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Economic effect of the cessation of Svitzer port towage services

A report for Seyfarth Shaw

17 November 2022

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Executive summary

1. I have been asked to prepare this report by Seyfarth Shaw, on behalf of Svitzer Australia Pty Ltd (Svitzer).¹ Its subject is the economic effect of a lockout of Svitzer employees at various ports on the Australian economy and/or any important part(s) of the Australian economy.

2. My report addresses the following questions:²

What is the importance to the Australian economy, relevant State economies, and/or any important part(s) of the Australian economy, of seaborne trade and towage services in the Ports?

What is the likely economic effect that the Lockout at the Ports is likely to have on the Australian economy, and/or any important part(s) of the Australian economy?

Are there particular sectors of the Australia or State economies which are likely to be particularly affected by a stoppage of work at the Affected Ports? If so, which sectors or industries are likely to be so affected and what are the likely effects on each of them?

3. I present below a summary of my responses to the questions put to me by Seyfarth Shaw.

What is the importance to the Australian economy, relevant State economies, and/or any important part(s) of the Australian economy, of seaborne trade and towage services in the Ports?

4. Containerised and bulk trade makes an important contribution to each state economy and to the overall Australian economy. Towage services are an essential component of the economic infrastructure that underpins a range of export and import activity.

5. A diverse range of goods is imported and exported by means of containerised and bulk trade in and out of Australia. Containerised imports principally consist of consumable goods and manufactured items, while containerised exports principally consist of primary goods. Bulk exports primarily consist of resources such as coal and iron ore, as well as grains and related products, while bulk imports principally consist of petroleum and petroleum oils.

What is the likely economic effect that the Lockout at the Ports is likely to have on the Australian economy, and/or any important part(s) of the Australian economy?

Context to the lockout

6. The existence of congestion issues at the ports provides important context to my assessment of the economic effect of the lockout. The lockout will apply to a sector that is already seeking to recover from previous and prevailing disruptions. The consequences of the lockout are likely to be magnified by the existing effects of port congestion.

7. I understand that the extended period of congestion in the containerised and bulk freight supply chains serving ports in Australia has arisen due to a number of factors, including:

- a. periodic industrial action;
- b. weather-related port closures;

¹ Seyfarth Shaw Australia, Expert Retainer - HoustonKemp Economists, 14 November 2022, hereafter Instructions; Seyfarth Shaw Australia, Further updated expert retainer letter, 16 November 2022, hereafter Updated instructions.

² Instructions, para 2.1.

- c. port development activities to improve port capacity and productivity, and other port maintenance; and
- d. COVID-19-related staffing difficulties.

Direct consequences of the lockout

8. The lockout prevents the servicing of vessels that are scheduled to arrive or depart during the lockout.
9. Spare berths and windows for the vessels that are not able to be served by tugboat services are not readily available. By consequence:
 - a. the affected vessels will experience delays to their schedules; and so therefore
 - b. these vessels will miss their allotted windows for berthing as well as missing their booking windows in respect of all subsequent steps in the transport and logistics supply chain;
 - c. some time-sensitive goods on these vessels will be lost or significantly diminished in value; and
 - d. these vessels therefore need to find new slots and schedules, inserting themselves into a later point in an already congested and tightly managed supply chain.
10. Each day the lockout continues necessitates the reconfiguration of berthing windows to accommodate vessels that are unable to be served during the period.
11. In addition, each day of lockout will have an enduring effect on goods scheduled to be carried by container ships and bulk vessels in the future, because each day of lockout results in unmet demand for import and export servicing. This manifests in delays to future bookings, vessel schedules 'sliding', ie, skipping a rotation of bookings to catch up to schedule, decisions to omit one or more ports on a route, cancellations of existing bookings, and/or the inability to accept new bookings.
12. Finally, each additional day that a lockout continues is likely to have a compounding, worsening set of consequences. This is because the supply chain has an increasingly limited ability to reschedule freight as the length of the stoppage increases. As a result, there is a non-linear 'snowball effect' in which the per-day consequences of a longer lockout are greater than that for a shorter lockout.

Indirect consequences of the lockout

13. In addition to the direct consequences I describe above, any assessment of the impact of the lockout for the Australian economy or any important part of it must also have regard to the relevant multiplier effects. Economic multipliers can be used to take account of the interdependence between industries that make up an economy, and so the extent to which a direct shock, or change, in one form of economic activity has consequences for other forms of activity.

Operational consequences of the lockout

14. In addition to the effect on port operations, the lockout is also likely to harm other elements of the logistics chain from the port to the exporter or end customer, ie, it is likely to
 - a. cause congestion and delays to truck and rail freight;
 - b. result in delay costs for ships, including demurrage and penalties payable to customers in respect of missed delivery windows; and
 - c. result in reputational damage to shipping lines and potentially to Australian exporters.

Quantification of the consequences of the lockout

15. I provide an indicative quantification of the total (including multiplier) economic effects associated with the lockout, focusing on each of containerised freight ports and coal exports from the Port of Newcastle.³ My analysis suggests that:
- a. for containerised freight:
 - i. the total value of ‘lost’ goods associated with a one-day lockout is in the order of **\$49 – 98 million**;
 - b. for bulk freight at the Port of Newcastle:
 - i. the total value of ‘lost’ exports associated with a one-day lockout is in the order of **\$137 million**.

Indicative quantification of the total (including multiplier) effects associated with a one-day lockout

	Value of lost imports (\$, million)	Value of lost exports (\$, million)	Total value of lost goods (\$, million)
Containerised freight			
Direct effects of one-day lockout	18-36	8-16	26-52
Total effects of one-day lockout, using multiplier of 1.9	34-68	15-30	49-98
Bulk freight at Port of Newcastle			
Direct effects of one-day lockout	0	72	72
Total effects of one-day lockout, using multiplier of 1.9	0	137	137
All freight			
Direct effects of one-day lockout	18-36	80-88	98-124
Total effects of one-day lockout, using multiplier of 1.9	34-68	152-167	186-235

16. Importantly, the estimates I present above do not account for the total economic consequences of the lockout, since I have not attempted to quantify its diffuse, operational effects. The exclusion of these considerations may understate materially the total economic effect of the lockout for the Australian economy.

Are there particular sectors of the Australian or State economies which are likely to be particularly affected by a stoppage of work at the Affected Ports? If so, which sectors or industries are likely to be so affected and what are the likely effects on each of them?

17. I have identified the coal export industry, meat export industry, retail sector, the transport and logistics sectors and liquid fuel imports as likely to be disproportionately affected by the lockout. In particular:
- a. Australia was the largest exporter of metallurgical coal and second-largest exporter of thermal coal in 2020, and the Port of Newcastle is Australia’s largest terminal for coal exports;
 - b. meat export production has an obvious ‘shelf life’ and a value that reduces with the duration of storage – exported meat is worth an estimated \$13.5 billion to the Australian economy and is

³ I explain the implications of the necessarily limited scope of my analysis at paragraphs 39 and 106. This includes that, in the time available, it was impracticable to identify the liquid bulk element of the available trade data, as identified in my Updated instructions.

reliant on efficient shipping links to ensure the delivery of meat to export markets within short time frames;

- c. the retail industry – which is reliant on regular imports for the sale of goods in Australia and can be characterised as an increasingly competitive industry in which to operate;
 - d. the transport and logistics section – which would experience disruption based on the flow of containers through each affected container port and the logistics chain that facilitates the transport and processing of containers for import or export; and
 - e. the liquid fuel imports sector is a key input a wide range of economic activity, such that a disruption to Australia’s fuel supply would have broad consequences including for food supply, medication, aviation, and military equipment, the risk of which is exacerbated by Australia holding only a limited reserve of liquid fuels.
18. In section 4 of my report, I provide a qualitative description of the consequences of disruption on these sectors.

1. Introduction

19. I have been asked to prepare this report by Seyfarth Shaw, on behalf of Svitzer Australia Pty Ltd (Svitzer).⁴ Its subject is the economic effect of a lockout of Svitzer employees at various ports on the Australian economy and/or any important part(s) of the Australian economy.
20. The context for my report is the Fair Work Commission's (FWC's) proceedings under s424 of the Fair Work Act in relation to the notified employer response action in relation to certain ports as given by Svitzer on 14 November 2022.

1.1 Details of the lockout

21. I am instructed that on 14 November 2022 Svitzer gave notice of employer response action in relation to employees (employees) covered by the enterprise agreement proposed to replace the Svitzer Australia Pty Ltd Limited National Towage Enterprise Agreement 2016 (proposed agreement). The notice provides that those employees will be locked out from their employment from 12pm on 18 November 2022, for an indefinite period (the lockout). The notice applies to all crews at all ports covered by the proposed agreement.⁵
22. The practical consequence of the lockout is that Svitzer employees will not be able to perform work at the ports to which Svitzer provides towage services around Australia.
23. Seyfarth Shaw has asked me to assess the effect on the Australian economy and/or any important part(s) of the Australian economy of the lockout at each of the affected ports. In particular, I have been asked to address the following questions:⁶

What is the importance to the Australian economy, relevant State economies, and/or any important part(s) of the Australian economy, of seaborne trade and towage services in the Ports?

and

What is the likely economic effect that the Lockout at the Ports is likely to have on the Australian economy, and/or any important part(s) of the Australian economy?

and

Are there particular sectors of the Australia or State economies which are likely to be particularly affected by a stoppage of work at the Affected Ports? If so, which sectors or industries are likely to be so affected and what are the likely effects on each of them

24. Copies of my letters of instruction and then updated instructions are attached at annexure A1.

1.2 Qualifications

25. I am a founding partner of the firm of expert economists, HoustonKemp. Over a period of more than thirty years I have accumulated substantial experience in the economics of infrastructure services and the provision of advice and expert evidence in litigation, business strategy, and policy contexts. I have developed that expertise in the course of advising corporations, regulators and governments in

⁴ Seyfarth Shaw Australia, *Expert Retainer - HoustonKemp Economists*, 14 November 2022, hereafter Instructions.

⁵ Instructions, para 1.2.

⁶ Instructions, para 2.1; Seyfarth Shaw Australia, Further updated expert retainer letter, 16 November 2022, para 1.3, hereafter Updated instructions.

Australia and the Asia-Pacific region on a wide range of regulatory, competition and financial economics matters.

26. My recent experience relevant to the ports sector includes:
- a. the preparation and filing in proceedings commenced before the FWC on behalf of Svitzer, in February 2022 of an expert report and accompanying affidavit on the economic effect of notified industrial action by tugboat staff at port container terminals;
 - b. expert reports and evidence given last year before the Australian Competition Tribunal in relation to the economic effects of changes in the navigation service charges applying to bulk freight ships entering and leaving the Port of Newcastle for the purpose of loading export coal;
 - c. the preparation and filing in separate proceedings commenced before the FWC on behalf of DP World and Patrick Terminals, respectively, in September 2020 of two expert reports and accompanying affidavits on the economic effect of notified industrial action by stevedores at port container terminals;
 - d. assistance to the tugboat operator, Smit Lamnalco in the preparation of its submission to the Australian Competition and Consumer Commission (ACCC) in the context of the 2018 application by Gladstone Ports Corporation seeking authorisation for the exclusive licensing of harbour towage services at the port of Gladstone;
 - e. the preparation of expert reports submitted to the National Competition Council in the context of the application by Glencore that navigation services provided at the port of Newcastle be declared under Part IIIA of the *Competition and Consumer Act 2010* and, subsequently, the application by Port of Newcastle Operations for recommendation that the declaration of those services be revoked;
 - f. my appointment as advisor to the government of Victoria on the design, development and application of the framework for economic regulation of wharfage and other charges levied by the Port of Melbourne Corporation in the context of the privatisation of the port by way of long-term lease;
 - g. the preparation of expert reports submitted to the Queensland Supreme Court showing the chain of causation necessary for a connection between the Queensland Competition Authority's draft decision on Aurizon Access Undertaking and the economic interests of the Port of Newcastle; and
 - h. advisor to Industry Funds Management/Queensland Investment Corporation on regulatory and competition matters likely to affect the future financial and business performance of the Port of Brisbane, in the context of the sale of a long-term lease of the container port facilities by the Queensland government.
27. More broadly, my industry sector experience spans aviation, beverages, building products, cement, credit reporting, digital platforms, e-commerce, electricity and gas, explosives, forest products, grains, healthcare, insurance, litigation funding, medical waste, mining, payments networks, office products, petroleum, ports, rail transport, retailing, scrap metal, securities markets, steel, telecommunications, thoroughbred racing, travel agency, waste processing and water. I have given evidence on these matters on numerous occasions before arbitrators, appeal panels, regulators, the Federal Court of Australia, the Competition Tribunal and other judicial or adjudicatory bodies.
28. I hold a BSc (Hons) in Economics, a University of Canterbury post-graduate degree, which I was awarded with first class honours in 1983. A copy of my curriculum vitae is attached at annexure A2.

29. I have been assisted in the preparation of this report by my colleague Nick Twort. Notwithstanding this assistance, the opinions in this report are my own, and I take full responsibility for them.

1.3 Structure of report

30. I have structured the remainder of my report as follows:
- a. section 2 provides an overview of seaborne trade and the Australian economy, and the essential role of harbour towage services in facilitating that trade;
 - b. section 3 sets out my analysis of the likely effect of the lockout on the Australian economy and/or the relevant state jurisdictions that comprise parts of the Australian economy; and
 - c. section 4 sets out my analysis of the likely effect of the lockout on particular sectors of the Australian economy.
31. My declaration, that I have been provided with a copy of and read, understood and agree to be bound by the terms of the *Harmonised Expert Witness Code of Conduct* at Annexure A of the Federal Court of Australia Expert Evidence Practice Note (GPNEXPT), appears at section 5.

2. Seaborne trade, towage and the economy

32. In this section I address the first of the economic questions put to me by Seyfarth Shaw, ie:⁷

What is the importance to the Australian economy, relevant State economies, and/or any important part(s) of the Australian economy, of seaborne trade and towage services in the Ports?

2.1 Data drawn upon

33. In order to assess the importance to the Australian economy of seaborne trade, and to form an opinion on the likely effect of the lockout at the relevant ports, I have first developed an estimate of the volume and type of freight likely to be affected by the lockout.

34. Since there is no practicable means of assessing the contents of seaborne trade vessels likely to be directly affected by the lockout, I have used data on historical seaborne freight volumes to estimate the volume, type and value of freight that is likely to be affected by any future lockout.

35. On the assumption that the lockout is taking place as scheduled, ie, commencing on 18 November 2022, and in light of the seasonal nature of freight, I have drawn on data in relation to freight volumes over an historical period that reflects a similar point in the calendar year. In particular, I have drawn on data for the period 1 October 2021 to 31 December 2021 to estimate the volume and type of freight likely to be affected by the lockout.

36. In my opinion, these data represent the best available basis for estimating the volume and value of containerised and bulk trade during the period commencing 18 November 2022.

2.1.1 MariTrade data

37. I procured data from the air and sea cargo research firm, MariTrade,⁸ for the relevant ports in relation to:

Monthly tonnage and FOB value of containerised freight, broken down by import/export and commodity over the three-month period from 1 October 2021 to 31 December 2021.

Monthly tonnage and FOB value of bulk freight, broken down by import/export and commodity over the three-month period from 1 October 2021 to 31 December 2021.

38. Given the seasonal nature of trade, in my opinion these containerised and bulk freight data are the best available, direct estimate of the containerised and bulk seaborne trade that will be affected by the lockout during the period commencing November 2022.

39. I note that the lockout also affects cruise ships at some ports. In the time available to prepare my report I have not been able to consider the economic effect of the lockout on the embarkation and disembarkation of cruise ship passengers. Had it been practicable to undertake such an analysis, my expectation is that this would have added materially to the estimates of the economic effects that I develop in this report.

⁷ Instructions, para 2.1a.

⁸ MariTrade has developed a database designed to sort and analyse very large volumes of trade data into meaningful air and sea freight reports. The database contains detailed commodity imports and exports by port, state and country. See Maritrade.com.au/statistics.html.

2.2 Towage is an essential part of the supply chain for seaborne trade

40. Towage services at Australian ports play a critical role in facilitating seaborne trade. For instance, the Productivity Commission has explained that:⁹

Harbour tugs assist ships to manoeuvre in navigation channels and to enter and leave berths at ports. Thus they provide an essential intermediate service input for many of Australia's imports and exports...

41. The harbour towage industry facilitates a wide range of other economic activity. It is a critical component of the economic infrastructure that underpins a range of export and import activity.
42. My instructions state that the vast majority of vessels calling into the ports require tug services and that, without such services, those vessels cannot be brought in and out of the ports and therefore cannot be serviced.¹⁰ In my updated instructions, I have been asked to assume that over 90 per cent of vessels calling into the ports require one or more tugboats to move in and out of the ports.¹¹
43. A very substantial extent of the broader Australian and respective state economies rely on trade-based economic activity. The efficient and effective operation of the towage industry is critically important to the competitiveness of that trading activity, particularly export trade.
44. Very few importers or exporters have any ready or viable alternative means for international seaborne trade to take place. The only practicable alternative for international trade is air freight, which is only suitable for very high value, light weight, time-sensitive items. By consequence, air freight makes up only a small proportion of total export and import trade.
45. The towage industry is one element of a lengthy, complex chain of logistics – it is part of the supply chain for both land-based and water-based logistics operations. Part of the need for producers and suppliers of export and imported products to remain competitive and efficient involves operating on a just-in-time basis, with the consequence that disruptions to towage services have a cascading effect throughout the relevant supply chains.

2.3 Overview of Australian seaborne trade

46. International trade is central to productivity, output and living standards in Australia. By way of example, the Organisation for Economic Cooperation and Development (OECD) has explained that:¹²

...open markets allow resources to be used more efficiently and productively. The efficiency benefits of an open trade and investment regime contribute to economic growth and hence rising incomes...

47. The importance of trade has been underlined by the World Bank, which highlights that:¹³

Countries that are open to international trade tend to grow faster, innovate, improve productivity and provide higher income and more opportunities to their people.

⁹ Productivity Commission, *Economic regulation of harbour towage and related services | Inquiry report*, 20 August 2002, p xxi.

¹⁰ Instructions, para 1.4.

¹¹ Updated instructions, para 1.2.

¹² OECD, *Open markets matter | The benefits of trade and investment liberalisation*, 1998, p 39.

¹³ The World Bank, *Stronger open trade policies enable economic growth for all*, available at: <https://www.worldbank.org/en/results/2018/04/03/stronger-open-trade-policies-enables-economic-growth-for-all>, accessed 14 November 2022.

48. Container and bulk shipping are particularly critical to realising the benefits of international trade for ocean-bound nations, are the primary modes of transporting Australia's general cargo imports and exports and are a crucial link in the broader freight supply chain.¹⁴
49. International trade makes a material contribution to gross domestic product (GDP) in Australia. In 2020, the Department of Foreign Affairs and Trade (DFAT) observed that:¹⁵

Trade as a whole is equivalent to 45 per cent of Australian GDP and is directly responsible for one in five Australian jobs. Businesses with foreign investment generate around 40 per cent of Australian exports, and foreign investment supports one in ten jobs in Australia.

50. In addition, DFAT notes that in 2018 Australia was the second largest global exporter of beef, third largest exporter of lentils, fourth largest export of sugar and cotton, and tenth largest exporter of cereals (by value).¹⁶

2.3.1 Containerised trade

51. The five Australian ports at which container handling arrangements are available facilitated approximately \$634 million of containerised trade each day over the three-month period ending 31 December 2021.¹⁷
52. The value of containerised goods handled by the relevant ports is also material in the context of each state's economy, and the Australian economy. In order to provide an 'order of magnitude' comparison, in table 2.1 below, I present the average daily value of containerised trade at each of Australia's container ports over the three-month period ending 31 December 2021, relative to the average daily gross state product (GSP) for the relevant state, and Australia's gross domestic product (GDP) as a whole.

Table 2.1: Average daily containerised trade and GSP – October to December 2021

Port	State	Average daily value of containerised trade (\$, million)	Average daily GSP/GDP (\$, million)	Containerised trade relative to GSP/GDP
Brisbane	Qld	140.12	1,003.50	14.0%
Sydney	NSW	205.09	1,762.04	11.6%
Melbourne	VIC	268.45	1,299.07	20.7%
Adelaide	SA	38.44	322.57	11.9%
Fremantle	WA	69.04	991.13	7.0%
Australia		721.14	5,663.04	12.7%

Source: *MariTrade and ABS; and ABS, 5220.0 – Australian National Accounts: State Accounts – Table 1, Gross State Product, current prices, 2021 financial year.*

Notes: Average daily value of containerised trade is calculated as the sum of FOB value of containerised imports and exports at the relevant port over the three-month period to 31 December 2021, divided by the number of days in that period, ie, 92.

The total GDP figure for Australia is larger than the sum of GSP relating to the ports, due to the inclusion of other states and territories in the Australia GDP figure.

The GSP values are for the 2021 financial year because this is the most recently available GSP values.

Figures may not add to the total due to rounding.

¹⁴ For example, 99 per cent of Australia's exports are transported by sea. See: Department of Infrastructure, Transport, Regional Development and Communications, *Maritime*, available at: <https://www.infrastructure.gov.au/maritime/>, accessed 14 November 2022.

¹⁵ Department of Foreign Affairs and Trade, *Trade and investment at a glance 2020*, p 3.

¹⁶ Department of Foreign Affairs and Trade, *Trade and investment at a glance 2020*, p 4, based on the 2018 United Nations Comtrade database.

¹⁷ See table 2.1 below.

53. The data I present at table 2.1 above show that the daily value of containerised trade at each port is highly material in the context of its respective state's GSP – comprising between 7.0 per cent and 20.7 per cent. It follows that containerised trade makes an important contribution to each state economy, and to the overall Australian economy. I describe in section 2.2 that towage services are an essential component of facilitating this trade.
54. A precise, like-for-like comparison of the level of containerised seaborne trade at each of the affected ports with the relevant state's GSP would require state financial information over the same three-month period ending 31 December 2021. However, information on GSP is published only annually and is not available in respect of particular months of a given year. I have therefore used information from the financial year ended 30 June 2021 to estimate the average daily GSP in each state over the relevant three-month period.
55. I note also that my daily GSP estimate is derived from the previous financial year (ended June 2021) to that in relation to the containerised freight values. I have used this earlier period because more recent GSP data has not yet been made available by the ABS. Notwithstanding, I have no reason to expect that the differing time periods would have a material effect on the comparisons I draw in in table 2.1. In using data for the entire financial year, I have assumed that the average daily level of GSP over the financial year ended 30 June 2021 is a reasonable estimate for the average daily rate over the relevant three-month period to 31 December 2021.
56. My estimates provide an indication for the quantum of containerised trade relative to economic activity, rather than a precise estimate of the contribution of containerised trade to GSP at a given time. This qualification to my analysis applies in relation to each occasion that I draw on the GSP data in my report.

2.3.2 Bulk freight trade

57. The Port of Newcastle facilitated approximately \$102 million of bulk trade each day over the three-month period ending 31 December 2021.¹⁸
58. The value of bulk goods handled by the Port of Newcastle is itself material in the context of the New South Wales (NSW) economy, as well as the Australian economy as a whole. In order to provide an 'order of magnitude' comparison, in table 2.2 below I present the average daily value of bulk trade at the Port of Newcastle over the three-month period ending 31 December 2021, as compared with the average GSP per day for NSW and the average daily GDP for Australia.

Table 2.2: Port of Newcastle average daily bulk trade and NSW GSP – October to December 2021

Port	State	Average daily value of bulk trade (\$, million)	Average daily GSP/GDP (\$, million)	Bulk trade relative to GSP/GDP
Newcastle	NSW	102.14	1,762.04	5.8%
Australia	AUS	102.14	5,663.04	1.8%

Source: *MariTrade* and ABS; and ABS, 5220.0 – *Australian National Accounts: State Accounts – Table 1, Gross State Product, current prices, 2021 financial year.*

Notes: Average daily value of containerised trade is calculated as the sum of FOB value of containerised imports and exports at the relevant port over the three-month period to 31 December 2021, divided by the number of days in that period, ie, 92.

The GSP values are for the 2021 financial year because this is the most recently available GSP values.

Figures may not add to the total due to rounding.

59. The data I present at table 2.2 above show that the daily value of bulk trade is highly material in the context of both the NSW and the entire Australian economy – representing 5.8 per cent and 1.8 per cent of these two economies, respectively. It follows that bulk trade at the Port of Newcastle makes an

¹⁸ See table 2.2 below.

important contribution the state economy, and to the overall Australian economy. I describe in section 2.2 that towage services are an essential component of facilitating this trade.

60. I note that the significance of bulk trade at the Port of Newcastle for the NSW and Australian economies has increased markedly since the period to which these export data relate, being October 2021 to December 2021. This is because the spot market price of coal exported from Newcastle has increased substantially since that applying in the last three months of 2021.¹⁹ To the extent the increased spot price has flowed through to the prices being realised for coal exported from Newcastle, my estimates for the daily value of bulk trade at Newcastle in table 2.2 above will be a highly conservative estimate of the present daily values of such trade.

2.3.3 Containerised and bulk freight in combination

61. Taken together, the daily value of containerised and bulk trade at the ports is highly material in the context of its respective state's GSP and in Australia. Containerised and bulk trade make an important contribution to each state economy and to the overall Australian economy. Towage services are an essential component of the economic infrastructure that underpins a range of export and import activity.

2.3.4 Trends in trade and the effect of COVID-19

62. The level of containerised trade at the ports has grown steadily in recent years, with the volume of containers handled at Australia's five largest container ports having increased at an average rate of 3.2 per cent per annum over the ten financial years between 2010 and 2020, or 37 per cent in total.²⁰ This growth in trade volumes has outstripped the rate of growth in the applicable states' combined GSP over that period, ie, 2.3 per cent, which reflects the increasing role of containerised trade in the Australian economy.²¹
63. Although there has been a long-term trend of material growth in the level of containerised trade at the ports in recent years, in my opinion it is not necessary to adjust the 2021 data – which reflect a period in which economic activity generally was disrupted by the Covid-19 pandemic – to account for any disturbance to this long-term trend that might affect my ability to draw inferences as to the magnitude of economic effects today, by reference to trade data from late 2021. Rather, I have assumed that the historical trade volumes over the period 1 October 2021 to 31 December 2021 (ie, over the same seasonal period) represent a reasonable estimate for the trade volumes that may be affected by the lockdown.
64. My assumption that although the COVID-19 pandemic has affected sea freight it did not cause a material, sustained or systematic disruption to the level/trend of containerised sea freight relevant for the period of the lockdown is consistent with the fact that ships and ports continued to function during the pandemic, albeit with additional restrictions, consistent with the designation of the maritime industry as an essential service. For example, on 30 March 2020 the National Cabinet confirmed that aviation and maritime workers continue to provide essential services.²²

¹⁹ See figure 6.6 in Australian Government | Department of Industry, Science, Energy and Resources | Office of the Chief Economist, *Resources and energy quarterly*, September 2022, p 70.

²⁰ Average annual growth rate calculated as $(7,878,094 / 5,768,095)^{(1/10)} - 1$. Total increase calculated as $(7,878,094 / 5,768,095) - 1$. BITRE, *Yearbook 2021 - Australian Infrastructure Statistics*, December 2021, p 183.

