not be “effective”. This approach is inappropriate and inconsistent with the operation and history of access regimes in Australia which have only applied to natural monopoly infrastructure rather than any asset held by a vertically integrated entity.

55 Such assets and operations are irrelevant to the test for certification under Part IIIA.

#### Qube’s assertion that the SA Ports Access Regime fails to consider the objects clause of Part IIIA is misguided and untrue

56 Paragraph 68 of the Qube Submission incorrectly asserts that the effectiveness of SA Ports Access Regime “*must be measured against its adequacy in promoting effective competition in upstream or downstream markets.*”

57 This is not the correct test for certification under section 44NA of the CCA.

58 The Council is not required to measure whether the SA Ports Access Regime has adequately promoted effective competition in upstream or downstream markets. Rather, to apply the test correctly, the Council must have regard to the objects of Part IIIA (and the relevant principles of the CPA) in assessing whether to certify a state or territory access regime.

59 The Council recently confirmed this view stating that:<sup>41</sup>

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<sup>41</sup> “South Australian Water Access Regime: Application for certification under section 44M of the *Competition and Consumer Act 2010* (Cth),” Final Recommendation (22 March 2017), paragraphs 4.14-4.15.

*In its Guide and in previous recommendations on applications for certification, the Council has expressed the view that the certification process does not involve an assessment of the merits of an access regime, or whether that regime provides the most effective means of achieving efficient access outcomes.*

*Rather, certification only requires an assessment as to whether an access regime satisfactorily addresses the clause 6 principles and accords with the objects of Part IIIA. In other words, the clause 6 principles do not impose a high threshold for an access regime to be certified. (emphasis added)*

60 Applying the correct test, the SA Ports Access Regime clearly and expressly accords with the objects of Part IIIA of the CCA.

61 Firstly, section 3 of the MSA Act provides that the objects of the SA Ports Access Regime are:

- (a) to provide access to maritime services on fair commercial terms; and*
- (b) to facilitate competitive markets in the provision of maritime services through the promotion of the economically efficient use and operation of, and investment in, those services; and*
- (c) 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*
- (d) to ensure that disputes about access are subject to an appropriate dispute resolution process.*

62 This clause clearly and expressly incorporates the objects of Part IIIA.

63 Indeed, in its Previous Recommendation, the Council was satisfied that the above objects clause incorporated the objects of Part IIIA stating that it “*satisfactorily incorporates efficiency promoting terms and conditions*”.<sup>42</sup> In its Previous Certification, the Minister considered that the regime accorded with the objects of Part IIIA, noting that the objects of the regime were ‘substantially reflect[ed]’ in the first limb of the objects of Part IIIA.<sup>43</sup>

64 Secondly, there is clear evidence that the SA Ports Access Regime has promoted the economically efficient operation of, use of and investment in the infrastructure by which regulated services are provided and has thereby promoted effective competition in upstream or downstream markets.

65 Since the commencement of the SA Ports Access Regime, Flinders Ports has made a number of significant investments (over \$250m in value) at the Proclaimed Ports for the benefit of third

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<sup>42</sup> Previous Recommendation, paragraph 5.156.

<sup>43</sup> Previous Certification, page 9.

parties that access regulated services. Qube has not contributed to any fees to these investments through access charges for regulated services.

66 The matters described in paragraphs 63 and 64 above have promoted effective competition in a number of downstream markets. Qube itself accepts that this is the case.

67 At paragraph 36 of the Qube Submission, Qube states that “*Competition for the provision of downstream services to the companies importing and exporting freight involves a variety of service providers*” (emphasis added) and it then lists a number of downstream competitors including FLOG.

68 At paragraph 37 of the Qube Submission, Qube states that “*Each of the above downstream service providers . . . competes fiercely for work from customers importing and exporting from the port*” (emphasis added).

69 The fact that there are a “variety of service providers” that compete “fiercely” strongly supports the view that the SA Ports Access Regime is achieving the very objects of Part IIIA which Qube refutes. This would simply not be the case if Qube’s assertions about vertical discrimination or anti-competitive conduct were true. In such a world, one would expect to see:

- (a) few or no downstream rivals;
- (b) little or no competition between downstream service providers;
- (c) significant market share for FLOG compared to its rivals as a result of some form of discrimination by Flinders Ports in how it deals with downstream stevedores; and
- (d) frequent tender wins by FLOG against its rivals.

70 This however is not the case:

- (a) Prior to privatisation of the seven South Australian ports in 2001, there was little or no significant or new investment in the infrastructure providing the regulated services or other assets that would increase throughput through the regulated port facilities operated by the SA Government.
- (b) Since Flinders Ports commenced operating the regulated port facilities, including in accordance with a Capex Deed which it was required to agree to as part of the privatisation process, it has invested \$250 million in significant investments to improve the delivery of regulated and other services at the Proclaimed Ports. Key capital expenses made by Flinders Ports in relation to the infrastructure providing the regulated services or associated assets include wharf remediation, berth

redevelopment, infrastructure alterations, drainage, security, paving for biosecurity, and fender and utilities upgrades;

- (c) The stevedoring market at the time was largely a duopoly between Qube and Asciano. These companies had ample opportunity to make investments, acquire land and construct associated facilities but they failed to do so.
- (d) In 2012, FLOG commenced stevedoring operations in competition with Asciano (Patrick, later Linx), Qube and SA Shipwright, as a new entrant, offering innovative and new solutions to customers. This is recognised by the Qube Submission itself at paragraph 38. Other stevedores entered the market and expanded as Qube has identified.
- (e) The stevedoring market is now characterised by a “variety of service providers” that compete “fiercely”.
- (f) Over the last 3 years, FLOG’s stevedoring volumes at the Proclaimed Ports have decreased by over 30% while Qube’s have increased by approximately 24%. Linx’s volumes have increased by 22%, and SA Shipwright’s have increased by over 430%. These trends are entirely inconsistent with any vertical discrimination by Flinders Ports.
- (g) The ESCOSA Review 2017 found that the prices charged by Flinders Ports were comparatively lower than other privately-owned ports.<sup>44</sup>

Qube’s assertion that the SA Ports Access Regime fails to apply certain principles of the CPA is misguided and untrue

### **Qube Submission**

71 Section 4 of the Qube Submission states that the SA Ports Access Regime does not properly apply the following principles of the CPA:

- (a) **clauses 6(4)(a)-(c):** that wherever possible third party access to a service provided by means of a facility should be on the basis of terms and conditions agreed between the owner of the facility and the person seeking access. However, where such agreement cannot be reached, Governments should establish a right for persons to negotiate access to a service provided by means of a facility and any right to negotiate access should provide for an enforcement process;

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<sup>44</sup> ESCOSA Review 2017, page 33.

- (b) **clause 6(4)(f)**: that access to a service for persons seeking access need not be on exactly the same terms and conditions;
- (c) **clause 6(4)(m)**: that the owner or user of a service shall not engage in conduct for the purpose of hindering access to that service by another person; and
- (d) **clause 6(4)(n)**: that separate accounting arrangements should be required for the elements of a business which are covered by the access regime.

72 Qube does not suggest that any of the other CPA principles are not reasonably incorporated into the SA Ports Access Regime. No other submissions were received by the Council arguing that SA Ports Access Regime should not be re-certified.

### **Response to Qube's assertions about these CPA principles**

#### *Guidelines for assessing the CPA principles*

73 The Qube Submission disregards how the Council is to assess whether the above principles are applied by the SA Ports Access Regime.

74 That assessment requires the Council to:

- (a) *"treat each individual relevant principle as having the status of a guideline rather than a binding rule"*,<sup>45</sup>
- (b) determine whether the SA Ports Access Regime *"reasonably incorporate[s] each of the principles ..."* recognising that *"[t]here may be a range of approaches available to a State or Territory Party to incorporate each principle [and] [p]rovided the approach adopted in a State or Territory access regime represents a reasonable approach to the incorporation of a principle"* <sup>46</sup> that will be sufficient; and
- (c) not apply *"a binary test of compliance"* but rather the Council has *"considerable flexibility"* in making its assessment *"recognis[ing] that a range of regulatory arrangements are capable of delivering efficient outcomes."*<sup>47</sup>

75 By applying the above correct assessment, the principles cited in the Qube Submission at sections 4.3, 4.4 and 4.5 are reasonably incorporated into the SA Ports Access Regime.

#### *Clauses 6(4)(a)-(c): Negotiated access*

76 Clauses 6(4)(a)-(c) of the CPA are incorporated into Part 3 of the MSA Act as follows:

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<sup>45</sup> Section 44DA(1)(c) of the CCA.

<sup>46</sup> Clause 6(3) of the CPA.

<sup>47</sup> NCC Guidelines, paragraph 3.3.

- (a) Section 11(1) of the MSA Act provides that a regulated access provider must provide regulated services on terms agreed between the operator and the access seeker, or failing that, on fair commercial terms determined by arbitration;
- (b) Section 12 of the MSA Act requires the access provider to provide the access seeker with certain information upon request;
- (c) Section 13 of the MSA Act sets out how an access seeker may apply for access;
- (d) Section 14 of the MSA Act imposes a duty on the operator and any interested third parties to negotiate with the access seeker in good faith; and
- (e) Section 15 of the MSA Act provides that an access dispute may be referred to ESCOSA for resolution.

77 In its Previous Recommendation, the Council was satisfied that the negotiation provisions in the MSA Act and the conciliate / arbitrate dispute resolution process appropriately balanced the interests of operators, access seekers and interested third parties. The Council also found that ESCOSA was sufficiently resourced and empowered to undertake its duties and that commercial negotiations were supported by credible options for dispute resolution.<sup>48</sup>

78 Flinders Ports also agrees with the reasoning in section 7.1 of the Application.

*Clause 6(4)(f): Different access terms*

79 Clauses 6(4)(f) of the CPA is incorporated into the MSA Act as follows:

- (a) Section 11 of the MSA Act requires access must be provided on terms agreed between the operator and the access seeker, or as determined by arbitration; and
- (b) Section 13 of the MSA Act states that a person seeking access may set out proposed terms and conditions for access to the operator.

80 Accordingly, access will not necessarily be provided on exactly the same terms and conditions in each access agreement.

81 In its Previous Recommendation, the Council was satisfied that the mechanisms in the SA Ports Access Regime supported the commercial negotiation of individual access agreements, did not preclude access on different terms and conditions and that arbitration could be expected to result in access on different terms and conditions.<sup>49</sup>

82 Flinders Ports also agrees with the reasoning in section 7.3 of the Application.

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<sup>48</sup> Previous Recommendation, 5.38-5.40.

<sup>49</sup> Previous Recommendation, 5.52-5.53.

*Clause 6(4)(m): Hindering access*

83 Clause 6(4)(m) of the CPA is incorporated into the MSA Act as follows:

- (a) Section 44 of the MSA Act provides that a person must not prevent or hinder a person who is entitled to a maritime service (which includes a regulated service); and
- (b) Section 44 of the MSA Act provides that a maximum penalty of \$20,000 will apply to a party that contravenes this section.

84 In its Previous Recommendation, the Council was satisfied that the SA Ports Access Regime properly incorporated this CPA principle.<sup>50</sup>

85 Flinders Ports also agrees with the reasoning in section 7.5 of the Application.

*Clause 6(4)(n): Accounting arrangements*

86 Clause 6(4)(n) of the CPA is incorporated into the MSA Act as follows:

- (a) Section 42 of the MSA Act requires that Flinders Ports must keep accounts and records relating to the provision of regulated services separately from accounts and records related to other aspects of other business or businesses it carries on; and
- (b) Section 42 of the MSA Act also requires that Flinders Ports keep separate accounts for each port at which regulated services are provided and provide these accounts and records to ESCOSA upon request.

87 In its Previous Recommendation, the Council was satisfied that the SA Ports Access Regime properly incorporated this CPA principle.<sup>51</sup>

88 Flinders Ports also agrees with the reasoning in section 7.6 of the Application.

**There is no evidence of Flinders Ports failing to implement the CPA principles**

89 Qube's assertion that the above principles are not reasonably incorporated into the SA Ports Access Regime because vertical integration requires some form of additional measures, is completely contradictory to the findings of ESCOSA over the last 10 years when examining the conduct of Flinders Ports as published in the ESCOSA Reviews.

90 Those findings demonstrate that there is no evidence whatsoever of:

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<sup>50</sup> Previous Recommendation, 5.60-5.61.

<sup>51</sup> Previous Recommendation, 5.69-5.70.

- (a) A third party access seeker not being able to negotiate access to regulated services provided by Flinders Ports;
- (b) A third party access seeker not having any right (or having limited rights) to negotiate access to regulated services provided by Flinders Ports;
- (c) A third party access seeker not being able to enforce any right to negotiate access to regulated services provided by Flinders Ports;
- (d) Flinders Ports providing favourable terms and conditions to FLOG for regulated services compared to the terms and conditions provided to any downstream rival;
- (e) Flinders Ports providing favourable pricing to FLOG for regulated services compared to the pricing provided to any downstream rival;
- (f) Flinders Ports providing favourable terms and conditions to FLOG for regulated services to hinder access to those services by any downstream rival;
- (g) Flinders Ports engaging in any conduct to hinder access to regulated services by any downstream rival; or
- (h) Flinders Ports' accounting arrangements being used to obtain an unfair competitive advantage for FLOG over any downstream rival in respect of the regulated services.

91 Appendix A also makes a number of baseless or factually incorrect allegations in support of this issue.

**Qube's assertion that the SA Ports Access Regime should be more comprehensive is inconsistent with 25 years of access policy in Australia**

92 The Qube Submission suggests that the SA Ports Access Regime is too light-handed. Qube suggests that mirroring the wording of the CPA is not sufficient for the regime to be certified but rather more detailed and comprehensive provisions are required.<sup>52</sup>

93 This approach however is entirely inconsistent with Australian access policy over the last 25 years which indicates that the aim is to have access regimes which are less rather than more interventionist. **Attachment 1** to this submission provides a summary of the purpose and objectives of access regimes in Australia which supports this view.

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<sup>52</sup> Qube Submission, paragraph 86.

94 Significantly, the NCC Guidelines also recognise that light-handed regulation is more appropriate where there is one service provider dealing with a few large, well-resourced and well-informed access seekers. They state:

*Its key advantage is that, being less interventionist than full regulation, it has the potential to limit regulatory costs while facilitating the achievement of outcomes that reflect those that would have emerged from commercial negotiations in a workably competitive market. This light-handed regulatory approach, with recourse to regulatory intervention only when the need arises, lends itself well to industries in which a single service provider deals with a few large, well-resourced and well-informed access seekers.*

*However, ex-post intervention may be less effective where a service is provided by more than one party or where there are multiple access seekers. This is particularly so where a large service provider deals with multiple, relatively small and less well-resourced access seekers. In such circumstances, in order for access seekers to be able to negotiate effectively, a more prescriptive access regime may be warranted to address significant information and negotiating power asymmetries. Such an ex-ante access regime would prescribe terms and conditions of access upfront, commonly in an approved access undertaking.*

95 In the current circumstances, it is irrefutable that there is a single service provider (in Flinders Ports) and that access seekers are large, well-resourced and well informed.

96 The Qube Submission itself confirms this, stating:

- (a) Qube “is the largest integrated provider of import and export logistics services [that] operates across all aspects of the port supply chain ...”;<sup>53</sup>
- (b) Qube “has been publicly listed on the Australian Securities Exchange since 2011”;<sup>54</sup>
- (c) “Qube Ports is a major integrated port solutions provider in Australia with bulk and general handling facilities in over 40 Australian, New Zealand and South East Asian ports. ... In Australia, its operations consist of on-wharf and port precinct facilities in all Australian capital city ports and both dry bulk materials and general cargo facilities in a further 24 regional port locations. Qube Ports provides port and facility development, vessel management, warehouse and distribution, stevedoring services, and cargo handling for general cargo and dry bulk commodities for both import and export supply chains ...”;<sup>55</sup>
- (d) “Qube Logistics operates across 48 sites nationally, covering over 210 hectares. Qube Logistics provides complete logistics services incorporating road and rail transport, warehousing and distribution, container parks and related services,

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<sup>53</sup> Qube Submission, paragraphs 2 and 19.

<sup>54</sup> Qube Submission, paragraphs 11 and 19.

<sup>55</sup> Qube Submission, paragraph 20.

*intermodal logistics hubs including rail terminals and global services incorporating procurement, freight forwarding, import and export services.”<sup>56</sup>*

(e) *“many of the Qube Holdings personnel and management team have been involved in the business which is now Qube Holdings from well before its formation”<sup>57</sup> and*

(f) *“the business has over 150 years of Australian port services experience”<sup>58</sup>*

97 The NCC Guidelines state that a more prescriptive access regime (as called for in the Qube Submission) may be warranted where there is more than one service provider and small, less well-resourced access seekers. This is not the case in respect of the relevant parties that are the subject of the SA Ports Access Regime.

**The reasoning in the Application is consistent with other certifications**

98 Contrary to paragraphs 85 and 86 of the Qube Submission, the majority of the state and territory access regimes that have been certified by the Council largely incorporate the relevant principles of CPA by reciting or mirroring those principles. The SA Ports Access Regime is no different.

99 The table below summarises which state and territory access regimes have been certified by the Council as effective access regimes on this basis:

State or Territory	Access Regime	Date of certification
NSW	Water Infrastructure Access Regime	02/03/2020
SA	Water Infrastructure Access Regime	22/05/2017
SA	Rail Access Regime	26/07/2011
QLD	Dalrymple Bay Coal Terminal Access Regime	11/07/2011
WA	Rail Access Regime	11/02/2011
QLD	Rail Access Regime	19/01/2011
NSW	Water Infrastructure Access Regime	13/08/2009

<sup>56</sup> Qube Submission, paragraph 21.

<sup>57</sup> Qube Submission, paragraph 22.

<sup>58</sup> Qube Submission, paragraph 25.

