

**PORTS AUSTRALIA - SUBMISSION ON APPLICATION BY  
BRISBANE MARINE PILOTS FOR EXCLUSIVE PROVISION OF SERVICES  
IN THE PORT OF BRISBANE**

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Ports Australia welcomes the opportunity to respond to the invitation extended by the Australian Competition and Consumer Commission (ACCC) to submit its views on an application submitted to the Commission by Brisbane Marine Pilots (BMP) seeking authorisation for an agreement that they established with the State of Queensland in December 2009, for the exclusive provision of pilotage services in the Port of Brisbane.

**Ports Australia - Representation**

Ports Australia is the peak industry body representing all port corporations, both publicly and privately owned, at the national level. Our website is at [www.portsaustralia.com.au](http://www.portsaustralia.com.au). Ports Australia is a constituted company limited by guarantee, with a Board of Directors comprising the CEOs of ten member port corporations.

**Summary of Position**

Ports Australia is opposed to the granting of an Authorisation by the ACCC for the *Pilotage Services Agreement*, referred to in the BMP Application.

The position of Ports Australia is driven by:

- we have not identified any particular need for an Authorisation, to in effect, formally legitimise the monopoly provision of pilotage services in the Port of Brisbane.
- we have formed a view that the grounds cited in the Application for granting of an Authorisation, are all contestable in some measure.
- an Authorisation would be counter to the strategic interests of the ports community, and would compromise opportunities to establish competitive pilotage markets in the future.

Ports Australia does not assume a role to advise its members on pilotage arrangements, nor does it have a view that current arrangements are inappropriate. Those arrangements variously take the form of exclusive and non-exclusive contracts awarded to private pilotage contractors and in other cases pilots are employed directly by port corporations, or by maritime agencies with statutory responsibility for pilotage in their respective jurisdictions.

Arrangements applying at any point in time in individual ports are the subject of business decisions appropriately determined by those ports, or, as in the case of Queensland, the agency with statutory responsibility for making such determinations.

Accordingly Ports Australia's position on BMP's application is not related to a view about current pilotage arrangements, it is related to a view about what we see as tenuous arguments supporting the need for Authorisation, and, importantly, the strategic implications of any acceptance of these arguments.

As a matter of sound strategic policy Ports Australia believes that the prospects for establishing competitive provision of pilotage services at some point in the future, should a port or appropriate authority choose to implement such an arrangement, should be maximised. We assert that providing an Authorisation on the grounds stipulated by BMP for the exclusive provision of pilotage services in the Port of Brisbane is not necessarily consistent with this goal, and in making an Application citing these grounds has left the ports community no alternative other than to make an intervention.

## Issues for Consideration

### 1. Growth and Pilotage Markets

Over the next 10 to 20 years forecast growth in Australia's container and bulk trades is substantial. Container trades are expected to grow at a compound rate equivalent or exceeding twice GDP growth, and in some of our bulk trades, notably iron ore and coal, the throughput of some of our ports will double, and in the more medium term, possibly triple. Further, very substantial development of the LNG industry, underway and in prospect, will add further to the number and size of vessels visiting our ports, such that this sector will at some point in the near future, be Australia's leading export by value.

These projections are well documented. At *Appendix A* are graphs respectively showing the growth in Australia's container trades between 1993 and the end of 2009, iron ore exports between 1988/89 and 2008/09, and coal exports between 1988/89 and 2008/09.

In the background work carried out for the development of the National Ports Strategy various growth scenarios were tested. This work established that:

- for the container trades a "business as usual" compound annual growth rate of 5.0% - 7.5% will increase port throughput by between 3 to 6 times in 25 years. At 7.5% compound annual growth Australia's international container task will double by 2020.
- a medium growth scenario for iron ore exports, i.e. a compound annual growth rate of 5%, will mean an increase from about 350 million tonnes in 2008/09 to 800 million tonnes by 2030. Assuming a high growth rate of 10%, iron ore exports would reach about 2,100 million tonnes in 2030.
- coal exports will grow from about 260 million tonnes in 2008/09 to over 700 million tonnes in 2030, based on a medium compound annual growth rate of 5%. At a higher growth rate of 7.5% the figure in 2030 will be 1,200 million tonnes<sup>1</sup>

Further detailed empirical information can be provided to the Commissioner if so required.