²¹ HoustonKemp analysis of the compound annual growth rate in New South Wales, Victoria, Queensland, South Australia and Western Australia's gross state product (chain volume measures) between 2010 and 2020. Average annual growth rate calculated as $(1,879,499 / 1,491,393)^{(1/10)} - 1$. See: ABS, 5220.0 - Australian National Accounts: State Accounts, Table 1 Gross State Product, Chain volume measures and current prices.

²² See: Prime Minister of Australia, *Statement – update on coronavirus measures*, Media statement, 30 March 2020, available at <https://webarchive.nla.gov.au/awa/20200331234949/https://www.pm.gov.au/media/statement-update-coronavirus-measures>, accessed 14 November 2022.

65. Further, I note the Maritime Union of Australia's submission to the Australian Parliamentary Inquiry into the implications of the COVID-19 pandemic for Australia's foreign affairs, defence and trade, which states in relation to the continued operation of ships facilitating Australia's overseas trade that:²³

Notwithstanding the COVID-19 restrictions like border closures and quarantine arrangements that posed difficulties for ship crew changes, that impacted on rosters, combined with the confined working environments prevalent onboard and which exacerbated the isolation factor for seafarers, that gave rise to issues like fatigue and mental stress, ships and ports continued to function. Ships continued to deliver the nation's exports that helped hold up the performance of the economy (at least to the March quarter at the time of this submission) and on the import side, the delivery of essential supplies like fuel, medical equipment, medicines and food that has sustained the nation during the COVID-19 pandemic.

Ships and the ports they use are a critical component of the supply chains that support other wealth generating industries. Ships are critical to the import and export supply chains for all facets of manufacturing, resources and energy including refined petroleum products, agriculture, aquaculture, fishing, tourism (including the growing marine tourism and cruise sectors), wholesale and retail distribution, and construction.

66. In light of these considerations, in my opinion, seaborne trade and the towage services that facilitate such trade are highly important to the Australian economy and also to the economy of each state that is served by one or more of the affected ports.

2.3.5 Nature of bulk and containerised trade

67. A diverse range of goods is imported and exported by means of containerised trade in and out of Australia.
68. Containerised imports principally consist of consumable goods and manufactured items, eg, metals, furniture, pharmaceuticals, electrical equipment, beverages, paper and newsprint, and other manufactured products.
69. By contrast, containerised exports principally consist of primary goods such as cereal grains, meat, dairy products, and fruit and vegetables.
70. Similarly, bulk freight comprises a range of goods and can differ considerably by port. Bulk freight includes dry bulk and liquid bulk freight, the latter of which is carried by tankers.
71. Bulk exports in and out of Australia primarily consist of resources such as coal and iron ore,²⁴ as well as grains and related products such as oils and seeds.
72. In contrast, bulk imports principally consist of petroleum and petroleum oils.

2.4 Australia's ports have been experiencing congestion

73. In this section, I describe the basis for my understanding that Australia's major ports, especially the major container ports, have experienced an extended period of congestion, causing the broader supply chain not to be operating under business-as-usual circumstances.
74. By way of example, the Chair of the Australian Competition and Consumer Commission recently described the container freight supply chain as highly congested:²⁵

²³ Maritime Union of Australia, *Inquiry into the implications of the COVID-19 pandemic for Australia's foreign affairs, defence and trade: submission 84*, 24 July 2020, p 38.

²⁴ Notwithstanding its importance to seaborne trade for the Australian economy as a whole, I note that the vast proportion of iron ore shipped from Australian ports will not be affected by the lockout.

²⁵ Cass-Gottlieb, G, *Competition in container shipping*, Speech at the Ports Australia conference, 1 September 2022, available at: <https://www.accc.gov.au/speech/competition-in-container-shipping>, accessed 14 November 2022.

Container shipping is sometimes referred to as an 'invisible industry' because the clockwork-like system that moves trillions of dollars' worth of goods and drives the global economy largely goes unnoticed by the end users of those goods.

At least, it was until COVID-19 threw out global supply chains and caused highly visible delays, price increases, and product unavailability. I think you could mount a strong argument that over the last two and a half years, ordinary consumers have never been more interested in shipping and logistics.

...

Worryingly, the container freight supply chain remains very congested, and the reliability of international shipping line schedules hasn't materially improved since last year.

75. The existence of congestion issues at the ports provides important context to my assessment of the economic impact of the lockout. The lockout will apply to a sector that is already seeking to recover from previous and prevailing disruptions.
76. The consequences of the lockout are likely to be magnified by the existing effects of port congestion. In particular, the effect of any lockout of Svitzer employees:
 - a. will be magnified by the extent to which any buffer that would otherwise enable other, related service providers – such as stevedores – to work through the consequential delays is not available; and
 - b. will add to the queue of ships/containers building up, increasing the length of the delay at each port and extending the estimated recovery period.
77. Put simply, the total effect of a substantial reduction or complete cessation of towage services at most ports on container and bulk freight volumes at any port and on the Australian economy depends on other port supply chain participants' ability to respond efficiently and so recover from the lockout, once it concludes.
78. Under normal operating conditions, I would expect a tugboat operator such as Svitzer to have some level of built-in 'buffer' to enable it to catch up for delayed vessels or minor interruptions. However, the cumulative consequence of disruptions is likely to 'snowball' if the scale of the service interruption exceeds Svitzer's subsequent ability to catch up, so that it could take several months to recover from a major disruption.
79. The cascading nature of delays is consistent with statements made by Maersk in relation to industrial action that has previously taken place at Australian ports:²⁶

The situation at hand right now is industrial action that is slowing down operations at the ports...

This is on the back of continued series of industrial actions that have occurred over the past six to eight months that were then paused for about two months to allow us to catch up in the market.

We're seeing significant impacts out at the Australian ports as we're going through a second or third wave of strikes and work slowdowns that continue to impact reliability in these markets

80. It is also consistent with statements from Orient Overseas Container Line Limited (OOCL) in relation to industrial action in September 2020:²⁷

OOCL customers would be aware that ongoing industrial action at terminals around Australia has created severe disruptions to shipping lines schedule integrity. The delays experienced around

²⁶ Ackerman, I, *Maersk regional chief outlines the trouble in Aus ports*, 15 June 2021, available at <https://www.thedcn.com.au/news/ports/maersk-regional-chief-outlines-the-trouble-in-aus-port>, accessed 14 November 2022.

²⁷ OOCL, *Industrial action – ongoing schedule disruption*, 9 September 2020, available at <https://www.oocl.com/australia/eng/localinformation/localnews/2020/Pages/Industrial-Action-%E2%80%93-Ongoing-Schedule-Disruption.aspx>, accessed 14 November 2022.

the Australian coast over the past month has impacted all shipping lines vessel schedules upon their return back to Asia.

[...]

Patrick Terminal have released details of the Protected Action plans that were received on 3rd September that will see work stoppages of up to 24 hours on multiple days over the next 2 weeks across Brisbane, Sydney, Melbourne, and Fremantle Patrick Terminals.

Regret these work stoppages and those expected at other terminal operator locations will both disrupt schedule integrity in September and have a cascading impact into October due to the delays as vessels return back to Asia.

81. I understand that the extended period of congestion in the containerised and bulk freight supply chains serving ports in Australia has arisen due to a number of factors, including:
- a. periodic industrial action;
 - b. weather-related port closures;
 - c. port development activities to improve port capacity and productivity, and other port maintenance; and
 - d. COVID-19-related staffing difficulties.
82. Of the above factors, I understand that items b. and d. are of most relevance for the prevailing level of congestion at the affected ports. For example, Neil Chambers, director of the Container Transport Alliance Australia (CTAA) noted earlier this year that many industry participants are facing the:²⁸

...hardest conditions they have ever encountered...Container transport operators across Australia have reported to CTAA that they are experiencing between a 5 per cent to 20 per cent reduction in available staff, including heavy vehicle drivers, warehouse staff, forklift drivers, container unpack crews and administration, due to COVID infections and isolation requirements...The current supply chain delays and the severe impact of COVID infections seem set to continue well into 2022.

83. By way of other examples drawn from this extended period of congestion, industrial action in the third quarter of 2020 ultimately led to:²⁹
- a. shipping lines introducing shipping surcharges – both at Port Botany and other Australian container ports (due to shipping lines diverting to these ports) of US\$285-\$350 per twenty-foot equivalent unit (TEU);
 - b. some vessels omitting or suspending bookings to Port Botany;
 - c. some importers having to transport their container cargo via road, rail or transshipment from Melbourne, at additional cost and delay;
 - d. empty container parks reaching capacity since ships were either not evacuating either the full amount or any empty containers; and
 - e. vessel servicing time deteriorating by up to 80 per cent with containers spending extra time on the terminal.

²⁸ Ogg, M, *Container logistics delays expected "well into 2022" as infections cut back staffing*, 7 January 2022, available at <https://www.businessnewsaustralia.com/articles/container-logistics-delays-expected--well-into-2022--as-infections-cut-back-staffing.html>, accessed 14 November 2022.

²⁹ NSW Ports, *NSW ports CEO update*, 10 October 2020, available at: <https://www.nswports.com.au/nsw-ports-ceo-update>, accessed 14 November 2022.

84. Similarly, in August 2021 Hapag-Lloyd announced fortnightly omissions of Sydney in its vessel rotations, stating:³⁰

While the industry adapts to the new scenarios, we continue to see unrecoverable vessel delays caused by the current congestions...

85. NSW Ports CEO, Marika Calfas noted in July last year that industrial action at Patrick's terminals 'continues to exacerbate delays and congestion.'³¹

86. The Director of the Freight & Trade Alliance, Paul Zalai, has previously highlighted that:³²

Vessels are now by-passing Port Botany discharging goods interstate and leaving importers to organise and pay massive logistics costs to move freight across state borders back to Sydney.

87. and:³³

The additional cost is one factor, however a critical concern for the entire import and export supply-chain is that with a bumper season for the agriculture sector, container volumes will quickly mount at these transition points with the intermodals and empty container parks likely to very quickly become heavily congested.

88. Similarly, in June last year Neil Chambers, director of the CTAA said that recent industrial action at Port Botany had disrupted export and import plans:³⁴

As experienced mid-last year, berth delays have led to vessels making port rotation changes to avoid Sydney's congestion, throwing export plans into turmoil... Also, the work bans have meant there is a constant 'shifting of the sands' on import container availability, export suspensions and some truck servicing across some time zones.

³⁰ Ackerman, I, *Congestion causes more port omissions in Australia and NZ*, 10 August 2021, available at <https://www.thedcn.com.au/news/containers-and-container-shipping/congestion-causes-more-port-omissions-in-australia-and-nz/>, accessed 14 November 2022.

³¹ NSW Ports, *NSW ports CEO update*, 23 July 2021, available at <https://www.nswports.com.au/nsw-ports-ceo-update-july-2021>, accessed 14 November 2022.

³² Freight & Trade Alliance, *Commission must open and protect out essential trade gateway*, Media Release, 17 September 2020, p 1.

³³ Friend, B, *Port Botany facing gridlock over industrial action*, 28 June 2021, available at <https://mhdsupplychain.com.au/2021/06/28/port-botany-facing-gridlock-over-industrial-action/>, accessed 14 November 2022.

³⁴ Whelan, S, *'Deja vu' in Australia's ports as terminals are hit by new round of strikes*, 14 June 2021, available at <https://theloadstar.com/deja-vu-in-australias-ports-as-terminals-are-hit-by-new-round-of-strikes/>, accessed 14 November 2022

3. Effect of the lockout on the economy

89. In this section I respond to Seyfarth Shaw's question:³⁵

What is the likely economic effect that the Lockout at the Ports is likely to have on the Australian economy, and/or any important part(s) of the Australian economy?

3.1 Overview of the consequences of the lockout

90. In this section I provide an overview of the economic consequences of the lockout in relation to the ports by reference to their direct, indirect and operational effects

3.1.1 Direct consequences in respect of vessels directly disrupted by bans

91. The lockout prevents the servicing of vessels requiring towage services that are scheduled to arrive or depart during the lockout.
92. Based on my prior experience in the analysis of the seaborne freight sector of the economy, I expect that spare berths and berthing windows for the vessels that are unable to be served by tugboat services would not be readily available. By consequence:
- a. the affected vessels will experience delays to their schedules; and so therefore
 - b. these vessels will miss their allotted windows for berthing as well as missing their booking windows in respect of all subsequent steps in the transport and logistics supply chain;
 - c. some time-sensitive goods on these vessels will be lost or significantly diminished in value; and
 - d. these vessels therefore need to find new slots and schedules, inserting themselves into a later point in an already congested and tightly managed supply chain; however,
 - e. the indefinite nature of the lockout imposes significant uncertainty as to the future availability of such slots.
93. Each day the lockout continues necessitates the reconfiguration of future berthing windows to accommodate vessels that are unable to be served until the lockout ends.
94. This disruption to scheduling affects not only the schedules for directly affected ships at the relevant ports but will also have flow-on effects to subsequent (and prior) ports called upon by those vessels, as well as disruptions to other vessels scheduled to call at the affected ports during or around the revised berth windows of the directly disrupted vessels.
95. Based on my prior experience of the seaborne freight sector, each day of lockout is also likely to have an enduring and effect on goods scheduled to be carried by container ships and bulk vessels in the future, because each day of lockout results in unmet demand for import and export servicing. This is likely to manifest in:
- a. delays to future bookings;
 - b. vessel schedules' 'sliding', ie, skipping a rotation of bookings to catch up to schedule;
 - c. decisions to omit one or more ports on a route;

³⁵ Instructions, para 2.1(b).

- d. cancellations of existing bookings and/or
 - e. the inability to accept new bookings.
96. Finally, each additional day that a lockout continues is likely to have compounding, worsening consequences. This is because the supply chain has an increasingly limited ability to reschedule freight as the length of the stoppage increases. By consequence, there is a non-linear 'snowball effect' in which the per-day consequences of a longer lockout will be greater than those for a shorter lockout.
97. I note that the cumulative consequence of disruptions in this context is consistent with the observed outcomes of industrial action by stevedores around Australia in 2020.³⁶

Lost cargo

98. Throughout this section, I refer to the direct consequence of the lockout as involving 'lost' cargo. Lost cargo can be thought of as imports and exports that do not take place, when otherwise – in a counterfactual world without the lockout – they would take place. The cause of such lost trade can be expected to manifest as export or import economic activity that no longer takes place by consequence of:
- a. for exports, contract cancellations or buyers substituting to other suppliers; and
 - b. for imports, products that are ultimately not sold, because either they have missed the relevant sales window and/or consumers have switched to another product or not purchased at all.
99. Lost cargo may also represent a reduction in the value of import and export activity that does take place, albeit at later time than would have been the case absent the lockout.

3.1.2 Indirect consequences

100. In addition to the direct consequences I describe above, any assessment of the consequences of the lockout for the Australian economy or an important part of it must also have regard to the relevant multiplier effects.
101. Economic multipliers can be used to take account of the interdependence between industries that make up an economy, and so the extent to which a direct shock, or change, in one form of economic activity has consequences for other forms of activity.³⁷
102. For example, if there is a direct impact to meat exports (such as a loss of containers shipped), there would also be indirect effects in the form of the various economic inputs into the meat exports' economic activity. Indirect effects also arise due to, say, lost wages for workers in the meat industry resulting in a reduction in expenditure by those meat workers affecting other forms of economic activity such as grocery or retail spending. Multiplier effects capture the 'induced' effects on other aspects of the economy arising from a direct economic impact.
103. The multiplier effect is typically expressed as a multiple of the initial economic shock of interest. There are two principal forms of analysis that study the impacts of those multipliers:
- a. input/output tables (or multiplier analysis); and
 - b. computable general equilibrium (CGE) analysis – such analysis is undertaken by means of a stylised model of an entire economy and measures the effect of changes in one part of the economy and how this flows through to other parts of the economy.

³⁶ See paragraph 140.

³⁷ Gretton, P, *On input-output tables: uses and abuses*, September 2013, p 2.

104. I have not conducted a specific multiplier analysis or CGE analysis to supplement the direct effects that are identified in this report. This would require a more complex and time-consuming analysis. However, I am aware from other studies of the transport and logistics industries that the multiplier in relation to economic activity in these sectors has been estimated in the range of 1.9 to 2.5, as I set out in more detail in section 3.5 below.

3.1.3 Operational consequences

105. In addition to the effect on port operations, the lockout is also likely to harm other elements of the logistics chain from the port to the exporter or end customer, ie, it is likely to:
- a. cause congestion and delays to truck and rail freight;
 - b. result in delay costs for ships, including demurrage and penalties payable to customers in respect of missed delivery windows; and
 - c. result in reputational damage to shipping lines and potentially to Australian exporters.

3.2 Approach to quantifying the consequences of the lockout

106. In the time available to prepare my report I have limited my quantitative consideration of the economic impact of the lockout at the container ports of Brisbane, Sydney, Melbourne, Adelaide and Fremantle, and the Port of Newcastle. Had it been practicable also to undertake this analysis by reference to liquid bulk imports and exports, or to undertake a full analysis for the remaining bulk ports served by Svitzer tugboats, my expectation is that this would have also added materially to the quantitative estimates of economic effect that I describe below.
107. In order to assess the consequences of the lockout, I first assess the likely standalone consequences of a one-day lockout and resulting stoppage of work on container vessels and bulk vessels at the above ports, drawing as far as possible on observed outcomes. In so doing, I assume that, upon completion of a one-day lockout, 'business as normal' can resume at each port with no further interruption.
108. I use this 'daily' measure of stoppage to estimate the effect of longer periods of lockout, ie, one day, seven days, 14 days, 30 days and 90 days, noting that each additional day of the lockout will have a compounding, worsening set of consequences.
109. Finally, I estimate the multiplier – or indirect – effects associated with the lockout by applying this multiplier to my estimate for the direct value of lost output to the economy by consequence of the lockout.
110. I have not attempted to quantify the operational consequences of the lockout, which may nevertheless also be significant. I describe the qualitative nature of these operational consequences in section 3.7 below.

3.3 Direct consequences of one-day lockout

111. The goods that are disrupted by the lockout refer to goods carried on vessels that are directly disrupted by stoppages of work during the lockout, ie, those goods on container and bulk vessels due to be serviced by Svitzer tugboats.

3.3.1 Value of trade handled at the relevant ports

112. My analysis indicates that a substantial volume of trade is handled at the relevant ports during the relevant period. In table 3.1 below I present the average daily containerised value and tonnage at each of the relevant ports over the three-month period ending 31 December 2021.

Table 3.1: Average daily containerised value and tonnage at ports, October 2021 to December 2021

Port	Volume of imports (tonnes)	Value of imports (\$, million)	Volume of exports (tonnes)	Value of exports (\$, million)
Brisbane	18,797	96.8	13,302	43.3
Sydney	24,577	159.9	16,536	45.2
Melbourne	30,065	187.9	27,987	80.5
Adelaide	4,249	19.1	6,842	19.3
Fremantle	10,764	50.9	9,547	18.1
Total	88,452	514.6	74,213	206.5

Source: MariTrade provided data sourced from individual ports and ABS international trade.

Note: Average daily value of containerised imports is calculated as the sum of FOB value of containerised imports at the relevant port over the three-month period to 31 December 2021, divided by the number of days in that period, ie, 92. The value of exports and the volume of imports and exports is calculated similarly.

Figures may not add to the total due to rounding.

113. In table 3.2 I present the average daily bulk value and tonnage at each of the Port of Newcastle over the three-month period ending 31 December 2021.

Table 3.2: Port of Newcastle average daily bulk value and tonnage, October 2021 to December 2021

	Volume of imports (tonnes)	Value of imports (\$, million)	Volume of exports (tonnes)	Value of exports (\$, million)
Newcastle	8,977	7.8	450,435	94.3

Source: MariTrade provided data sourced from individual ports and ABS international trade.

Note: Average daily value of bulk imports is calculated as the sum of FOB value of bulk imports at the Port of Newcastle over the three-month period to 31 October 2021, divided by the number of days in that period, ie, 92. The value of exports and the volume of imports and exports is calculated similarly.

Figures may not add to the total due to rounding.

114. In my opinion, given the seasonal nature of trade and the limitations I describe in section 2, these data are the best direct estimate of the trade at Port of Newcastle that may be affected by the lockout during the period starting November 2022. I note in section 2.1 my assumption that these outturn figures in respect of 2021 provide a reasonable indication of the value of trade that can be expected to be processed at the relevant ports over the period of November 2022.

3.3.2 Value of disrupted goods on relevant ships during period of lockout

115. Goods that cannot be handled at a port where a lockout is taking place will face delays in getting to their final destination. The contribution of those goods to the relevant state and Australian economies may be substantially reduced by consequence of a disruption, particularly for those goods that are:

- a. perishable;
- b. seasonal in nature or resold by importers without sufficient stock on hand; or
- c. inputs to the production of another good or service in a downstream market.

116. Lost sales are likely to be particularly relevant for importers of perishable goods that cannot be stored for long durations and that may perish before their arrival into Australia.

117. Some seasonal products attract premiums during a narrow period in which no alternative supplies are available, as noted by the Productivity Commission:³⁸

If the product does not arrive before its expiry date it is unlikely that the product can be sold at all. Particular examples include Chinese cabbage, broccoli and asparagus sold into South-East Asia.

Further, if commodities are imported to supply seasonal industries such as the fishing or wine industries and if these goods miss the season for which they were purchased, sales may be lost or made at greatly reduced prices. Shippers incur the financial cost of having the capital tied up when goods are held over to the next suitable season.

Containerised freight

118. Using the daily value of containerised trade at each of the relevant ports from table 3.1 above, I calculate the value of disrupted containerised goods on container ships during the lockout by multiplying the total value of containerised trade at each port over the one-day period by the estimated share of containerised imports and containerised exports carried by affected vessels, ie, relating to towage services that Svitzer would otherwise provide to container vessels and cannot be provided by an alternative provider.
119. I have been asked to assume that over 90 per cent of vessels calling at the ports require tug services to move in and out of the ports.³⁹ On this basis, I have estimated that 90 per cent of trade (imports and exports) at each port require tug services, and that the remaining 10 per cent of trade would not be affected by the lockout.
120. I have been asked to assume that all containerised vessels and all bulk vessels to which Svitzer provides towage services are affected by the lockout, but that there may be some limited ability to subcontract towage services during the period of lockout at some ports. In the table below I reproduce the information provided to me in relation to Svitzer's operating share of towage at the container ports and the Port of Newcastle.

Table 3.3 Estimates of Svitzer share of vessels requiring towage at each port

Port	Port share of vessels that require towage
Adelaide	100 per cent.
Brisbane	73 per cent, however Svitzer operates 100 per cent of the towage services due to a SLA with one of its competitors.
Fremantle	100 per cent.
Melbourne	77 per cent, however Svitzer operates 100 per cent of the towage services due to a SLA with one of its competitors.
Newcastle	100 per cent.
Sydney (Port Botany)	69 per cent.

Source: *Instructions, para 1.3.*

121. I have been instructed that there is limited to no ability for port operators and shipping lines to find alternative towage services in the event of the lockout.⁴⁰ Of the affected ports, only the two Sydney ports have an alternative towage provider (Engage).
122. It is uncertain as to whether the Engage would have capacity to service all of the ports' ship movements, given the Engage's own workloads and resources available to it in terms of crews and

³⁸ Productivity Commission, *International benchmarking of the Australian waterfront: Research report*, April 1998, p 201.

³⁹ Updated instructions, para 1.2.

⁴⁰ Instructions, para 1.5.

tugs. Svitzer currently has six tugs in service (out of its usual eight) and Engage has four tugs in Sydney. I have assumed that Engage would be able to serve 60 per cent of Svitzer's otherwise contracted jobs, leaving 40 per cent of service requirement unmet. I note that this assumption does not take into account the potential for this added demand for services to be performed by Engage to have a negative effect on the services it would otherwise normally offer.

123. I therefore estimate that the proportion of vessels that would usually require tug services and are 'affected' by the lockout at each port, being those vessels for which Svitzer would otherwise provide towage services and which cannot be provided by an alternative provider, as 40 per cent of Svitzer's vessels at Sydney and 100 per cent of vessels requiring towage at all other affected ports. I set out this information at table 3.4 below.

Table 3.4: Proportion of vessels that require towage at each port affected by the lockout

Port	Proportion of vessels that require towage affected by the lockout
Sydney container freight	27.6 per cent (69 per cent at Port Botany, with 60 per cent of this subcontracted).
All other ports	100 per cent.

124. I estimate the value of containerised imports and exports carried by affected vessels each day over the assessment period by taking the value of imports and exports at each port, from table 3.1, and:
- multiplying this by 90 per cent, representing my assumption that 90 per cent of trade requires towage services; and
 - multiplying this by Svitzer's share of trade that cannot be subcontracted, from table 3.4.
125. I present my estimates of the value of imports and exports carried by affected vessels over an average one-day period in table 3.5 below.

Table 3.5: Value of containerised goods on ships disrupted by a one-day lockout

Port	Value of disrupted imports (\$, millions)	Value of disrupted exports (\$, millions)	Total value of disrupted goods (\$, millions)
Brisbane	87.12	38.99	126.11
Sydney	39.72	11.23	50.94
Melbourne	169.11	72.49	241.60
Adelaide	17.21	17.38	34.60
Fremantle	45.81	16.32	62.13
Total	358.97	156.41	515.38

Source: *HoustonKemp analysis of MariTrade provided data sourced from individual ports and ABS international trade.*

Notes: *Value of disrupted imports is equal to the average daily value of containerised imports, from table 3.1, multiplied by 90 per cent (representing the proportion of trade that requires towage services), multiplied by the proportion of freight at the relevant port that cannot be serviced by an alternative towage provider, from table 3.4.*

The value of disrupted exports is calculated similarly.

The total value of disrupted goods is the sum of disrupted imports and disrupted exports.

Figures may not add to the total due to rounding.

Bulk freight

126. I estimate the value of bulk imports and exports carried by affected vessels at the Port of Newcastle each day over the assessment period by taking the value of imports and exports at each port, from table 3.2. and:

- a. multiplying this by 90 per cent, representing my assumption that 90 per cent of trade requires towage services; and
- b. multiplying this by Svitzer's share of trade that cannot be subcontracted, from table 3.4.

127. I present my estimates of the value of bulk imports and exports over an average one-day period in table 3.6 below.

Table 3.6: Value of disrupted bulk goods at Port of Newcastle on ships disrupted by one-day lockout

Port	Value of disrupted imports (\$, millions)	Value of disrupted exports (\$, millions)	Total value of disrupted goods (\$, millions)
Newcastle	7.05	84.88	91.93

Source: *HoustonKemp analysis of MariTrade provided data sourced from individual ports and ABS international trade.*

Notes: Value of disrupted imports is equal to the average daily value of bulk imports, from table 3.2, multiplied by 90 per cent (representing the proportion of trade that requires towage services), multiplied by the proportion of freight at the Port of Newcastle that cannot be serviced by an alternative towage provider, from table 3.4.

The value of disrupted exports is calculated similarly.

The total value of disrupted goods is the sum of disrupted imports and disrupted exports.

Figures may not add to the total due to rounding.