State or Territory	Access Regime	Date of certification
NT	Northern Territory Electricity Network Access Regime	01/12/2001

100 Notably, in 6 of the 8 certifications above, the service provider was vertically integrated.

### **Nothing has changed**

101 Most significantly, since the Previous Recommendation and Previous Certification, there have been no material changes to the MSA Act or the CPA principles. This strongly supports the view that the SA Ports Access Regime should be re-certified. Indeed, Qube itself acknowledges that “*the South Australian ports access regime has not materially changed*”.<sup>59</sup>

102 In this regard, the revocation of certification provisions of Part IIIA of the CCA are telling.

103 Under section 44NBA(1) of the CCA, the Council, a person seeking access to the service, the responsible State or Territory Minister or the provider of the service can apply to revoke the certification of a state or territory access regime.

104 Section 44NBA(5) sets out the test the Council must apply in determining whether to recommend revocation of a certification that a State or Territory access regime is effective. That test provides:

*In considering whether to make the recommendation, the Council must consider whether it is satisfied that the regime no longer meets the relevant principles, set out in the Competition Principles Agreement, relating to whether access regimes are effective access regimes, because of either or both of the following:*

*(a) substantial changes to the regime;*

*(b) substantial amendments of those principles.*

105 Accordingly, the Council can only make a revocation recommendation if there have been substantial changes to the State or Territory access regime or the CPA principles. No other matters can be taken into account.

106 This supports the view that the Council must re-certify the SA Ports Access Regime.

### ***Qube has raised a number of other matters which are irrelevant***

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<sup>59</sup> Qube Submission, paragraph 6.

## Overview

107 The Qube Submission contains a number of other arguments that seek to support its view that the SA Ports Access Regime should not be re-certified. Almost all of these arguments however are either irrelevant to the test for certification and must not be taken into account (as required by section 44M(4)(b) of the CCA) or are factually erroneous.

108 While Flinders Ports is reluctant to address these matters for these very reasons, given that this material is on the public record, it has no option but to do so.

## Regulatory and legal cases

109 The Qube Submission states that, in making its recommendation about the re-certification of the SA Ports Access Regime, the Council should consider:<sup>60</sup>

*“the history and wider experience of anti-competitive conduct by privatised port operators over the last decade, and the absence of effective state-based regulation, which has been publicly acknowledged by the ACCC and has resulted in Qube itself taking substantial private litigation under section 46 of the CCA.”*

110 For reasons previously noted, the above matters are irrelevant and must not, pursuant to section 44M(4)(b) of the CCA, be taken into account by the Council in determining whether to recommend that the SA Ports Access Regime be re-certified.

111 It is disingenuous for Qube to rely upon these cases as they have no relevance to the operation of the SA Ports Access Regime and can be distinguished from the current factual situation. For example:

- (a) The *RoRo matters*<sup>61</sup> referred to by Qube relate to undertakings provided by merger parties to alleviate competition concerns of the ACCC due to those transactions. The reason for the undertakings was because there was no access regime in place (compared to the current situation);
- (b) The *ACCC v NSW Ports* case<sup>62</sup> relates to anti-competitive arrangements between competing ports. It does not involve access to regulated services or certification;
- (c) The *Qube v Port of Newcastle* case<sup>63</sup> relates to misuse of market power allegations by Qube against the Port of Newcastle. It does not involve access to regulated services or certification; and

<sup>60</sup> Qube Submission, paragraph 42.

<sup>61</sup> Undertaking to the ACCC – Given under section 87B of the CCA by Victoria Quay International RoRo Terminal Pty Ltd ACN 167 888 646, 30 March 2015;

Undertaking to the ACCC – Given under section 87B of the CCA by Australian Amalgamated Terminals Pty Ltd ACN 098 458 229 and Qube Holdings Limited ACN 149 723 053, 17 November 2016.

<sup>62</sup> *ACCC v NSW Ports Operations Hold Co Pty Ltd ACN 163 262 351 & Ors*, NSD2289/2018.

<sup>63</sup> *Qube v Port of Newcastle Operations Pty Ltd*, NSD1905/2019.

- (d) The *TasPorts* case<sup>64</sup> relates to misuse of market power allegations brought by the ACCC. It does not involve access to regulated services or certification.

### **Other commentary**

- 112 The Qube Submission also relies on an excerpt of a speech delivered by ACCC Chairman Rod Sims.<sup>65</sup>
- 113 This speech has nothing to do with the SA Ports Access Regime or certification. Rather, Mr Sims's comments were made in the context of state governments selling assets for high prices to obtain increased revenue but failing to have pricing controls on the relevant buyer post-sale which has resulted in increased rents for users.
- 114 Indeed, Mr Sims says the following directly after the excerpt cited by Qube:

*... we need to stop the privatisation of assets with no regulation on the way they will set future prices. This sees high initial sales proceeds go to the government vendors which is subsequently 'paid for' by the users of that infrastructure through excessive prices for many decades afterwards.*

- 115 Qube submits that the concerns raised by Mr Sims are also shared in a press release issued by a "national coalition of peak transport and logistics groups", the Australian Trucking Association.<sup>66</sup> Again, this is disingenuous because only one entity in this coalition is based in South Australia and Qube is a 'Silver Sponsor' of that entity.<sup>67</sup>
- 116 Qube also relies upon the inquiry conducted by the Victorian Essential Services Commission into the market rent charged at the Port of Melbourne by the Lonsdale Consortium, the monopoly provider of land at the port. Importantly, there is no access regime in place at the port and this inquiry relates to the alleged charging of excessive fees by the container terminal services provider.

### **Other regimes**

- 117 The Qube Submission suggests that the SA Ports Access Regime is not "effective" and should not be re-certified because it is not as comprehensive as other regimes such as the proposed access regime for the DBCT.<sup>68</sup>
- 118 In addition to this submission being irrelevant to the test for certification (as noted above), it is inconsistent with the law and frankly, nonsensical.

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<sup>64</sup> ACCC v *Tasmanian Ports Corporation Pty Ltd*, VID1329/2019.

<sup>65</sup> ACCC Speech by Rod Sims, 'Tackling market power in the COVID-19 era', given at the National Press Conference in Canberra on 21 October 2020, page 11.

<sup>66</sup> Qube Submission, paragraph 55.

<sup>67</sup> SARTA Home Page, <http://www.sarta.org.au/>.

<sup>68</sup> Qube Submission, paragraph 60.

119 It is well recognised that there may be a range of approaches to having “effective access regimes” under Part IIIA and the long history of certified regimes demonstrates this. To suggest that an access regime should not be certified because it is not the same as a different access regime regulating different assets and potential conduct<sup>69</sup> (but is longer when drafted on paper) is farcical and shows disregard for the Council’s decisions over the last two decades.

120 Indeed, the Qube Submission is disingenuous by suggesting that the SA Ports Access Regime is only 11 pages compared to the “several hundred pages” of proposed DBCT undertaking. The table below shows that a number of state access regimes have been certified without needing to have hundreds of pages of provisions:

State or Territory	Access Regime	Number of pages
NSW	Water Infrastructure Access Regime (2020)	12
NSW	Water Infrastructure Access Regime (2009)	13
SA	Rail Access Regime	15
SA	Water Infrastructure Access Regime	17
WA	Rail Access Regime	23

121 Many of the access regimes that are more comprehensive in size simply contain a number of provisions that are supplementary to the CPA principles and the objects of Part IIIA.

## **RESPONSES TO PARAGRAPHS (A) AND (B) OF ANNEXURE A**

### **The SA Ports Access Regime**

122 The SA Ports Access Regime addresses the potential for vertical discrimination through the following provisions:

- (a) Sections 3, 11 and 44 of the MSA Act ensure that access must be provided on fair and commercial terms to all parties and that a person must not hinder the access of any party;
- (b) If access cannot be agreed by commercial negotiation, section 32(2)(b) of the MSA Act ensures that an arbitrator take into account the following principle in determining the price of access:

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<sup>69</sup> Qube Submission, paragraph 60.

*“that access prices should not allow a vertically integrated operator to set terms and conditions that would discriminate in favour of its downstream operations, except to the extent that the cost of providing access to others would be higher”*

- (c) Flinders Ports issues and publishes “Port Rules” that set out a number of operational rules that apply equally to all access seekers including rules regarding “first-in, first-serviced” policies, objective berthing priority rules and the maximisation of port efficiency. Copies of the Master Port Rules for Flinders Ports and the Port Adelaide Port Rules can be found at Exhibits 1 and 2 to this submission.

123 Consistent with the above provisions, there is no evidence of any vertical discrimination by Flinders Ports since the commencement of the SA Ports Access Regime. ESCOSA has made this very finding in 2012 and 2017 and the Qube Submission only contains false and unsubstantiated allegations about this issue. Other than the one recent alleged access dispute raised by Qube on 17 May 2021, there have been no access disputes over the last decade.

124 The Qube Submission at paragraph 1.3 of Appendix A suggests that Flinders Ports’ rules have “the effect of prioritising Flinders Ports’ downstream customers over those of other downstream providers without any efficiency basis is [sic] to warrant the priority berthing”. The Rules clearly do not have this effect, rather they reflect the need to balance efficiency and commercial outcomes for all users. This was clearly demonstrated in 2020/21 when significant maintenance works at Berth 20 resulted in a number of vessels being serviced at Berth 29 as an alternative.

125 In any event, Qube and other stevedores do not appear to acquire any regulated service from Flinders Ports. Accordingly, Flinders Ports does not receive any confidential information from Qube or any other stevedore under the SA Ports Access Regime in respect of regulated services. In this regard, Qube’s submissions are false and unsubstantiated.

## PART C: RESPONSE TO THE NOTICE

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### QUESTION 1: VERTICAL INTEGRATION

#### The Council's questions

126 In response to sections 1.1, 1.2 and 1.6 of Appendix A, the Council has asked:

- (a) Are Qube Ports' assertions and understandings outlined above true? Please give details.
- (b) Is there a separation policy or practice that requires staff and management within the Flinders Group to separate the regulated monopoly activities of Flinders Ports from the downstream contestable activities of Flinders Logistics, and Flinders Warehousing & Distribution?
- (c) Are any measures in place to prevent confidential or commercially sensitive information obtained from access seekers by staff of Flinders Ports from being used by its related bodies corporate to obtain a competitive advantage in contestable markets?
- (d) Is Qube Ports correct that there has been a 'change in management structure' as described? If so, please give details of this change.

#### Fundamental flaws with the argument about vertical integration

127 The above questions appear to be based on the Qube Submission which effectively seeks to argue that because Flinders Ports is vertically integrated, it has the ability and incentive to engage in vertical foreclosure or discrimination against downstream rivals such as Qube,<sup>70</sup> and for this reason, the SA Ports Access Regime is no longer "effective".<sup>71</sup>

128 There are a multitude of flaws with this line of argument.

129 Firstly, in accordance with section 44M(4)(b) of the CCA, the vertical integration or operations of Flinders Ports are irrelevant and must not be considered in relation to the test for certification.

130 Secondly, as stated in paragraphs 44 and 45, Qube's interpretation of the word "effective" under Part IIIA of the CCA is misconstrued and fundamentally wrong. It is well understood that "effective" under Part IIIA of the CCA does not refer to the actual operation of an access regime as Qube suggests but rather relates to whether the access regime (as drafted on paper) embraces the principles of the CPA and the objects of Part IIIA.

131 Thirdly, Flinders Ports has an economic incentive to maximise volume and throughput across the Proclaimed Ports as this results in increased revenues. This incentive means Flinders Ports does not have any incentive to engage in vertical foreclosure or discrimination against downstream rivals. The volume trends described in paragraph 70(f) are consistent with this incentive.

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<sup>70</sup> Qube Submission, paragraphs 105 and 138.

<sup>71</sup> Qube Submission, paragraph 137.

132 Fourthly, Qube cites entities owned by FPH that are completely unrelated to the provision of the regulated services.<sup>72</sup> The SA Ports Access Regime does not apply to the services acquired by such entities.

133 Fifthly, Qube makes a number of disingenuous and false statements about the level of FPH's vertical integration. It incorrectly states:

- (a) *"the Flinders Group has significantly expanded its operations into related (and contestable market activities) ..."*;<sup>73</sup>
- (b) *"The Flinders Group is, simply, the most diversified and vertically integrated port operator in Australia"*;<sup>74</sup> and
- (c) There has been a *"rapid and substantial expansion in activities by the Flinders Group since 2011"*.<sup>75</sup>

134 In reality, FPH has commenced only two new businesses over a 10 year period that seek to:

- (a) support the operations of Flinders Ports and provide a competitive alternative to Qube (i.e. FWD); and
- (b) increase competition in markets in which Qube enjoyed significant market share as the incumbent provider (i.e. FLOG).

135 FPH was a joint venture owner of FACT prior to 2012.

136 Ironically, the Qube Submission notes that Qube itself is vastly more vertically integrated than FPH:

- (a) Qube *"is the largest integrated provider of import and export logistics services [that] operates across all aspects of the port supply chain ..."*;<sup>76</sup>
- (b) *"Qube Ports is a major integrated port solutions provider in Australia with bulk and general handling facilities in over 40 Australian, New Zealand and South East Asian ports. ... Qube Ports provides port and facility development, vessel management, warehouse and distribution, stevedoring services, and cargo handling for general cargo and dry bulk commodities for both import and export supply chains ..."*;<sup>77</sup> and
- (c) *"Qube Logistics provides complete logistics services incorporating road and rail transport, warehousing and distribution, container parks and related services, intermodal logistics hubs including rail terminals and global services incorporating procurement, freight forwarding, import and export services."*<sup>78</sup>

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<sup>72</sup> For example, FWD and FACT do not acquire services from Flinders Ports

<sup>73</sup> Qube Submission, paragraph 7.

<sup>74</sup> Qube Submission, paragraph 8.

<sup>75</sup> Qube Submission, paragraph 42.

<sup>76</sup> Qube Submission, paragraphs 2 and 19.

<sup>77</sup> Qube Submission, paragraphs 8 and 20.

<sup>78</sup> Qube Submission, paragraphs 20-21.

137 Sixthly, contrary to the general theme of the Qube Submission, vertical integration of itself does not equate to vertical foreclosure or discrimination or anti-competitive conduct. Rather, there are a number of significant efficiencies that are generated through vertical integration that are highly beneficial for the economically efficient operation of markets.

138 Qube's own recent public statements support this view:

(a) its vision is *"to be Australia's leading provider of . . . a comprehensive integrated supply chain solution for customers through Qube as a single service provider, thereby delivering both price and service benefits to customers . . ."*; <sup>79</sup>

(b) *"A key competitive strength of Qube's businesses is the ability to offer customers a comprehensive logistics supply chain solution. This is possible due to Qube's deliberate decision to develop capabilities across multiple aspects of the supply chain, from the port to the end-customer for both import and export products. This integrated approach enables Qube to remove inefficiencies in the logistics supply chain and provide a value add competitive service to our customers."* <sup>80</sup>

139 Seventhly, the Qube Submission states that ESCOSA has failed to consider the vertical integration of FPH in the ESCOSA Reviews.<sup>81</sup> This is again simply untrue.

140 In the ESCOSA Review 2017, ESCOSA:

(a) considered the structure of the market and emerging market conditions for evidence of the potential or actual exercise of market power;<sup>82</sup>

(b) acknowledged that FPH was vertically integrated identifying that it operated at multiple levels of the supply chain;<sup>83</sup>

(c) acknowledged that vertical integration can achieve efficiencies and create potential incentives to leverage market power for anti-competitive practices in upstream or downstream markets;<sup>84</sup>

(d) concluded that despite this potential, there was no evidence of market power being exercised by Flinders Ports and it was unlikely this would change.<sup>85</sup>

141 In the ESCOSA Review 2012, ESCOSA:

(a) observed that Flinders Ports was a vertically integrated ports operator;<sup>86</sup>

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<sup>79</sup> Qube Annual Report 2020, <https://qube.com.au/wp-content/uploads/2020/10/Qube-Annual-Report-2020-Final-as-printed-250820-1.pdf>, page 19

<sup>80</sup> Qube Government Services Capability Statement, January 2019, [https://qube.com.au/wp-content/uploads/2020/05/QUBE\\_Govt-Services-Capability-Statement\\_JAN19\\_online-version.pdf](https://qube.com.au/wp-content/uploads/2020/05/QUBE_Govt-Services-Capability-Statement_JAN19_online-version.pdf).

<sup>81</sup> Qube Submission, paragraphs 13, 44 and 53.

<sup>82</sup> ESCOSA Review 2017, pages 5 and 7.

<sup>83</sup> ESCOSA Review 2017, pages 14 and 45.

<sup>84</sup> ESCOSA Review 2017, pages 14, 18 and 58.

<sup>85</sup> ESCOSA Review 2017, pages 2, 16–7, 23, 45 and 58.

<sup>86</sup> ESCOSA Review 2012, page 33.

- (b) acknowledged that Flinders Ports had an incentive to maximise throughput over the port and that customers could seek alternative port solutions;<sup>87</sup>
- (c) considered that there were viable alternatives for storage, rail and land facilities available to downstream rivals;<sup>88</sup>
- (d) obtained the conclusion from an independent auditor that there was no non-compliance by Flinders Ports with guidelines established to prevent practises such as cost-shifting of returns in contestable markets to set anti-competitive prices in non-contestable markets;<sup>89</sup>
- (e) agreed that the new port developments triggered by FPH's vertical integration may in fact enhance competition;<sup>90</sup> and
- (f) concluded there was no evidence of Flinders Ports' vertical integration leading to it exercising market power in pricing regulated services<sup>91</sup> and that "light-handed" regulation of Flinders Ports was accordingly appropriate.<sup>92</sup>

### **Response to Question 1(a)**

142 In Section 1.1. of Appendix A, Qube alleges that:

*"Qube has been informed by a Flinders Port representative of a change in management structure that removes any separation between Flinders Ports and Flinders Logistics.*

*For example, Qube understands that:*

- *Danny Sloan (Stevedoring Operations Manager at Flinders Logistics) now reports to Carl Kavina (General Manager of Finders [sic] Ports); and*
- *Port services, such as the Mooring teams, now report to Danny Sloan (Stevedoring Operations Manager at Flinders Logistics).*

143 Qube's assertions are irrelevant and must not, pursuant to section 44M(4)(b) of the CCA, be taken into account by the Council in determining whether to recommend that the SA Ports Access Regime be re-certified.

144 They have no bearing on the provision of regulated services by Flinders Ports for the purposes of the SA Ports Access Regime. The allegation does not evidence any anti-competitive conduct or vertical discrimination and there is no allegation of the disclosure of the commercially sensitive information of Qube to FLOG by Flinders Ports.

<sup>87</sup> ESCOSA Review 2012, page 4.

<sup>88</sup> ESCOSA, 2012 Ports Access and Pricing Review (October 2012), pages 40 and 43.

<sup>89</sup> ESCOSA, 2012 Ports Access and Pricing Review (October 2012), page 47. In July 2013 ESCOSA engaged BDO Audit (SA) Pty Ltd (BDO) to perform an independent review of the Regulatory Accounts of Flinders Ports and Viterra, examining the extent of compliance with the Guideline for 2011 and 2012 period. See BDO Audit (SA) Pty Ltd, *Essential Services Commission of South Australia Review of Ports Regulatory Accounts*, August 2013, available at: [http://www.escosa.sa.gov.au/library/130926-ReviewOfPortsRegulatoryAccounts-BDO\\_Report.pdf](http://www.escosa.sa.gov.au/library/130926-ReviewOfPortsRegulatoryAccounts-BDO_Report.pdf)

<sup>90</sup> ESCOSA, 2012 Ports Access and Pricing Review (October 2012), page 22.

<sup>91</sup> ESCOSA, 2012 Ports Access and Pricing Review (October 2012), pages vi, 14 and 27. ESCOSA stated as the development had not commenced operations the next regulatory review would be able to assess the developments in relation to market power.

<sup>92</sup> ESCOSA, 2012 Ports Access and Pricing Review (October 2012), page 27.

145 On the contrary, the change in management structure within FPH was undertaken to reduce costs and ensure more efficient decision making for the benefit of customers.

146 In Section 1.2. of Appendix A, Qube alleges that:

*“The Flinders Ports commercial team (Michael Simms and Sally Sloan), who Qube negotiate lease agreements and stevedoring licence agreements through, are actively looking to secure stevedoring work for Flinders Logistics.*

*For example, Qube recently held a meeting with a number of customers in which it invited a Flinders Ports commercial representative to attend. Immediately following the meeting, one of Qube’s customers was approached by the Flinders Ports representative in the car park, who said words to the effect “it will be good if Flinders Logistics can do your stevedoring work”. The customer notified the conversation with Qube and identified the conversation as a clear conflict of interest.”*

147 This allegation is irrelevant to and must not, pursuant to section 44M(4)(b) of the CCA, be taken into account by the Council in determining whether to recommend that the SA Ports Access Regime be re-certified.

148 The allegation has no bearing on the provision of regulated services by Flinders Ports for the purposes of the SA Ports Access Regime. It also is completely devoid of cogency - “car park chatter” is hardly evidence of a party leveraging market power. If anything, this assertion is legitimate, aggressive pro-competitive conduct – conduct which Qube itself engages in from time to time with the customers of Flinders Ports and FLOG.

149 In addition to direct competition in open tenders, and by way of example, FLOG customer OZ Minerals was approached and subsequently directed new business to the independently owned and unregulated Port of Whyalla where Qube has exclusive stevedoring rights.

150 Finally, it should be noted that there is no property in a prospective customer but, importantly, all customers using Flinders Ports’ ports are also likely to be actual or prospective customers of Flinders Ports as well as customers of the stevedore (ie Qube).

151 In Section 1.6. of Appendix A, Qube alleges that:

*The lack of any meaningful functional separation or ring fencing within Flinders Group means there are no apparent constraints on the disclosure of commercially sensitive information between Flinders Ports and Flinders Logistics.*

*In Qube’s experience, it is not uncommon for a representative of Flinders Ports to attend meetings with Qube customers to help Qube deal with questions related to port services and infrastructure. In situations where there is only one customer present, Qube may be discussing commercially sensitive information about the terms and conditions of the provision of services to Qube customers.*

*Qube has previously raised this concern with a Flinders Ports representative. The Flinders Ports representative conceded that commercially sensitive information provided by Qube may be accessible and used by other divisions of Flinders Group, including Flinders Logistics. However, perhaps more concerningly, the Flinders Ports representative then stated that if Qube wanted to do anything about that, it would need to complain to the ACCC – inferring that:*

- *the Flinders Ports representative did not intend to seek to take any action to rectify the issue;*  
*and*
- *the existing South Australian port access regime offered no protection to Qube*

*from this kind of anti-competitive behaviour.*

152 This allegation is irrelevant to and must not, pursuant to section 44M(4)(b) of the CCA, be taken into account by the Council in determining whether to recommend that the SA Ports Access Regime be re-certified.

153 The allegation is also vague and baseless. No actual evidence is provided in support of the allegation including identity of persons, location, timing and context. Flinders Ports has no knowledge of this incident and the conclusions made by Qube in this allegation are preposterous.

#### **Response to Question 1(b)**

154 Each year, FPH reviews and approves a group competition law policy that ensures it complies with its competition law and other regulatory obligations at all times. This policy ensures that whatever structure FPH operates under, all of its businesses comply with these obligations.

155 Indeed, there is no evidence from Qube or any other party that the structure of FPH has resulted in anti-competitive conduct or vertical discrimination. No complaint has been made about this issue to ESCOSA (other than Qube's recent alleged access dispute) and ESCOSA has made no finding about this in a decade.

156 Flinders Ports' policy and practice for the last decade has been to provide access to regulated services on the same terms to each third party. Its practice is also not to discriminate against downstream rivals but to treat FLOG the same as any other party. There is no evidence of it doing otherwise,

#### **Response to Question 1(c)**

157 As detailed above, Qube and other stevedores do not appear to acquire any regulated service from Flinders Ports. Accordingly, Flinders Ports does not receive any confidential information from Qube or any other stevedore under the SA Ports Access Regime in respect of regulated services. In this regard, Qube's submissions are false and unsubstantiated.

### **Response to Question 1(d)**

158 Please see **Confidential Attachment 2** which sets out the change in management structure.

### **QUESTION 2: DISCRIMINATORY ACCESS**

#### **The Council's questions**

159 In response to sections 1.3 and 1.4 of Appendix A, the Council has asked:

- (a) What measures does Flinders Ports have in place to ensure it does not discriminate in of its customers and related companies in providing access to regulated port services, or in prioritising infrastructure spending?
- (b) Please detail how competing access requests are evaluated by Flinders Ports (particularly where they receive competing requests from a related entity and a third party)?
- (c) Please respond to the specific assertions in section 1.3 of Appendix A of the Qube Submission.
- (d) Please respond to the specific comments in section 1.4 of Appendix A of the Qube Submission.

#### **Response to Questions 2(a) and (b)**

160 Please see paragraphs 122-125 above in relation to the responses to paragraphs (a) and (b) of Annexure A.

#### **Response to Question 2(c)**

161 In Section 1.3. of Appendix A, Qube alleges that:

*Access to common user berths is typically decided on a "first in, first serviced" basis.*

*Typically, however, ports are able to determine (at their complete discretion) whether certain customers or operators should be afforded priority access at berths, and the conditions for that priority access. Similarly, Flinders Ports is able to enact Port Rules that provide berthing priority to certain vessels. Flinders Ports has enacted rules in relation to priority access at berth 29 which are particularly vague with no clear basis for the conditions which apply to that priority:*

*"To maximise port efficiency if there is likely to be a conflict between two vessels wanting berth 29, preference will be given to vessels that require facilities only available at berth 29 and nowhere else (eg loader, crane etc). Hence fertiliser vessels, livestock vessels and breakbulk vessels which can be handled at other berths will need to berth elsewhere if a clash / conflict exists or is likely to occur."*

*In Qube's experience, this rule has had the effect of prioritising Flinders Ports' downstream customers over those of other downstream providers without any clear efficiency basis is to warrant the priority berthing.*

*Qube's customers primarily operate from common user berths 18 to 20. However, vessels will often also require access to berth 29 during peak periods, when berths 18 to 20 are at capacity. While*

*Qube's customers can use berth 29, given the various priority arrangements at this berth, Qube's customers are often denied access to this common user berth on the basis that a priority vessel is due to berth within the next 48 hours.*

*As a result, at peak times, Qube's customers can often be required to wait up to 10 days in order to berth while berth 29 is underutilised. Flinders Logistics customers (i.e. those where Flinders provides the stevedoring) are seldom, if ever, required to wait.*

162 This allegation is irrelevant to and must not, pursuant to section 44M(4)(b) of the CCA, be taken into account by the Council in determining whether to recommend that the SA Ports Access Regime be re-certified.

163 The allegations are also false and potentially mislead the Council. They are completely baseless and are not supported by one skerrick of evidence or data. No other party has ever complained about the port rules or made the fanciful allegations now made by Qube. On the contrary, those rules seek to comply with the operational efficiency requirements of different berths at the port.

164 In addition, as noted in this submission, Flinders Ports has every incentive to maximise berth utilisation and no incentive to discriminate berthing priority by reference to the identity of the stevedore.

165 Please see paragraphs 122-125 above in relation to the responses to paragraphs (a) and (b) of Annexure A.

### **Response to Question 2(d)**

166 In Section 1.4. of Appendix A, Qube alleges that:

*Qube's experience has been that Flinders Ports prioritises infrastructure spending in those areas and berths in which its downstream services primarily operate (e.g., the services provided at berth 29, where Flinders Logistics' customers tend to have priority access).*

*Whilst Qube understands that some of the infrastructure at berth 29 may be funded and owned by end customers, there is no visibility over the source of funding for what appears to be substantial infrastructure spending at berth 29.*

*Infrastructure spending at other, common user berths and PCC berths has been overlooked or has not been similarly prioritised.*

167 This allegation is irrelevant to and must not, pursuant to section 44M(4)(b) of the CCA, be taken into account by the Council in determining whether to recommend that the SA Ports Access Regime be re-certified.

168 The allegation is also false and misleading. Flinders Ports has made a number of recent and significant capital improvements at Berths 18-20 to ensure those berths are of similar capacity and operational efficiency as Berth 29.

169 Flinders Ports however does not provide priority to FLOG at Berth 29 and has accordingly not inappropriately invested more at Berth 29 than other Berths. These allegations are incorrect, unsubstantiated and directly contradicted by the facts.

170 Flinders Ports has a 20 year capital plan and investment decisions are based on multiple criteria. Prioritising infrastructure spending in those areas and berths in which Flinders Ports' downstream services primarily operate is not one of those criteria.

### **QUESTION 3: BUNDLING AND CROSS-SUBSIDISATION OF CONTESTABLE SERVICES**

#### **The Council's questions**

171 In response to section 1.7 of Appendix A, the Council has asked:

- (a) Does Flinders Ports bundle fees for providing contestable services with the fees charged for access to regulated port services?
- (b) If so, please explain how such bundling impacts the capability for other businesses to compete for the related services.

#### **Response to Question 3(a)**

172 In Section 1.7 of Appendix A, Qube alleges that:

*Qube understands that mooring services are 'packaged' into the Flinders Ports services charges. The current Port Charges effective June 2020 to July 2021 state that the Harbour Service Charges for ships at Port Adelaide and the other ports "includes mooring".*

*As such, it is impossible for Qube to attempt to secure mooring work in circumstances where clients are already paying for mooring as part of the port services charge.*

*More generally, Qube has no transparency over the terms which Flinders Ports provides services to its own related entities – and has no way to test whether pricing charged by Flinders Ports for access to monopoly berth infrastructure is efficient or cost-orientated. There is no meaningful transparency or any dispute process.*

*Qube is concerned that Flinders Ports is engaging in bundling of services and cross-subsidisation across its monopoly and contestable activities.*

173 This allegation is irrelevant to and must not, pursuant to section 44M(4)(b) of the CCA, be taken into account by the Council in determining whether to recommend that the SA Ports Access Regime be re-certified.

174 The allegation is also false, misleading and completely unsupported by any evidence or data.

175 Harbour Service Charges includes mooring because no other party provided or sought to provide mooring services at the relevant time. Further, Flinders Ports provides these services to the vessel, not a stevedore.

176 The allegations raised by Qube have been (and are continually) reviewed by ESCOSA which has not found any evidence of such allegations.

### **Response to Question 3(b)**

177 Bundling of services does not impact the capability for other businesses to compete for related services. There is no vertical discrimination through differentiated pricing, refusal to provide access or more onerous access terms as between downstream rivals and FLOG or other entities owned by FPH. ESCOSA came to the same conclusions in 2012 and 2017. Given that there is no vertical discrimination which has been endorsed by an independent regulator, bundling does not affect competition in related markets.

178 Indeed paragraphs 70(d) to 70(f) above demonstrate that bundling is likely to be pro-competitive in respect of stevedoring services given the number of rivals that fiercely compete in the market and the volume trends over recent years.

### **RESPONSE TO SECTION 1.5 OF APPENDIX A**

#### **Qube's assertions**

179 Qube alleges that:

*Flinders Warehousing and Distribution has taken over a lease on a warehouse located in the Outer Harbour at Port of Adelaide, next to the Flinders container terminal. The warehouse is owned by MTAA Super, which currently holds a 20.81% interest in Flinders Ports Holdings Group.*

*At this warehouse, Flinders Warehousing and Distribution has been able to open the "back door" from the container terminal to the warehouse, meaning that containers are able to be taken directly from a ship to the warehouse using reach stackers. This same access is not available to other service providers who have warehouses at Port Adelaide, who instead are required to hire trucks in order to transport containers from the ship to the warehouse, increasing cost to the customer.*

*Qube is concerned that there is no visibility over the terms by which Flinders is entering these commercial arrangements (e.g., a lease) with parties that have an interest in the Flinders Group.*

180 This allegation is irrelevant to and must not, pursuant to section 44M(4)(b) of the CCA, be taken into account by the Council in determining whether to recommend that the SA Ports Access Regime be re-certified.

181 In any event, Qube's allegation is also knowingly misleading because it fails to disclose key factual information known to Qube, namely:

(a) Prior to Flinders Ports being able to use this particular warehouse, Qube and Qube's joint venture had exclusive rights to use the warehouse in this way for many years. However, Qube decided not to extend its lease. Despite this, Qube has continued to receive access and assistance from Flinders Ports as described below;

(b) Flinders Ports leases the warehouse at arm's length market rates from MTAA Super;

- (c) The warehouse that is the subject of Qube's allegation was sub-leased to Hardy Wine Company Limited for 15 years from 28 July 2004 to 27 July 2019 with a right of renewal for a further 5 years. During the term of this sub-lease the lease was assigned by Hardy Wine Company Limited to Mackenzie Hillebrand Pty Ltd which is a joint venture between Qube and JF Hillebrand that appears to specialise in logistics solutions related to wine, food and liquids;
- (d) In 2019, the sub-lessee advised Flinders Ports that it did not wish to exercise the right of renewal for a further 5 years but that it wished to take a sub-lease of a portion of the facility for a period of 3 months with 30 days' notice of termination. This arrangement was formalised by way of a lease dated 6 September 2019 with the sub-lessee being Qube Logistics (Aust) Pty Ltd;
- (e) Even though Flinders Ports was receiving rent for a portion of the facility, it was (and still is) liable to pay rent to MTAA for the whole facility. In light of this and the inefficient use of the warehouse, in September 2019 FWD commenced operations in the warehouse with Qube;
- (f) Qube continued to be accommodated in the facility at reduced capacity until January 2020 where the parties entered commercial make-good arrangements having regard to the lease requirements for a further 5 months. At all times throughout Qube's occupancy, Qube continued to have access to containers, through the FACT interchange (referred to by Qube as the "back door");
- (g) Qube could have continued to extend its exclusive rights in the warehouse but it chose not to do so. Qube was then free to negotiate with Flinders Ports to stay in the warehouse on commercial terms but chose not to do so. In the absence of Qube or another tenant, FWD used the facility to ensure that it obtained some return on its investment;
- (h) Qube continues to be provided with access to the warehouse: in September 2020, Qube asked if Flinders Ports could provide it with warehouse space for a period of three months. On 9 October 2020, Flinders Ports entered into arrangements with Qube to provide it up to 5000m<sup>2</sup> of space on the same commercial terms as the previous lease. Flinders Ports has granted two extensions to Qube and has also agreed to an increase of space to 7000m<sup>2</sup> at times; and
- (i) Significantly, at all times, Qube has been able to access containers via the interchange grid when using the warehouse and now has similar access to the adjacent facility that Qube has chosen to use instead of the warehouse.

182 In summary, Qube's allegation is again untruthful and misleads the Council.

## ATTACHMENT 1

### HISTORY OF THE PURPOSE OF ACCESS REGIMES

- 1 The SA Ports Access Regime is a light-handed access regime that is entirely consistent with Australian access policy for the last 25 years.

#### Hilmer Report

- 2 In 1993, when the need for an essential infrastructure access regime was first contemplated, the Hilmer Report recommended a national access regime to promote “effective competition”<sup>93</sup> and proposed a new legal access regime be introduced.<sup>94</sup>

- 3 The Hilmer Report considered that the first policy principle, which all Australian Governments should agree to abide by, was that:<sup>95</sup>

*I. There should be no regulatory restrictions on competition unless clearly demonstrated to be in the public interest. Governments which choose to restrict consumers' ability to choose among rival suppliers and alternative terms and conditions should demonstrate why this is necessary in the public interest.*

...