3.3.3 Value of lost goods on relevant ships during period of lockout

128. The direct value of goods disrupted by the lockout that I estimate above is not an estimate of the value lost completely, since many of the disrupted goods will likely be delivered to their destination eventually, albeit after a delay. At one end of the spectrum of possibilities, a delay may give rise to an inconvenience for an importer, without necessarily translating into a permanent loss in output and sales that, in turn, results in lost wages and profit. Businesses or consumers falling into this category are likely to be those for whom the import supply chain is a modest or occasional component of their enterprise.
129. At the other end of the spectrum are importers for whom containerised freight supports complex production and distribution supply chains and/or where international competitiveness demands cost efficiency, as arises from well-functioning, just in time product processing. For these industries, the economic harm occasioned by delays in the flow of inputs to the point of production carries a much greater risk of irrecoverable damage.
130. I am not aware of any recent economic impact studies on the consequences of lockouts at an Australian port. In estimating the direct consequences of disruption, I have had regard to:
 - a. OECD research papers on global ports, including the findings that a 10 per cent increase in total transit time leads to a reduction in trade value for exports of between five and 25 per cent;⁴¹
 - b. estimates by the Congressional Budget Office in the United States of the effect of a one-week shutdown of all container traffic through the ports of Los Angeles and Long Beach, California, at losses of between 13 and 30 per cent of imports per day;⁴² and

⁴¹ In particular, for Australia, the estimates of reduction in trade value resulting from a 10 per cent increase in transit time were 7 per cent for all goods, 15 per cent for intermediate goods, 5 per cent for clothing and 10 per cent for electronics. H Nordas, E Pinali and M Geloso Gross, *Logistics and time as a trade barrier, OECD Trade Policy Working Papers*, 35, May 2006, pp 9, 32.

⁴² The paper finds that the closure of these Los Angeles and Long Beach ports for one week would have cost the US economy between US\$65 million and US\$150 million per day. Accounting for containerised imports through these ports of an average of US\$500 million per day at the period of the study, loss of \$65 million to \$150 million translates to an economic cost of approximately 13 to 30 per cent, calculated as 65/500 and 150/500 respectively. See: Congressional Budget Office, *The economic costs of disruptions in container shipments*, March 2006, p 2.

- c. estimates of the total economic impact of a port disruption over a 90-day period at the Port of Beaumont and Port Arthur in Texas, drawing on input-output multiplier analysis – this paper found that a 90-day disruption at the two ports would be associated with a \$4,186 million,⁴³ or 24 per cent impact on gross output to the Port Region,⁴⁴ for which I note that:
- i. as a percentage of trade through the port, the estimate equates to 44 per cent; and
 - ii. in having regard to this paper, measures of gross output are distinct from measures of economic loss.

131. These studies provide an order-of-magnitude indication of the proportional consequences of an interruption at the ports. In the remainder of my analysis, I have adopted a range of conservative assumptions that the direct economic loss per day ranges from five per cent to ten per cent of affected imports and from five per cent to ten per cent of affected exports, in each instance on the assumption that a normal level of vessel service capability is in operation immediately prior to the lockout and resumes immediately thereafter (noting that the lockout is indefinite).
132. On this basis, I estimate that a lockout on any one day will result in a loss of output for containerised goods disrupted on board affected ships of:
- a. \$17.9 million to \$35.9 million for imports; and
 - b. \$7.8 million to \$15.6 million for exports.
133. I present these estimates by affected port in table 3.7 below.

Table 3.7: Value of lost containerised goods on ships directly affected by a one-day lockout

Port	Value of lost imports at 5% of imports disrupted (\$, millions)	Value of lost imports at 10% of imports disrupted (\$, millions)	Value of lost exports at 5% of exports disrupted (\$, millions)	Value of lost exports at 10% of exports disrupted (\$, millions)	Total value of lost goods (\$, millions)
Brisbane	4.36	8.71	1.95	3.90	6.31-12.61
Sydney	1.99	3.97	0.56	1.12	2.55-5.09
Melbourne	8.46	16.91	3.62	7.25	12.08-24.16
Adelaide	0.86	1.72	0.87	1.74	1.73-3.46
Fremantle	2.29	4.58	0.82	1.63	3.11-6.21
Total	17.95	35.90	7.82	15.64	25.77-51.54

Source: *HoustonKemp analysis of MariTrade provided data sourced from individual ports and ABS international trade.*

Note: Value of lost imports is equal to the value of disrupted imports, from table 3.5, multiplied by the proportion of disrupted goods that become lost (five or ten per cent).

Value of lost exports is calculated similarly.

Total value of lost goods is the sum of the value of lost imports and the value of list exports.

Figures may not add to the total due to rounding.

⁴³ Rose A, Wei Dan, *Estimating the economic consequences of a port shutdown: the special role of resilience*, Economic Systems Research, 2013, Vol. 25, No. 2, pp 225-228. This paper estimated the effects of a complete shutdown of the two ports in the region, but in arriving at its estimate for the impact on gross output assumes that 'resilience' measures apply, including 90 per cent re-routing of import vessels to other ports, release of strategic reserves of petroleum to replace crude oil imports to ensure refineries in the region continue to operate, existing inventories and substitutes are used as input goods in place of imports, scarce materials are conserved and used more efficiently, and that production rescheduling (ie, delay until after the disruption) is possible. In my opinion, it is unlikely that many of these mitigating factors would apply in relation to the lockout, which is of an indefinite duration and was announced in a time frame likely to be insufficient for many affected parties to take such measures. I note that the paper estimated an impact on gross output of \$9.6 billion, or 54 per cent of gross output of the region, if such measures did not apply.

⁴⁴ At the time, regional output was around \$71 billion per year, or \$17.8 billion per quarter. \$4,186 million is approximately 23 per cent of quarterly regional output. Rose A, Wei Dan, *Estimating the economic consequences of a port shutdown: the special role of resilience*, Economic Systems Research, 2013, Vol. 25, No. 2, p 221.

134. In contrast to the broad range of goods imported and exported by containerised freight, bulk freight exported at the Port of Newcastle comprises largely coal. In November and December 2021, coal exports accounted for approximately 85 per cent of the value of imports and exports through the Port of Newcastle.
135. I explain at paragraph 187 my opinion that, in present value terms, the lockout would cause the full value of disrupted coal exports from the Port of Newcastle to be lost, because of the finely tuned nature of the Hunter Valley coal supply chain.
136. On this basis, I assume that 85 per cent of the bulk goods disrupted for each one-day lockout at the Port of Newcastle are lost, with this value being approximately equivalent to the full or 100 per cent loss of coal exports and no loss of other exports and all imports. I note that not applying any loss estimate to the remaining 15 per cent of goods at the Port of Newcastle is highly conservative.
137. I therefore estimate that a one-day lockout will result in a loss of output for exported bulk goods at the Port of Newcastle of \$72.1 million.
138. I present these estimates in table 3.8 below.

Table 3.8: Value of bulk goods lost at Port of Newcastle, caused by one-day lockout

Port	Value of lost imports at 0% of imports disrupted (\$, million)	Value of lost exports at 85% of exports disrupted (\$, million)	Total value of lost goods
Newcastle	0.00	72.15	72.15

Source: HoustonKemp analysis of MariTrade provided data sourced from individual ports and ABS international trade.

Note: Value of lost imports is equal to the value of disrupted imports, from table 3.6, multiplied by the proportion of disrupted goods that become lost (zero for the Port of Newcastle).

Value of lost exports is calculated similarly, except 85 per cent is applied to exports at the Port of Newcastle.

Total value of lost goods is the sum of the value of lost imports and the value of list exports.

Figures may not add to the total due to rounding.

3.4 Compounding effect of lockout

139. The lockout comprises indefinite stoppages at the ports. My analysis above sets out a framework for assessing the effect of a one-day stoppage. In the context of the existing congestion at many ports to which I refer in section 2.4, longer or subsequent stoppages will typically have a compounding, worsening set of consequences.
140. For example, I understand that during industrial action by stevedores in September 2020, Patrick Terminals publicly noted that the industrial action at Port Botany cut terminal production by 40 per cent and was made worse by half a day for every day the action continued.⁴⁵
141. Given the uncertain, indefinite period of the lockout, I have incorporated this compounding effect into my calculations by assuming that the proportion of goods that become lost for a lockout of greater than 14 days is ten per cent, ie, at the higher end of the range that I have assumed for a one-day lockout.⁴⁶

⁴⁵ Whelan, S, *Importers 'close to breaking point' as tension rises at Sydney's Port Botany*, 17 September 2020, The Loadstar, available at: <https://theloadstar.com/importers-close-to-breaking-point-as-tension-rises-at-sydneys-port-botany/>, accessed 1 September 2022.

⁴⁶ In relation to the Port of Newcastle, have continued to assume that all coal exports affected by the lockout (being 85 per cent of total affected exports) are lost.

3.5 Indirect effects

142. I have not conducted a specific multiplier analysis to supplement the direct effects that I identify in this report. This would require a more complex and time-consuming analysis. However, I am aware from other studies of the transport and logistics industries that the multiplier in relation to economic activity in these sectors has been estimated in the range of 1.9 to 2.5, the details of which I describe below.
143. I note the following estimates of multiplier effects in relation to the transport and logistics sector in Australia, ie:
- a. a report by PwC estimates that the maritime industry supports an additional \$11.8 billion of industry gross value add to other industries of the Australian economy, based on direct contribution of \$9.041 billion,⁴⁷ computed using a computable general equilibrium (CGE) model – this is consistent with a total value add multiplier of around 2.31;⁴⁸
 - b. Deloitte Access Economics estimates that a one per cent increase in port efficiency would increase state GSP by 0.008 per cent in the long run;⁴⁹
 - c. OECD research estimates the indirect economic effects (backward linkage) multipliers in the range of 1.13 to 2.47;⁵⁰
 - d. the NSW government has highlighted that:⁵¹

Logistics is much more than just transport, with general agreement in previous studies that the entire logistics sector accounts for 2.2 to 2.5 times the freight transport component
 - e. ACIL Allen suggests that a one per cent increase in the productivity of logistics would add \$2 billion to Australia's GDP, based on its CGE model;⁵²
 - f. a report by PwC estimates a multiplier of 1.9 for the Port of Melbourne;⁵³ and
 - g. the Port of Fremantle highlights that, in addition to the 2,000 jobs directly linked to its operations in 2018, around three times that many jobs (6,000) are linked indirectly.⁵⁴
144. In order to illustrate the indicative magnitude of the total effect of the lockout, I apply a multiplier of 1.9 to the direct effects, as shown in table 3.9 below.

⁴⁷ PwC, *The economic contribution of the Australian maritime industry*, February 2015, p 57.

⁴⁸ PwC, *The economic contribution of the Australian maritime industry*, February 2015, p 20.

⁴⁹ Deloitte Access Economics, *NSW container and port policy*, Port of Newcastle, March 2018, p 71.

⁵⁰ O Merk, *The competitiveness of global port-cities: Synthesis report*: OECD Regional Development Working Papers, 2013, p 21.

⁵¹ NSW Government, *NSW freight and ports strategy*, November 2013, p 7.

⁵² ACIL Allen, *The economic significance of the Australian logistics sector*, July 2014, p 11.

⁵³ PwC, *Economic analysis of the Port of Melbourne*, March 2007, p 50.

⁵⁴ Port of Fremantle, *Fremantle Ports 2018 Annual Report*, p 8.

Table 3.9: Indicative quantification of the total (including multiplier) effects associated with a one-day lockout

	Value of lost imports (\$, million)	Value of lost exports (\$, million)	Total value of lost goods (\$, million)
Containerised freight			
Direct effects of one-day lockout	18-36	8-16	26-52
Total effects of one-day lockout, using multiplier of 1.9	34-68	15-30	49-98
Bulk freight at Port of Newcastle			
Direct effects of one-day lockout	0	72	72
Total effects of one-day lockout, using multiplier of 1.9	0	137	137
All freight			
Direct effects of one-day lockout	18-36	80-88	98-124
Total effects of one-day lockout, using multiplier of 1.9	34-68	152-167	186-235

Notes: 'Direct effects' from table 3.7 and table 3.8. 'Total effects' equal to 'Direct effects' multiplied by 1.9. Figures may not add to the total due to rounding.

3.6 Economic significance of direct consequences to the economy

145. By way of indication of the economic significance of the trade either disrupted and/or lost, in table 3.10 below I present an order of magnitude comparison of these values by reference to the gross product for each state.
146. Gross state and domestic products are primary indicators of the scale of all economic activity, as measured by the sum of total compensation to employees, gross profits for firms and taxes less any subsidies. The practical implication of any disruption to, or contraction in, gross state and domestic products caused by the lockout is that the 'income' that employees and firms receive is threatened, and/or lower than it would be otherwise.
147. Importantly, the estimates I present above do not account for the total consequences of the lockout, since I have not attempted to quantify the diffuse, operational effects of the lockout. Their exclusion may understate materially the total economic significance of the lockout to Australia.
148. At Table 3.10 below I set out my estimates of the value of lost containerised goods due to one-day lockout relative to state GSP. I compare the value of lost goods to an estimate for GSP over the same length period. I also estimate the value of lost containerised goods if the lockout extended to seven, 14, 30 or 90 days. Table 3.11 sets out my estimates of the value of lost bulk goods at Port of Newcastle due to a lockout relative to state GSP, using the same methodology.

Table 3.10: Value of lost containerised goods due to a lockout, relative to state GSP

Port	State	Average GSP over relevant period (\$, million)	Direct value of lost goods (\$, million)	Direct loss relative to GSP	Total value of lost goods including multiplier (\$, million)	Total loss relative to GSP
<i>One-day lockout</i>						
Brisbane	QLD	1,003	6-13	0.63%-1.26%	12-24	1.19%-2.39%
Sydney	NSW	1,762	3-5	0.14%-0.29%	5-10	0.27%-0.55%
Melbourne	Vic	1,299	12-24	0.93%-1.86%	23-46	1.77%-3.53%
Adelaide	SA	323	2-3	0.54%-1.07%	3-7	1.02%-2.04%
Fremantle	WA	991	3-6	0.31%-0.63%	6-12	0.60%-1.19%
Total	Australia	5,663	26-52	0.46%-0.91%	49-98	0.86%-1.73%
<i>Seven-day lockout</i>						
Brisbane	QLD	7,024	44-88	0.63%-1.26%	84-168	1.19%-2.39%
Sydney	NSW	12,334	18-36	0.14%-0.29%	34-68	0.27%-0.55%
Melbourne	Vic	9,093	85-169	0.93%-1.86%	161-321	1.77%-3.53%
Adelaide	SA	2,258	12-24	0.54%-1.07%	23-46	1.02%-2.04%
Fremantle	WA	6,938	22-43	0.31%-0.63%	41-83	0.60%-1.19%
Total	Australia	39,641	180-361	0.46%-0.91%	343-685	0.86%-1.73%
<i>14-day lockout</i>						
Brisbane	QLD	14,049	88-177	0.63%-1.26%	168-335	1.19%-2.39%
Sydney	NSW	24,669	36-71	0.14%-0.29%	68-136	0.27%-0.55%
Melbourne	Vic	18,187	169-338	0.93%-1.86%	321-643	1.77%-3.53%
Adelaide	SA	4,516	24-48	0.54%-1.07%	46-92	1.02%-2.04%
Fremantle	WA	13,876	43-87	0.31%-0.63%	83-165	0.60%-1.19%
Total	Australia	79,283	361-722	0.46%-0.91%	685-1371	0.86%-1.73%
<i>30-day lockout</i>						
Brisbane	QLD	30,105	378	1.26%	719	2.39%
Sydney	NSW	52,861	153	0.29%	290	0.55%
Melbourne	Vic	38,972	725	1.86%	1,377	3.53%
Adelaide	SA	9,677	104	1.07%	197	2.04%
Fremantle	WA	29,734	186	0.63%	354	1.19%
Total	Australia	169,891	1,546	0.91%	2,938	1.73%
<i>90-day lockout</i>						
Brisbane	QLD	90,315	1,135	1.26%	2,156	2.39%
Sydney	NSW	158,584	459	0.29%	871	0.55%
Melbourne	Vic	116,916	2,174	1.86%	4,131	3.53%
Adelaide	SA	29,032	311	1.07%	592	2.04%
Fremantle	WA	89,201	559	0.63%	1,062	1.19%
Total	Australia	509,674	4,638	0.91%	8,813	1.73%

Source: ABS, 5220.0 – Australian National Accounts: State Accounts – Table 1, Gross State Product, current prices, 2021 financial year.

Notes: 'Average GSP over relevant period' is calculated as GSP for the 2021 financial year, divided by 365, multiplied by the 'Relevant period' is equal to the length of the lockout.

For one-day lockout, 'Direct value of lost goods' equal to the sum of value of lost goods during the lockout from table 3.7.

For seven-day and 14-day lockouts, 'Direct value of lost goods' equal to the direct value of lost goods for one-day lockout, multiplied by 3 and 7, respectively. For 30-day and 90-day lockouts, 'Direct value of lost goods' equal to the upper bound of direct value of lost goods for one-day lockout, multiplied by 30 and 90, respectively.

'Direct loss relative to GSP' is calculated as direct value of lost goods divided by average GSP over relevant period.

'Total value of lost goods including multiplier' is calculated as direct value of lost goods multiplied by 1.9.

'Total loss relative to GSP' is calculated as total value of lost goods including multiplier divided by average GSP over relevant period.

The total GDP figure for Australia is larger than the sum of GSP relating to the ports, due to the inclusion of all states and territories in the Australia GDP figure.

Figures may not add to the total due to rounding.

Table 3.11: Value of lost bulk goods at Port of Newcastle due to a lockout, relative to state GSP

Port	State	Average GSP over relevant period (\$, million)	Direct value of lost goods (\$, million)	Direct loss relative to GSP	Total value of lost goods including multiplier (\$, million)	Total loss relative to GSP
<i>One-day lockout</i>						
Newcastle	NSW	1,762	72	4.09%	137	7.78%
Total	Australia	5,663	72	1.27%	137	2.42%
<i>Seven-day lockout</i>						
Newcastle	NSW	12,334	505	4.09%	960	7.78%
Total	Australia	39,641	505	1.27%	960	2.42%
<i>14-day lockout</i>						
Newcastle	NSW	24,669	1,010	4.09%	1,919	7.78%
Total	Australia	79,283	1,010	1.27%	1,919	2.42%
<i>30-day lockout</i>						
Newcastle	NSW	52,861	2,164	4.09%	4,112	7.78%
Total	Australia	169,891	2,164	1.27%	4,112	2.42%
<i>90-day lockout</i>						
Newcastle	NSW	158,584	6,493	4.09%	12,337	7.78%
Total	Australia	509,674	6,493	1.27%	12,337	2.42%

Source: ABS, 5220.0 – Australian National Accounts: State Accounts – Table 1, Gross State Product, current prices, 2021 financial year.

Notes: 'Average GSP over relevant period' is calculated as GSP for the 2021 financial year, divided by 365, multiplied by the relevant period.

'Relevant period' is equal to the length of the lockout.

For one-day lockout, 'Direct value of lost goods' equal to the sum of value of lost goods during the lockout from table 3.8.

For seven-day and 14-day lockouts, 'Direct value of lost goods' equal to the direct value of lost goods for one-day lockout, multiplied by 3 and 7, respectively. For 30-day and 90-day lockouts, 'Direct value of lost goods' equal to the upper bound of direct value of lost goods for one-day lockout, multiplied by 30 and 90, respectively.

'Direct loss relative to GSP' is calculated as direct value of lost goods divided by average GSP over relevant period.

'Total value of lost goods including multiplier' is calculated as direct value of lost goods multiplied by 1.9.

'Total loss relative to GSP' is calculated as total value of lost goods including multiplier divided by average GSP over relevant period.

Figures may not add to the total due to rounding.

3.7 Operational consequences

149. In recent decades, supply chains have undergone transformations towards leaner, more agile 'just-in-time' systems.⁵⁵ A 'just-in-time' supply chain is one that minimises costs by procuring and delivering everything at the last possible opportunity, minimising the costs of warehousing and storage.
150. Such forms of business operation necessarily have very little flexibility to respond to delays or other operational interruptions. In consequence, a lockout at the ports is likely to cause significant 'ripple effects' out across the supply chain.
151. In this section I describe the nature of the operational consequences of previous industrial action and the lockout at the ports.
152. These operational consequences include:
- a. costs to shippers associated with delays to ships being able to berth in port; and
 - b. reputational effects.
153. I have not attempted to quantify these reputational effects.

3.7.1 Costs to shippers

154. Operational costs associated with delays to ships being able to berth in port include:
- a. demurrage costs for the duration of time that vessels are delayed;
 - b. additional costs associated with sourcing containers – these costs can arise due to the shortage of empty containers at origin, which is brought about by constraints on empty container supply out of Australia to load points overseas;
 - c. of further note, containers are subject to size and type requirements, along with quality standards and restrictions on certain product types (eg, containers used for scrap in one direction cannot be used for food products in the other direction), which exacerbate the shortage of containers arising from a disruption;
 - d. the cost of transport and potentially storage for those containers that are shipped to and offloaded at an alternate port; and
 - e. additional operating costs or loss of productivity, to the extent that delayed imports are necessary inputs to an importer's production process and the delay in their arrival holds up production.⁵⁶
155. I observe that industrial action at terminals around Australia over the last two years suggests that importers are already bearing these costs. For instance, during industrial action by stevedores in September 2020, Patrick Terminals publicly noted that the industrial action at Port Botany cut terminal production by 40 per cent, with shipping schedules slipping by nine days – and made worse by half a day for every day the action continued.⁵⁷

⁵⁵ See, for example, Nordas, H, *International production sharing: a case for a coherent policy framework*, World Trade Organisation (WTO) Discussion paper 11, 2005, p 1.

⁵⁶ This may also include additional container storage costs, to the extent there are delays in the transport of containers upon resumption of normal services at terminals.

⁵⁷ Whelan, S, *Importers 'close to breaking point' as tension rises at Sydney's Port Botany*, 17 September 2020, The Loadstar, available at: <https://theloadstar.com/importers-close-to-breaking-point-as-tension-rises-at-sydneys-port-botany/>, accessed 14 November 2022.

156. Paul Zalai – the director of the Freight and Trade Alliance – highlighted that because of industrial action at Port Botany vessels had been:⁵⁸

‘Vessels are now bypassing Port Botany, discharging goods interstate and leaving importers to pay massive logistics costs to organise movinmg [sic] freight back to Sydney.

Once cargo is received, importers then face the difficulty of returning the empty containers to a shipping line-contracted and nominated depot. With the failure of shipping lines to evacuate surplus empty containers, Sydney’s depots are at full capacity with transport operators passing on costs for redirections, waiting times, futile trips and storage containers.’

157. In addition to these logistical costs, shipping lines are reported to have imposed congestion charges on importers, eg:⁵⁹

Shipping lines have already begun to pass on the extra costs to importers, with four carriers implementing congestion surcharges of around A\$300 per teu, including MSC, ANL, Pacific Asia Express and Hapag-Lloyd, with others expected to follow suit.

3.7.2 Reputational effects

158. In addition to the direct loss associated with the lockout, there are a number of sectors whose business activities may reasonably be expected to suffer broader reputational damage.
159. These businesses include shippers and exporters of perishable and/or seasonal items, such as agricultural exporters and retailers.
160. By way of example, previous industrial action at Victoria International Container Terminal at the port of Melbourne in 2017 left stranded at the port consignments of Victorian pears destined for Indonesia. The exporter was not able to access containers already in the staging yard and explained that:⁶⁰

...he could lose all his money or have to heavily discount the produce which should have arrived in Indonesia by now.

This disrupts the trading relationship and our reputation as Australian exporters.

161. The same industrial action also left stranded more than 50,000 litres of fresh milk at Victoria International Container Terminal, with one exporter of milk explaining that:⁶¹

...the cost of the spoiled milk, including transport, disposal, and damaged reputation, would far exceed the \$60,000 value of the lost sale.

It’s a bad look for Victoria, and our whole food reputation

162. Although difficult to quantify, in my opinion it is reasonable to expect that these operational costs would be a significant component of the total cost of the lockout to the Australian economy.

⁵⁸ Whelan, S, *Importers ‘close to breaking point’ as tension rises at Sydney’s Port Botany*, 17 September 2020, The Loadstar, available at: <https://theloadstar.com/importers-close-to-breaking-point-as-tension-rises-at-sydneys-port-botany/>, accessed 14 November 2022.

⁵⁹ Whelan, S, *Importers ‘close to breaking point’ as tension rises at Sydney’s Port Botany*, 17 September 2020, The Loadstar, available at: <https://theloadstar.com/importers-close-to-breaking-point-as-tension-rises-at-sydneys-port-botany/>, accessed 14 November 2022.

⁶⁰ Patty, A and Toscano, N, *Ports dispute enters second week and stalls millions of dollars in Christmas deliveries*, The Sydney Morning Herald, December 2017, available at: <https://www.smh.com.au/business/workplace/ports-dispute-enters-second-week-and-stalls-millions-of-dollars-in-christmas-deliveries-20171206-gzzma0.html>, accessed 14 November 2022.

⁶¹ The Weekly Times, *Milk rots as Melbourne ports dispute drags on*, Weekly Times Now, 13 December 2017, available at: <https://www.weeklytimesnow.com.au/agribusiness/dairy/milk-rots-as-melbourne-ports-dispute-drags-on/news-story/678b418ca47c68b03781685a1bfc00db>, accessed 14 November 2022.

4. Effect of lockout on particular sectors

163. In this section, I respond to Seyfarth Shaw's question as to:⁶²

Are there particular sectors of the Australian or State economies which are likely to be particularly affected by a stoppage of work at the Affected Ports? If so, which sectors or industries are likely to be so affected and what are the likely effects on each of them?

164. There are a number of sectors whose business activities can reasonably be expected to lose a significant amount of value as a result of any such delays, namely those sectors that involve:

- a. a loss of sales as a result of the inability to ship product to export markets – this issue is likely to be most significant for:
 - i. resource-based industries that operate supply chains that cannot readily make up lost days of export production; and
 - ii. exporters of perishable and/or seasonal products that may expire prior to resumption of normal stevedoring services, or be delivered with a reduced shelf-life and so lower value;
- b. a loss of productivity or increased storage/operating costs resulting from the delay in production of products for export; and
- c. a loss of sales of downstream goods or services where imported goods represent inputs to production in a downstream market and result in lost production.

165. In the limited time available to prepare my report, I have identified the coal export industry, meat export and processing, retail sector, the transport and logistics sectors and liquid fuel imports as likely to be disproportionately affected by the lockout. In particular:

- a. Australia was the largest exporter of metallurgical coal and second-largest exporter of thermal coal in 2020, and the Port of Newcastle is Australia's largest terminal for coal exports;⁶³
- b. meat export production has an obvious 'shelf life' and a value that reduces with the duration of storage – exported meat is worth an estimated \$15 billion to the Australian economy⁶⁴ and reliant on efficient shipping links to ensure the delivery of meat to export markets within short time frames;
- c. the retail industry – which is reliant on regular imports for the sale of goods in Australia and can be characterised as an increasingly competitive industry in which to operate;
- d. the transport and logistics section – which would experience disruption based on the flow of containers through each affected container port through the logistics chain that facilitates the transport and processing of containers for import or export; and
- e. the liquid fuel imports sector, which is a key input a wide range of economic activity, such that a serious disruption to Australia's fuel supply would have broad consequences including for food supply, medication, aviation, and military equipment, in a context where Australia holds only a limited reserve of liquid fuels.

⁶² Updated instructions, 16 November 2022, para 1.3.

⁶³ NSW Government | Transport for NSW, *NSW Freight and Ports Plan 2018-2023*, September 2018, p 39.