*The principle recognises that while it may be appropriate to restrict competition in some circumstances, this should not be done lightly. [emphasis added]*

- 4 The second policy principle was that:<sup>96</sup>

*II. Proposals for new regulation that has the potential to restrict competition should include evidence that the competitive effects of the regulation have been considered, that the benefits of the proposed restriction outweigh the likely costs, and that the restriction is no more restrictive than necessary in the public interest. [emphasis added]*

- 5 The Hilmer Report accordingly endorsed the need for an access regime for essential facilities but cautioned that any such regime (whether State based or National) should be light-handed.

#### First Review of the National Access Regime<sup>97</sup>

- 6 *In 2001, the Productivity Commission reviewed Part IIIA and recommended that an objects clause and pricing principles should be included in Part IIIA.*<sup>98</sup> *The Productivity Commission also cautioned against the dangers of over-regulation observing:*<sup>99</sup>

*The preceding discussion suggests that it is important not to overstate the extent of market power in the provision of essential infrastructure services. While delivery of a number of these services relies*

<sup>93</sup> Hilmer Report, pages (xxxi)-(xxxiii), 239 and 265.

<sup>94</sup> Hilmer Report, page (xxxii).

<sup>95</sup> Hilmer Report, page 205. See also page 212.

<sup>96</sup> Hilmer Report page 207. See also page 212.

<sup>97</sup> Productivity Commission, *Review of the National Access Regime*, Inquiry Report No.17, 28 September 2001.

<sup>98</sup> Productivity Commission, *Review of the National Access Regime*, Inquiry Report No.17, 28 September 2001, pages 128–9, 142 and 332.

<sup>99</sup> Review of the National Access Regime, Inquiry Report No.17, 28 September 2001, page 58.

*on natural monopoly technologies, various competitive pressures are likely to limit the scope for providers to restrict access and/or raise access prices unreasonably. This reinforces the need not to dismiss the 'no regulation' option, particularly given the likely costs of remedial intervention discussed in the following chapter.*

- 7 The Productivity Commission's recommendations were implemented into the then *Trade Practices Act 1974 (Cth)*.<sup>100</sup>

#### Second Review of the National Access Regime<sup>101</sup>

- 8 In 2013, the Productivity Commission again considered access regulation in Australia. While it recommended Part IIIA should be retained,<sup>102</sup> an amendment to the declaration criteria in Part IIIA<sup>103</sup> was required to confine the scope of the regime to exceptional cases where the benefit from increased competition outweighs the cost of regulated third party access.<sup>104</sup>

- 9 The Productivity Commission considered that:<sup>105</sup>

*However, renewed emphasis should be given to ensuring that the Regime better targets the economic problem to reduce the risk of imposing unnecessary costs on the community and deterring investment in markets for infrastructure services for little gain.*

- 10 The Productivity Commission also observed that:<sup>106</sup>

*The Commission considers that the Regime has benefits as a relatively light-handed template for access regulation — the negotiate–arbitrate framework provides a sound basis for resolving access disputes (chapter 4). The Regime is therefore likely to improve the quality of state and territory access regimes through a demonstration role (in addition to the formal certification process).*

- 11 The Productivity Commission's concern about the intrusive nature and high costs of access regulation and the desire for a light-handed regime are reflected in its comments opposing an airport specific regime, specifically:<sup>107</sup>

*The Commission noted that deemed declaration could undermine light-handed regulation and be far more intrusive than the current price monitoring approach, and that, given the evidence of progress made in commercial negotiations since moving to light-handed regulation, 'it would seem retrograde to allow a reintroduction of heavy-handed regulation that could displace commercial negotiations and encourage gaming' (PC 2011b, p. 203). The Commission remains of this view.*

- 12 The same comments can be made in response to the Qube Submission.

#### Harper Review

<sup>100</sup> *Trade Practices Amendment (National Access Regime) Act 2006 (Cth)* Sch 1 item 4, 110.

<sup>101</sup> Productivity Commission, *Review of the National Access Regime*, Inquiry Report No.66, 25 October 2013.

<sup>102</sup> Productivity Commission, *Review of the National Access Regime*, Inquiry Report No.66, 25 October 2013, page 2.

<sup>103</sup> Productivity Commission, *Review of the National Access Regime*, Inquiry Report No.66, 25 October 2013, 2, pages 33–4.

<sup>104</sup> Productivity Commission, *Review of the National Access Regime*, Inquiry Report No.66, 25 October 2013, 2, pages 33–4.

<sup>105</sup> Productivity Commission, *Review of the National Access Regime*, Inquiry Report No.66, 25 October 2013, page 245.

<sup>106</sup> Productivity Commission, *Review of the National Access Regime*, Inquiry Report No.66, 25 October 2013, page 243.

<sup>107</sup> Productivity Commission, *Review of the National Access Regime*, Inquiry Report No.66, 25 October 2013, page 27.

- 13 In March 2015, a Panel chaired by Professor Harper undertook a review of Australian competition law and policy, including in relation to Part IIIA.
- 14 The Harper Review endorsed the national access regime and observed Part IIIA was a model and a backstop to access undertakings and certification of access regimes under State and Territory laws.<sup>108</sup>
- 15 The Harper Review echoed the Productivity Commission's concerns that the scope of access regimes should be confined, stating that:<sup>109</sup>

*The Panel agrees with the conclusion of the recent Productivity Commission (PC) inquiry that the National Access Regime is likely to generate net benefits to the community, but that its scope should be confined to ensure its use is limited to the exceptional cases, where the benefits arising from increased competition in dependent markets are likely to outweigh the costs of regulated third-party access.*

...

*Third, beyond the circumstances envisaged by the Hilmer Review, imposing an access regime upon privately developed single-user infrastructure is more likely to produce inefficiency than efficiency, impeding the competitiveness of Australian industry.*

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<sup>108</sup> Harper Review, page 426.

<sup>109</sup> Harper Review, page 73.

## NCC Guidelines

16 The NCC Guidelines published in 2017 state:<sup>110</sup>

*The clause 6 principles promote a negotiate-arbitrate model of access regulation, which is the model advocated by the Hilmer Committee (Hilmer Committee 1993, pp 255-6) and reaffirmed by all Australian governments in the Competition and Infrastructure Reform Agreement as the underlying principle for the establishing of access terms. Under this model, an access seeker negotiates the terms of access with the service provider and the parties have recourse to arbitration only if and when they fail to reach a commercial agreement. Since the regulator does not intervene and access terms are not imposed until commercial negotiations fail, this approach can be described as ex-post regulation. Its key advantage is that, being less interventionist than full regulation, it has the potential to limit regulatory costs while facilitating the achievement of outcomes that reflect those that would have emerged from commercial negotiations in a workably competitive market. This light-handed regulatory approach, with recourse to regulatory intervention only when the need arises, lends itself well to industries in which a single service provider deals with a few large, well-resourced and well-informed access seekers.*

## Productivity Commission Report - Airports

17 In 2019, the Productivity Commission considered whether the access regime for airports required greater regulation. It concluded that it did not stating:<sup>111</sup>

*Airports in Australia operate under a light-handed economic regulatory regime that is designed to facilitate commercially negotiated outcomes. Airport users, including airlines and operators of landside services, negotiate directly with airport operators on charges and other terms of access to a range of infrastructure services. Except for some regional services at Sydney Airport, governments do not intervene in the setting of charges or other terms of access.*

...

*The light-handed approach to the economic regulation of airports includes the general provisions of competition and consumer law, and airport-specific regulations that were introduced following the privatisation of airports.*

...

*Commercial negotiations can provide direct investment incentives and link the interests of airport users to airport operations, and promote efficient investment in airports and related industries (PC 2002).*

18 The Productivity Commission considered that light-handed access regulation was appropriate where there was: (i) a monitoring regime in place reporting on whether the relevant asset owner is exercising market power; and (ii) a credible threat of additional regulation.<sup>112</sup>

19 In respect of Flinders Ports, these two issues are met through ESCOSA reviews and the general competition law.

<sup>110</sup> NCC Guidelines, paragraphs 3.13-3.14.

<sup>111</sup> "Economic Regulation of Airports: Productivity Commission Inquiry Report, No. 92" (21 June 2019), pages 4 and 52.

<sup>112</sup> "Economic Regulation of Airports: Productivity Commission Inquiry Report, No. 92" (21 June 2019), pages 4 and 52.

**Marine Operations  
Flinders Ports  
Master Port Rules**

Uncontrolled if printed

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## 1. Purpose

Flinders Ports Pty Ltd (**Flinders Ports**) operates seven ports in South Australia (Port Adelaide, Port Lincoln, Port Pirie, Thevenard, Port Giles, Wallaroo and Klein Point). These Master Port Rules apply to those ports and are intended to inform commercial users of the ports of their responsibilities for the safe navigation of vessels and conduct of other associated activities within the ports.

These rules contain a *summary* of certain applicable legislative and contractual obligations. Port users are required to inform themselves of their duties under all applicable laws, regulations and contractual terms and nothing contained in these Port Rules exempts any port user from compliance with any other legal or contractual requirement or obligation.

It is a condition of all access to, use of and the conduct of activities within the ports that these Master Port Rules and any other rules or terms incorporated into them or otherwise applicable are complied with.

In addition to these Master Port Rules, specific local port rules relating to Port Adelaide and regional ports apply and are available on the Flinders Ports website at <https://www.flindersports.com.au>. These Master Port Rules must be read in conjunction with the relevant local port rules.

These Master Port Rules and all use of the ports is also subject to the Flinders Ports' '**Standard Terms and Conditions** (Use of Ports, Facilities and Services by Vessels)' and '**PortMIS** (management information system) Terms of Use and Access', each of which may contain terms limiting or excluding Flinders Ports' liability and otherwise benefiting Flinders Ports, copies of which are available on the Flinders Ports website.

These Master Port Rules and other rules or terms incorporated into them may be amended from time to time, so we recommend that you routinely check the Flinders Ports' website to ensure that you are referring to the current version.

## 2. Scope

The ports are operated in accordance with all laws in force in South Australia and any applicable Commonwealth and International laws, including but not limited to:

- Navigation Act 1912 (Cth)
- Harbors and Navigation Act 1993 (SA) (**H&N Act**)
- Environment Protection Act 1993 (SA)
- Maritime Services (Access) Act 2000 (SA)
- Customs Act 1901 (Cth)
- Quarantine Act 1908 (Cth)
- Work Health and Safety Act 2012 (SA)
- Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987 (SA)
- South Australian Ports (Bulk Handling Facilities) Act 1996 (SA)
- South Australian Ports (Disposal of Maritime Assets) Act 2000 (SA)
- Recreational Access to Commercial Wharves Agreement.

### 3. Authority

Port Management Officers (**PMO**), who are appointed under Section 29 of the H&N Act, will manage the port waters in accordance with the H&N Act.

PMOs are issued with photographic identity cards, which list the conditions of appointment.

PMOs are responsible for directing and controlling vessel movements in port waters for the purpose of safe navigation of vessels and other activities within the ports.

This will include:

- movement of vessels into, within and out of port waters;
- loading and unloading of vessels;
- mooring, anchoring and securing of vessels within port waters; and
- conduct of certain other activities by, on or in relation to vessels (e.g. certain restricted works) within the port.

### 4. Powers of Port Management Officers

A PMO may give a direction (orally, by signal, radio communication, or in any other appropriate manner) to a person in charge, or apparently in charge, of a vessel in or in the vicinity of the port. Failure to comply with a direction given by the PMO is an offence under the H&N Act.

A direction may, for example:

- require that vessels proceed to load or unload in a particular order;
- require that a vessel be moored or anchored in a particular position;
- require that a vessel be secured in a particular way;
- require that a vessel be moved from a particular area or position;
- require the production of documents relating to the navigation, operation, pilotage, use or unloading of the vessel; or
- if a person is not onboard a vessel to receive a direction, the PMO may cause the vessel to be moved and any costs will be recoverable from the owner.

A person in charge of a vessel must permit a PMO to:

- board the vessel;
- inspect the vessel and its cargo; and
- carry out on the vessel any investigation necessary to ensure that the vessel and the business in the course of which the vessel is being used is being operated lawfully.

The appointment as a PMO confers upon the authorised persons the powers set out in the Harbors and Navigation Regulations 2009 (SA) (**Regulations**), but only within the confines of the nominated port and only whilst under the management of Flinders Ports Pty Ltd. Further detail on the content of the Regulations can be found at [www.transport.sa.gov.au/legislation](http://www.transport.sa.gov.au/legislation).

The following powers have been delegated to the PMO by the CEO (as referred to in the H&N Act):

- Obstructions on wharves (section 295(1))

- Obstruction of landing places (section 30(1))
- Unauthorised activity on wharf (section 31)
- Use of rail trolley (section 32(1))
- Abandoned cargo (section 37)
- Unauthorised entry to wharf or contiguous land (section 38)
- Watch officers in harbors (section 39)
- Mooring lines in harbors (section 43(3))
- Use of vessel engines in harbors (section 44(1))
- Mooring and unmooring of vessels in certain harbors (section 45(1))
- Swimming in harbors (section 46)
- Traffic signs (section 48(1) and 48(3))
- Parking signs and markings (section 50(1))
- Permits (parking) (section 53 (1) and 53(2)).

Note that these powers may only be exercised in those ports under the control of Flinders Ports and only by the person nominated below for that port. Where a port is operated by a third party (i.e. Port Bonython, Whyalla, Ardrossan), Flinders Ports may be contractually engaged by that third party to undertake some of the duties above.

NAME OF FLINDERS PORTS EMPLOYEE	NAME OF PORTS
<b>KAVINA</b> Carl, <b>DOW</b> Douglas, <b>STRYDOM</b> Leon	All South Australian commercial ports
<b>PADMANABHAN</b> Vijay	Whyalla, Port Bonython, Port Lincoln, Thevenard
<b>COZZI</b> Michael	Whyalla, Port Bonython, Port Lincoln, Thevenard
<b>MIERS</b> Ben	Whyalla, Port Bonython, Port Pirie, Thevenard
<b>Munday</b> Avikar	Whyalla, Port Bonython, Port Lincoln, Thevenard, Port Pirie
<b>Commissariat</b> Adil	Whyalla, Port Lincoln, Thevenard

#### 4.1 Berthing Priorities

Subject to any particular berthing priority rules at specific facilities in any of the ports, a “first in, first serviced” policy is applicable to berthing of commercial vessels at the ports, except where tidal limitations (Windows of Opportunities), stevedore labour allocations (on arrivals) and towage impact on available transits. Berthing priority is to be given to the vessel that reports to Flinders Ports Vessel Traffic Services (VTS) (refer to paragraph 5) that it has dropped its anchor in the anchorage first – this vessel is considered to be the “first arrived vessel” irrespective of size of the vessel. Vessels will be allotted a movement time according to their priority.

If a vessel defaults on its allotted movement time (once a working program has been confirmed by VTS) and the delay impacts on other vessel movements, then the vessel shall be placed at the back of the queue or next available window, at the sole and absolute discretion of Flinders Ports.

All berths in the ports are working berths.

If a vessel is for any reason not able or willing to berth or work at a berth in accordance with its working program (including if work is ceased for any period of time), it may be directed to clear or depart the berth and return to anchorage or some other place within or outside the port (at its own cost) and shall be placed at the back of the queue or next available window, at the sole and absolute discretion of Flinders Ports.

Any commercial vessel requiring a berth for non-working purposes (e.g. ship repair, survey, bunkering, cleaning or any other purpose not deemed by Flinders Ports to be 'working') will be given berthing priority only after consultation with Flinders Ports and at its sole and absolute discretion.

Any non-commercial vessels requiring pilotage shall be ranked lowest in priority.

The above berthing priority conditions are at all times subject to the security and emergency needs of the ports and any unforeseen circumstances which, in the opinion of Flinders Ports, require any change in berthing priority, as well as the powers of any PMO to issue directions in relation to port operations.

Any decision of Flinders Ports in relation to berthing priority will be final.

## **4.2 Pilot Passage Plan**

Mandatory pilotage requirements may apply in the ports – see the relevant ports' Port Rules for guidance.

On boarding a vessel, the Pilot will discuss a passage plan with the vessel's Master, review the vessel's pilot card and exchange the necessary Pilot/Master information.

Once satisfied, the Pilot will then advise the Master to commence the pilotage passage (inward/outward).

Refer to Flinders Ports' Website for a copy of the Pilot Passage Plan.

## **5. Communications**

Flinders Ports Vessel Traffic Services (VTS) is staffed at all times and Flinders Ports maintains a listening watch on VHF channels 16 and 12 (call sign "Adelaide Outer Harbor").

### **5.1 Radio and Port Communications**

#### **5.1.1 Shipping Transit and Advice Register**

Pilots, Masters and Exempt Masters are to communicate with the VTS at reporting points to advise and record position, situation and time. All advice messages will be recorded by Flinders Ports in the Port Control Logs.

Reporting Points are as follows:

- Anchorage to or from/Pilot On Board/Pilot Disembark Point
- Entrance beacon
- Osborne (No. 39 Beacon)
- Vessel alongside and secure.

## 6. Coordination of Marine Services

Scheduling of vessel traffic is provided by the Vessel Traffic Services Officer (**VTSO**) (Central & Regional). The VTS is staffed 24/7, on a 12-hour rotational roster basis.

Marine Services (pilotage, mooring, tugs, launches and communications) are all coordinated by Flinders Ports VTS (located at Gate C, Oliver Rogers Road, Outer Harbor).

Flinders Ports operates a "One Stop Shop" platform for ordering and coordination of pilotage, tugs and mooring personnel. Flinders Ports will provide adequate pilotage and mooring services and ensure that towing services are available to be provided by third parties to fulfil the above requirements, subject to ordinary port contingencies.

Whilst every effort is made to communicate resourcing advice in relation to prevailing conditions, it should be remembered that towing services are only coordinated on the vessel's behalf (through the shipping agent) and are provided to vessels independently by third parties. Flinders Ports is not responsible for the provision, performance, non-performance, delay; or any deficiency in; or any incident, loss or damage arising from, the provision of any such services.

## 7. Vessel Traffic Analysis (Scheduling)

### 7.1 Purpose

To ensure that the administration and scheduling of shipping activities is carried out cost effectively and efficiently, so as to offer flexibility consistent with Flinders Ports' vision of customer service and observe the interests of safety.

### 7.2 Role & Responsibilities

Scheduling of vessel traffic is handled by the Vessel Traffic Services Officer (herein after referred to as VTSO) who is responsible for the provision and maintenance of a daily commercial shipping program for South Australian ports.

Ports that fall within the Central region banner of Flinders Ports include Port Adelaide, Klein Point, Port Giles, Wallaroo, and Ardrossan.

Ports that fall within the Regional Ports region banner of Flinders Ports include Port Pirie, Port Bonython, Whyalla (including transshipment points), Port Lincoln and Thevenard.

The VTS must ensure assertion to the overall shipping program at all times in order to effectively coordinate all resources.

This involves the review and processing of new and altered shipping data via the Klein's vessel traffic management system (PortMIS) and subsequent actioning of subsidiary administration, including a support role for security related matters. Emphasis is drawn on the reliance of up to date timetable information by internal resources, as well as the greater shipping community and general public. Consequently, timeliness of updating schedules is of paramount importance and in keeping with the integrity of the Flinders Ports website.

Obligations also exist for the VTS to provide a shipping related advice service to shipping companies and to the general public. This includes technical interpretation of vessel data and the attention of operational type complaints.

Any movement concerns should be raised with agents during periods of forecast inclement weather, more particularly with respect to the ordering of services. This is most important for regional locations where cancellation costs can be potentially high. Advice given should include the pilot's recommendations (such as the likelihood of a movement occurring, additional resourcing etc) and any weather warnings received from the Bureau of Meteorology.

### **7.3 Work Hours**

Scheduling of vessel traffic is to be provided by VTS 24/7, including public holidays.

## **8. Pilotage Process**

### **8.1 Reporting times for Pilots**

Once a movement is confirmed, a pilot is allocated in PortMIS.

A pilot will report to the pick-up point 30 minutes prior to the scheduled time of arrival for inbound vessels for all ports except in the case of Port Lincoln where the report time is 40 minutes prior to the scheduled time and 60 minutes for Port Pirie pilotages.

In the case of all ports, a pilot will board an outbound vessel at least 15 minutes before the advised time of departure.

### **8.2 Pilotage Job Risk Assessment**

If a pilotage is being planned that is outside of the documented procedures/rules, a pilotage job risk assessment shall be undertaken. This can be achieved by completing the electronic form available from the Flinders Ports Intranet and maybe submitted by the VTS or Duty Pilot.

This risk assessment will be carried out in consultation with the allocated pilot. Such consultation may be carried out by the Chief Pilot or GMFP OR MARINE OPERATIONS MANAGER directly if required.

Approval must be sought from the GMFP OR MARINE OPERATIONS MANAGER, Chief Pilot or the Duty Pilot before any Pilotage Job Risk Assessment is finalised.

### **8.3 First Visit - Vessel Assessment**

Where a pilotage involves a first visit for a vessel, then the pilot shall undertake an assessment of that vessel and provide operational comments (identifying additional or lesser towage requirements, handling and propulsion characteristics) to the VTS for inclusion in the PortMIS vessel editor.

## 9. Port Restrictions

### 9.1 General rules for vessels in excess of port limitations

Oversize vessels (as defined in the relevant Local Port Rules) are permitted to enter and conduct activities within the ports at the absolute discretion of the General Manager, Flinders Ports (in conjunction with the Duty Pilot). In the absence of the General Manager, approvals should be referred to the Chief Pilot.

Oversize vessels must submit an “Oversize vessel application” for the relevant port, which can be found on the Flinders Ports website.

Oversize vessel movements may be restricted to high water, daylight only, additional tugs, minimum cross currents, maximum wind speed of 15 knots, or any other restriction which may be considered prudent for the particular vessel by the General Manager, Chief Pilot and/or Duty Pilot. Vessels wishing to operate outside of the above parameters may be considered in the absolute discretion of Flinders Ports and only after simulations are carried out in a full mission ship simulator.

### 9.2 Tugs Required

In the absence of alternative arrangements being approved by Flinders Ports, the following requirements are applicable.

A bow thruster will be considered in lieu of a tug, at the absolute discretion of Flinders Ports and only provided its power is sufficient for the vessel’s size and wind speed is less than 15 knots. Bow thruster power is calculated by the following:

1 HP = 0.746 KW

100 HP = 1 Tonne Bollard Pull

If a vessel has a bow thruster and visits a Flinders Ports port for the first time, the Pilot will use appropriate tugs and assess the strength of the bow thruster.

If a vessel requires 3 tugs (1Z, 2 conventional) it can operate with 2Zs if they are available.

#### 9.2.1 Specific Information – Commercial tugs in SA Ports

Home Port	Tug Name	Year Built	LOA (metres)	M/E Power	Bollard Pull	Propellers / Type	Company	Remarks
Port Adelaide	Barunga	2003	24.55	4200 kW	63mt astern 70mt ahead	2X Z-peller azimuthing	Svitzer	
	Svitzer Heron	2012	31.57	2X 1838 kW	65mt	2 / Z-peller	Svitzer	Fire fighting equipped
	SL Endeavour	2010	24.55	4200 kW	63mt astern 70mt ahead	2X Z-peller azimuthing	Svitzer	

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Ardrossan	<b>Tickera</b>	1976	28.98	2X 1250 bhp	42t	2 nozzles (steerable)	PLT	Harbour towage for ARD & PGI (ex Tapir)
Wallaroo	<b>Kioloa</b>	1975	28.84	2X 1220 bhp	40t	2 / nozzles (fixed)	PLT	
Port Pirie	<b>Walan</b>	1986	31.95	2X 1800 kW	49mt	2 / Z-peller	Svitzer	Fire fighting equipped
	<b>Wonga</b>	1983	32.17	2X 1800 bhp	50t	2 / Z-peller	Svitzer	Fire fighting equipped
Whyalla	<b>Tarpan</b>	1984	32.17	2X 1342 kW	50t	2 / Z-peller	Svitzer	Emergency towing (salvage) & fire fighting
	<b>Gloucester</b>	1983	34.02	3854hp		2 / Z-peller	Svitzer	Harbour towage
	<b>Riverwijs Grace</b>	2000	27.8	2X 1176kW	43.1t	Twin azimuth / tractor	Svitzer	Barging & harbour towage
	<b>Riverwijs Isabelle</b>	2000	27.8	2X 1176kW	43.1t	Twin azimuth / tractor	Svitzer	Barging & harbour towage
	<b>Ungarra</b>	1968	20.96	2X 340 bhp	12.5t	2 / nozzles (fixed)	PLT	Lines launch / PV & towage
Port Lincoln	<b>Wangary</b>	1976	28.87	2X 1250 bhp	42t	2 / nozzles (steerable)	PLT	1st preference (ex Corsair)
	<b>Bulimba</b>	1979	29	2X 1250 bhp	41t	2 / nozzles (steerable)	PLT	Supplementary '2nd' tug / fire fighting equipped
	<b>Capel</b>		25.96	2316hp		Twin screw (fixed)	PLT	Temporary <sup>1</sup>
	<b>Lucinda</b>	1975	23.77	2X 800 bhp	26.4t	2 / Nozzles	PLT	Temporary <sup>1</sup>
Thevenard	<b>Carawa</b>	1987	23.88	2382hp		2 / nozzles	PLT	1st preference
	<b>Pelsaert</b>		23.96				PLT	Supplementary '2nd' tug

### Notes

- 1 Awaiting determination for future service requirements

To facilitate Port requirements the allocation and location of tugs may differ from the above table.

### **9.2.2 Barge / Convoy Movements**

Specific requirements may exist for barge movements with respect to towage, however the requirements are to be assessed on a case by case basis. Consultation should be carried out with the assigned Pilot before any determinations on tug resourcing are made.

### **9.2.3 Launch in Attendance**

When a vessel is negotiating the channel or approaches to the channel with limited visibility and/or manoeuvrability, a launch may be required to ensure the channel is clear of all other vessel traffic. Arrangements are to be made with the VTSO/VTS in accordance with paragraph 6 in advance.

### **9.2.4 Berths**

Where applicable, restrictions against a specific berth may exist. Load limits apply to all wharves and jetties. For further information contact Flinders Ports on (08) 8447 0611 or refer to the port information contained on the Flinders Port website.

## **10. Fleeting Requests**

Masters and Agents must obtain permission from Flinders Ports before any repositioning of vessels by fleeting or warping occurs. Permission should be requested from the VTSO on VHF channel 12 or 08 8447 0903.

## **11. Vessel Navigation**

International Regulations for Preventing Collisions at Sea apply to all vessels in all State waters, including those within the ports, unless indicated otherwise.

The Master or operator of a vessel proceeding along the course of a river or channel must keep the vessel as near to the outer limit of the river or channel which lies on its starboard side as is safe and practicable.

The Master or operator of a vessel, which can safely navigate outside a channel, must not allow the vessel to hamper the safe passage of a vessel which can safely navigate only inside the channel.

The Master or operator of a vessel engaged in fishing must not allow the vessel to impede the passage of any other vessel navigating within a channel.

The Master or operator of a vessel must not, except in an emergency, anchor the vessel in a channel.

If a vessel is anchored in a channel in an emergency, the Master or operator of the vessel must, as soon as practicable, move the vessel to the side of the channel. The VTS must be advised on (08) 8248 3505.

The Master or operator of a vessel navigating in a channel must only overtake another vessel if this can be done safely.

A person must not, except with the prior approval of Flinders Ports, cause or permit a cable, chain, hawser or rope to be placed across a channel.

All vessels in ballast must have their propellers completely submerged and an appropriate trim by the stern. An appropriate trim for sailing is considered to be 1% of the vessel's overall length.

As far as practicable, it is recommended that gangways are kept inboard until all fast on arrival and until clear of the berth on departure.

### **11.1 Anchor Restrictions**

Refer to the relevant Local Port Rules.

## **12. Tide Information**

### **12.1 Tide Information for all Ports Except for Ardrossan**

Both predicted and real-time tide information is available.

Predicted tide information is provided both in hard copy and digital form and is available as Highs and Lows or in an hourly format.

Both Highs/Lows and Hourly tides in hardcopy format can be sourced from the Tide Officer, HydroSurvey.

Digital tide information is displayed via HydroTel (predicted and real-time) or via the in-house software application "Tides" (predicted, real-time, draft calculations and windows of opportunities).

## **13. Notifications**

The conduct of certain works or activities is prohibited in the ports without approval and, in any event, may be subject to certain requirements.

Requests to conduct any such works must be made by submitting a "Notice". Notices can be requested by the vessel's Master through their agent asking for certain activities to be carried out on board the vessel. These Notices are activity specific and act as a formal mechanism to identify important provisions to be followed (and be agreed to by Flinders Ports) in the interests of minimising safety risks to the vessel, its crew, other personnel and infrastructure.

The following works and activities Notices can be found on the Flinders Ports website:

- Hot Work Notice
- Bunkering Notice
- Fumigation Notice (in port or in transit)
- Immobilisation of Engines Notice
- Chipping and Painting Notice
- Lifeboat Drill Notice

- Diving Notice.

Vessel agents are to complete the relevant Notice (which can be located on the Flinders Ports' website) and email it to Flinders Ports for approval prior to undertaking the relevant work or activity. Emails are to be sent to:

### **All Hours**

#### **The Duty VTSO (Scheduling) – Marine Operations**

**Email: [portops-adl@flindersports.com.au](mailto:portops-adl@flindersports.com.au)**

The VTSO will assess if it is acceptable to proceed with the request - if it is acceptable, they will sign the Notice and email this back to the Agent.

No work is to commence until the signed copy of the Notice is received by the Agent from the VTSO. Any work conducted must be done strictly in accordance with the terms of the Notice, failing which the Notice may be revoked.

## **14. Administration**

### **14.1 Agent Web Interface**

Access to the Agent Web Interface (PortMIS) is controlled by the PortMIS administrator (IT).

For an agent to be granted access to this portal, the applicant must complete and sign an "Application for access to Flinders Ports PortMIS System" form obtainable from the Manager Shipping Services. A form must be completed for each individual with the company/agency that will require access and it shall remain the responsibility of the PortMIS business partner to ensure details are correct and to notify Flinders Ports of any changes to the applicant's particulars or prior to the applicant leaving their employ or upon transfer to a position that no longer requires access to the PortMIS system.

### **14.2 Lloyds SEA-WEB**

Lloyds SEA-WEB provides a web-based maritime reference tool that can be utilised to obtain vessel information as required complying with data for the port management system.

A secure login and password for this site is maintained by the Flinders Ports IT section.

### **14.3 IMDG Code**

IMO Publishing provides a web-based dangerous goods reference tool that can be utilised to source information as required for screening and assessing hazardous cargo via the IMDG Code listing.

A secure login and password for this site is maintained by the Flinders Ports IT section.

## **15. PortMIS Management & Maintenance**

### **15.1 Application for Use of Port Facilities**

An application for the use of port facilities or “Voyage Application Request (VAR)” can be lodged electronically via a secure portal to the Agent Web Interface.

This application enables an agent to lodge sufficient details associated with an impending voyage so that it can be added to the shipping schedule. Agents can continue to monitor and edit this voyage information to within 48 hours of the vessel arrival, upon which the further maintenance and/or modifications can only be undertaken by the VTS (or designated personnel within Flinders Ports).

At the time of lodgement, the agent is provided with a printable confirmation report, indicating successful input to the PortMIS database.

Usage of a VAR does not permit an agent to nominate a vessel to anchorage initially. Where the vessel will require anchorage prior to its shift to a berth, the agent is required to identify movement times for the shift and to indicate ETA to anchorage within the voyage remarks. This will then be managed by the VTS.

**Note:**

Where an agent has not obtained a secure web portal, advice of pending vessel arrivals can still be lodged by completing the “Application for use of Port Facilities” form on-line and submitting it either via email or facsimile. This will require the information contained within the application to be manually input into PortMIS, including acknowledgement by return to the issuing agent of the visit number and assigned towage / confirmation of berth.

All applications lodged electronically shall have each movement initially designated with an allocated status of “Requested”.

A periodical daily check shall be conducted to identify outstanding “requested” voyages within the Port Management Information System (PortMIS). Once details associated with these voyages have been quality assured, the movement **statuses** for each job shall be changed to “Planned” signifying acceptance.

Lodgement of a VAR requires the existence of the vessel to occur within PortMIS. Refer to **Vessel Management** for further details.

### **15.2 Shipping Activity Status**

All commercial shipping movements are assigned status levels reflecting the current operational status of the activity. These statuses are controlled within the Port Management Information System (PortMIS).

The following represent the allocated statuses:

- **REQUESTED:** Flags initial lodgement of a voyage (External - Web)
- **PLANNED:** Acceptance acknowledgement (or initial lodgement by VTS where lodged internally) and spans the dormant period prior to vessel traffic analysis (scheduling).

- SCHEDULED: Signifies movement has been considered and vetted for an allocated place in the shipping schedule
- RESOURCED: Respective work groups (including towage) have indicated acceptance and availability to provide resources as required
- CONFIRMED: Final scrutinization, indicating movement stability and no further changes expected.
- ACTUAL: Operational stage reflecting movement occurrence (Waypoint entry etc)
- SUBMITTED: Operational data and services assigned for submitting to finance department
- COMPLETED: Invoices raised and posted.

### **15.3 Conflicts**

Vessel traffic analysis of scheduled movements can yield 'conflicts' that are displayed within PortMIS where the movement causes conflicts with either other vessel movements, vessel dimensions, infrastructure constraints or berth availability.

These conflicts act as an advisory to the VTS which maybe over-ridden, but serve as a form of quality insurance to ensure interests of safety are upheld and maintained. Conflicts (where they exist) should be processed and cleared daily.

## **16. Miscellaneous**

### **16.1 Environment – Emissions and discharges**

Vessels must not emit smoke or vapour to the extent that it causes danger to any other person.

No offensive material, noxious or harmful substance or garbage is to be discharged from a vessel or any cargo directly or indirectly into waters or onto land in the port. Any such discharge is to be reported to the VTSO/VTS immediately.

The ports may issue directions in relation to, without limitation:

- permitted emissions or emissions levels within the ports;
- restrictions on the use of certain fuels within the ports; or
- requirements for the use of specific fuels within the ports.

### **16.2 Ballast**

A PMO may give the Master or operator of a vessel in a port, directions relating to any ballast water carried on the vessel, including directions:

- prohibiting the discharge of ballast water into port waters;
- requiring ballast water to be discharged in specified waters or in a specified manner (including that it is treated in a specified manner prior to discharge);
- requiring ballast water to be exchanged in specified waters; or

- as to the loading of ballast water.

### **16.3 Divers**

The Master or operator of a vessel is to inform Flinders Ports of any proposed diving activities and request permission from Flinders Ports to carry out such activities (by submitting a Diving Notice).

The following signal requirements apply to any diving activities:

- The Master or operator of a vessel that is over 10 metres in length must, at all times while a diver is operating from the vessel, display in a conspicuous position on the vessel the International Code Flag A.
- The Master or operator of a vessel that is 10 metres or less in length must, at all times while a diver is operating from the vessel, display in a conspicuous position on the vessel a rigid replica of International Code Flag A, at least 750 millimetres by 600 millimetres in size.
- A diver who is operating in a harbour independently of a vessel must ensure that a rigid replica of International Code Flag A, at least 300 millimetres by 200 millimetres in size, is displayed at all times, from a buoy or float which is moored within 30 metres of the diver or is attached to a line and towed by the diver.
- Where this regulation requires an International Code Flag A or a replica to be displayed, the person who is required to display the flag or replica must ensure that it is illuminated during the hours of darkness.