⁶⁴ Meat & Livestock Australia, *State of the industry report 2021*, March 2022, p 17.

166. In this section, I provide a qualitative description of the consequences of disruption on these sectors.

4.1 Coal exports

4.1.1 Coal is a substantial contributor to total Australian exports

167. Australia forms a significant part of the global trade of coal. In 2020, Australia was the largest exporter of metallurgical coal, exporting 55 per cent of the world's total traded metallurgical coal, and the second largest exporter of thermal coal, exporting 21 per cent of the world's total traded thermal coal.⁶⁵
168. Australia's coal exports are primarily destined for some of the largest coal importers in the world located throughout Asia, including Japan, South Korea and India.⁶⁶
169. Despite China's informal ban on coal exported from Australia, demand for Australian coal remains high, with many major overseas importers switching to Australian sourced coal made available by reduced demand from China.⁶⁷ It has been observed that the prospects of the informal ban being removed may have risen in the context of the significant increase in commodity prices since the commencement of the Ukraine war.⁶⁸
170. Coal exports represented approximately 21 per cent of Australia's total exports by value in the 2022 financial year.⁶⁹ The total value of coal exports in the 2022 financial year, \$112.8 billion, was significantly larger than in the previous financial year, \$39.2 billion. In the 2019 calendar year, coal exports totalled \$63.9 billion.⁷⁰
171. Coal mining also generates jobs in regional areas of Australia and New South Wales, while royalties generate revenue for social infrastructure, such as schools and hospitals.⁷¹
172. With coal prices currently well above average, Australian thermal coal export values are forecast to total \$44 billion, and metallurgical coal export values are forecast at over \$60 billion in financial year ended 30 June 2023.⁷² This data underlines that Australian coal is presently in very high demand in the wake of the Ukraine war.⁷³
173. From an economic perspective, coal miners can be expected to aim to ramp up production and exports of coal when world coal prices are high, to take advantage of the favourable conditions. Delays in the ability to transport and therefore export coal therefore affect the output and profitability of such mines.

⁶⁵ Australian Government | Department of Industry, Science, Energy and Resources | Office of the Chief Economist, *Resources and Energy Quarterly*, June 2022, pp 52 and 62.

⁶⁶ Australian Government | Department of Industry, Science, Energy and Resources | Office of the Chief Economist, *Resources and Energy Quarterly*, June 2022, pp 52 and 62.

⁶⁷ Australian Government | Department of Industry, Science, Energy and Resources | Office of the Chief Economist, *Resources and Energy Quarterly*, December 2021, pp 49 and 64.

⁶⁸ Birtles, B, *China increasingly expected to drop ban on Australian coal as nation's economic woes deepen*, 15 July 2022, available at: <https://www.abc.net.au/news/2022-07-15/china-increasingly-expected-to-drop-ban-on-australian-coal/101242670>,

⁶⁹ ABS, *536803 International Trade in Goods and Services, Australia, Table 3: Goods credits, original, current prices*, Series ID A2717939F, June 2022.

⁷⁰ ABS, *536803 International Trade in Goods and Services, Australia, Table 3: Goods credits, original, current prices*, Series ID A2717939F, June 2022.

⁷¹ Department of Regional NSW, *Strategic statement on coal exploration and mining in NSW*, 2020, p 3.

⁷² Department of Industry, Science and Resources, *Resources and energy quarterly*, June 2022, pp 53, 63, 71.

⁷³ Department of Industry, Science and Resources, *Resources and energy quarterly*, June 2022, pp 70-71.

4.1.2 Port of Newcastle is an integral part of the coal export industry

174. The Hunter Valley coal chain in New South Wales is the largest coal export operation in the world, transporting coal from mines in the Hunter Valley to the Port of Newcastle.⁷⁴ Correspondingly, the Port of Newcastle is the largest terminal for coal exports in Australia.⁷⁵ In the year to July 2022, the Port of Newcastle exported 80.4 million tonnes of coal valued at \$31.2 billion.⁷⁶ This represented 92.2 per cent of the Port of Newcastle's total export trade value and 84.1 per cent of its combined import and export trade value for the year to July 2022.
175. The Hunter Valley coal chain:⁷⁷
- ... is a complex system, involving 11 producers operating 35 coal mines, 27 coal load points, two rail track owners, four above rail operators, three coal loading terminals with a total of eight berths, and nine vessel operators.
176. The Hunter Valley Coal Chain Coordinator (HVCCC) is an organisation of coal producers, rail service providers and terminal operators using the Port of Newcastle that provides an operational foundation to support the high export volume of coal from the Port of Newcastle.⁷⁸
177. The Port of Newcastle handled 920 coal trade vessels during the year to July 2022, a figure that amounted to 76.8 per cent of the total vessels calling at the Port of Newcastle during this period.⁷⁹
178. The number of total ship visits at the Port of Newcastle, including the number of coal vessels, has remained comparatively stable since 2017, as indicated as table 4.1 below.

Table 4.1: Total vessels at the Port of Newcastle

Vessel\Calendar year	2016	2017	2018	2019	2020	2021	2022 to July
Coal vessels	1,764	1,757	1,769	1,813	1,754	1,757	920
Non-coal vessels	494	569	530	483	453	509	278
Total vessels	2,258	2,326	2,299	2,269	2,207	2,266	1,198

Source: Port of Newcastle, Trade Report 2016, April 2017, p 2; Port of Newcastle, Trade Report 2017, April 2018, p 2; Port of Newcastle, Trade Report 2017, April 2019, p 2; Port of Newcastle, Monthly trade report | December 2019, available at <https://www.portofnewcastle.com.au/wp-content/uploads/2020/01/Port-of-Newcastle-Monthly-Trade-Report-December-2019.pdf>, accessed 1 September 2022; Port of Newcastle, Monthly trade report | December 2020, available at <https://www.portofnewcastle.com.au/wp-content/uploads/2021/01/20201201-External-Monthly-Trade-Report-December-2020.pdf>, accessed 1 September 2022; and Port of Newcastle, Monthly trade report | December 2021, available at <https://www.portofnewcastle.com.au/wp-content/uploads/2022/01/20211201-External-Monthly-Trade-Report-Dec-2021.pdf>, accessed 1 September 2022; Port of Newcastle, Monthly trade report | July 2022, available at <https://www.portofnewcastle.com.au/wp-content/uploads/2022/08/20220801External-Monthly-Trade-Report-July2022.pdf>, accessed 1 September 2022.

179. The coal exported by the Port of Newcastle is primarily black, or thermal, coal and is considered to be amongst the highest quality coal.⁸⁰

⁷⁴ HVCCC, <https://www.hvccc.com.au/history/>, accessed 1 September 2022.

⁷⁵ NSW Government | Transport for NSW, *NSW Freight and Ports Plan 2018-2023*, September 2018, p 39.

⁷⁶ Port of Newcastle, *Monthly trade report | July 2022*, available at <https://www.portofnewcastle.com.au/wp-content/uploads/2022/08/20220801External-Monthly-Trade-Report-July2022.pdf>, accessed 1 September 2022.

⁷⁷ Institute of Transport and Logistics Studies, Boland, N, Reisi, M and Savelsbergh, M, *Assessment of the Hunter Valley coal export supply chain*, Working paper, March 2017, p 2.

⁷⁸ Transport for NSW, *NSW Freight and Ports Plan 2018-2023*, September 2018, p 39.

⁷⁹ Port of Newcastle, *Monthly trade report | July 2022*, available at <https://www.portofnewcastle.com.au/wp-content/uploads/2022/08/20220801External-Monthly-Trade-Report-July2022.pdf>, accessed 1 September 2022.

⁸⁰ NSW Mining, *Coal*, available at <https://www.nswmining.com.au/coal>, accessed 1 September 2022.

180. The Hunter Valley coal chain feeds coal into the export coal loading terminals owned by Port Waratah Coal Services (PWCS) and Newcastle Coal Infrastructure Group (NCIG).⁸¹ There is one loading terminal at NCIG and two terminals at PWCS, including Carrington and Kooragang.⁸² 1,279 vessels were loaded at the Carrington and Kooragang coal terminals in 2021.⁸³
181. HVCCC aims to provide a reliable and efficient supply of coal to the Port of Newcastle, stating that:⁸⁴
- HVCCC planning and scheduling routinely delivers productivity and efficiency that is aspirational for other coal chains.
182. The Port of Newcastle is a turn-of-arrival loading port.⁸⁵ This means that the movement of coal and scheduling of train routes depends on the order of arrival of coal vessels at the port.⁸⁶ There is no more than two weeks' visibility of the number of vessels arriving at the port, and therefore, the scheduled train routes.⁸⁷ The port has limited storage, which means operations are a combination of just-in-time cargo assembly with some dedicated stockpiles.⁸⁸
183. I understand that over 60 movements (arrivals and departures) of vessels are expected at the Port of Newcastle during the first three days of the lockout.⁸⁹

4.1.3 Economic effects of the lockout

184. The relatively constant, year-round and year-to-year volumes of export coal running along the just-in-time landside components of the Hunter Valley coal network implies that the supply chain serving the port is routinely operating close to its potential capacity and so does not have sufficient spare capacity to provide for the rescheduling of lost coal exports to other times of the year.
185. This is consistent with the sequence of operations coordinated by the HVCC that I describe at paragraph 175 involving capacity limitations at one or more element part of the supply chain. The economic consequence is that, once seaborne exports from the port cease, one or more other elements of the integrated time supply chain (comprising the rail transport network taking coal from mines to the port, the stockpiling of coal at the port itself, and the operation of the coal loading terminals) will also cease.
186. It follows that coal exports not made on the day of the lockout cannot be recovered once port operations recommence and so the total amount of those affected exports is lost. Such loss arises because there is insufficient spare capacity at one or more components of the supply chain to allow the entire system to operate, subsequently – say, once the lockout has ended – at a materially faster rate and so catch-up the lost output.
187. By way of intuitive explanation for affected coal being 'lost', this amounts to the relevant quantity of un-exported coal on any day remaining unmined or un-exported, until such future point time as either the final tonne of coal is extracted or exported from that mine, or an equivalent quantity of capacity becomes available within the supply chain as a different mine reaches the end of its life. Given the

⁸¹ Australian Rail Track Corporation (ARTC), *2021 Hunter Valley corridor capacity strategy*, August 2021, p 13.

⁸² Port Waratah Coal Services, <https://pwcs.com.au/what-we-do/the-coal-chain/>, accessed 16 November 2022

⁸³ Port Waratah Coal Services, <https://pwcs.com.au/what-we-do/the-coal-chain/>, accessed 16 November 2022.

⁸⁴ Hunter Valley Coal Chain Coordinator, *About us*, <https://www.hvccc.com.au/about-us/>, accessed 16 November 2022.

⁸⁵ Port of Newcastle, *Vessel Standard Terms and Conditions*, 2022, p 6.

⁸⁶ RAIRO Operations Research, Singh, G et al, *Rail schedule optimisation in the Hunter Valley coal chain*, Research Paper, 2015, p 419.

⁸⁷ ACCC, *The context for ARTC's role in the Hunter Valley coal chain*, August 2018, p 7.

⁸⁸ RAIRO Operations Research, Singh, G et al, *Rail schedule optimisation in the Hunter Valley coal chain*, Research Paper, 2015, p 415.

⁸⁹ Port Authority of NSW, *Daily vessel movements Newcastle Harbour*, available at: <https://www.portauthoritiesnsw.com.au/newcastle-harbour/daily-vessel-movements/>, accessed 16 November 2022.

period of time necessary for that coal affected by the lockout eventually to be recovered, I have assumed that its entire value is lost, in today's money terms.

188. Of further relevance to the likelihood that lost coal export opportunities may never be recovered, I note that Indonesia provides around twice as much thermal coal on the world market than Australia.⁹⁰ Recently, Indonesian exporters have demonstrated their ability to increase supply over time, with Indonesian coal exports – albeit of lower quality coal – replacing Australian exports to the Chinese market.⁹¹
189. Significant disruptions to services at the Port of Newcastle may therefore pose a threat to the future global demand for thermal coal exported from the Hunter Valley, since other, competing global exporters could prove a viable replacement for any lock-out induced disruption to coal exports from Australia.

4.1.4 Conclusion regarding the effect on coal exports

190. Coal is a substantial export commodity for Australia, while the Port of Newcastle is Australia's largest terminal for coal exports. Coal exporters, which operate in competitive global markets, risk experiencing a short-term reduction in revenues as a result of the lockout, with limited ability to make-up such lost sales and the medium-term potential for lost business to rival overseas exporters of coal.

4.2 Meat processing and export industry

191. Australia's red meat and livestock exports primary take the form of:
- meat;
 - meat co-products; and
 - further processed products.
192. Chilled and frozen meat products accounted for approximately 80 per cent of total meat and livestock exports in 2019-20.⁹² Queensland is Australia's largest exporter of red meat, accounting for approximately 39 per cent of Australia's red meat exports in 2019-20.⁹³

4.2.1 Australia is a large player in global meat markets

193. In 2020, Australia was the largest global exporter of sheep meat and the second largest beef exporter.⁹⁴ Australia was also the largest exporter of goat meat in 2020.⁹⁵
194. The vast majority of beef, lamb, and goat produced in Australia is exported, as shown in table 4.2.

Table 4.2: Australia meat exports

Type of meat	Proportion exported	Value of exports
Beef and veal ⁽¹⁾	76%	\$10.8 billion (2019)

⁹⁰ Australian Government | Department of Industry, Science, Energy and Resources | Office of the Chief Economist, *Resources and Energy Quarterly*, December 2021, p 59.

⁹¹ Australian Government | Department of Industry, Science, Energy and Resources | Office of the Chief Economist, *Resources and Energy Quarterly*, December 2021, p 64.

⁹² Meat & Livestock Australia, *State of the industry report 2021*, March 2022, p 17.

⁹³ Meat & Livestock Australia, *State of the industry report 2021*, March 2022, p 17.

⁹⁴ Meat & Livestock Australia, *State of the industry report 2021*, March 2022, p 5.

⁹⁵ Meat & Livestock Australia, *Global snapshot | Goatmeat*, March 2022, p 2.

Lamb and mutton ⁽²⁾	77%	\$4.1 billion (2019)
Goat meat ⁽³⁾	91%	\$242 million (2021)

Source: (1) Meat & Livestock Australia, *Fast Facts 2020: Australia's beef industry*, November 2020; (2) Meat & Livestock Australia, *Fast Facts 2020: Australia's sheepmeat industry*, November 2020; (3) Meat & Livestock Australia, *Global snapshot | Goatmeat*, March 2022 (value for 2021).

195. The farming and processing of livestock occurs across Australia, but varies in nature from state to state, eg:⁹⁶
- beef cattle is predominately produced in the eastern states with Queensland being the largest red meat producer and home to the country's largest corporate beef cattle farms;
 - southern states like Victoria and Tasmania are characterised by many small beef cattle farms that operate as sole proprietors or partnerships; whereas
 - sheep farming is focused in Victoria, New South Wales and Western Australia due the suitability of the climate and environment.
196. Australia exported approximately \$16.2 billion of meat and meat preparations in the year to June 2022, which comprises approximately 3.0 per cent of total exports.⁹⁷ It follows that the exportation of processed meats makes a significant contribution to the Australian and state economies, and a much larger relative contribution to regional farming communities.
197. The vast majority of processed meat exports are shipped from the Port of Melbourne, Sydney, Port of Brisbane and the Port of Fremantle, as illustrated in table 4.3, below.

Table 4.3: Meat exports by port of loading, 2021

Load port	Tonnes, shipped weight	Percentage
Port of Brisbane	641,356	42%
Sydney	214,919	14%
Port of Melbourne	522,599	35%
Port of Fremantle	98,884	7%
Other ports ⁹⁸	36,909	2%
Total	1,514,667	100%

Source: Department of Agriculture, *Red meat export statistics 2021: Exports by Load Port, 2021*, available: <http://www.agriculture.gov.au/export/controlled-goods/meat/statistics/red-meat-stats-2021>, accessed 16 November 2022.

4.2.2 Australian meat commands a premium

198. Australian meat commands a premium in offshore markets, as noted by Mick Keogh, deputy Chair of the ACCC, in 2019:⁹⁹

⁹⁶ Meat & Livestock Australia, *Fast Facts 2020: Australia's beef industry*, November 2020; Meat & Livestock Australia, *Fast Facts 2020: Australia's sheep industry*, November 2020.

⁹⁷ ABS, *536803 International Trade in Goods and Services, Australia, Table 3: Goods credits, original, current prices*, Series ID A2717939F, June 2022.

⁹⁸ Export of red meat from 'other ports' predominantly relates to the Port of Adelaide, which shipped 30,328 tonnes in 2021.

⁹⁹ ACCC, *The future of global agriculture*, 4 March 2019, available at: <https://www.accc.gov.au/speech/the-future-of-global-agriculture>, accessed 16 November 2022.

Australian farmers and processors have increasingly altered their production and processing systems to target higher value or premium markets, rather than just continuing to attempt to compete on a least-cost basis.

199. And:

And more generally, Australia has managed to retain and even enhance its reputation as a reliable supplier of high quality and safe agricultural produce, meaning that even in generic commodity markets, there is often an “Australian” premium.

200. Australia has a strong reputation for high food safety and quality standards.

201. The MLA notes:¹⁰⁰

Australia’s strong reputation for high food safety and quality standards, built over decades of combined industry investment in global markets, will continue to underpin strong consumer demand for Australian red meat.

202. Meat Standards Australia (MSA) was developed by the Australian red meat industry to improve and standardise the quality of beef and sheep meat.¹⁰¹ The ability to predict the eating quality of Australian beef is a key contributor to maintaining Australia’s premium brand position.

4.2.3 Economic effects of the lockout

203. Meat products are inherently perishable, ie, once slaughtered, animal meat products have a limited ‘shelf life’ before they become unsafe for human consumption, even after allowing for chilling and freezing. A product’s ‘shelf life’ will depend on the type of meat and how it is stored.

204. In general, chilled meats can be stored for period of between one and four weeks before spoiling. Frozen meats can be stored for longer periods of between four months and 24 months as microbiological growth is prevented, but the meat will still deteriorate over time due to oxidisation, thereby diminishing its value.¹⁰²

205. It follows that delays to the exportation of meat will reduce its shelf life and value. For this reason, meeting delivery schedules agreed between exporters and international buyers is critical in generating meat export revenues.

206. Export customers also have standards in terms of delivery and storage timeframes for meat products that demand supply chains are tight.

207. One meat producer has explained that customers in Japan will reject beef if it has been sitting in cold rooms for more than 14 days, which then forces it to sell product in the domestic market at lower prices, eg, because the preferences of Australians are such that it is ascribed a lower value in the domestic market.¹⁰³

208. A back-log of meat for export may also lead to storage constraints, eg, the Chief Operating Officer of DP World, Andrew Adam, has explained that:¹⁰⁴

Refrigerated cargo capacity [for exports] is diminishing in Melbourne... So there is concern in relation to export refrigerated cargo out of the largest port in the country.

¹⁰⁰ Meat & Livestock Australia, *State of the industry report 2020*, March 2021, p 36.

¹⁰¹ Meat & Livestock Australia, *Meat Standards Australia: Delivering consumer confidence in eating quality for 20 years*, p 2.

¹⁰² Food Science Australia, Meat & Livestock Australia and AMPC, *Storage life of meat*, September 2002.

¹⁰³ See <https://www.news.com.au/breaking-news/union-to-advise-wharfies-to-stop-action/news-story/163d087fba6b665592aad2ba0d692852>, accessed 16 November 2022.

¹⁰⁴ Sydney Morning Herald, *DP World to shed another 200 wharfies as dock dispute escalates*, 18 July 2019, available at: <https://www.smh.com.au/business/workplace/dp-world-to-shed-another-200-wharfies-as-docks-dispute-escalates-20190718-p528di.html>, accessed 16 November 2022.

209. It follows that the tightness of the supply chain, the inherently perishable nature of meat and the reliance on container ports means that the lockout has the potential to cause significant harm to the Australian meat processing and export industry.

4.2.4 Conclusion regarding the effect on the meat processing and export industry

210. In my opinion, the meat processing and export industry will be particularly affected by the lockout at the ports. Australian meat exporters are heavily reliant on containerised shipping to deliver their products to overseas markets and the output of this industry is inherently perishable. Once slaughtered, animal meat products have a limited 'shelf life' and a value that declines from the time of slaughter.
211. In my opinion, the primary effect on parties in the meat processing and export industry of an extended lockout will be lost revenue from meat perishing or having to be sold locally at lower prices.
212. The consequent implications for the Australian and state economies are considerable, with meat exports totalling \$12 billion per annum since 2013/14 and accounting for approximately 4.8 per cent of Australia's key industry exports in 2019/20.¹⁰⁵

4.3 Retail sector

213. The Australian retail sector is an important component of the economy in Australia and makes a significant contribution to employment.
214. The industry comprises over 120,000 retail stores and online stores, employs over 1.3 million Australians and derives \$400 billion of revenue per annum.¹⁰⁶
215. International competitiveness rests on efficient supply chains achieved through well-functioning, just in time product processing. This is particularly relevant for large retail chains since they typically hold less stock and so even a short lockout may inhibit their ability to stock shelves. For these retailers, the economic harm from delays in the movement of product to or from its point of production to end-customer carries a real risk of economic loss.
216. While the goods of retailers are unlikely to perish like meat products, many are likely to have shelf lives of their own, owing to seasonality in demand, eg:
- a. many clothes are seasonal in nature, and fashions change quickly, meaning that clothes delivered materially late may be in lower demand;
 - b. demand for some products spikes at particular times of the year, say, due to Father's Day occurring in early September each year – if goods cannot be delivered in sufficient time to be able to be stocked for this period of elevated demand, then affected retailers are likely to have to sell delayed goods at a discount; and
 - c. any 'fad' goods or goods being imported in an attempt to obtain a 'first mover' type advantage over competing retailers may in fact not be delivered in time to exploit any temporarily inflated demand/prices.
217. The instances listed above would have a negative impact on the profits of these retailers.

¹⁰⁵ Meat & Livestock Australia, *State of the industry report 2021*, March 2022, p 17.

¹⁰⁶ National Skills Commission, *Industry details – retail trade*, available at: <https://labourmarketinsights.gov.au/industries/industry-details?industryCode=G>, accessed 16 November 2022; Australian Retailers Association, *Homepage*, available at: <https://www.retail.org.au/>, accessed 16 November 2022.

218. By way of example, previous industrial action at VICT's terminal at the port of Melbourne in 2017 left:¹⁰⁷

...stranded millions of dollars of Christmas retail goods, fresh food and medicine in containers on the wharves.

4.3.1 Conclusion regarding the effect on the retail sector

219. International competitiveness in the supply chains of Australian retailers demand cost efficiency achieved through well-functioning, just in time product processing. For these parties, the economic harm from delays in the movement of product to or from its point of production to end-customer carries a real risk of irrecoverable loss. Overall, the primary effect on retailers from any delay in the arrival of goods will be lost sales revenue.

4.4 Transport and logistics sector

220. The disruption to the flow of containers through each affected port will impact a variety of business involved in the logistics chain that facilitates the transport and processing of containers to/from vessels from/to their origin/destination in Australia. These businesses include landside service providers such as customs and road and rail transport operators.

221. For example, The Container Transport Alliance Australia has explained in respect of previous industrial action at the Port of Melbourne that:¹⁰⁸

It's affecting big and small logistics companies, and family businesses who have sent their trucks down there to pick up a container.

The cost of the round trip will never be able to be recouped from the customer...

222. The Victorian Transport Association has explained that, by consequence of industrial action at DP World's terminals:¹⁰⁹

...trucking companies will be "hugely" affected as "schedules will be stuffed up, volumes will be down and there will be a backlog"

It's not the lack of activity today, it's the extra activity in three or four days time. If I can't get into the terminal to pick up or return my boxes... [w]e'll likely have to pay demurrage and penalties.

223. It has also in the past been noted that trucking operators incur costs from a lack of work during a stoppage and, once industrial action ends, they have to pay higher wage bills since drivers have to work overtime to clear the backlog.¹¹⁰

224. The Director of the Freight & Trade Alliance, Paul Zalai, recently highlighted that the:¹¹¹

¹⁰⁷ Sydney Morning Herald, *MUA faces \$100 million court claim over picket*, 18 January 2018, available at: <https://www.smh.com.au/business/the-economy/mua-faces-100-million-court-claim-over-picket-20180118-p4yym8.html>, accessed 16 November 2022.

¹⁰⁸ Anna Patty, Nick Toscano, *Ports dispute enters second week and stalls millions of dollars in Christmas deliveries*, The Sydney Morning Herald, December 2017, available at <https://www.smh.com.au/business/workplace/ports-dispute-enters-second-week-and-stalls-millions-of-dollars-in-christmas-deliveries-20171206-gzzma0.html>, accessed 16 November 2022.

¹⁰⁹ Jim Wilson, *Australian national longshoremen's strike underway for up to four days*, Freight Waves, 9 July 2019, available at <https://www.freightwaves.com/news/australian-national-longshoremen-strike-underway-for-up-to-four-days>, accessed 16 November 2022.

¹¹⁰ Brad Gardner, *Trucking feels the pain from Patrick strike*, ATN, 25 May 2011, available at: <https://www.fullyloaded.com.au/industry-news/1105/trucking-feels-the-pain-from-patrick-strike>, accessed 16 November 2022.

¹¹¹ The Loadstar, *DP World to axe 200 more stevedore jobs in prolonged row with union*, 19 July 2017, available at <https://theloadstar.com/dp-world-australia-to-axe-200-more-stevedore-jobs-in-prolonged-row-with-union/>, accessed 16 November 2022.

“...resulting supply chain costs included those for reefers held on power, higher transport to clear backlogs on a Sunday, truck delays and waiting times to return empty containers, which resulted in shipping line detention charges.”

“In addition to the logistics costs, these types of delays present a real and serious risk of loss of contracts or contract penalties arising from delayed sailings, the potential for exporters to miss transshipments due to delays and importers not having stock on time,” he added, noting that previous stoppages had forced shipping lines to omit ports to maintain schedules

4.4.1 Conclusion regarding the effect on the transport and logistics sector

225. In my opinion, the transport and logistics sector will be particularly affected by the lockout at the ports. In particular, the disruption to the flow of containers through each affected container port will impact a variety of business involved in the logistics chain that facilitates the transport and processing of containers for import or export.

4.5 Liquid fuel imports

226. In the year to June 2021, Australia imported \$24.8 billion worth of ‘fuels and lubricants’, representing 7.8 per cent of Australia’s total imports.¹¹² I assume that the vast proportion of Australia’s fuel is imported through the affected ports, since these ports coincide with the main population centres that create the demand for such fuel imports.

227. Australia imports a mix of refined fuel products and products that are inputs to Australian refineries. The total output of Australian refineries was 22,180.3 ML in 2020-21.¹¹³ This equated to 41.6 per cent of total petroleum sales in Australia over the period, so that 58.4 per cent of domestic liquid fuel sales were of imported refined products.¹¹⁴ Further, 70.9 per cent of the fuel products used as inputs in Australian refineries, including crude oil and other feedstock,¹¹⁵ were imported.¹¹⁶ It follows that domestic fuel consumption is heavily reliant on imports.