The following requirements otherwise apply to diving activities:

- A diver must not operate in a harbour, independently of a vessel, in a dredged channel used by vessels.
- The Master or operator of a vessel navigating in the vicinity of a vessel, float or buoy displaying an International Code Flag A or a replica of that flag, must navigate so as to avoid injury to the diver or interference with the vessel, float or buoy.
- All vessels passing another vessel which is displaying a diving signal shall pass at a speed not exceeding 4 knots and shall keep well clear.

### **16.4 Dangerous Substances**

If cargo is of hazardous nature (i.e. classed under to the International Maritime Dangerous Goods Code or any applicable law, or otherwise), details are to be provided to Flinders Ports by the Agent for action as directed.

Hazardous cargo list(s) are to be forwarded to Flinders Ports by the vessel's Agent at least 2 business days prior to vessel's arrival. The list should provide all relevant details, including UN number to enable a check to be made. Flinders Ports has adopted Australian Standard 3846 "The Handling and Transport of Dangerous Cargoes in Port Areas", which applies to all dangerous goods operations within the ports.

Cargo of an explosive nature is to be listed and will be forwarded by Flinders Ports to SafeWork SA.

Flinders Ports will then advise the Agent of any applicable restrictions and the precautions, actions and documentation required to be undertaken or provided in relation to the presence, handling and storage of or other cargo operations relating to any dangerous goods.

### **16.5 Port Security Levels**

The “Security Level” of the port as determined by the Office of Transport Security (OTS) as well as other current information can be accessed from the Flinders Ports web site on [www.flindersports.com.au](http://www.flindersports.com.au).

It is the obligation of any port user that observes a breach of security to report it promptly to Flinders Ports on (08) 8447 0600.

Flinders Ports reserves the right to restrict entry, access to and/or require the removal from the ports or any parts of the ports, any person, vehicle, vessel, cargo or aircraft (including drones/remotely piloted aircraft) in accordance with its security requirements and considerations, at the absolute discretion of Flinders Ports.

### **16.6 Incident Reporting**

The Master of a vessel has the responsibility to report any incident that occurs on or near his/her vessel or a malfunction that can cause risk or damage to the vessel or port infrastructure. Such reports must be made via the VTS on VHF Channel 16 or 12 or on phone (08) 8248 3505.

Contact details and associated advice is documented in the “Notice to Masters of Ships” (FPFM 132) which is presented to Masters upon embarkation of the Pilot.

### **16.7 Visitor Safety**

All visitors to any security restricted area of the ports are permitted in the sole and absolute discretion of Flinders Ports and must, as required by law or Flinders Ports:

- undergo any required security screening;
- satisfactorily complete any required induction specific to the activity eg, passengers on pilot vessels;
- have legitimate business at the ports; and
- hold or at all times whilst within the ports be accompanied by someone who holds any required security clearance, including a Maritime Security Identification Card.

All visitors or organised groups intending to be on the wharf while a ship is alongside a berth must provide notice of their intention and inform the Port Manager at least 24 hours prior to the visit to ensure a comprehensive assessment is made to ensure safety of all personnel on site.

All visitors must abide by any directions, signage or notices in relation to access and parking and any activities which are restricted in the ports or any places within them.

### **16.8 Port Charges**

Charges apply in relation to the following matters:

- Cargo service charges

- Harbour service charges
- Pilotage charges
- Navigation service charges
- Miscellaneous service charges

Additional charges may be introduced at the sole discretion of Flinders Ports.

Details of prevailing charges can be found in the “Flinders Ports Port Charges” schedule, which can be found on the Flinders Ports website and may be amended from time to time by Flinders Ports.

The charges set out in the applicable current schedule at the time of the provision of services or entry and access of a vessel to the ports will prevail, unless otherwise agreed in writing and signed by Flinders Ports.

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## **1.0 PORT ADELAIDE**

### **1.1 Local Port Rules**

These Local Port Rules specifically relate to Port Adelaide. They operate in addition to and shall be read together with the requirements set out in the Master Port Rules. To the extent of any conflict between these Local Port Rules and the Master Port Rules, these Local Port Rules apply.

These Local Port Rules contain a summary of certain applicable legislative and contractual obligations. Port users are required to inform themselves of their duties under all applicable laws, regulations and contractual terms and nothing contained in these Local Port Rules exempts any port user from compliance with any other legal or contractual requirement or obligation.

These Local Port Rules, the Master Port Rules and other rules or terms incorporated into them may be amended from time to time, so we recommend that you routinely check the Flinders Ports website to ensure that you are referring to the current version.

### **1.2 Pilotage Constraints**

A vessel of 35 metres These Local Port Rules, the Master Port Rules and other rules or terms incorporated into them may be amended from time to time, so we recommend that you routinely check the Flinders Ports website to ensure that you are referring to the current version.

**A vessel of 35 metres or more in length must not be navigated in Port Adelaide unless the following conditions are satisfied:**

- (a) the master of the vessel holds a pilotage exemption certificate issued by the South Australian Department of Planning, Transport and Infrastructure (**DPTI**) for Port Adelaide. Pilots can only be arranged through the vessel's owner or agent;
- (b) the vessel is navigated under the control or at the direction of a pilot who is licensed by DPTI for pilotage of vessels within Port Adelaide;
- (c) the vessel has lodged an application form 48 hours prior to her movement; and
- (d) boarding of the vessel by the pilot must occur at the pilot boarding ground located 3 nautical miles south west of the entrance beacon (unless expressly directed by a licensed pilot).

**Prior to a vessel entering the port boundary and the vessel being under pilotage:**

- (a) a licensed pilot must be on-board the vessel; and
- (b) the pilot/master exchange must occur to the satisfaction of the licenced pilot.

NOTE: A direction given for safety purposes must not be mistaken for or construed as "an act of pilotage".

### **1.3 Berthing Priorities**

#### **Outports**

In an effort to minimise delays to all parties, Port Adelaide (being the resident port for pilots and tugs servicing these regions) will have reasonable priority over outport locations. The outport locations in order of priority are Port Adelaide, Port Giles, Wallaroo and Ardrossan.

#### **Iron Ore Shipments**

Scheduling of vessels at Outer Harbor 7 (**OH7**) will principally see priority given to container vessels over bulk vessels with the following considerations:

- (a) If OH7 has an available window for a period of 3 full days, the bulk carrier will be permitted to berth;
- (b) If the owner/operator of the bulk carrier chooses to berth inside an available window of less than 3 full days and part way through loading operations a container vessel requires the use of OH7, then:
  - i. if, in the reasonable opinion of Flinders Ports, one full shift or less is required to complete loading, the bulk vessel will be permitted to remain at the berth and complete loading;
  - ii. if, in the reasonable opinion of Flinders Ports, more than one full shift remains to complete loading operations, Flinders Ports will notify the appointed agent that the bulk vessel will be required to vacate OH7 at its own cost. Vacating options will include:
    - A. moving the vessel to Outer Harbor 8 (**OH8**) to allow FACT to commence and complete the provision of container stevedoring services to container vessels at OH7 (subject to availability at OH8) and following the completion of those services, Flinders Ports will allow the bulk vessel to move back to OH7 to resume loading; or
    - B. if OH8 is unavailable, Flinders Ports will require the bulk vessel to be moved off OH7 and to anchor until bulk loading operations can be resumed.

In both cases the waiting vessel will have priority over any other bulk carrier to occupy the berth and Flinders Ports will use its reasonable endeavours to ensure that stevedoring service resume as soon as possible.

#### **Port Adelaide, Port Giles and Wallaroo Grain Berth Loading Priorities:**

- (a) The principle of “first come, first serviced” will be strictly adhered to;
- (b) If a vessel arrives to load grain cargoes, it will automatically be deemed as being ready to load. If the loading berth is/becomes available, the first vessel to arrive may occupy the loading berth;
- (c) Any vessel requiring the loading berth will be deemed as being ready to load and shall have the right to occupy the loading berth unless and until otherwise notified as a result

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of surveys undertaken by the Australian Quarantine Inspection Service (**AQIS**), the Australian Maritime Safety Authority (**AMSA**) or marine surveyors;

- (d) If the loading berth is subsequently required by another vessel and the vessel in the berth is not ready to commence loading due to Major Survey Failure, that vessel must vacate the berth **at its own cost** in order to allow the other vessel to berth.
- (e) For the purposes of these loading priorities:
  - “**Major Survey Failure**” means any work required by a survey over and above Spraying and includes without limitation major hold cleaning and Fumigation;
  - “**Spraying**” means 6 hours spraying with crew remaining on-board the vessel;
  - “**Fumigation**” means 24-hour fumigation with all crew vacating the vessel;
- (f) Vessels which require Spraying only will be permitted to remain at the loading berth while the Spraying and re-survey is performed;
- (g) If, following Spraying, a vessel fails the resurvey, the vessel will be required to vacate the loading berth and return **at its own cost** once the survey has been passed;
- (h) A vessel at the loading berth which declines to fully utilise the loading plant must, if the loading berth is required by another vessel which is prepared to survey and fully utilise the loading plant, vacate and return to the berth **at its own cost** to allow the other vessel to work the loading berth until it has completed loading. Rules are to apply on the basis of a 24-hour loading operation;
- (i) If the other vessel referred to in (h) fails its survey, it may remain at the loading berth to perform tasks to pass the survey unless the berth is required by a third vessel in accordance with (d) - (g);
- (j) If a situation arises where there is a failed vessel at the loading berth and other failed vessel at another berth undergoing tasks to pass surveys, the vessel which passes its survey first and obtains the “permission to load” will be permitted to occupy the loading berth;
- (k) Agreements between the relevant agents of vessels may take precedence over (a) – (c). Such arrangements must be discussed and agreed by Flinders Ports before deviating from these loading priorities; and
- (l) Flinders Ports shall be the final arbiter in deciding the priority and setting the consistency needed for the cost-efficient operation of the loading berth.

#### **Port Adelaide Petroleum (M Berth & Outer Harbor 4 Berth) Priorities:**

- (a) M Berth and Outer Harbor 4 (**OH4**) berths at Port Adelaide are multi user liquids berth facilities and are classified as critical infrastructure for the State of South Australia.
- (b) Although shared with Pure Car Carriers (PCC), OH4 berth will see priority given to tankers if the delay to a tanker’s ETA exceeds 2 hours.

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- (c) In keeping with standard berthing priorities, tankers will follow the same fundamental principle of 'first in, first serviced' in being ready to berth at either location, in turn and without tidal limitation or delay.
- (d) Priorities can be further defined as follows;
- i. A vessel berthed at OH4 that requires to shift to M berth to complete cargo, may do so provided that:
    - A. M berth is not occupied or becomes unoccupied;
    - B. no other vessels have arrived at the pilot boarding ground prior to completion of pumping at OH4 that require to proceed directly to M berth;
    - C. it does not have to await a tidal window that becomes available after the ETA of a vessel arriving at the pilot boarding ground that requires M and is not tide dependant; and
    - D. if the vessel has a minimum UKC requirement above at which Flinders Ports operates, it does not impact on existing or alternative transits.
  - ii. If OH4 is subsequently required by another vessel when a vessel at the berth is remaining idle alongside awaiting M berth to become unoccupied or tide, that vessel shall vacate OH4 at its own costs, in order to allow the other vessel to berth.
  - iii. For vessels requiring to visit both berths in the reverse order to above, the same principles shall apply.
  - iv. If there is an urgent requirement for a particular grade of fuel to be brought into the State and the vessel is NOT next in line to berth, then the following is to be adopted:
    - A. the company will need to negotiate directly with the owner/charterer of the vessel that is due to berth and inform Flinders Ports if any agreement is reached;
    - B. if there is an urgent requirement for any grade of fuel and no agreement can be reached between the vessels then the fuel company will apply to the 'Energy Regulator' in DPTI to ensure priority berthing is given to that vessel.

### Inner Harbor Berth 29 Priorities

To maximise port efficiency, if there is likely to be a conflict between two vessels wanting to berth at Inner Harbor Berth 29 (IH29), preference will be given to vessels that require facilities only available at IH29 and nowhere else (e.g. loader, crane etc). Hence fertiliser vessels, livestock vessels and breakbulk vessels which can be handled at other berths will need to berth elsewhere if a conflict exists or is likely to occur.

## 1.4 Geographic Limits

### Port Adelaide Operating Limits:

The subjacent land underlying and the adjacent land extending from the waters, rivers, creeks and inlets to the high-water mark bounded as follows:

*Commencing at Point Grey then due west along a line to its intersection with the western boundary of the harbor of Port Adelaide; then generally south south-easterly along the harbor boundary for 3 nautical miles; then along a line due east to its intersection with the south-westerly production of the Number 4 Leading Lights; then generally north-easterly along the production to its intersection with the high water mark on the southern face of the Southern Breakwater; then generally north-easterly along the high water mark to its intersection with the south-western boundary of Section 694 Hundred of Port Adelaide; then generally north-westerly along that boundary of Section 694 Hundred of Port Adelaide across the Southern Breakwater to its intersection with the high water mark on the northern face of the Southern Breakwater; then generally north-easterly along the high water mark to the northern extremity of Number 4 berth; then generally south-easterly along the high water mark to its intersection with the production southerly of the high water mark of the western face of the breakwater at the Royal South Australian Yacht Squadron (RSAYS); then generally north-easterly along the production across the RSAYS Basin; then generally north-westerly and north-easterly along the high water mark to Pelican Point; then generally south-easterly and southerly along the high water mark to its intersection with a line across the Port Adelaide River perpendicular to the western face of Number 18 berth and intersecting the western face of Number 18 berth and its southerly production at the southern extremity of the western face of Number 18 berth; then generally easterly along that perpendicular line across the Port Adelaide River to its intersection with the high water mark; then generally northerly and easterly along the high water mark, including Number 3 dock, to its intersection with the Wave Screen in North Arm; then generally northerly along the western face of the Wave Screen and its production to intersect with the high water mark on Torrens Island; then generally northerly along the high water mark to the point of commencement at Point Grey.*

*And including:*

*Portion of Section 694 Hundred of Port Adelaide being the area described as easement E on FPX 43068.*

*But excluding:*

*Allotment 5 FP 102960; Allotment 707 FP 50323; and that Portion of Allotment 33 DP 75708 which comprises the Marina Adelaide basin and the entrance to that basin and is bounded by a straight line across the opening to the entrance that is an extension of the high-water mark on the western bank of the river.*

Refer to the Flinders Ports website for further information.

## 1.5 Communications

Flinders Ports Vessel Traffic Service (VTS) is staffed at all times and Flinders Ports maintains a listening watch on channels 16 and 12 (call sign “Adelaide Outer Harbor”).

## 1.6 Port Restrictions

### Vessel Dimensions & Restrictions

#### 1.6.1.1 Port Adelaide Maximum Vessel Dimensions & Restrictions

<b>OUTER HARBOR</b>	Daylight In/Out	350m x 49m
	Darkness In/Out	350m x 49m
	Oversize to a max of	366m x 51.2m
<b>OSBORNE<sup>1</sup></b>	Daylight Only In/Out	206m 32.26m
	Vessel to turn @ Osborne	183m x 32.26m
	Vessel to turn #3 Basin	206m x 32.26m
	Osborne # 1 Berth	185m
	Penrice	120m
<sup>1</sup> Maximum LOA at Osborne 1 Berth is subject to fleeting requirements with possible draft restrictions to apply.		
<b>INNER HARBOR</b>	Daylight/Dark In/Out	206m x 32.26m
	Car Carriers and livestock vessels	196m x 32.26m
	Oversize vessels to Panamax size	225m x 32.26m
<b>NUMBER 2 DOCK</b>	Daylight In/Out	183m
	Darkness In/Out	125m
<p>The following restrictions are applicable: -</p> <p>LOA &gt; 165m    First 80 m of the opposite berth to be clear when berthing.</p> <p>LOA &gt; 160m    If vessel entering No 2 Dock, H Berth to be unoccupied.</p> <p>Note: A vessel can depart when another vessel is berthed on the opposite side of the dock.</p>		

<p><b>Port Adelaide Turning Basins</b></p>	<p>The following guidelines may generate impacts on either vessel limitations or tidal constraints as applicable.</p> <p>Number 2 (no 2 Dock) Max LOA to swing 125m</p> <p>Number 3 (No 3 Dock) Turning Basin Max LOA to swing 229m</p> <p>The following restrictions are applicable: -</p> <p>LOA &gt;= 180m If vessel at Berth 27 which extends either into or is positioned near the swinging basin (typically Panamax), then 2 tugs to swing</p> <p>LOA &gt; 191m K Berth to be unoccupied to swing</p> <p>Number 4 (Osborne) Max LOA to swing 183m</p>
	<p>Number 6 (OH 2 berth) Turning Basin</p> <p>The following restrictions are applicable: -</p> <p>LOA &gt; 260m &amp; drafts &gt; 9m at LAT Vessels shall use No. 5 (OH 6) turning basin</p>
	<p>Number 5 (OH 6 -7 berth) Turning Basin</p> <p>LOA &gt; 275 &amp; ≤ 306m Beam ≤ 40.3m UKC &lt; 20% 0.3kt</p> <p>LOA ≤ 306m Beam &gt; 40.3 &amp; ≤ 49m UKC &gt; 20% 0.3kt UKC &lt; 20% slack water</p> <p>LOA &gt; 306 &amp; ≤ 350m Beam ≤ 49m UKC &gt; 20% 0.3kt UKC &lt; 20% slack water</p> <p>LOA &gt; 350 or Beam &gt; 49m slack water</p> <p>Vessels exceeding Port Limits (350 x 49) when turning, OH6 berth to be clear.</p>

	<i>Refer also sections 1.6.3 Tugs Required – Port Adelaide &amp; 1.6.9. Container Vessel – Tide &amp; Wind Constraints (OH6-7 berths)</i>
	Number 6 (Outer Harbor 2 berth) turning area guidelines  Maximum length 260 metres. Vessels over this length shall use number 5 (OH6) turning area.

Note: Should current predictions not be available then swinging limits will be based on 30cm rise or fall in the hour.

### 1.6.2 **General rules for vessels in excess of port limitations**

Oversize vessels are at the discretion of the General Manager, Marine Operations, Flinders Ports (GMFP OR MARINE OPERATIONS MANAGER) and may be restricted to high water, daylight only, additional tugs, minimum cross currents, maximum wind speed or any other restriction which may be prudent for the particular vessel. Vessels outside of the above parameters may be considered after simulations are carried out in a full mission vessel simulator.

## Tugs

OUTER HARBOR	
VESSEL TYPE	TUG REQUIREMENTS
Up to 90m LOA (not turning)	No tugs
Up to 90m LOA (when turning)	1 tug
Between 90m and 120m LOA	1 tug
Between 120m and 230m LOA	2 tugs
In excess of 230m LOA (with or without bow thrusters) – see No. 5 OH6-7 Turning Basin Guidelines	3 tugs (or 2 Z Pellers)
Car carriers swinging on departure with bow thrusters exceeding 1000hp (735.5w) (provided that wind less than 15 knots)	1 tug
Livestock and car carriers operating in winds exceeding 15 knots	2 tugs
Livestock and car carriers in excess of 183m LOA when turning	2 tugs
Vessels berthing with a beam in excess of 32.20m	Refer to additional information under “Bulk Carriers Berthing at OH7/8 from Sea
Container vessels sailing (head-out) in either forecast winds exceeding 15 knots or actual winds exceeding 20 knots	2 tugs
Vessel with displacement ≤ 127,000 tonnes	2 tugs (min 70T bollard pull)
Vessels with displacement ≥ 127,000 tonnes	3 tugs
If a vessel has bollards or fairleads with a SWL <70T the following displacements will represent the limitations for 2 tugs (Z’s)	For 60T bollards max 109,000T For 50T bollards max 91,000T For 40T bollards max 73,000T For 30T bollards max 54,000T For 20T bollards max 36,000T

OSBORNE AND INNER HARBOR	
VESSEL TYPE	TUG REQUIREMENTS
Up to 90m LOA (not turning)	No tugs
Up to 90m LOA (when turning)	1 tug
Between 90m and 120m LOA	1 tug
Between 120m and 176m LOA	2 tugs
All tankers exceeding 176m LOA or with draft exceeding 9m	3 tugs (or 2 Z Pellers)*
Vessels in excess of 183m when turning (see additional requirements under Number 3 turning basin)	3 tugs (or 2 Z Pellers)
Vessels in excess of 206m when turning	3 tugs (or 2 Z Pellers)

\* Due to M Berth being classified as critical infrastructure, all tankers carrying flammable cargo will require 2 tugs and gate security. Tankers with a LOA of less than 120m and fitted

with a bow thruster may dispense with 1 tug for arrival and sail without a tug at the pilot's discretion.

## Tug Ahead

Vessels will require a tug ahead/tug assist whilst negotiating the Port River under the following circumstances:

- (a) Vessel with a draft of 9.3m or more
- (b) Oversize vessels (as per the dimensions set out in paragraph 1.6.2)
- (c) Any vessel with a defect that effects navigation or ability to manoeuvre.

## Under Keel Clearance (UKC)

All vessels to maintain 0.3m UKC at all berths at all times.

The following additional requirements apply:

LOCATION	UKC
Inner Harbor Channel	<p>UKC of not less than 7.5% of draft.</p> <p>Vessels in excess of 200m LOA and all tankers to have UKC of not less than 10% of draft.</p> <p>Vessels with a draft in excess of 9.5m may transit on an ebb tide if there is sufficient water at OH6 two hours after sailing time, OR there is sufficient water in the Inner Harbor channel three hours after Pilot On Board (POB) time.</p>
Outer Harbor Channel	UKC of not less than 10% of draft.

## Clear River

The following vessel restrictions require the river channel to be clear of traffic:

- (a) Vessels with a LOA greater than 183m and/or draft of greater than 9.3m
- (b) At night where the vessel is the Accolade II
- (c) Where the vessel is a tanker (if not gas free)
- (d) If a vessel is hampered for any reason.

The extent of the clear river will be:

- A. Geographically from the point the vessel enter/departs the Channel and the berth as the other point.

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- B. In time by allowing 1.5 hours between POBs for all traffic ahead of the Clear River vessel and 30 minutes behind.
- C. If there are two vessels transiting in the same direction then a 30-minute time difference will be allowed provided there is tug assist.
- D. Allowance is to be made for the Accolade II to pass. The practise of allowing Accolade II to pass in the Osborne area or Outer Harbor will continue. Where the Accolade II is sailing out ahead of a clear river vessel, a time of 1 hour is to be allowed, shortened to 30 minutes if there is a tug assist.
- E. Other allowances will be at the Pilot's discretion considering all factors of risk assessment.

If the Clear River outbound vessel has a tug assist then the tug is to be retained till the vessel is passing Outer Harbor and in deeper waters.

## Launch

A line launch is required for all berths except 18-20 berth if 2 tugs are used (or 1 tug plus bow thruster).

## Berths

From time to time, restrictions against a specific berth may exist. Load limits apply to all wharves and jetties.

For further information, contact Flinders Ports on (08) 8447 0611 or refer to the berth information for Port Adelaide on the Flinders Ports website.

Specific requirements are set out below:

Berth Description	Requirements
Outer Harbor Berths 6-7 (Container Terminal)	<ul style="list-style-type: none"> <li>• Cranes are specifically positioned on arrival or departure of a vessel, to ensure a safe operating environment for mooring personnel, to prevent damage to other vessels at berth and the infrastructure.</li> <li>• Whilst berthing at OH7 and another vessel is working alongside OH6, the container crane booms will only be lifted if requested by the pilot/master. The pilot/master will advise the Communications Tower if this is required.</li> <li>• A vessel occupying OH6 shall have its own cranes stowed inboard as another vessel manoeuvres past.</li> <li>• All container cranes will be "parked" at the northern end of OH7 except when a vessel is berthing at OH7 (with or without a vessel alongside OH6) when the cranes shall be "parked" as follows:               <ul style="list-style-type: none"> <li>(i) Numbers 1 and 2 cranes at the southern end of OH6 or behind any vessel berthed at OH6;</li> </ul> </li> </ul>

Berth Description	Requirements
	<p>(ii) Numbers 3 and 4 cranes in the mid-ship half length of the ship when in the berthed position.</p> <ul style="list-style-type: none"> <li>Note: Cranes 3 and 4 will only travel from the northern end to the 200m mark.</li> </ul>
Outer Harbor Berth 8	<ul style="list-style-type: none"> <li>The loader will be positioned on arrival or departure of a vessel in the midship half length of the vessel when in the berthed position.</li> <li>There is no preference with regard to the parked positions of container cranes when berthing or sailing vessels in or out of OH8. Pilots will need to be advised of any instances where boom(s) are in the lowered position. The FACT duty supervisor (in any case) needs to be advised when pilotages in or out of OH8 are to occur. Communication protocols follow: <ul style="list-style-type: none"> <li><b>Arrivals:</b> FACT duty supervisor to be contacted at time of pilot pick up at OH2, ie 30 minutes prior to scheduled pilot boarding time.</li> <li><b>Departures:</b> FACT duty supervisor to be contacted 1 hour prior to scheduled departure time</li> </ul> </li> </ul>
Bulk Carriers arriving or sailing to / from OH6/7/8 berths	<ul style="list-style-type: none"> <li>Bulk carriers arriving or sailing to or from OH6/7/8, should meet the same requirements as a container ship of the same dimensions and drafts. Refer to 0 Container Vessel Tide &amp; Wind Constraints (OH6-7 berths)</li> <li>May sail day or night</li> <li>Allow one hour and 15 minutes for pilotage.</li> </ul>
Bulk Carriers shifting from Berth 27 to Outer Harbor Berth 8	<ul style="list-style-type: none"> <li>Requires 2 hours for all vessels.</li> </ul> <p><b>Panamax Vessels (any vessel greater than 206m LOA and 32.2m beam)</b></p> <ul style="list-style-type: none"> <li>Daylight only for the channel between Berth 27 and number 20 beacon.</li> <li>May berth at night at OH8 (vessel may commence any time from sunrise until 1 hour 30 minutes before sunset).</li> <li>2 tugs to sail from Berth 27, 2 Z Pellers (or 3 tugs) to berth at OH8.</li> <li>Tug ahead required if draft over 9.3m.</li> <li>Timed to berth at OH8 at slack water or on the flood (shift commences at one hour before low water until one hour before high water).</li> </ul> <p><b>Non Panamax vessels (LOA less than 206m)</b></p>

*UNCONTROLLED if printed*

Berth Description	Requirements
	<ul style="list-style-type: none"> <li>• May shift any time day or night.</li> <li>• 2 tugs to sail 2 tugs to berth (if draft over 9.3m, then 2 Z Pellers are required).</li> <li>• Tug ahead required if over 9.3m draft.</li> <li>• If draft over 9.3m timed to berth at OH8 at slack water or on the flood (shift commences at one hour before low water until one hour before high water).</li> </ul>

## Container Vessel Tide & Wind Constraints (OH6-7 berths)

### Tidal Limitations

Size	Arrival		Departure		Swing	
	Flood	Ebb	Flood	Ebb	Flood	Ebb
LOA <= 306m Beam <= 40.3m	no limit	no limit	no limit	no limit	no limit	no limit
LOA > 306 & <= 350m Beam > 40.3 & <= 49m	no limit 0.5kt between breakwaters	no limit	no limit	no limit	0.3kt	0.3kt
UKC > 20% UKC < 20%		no limit	no limit	no limit	0.3kt	0.3kt
LOA > 350m or Beam > 49m	0.5kt between breakwaters POB 1 hr prior HW	no limit	no limit	no limit	0.3kt	0.3kt
UKC > 20% UKC < 20%		POB 1 hr prior LW	30-60 mins prior HW	30-60 mins prior LW	slack water	slack water

Note: Should current predictions not be available then swinging limits will be based on 30cm rise or fall in the hour.

Wind Limitations
All container vessels exceeding 306m LOA: max allowable winds 25 knots (arrival or departure)
All container vessels up to 306m LOA & all other vessels: max allowable winds to 35 knots but may be reduced to 25 knots at pilot's discretion, taking into account wind direction, broadside windage area of the vessel and available useable tug power

## Vessel Navigation

Vessels enter and exit the Port Adelaide channel in three (3) locations depending on the type of vessel and its draft:

- (a) At Beacon Number 9

- (b) At Beacon Number 5
- (c) At the Entrance Beacon

## Anchor Restrictions

The Master or operator of a vessel must not cause or allow the vessel to be anchored or an anchor to be used in any of the following areas:

- (a) the area comprising the full width of the Port Adelaide River which lies within 70m of a line from a point on the western bank of the river distance 490m and bearing 314 degrees from No. 11 front inward leading beacon to a point on the eastern bank of the river distance 215m and bearing 22 degrees from No. 11 front inward leading beacon; and
- (b) the area comprising the full width of the Port Adelaide River which lies within 60m of a line from a point on the western bank of the river distance 410m and bearing 273 degrees from No. 12 rear inward leading beacon to a point on the eastern bank of the river distance 210m and bearing 204 degrees from No. 12 rear inward leading beacon.

## Speed




The speed limit in the following waters is seven (7) knots:

- (a) That portion of the Port Adelaide River, which lies between No. 12 Channel Beacon and No. 22 Channel Beacon; and
- (b) That portion of the Port Adelaide River, which lies south of No. 35 Channel Beacon.

The speed limit when passing any moored vessel is four (4) knots.

## Signals

The tide lights located at the top of the Communications Tower shall remain lit at all times to inform vessel traffic which way the tide is running. The 'slack' period of the tide should be interpreted as approximately 15 minutes either side of predicted low and high water.

- All round green light - indicates the tide is flooding 
- All round red light - indicates the tide is ebbing 
- All round white light - indicates the tide is slack 
- All 3 lights lit simultaneously - indicates the channel is blocked



## **2. Vessel Traffic Analysis (Scheduling)**

### **2.1 Towage**

#### **Svitzer**

Svitzer tugs are located at Port Adelaide and are responsible for providing towage services for Port Adelaide, Port Giles and Ardrossan from their local office.

Hours of Business: 0830 – 1700

Out of Hours: Fremantle Operations Centre

Enquiries from shipping agents regarding tug costs or penalties for alterations and/or cancellations regarding towage should be directed to the towage operator.

#### **Gale Watch**

When a gale warning is issued by the Bureau of Meteorology and the General Manager Flinders Ports determines that a gale watch is to be activated, the VTS is to take the following steps;

- VTS will call the Fremantle Operations Centre and advise the specific time gale watch standby is to commence. (Svitzer will allow 2 hours for Port Adelaide crews to attend for gale watch).
- If a request from VTS is for attendance as soon as possible, Svitzer Operations Officers will call each crew member and advise they are required to attend the tug/s in their best time. Operations Officers will then revert back to VTS with an approximate time full crew/s will be onboard.
- Once the full crew/s have arrived, Svitzer Operations Officers will confirm with VTS that the tug/s are officially on standby.
- Once advice is received from the General Manager Flinders Ports, VTS will call the Fremantle Operations Centre to end the standby for gale watch.

### **2.2 Priorities**

All ports are allocated (for vessel traffic analysis) to 2 regions: - Central & Regional.

Central Region refers to the following ports:

- Port Adelaide
- Port Giles
- Klein Point
- Ardrossan
- Wallaroo

Regional Ports region refers to the following ports:

- Thevenard
- Port Lincoln

- Whyalla
- Port Bonython
- Whyalla (SPN)
- Port Pirie

Commercial vessel traffic for a region is then managed according to shipping agent request, berth availability, other traffic movements, operational restrictions (such as draft v tide limitations) and resource availability (pilot, tug etc).

Vessels requiring pilotage that are non-commercial are ranked lowest in priority. For further information on vessel movement priority, refer to section 1.2 "*Pilotage Constraints*".

## **2.3 Vessel Positioning**

### **Port Adelaide Vessel Positioning**

Bridge & associated marks to establish vessel positioning are principally defined by the duty Labour Allocator for presenting to Mooring Team Leaders. Vehicle carriers have specific requirements in terms of stern / mid-ship ramp placement & in the case of containerised vessels & OH 8 berth, positioning is determined in direct consultation with the terminal operators respectively.

On occasion, specific requirements may exist for 18 to 20 and 29 berths that are requested by the allocated Stevedore.

A vessel berthing at 18 to 20 berths with no specific requirements, a nominal distance from either end of the wharf is adopted to achieve sufficient head-line / stern-line purchase.

### **Pre-Planning for Fleeting Operations**

#### **Port Adelaide Fleeting**

Grain shippers at IH 27 berth will be encouraged to use hatches 2, 3, 4, 5 and 6; that is hatches other than end hatches on Panamax vessels where possible, thereby reducing the need to fleet vessels. Where ship's deadweight, hull stresses and operational constraints do not allow for this, fleeting must take place.

Agents will be asked to declare on their berthing applications hatches to be used and indicate when the ship has to be fled.

Best use of mooring facilities shall be used on berthing to facilitate fleeting operations, i.e. minimum of shifting lines.

A responsible person from Flinders Ports may be required to attend fleeting.

A Mooring Team will be required for gangway and line shifting duties.  
Safety of personnel and ship to be of prime concern at all times

Considerations concerning fleeting:

- Ship's draft, airdraft, trim and displacement.
- Wind conditions - direction and speed – forecasts and warnings.
- Tide conditions - direction and speed.
- Ship hull form (flare and counter) and projections (cranes etc.) and proximity to bulk loading plant and wharf infrastructure.
- Daylight/darkness conditions.
- Ship/shore communications.
- Communications with stevedore for positioning of ship.
- Availability of ship's lines and winching capacity.
- Extreme of berth box for final draft/tide in the position.
- The possibility of tug assistance.
- Pilotage attendance.
- Line launch availability.

Masters will be required to ensure that the number of mooring lines used are sufficient for those exposed to extreme weather conditions.

Note: All fleeting events with movement of the vessel greater than the LOA of the vessel will require a pilot and / or tugs.

## **2.4 Operational Changes**

### **Alteration to Berthing Times**

Berthing of vessels maybe arranged to suit the operational requirements of the port i.e. a vessel is berthed earlier than the preferred time (as requested by the agent). This may occur to expedite a traffic scheduling or resource issue. Where the vessel is brought forward in such a manner, then shipping based charges are typically adjusted to reflect the preferred time rather than the actual operational times recorded.

The VTSO (with prior approval from the GMFP OR MARINE OPERATIONS MANAGER) is required to document the preferred berthing time to be utilised for the intended waiver (email is sufficient) for notifying the Income Accounting Officer as appropriate.

## **2.5 Tide Information**

### **Height of Tide Required-**

The following tables determine the minimum tide required to navigate the required section of the channel, based on a vessel's draft and its UKC. These values may then be utilised in conjunction with predicted tide values to determine suitable windows of opportunity to move a vessel within the port as constrained by its required transit times.

## Height of Tide Required for Port Adelaide Outer Harbor

Channel Declared Depth at LW – 14.2m LAT

Under Keel Clearance – 10.0 % of Draft

Draft	Tide Required
12.90	-0.01
13.00	0.10
13.10	0.21
13.20	0.32
13.30	0.43
13.40	0.54
13.50	0.65
13.60	0.76
13.70	0.87
13.80	0.98
13.90	1.09

Draft	Tide Required
14.00	1.20
14.10	1.31
14.20	1.42
14.30	1.53
14.40	1.64
14.50	1.75
14.60	1.86
14.70	1.97
14.80	2.08
14.90	2.19
15.00	2.30
15.10	2.41

Refer to additional tidal constraints associated with [\(OH 6–7\) Turning Basin Guidelines](#) or [\(OH 2\) Turning Basin Guidelines](#) if applicable.