228. Total petroleum sales and imports comprise many products including automotive and aviation gasoline, LPG and diesel oil. Australian refineries predominantly produce automotive gasoline and diesel oil, while also producing some aviation turbine fuel, LPG and fuel oil.¹¹⁷

229. Fuel supply is critical to the transport sector. According to the Australian Government:¹¹⁸

The Australian economy is dependent on extensive transport networks to move people, goods and resources domestically and offshore.

230. A serious disruption to Australia’s fuel supply would have broad consequences including for food supply, medication, aviation, and military equipment.¹¹⁹

231. It follows that the Australian economy is heavily reliant on fuel imports.

¹¹² ABS, 536804 *International Trade in Goods and Services, Australia, Table 4: Goods debits, original, current prices*, Series ID A2718195V, August 2020.

¹¹³ Australian Government | Department of Industry, Science, Energy and Resources, *Australian Petroleum Statistics Issue 299*, June 2021, Table 2.

¹¹⁴ Total sales of petroleum products in Australia for 2020-21 were 52,897.7 ML: Australian Government | Department of Industry, Science, Energy and Resources, *Australian Petroleum Statistics Issue 299*, June 2021, Table 3A.

¹¹⁵ Laidlaw, H, *Liquid fuel security: a quick guide – May 2020 update* | *Parliament of Australia*, 8 May 2020, p 3.

¹¹⁶ Australian Government | Department of Industry, Science, Energy and Resources, *Australian Petroleum Statistics Issue 299*, June 2021, Table 2.

¹¹⁷ Australian Government | Department of Industry, Science, Energy and Resources, *Australian Petroleum Statistics Issue 299*, June 2021, Table 2.

¹¹⁸ Parliament of Australia | Senate rural and regional affairs and transport references committee, *Australia’s transport energy resilience and sustainability*, June 2015, p 4.

¹¹⁹ Richardson, A, *Australia imports almost all of its oil, and there are pitfalls all over the globe*, *The Conversation*, May 2018.

4.5.1 Economic effects of the lockout

232. Data suggests that in the 2021 financial year, Australia held on average 28 days of consumption of automotive gasoline in fuel stocks.¹²⁰ In other words, if consumption rates remained the same and fuel imports and any local production ceased, Australia would run out of its gasoline supply in 28 days.
233. This estimate likely understates the speed with which localised gasoline storages would become apparent, such that serious supply shortages could be expected to occur in shorter time periods. A prolonged lockout would therefore present considerable challenges for Australia's fuel demands.
234. I note that land transport of fuel from other ports could mitigate localised shortages to some extent, provided that sufficient capacity existed at those ports and the surrounding transport network, which I note above would also be affected by the lockout.
235. A period of prolonged and widespread lockouts affecting liquid fuel imports could therefore present series challenges for Australia's fuel demands and the industries that depend on fuel.

¹²⁰ Australian Government | Department of Industry, Science, Energy and Resources, Australian Petroleum Statistics Issue 299, June 2021, Table 7.

5. Declaration

236. I confirm that, in the course of preparing this report, I have been provided with a copy of and read, understood and agree to abide by the terms of the *Harmonised Expert Witness Code of Conduct*.

A handwritten signature in blue ink that reads "Greg Houston". The signature is written in a cursive style with a large, stylized initial "G".

Greg Houston
17 November 2022



Annexure A – Letter of instruction



14 November 2022

PRIVILEGED & CONFIDENTIAL

VIA E-MAIL

Mr Greg Houston
Partner
HoustonKemp Economists
Level 40, 161 Castlereagh Street
Sydney NSW 2000
greg.houston@houstonkemp.com

Dear Mr Houston

Expert Retainer - HoustonKemp Economists

As you know, we act for Svitzer Australia Pty Ltd (**Svitzer**).

We refer to our previous letters of engagement dated 15 February 2022 and 29 August 2022 and assumptions dated 30 August 2022. A copy of these letters and the assumptions are **enclosed** with this letter for your ease of reference.

On 11 November 2022, Chris Gardner foreshadowed the potential for you to be once again engaged in a call with you.

On 14 November 2022 Svitzer gave notice of employer response action pursuant to section 414(5) of the *Fair Work Act 2009* (**Act**) (**Notice**). A copy of the Notice is **enclosed** with this letter.

The Notice provides that employees who will be covered by the proposed enterprise agreement to replace the *Svitzer Australia Pty Ltd Limited National Towing Enterprise Agreement 2016* (**Proposed Agreement**) (**Employees**) will be locked out from their employment with effect from 12.00pm AEDT on 18 November 2022 (**Lockout**). The Lockout will continue indefinitely.

There is the possibility that proceedings will take place under s424 of the Act in the Fair Work Commission (**FWC**) arising from the Notice (**Anticipated Hearing**).

This letter is to again engage you to act as an independent expert in relation to the Anticipated Hearing, and to set out the terms of your retainer.

1. Instructions

- 1.1. Svitzer is a marine towing business. Svitzer owns, and to a lesser degree charters, tug boats in all types of ports across Australia including container terminals, liquid bulk terminals, dry bulk terminals, roll on/roll off (**RoRo**) cargo terminals and cruise terminals.
- 1.2. As set out above, the Lockout will be indefinite and will impact all crews at all ports covered by the Proposed Agreement (**Ports**).

- 1.3. Set out below is a summary of the Ports, the type of cargo and Svitzer's share of work in those Ports:

Port	Main Cargo/Ship Types	Port Share
Adelaide	Container, Dry Bulk, RoRo, Tanker, Cruise Ship	100%
Albany	Dry Bulk	100%
Brisbane	Container, Dry Bulk, Tanker, RoRo, Cruise Ship	73%, however Svitzer operates 100% of the towage services due to a SLA with one of its competitors
Cairns	Tanker, Dry Bulk, Cruise Ship	100%
Eden	Dry Bulk, Cruise Ship	67%
Fremantle	Container, RoRo, Dry Bulk, Tanker, Cruise Ship	100%
Geraldton	Dry Bulk, Tanker	100%
Kwinana	Dry Bulk, Tanker	100%
Lucinda	Dry Bulk	100%
Melbourne	Container, RoRo, Tanker, Dry Bulk, Cruise Ship	77%, however Svitzer operates 100% of the towage services due to a SLA with one of its competitors.
Mourilyan	Dry Bulk	100%
Newcastle	Dry Bulk, Tanker, some RoRo, Cruise Ship	75%, however Svitzer operates 100% of the towage services due to a SLA with one of its competitors.
Port Kembla	Dry Bulk, RoRo, Tanker	100%

Port	Main Cargo/Ship Types	Port Share
Spencer Gulf (Port Pirie)	Dry Bulk, Tanker	100%
Sydney (Port Jackson)	Dry Bulk, Tanker, Cruise Ship	59%
Sydney (Port Botany)	Container, Tanker	69%
Westernport	Tanker, Dry Bulk	100%

- 1.4. The vast majority of vessels calling into the Ports require tug services. Without tug services these vessels cannot be brought in and out of the Ports and therefore cannot be serviced.
- 1.5. There is limited to no ability for port operators and shipping lines to find alternative towage services in the event of the industrial action. Of the ports, only the Sydney ports have an alternative towage provider (Engage) and Engage may not have capacity to service all of the Sydney port's volume without significant delay and congestion given their own workloads and resource availability in terms of crews and tugs. Engage has four tugs in Sydney. Svitzer usually has eight tugs in Sydney, but currently has six in service.

2. Engagement to prepare expert report

- 2.1. We would like you to prepare a report in which you address the following:
- (a) What is the importance to the Australian economy, relevant State economies, and/or any important part(s) of the Australian economy, of seaborne trade and towage services in the Ports?
 - (b) What is the likely economic effect that the Lockout at the Ports is likely to have on the Australian economy, and/or any important part(s) of the Australian economy.
- 2.2. In addition, would you please specifically address the following in your report:
- (a) Please provide a précis of your experience and expertise in relation to relevant economic disciplines, including:
 - (i) your qualifications and work experience; and
 - (ii) your experience with the port services, stevedoring and the transport and logistics industries generally.
 - (b) Please confirm that you have read the *Harmonised Expert Witness Code of Conduct* at Annexure A of the Federal Court of Australia Expert Evidence Practice Note (GPN-EXPT) (a copy of which is **enclosed** with this letter) and agree to abide by it.

3. **Other aspects of retainer**

- 3.1. From time to time you may also be required to provide or respond to further evidence or expert opinions.
- 3.2. You may need to be available to give evidence in the FWC at some time during the course of the Anticipated Hearing. We may also ask that you be available at other times when any experts retained by other parties to the Anticipated Hearing are giving evidence.

4. **Legal professional privilege**

- 4.1. Your independent expert report and any drafts, notes or working papers prepared in accordance with your retainer are confidential and are not be copied or used for any purpose unrelated to the Anticipated Hearing without our permission.
- 4.2. Materials supplied to you by Seyfarth Shaw Australia and Svitzer are confidential and are not to be copied or used for any purpose unrelated to your retainer without permission.
- 4.3. Your report and any drafts prepared by you should have the following words inserted on the cover page:

This document is protected by legal professional privilege. To ensure privilege is not waived, please keep this document confidential and in a safe and secure place. This document should not be distributed, and no reference to it should be made, to any person or organisation not directly involved in making decisions on the subject matter of this document.

5. **Conflicts of interest**

- 5.1. As an independent expert, it is important that you are free from any possible conflict of interest in the provision of your advice or giving evidence in the Anticipated Hearing. You should ensure that you have no connection with any party to the Anticipated Hearing which would preclude you from providing your opinion in an objective and independent manner.
- 5.2. At this stage it is unknown who the other party in the Anticipated Hearing will be.
- 5.3. The Australian Maritime Officers' Union, the Maritime Union of Australia Division of the Construction, Forestry, Maritime, Mining and Energy Union and the Australian Institute of Marine and Power Engineers may also become involved in the Anticipated Hearing.

6. **Rates and curriculum vitae**

Svitzer will be responsible for payment of your fees but they will be processed by us. You should present your memoranda of fees to us on a monthly basis. Expenses such as taxis, parking, couriers, printing etc. are to be billed at cost.

7. **Communications**

Unless otherwise indicated, any request for documents and/or information, correspondence and any other communications regarding this matter should be directed through our office.

8. **Your duties and responsibilities as an expert witness**

- 8.1. Your role is that of an independent expert. As such, you are not an advocate for any party.

- 8.2. Although you are instructed and retained by Seyfarth Shaw Australia and Svitzer, you are retained as an independent expert to assist the FWC, and you have an overriding duty to it. The FWC expects you to be objective, professional and to form an independent view as to the matters in relation to which your opinion is sought.
- 8.3. Your duties as an expert witness are set out in the expert witness code of conduct **enclosed** with this letter and referred to above.
9. **Confirmation and next steps**
- 9.1. Please sign and return this letter to confirm your agreement to the terms of the retainer. Please also provide a copy of your curriculum vitae at your earliest convenience.
- 9.2. Should you become aware of any matters which you believe would prevent you from performing your duties in accordance with the terms in this letter, please let us know as soon as possible.

Please do not hesitate to contact Chris Gardner if you have any questions or concerns, or wish to discuss this matter further.

Yours faithfully



Chris Gardner
Partner

SEYFARTH SHAW AUSTRALIA
Enc:

Letters of engagement dated 15 February 2022 and 29 August 2022.

Notice of Lockout dated 14 November 2022.

Expert Witness Code of Conduct.

Signing Page

Signed by Greg Houston

Date

15 February 2022

PRIVILEGED & CONFIDENTIAL**VIA E-MAIL**

Mr Greg Houston
Partner
HoustonKemp Economists
Level 40, 161 Castlereagh Street
Sydney NSW 2000
greg.houston@houstonkemp.com

Dear Mr Houston

Expert Retainer - HoustonKemp EconomistsWe act for Svitzer Australia Pty Ltd (**Svitzer**).

You were engaged by Seyfarth Shaw Australia on Friday, 11 February 2022.

This letter is to confirm your retainer to act as an independent expert in relation to an application by Svitzer to the Fair Work Commission (**FWC**) to suspend or terminate protected industrial action by members of the Australian Maritime Officers' Union (**AMOU**) on the basis of a threat of significant harm to the Australian economy or an important part of it (the **Proceedings**), and to set out the terms of your retainer.

1. Instructions

- 1.1. Svitzer is a marine towage business. Svitzer owns, and to a lesser degree charters, tug boats in all types of ports across Australia including container terminals, liquid bulk terminals, dry bulk terminals, roll on/roll off cargo terminals and cruise terminals.
- 1.2. On 11 and 14 February 2022, Svitzer was notified of the following protected industrial action to be taken by members of the AMOU at the ports of Brisbane, Cairns, Port Botany, Port Jackson, Newcastle, Kwinana, Fremantle, Albany, Geraldton and Mourilyan (**Affected Ports**):

No.	Date of notice	Ports affected	PIA notified
1.	11 February 2022	Brisbane and Cairns	<ol style="list-style-type: none">1. A 48 hour stoppage of work commencing at 6.00am on 17 February 2022 in Brisbane.2. A 48 hour stoppage of work commencing at 6.00am on 22 February 2022 in Brisbane.

No.	Date of notice	Ports affected	PIA notified
			3. A 24 hour stoppage of work commencing at 6.00am on 24 February 2022 in Brisbane. 4. A ban on the performance of work during a period of leave (including recalls and relief work) for an unlimited period commencing at 6.00am on 17 February 2022 in Cairns.
2.	11 February 2022	Port Botany and Port Jackson	1. A 48 hour stoppage of work commencing at 12.01am on 17 February 2022 in Port Botany and Port Jackson. 2. A 48 hour stoppage of work commencing at 12.01am on 22 February 2022 in Port Botany and Port Jackson.
3.	11 February 2022	Newcastle	1. A 48 hour stoppage of work commencing at 6.00am on 17 February 2022 in Newcastle. 2. A 48 hour stoppage of work commencing at 6.00am on 22 February 2022 in Newcastle. 3. A ban on the performance of work during a period of leave (including recalls and relief work) for an unlimited period commencing at 6.00am on 16 February 2022 in Newcastle.
4.	14 February 2022	Kwinana, Fremantle, Albany, Geraldton and Mourilyan	1. A 48 hour stoppage of work commencing at 7.00am on 19 February 2022 in Kwinana. 2. A 48 hour stoppage of work commencing at 7.00am on 23 February 2022 in Kwinana. 3. A 48 hour stoppage of work commencing at 7.00am on 24 February 2022 in Fremantle. 4. A 48 hour stoppage of work commencing at 7.00am on 3 March 2022 in Fremantle.

No.	Date of notice	Ports affected	PIA notified
			5. A 4 hour stoppage of work commencing at 7.00am on 25 February 2022 in Albany. 6. A 4 hour stoppage of work commencing at 7.00am on 25 February 2022 in Albany. 7. A 4 hour stoppage of work commencing at 7.00am on 3 March 2022 in Albany. 8. A 4 hour stoppage of work commencing at 7.00am on 4 March 2022 in Albany. 9. A ban on the performance of work during a period of leave (including recalls and relief work) for an unlimited period commencing at 7.00am on 18 February 2022 in Kwinana, Fremantle and Gerladton. 10. A ban on the performance of work during a period of leave (including recalls and relief work) for an unlimited period commencing at 6.00am on 18 February 2022 in Mourilyan.

- 1.3. A bundle of the notices of protected industrial action issued by the AMOU on 11 and 14 February 2022 is **enclosed**.
- 1.4. In the Affected Ports, Svitzer services the following types of vessels relevant to the Proceedings:

Port	Main Cargo/Ship Types
Albany	Tanker, Dry Bulk
Brisbane	Container, Dry Bulk, Tanker, Roll on/Roll off
Cairns	Tanker, Dry Bulk
Fremantle	Container, RoRo, Dry Bulk, Tanker

Port	Main Cargo/Ship Types
Geraldton	Dry Bulk, Tanker
Kwinana	Dry Bulk, Tanker
Mourilyan	Dry Bulk
Newcastle	Dry Bulk, Tanker, some roll on/roll off
Sydney (Port Jackson)	Dry Bulk, Tanker
Sydney (Port Botany)	Container, Tanker

1.5. Svitzer's port share in the Affected Ports is as follows:

Port	Port Share
Albany	100%
Brisbane	73%, however Svitzer operates 100% of the towage services due to a subcontracting arrangement with one of its competitors.
Port Botany	61%, however Svitzer operates 90% of the towage services due to a subcontracting arrangement with one of its competitors.
Cairns	100%
Fremantle	100%
Geraldton	100%
Kwinana	100%
Mourilyan	100%

Port	Port Share
Newcastle	73%, however Svitzer operates 100% of the towage services due to a subcontracting arrangement with one of its competitors.
Sydney (Port Jackson)	58%

- 1.6. The action notified involves Masters at the Affected Ports. Without the work of Masters, a tug boat cannot operate. In turn, vessels (including those carrying bulk and containerised trade) that rely upon tugs for their entry into and exit from port, cannot be serviced.
- 1.7. There is limited to no ability for port operators and shipping lines to find alternative towage services in the event of the industrial action. Of the Affected Ports, only the Sydney ports have an alternative towage provider. The alternate provider in Sydney would be able to serve no more than 50 to 60% of the required service level in the Sydney ports, at best.
- 1.8. On conservative assumptions, in respect of any 48 hour stoppage at each of Brisbane, Newcastle, Port Botany, Port Jackson, Kwinana and Fremantle, it will take a further five days to clear the backlog and recover from the disruption associated with the 48 hour stoppage. Noting that:
- (a) In each port multiple 48 hour stoppages have been notified; and
 - (b) In the case of Brisbane, back-to-back stoppages totalling 72 hours have been notified.
- 1.9. Further instructions will be provided as they become available.

2. Engagement to prepare expert report

- 2.1. We would like you to prepare a report in which you address the following:
- (a) What is the importance to the Australian economy, and/or any important part(s) of the Australian economy, of seaborne trade and towage services in the Affected Ports?
 - (b) What is the likely economic effect that such protected industrial action at the Affected Ports is likely to have on the Australian economy, and/or any important part(s) of the Australian economy.
- 2.2. In addition, would you please specifically address the following in your report:
- (a) Please provide a précis of your experience and expertise in relation to relevant economic disciplines, including:
 - (i) your qualifications and work experience; and
 - (ii) your experience with the port services, stevedoring and the transport and logistics industries generally.

- (b) Please confirm that you have read the expert code of conduct in Schedule 7 of the *Uniform Civil Procedure Rules 2005* (a copy of which is **enclosed** with this letter) and agree to abide by it.

3. **Other aspects of retainer**

- 3.1. From time to time you may also be required to provide or respond to further evidence or expert opinions.
- 3.2. You may need to be available to give evidence in the FWC at some time during the course of the Proceedings. We may also ask that you be available at other times when any experts retained by other parties to the Proceedings are giving evidence.

4. **Legal professional privilege**

- 4.1. Your independent expert report and any drafts, notes or working papers prepared in accordance with your retainer are confidential and are not to be copied or used for any purpose unrelated to the Proceedings without our permission.
- 4.2. Materials supplied to you by Seyfarth Shaw Australia and Svitzer are confidential and are not to be copied or used for any purpose unrelated to your retainer without permission.
- 4.3. Your report and any drafts prepared by you should have the following words inserted on the cover page:

This document is protected by legal professional privilege. To ensure privilege is not waived, please keep this document confidential and in a safe and secure place. This document should not be distributed, and no reference to it should be made, to any person or organisation not directly involved in making decisions on the subject matter of this document.

5. **Conflicts of interest**

- 5.1. As an independent expert, it is important that you are free from any possible conflict of interest in the provision of your advice or giving evidence in the Proceedings. You should ensure that you have no connection with any party to the Proceedings which would preclude you from providing your opinion in an objective and independent manner.
- 5.2. The other party in the Proceedings is the Australian Maritime Officers' Union. However, the Maritime Union of Australia Division of the Construction, Forestry, Maritime, Mining and Energy Union and the Australian Institute of Marine and Power Engineers may also become involved in the Proceedings.

6. **Rates and curriculum vitae**

Svitzer will be responsible for payment of your fees but they will be processed by us. You should present your memoranda of fees to us on a monthly basis. Expenses such as taxis, parking, couriers, printing etc. are to be billed at cost.

7. **Communications**

Unless otherwise indicated, any request for documents and/or information, correspondence and any other communications regarding this matter should be directed through our office.

8. **Your duties and responsibilities as an expert witness**
- 8.1. Your role is that of an independent expert. As such, you are not an advocate for any party.
- 8.2. Although you are instructed and retained by Seyfarth Shaw Australia and Svitzer, you are retained as an independent expert to assist the FWC, and you have an overriding duty to it. The FWC expects you to be objective, professional and to form an independent view as to the matters in relation to which your opinion is sought.
- 8.3. Your duties as an expert witness are set out in the expert witness code of conduct **enclosed** with this letter and referred to above.
9. **Confirmation and next steps**
- 9.1. Please sign and return this letter to confirm your agreement to the terms of the retainer. Please also provide a copy of your curriculum vitae at your earliest convenience.
- 9.2. Should you become aware of any matters which you believe would prevent you from performing your duties in accordance with the terms in this letter, please let us know as soon as possible.

Please do not hesitate to contact Rachel Bernasconi if you have any questions or concerns, or wish to discuss this matter further.

Yours faithfully



Rachel Bernasconi
Partner

SEYFARTH SHAW AUSTRALIA

Enc: 1. Notices of Protected Industrial Action dated 11 and 14 February 2022
2. Expert Witness Code of Conduct

Signing Page

Signed by Greg Houston

Date

Friday 11th February 2022
Nicolaj Noes
Managing Director
Svitzer Australia Pty Ltd
7 Cooper Street
Balmain NSW 2041

VIA EMAIL: NICOLAJ.NOES@SVITZER.COM

Dear Nicolaj,

SVITZER TUGS 2020 EBA: Protected Industrial action notice # 1

The Australian Maritime Officers Union refers to the outcome of the Protected Action Ballot **Order: B2021/1247**, the results of which were declared on 10/02/2022

Pursuant to Section 414(2)(b) of the Fair Work Act 2009 (Cth), I notify you as follows:

1. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a stoppage of work for 48 hours duration commencing at 0600 (local time) on 17th of February. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:

- Brisbane

2. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a stoppage of work for 48 hours duration commencing at 0600 (local time) on 22nd of February. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:

- Brisbane

3. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a stoppage of work for 24 hours duration commencing at 0600 (local time) on 24th of February. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:

- Brisbane

4. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a ban on performing work during a period of leave (including recalls and relief work) for an unlimited duration commencing at 0600 (local time) on 17th of February. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:

- Cairns

In any industrial action taken in reliance on this notice the following will be exempt:

a. An emergency circumstance advised by a Harbour Master or representative of a Port Authority or another circumstance where the safety of the port, vessel, crew or marine environment may be in jeopardy.

b. Where such a circumstance in a. is identified there will be immediate consultation between Svitzer Australia Pty Limited, and AMOU representatives to ensure the required towage services are available.

The employee claim action of which you are being notified is being taken for the purpose of supporting or advancing claims made in respect of a proposed Enterprise Agreement.

Yours Sincerely

Chris Neiberding

AMOU Senior Industrial Officer

Friday 11th February 2022
Nicolaj Noes
Managing Director
Svitzer Australia Pty Ltd
7 Cooper Street
Balmain NSW 2041

VIA EMAIL: NICOLAJ.NOES@SVITZER.COM

Dear Nicolaj

SVITZER TUGS 2020 EBA: Protected Industrial action notice # 2

The Australian Maritime Officers Union refers to the outcome of the Protected Action Ballot **Order: B2021/1247**, the results of which were declared on 10/02/2022

Pursuant to Section 414(2)(b) of the Fair Work Act 2009 (Cth), I notify you as follows:

1. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a stoppage of work for 48 hours duration commencing at 0001 (local time) on 17th of February. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:
 - Port Botany
 - Port Jackson
2. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a stoppage of work for 48 hours duration commencing at 0001 (local time) on 22nd of February. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:

- Port Botany
- Port Jackson

In any industrial action taken in reliance on this notice the following will be exempt:

- An emergency circumstance advised by a Harbour Master or representative of a Port Authority or another circumstance where the safety of the port, vessel, crew or marine environment may be in jeopardy.
- Where such a circumstance in a. is identified there will be immediate consultation between Svitzer Australia Pty Limited, and AMOU representatives to ensure the required towage services are available.
- Any services impacting or potentially impacting the movement of an Australian Defence Force vessel or foreign Navy vessels.
- For a stoppage or stoppages longer than 4 hours, any services impacting or potentially impacting the shipment of a vessel loaded with livestock.
- Any services impacting or potentially impacting the movement of a cruise ship.

The employee claim action of which you are being notified is being taken for the purpose of supporting or advancing claims made in respect of a proposed Enterprise Agreement.

Yours Sincerely

Chris Neiberding

AMOU Senior Industrial Officer

Friday 11th February 2022
Nicolaj Noes
Managing Director
Svitzer Australia Pty Ltd
7 Cooper Street
Balmain NSW 2041

VIA EMAIL: NICOLAJ.NOES@SVITZER.COM

Dear Nicolaj,

SVITZER TUGS 2020 EBA: Protected Industrial action notice # 3

The Australian Maritime Officers Union refers to the outcome of the Protected Action Ballot **Order: B2021/1247**, the results of which were declared on 10/02/2022

Pursuant to Section 414(2)(b) of the Fair Work Act 2009 (Cth), I notify you as follows:

1. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a stoppage of work for 48 hours duration commencing at 0600 (local time) on 17th of February. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:
 - Newcastle
2. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a stoppage of work for 48 hours duration commencing at 0600 (local time) on 22nd of February. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:

- Newcastle

3. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a ban on performing work during a period of leave (including recalls and relief work) for an unlimited duration commencing at 0600 (local time) on 16th of February, For avoidance of doubt regarding PPT's this is only when on their rostered leave or after having completed their guaranteed percentage requirements. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:

- Newcastle

In any industrial action taken in reliance on this notice the following will be exempt:

- An emergency circumstance advised by a Harbour Master or representative of a Port Authority or another circumstance where the safety of the port, vessel, crew or marine environment may be in jeopardy.
- Where such a circumstance in a. is identified there will be immediate consultation between Svitzer Australia Pty Limited, and AMOU representatives to ensure the required towage services are available.
- Any services impacting or potentially impacting the movement of an Australian Defence Force vessel or foreign Navy vessels.
- For a stoppage or stoppages longer than 4 hours, any services impacting or potentially impacting the shipment of a vessel loaded with livestock.
- Any services impacting or potentially impacting the movement of a cruise ship.

The employee claim action of which you are being notified is being taken for the purpose of supporting or advancing claims made in respect of a proposed Enterprise Agreement.