## Height of Tide Required for Port Adelaide Outer Harbor

Channel Declared Depth at LW – 14.2m LAT

Under Keel Clearance – 20.0 % of Draft

Draft	Tide Required
11.8	-0.04
11.9	0.08
12	0.2
12.1	0.32
12.2	0.44
12.3	0.56
12.4	0.68
12.5	0.8
12.6	0.92
12.7	1.04
12.8	1.16
12.9	1.28

Draft	Tide Required
13	1.4
13.1	1.52
13.2	1.64
13.3	1.76
13.4	1.88
13.5	2
13.6	2.12
13.7	2.24
13.8	2.36
13.9	2.48
14	2.6
14.1	2.72

Refer to additional tidal constraints associated with [\(OH 6–7\) Turning Basin Guidelines](#) or [\(OH 2\) Turning Basin Guidelines](#) if applicable.

## Height of Tide Required for Port Adelaide Inner Harbor (excluding Oil Tankers & vessels with LOA > 200m)

Channel Declared Depth at LW - 9.3m LAT  
Under Keel Clearance - 7.5 % of Draft

Draft	Tide Required
8.70	0.06
8.80	0.16
8.90	0.27
9.00	0.38
9.10	0.48
9.20	0.59
9.30	0.70
9.40	0.80
9.50	0.91
9.60	1.02
9.70	1.13
9.80	1.23
9.90	1.34
10.00	1.45
10.10	1.56
10.20	1.67
10.30	1.77

Draft	Tide Required
10.40	1.88
10.50	1.99
10.60	2.10
10.70	2.20
10.80	2.31
10.90	2.42
11.00	2.52
11.10	2.63
11.20	2.74
11.30	2.85
11.40	2.95
11.50	3.06
11.60	3.17
11.70	3.28
11.80	3.39
11.90	3.49
12.00	3.60

## Height of Tide Required for Port Adelaide Inner Harbor (Oil Tankers & vessels exceeding 200m LOA)

Channel Declared Depth at LW - 9.3m LAT  
Under Keel Clearance - 10 % of Draft

Draft	Tide Required
8.4	- .06
8.5	+.05
8.6	.16
8.7	.27
8.8	.38
8.9	.49
9.0	.60
9.1	.71
9.2	.82
9.3	.93
9.4	1.04
9.5	1.15

Draft	Tide Required
9.6	1.26
9.7	1.37
9.8	1.48
9.9	1.59
10.0	1.70
10.1	1.81
10.2	1.92
10.3	2.03
10.4	2.14
10.5	2.25
10.6	2.36
10.7	2.47

## 2.5.1.1 Port Adelaide Digital Tide Gauges

Port	Port Number	Data Available	Abbrev Dial
Outer Harbor	61600	Tide, Baro, Wind Speed, Wind Direction	1038

## 2.6 Resource Allocation

### Launch Operations

#### 2.6.1.1 Port Adelaide Pilot Launch Reporting Times

Arrivals 1 hour prior to POB (if shipping only). For reporting to Pilot pick up point, 30 minutes prior to scheduled Pilot Boarding Time.

Departures From Outer Harbor, half hour before sailing time (if shipping only).

Departures From Inner Harbour/Osborne, sailing time (if shipping only).

### Mooring Personnel (Marine Services Team)

#### 2.6.1.2 Port Adelaide Marine Services Team Reporting Times for Mooring Operations

Arrivals to OH1-4	Half hour after POB time
Arrivals to OH6-8	45 minutes after POB time if swinging (berthing port side to)
	30 minutes after POB time if berthing head-in
Arrivals to Osborne / Penrice	1 hour after POB time
Arrivals to Inner Harbor (all berths)	90 minutes after POB time
All departures	15 minutes prior to sailing time

## 2.7 Due Diligence & Risk Management

### Noise Complaints

Noise complaints from the general public should be recorded on an Incident Report.

The following minimum checklist of information should be recorded from the complainant:

- Complainant name
- Phone No
- Address (if provided)
- Name (Author)
- Date
- Time
- Noise Source (vessel name)
- Location (berth)

- Noise type (e.g. fan)

Approaches may then be made to either the vessel master (or agent where appropriate) to investigate possible noise reduction, noting:

- Vessel Representative
- Comments/Advice received
- Weather conditions
- Operational issues that may affect the noise generated
- Any action taken as a result of the investigation

### **Small Boat Regattas**

Notification of small boat regattas and yacht races must be brought to the attention of the VTS to ensure pilots and other significant vessel traffic are notified of the impending disruption to a clear channel.

If a pilotage is to occur during such an event, the pilot vessel should be deployed to ensure the safety of the piloted vessel by attempting to keep small vessels away.

### **Aquatic Events**

Instruction to parties conducting aquatic events or other operations in the river should detail all precautionary steps in mitigating risks to both individuals partaking in the event and any vessels engaged in commercial shipping. These steps should include:

- Marine VHF protocols
- Provision of contact details
- Roles played by pilot launches or other vessels of authority

Any documentation including forwarding of advice should also be directed to all other operational marine groups (i.e. tugs) to ensure communicative awareness.

## **2.8 Reports**

Various electronic and hardcopy reports are produced from the PortMIS application which are distributed to numerous internal and external clients.

### **Shipping Schedule**

The shipping programme (Central) is presented formally (via e-mail) to resource groups daily at approximately 1145 (as a preliminary draft of the next day's schedule), providing the opportunity to enable resources to be initially rostered.

Interim parties (such as dredging or maritime operators) maybe included as required or deemed appropriate.

At 1500, a follow up report is provided (with pilot allocations included and confirmed time-frames where possible).

## External Recipients

As a service to select external organisations that interact with commercial shipping (e.g. Customs, AQIS, Stevedores etc), two emailed electronic reports encompassing berth and vessel traffic prognostics are produced daily.

Additional reports can also be obtained from PortMIS directly by applying filtered queries to voyage/job related data for all or individual ports.

## Public Shipping Schedule

Except for specific detailed queries, members of the public should be referred to the Flinders Ports Shipping Schedules for information relating to expected and actual movements, vessels in port and cruise ship schedules.

## PortMIS Requested VARs

PortMIS requested VARs report provides a summary of voyage applications lodged by external shipping agents via the PortMIS Web Interface – Agent Portal that will require assessment prior to acceptance into the vessel traffic schedule.

## 3. Finance

### 3.1 Discounts/Waivers

Flinders Ports via the GMFP OR MARINE OPERATIONS MANAGER may approve discounts and/or waivers for clients depending upon a range of circumstances e.g. emergency repairs, operational etc

Additionally, Business Development may also negotiate incentive schemes with specific clientele depending upon their level of service. This type of discount is negotiated in commercial confidence and is not covered within this document.

All waivers granted require the VTS to advise the Finance section (Income Accounting Officer(s)) of revised billing times as applicable.

### 3.2 Berthing Time

This type of waiver is granted where a vessel is berthed ahead or has the sailing deferred of the required shipping agents requested time for the benefit of Flinders Ports' operational requirements i.e. tug resourcing, mooring resources etc.

This waiver is only applicable whilst the vessel is not loading or discharging.

### **3.3 Ad-Hoc**

These waivers may be granted in instances where ships are in distress and require a safe berth to conduct emergency repairs. This is a negotiated waiver, depending on the individual circumstances.

### **3.4 Harbour Service Charge**

Harbour Service Charge Waivers are provided when ships are undergoing repairs or decommissioned and undergoing grain surveys

This waiver only applies whilst ships are not loading/discharging.

### **3.5 Standby (Cargo Vessels)**

In order to facilitate the entry of grain vessels into ports to undergo survey and cleaning prior to taking up the loading berth, vessels may receive a reduction in charges.

The reduction in charges for a vessel of approximately 30,000 GRT would be in the order of 70%.

The following rules apply.

- The grain vessel would be allocated a berth if one was available and did not inconvenience other shipping.
- The vessel would only berth during ordinary hours and not inconvenience the entry or departure of other shipping.
- Removals to the loading berth would be at normal cost.
- The normal variable component of the Harbor Service Charge would be applicable from arrival, that is, first line at the loading berth.

Grain vessels entering to undergo survey and cleaning in Flinders Ports' ports may be granted a waiver of the variable component of the Harbor Services Charge of approximately 70%. It is intended that this waiver apply a flat rate charge per day plus GST or part thereof when the grain loading ship is undergoing survey and cleaning. The charge to cease once the first line is achieved at the loading berth.

## **4. Administration**

### **4.1 Locations & Berths**

All country and port locations utilised by PortMIS are identified by UN/LOCODE Codes (CODE FOR TRADE AND TRANSPORT LOCATIONS).

#### **Undefined locations**

Where a country location is unknown, a Country Code of ZZ (Unknown) can be utilized.

Where a port location is unknown, a Port Code of ZZZ (Unknown) can be utilized.

## **SALOC**

A location for SA Local Offshore (SALOC) exists to identify previous or next ports where the port(s) are local to SA but do not carry a recognised UN/LOCODE. This is typically applicable to fishing or passenger vessels (ferries) that may transit to Adelaide to undertake maintenance or survey.

## **Anchorage**

Vessels arriving to anchor substantially ahead of scheduled pilot boarding times should be shown as same, with a shift inserted (at the job level) signifying a movement from anchor to the allotted berth. If it is chosen to simplify the voyage by omitting the arrival to anchor (and thus shift), opting instead for the scheduled entry time, then a comment should be included under the remarks tab of the job editor to indicate the vessel's actual ETA to the anchorage. To this advantage, vessels arriving substantially early to anchor ahead of scheduled pilot boarding times won't be of any surprise or concern to the VTSO.

## **Port Adelaide Lay-By Berths**

Commercial berths maybe allocated as lay-by berths for maintenance requirements or provision of stores, and should only be issued under the condition that the vessel vacates the berth within a period when required by a priority vessel.

Requests for a lay-up berth from the fishing industry or by non-trading type vessels should be referred to Renewal SA for placement within their jurisdiction, as usage of a commercial berth for a long-term occupancy should be discouraged given its impact on the berth's availability for shipping.

## **Vessel Management**

All vessel detail is to be added to PortMIS shall be validated based on information available from Lloyds SEA-WEB or from information supplied by the agent.

Where information pertaining to the GRT value of a vessel differs, a certificate of international tonnage shall be sourced from the agent which shall then dictate the GRT value. The value from Lloyds SEA-WEB shall be used until receipt of the certificate.

No vessel can be added into PortMIS via the agent web interface. An agent wishing to lodge a VAR where the vessel does not appear within the available list shall notify the VTS, who shall be responsible for its data entry into the system. Whilst logged into Lloyds SEA-WEB, an opportunity exists to source as much information as applicable (additional to fields provided through the VAR) to better establish the vessel within the database – such fields include year of build, MMSI number, call sign, depth, NRT and main engine output. Once lodged, the vessel will be available for selection via the web interface.

Name changes to vessels are simply applied directly over the existing name in the vessel editor, at which point former names are captured & auto-populated as historic under the 'previous names' tab.

## **Vessel Particulars & Limitations**

Where available, electronic copies of plans detailing vessel particulars shall be sourced from the shipping agent and attached to the vessel details available within PortMIS. This information is of significant benefit to operational staff and should be sourced prior to the vessel's arrival if possible.

All VARs received for oversize vessels shall have the relevant notice submitted by the issuing agent. A copy of the notice is also required by the Principal Marine Environment and Safety Officer, DPTI with forwarding advice to include the expected arrival date of the subject vessel.

Temporary restrictions may be introduced at certain berths when shoaling or infrastructure damage is identified. This could typically limit visiting vessels to a reduced LOA and / or maximum draft then what is normally permitted. Any restrictions imposed will remain in force until repairs have been carried out or the berth has been returned to its gazetted depth and this has been confirmed by the GMFP OR MARINE OPERATIONS MANAGERFP.

## **Container Vessels – Port Adelaide**

Where the new vessel to be added is a container vessel, the appropriate Shipping Service (to which the vessel operates) shall be sourced from either the issuing agent or the FACT website.

Allocation of an appropriate Shipping Service to a vessel is pertinent to container trade statistics supplied by Flinders Ports to numerous agencies and authorities.

## **Default Towing**

Default allocation of tugs for arrival, shifts and departures associated with a port can be established for a vessel, identifying the tugs required based on orientation and swing requirements.

This information (where supplied) is also available to agents lodging electronically via the agent web interface.

## **Default Services**

Default services are typically applied either by the finance department or operational staff where a specific service has been identified e.g. Crane hire, security fencing etc.

## **Mooring Personnel**

Default numbers of mooring personnel are defined by operational staff as a component of a risk assessment.

## **Operational Notes (Remarks)**

Operational notes (General / Pilot / Mooring / Launch) can be assigned to a vessel identifying additional or lesser towing requirements, handling and propulsion characteristics. Pilot remarks should be added by the VTS following feedback after a 1<sup>st</sup> visit by a specific vessel.

## **Regular Runners**

Vessels identified as regular runners (e.g. Accolade II) have predefined schedules assigned enabling the bulk creation of multiple voyages formed from the summary of information held against voyage templates.

The definition of a regular runner schedule for a vessel must be defined prior to planning recurring visits. A single instance of a planned voyage (to be utilised as the template) must exist to establish the schedule.

### **Specialised Vessel Traffic Port Adelaide**

In addition to normal scheduling of commercial vessel traffic for Port Adelaide, other specialised vessels require access to the channel which must be considered. These include:

#### **Submarine Traffic**

A voyage application request (VAR) is not normally provided for movements associated with submarine traffic. These voyages are to be created based on verbal or electronic notification from the submarine corporation and will remain active within the system until all associated movements are finalized. Departure time-frames are commonly not known in advance therefore should be set back as far as deemed appropriate allowing the voyage to remain active in the system until confirmation is received regarding sailing.

Submarine movements affect other commercial traffic when navigating the channel, requiring 1.5 hours to transit between the entrance beacon and the Australian Submarine Corporation (ASC).

Sufficient time must be provided within the traffic schedule to enable the vessel safe passage, prior to programming subsequent movements.

Tugs (Svitzer) are also required to assist where manoeuvring submarines at either the ASC Berths or the Shiplift, and must be accounted for when coordinating resources for other commercial traffic during these periods.

Submarines do not normally require a Flinders Ports Pilot (Naval pilots are sourced) but are notoriously slow whilst navigating the channel.

## **4.2 AIS (Automated Identification System)**

Automated Identification System (AIS) is the technology that enables the real time tracking of movements associated with all vessels within range to be monitored and recorded, where the vessel is fitted with an AIS transponder. As at July 2002, the International Maritime Organization (IMO) mandated the use of AIS, as part of the carriage requirements for vessels in accordance with SOLAS Chapter V, Regulation 19.

AIS is a transponder-based communication system that permits participants to track and communicate with each other through an AIS network. The AIS network is designed for automatic and autonomous data communication between vessels, and between vessels and shore stations. AIS transponders work in broadcast mode on shared channels so that all transponder equipped vessels can see each other. The transponders communicate on VHF frequencies and exchange information about vessels and base stations using a standardized protocol. Flinders Ports AIS based stations currently only receive AIS transmissions.

AIS provides improved functionality, accessibility and workflow associated with the port management process.

## **AIS Target identification**

To enable AIS target identification, Flinders Ports utilizes an electronic charting system which provides a visual display of vessel positions. This is achieved by interfacing with vessel's AIS transponder data transmissions (comprising of small encrypted packets of information known as AIS messages) which have been received within VHF range of an AIS base station. Local AIS target information is then displayed via the software and also relayed back to a central data repository for distribution to the other remote locations.

Each AIS message consists of various information including safety related messages, vessel information (MMSI, name, position, speed over ground (SOG), call sign etc), cargo etc. about the specific AIS target. Its transmission cycle is dependent on the target's current navigation status. AIS target information is typically received at 10 to 20 second intervals when the AIS target is underway and at approximately 3-minute intervals when the AIS target is either at anchor or berthed.

A mandatory component of the AIS message is the inclusion of an MMSI number (Maritime Mobile Service Identity).

*Australian Search and Rescue (AusSAR), a part of AMSA, allocates and issues MMSI to Australian vessels. Large commercial vessels subject to the Safety of Life at Sea (SOLAS) Convention must carry DSC (Digital Selective Calling) equipment appropriate to their area of operations. To use DSC techniques, an MF/HF or VHF DSC transceiver must be permanently programmed with a unique nine-digit identification number known as the Maritime Mobile Service Identity (MMSI). The MMSI is automatically included in all DSC transmissions from a station and electronically identifies that station to the receiving station(s).*

### *MMSI Formats*

*Three of the nine digits of an MMSI identify country of origin. In the case of a coast station these digits indicate the country of location, and in the case of a ship station, the country of registration. The remaining six digits uniquely identify the station itself. The three digits identifying the country are known as the Maritime Identification Digits or MID. Australia's MID is 503.*

*An Australian MMSI takes the form 503 x x x x x where x is any number from 0 to 9.*

Further information about MMSIs can be obtained from the AMSA website.

## **AIS Rules**

It is a mandatory condition when a vessel enters a port managed by Flinders Ports that the vessel's AIS remains operational at all times (including tanker berths).

Where awareness of a vessel's position is known and no AIS signal is currently being received from that vessel, contact should be made with the master of the vessel where possible (or the responsible Shipping Agent) by port communications staff to advise them of the mandatory requirement for their AIS to transmit.

### *Note:*

*Validate that AIS transmissions are being received from other targets, to confirm overall functionality of the AIS network, before contacting the master of the vessel.*

*UNCONTROLLED if printed*

Where an invalid MMSI or IMO is broadcast or the geographic location or orientation of a vessel being tracked is observed to be incorrect, contact should be made with the GMFP OR MARINE OPERATIONS MANAGER in the first instance, or if unavailable AMSA (Chris Barber: Marine Surveyor 0419 828 716) to report the inconsistency.