Yours Sincerely

Chris Neiberding

AMOU Senior Industrial Officer

Monday 14th February 2022
Nicolaj Noes
Managing Director
Svitzer Australia Pty Ltd
7 Cooper Street
Balmain NSW 2041

VIA EMAIL: NICOLAJ.NOES@SVITZER.COM

Dear Nicolaj

SVITZER TUGS 2020 EBA: Protected Industrial action notice # 4

The Australian Maritime Officers Union refers to the outcome of the Protected Action Ballot **Order: B2021/1247**, the results of which were declared on 10/02/2022

Pursuant to Section 414(2)(b) of the Fair Work Act 2009 (Cth), I notify you as follows:

1. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a stoppages of work for 48 hours duration commencing at 0700 (local time) on 19th and 23rd of February. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:
 - Kwinana
2. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a stoppage of work for 48 hours duration commencing at 0700 (local time) on the 24th of February and 3rd March. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:
 - Fremantle

3. Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a stoppage of work for 4 hours duration commencing at 0700 (local time) on 24th and 25th of February and 3rd and 4th March . The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:

- Albany

Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a ban on performing work during a period of leave for avoidance of doubt regarding PPT's this is only when on their rostered leave and after having completed their guaranteed percentage requirements. (including recalls and relief work) for an unlimited duration commencing at 0700 (local time) on 18th of February. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:

- Kwinana
- Fremantle
- Geraldton

Members of the Australian Maritime Officers Union (AMOU) employed by Svitzer Australia Pty Ltd shall engage in a ban on performing work during a period of leave for avoidance of doubt regarding PPT's this is only when on their rostered leave and after having completed their guaranteed percentage requirements. (including recalls and relief work) for an unlimited duration commencing at 0600 (local time) on 18th of February. The Protected Industrial Action identified above shall take place in the following ports which are covered by the Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016:

- Mourilyan

In any industrial action taken in reliance on this notice the following will be exempt:

a. An emergency circumstance advised by a Harbour Master or representative of a Port Authority or another circumstance where the safety of the port, vessel, crew or marine environment may be in jeopardy.

b. Where such a circumstance in a. is identified there will be immediate consultation between Svitzer Australia Pty Limited, and AMOU representatives to ensure the required towage services are available.

c. Any services impacting or potentially impacting the movement of an Australian Defence Force vessel or foreign Navy vessels.

d. For a stoppage or stoppages longer than 4 hours, any services impacting or potentially impacting the shipment of a vessel loaded with livestock.

e. Any services impacting or potentially impacting the movement of a cruise ship.

The employee claim action of which you are being notified is being taken for the purpose of supporting or advancing claims made in respect of a proposed Enterprise Agreement.

The employee claim action of which you are being notified is being taken for the purpose of supporting or advancing claims made in respect of a proposed Enterprise Agreement.

Yours Sincerely

Chris Neiberding

AMOU Senior Industrial Officer

Uniform Civil Procedure Rules 2005

Current version for 1 December 2021 to date (accessed 15 February 2022 at 12:01)

[Schedule 7](#)

Schedule 7 Expert witness code of conduct

(Rule 31.23)

1 Application of code

This code of conduct applies to any expert witness engaged or appointed—

- (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings, or
- (b) to give opinion evidence in proceedings or proposed proceedings.

2 General duties to the Court

An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the court impartially on matters relevant to the area of expertise of the witness.

3 Content of report

Every report prepared by an expert witness for use in court must clearly state the opinion or opinions of the expert and must state, specify or provide—

- (a) the name and address of the expert, and
- (b) an acknowledgement that the expert has read this code and agrees to be bound by it, and
- (c) the qualifications of the expert to prepare the report, and
- (d) the assumptions and material facts on which each opinion expressed in the report is based (a letter of instructions may be annexed), and
- (e) the reasons for and any literature or other materials utilised in support of each such opinion, and
- (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise, and
- (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications, and
- (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person, and
- (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the court, and

- (j) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate, and
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason, and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

4 Supplementary report following change of opinion

- (1) Where an expert witness has provided to a party (or that party's legal representative) a report for use in court, and the expert thereafter changes his or her opinion on a material matter, the expert must forthwith provide to the party (or that party's legal representative) a supplementary report which must state, specify or provide the information referred to in clause 3(a), (d), (e), (g), (h), (i), (j), (k) and (l), and if applicable, clause 3(f).
- (2) In any subsequent report (whether prepared in accordance with subclause (1) or not), the expert may refer to material contained in the earlier report without repeating it.

5 Duty to comply with the court's directions

If directed to do so by the court, an expert witness must—

- (a) confer with any other expert witness, and
- (b) provide the court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing, and
- (c) abide in a timely way by any direction of the court.

6 Conferences of experts

Each expert witness must—

- (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the court and in relation to each report thereafter provided, and must not act on any instruction or request to withhold or avoid agreement, and
- (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

29 August 2022

PRIVILEGED & CONFIDENTIAL

VIA E-MAIL

Mr Greg Houston
Partner
HoustonKemp Economists
Level 40, 161 Castlereagh Street
Sydney NSW 2000
greg.houston@houstonkemp.com

Dear Mr Houston

Expert Retainer - HoustonKemp Economists

We act for Svitzer Australia Pty Ltd (**Svitzer**).

As you will recall you were engaged by us on Svitzer's behalf in February this year. That engagement led to your report dated 16 February 2022, which was admitted into evidence in the Fair Work Commission (**FWC**) proceedings on 18 February 2022.

This letter is to confirm your retainer to act as an independent expert in relation to a possible further application by Svitzer to the FWC to suspend or terminate protected industrial action on the basis of a threat of significant harm to the Australian economy or an important part of it (the **Proceedings**), and to set out the terms of your retainer.

1. Instructions

- 1.1. Svitzer is a marine towage business. Svitzer owns, and to a lesser degree charters, tug boats in all types of ports across Australia including container terminals, liquid bulk terminals, dry bulk terminals, roll on/roll off (**RoRo**) cargo terminals and cruise terminals.
- 1.2. At this stage we do not know the type of industrial action, where it will take place, nor the duration. However, we are mindful that any report will need to be provided as a matter of urgency. Accordingly, please undertake any preparatory work now possible, on the assumption that there is a complete stoppage of work of at least 24 hours in any or all of the ports.
- 1.3. Set out below is a summary of the ports, the type of cargo and Svitzer's share of work in those ports where industrial action may occur:

Port	Type of Cargo	Port Share
Adelaide	Container, Dry Bulk, RoRo, Tanker	100%

Port	Type of Cargo	Port Share
Albany	Dry Bulk	100%
Bowen	Dry Bulk	100%
Brisbane	Container, Dry Bulk, Tanker, RoRo, Cruise Ship	90%
Cairns	Tanker, Dry Bulk, Cruise Ship	100%
Eden	Dry Bulk, Cruise Ship	To be provided if needed.
Fremantle	Container, RoRo, Dry Bulk, Tanker	100%
Geelong	Dry Bulk, Tanker	41%
Geraldton	Dry Bulk, Tanker	100%
Kwinana	Dry Bulk, Tanker	100%
Lucinda	Dry Bulk	To be provided if needed.
Melbourne	Container, RoRo, Tanker, Dry Bulk, Cruise Ship	83%, however Svitzer operates 100% of the towage services due to a SLA with one of its competitors.
Mourilyan	Dry Bulk	100%
Newcastle	Dry Bulk, Tanker, RoRo	100%
Port Kembla	Dry Bulk, RoRo, Tanker	100%
Port Pirie	Dry Bulk, Tanker	100%
Spencer Gulf (Whyalla)	Dry Bulk	58%
Sydney (Port Jackson)	Dry Bulk, Tanker, Cruise Ship	100%
Sydney (Port Botany)	Container, Tanker	100%
Westernport	Tanker, Dry Bulk	100%

- 1.4. There is limited to no ability for port operators and shipping lines to find alternative towage services in the event of the industrial action. Of the ports, only the Sydney ports have an alternative towage provider. The alternate provider in Sydney would be able to serve no more than 50 to 60% of the required service level in the Sydney ports, at best.

1.5. Further instructions will be provided as they become available.

2. Engagement to prepare expert report

2.1. We would like you to prepare a report in which you address the following:

- (a) What is the importance to the Australian economy, and/or any important part(s) of the Australian economy, of seaborne trade and towage services in the Affected Ports?
- (b) What is the likely economic effect that such protected industrial action at the Affected Ports is likely to have on the Australian economy, and/or any important part(s) of the Australian economy.

2.2. In addition, would you please specifically address the following in your report:

- (a) Please provide a précis of your experience and expertise in relation to relevant economic disciplines, including:
 - (i) your qualifications and work experience; and
 - (ii) your experience with the port services, stevedoring and the transport and logistics industries generally.
- (b) Please confirm that you have read the *Harmonised Expert Witness Code of Conduct* at Annexure A of the Federal Court of Australia Expert Evidence Practice Note (GPN-EXPT) (a copy of which is **enclosed** with this letter) and agree to abide by it.

3. Other aspects of retainer

3.1. From time to time you may also be required to provide or respond to further evidence or expert opinions.

3.2. You may need to be available to give evidence in the FWC at some time during the course of the Proceedings. We may also ask that you be available at other times when any experts retained by other parties to the Proceedings are giving evidence.

4. Legal professional privilege

4.1. Your independent expert report and any drafts, notes or working papers prepared in accordance with your retainer are confidential and are not to be copied or used for any purpose unrelated to the Proceedings without our permission.

4.2. Materials supplied to you by Seyfarth Shaw Australia and Svitzer are confidential and are not to be copied or used for any purpose unrelated to your retainer without permission.

4.3. Your report and any drafts prepared by you should have the following words inserted on the cover page:

This document is protected by legal professional privilege. To ensure privilege is not waived, please keep this document confidential and in a safe and secure place. This document should not be distributed, and no reference to it should be made, to any person or organisation not directly involved in making decisions on the subject matter of this document.

5. **Conflicts of interest**

- 5.1. As an independent expert, it is important that you are free from any possible conflict of interest in the provision of your advice or giving evidence in the Proceedings. You should ensure that you have no connection with any party to the Proceedings which would preclude you from providing your opinion in an objective and independent manner.
- 5.2. The other party in the Proceedings is the Australian Maritime Officers' Union. However, the Maritime Union of Australia Division of the Construction, Forestry, Maritime, Mining and Energy Union and the Australian Institute of Marine and Power Engineers may also become involved in the Proceedings.

6. **Rates and curriculum vitae**

Svitzer will be responsible for payment of your fees but they will be processed by us. You should present your memoranda of fees to us on a monthly basis. Expenses such as taxis, parking, couriers, printing etc. are to be billed at cost.

7. **Communications**

Unless otherwise indicated, any request for documents and/or information, correspondence and any other communications regarding this matter should be directed through our office.

8. **Your duties and responsibilities as an expert witness**

- 8.1. Your role is that of an independent expert. As such, you are not an advocate for any party.
- 8.2. Although you are instructed and retained by Seyfarth Shaw Australia and Svitzer, you are retained as an independent expert to assist the FWC, and you have an overriding duty to it. The FWC expects you to be objective, professional and to form an independent view as to the matters in relation to which your opinion is sought.
- 8.3. Your duties as an expert witness are set out in the expert witness code of conduct **enclosed** with this letter and referred to above.

9. **Confirmation and next steps**

- 9.1. Please sign and return this letter to confirm your agreement to the terms of the retainer. Please also provide a copy of your curriculum vitae at your earliest convenience.
- 9.2. Should you become aware of any matters which you believe would prevent you from performing your duties in accordance with the terms in this letter, please let us know as soon as possible.

Please do not hesitate to contact Chris Gardner if you have any questions or concerns, or wish to discuss this matter further.

Yours faithfully



Chris Gardner
Partner

SEYFARTH SHAW AUSTRALIA
Enc: *Harmonised Expert Witness Code of Conduct*

Signing Page

Signed by Greg Houston

Date



EXPERT EVIDENCE PRACTICE NOTE (GPN-EXPT)

General Practice Note

1. INTRODUCTION

- 1.1 This practice note, including the *Harmonised Expert Witness Code of Conduct* (“**Code**”) (see **Annexure A**) and the *Concurrent Expert Evidence Guidelines* (“**Concurrent Evidence Guidelines**”) (see **Annexure B**), applies to any proceeding involving the use of expert evidence and must be read together with:
- (a) the Central Practice Note (CPN-1), which sets out the fundamental principles concerning the National Court Framework (“**NCF**”) of the Federal Court and key principles of case management procedure;
 - (b) the Federal Court of Australia Act 1976 (Cth) (“**Federal Court Act**”);
 - (c) the *Evidence Act 1995* (Cth) (“**Evidence Act**”), including Part 3.3 of the Evidence Act;
 - (d) Part 23 of the *Federal Court Rules 2011* (Cth) (“**Federal Court Rules**”); and
 - (e) where applicable, the Survey Evidence Practice Note (GPN-SURV).
- 1.2 This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

2. APPROACH TO EXPERT EVIDENCE

- 2.1 An expert witness may be retained to give opinion evidence in the proceeding, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation or a conference of experts. In some circumstances an expert may be appointed as an independent adviser to the Court.
- 2.2 The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge (based on training, study or experience - see generally s 79 of the *Evidence Act*).
- 2.3 However, the use or admissibility of expert evidence remains subject to the overriding requirements that:
- (a) to be admissible in a proceeding, any such evidence must be relevant (s 56 of the *Evidence Act*); and
 - (b) even if relevant, any such evidence, may be refused to be admitted by the Court if its probative value is outweighed by other considerations such as the evidence

being unfairly prejudicial, misleading or will result in an undue waste of time (s 135 of the Evidence Act).

- 2.4 An expert witness' opinion evidence may have little or no value unless the assumptions adopted by the expert (ie. the facts or grounds relied upon) and his or her reasoning are expressly stated in any written report or oral evidence given.
- 2.5 The Court will ensure that, in the interests of justice, parties are given a reasonable opportunity to adduce and test relevant expert opinion evidence. However, the Court expects parties and any legal representatives acting on their behalf, when dealing with expert witnesses and expert evidence, to at all times comply with their duties associated with the overarching purpose in the Federal Court Act (see ss 37M and 37N).

3. INTERACTION WITH EXPERT WITNESSES

- 3.1 Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate or "hired gun". Equally, they should never attempt to pressure or influence an expert into conforming his or her views with the party's interests.
- 3.2 A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence. However, it is important to note that there is no principle of law or practice and there is nothing in this practice note that obliges a party to embark on the costly task of engaging a "consulting expert" in order to avoid "contamination" of the expert who will give evidence. Indeed the Court would generally discourage such costly duplication.
- 3.3 Any witness retained by a party for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based in the specialised knowledge of the witness¹ should, at the earliest opportunity, be provided with:
 - (a) a copy of this practice note, including the Code (see Annexure A); and
 - (b) all relevant information (whether helpful or harmful to that party's case) so as to enable the expert to prepare a report of a truly independent nature.
- 3.4 Any questions or assumptions provided to an expert should be provided in an unbiased manner and in such a way that the expert is not confined to addressing selective, irrelevant or immaterial issues.

¹ Such a witness includes a "Court expert" as defined in r 23.01 of the Federal Court Rules. For the definition of "expert", "expert evidence" and "expert report" see the Dictionary, in Schedule 1 of the Federal Court Rules.

4. ROLE AND DUTIES OF THE EXPERT WITNESS

- 4.1 The role of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the Court or become an advocate for the cause of the party that has retained the expert.
- 4.2 It should be emphasised that there is nothing inherently wrong with experts disagreeing or failing to reach the same conclusion. The Court will, with the assistance of the evidence of the experts, reach its own conclusion.
- 4.3 However, experts should willingly be prepared to change their opinion or make concessions when it is necessary or appropriate to do so, even if doing so would be contrary to any previously held or expressed view of that expert.

Harmonised Expert Witness Code of Conduct

- 4.4 Every expert witness giving evidence in this Court must read the *Harmonised Expert Witness Code of Conduct* (attached in Annexure A) and agree to be bound by it.
- 4.5 The Code is not intended to address all aspects of an expert witness' duties, but is intended to facilitate the admission of opinion evidence, and to assist experts to understand in general terms what the Court expects of them. Additionally, it is expected that compliance with the Code will assist individual expert witnesses to avoid criticism (rightly or wrongly) that they lack objectivity or are partisan.

5. CONTENTS OF AN EXPERT'S REPORT AND RELATED MATERIAL

- 5.1 The contents of an expert's report must conform with the requirements set out in the Code (including clauses 3 to 5 of the Code).
- 5.2 In addition, the contents of such a report must also comply with r 23.13 of the *Federal Court Rules*. Given that the requirements of that rule significantly overlap with the requirements in the Code, an expert, unless otherwise directed by the Court, will be taken to have complied with the requirements of r 23.13 if that expert has complied with the requirements in the Code and has complied with the additional following requirements. The expert shall:
 - (a) acknowledge in the report that:
 - (i) the expert has read and complied with this practice note and agrees to be bound by it; and
 - (ii) the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience;
 - (b) identify in the report the questions that the expert was asked to address;
 - (c) sign the report and attach or exhibit to it copies of:
 - (i) documents that record any instructions given to the expert; and

- (ii) documents and other materials that the expert has been instructed to consider.

5.3 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the other parties at the same time as the expert's report.

6. CASE MANAGEMENT CONSIDERATIONS

6.1 Parties intending to rely on expert evidence at trial are expected to consider between them and inform the Court at the earliest opportunity of their views on the following:

- (a) whether a party should adduce evidence from more than one expert in any single discipline;
- (b) whether a common expert is appropriate for all or any part of the evidence;
- (c) the nature and extent of expert reports, including any in reply;
- (d) the identity of each expert witness that a party intends to call, their area(s) of expertise and availability during the proposed hearing;
- (e) the issues that it is proposed each expert will address;
- (f) the arrangements for a conference of experts to prepare a joint-report (see Part 7 of this practice note);
- (g) whether the evidence is to be given concurrently and, if so, how (see Part 8 of this practice note); and
- (h) whether any of the evidence in chief can be given orally.

6.2 It will often be desirable, before any expert is retained, for the parties to attempt to agree on the question or questions proposed to be the subject of expert evidence as well as the relevant facts and assumptions. The Court may make orders to that effect where it considers it appropriate to do so.

7. CONFERENCE OF EXPERTS AND JOINT-REPORT

7.1 Parties, their legal representatives and experts should be familiar with aspects of the Code relating to conferences of experts and joint-reports (see clauses 6 and 7 of the Code attached in *Annexure A*).

7.2 In order to facilitate the proper understanding of issues arising in expert evidence and to manage expert evidence in accordance with the overarching purpose, the Court may require experts who are to give evidence or who have produced reports to meet for the purpose of identifying and addressing the issues not agreed between them with a view to reaching agreement where this is possible ("**conference of experts**"). In an appropriate case, the Court may appoint a registrar of the Court or some other suitably qualified person ("**Conference Facilitator**") to act as a facilitator at the conference of experts.

- 7.3 It is expected that where expert evidence may be relied on in any proceeding, at the earliest opportunity, parties will discuss and then inform the Court whether a conference of experts and/or a joint-report by the experts may be desirable to assist with or simplify the giving of expert evidence in the proceeding. The parties should discuss the necessary arrangements for any conference and/or joint-report. The arrangements discussed between the parties should address:
- (a) who should prepare any joint-report;
 - (b) whether a list of issues is needed to assist the experts in the conference and, if so, whether the Court, the parties or the experts should assist in preparing such a list;
 - (c) the agenda for the conference of experts; and
 - (d) arrangements for the provision, to the parties and the Court, of any joint-report or any other report as to the outcomes of the conference (“**conference report**”).

Conference of Experts

- 7.4 The purpose of the conference of experts is for the experts to have a comprehensive discussion of issues relating to their field of expertise, with a view to identifying matters and issues in a proceeding about which the experts agree, partly agree or disagree and why. For this reason the conference is attended only by the experts and any Conference Facilitator. Unless the Court orders otherwise, the parties' lawyers will not attend the conference but will be provided with a copy of any conference report.
- 7.5 The Court may order that a conference of experts occur in a variety of circumstances, depending on the views of the judge and the parties and the needs of the case, including:
- (a) while a case is in mediation. When this occurs the Court may also order that the outcome of the conference or any document disclosing or summarising the experts' opinions be confidential to the parties while the mediation is occurring;
 - (b) before the experts have reached a final opinion on a relevant question or the facts involved in a case. When this occurs the Court may order that the parties exchange draft expert reports and that a conference report be prepared for the use of the experts in finalising their reports;
 - (c) after the experts' reports have been provided to the Court but before the hearing of the experts' evidence. When this occurs the Court may also order that a conference report be prepared (jointly or otherwise) to ensure the efficient hearing of the experts' evidence.
- 7.6 Subject to any other order or direction of the Court, the parties and their lawyers must not involve themselves in the conference of experts process. In particular, they must not seek to encourage an expert not to agree with another expert or otherwise seek to influence the outcome of the conference of experts. The experts should raise any queries they may have in relation to the process with the Conference Facilitator (if one has been appointed) or in

accordance with a protocol agreed between the lawyers prior to the conference of experts taking place (if no Conference Facilitator has been appointed).

- 7.7 Any list of issues prepared for the consideration of the experts as part of the conference of experts process should be prepared using non-tendentious language.
- 7.8 The timing and location of the conference of experts will be decided by the judge or a registrar who will take into account the location and availability of the experts and the Court's case management timetable. The conference may take place at the Court and will usually be conducted in-person. However, if not considered a hindrance to the process, the conference may also be conducted with the assistance of visual or audio technology (such as via the internet, video link and/or by telephone).
- 7.9 Experts should prepare for a conference of experts by ensuring that they are familiar with all of the material upon which they base their opinions. Where expert reports in draft or final form have been exchanged prior to the conference, experts should attend the conference familiar with the reports of the other experts. Prior to the conference, experts should also consider where they believe the differences of opinion lie between them and what processes and discussions may assist to identify and refine those areas of difference.

Joint-report

- 7.10 At the conclusion of the conference of experts, unless the Court considers it unnecessary to do so, it is expected that the experts will have narrowed the issues in respect of which they agree, partly agree or disagree in a joint-report. The joint-report should be clear, plain and concise and should summarise the views of the experts on the identified issues, including a succinct explanation for any differences of opinion, and otherwise be structured in the manner requested by the judge or registrar.
- 7.11 In some cases (and most particularly in some native title cases), depending on the nature, volume and complexity of the expert evidence a judge may direct a registrar to draft part, or all, of a conference report. If so, the registrar will usually provide the draft conference report to the relevant experts and seek their confirmation that the conference report accurately reflects the opinions of the experts expressed at the conference. Once that confirmation has been received the registrar will finalise the conference report and provide it to the intended recipient(s).

8. CONCURRENT EXPERT EVIDENCE

- 8.1 The Court may determine that it is appropriate, depending on the nature of the expert evidence and the proceeding generally, for experts to give some or all of their evidence concurrently at the final (or other) hearing.
- 8.2 Parties should familiarise themselves with the *Concurrent Expert Evidence Guidelines* (attached in Annexure B). The Concurrent Evidence Guidelines are not intended to be exhaustive but indicate the circumstances when the Court might consider it appropriate for

concurrent expert evidence to take place, outline how that process may be undertaken, and assist experts to understand in general terms what the Court expects of them.

- 8.3 If an order is made for concurrent expert evidence to be given at a hearing, any expert to give such evidence should be provided with the Concurrent Evidence Guidelines well in advance of the hearing and should be familiar with those guidelines before giving evidence.

9. FURTHER PRACTICE INFORMATION AND RESOURCES

- 9.1 Further information regarding Expert Evidence and Expert Witnesses is available on the Court's website.
- 9.2 Further information to assist litigants, including a range of helpful guides, is also available on the Court's website. This information may be particularly helpful for litigants who are representing themselves.

J L B ALLSOP
Chief Justice
25 October 2016

Application by Svitzer Australia Pty Ltd under s424 of the *Fair Work Act 2009* (Cth)

1 Background

- 1.1 Svitzer Australia Pty Ltd (**Svitzer**) has extracted data (**enclosed**) from its Helm system to assess the impact of the protected industrial action which occurred at Brisbane, Newcastle and Port Botany/Port Jackson on 17 and 18 February 2022 (**February PIA**), which was as follows:
- (a) a 48 hour stoppage of work commencing at 6.00am on 17 February 2022 in Brisbane;
 - (b) a 48 hour stoppage of work commencing at 12.01am on 17 February 2022 in Port Botany and Port Jackson; and
 - (c) a 48 hour stoppage of work commencing at 6.00am on 17 February 2022 in Newcastle.
- 1.2 The data sets out the scheduled vessel movements (a vessel movement being either the departure or arrival of a vessel), the actual time that the movement took place, the length of the delay and any other information known (for example whether the job was subcontracted).

2 The data

- 2.1 In summary, the data shows that:
- (a) 75 vessel movements were scheduled for the period in which the February PIA occurred;
 - (b) 27 of those vessel movements were delayed by 48 hours or less (36%);
 - (c) 28 of those vessel movements were delayed by 49 hours or more (37%);
 - (d) 16 vessel movements were serviced early before the February PIA commenced (21%);
 - (e) 3 vessels did not arrive in port at all (4%); and
 - (f) 1 vessel movement was serviced on time (1%).
- 2.2 Taking into consideration only the delayed vessel movements (being 55):
- (a) 49% of the vessel movements were delayed by 48 hours or less (27 movements);
 - (b) 51% of the vessel movements were delayed by 49 hours or more (28 movements); and
 - (c) 51% of the vessel movements were delayed by between 24 and 65 hours (28 movements).

2.3 The data shows that, in **Brisbane**:

- (a) during the period of 17 to 18 February 2022, there were thirteen vessel movements scheduled at Brisbane.
- (b) of these thirteen vessel movements:
 - (i) 31% of the vessel movements (4 vessel movements) were serviced prior to the February PIA commencing;
 - (ii) 31% of the vessel movements (4 vessel movements) were delayed by up to 48 hours;
 - (iii) 38% of the vessel movements (5 vessel movements) were delayed by more than 48 hours; and
 - (iv) 46% of the vessel movements (6 vessel movements) were delayed for between 24 and 65 hours.

2.4 The data shows that, in **Port Botany**:

- (a) during the period of 17 to 19 February 2022, there were 22 vessel movements scheduled at Port Botany. 11 of which were subcontracted.
- (b) of these 22 vessel movements:
 - (i) 5% of the vessel movements (1 vessel movement) was serviced on time;
 - (ii) 27% of the vessel movements (6 vessel movements) were serviced prior to the February PIA commencing;
 - (iii) 36% of the vessel movements (8 vessel movements) were delayed by up to 48 hours;
 - (iv) 32% of the vessel movements (7 vessel movements) were delayed by more than 48 hours; and
 - (v) 27% of the vessel movements (6 vessel movements) were delayed for between 24 and 65 hours.

2.5 The data shows that, in **Newcastle**:

- (a) during the period of 17 to 18 February 2022, there were 40 vessel movements scheduled at Newcastle.
- (b) of these 40 vessel movements:

- (i) 8% of the vessel movements (3 vessel movements) were not carried out as the vessels did not arrive at the port;
- (ii) 15% of the vessel movements (6 vessel movements) were serviced prior to the February PIA commencing;
- (iii) 38% of the vessel movements (15 vessel movements) were delayed by up to 48 hours;
- (iv) 40% of the vessel movements (16 vessel movements) were delayed by more than 48 hours; and
- (v) 40% of the vessel movements (16 vessel movements) were delayed for between 24 and 65 hours.

3 Assumptions

3.1 Based on the above, we ask you to take the following assumptions into account when preparing your report:

- (a) the data is reliable to the extent that it sets out the actual movement times for a vessel movement;
- (b) the majority of the delays to vessel movements are likely to be a result of the February PIA; and
- (c) the vessel movements that occurred prior to the February PIA (21% of all vessel movements) were as a result of the capacity to reschedule movements.

Chris Gardner
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SEYFARTH SHAW AUSTRALIA
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Rebecca Brediceanu
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SEYFARTH SHAW AUSTRALIA
rbrediceanu@seyfarth.com
Tel: +61 2 8256 0405

30 August 2022

HARMONISED EXPERT WITNESS CODE OF CONDUCT²

APPLICATION OF CODE

1. This Code of Conduct applies to any expert witness engaged or appointed:
 - (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
 - (b) to give opinion evidence in proceedings or proposed proceedings.

GENERAL DUTIES TO THE COURT

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

CONTENT OF REPORT

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
 - (a) the name and address of the expert;
 - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
 - (e) the reasons for and any literature or other materials utilised in support of such opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
 - (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;

² Approved by the Council of Chief Justices' Rules Harmonisation Committee

- (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

SUPPLEMENTARY REPORT FOLLOWING CHANGE OF OPINION

4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

DUTY TO COMPLY WITH THE COURT'S DIRECTIONS

6. If directed to do so by the Court, an expert witness shall:
 - (a) confer with any other expert witness;
 - (b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and
 - (c) abide in a timely way by any direction of the Court.

CONFERENCE OF EXPERTS

7. Each expert witness shall:
 - (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
 - (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

ANNEXURE B

CONCURRENT EXPERT EVIDENCE GUIDELINES

APPLICATION OF THE COURT'S GUIDELINES

1. The Court's Concurrent Expert Evidence Guidelines ("**Concurrent Evidence Guidelines**") are intended to inform parties, practitioners and experts of the Court's general approach to concurrent expert evidence, the circumstances in which the Court might consider expert witnesses giving evidence concurrently and, if so, the procedures by which their evidence may be taken.

OBJECTIVES OF CONCURRENT EXPERT EVIDENCE TECHNIQUE

2. The use of concurrent evidence for the giving of expert evidence at hearings as a case management technique³ will be utilised by the Court in appropriate circumstances (see r 23.15 of the *Federal Court Rules 2011* (Cth)). Not all cases will suit the process. For instance, in some patent cases, where the entire case revolves around conflicts within fields of expertise, concurrent evidence may not assist a judge. However, patent cases should not be excluded from concurrent expert evidence processes.
3. In many cases the use of concurrent expert evidence is a technique that can reduce the partisan or confrontational nature of conventional hearing processes and minimises the risk that experts become "opposing experts" rather than independent experts assisting the Court. It can elicit more precise and accurate expert evidence with greater input and assistance from the experts themselves.
4. When properly and flexibly applied, with efficiency and discipline during the hearing process, the technique may also allow the experts to more effectively focus on the critical points of disagreement between them, identify or resolve those issues more quickly, and narrow the issues in dispute. This can also allow for the key evidence to be given at the same time (rather than being spread across many days of hearing); permit the judge to assess an expert more readily, whilst allowing each party a genuine opportunity to put and test expert evidence. This can reduce the chance of the experts, lawyers and the judge misunderstanding the opinions being expressed by the experts.
5. It is essential that such a process has the full cooperation and support of all of the individuals involved, including the experts and counsel involved in the questioning process. Without that cooperation and support the process may fail in its objectives and even hinder the case management process.

³ Also known as the "hot tub" or as "expert panels".

CASE MANAGEMENT

6. Parties should expect that, the Court will give careful consideration to whether concurrent evidence is appropriate in circumstances where there is more than one expert witness having the same expertise who is to give evidence on the same or related topics. Whether experts should give evidence concurrently is a matter for the Court, and will depend on the circumstances of each individual case, including the character of the proceeding, the nature of the expert evidence, and the views of the parties.
7. Although this consideration may take place at any time, including the commencement of the hearing, if not raised earlier, parties should raise the issue of concurrent evidence at the first appropriate case management hearing, and no later than any pre-trial case management hearing, so that orders can be made in advance, if necessary. To that end, prior to the hearing at which expert evidence may be given concurrently, parties and their lawyers should confer and give general consideration as to:
 - (a) the agenda;
 - (b) the order and manner in which questions will be asked; and
 - (c) whether cross-examination will take place within the context of the concurrent evidence or after its conclusion.
8. At the same time, and before any hearing date is fixed, the identity of all experts proposed to be called and their areas of expertise is to be notified to the Court by all parties.
9. The lack of any concurrent evidence orders does not mean that the Court will not consider using concurrent evidence without prior notice to the parties, if appropriate.

CONFERENCE OF EXPERTS & JOINT-REPORT OR LIST OF ISSUES

10. The process of giving concurrent evidence at hearings may be assisted by the preparation of a joint-report or list of issues prepared as part of a conference of experts.
11. Parties should expect that, where concurrent evidence is appropriate, the Court may make orders requiring a conference of experts to take place or for documents such as a joint-report to be prepared to facilitate the concurrent expert evidence process at a hearing (see Part 7 of the Expert Evidence Practice Note).

PROCEDURE AT HEARING

12. Concurrent expert evidence may be taken at any convenient time during the hearing, although it will often occur at the conclusion of both parties' lay evidence.
13. At the hearing itself, the way in which concurrent expert evidence is taken must be applied flexibly and having regard to the characteristics of the case and the nature of the evidence to be given.
14. Without intending to be prescriptive of the procedure, parties should expect that, when evidence is given by experts in concurrent session:

- (a) the judge will explain to the experts the procedure that will be followed and that the nature of the process may be different to their previous experiences of giving expert evidence;
 - (b) the experts will be grouped and called to give evidence together in their respective fields of expertise;
 - (c) the experts will take the oath or affirmation together, as appropriate;
 - (d) the experts will sit together with convenient access to their materials for their ease of reference, either in the witness box or in some other location in the courtroom, including (if necessary) at the bar table;
 - (e) each expert may be given the opportunity to provide a summary overview of their current opinions and explain what they consider to be the principal issues of disagreement between the experts, as they see them, in their own words;
 - (f) the judge will guide the process by which evidence is given, including, where appropriate:
 - (i) using any joint-report or list of issues as a guide for all the experts to be asked questions by the judge and counsel, about each issue on an issue-by-issue basis;
 - (ii) ensuring that each expert is given an adequate opportunity to deal with each issue and the exposition given by other experts including, where considered appropriate, each expert asking questions of other experts or supplementing the evidence given by other experts;
 - (iii) inviting legal representatives to identify the topics upon which they will cross-examine;
 - (iv) ensuring that legal representatives have an adequate opportunity to ask all experts questions about each issue. Legal representatives may also seek responses or contributions from one or more experts in response to the evidence given by a different expert; and
 - (v) allowing the experts an opportunity to summarise their views at the end of the process where opinions may have been changed or clarifications are needed.
15. The fact that the experts may have been provided with a list of issues for consideration does not confine the scope of any cross-examination of any expert. The process of cross-examination remains subject to the overall control of the judge.
16. The concurrent session should allow for a sensible and orderly series of exchanges between expert and expert, and between expert and lawyer. Where appropriate, the judge may allow for more traditional cross-examination to be pursued by a legal representative on a particular issue exclusively with one expert. Where that occurs, other experts may be asked to comment on the evidence given.
17. Where any issue involves only one expert, the party wishing to ask questions about that issue should let the judge know in advance so that consideration can be given to whether

arrangements should be made for that issue to be dealt with after the completion of the concurrent session. Otherwise, as far as practicable, questions (including in the form of cross-examination) will usually be dealt with in the concurrent session.

18. Throughout the concurrent evidence process the judge will ensure that the process is fair and effective (for the parties and the experts), balanced (including not permitting one expert to overwhelm or overshadow any other expert), and does not become a protracted or inefficient process.

To:

- All bargaining representatives for the proposed enterprise agreement to replace the *Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016* (**Proposed Agreement**)

- All employees of Svitzer Australia Pty Ltd who will be covered by the Proposed Agreement

14 November 2022

NOTICE OF EMPLOYER RESPONSE ACTION

Pursuant to section 414(5) of the *Fair Work Act 2009* (**Act**), Svitzer Australia Pty Ltd (**Svitzer**) gives notice that each employee of Svitzer who will be covered by the Proposed Agreement will be locked out from their employment with effect from 12:00pm (midday) AEDT (and equivalent local times in your state i.e. 9am WST) on Friday, 18 November 2022 (**Lockout**).

The Lockout will continue indefinitely until further notice.

During the period of the Lockout, employees who are locked out are directed:

1. Not to attend for work; and
2. Not to perform any work under their contracts of employment.

Effective from the commencement of the Lockout, and for the duration of the Lockout, Svitzer will not make any payments to any employees who are locked out. However, the Lockout will not affect the employees' continuity of employment.

The Lockout notified above is organised and engaged in as a response to employee claim action engaged in by employees who will be covered by the Proposed Agreement, which has been organised and notified by the Australian Maritime Officers'

Union, the Construction, Forestry, Maritime, Mining and Energy Union and the Australian Institute of Marine and Power Engineers in relation to the Proposed Agreement.

Yours sincerely,



Nicolaj Noes

Managing Director

0437 236 566

Nicolaj.noes@svitzer.com

Annexure A

HARMONISED EXPERT WITNESS CODE OF CONDUCT¹

APPLICATION OF CODE

1. This Code of Conduct applies to any expert witness engaged or appointed:
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 - (b) to give opinion evidence in proceedings or proposed proceedings.

GENERAL DUTIES TO THE COURT

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

CONTENT OF REPORT

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
 - (a) the name and address of the expert;
 - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
 - (e) the reasons for and any literature or other materials utilised in support of such opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
 - (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;

¹ Approved by the Council of Chief Justices' Rules Harmonisation Committee

- (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

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- 7. Each expert witness shall:
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16 November 2022

PRIVILEGED & CONFIDENTIAL

VIA E-MAIL

Mr Greg Houston
Partner
HoustonKemp Economists
Level 40, 161 Castlereagh Street
Sydney NSW 2000
greg.houston@houstonkemp.com

Dear Mr Houston

Expert Retainer - HoustonKemp Economists

As you know, we act for Svitzer Australia Pty Ltd (**Svitzer**).

We refer to our previous letter of engagement dated 14 November 2022 (**14 November Letter**) and adopt the defined terms in the 14 November Letter.

Proceedings B2022/1726 have commenced in the Fair Work Commission (**FWC**) under s424 of the Act arising from the Notice (**Proceedings**).

This letter is to update your instructions in relation to your engagement to act as an independent expert in relation to the Proceedings.

The Proceedings will be heard at 1pm on Thursday, 17 November 2022 and at 9am on Friday, 18 November 2022. This hearing will occur in person at:

Level 10, Terrace Tower
80 William St
East Sydney NSW 2011

We will need to file your report with the FWC by no later than 11am on Thursday, 17 November 2022.

1. Instructions

1.1. We refer to paragraph 1.4 of the 14 November Letter, which relevantly stated:

The vast majority of vessels calling into the Ports require tug services. Without tug services these vessels cannot be brought in and out of the Ports and therefore cannot be serviced.

1.2. Please assume that over 90% of vessels calling into the Ports require one or more tugboats to move in and out of the Ports.

1.3. In addition to the questions asked in the 14 November Letter, please consider the following question in your report:

Are there particular sectors of the Australian or State economies which are likely to be particularly affected by a stoppage of work at the Affected Ports? If so, which sectors or industries are likely to be so affected and what are the likely effects on each of them?

1.4. In light of the timing:

- (a) please focus the quantitative analysis in your report, in relation to all questions, on containerised trade, the port of Newcastle (particularly coal), and liquid bulk; and
- (b) we do not need you to prepare a covering witness statement.

Please do not hesitate to contact me if you have any questions or concerns, or wish to discuss this matter further.

Yours faithfully



Chris Gardner
Partner

SEYFARTH SHAW AUSTRALIA

Annexure B – Curriculum vitae



Greg Houston

Partner

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Web: HoustonKemp.com



Overview

Greg is a founding partner of HoustonKemp. He is an expert in the application of economics to assist high stakes decision-making in competition, finance, policy and regulatory matters.

In the antitrust sphere, Greg is regularly sought to advise on the competitive effects of proposed merger transactions, and to provide expert testimony in antitrust enforcement proceedings. His evidence has been cited favourably in numerous proceedings before the Federal Court, the Competition Tribunal and in the decisions of Australian and international arbitrators. For many years, Greg has been listed by Who's Who Legal as one of the world's leading competition economists. More recently, Greg has been recognised in WWL's Thought Leaders – Competition for his contributions to competition economics.

On regulatory matters, Greg has played a substantial role in shaping the development of economic regulatory regimes governing communications, energy, transport and water services infrastructure in Australia and the Asia Pacific region. His clients in this area include governments, regulators, infrastructure service providers and trade associations.

Greg is also the foremost expert in the region on the application of economics to critical questions arising in securities class actions, insider trading and market manipulation. He has filed expert reports in numerous proceedings concerning the adequacy and effect of disclosures in relation to listed and unlisted securities, in both Australia and New Zealand. Greg's evidence was accepted in the only two wrongful disclosure matters for which final judgment on substantive elements was informed by economic evidence before the Federal Court.

In April 2014, Greg – together with Adrian Kemp – founded HoustonKemp, a firm dedicated to applying economic analysis to bring clarity and focus to complex problems arising in competition, finance, policy and regulation.

Greg holds a first class honours degree in economics from the University of Canterbury, and is a member of the Competition and Consumer Committee of the Law Council of Australia.

Qualifications

1982 **University of Canterbury, New Zealand**
B.Sc. (First Class Honours) in Economics

Prizes and scholarships

1980 University Junior Scholarship, New Zealand

Career details

2014-	HoustonKemp Economists Partner, Sydney, Australia
1989-2014	NERA Economic Consulting Director (1998-2014) London, United Kingdom (1989-1997) Sydney, Australia (1998-2014)
1987-89	Hambros Bank, Treasury and capital markets Financial Economist, London, United Kingdom
1983-86	The Treasury, Finance sector policy Investigating Officer, Wellington, New Zealand

Project experience¹

Economic impact analysis

2022	Seyfarth Shaw/Svitzer Effect of industrial action by tugboat masters Expert report and evidence before the Fair Work Commission assessing the economic effect of industrial action by tugboat masters affecting the provision of harbour towage services at container and bulk trade ports in Queensland, NSW, South Australia and Western Australia.
2021	Seyfarth Shaw/Australian Fresh Produce Alliance Earnings of piece rate and hourly paid workers in horticultural sector Expert reports submitted to the Fair Work Commission in the context of an application brought by the Australian Workers Union, assessing empirical evidence concerning both the level and relative earnings of piece rate and hourly paid workers in the horticultural sector.
2020	Seyfarth Shaw/Patrick Effect of industrial action by stevedores Expert report submitted to the Fair Work Commission assessing the economic impact on the Australian and NSW economies of notified protected industrial action by stevedores.
2020	Seyfarth Shaw/DP World Effect of industrial action by stevedores Expert reports submitted to the Fair Work Commission assessing the economic impact on the Australian and NSW economies of notified protected industrial action by stevedores.

¹ Past ten years only.

- 2020** **Crown Solicitor for New South Wales**
Relative economic effects of government expenditure decisions
Expert reports and testimony before the NSW Industrial Relations Commission in relation to the relative effects on the NSW economy of salary increases for public sector employees, as compared with increased expenditure on infrastructure projects – in the context of the effects of the Covid-19 pandemic.
- 2019** **Seyfarth Shaw/Confidential client**
Effect of potential industrial action by stevedores
Analysis and draft expert report in the context of a potential application to the Fair Work Commission addressing the economic effect that various forms of industrial action by stevedores would be likely to have on the Australian economy.
- 2016-17** **Seyfarth Shaw/Confidential client**
Effect of potential industrial action by stevedores
Analysis and draft expert report in the context of a potential application to the Fair Work Commission addressing the economic effect that various forms of industrial action by stevedores would be likely to have on the Australian economy.
- 2015-16** **Airservices Australia**
Effect of potential industrial action by air traffic controllers
Analysis and draft expert report in the context of a potential application to the Fair Work Commission addressing the economic effect that certain forms of industrial action by Air Traffic Controllers would be likely to have on passengers, businesses, and the Australian economy.
- 2014** **Confidential client**
Effect of potential industrial action by tug boat operators
Analysis and draft expert report in the context of a potential application to the Fair Work Commission addressing the economic effect that certain forms of industrial action by tug boat operators would be likely to have on iron ore exports and the Australian economy.

Competition, access and mergers

- 2022** **Minter Ellison/NIB Health Fund**
Authorisation of collective buying group
Expert report before the Competition Tribunal in the context of its review of the decision by the Australian Competition and Consumer Commission (ACCC) to authorise the establishment of a collective buying group in the health insurance sector.
- 2022** **Mills Oakley/confidential client**
Competition effects of restrictions
Advice and analysis of the effects on competition of several state-based restrictions applying in relation to classes of gambling products.
- 2022** **Minter Ellison/Singtel Optus**
Authorisation of network and spectrum sharing
Expert reports submitted to the ACCC on the competitive effect of proposed arrangements between Telstra and TPG in the context of their application for authorisation of agreements involving the transfer of radio spectrum, the decommissioning of telecommunications assets and the sharing of radio access network services underpinning the provision of mobile telephony services.

- 2020-22** **Chapman Tripp & DLA Piper/Foodstuffs**
Competition market study
Advice, analysis and expert reports prepared in relation to the New Zealand Commerce Commission's market study of the retail grocery sector, and subsequent government proposals to establish a wholesale grocery access regime, and to analyse the costs and benefits of forced divestiture of retail grocery outlets.
- 2021** **Clayton Utz/Port of Newcastle Operations**
Collective bargaining authorisation review
Expert report and evidence given before the Competition Tribunal in the context of its review of the decision by the ACCC to authorise collective bargaining for port access services by Hunter Valley coal producers.
- 2021** **Ashurst, King & Wood Mallesons/Ovato-Are Media**
Merger clearance
Advice and expert reports submitted to the ACCC and the New Zealand Commerce Commission in relation to attaining clearance in Australia and New Zealand for magazine publisher Are Media to acquire the magazine distribution business of Ovato.
- 2017-21** **Gilbert + Tobin/Confidential client**
Alleged cartel conduct
Advice and analysis in relation to an ACCC investigation and then prosecution of alleged cartel conduct.
- 2020** **Allens/Confidential client**
Alleged misuse of market power
Advice and analysis in relation to Federal Court proceedings brought by a private party in relation to below cost pricing of a fast moving consumer good.
- 2020** **Ashurst/ASN**
Exclusive dealing
Expert report on the competitive effects of the exclusive dealing notification to the ACCC by the dedicated TV shopping channel retailer TVSN, proposing to be able to acquire products from suppliers on an exclusive basis.
- 2019-20** **King & Wood Mallesons/Confidential client**
Merger authorisation
Advice and preparation of expert report for use in a potential application for authorisation to the ACCC.
- 2018-20** **Squire Patton Boggs/Confidential client**
Market power provision
Advice and expert report prepared on the application of an industry-specific regulation directed at limiting a firm's pricing conduct in circumstances where it has market power.
- 2018-20** **Queensland Rail**
Access to facilities
Advice in relation to the review by the Queensland Competition Authority (QCA) of the declared status of services provided by QR's five rail networks, as well as the QCA's simultaneous review of the access undertaking applying to those networks.

- 2018-20** **DLA Piper/DBCT Management**
Access to facilities
Expert reports submitted to the QCA review of the declared status of services provided by the Dalrymple Bay Coal Terminal.
- 2017-19** **Johnson Winter & Slattery/Ramsay Healthcare**
Alleged misuse of market power
Expert reports and testimony in context of Federal Court proceedings brought by the ACCC against Ramsay Healthcare in relation to conduct by Coffs Harbour-based surgeons.
- 2017-19** **Wilson Harle/Wilson Parking**
Competitive effects of merger
Expert report submitted in High Court of New Zealand proceedings (settled shortly before trial) brought by the Commerce Commission concerning the competitive effects of an already completed merger transaction.
- 2017-20** **King & Wood Mallesons**
Competition analysis
Advice to a major digital platform service provider on competition matters arising in the ACCC's digital platforms inquiry, and the development of the news media and digital platforms bargaining code.
- 2015-20** **Port of Newcastle Operations**
Access to facilities
Advice and expert reports submitted to the National Competition Council on matters arising in applying the criteria for declaration under Part IIIA, in the context of applications by Glencore and the NSW Minerals Council seeking recommendation that navigation service be declared, and PNO's application for recommendation that the declaration of services be revoked.
- 2018** **Westpac Banking Corporation**
Competition analysis
Expert report prepared for the Productivity Commission in response to the draft finding in its banking competition inquiry that each of Australia's banks holds substantial market power.
- 2017-19** **Ashurst/Confidential client**
Anti-competitive bundling
Advice in relation to an ACCC's investigation of bundled discounts that were alleged to have had an anti-competitive effect.
- 2017** **Minter Ellison Rudd Watts/Complete Office Supplies**
Competitive effects of merger
Expert reports submitted in High Court of New Zealand proceedings concerning the proposed acquisition of OfficeMax by Platinum Equity injunction.
- 2017** **Minter Ellison/CrownBet**
Merger authorisation
Expert reports and testimony in Competition Tribunal proceedings concerning the proposed acquisition of Tatts by Tabcorp.

- 2016** **Bird & Bird/Generic Health**
Competitive effects of patent infringement
Expert reports and testimony in Federal Court proceedings concerning the damages arising from infringement of a pharmaceutical patent in relation to a pharmaceutical patent.
- 2016** **Manildra Group**
Competition analysis
Advice and preparation of an expert report assessing competitive constraints in the supply of fuel grade ethanol.
- 2016** **Clayton Utz/Anglo American**
Competitive effects analysis
Expert reports assessing the economic impact on the equine critical industry cluster if certain thoroughbred breeding operations were to leave the Upper Hunter.
- 2014-16** **Ashurst and Gilbert + Tobin/Confidential client**
Competitive effects of agreements
Analysis and advice prepared in context of an ACCC investigation of agreements between a supplier and its major customers that are alleged to harm competition.
- 2015** **Corrs/Confidential client**
Merger clearance
Analysis, advice and expert report submitted to the ACCC in the context of a proposed acquisition in the office products sector.
- 2014-15** **Australian Government Solicitor/Commonwealth of Australia**
Competition and trade analysis
Expert report on competition and trade in tobacco products, prepared in the context of the World Trade Organisation dispute settlement proceedings concerning Australia's tobacco plain packaging legislation.
- 2014-15** **King & Wood Mallesons/Confidential client**
Competitive effects of agreement
Analysis and advice prepared in context of an ACCC investigation of agreements between a supplier and its major customers that were alleged to harm competition.
- 2013-14** **Corrs/Australian Competition and Consumer Commission**
Effect of cartel conduct
Expert report filed in the Federal Court on the price effects of an alleged market sharing arrangement in relation to the supply of forklift gas, prepared in the context of proceedings brought against Renegade Gas (Supagas).
- 2013-14** **Australian Competition and Consumer Commission**
Merger clearance
Expert report and testimony before the Competition Tribunal in the context of the ACCC's decision to oppose the acquisition of Macquarie Generation by AGL Energy.
- 2013-14** **Ashurst/BlueScope**
Merger clearance
Expert reports submitted to the ACCC in the context of the clearance of three approved transactions in the domestic steel industry.
- 2013-14** **Australian Government Solicitor/ACCC**
Merger clearance
Analysis and advice prepared in the context of the ACCC review of the proposed acquisition of petrol retailing sites in South Australia.

- 2013** **Corrs/Generic Health**
Patent damages estimation
Expert report on the nature and extent of the analysis necessary to estimate damages in a patent infringement proceeding.
- 2012-13** **Minter Ellison/Confidential client**
Merger clearance
Expert reports submitted to the ACCC in the context of a confidential application for clearance of a proposed acquisition in the industrial gases industry.
- 2011-12** **Gilbert + Tobin/Pact Group**
Merger clearance
Expert reports submitted to the ACCC on the competitive implications of the proposed acquisition of plastic packaging manufacturer Viscount Plastics by Pact Group.
- 2010-12** **Mallesons/APA**
Merger clearance
Expert reports submitted to the ACCC on the competitive implications of the proposed acquisition of the gas pipeline assets of Hastings Diversified Utilities Fund by APA Group.

Securities and finance

- 2022** **Watson Mangioni/Regency**
Appropriate litigation funding commission
Expert report before the Federal Court in six settlement approval proceedings on the funding commission to be paid upon settlement of group proceedings brought against manufacturers of motor vehicles containing Takata air bags.
- 2022** **Madison Marcus/Galactic**
Appropriate litigation funding commission
Expert report and evidence before the Federal Court in proceedings seeking approval of the funding commission to be paid upon settlement of group proceedings brought against the franchisor of 7-Eleven stores.
- 2021-22** **HWL Ebsworth/iSignthis**
Materiality of information
Expert reports submitted in the context of Federal Court proceedings brought by the Australian and Investments Commission (ASIC) alleging that iSignthis and/or its Chief Executive Officer failed to notify the ASX of information that was material to the price of its securities and thereby breached its continuous disclosure obligations.
- 2021** **Slater and Gordon/Representative proceeding**
Appropriate litigation funding commission
Expert report in the context of proceedings before the Supreme Court of Victoria seeking approval of a group costs order (GCO) for application in representative proceedings brought against G8 Education alleging breach of its continuous disclosure obligations.

- 2021** **Maurice Blackburn Lawyers/Representative proceeding**
Appropriate litigation funding commission
Expert reports prepared in the context of proceedings before the Supreme Court of Victoria seeking approval of a GCO for application in representative proceedings brought against ANZ and Westpac banks concerning the application of flex commissions in the sale of motor vehicles.
- 2020-21** **SBA Law/Pitcher Partners**
Valuation of damages
Expert reports and sworn evidence in the context of Federal Court proceedings brought against Pitcher Partners in its role as group auditor of consumer law firm Slater & Gordon and alleging it failed to recognise the need for an impairment of Slater & Gordon's UK subsidiary in light of poorer than expected financial performance and pending regulatory changes.
- 2020-21** **Australian Securities and Investments Commission**
Breach of disclosure obligations
Expert reports submitted in the context of Federal Court proceedings brought by ASIC in relation to the materiality for the price of its securities of the January 2013 disclosure by Rio Tinto Limited of an impairment to the value of Rio Tinto Coal Mozambique assets.
- 2019-21** **Shine Lawyers/Representative proceeding**
Breach of disclosure obligations
Expert reports submitted in the context of proceedings before the Federal Court concerning the effect of certain disclosures on the price of ASX listed securities in Iluka Limited.
- 2020** **Corrs/Balance Legal Capital**
Appropriate litigation funding commission
Expert report prepared in the context of proceedings to approve the settlement of a consumer class action brought against Swann Insurance, on the reasonable range of and return on investment implied by historically observed funding commission rates in previous class action proceedings in Australia.
- 2020** **Johnson Winter & Slattery/Representative proceeding**
Group cost order application
Expert report prepared in the context of an application to be brought before the Supreme Court of Victoria to make a GCO, under which the legal costs and funding commission for a representative proceeding would be set by reference to a percentage of the settlement amount.
- 2020** **McCabe Curwood/Lewer Corporation**
Economic interpretation of loan agreement
Expert report prepared for the Supreme Court of Victoria as to whether a US dollar loan could be interpreted, economically, as equivalent to the sum of an Australian dollar loan plus a foreign exchange forward contract.
- 2020** **JWS/Australian Securities and Investments Commission**
Breach of disclosure obligations
Expert report in reply submitted in the context of Federal Court proceedings brought by ASIC concerning the materiality for the price of its securities of information omitted from ASX disclosures made by GetSwift Limited.

- 2019-20** **Joint Action Funding/Representative proceeding**
Valuation of damages
Expert reports submitted to the New Zealand High Court in the matter of Eric Houghton versus parties associated with former listed entity, Feltex Carpets, on the extent of loss arising from the allotment of shares under an IPO for which the prospectus contained untrue statements.
- 2019-20** **Slater & Gordon/Representative proceeding**
Breach of disclosure obligations
Expert reports submitted in the context of proceedings before the Federal Court concerning the effect of certain disclosures on the price of ASX listed securities in Spotless Limited.
- 2019-20** **Arnold Bloch Leibler/Australian Funding Partners**
Appropriate litigation funding commission
Expert reports and sworn testimony in the proceedings before the Victorian Supreme Court concerning the appropriate level of funding commission to apply in the context of the 2018 settlement of representative proceedings brought against Banksia Securities Limited.
- 2017-20** **Portfolio Law/Representative proceeding**
Misleading and deceptive conduct
Expert reports and sworn testimony in representative proceedings before the Federal Court concerning the effect of certain disclosures on the price of ASX listed securities in Myer.
- 2019** **Norton Rose Fulbright/Directors of QRxPharma**
Breach of disclosure obligations
Advice and analysis of the extent of potential damages arising from a shareholder class action alleging breach of disclosure obligations of the former ASX-listed entity, QRxPharma.
- 2019** **Elliot Legal/Representative proceeding**
Breach of disclosure obligations
Expert reports submitted in the context of proceedings before the Federal Court concerning the effect of certain disclosures on the price of ASX listed securities in Murray Goulburn Co-operative Company.
- 2018** **Maurice Blackburn/Representative proceeding**
Misleading and deceptive conduct
Expert reports prepared in relation to Federal Court representative proceedings concerning the effect of certain disclosures on the price of ASX listed securities in Sirtex Medical.
- 2018** **William Roberts/Representative proceeding**
Misleading and deceptive conduct
Preliminary analysis on the extent of liability and potential damages arising from a shareholder class action alleging breach of disclosure obligations.
- 2017-18** **Australian Pipelines and Gas Association**
Allowed rate of return
Advice in relation to the rate of return guideline review being undertaken by the Australian Energy Regulator (AER), including participation in the AER's concurrent expert evidence session one.

- 2017** **Slater and Gordon/Gasmere Ltd**
Share portfolio valuation
Expert report prepared in relation to Supreme Court of Victoria proceedings brought against Shaw and Partners concerning the appropriate valuation of a share portfolio, the subject of a damages claim following the collapse of Opus Prime.
- 2016-17** **Allens/QBE**
Shareholder class action
Advice and analysis on the extent of liability and potential damages arising from a shareholder class action alleging breach of QBE's ASX disclosure obligations.
- 2016** **Elliot Legal/Representative proceeding**
Misleading and deceptive conduct
Expert reports in representative proceedings in the Supreme Court of Victoria concerning the effect of certain disclosures on the price of ASX listed securities in Downer EDI.
- 2015-16** **Maurice Blackburn/Representative proceeding**
Misleading and deceptive conduct
Expert reports submitted to the Federal Court assessing the effect of alleged misstatements in relation to the annual accounts and associated going concern assumption in relation to Tamaya Resources (in liquidation).
- 2013-15** **Sydney Water Corporation**
Cost of capital estimation
Prepare three expert reports for submission to the Independent Pricing and Regulatory Tribunal (IPART) on the framework for determining the weighted average cost of capital for infrastructure service providers, and on estimation of an appropriate equity beta.
- 2012-15** **HWL Ebsworth/Confidential client**
Insider trading
Expert advice and analysis in the context of criminal proceedings alleging insider trading in certain ASX-listed securities (2012-13). Subsequent expert report filed in Supreme Court of Tasmania estimating price effects of inside information in context of 'proceeds of crime' proceedings.
- 2014** **Wotton Kearney/Genesys Wealth Advisors**
Misleading and deceptive conduct
Expert report submitted to the Supreme Court of Victoria assessing the accuracy of product disclosure statements and other information in relation to two fixed interest investment funds offered by Basis Capital.
- 2014** **TransGrid**
Cost of capital estimation
Preparation of an expert report for submission to the AER estimating the weighted average cost of capital for electricity network service providers.
- 2011-13** **Slater & Gordon/Modtech**
Shareholder damages assessment
Expert reports and testimony in representative proceedings before the Federal Court alleging misstatement and/or breach of the continuous disclosure obligations of the ASX-listed entity, GPT.

- 2011-12** **Freehills/National Australia Bank**
Shareholder damages assessment
Expert advice in connection with representative proceedings before the Federal Court alleging misstatement and/or breach of the continuous disclosure obligations of an ASX-listed entity.
- 2012** **Johnson Winter & Slattery/Victorian gas distributors**
Cost of equity estimation
Expert report submitted to the AER on the appropriate methodology for estimating the cost of equity under the capital asset pricing model.
- 2009-13** **Minter Ellison/Confidential client**
Misleading and deceptive conduct
Expert report and related advice in light of investor claims and pending litigation following the freezing of withdrawals from a fixed interest investment trust that primarily held US-denominated collateralised debt obligations (CDOs), as offered by a major Australian financial institution. Analysis undertaken included the extent to which the investment risks were adequately described in the fund documents, and the quantum of potential damages arising.

Regulatory analysis

- 2021** **Crown Solicitor/ESCOSA**
Review of regulatory determination
Conducted a formal review of the Essential Services Commission of South Australia's (ESCOSA) final determination of maximum allowed revenue for the licensed Compass Springs drinking water services provider, Robusto Investments, and subsequently, prepared expert reports and gave evidence before the South Australia Civil and Administrative Tribunal.
- 2021** **Barrenjoey Capital Partners**
Regulatory due diligence
Advice and preparation of a vendor due diligence report in the context of the sale by Australian Super of a stake in the NSW electricity network service provider, Ausgrid. This work focused on the regulatory framework for regulation of electricity network services and its likely evolution in the face of the transition towards a lower carbon energy sector.
- 2021** **Brookfield Asset Management**
Regulatory due diligence
Advice and preparation of a regulatory due diligence report and advice on competition matters arising in the context of Brookfield's acquisition of the Victorian electricity and gas network service provider, AusNet Services.
- 2021** **Barrenjoey Capital Partners**
Regulatory due diligence
Advice and preparation of a regulatory due diligence report in the context of the acquisition of the electricity network service provider, Spark Infrastructure Group by a consortium of KKR, OTPP and PSP.

- 2020-2022** **DLA Piper/Perth Airport
Quantum meruit determination**
Expert reports and evidence given in proceedings before the Supreme Court of Western Australia on the appropriate methodology and its application in a quantum meruit application to determine the fair and reasonable price for aeronautical services provided by Perth Airport Pty Ltd to Qantas Group during 2018, the price for which was in dispute.
- 2019-21** **DLA Piper/Dalrymple Bay Infrastructure
Review of access undertaking**
Advice and expert reports prepared in the context of the Queensland Competition Authority's review of the access undertaking for users of the Dalrymple Bay coal terminal.
- 2019** **Brookfield Asset Management/Bank of America
Regulatory due diligence**
Vendor due diligence report on all regulatory aspects of the arrangements – and potential developments therein – applying to the Dalrymple Bay coal terminal.
- 2018** **Johnson Winter & Slattery/Queensland Competition Authority
Apprehension of bias claim**
Expert reports submitted to the Queensland Supreme Court showing the chain of causation necessary for a connection between the QCA's Aurizon draft decision and the economic interests of the Port of Newcastle.
- 2017-18** **King & Wood Mallesons/Tasmania Gas Pipeline
Gas pipeline arbitration arrangements**
Expert reports on economic aspects of the Part 23 regime arbitration with Hydro Tasmania on the terms of access to the Tasmanian Gas Pipeline.
- 2017-18** **Victorian and South Australian electricity distribution networks
Productivity adjustments**
Expert report on the conceptual and empirical basis for pre-emptive productivity adjustments to DNSPs' projected operating expenditure.
- 2017-18** **Jemena
Gas pipeline arbitration arrangements**
Advice and analysis in relation to the new rules for arbitration of prices for services provided by non-scheme gas pipelines.
- 2016-18** **APA Group
Gas market reform**
Expert reports submitted to the Gas Market Reform Group in the context of its review of the gas pipeline coverage criteria, and the proposal to introduce the compulsory auction of contracted but unominated gas pipeline capacity.
- 2016-17** **Minter Ellison Rudd Watts/Trustpower, New Zealand
Transmission pricing methodology**
Expert reports submitted to the Electricity Authority and to the High Court of New Zealand in relation to proposed reforms to the transmission pricing methodology and the distributed generation pricing principles.

- 2016** **Johnson Winter & Slattery/Australian Gas Networks**
Materially preferable decision
Expert report reviewing whether aspects of the Australian Energy Regulator's (AER's) draft access arrangement decision would be likely to result in a materially preferable decision in terms of achievement of the national gas objective.
- 2015-17** **Government of New South Wales**
Economic regulation for privatisation
Advisor to government of New South Wales on all economic regulatory aspects of the proposed partial lease the electricity transmission and distribution entities, TransGrid, AusGrid and Endeavour Energy.
- 2014-16** **Powerco**
Input methodologies review
Advice and several expert reports prepared in the context of the Commerce Commission's reviews of cost of capital and others aspects of the Input Methodologies governing the determination of maximum prices for New Zealand electricity and gas distribution networks.
- 2015** **ActewAGL**
Regulatory price review
Expert report on the economic interpretation of provisions in the national electricity law and rules in relation to the application of the national electricity objective to the entire price determination of the Australian Energy Regulator.
- 2014-16** **Atco Gas**
Access price review
Expert reports on the economic interpretation of provisions in the national gas law and rules in relation to depreciation and the application of the national gas objective to the entire draft decision, submitted to the Economic Regulation Authority of WA.
- 2014-16** **Government of Victoria**
Economic regulation for privatisation
Advisor to government of Victoria on the design, development and application of the framework for economic regulation of the Port of Melbourne Corporation in the context of the privatisation of the port by way of long term lease.
- 2013** **Actew Corporation**
Interpretation of economic terms
Advice on economic aspects of the decision of the Independent Competition and Regulatory Commission in relation to the price controls applying to Actew.
- 2012-13** **Ashurst/Brisbane Airport Corporation**
Draft access undertaking
Advice, analysis and expert reports in the context of the preparation of a draft access undertaking specifying the basis for determining a ten year price path for landing charges necessary to finance a new parallel runway at Brisbane airport.
- 2012** **King & Wood Mallesons/Origin Energy**
Interpretation of economic terms
Expert reports and testimony in the context of judicial review proceedings before the Supreme Court of Queensland on the electricity retail price determination of the Queensland Competition Authority.

- 2012** **Contact Energy, New Zealand**
Transmission pricing methodology
Advice on reforms to the Transmission Pricing Methodology proposed by Electricity Authority.
- 2011-12** **Energy Networks Association**
Network pricing rules
Advice and expert reports submitted to the Australian Energy Market Commission on wide-ranging reforms to the network pricing rules applying to electricity and gas transmission and distribution businesses, as proposed by the Australian Energy Regulator.
- 2010-12** **QR National**
Regulatory and competition matters
Advisor on the competition and regulatory matters, including: a range of potential structural options arising in the context of the privatisation of QR National's coal and freight haulage businesses, particularly those arising in the context of a 'club ownership model' proposed by a group of major coal mine owners.
- 2002-12** **Orion New Zealand Ltd, New Zealand**
Electricity lines regulation
Advisor on regulatory and economic aspects of the implementation by the Commerce Commission of the evolving regimes for the regulation of New Zealand electricity lines businesses, including the provision of expert reports, and the giving of expert evidence before the Commission.

Valuation and contract analysis

- 2021-2022** **Northern Lands Council**
Native title compensation
Expert report submitted to the Federal Court in the context of a native title compensation claim on the economic framework for determining the amount of compensation necessary to restore native title claimants to the economic position they would be in today, had they not been deprived of the opportunity to bargain in relation to the alleged infringement of native title rights three decades ago.
- 2018-2020** **DLA Piper/Basslink Pty Ltd**
Damages valuation
Expert reports and testimony in arbitration proceedings concerning the extent of damages arising from the 2016 failure of the Basslink electricity interconnector cable between the Tasmanian and Victorian regions of the national electricity market.
- 2017-19** **DLA Piper & Arnold Bloch Leibler/Coal terminal users**
Price review arbitration
Expert reports and testimony in arbitration proceedings concerning the application of the price review clauses in the standard user agreement for Adani Abbot Point coal terminal.
- 2016** **SyCip Salazar Hernandez & Gatmaitan/Maynilad Water Services**
Concession contract dispute
Expert reports and testimony in arbitration proceedings concerning the application of the price review clauses in the Manila Water Concession agreements.

- 2015-16** **Clyde and Co/Apache Corporation**
Contract dispute
Expert reports submitted in the context of Supreme Court of Victoria proceedings concerning the appointment of receivers for Burrup Fertilisers Pty Ltd, in relation to the market price of gas available to supply an anhydrous ammonia plant on the Burrup Peninsula.
- 2015-16** **Raja, Darryl & Loh/Serudong Power Sdn Bhd (SPSB)**
Power purchase agreement arbitration
Expert reports submitted in the context of an international arbitration held in Kuala Lumpur concerning the interpretation of price indexation provisions in a power purchase agreement between SPSB and Sabah Electricity Sdn Bhd.
- 2015-16** **Australian Government Solicitor/Commonwealth of Australia**
Native title compensation
Expert reports and testimony before the Federal Court in relation to the native title compensation claim against the Northern Territory for certain acts extinguishing native title in the town of Timber Creek.
- 2014-15** **Minter Ellison/Foxtel Management Pty Ltd**
Assessment of reasonable licence fee
Expert reports prepared in the context of proceedings before the Copyright Tribunal concerning the appropriate valuation of the rights to be paid by Foxtel for the broadcast and communication of commercial recordings licensed by the Phonographic Performance Company of Australia.
- 2014-15** **Rahmat Lim & Partners/Port Dickson Power Berhad, Malaysia**
Power purchase agreement arbitration
Expert reports submitted in the context of an arbitration held in Kuala Lumpur concerning the interpretation of the price indexation provisions in a power purchase contract between Port Dickson Power Berhad and Tenaga Nasional Berhad.
- 2013** **Johnson Winter & Slattery/Origin**
Gas supply agreement price review
Analysis and advice on the implications of certain contract terms for the price of gas, to be determined in a potential arbitration concerning the terms of a substantial long term gas supply agreement.
- 2013** **Herbert Smith Freehills/Santos**
Gas supply agreement price review
Analysis and advice on factors influencing the market price of gas in eastern Australia, to be determined in a potential arbitration concerning the terms of a substantial long term gas supply agreement.
- 2012-13** **Herbert Smith Freehills/North West Shelf Gas**
Gas supply agreement arbitration
Expert reports on the implications of certain contract terms for the price of gas under a substantial long term gas supply agreement.
- 2012-13** **Allens/BHP Billiton-Esso**
Gas supply agreement arbitration
Analysis, advice and expert report on the implications of certain contract terms for the price of gas under a substantial long term gas supply agreement.

- 2012-13** **Gilbert + Tobin/Rio Tinto Coal Australia**
Price review arbitration
Analysis and expert reports prepared in the context of an arbitration concerning the price to be charged for use of the coal loading facilities at Abbott Point Coal Terminal.
- 2012** **King & Wood Mallesons/Ausgrid**
Power purchase agreement arbitration
Expert report prepared and filed in an arbitration on the in relation to the effect of the government's newly introduced carbon pricing mechanism on the price to be paid under a long term power purchase and hedge agreement between an electricity generator and retailer.

Sworn, transcribed evidence²

- 2022** **Expert evidence before the South Australia Civil and Administrative Tribunal, in its review of ESCOSA's drinking water determination for Robusto Investments**
Expert reports, sworn evidence, Adelaide, 15-17 August 2022
- Expert evidence before the Federal Court on behalf of Galactic, in the settlement approval of group proceedings concerning 7-Eleven Stores Pty Ltd**
Expert report, sworn evidence, Sydney, 29 March 2022
- Expert evidence before the Fair Work Commission on behalf of Svitzer, in the matter of an application to suspend industrial action notified by the Australian Maritime Officers Union.**
Expert reports, sworn evidence, via videolink, Friday 18 February 2022
- 2021** **Expert evidence before the Federal Court on behalf of Pitcher Partners, in the matter of the representative proceedings Matthew Hall v Pitcher Partners**
Expert reports, sworn evidence, via videolink, 14-16 December 2021
- Expert evidence before the Australian Competition Tribunal on behalf of Port of Newcastle Operations, in the matter of an application for redetermination of a collective bargaining authorisation decision by the Australian Competition and Consumer Commission**
Expert reports, sworn evidence, via videolink, 13 October 2021
- Expert evidence before the Supreme Court of Western Australia on behalf of Perth Airport, in the matter of Perth Airport v Qantas Group**
Expert reports, sworn evidence, via videolink, 5-8 October 2021
- Expert evidence before the Fair Work Commission on behalf of the Australian Fresh Produce Alliance, in the matter of an application by the Australian Workers Union to vary the Horticultural Workers Award 2020**
Expert reports, sworn evidence, via videolink, 20 July 2021
- Expert evidence before the Federal Court on behalf of Aucham Superfund, in the matter of the Aucham Superfund v Iluka Resources Limited**
Expert reports, sworn evidence, via videolink, 8-9 April 2021

² Past ten years only.

- 2020**
- Expert evidence before the NSW Industrial Relations Commission on behalf of the Crown Solicitor for NSW, in the matter of the Crown Employees (Police Officers) and Paramedics and Control Centre Officers' awards**
Expert reports, sworn evidence, Parramatta, 7-8 October and 13 November 2020
- Expert evidence before Hon Robert French AC on behalf of Basslink Pty Ltd, in the matter of the State of Tasmania and Hydro Electric Corporation v Basslink Pty Ltd**
Expert reports, sworn evidence, via videolink, 13-14 October 2020
- Expert evidence before the Supreme Court of Victoria on behalf of Australian Funding Partners, in the matter of Laurence John Bolitho v Banksia Securities Limited**
Expert reports, sworn evidence, via videolink to Melbourne, 4 August 2020.
- Expert evidence before the Supreme Court of Queensland on behalf of the QCoal group and Lake Vermont Resources, in the matter of Adani Abbot Point v QCoal, Sonoma Mine Management and Byerwen Coal (the QCoal Group), and Lake Vermont Resources**
Expert reports, sworn evidence, Brisbane, 28 February 2020
- 2019**
- Expert evidence before the Federal Court on behalf of Ramsay Healthcare, in the matter of ACCC v Ramsay Healthcare**
Expert reports, sworn evidence, Sydney, 9-10 December 2019
- Expert evidence before Hon Michael McHugh AM, on behalf of the QCoal Group and Lake Vermont Resources, in the matter of Adani Abbot Point Terminal v QCoal, Sonoma Mine Management and Byerwen Coal (the QCoal Group), and Lake Vermont Resources**
Expert reports, sworn evidence, Brisbane, 21 February 2019
- 2018**
- Expert evidence before the Federal Court on behalf of TPT Patrol, in the matter of TPT Patrol v Myer**
Expert reports, sworn evidence, Melbourne 23 August 2018
- Expert evidence before the Board of the Australian Energy Regulator, on behalf of the South Australian public lighting customers, in arbitration proceedings concerning public lighting charges**
Expert reports, transcribed evidence, Melbourne, 7 May 2018
- Expert evidence before the Board of the Australian Energy Regulator, on behalf of the Australian Pipelines and Gas Association, in the Review of Rate of Return Guidelines, Concurrent expert evidence session one**
Joint expert report, transcribed evidence, Sydney, 15 March 2018
- Expert evidence before the Federal Court on behalf of Changshu Longte Grinding Ball Co Ltd, in the matter of Changshu Longte v Anti-Dumping Review Panel and others.**
Expert reports, sworn evidence, Sydney, 1 February 2018
- 2017**
- Expert evidence before the Competition Tribunal on behalf of CrownBet, in the application by Tabcorp for authorisation to acquire Tatts**
Expert reports, sworn evidence, Melbourne, 30 May–1 June 2017

- 2016**
- Expert evidence before the Federal Court on behalf of Generic Health, in the matter of Bayer Pharma Aktiengesellschaft v Generic Health Pty Ltd**
Expert reports, sworn evidence, Sydney, 14-15 December 2016
- Testimony before an UNCITRAL arbitral tribunal on behalf of Maynilad Water Service Inc (MWSI), in the matter of MWSI v Republic of the Philippines**
Report, sworn evidence, Singapore, 6 December 2016
- Expert evidence on behalf of Powerco, at the Commerce Commission's Conference on the Cost of Capital matters**
Transcribed evidence, public hearings, Wellington, 7 September 2016
- Expert evidence before the Federal Court on behalf of plaintiffs, in the matter of HFPS v Tamaya**
Expert reports, sworn evidence, Sydney, 13 May 2016
- Expert evidence before an arbitral tribunal on behalf of Serudong Power Sdn Bhd (SPSB), in the matter of SPSB v Sabah Electricity Sdn Bhd (SESB)**
Expert reports, sworn evidence, Kuala Lumpur, 27-28 April 2016
- Expert evidence before the Federal Court on behalf of the Commonwealth of Australia, in the matter of Griffiths v Northern Territory**
Expert reports, sworn evidence, Darwin, 24-25 February 2016
- 2015**
- Expert evidence before an arbitral tribunal on behalf of Port Dickson Power Berhad (PDP), in the matter of PDP v Tenaga Nasional Berhad (TNB)**
Expert reports, sworn evidence, Kuala Lumpur, 28 January 2015
- 2014**
- Expert evidence before an UNCITRAL arbitral tribunal on behalf of Manila Water Corporation Inc (MWCI) in the matter of MWCI v Metropolitan Waterworks and Sewerage System (MWSS)**
Expert reports, sworn evidence, Sydney (by videolink to Manila), 31 August 2014
- Expert evidence before the Australian Competition Tribunal on behalf of the ACCC, in the matter of AGL Energy v ACCC**
Expert reports, sworn evidence, Sydney, 10-11 June 2014
- 2013**
- Expert evidence before the Supreme Court of Victoria on behalf of Maddingley Brown Coal in the matter of Maddingley Brown Coal v Environment Protection Agency of Victoria**
Expert reports, sworn evidence, Melbourne, 12 August 2013
- Expert evidence before the Federal Court on behalf of Modtech in the matter of Modtech v GPT Management and Others**
Expert reports, sworn evidence, Melbourne, 27 March 2013
- 2012**
- Expert evidence before the Supreme Court of Queensland on behalf of Origin Energy, in the matter of Origin Energy Electricity Ltd and Others v Queensland Competition Authority and Others**
Expert reports, sworn evidence, Brisbane, 3 December 2012

Speeches and publications³

- 2019**
- RBC Renewables and energy transition forum**
Economic and regulatory forces affecting the transition
Panel discussant, Sydney, 12 September 2019
- Competition Matters conference**
Competition issues for Digital platforms
Panel discussant, Auckland, 26 July 2019
- Competition Law Conference**
Proof of collusion, or optical illusion?
Speech, Sydney, 25 May 2019
- Clayton Utz – Equitable briefing series**
Expert joint conferencing and reports
Panel discussant, Sydney, 16 May 2019
- 2018**
- RBC Capital Markets Global Infrastructure Forum**
Australian utilities: current policy issues and industry trends
Panel discussant, Sydney, 13 March 2018
- GCR 7th Annual Asia Pacific Law Leaders Forum**
The role of algorithms: cartel enforcement in the era of artificial intelligence
Panel discussant, Singapore, 10 March 2018
- 2017**
- IPART 25th Anniversary Conference**
Electricity and Water: Mutual Lessons
Speech, Sydney, 27 October 2017
- Competition Law Conference**
ACCC v Flight Centre: What was going on?
Speech, Sydney, 6 May 2017
- Association for Data-driven Marketing and Advertising**
Driving Customers to you: Insights from Location Data
Speech, Melbourne, 5 April 2017
- GCR 6th Annual Asia Pacific Law Leaders Forum**
Roadblocks and Solutions in Cross Border Mergers
Panel discussant, Singapore, 2 March 2017
- 2016**
- NSW Planning Assessment Commission**
Economic Effects of Drayton South Mine on Upper Hunter Industry
Presentation to public hearing, Muswellbrook, 16 November 2016
- 2015**
- Electricity Networks Association Regulation Seminar, Brisbane**
Participant in Expert Plenary Panel
Speech, Brisbane, 5 August 2015
- NZ Commerce Commission Input Methodologies Review, Wellington**
'Allocation of Risk' and 'New Technologies'
Panel Discussant, Wellington, 29 July 2015

³ Past ten years only

Competition Matters Conference, Wellington
Disruptive Technologies
Chair, Discussion Panel, Wellington, 24 July 2015

Competition Law Conference
The Public Interest in Private Enforcement
Speech, Sydney, 30 May 2015

Singapore Aviation Academy, Singapore
Private Financing of Airport Infrastructure Expansions
Speech, Singapore, 5 March 2015

GCR 4th Annual Asia-Pacific Law Leaders Forum
Differences in using economics in EU and Asia Pacific
Speech, Singapore, 5 March 2015

AEMC Public Forum
East Coast Gas Market Review
Speech, Sydney, 25 February 2015

2014

Competition and Consumer Workshop, Law Council of Australia
An Economist's Take on Taking Advantage
Paper and Speech, Brisbane, 14 September 2014

Energy Networks 2014
Innovation and Economic Regulation
Speech, Melbourne, 1 May 2014

The Network Industries Quarterly, *Consumer Advocacy in Australian Regulatory Decision Making – 'Hard Choices Await'*, Vol. 16, No 1, 2014
Ecole Polytechnique Federale de Lausanne, 31 March 2014

GCR 3rd Annual Law Leaders Asia Pacific
Role of Economists in Competition Law Enforcement in Asia-Pacific
Speech, Singapore, 6 March 2014

2013

University of South Australia – Competition and Consumer Workshop
Empirical test and collusive behaviour
Speech and participation game, Adelaide, 16 November 2013

Energy in WA Conference
Capacity Payments in the WEM – Time to Switch?
Panel Discussion, Perth, 21 August 2013

ACCC/AER Regulatory Conference
Designing Customer Engagement
Speech, Brisbane, 25 July 2013

Victorian Reinsurance Discussion Group
Australian Mining – When Opportunities and Risk Collide
Speech, Melbourne, 1 March 2013

NZ Downstream Conference
Investment and Regulation
Panel Discussion, Auckland, 25 July 2013

2012

Rising Stars Competition Law Workshop

Expert Evidence in Competition Cases
Speech, Sydney, 24 November 2012

KPPU – Workshop on the Economics of Merger Analysis

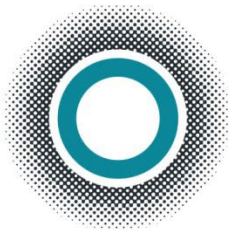
Theories and Methods for Measuring the Competitive Effects of Mergers
Speech, Bali, 19-21 November 2012

University of South Australia – Competition and Consumer Workshop

Reflections on Part IIIA of the Competition Act
Speech, Adelaide, 12 October 2012

NZ Downstream Conference

Lines company consolidation – what are the benefits and risks?
Panel discussion, Auckland, 6-7 March 2012



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