With respect to pilotage, the substantial projected growth in Australia's trades, and for some ports in particular, is very significant in one particular respect. That is, and in broad terms, the doubling of throughput for some ports in a relatively few number of years means that the dynamics of pilotage markets (and possibly other markets such as towage) will change. This fairly rapid change in scale proffers the option to ports to research the

<sup>1</sup> This content is drawn extensively from *Background Paper 5* for the NPS; "The possible future market challenges for relevant ports" prepared for Infrastructure Australia and the National Transport Commission, by GHD Meyrick.

scale and the point at which a new entrant may be viable, and to strategically plan for the introduction of competitive pilotage markets should they wish to do so. In this context Ports Australia cannot support the establishment of an Authorisation based, for example, on the notions put forward by BMP that competitive markets cannot, or do not work, or inherently produce unsafe outcomes. We offer the following further comment on these matters.

## 2. Arguments Supporting the Application

- a) *an exclusive arrangement has, over the past 20 years, and will continue to, generate significant public benefit and favourable community outcomes.*

Ports Australia does not dispute that BMP provides a good pilotage service in the Port of Brisbane, with due care and attention to key matters such as training, the implementation of risk management systems and so on. There arguably exists “a public benefit and favourable community outcomes” insofar as BMP exercises all due diligence to ensure the safe navigation of commercial vessels within the Port of Brisbane.

However, we would assert that this issue is removed from more important issues relating specifically to the rationale or otherwise, of an Authorisation for such an arrangement in that:

- the fact that exclusivity has existed for 20 years is not of itself a sound basis for an Authorisation
- it is not demonstrated in any rigorous way the nature or magnitude of the public benefit, or “favourable community outcomes” arising from the exclusive arrangement, viz other possible arrangements.

- b) *no public detriment has in the past, or will during the term of the agreement, result from adopting an exclusivity arrangement.*

This assertion is neither proven nor analysed. BMP has now available to it considerable market power through the evolution of the current arrangement in the Port of Brisbane, and through its monopoly on pilots licensed to operate in the Port of Brisbane. Under these circumstances there can certainly be no assumption of “no public detriment” in terms, for example, of costs on trade and as a matter of theory some public detriment can probably be demonstrated. In section 7.1 BMP argues against disclosure of the Pilotage Services Agreement but it can reasonably be deduced that they have secured a monopoly price for the provision of its services in that Agreement.

- c) *the arrangement is consistent with the prevailing market practice in every other Australian port.*

This may be so although all pilotage service contracts are not exclusive, but again we cannot see why this observation of itself merits an Authorisation for prevailing arrangements.

As noted previously current arrangements at individual ports are as a result of business decisions taken by ports, or by those agencies in some jurisdictions with the statutory responsibility to appoint and manage pilots and pilotage. These arrangements reflect the current scale of operations in our ports and may or may



not change as throughput increases. We see our task as doing what is necessary in the context of the BMP Application to ensure the prospects for moving to a competitive model are not diminished.

- d) *where a competitive model has been attempted (such as the Great Barrier Reef and Torres Strait) it has been the subject of considerable criticism or shown to be flawed (as was the case in Cairns in 2001).*

Ports Australia rejects this assertion on a number of grounds, and in particular strongly contests the implication in the BMP Application that competitive pilotage markets inherently produce unsafe outcomes. We also contend that the Application draws selectively on the Kolsen and AMSA reports in making this statement.

- (i) The case of Cairns is dated and not particularly instructive. In tonnage terms Cairns is a small port and does not offer anything approaching the scale of operations that a number of our ports will offer in the not too distant future. The pilotage markets between Cairns and say ports like Newcastle or Brisbane, are not comparable.
- (ii) A competitive model has been established (not “attempted”) in the Great Barrier Reef (GBR) and Torres Strait and indeed “reported incidents” in that region have statistically diminished over time. BMP is right in saying that the regime has been the subject of considerable criticism but this has been, in many instances, based on anecdote and has often come from parties inherently hostile to the idea of introducing competition in pilotage.

Most importantly however, those failing that have been reported in service levels, corporate culture, and so on among the parties providing pilotage services in the GBR and the Torres Strait, are due to regulatory, not market, failure.

The maintenance of safe outcomes in a competitive pilotage market comes down to the governance and auditing standards attached to the industry. In short, if a pilotage company operating within a competitive market is audited, as it should be either as a matter of routine, or triggered say by an incident, and does not meet the condition of its accreditation then its right to operate should be removed or restricted pending improvement. This is the case for service providers in many industries.

- e) *any attempt to implement a competitive tender process in the Port of Brisbane to provide pilots to MSQ would be artificial and a contrivance, given that marine pilots must be licensed to operate in the Port and all licensed pilots are currently employed by the applicant.*

Going to tender would be a “contrivance” because of the way the market in Brisbane has evolved and been constructed over time. Short term, there is no other viable method for MSQ to source pilots for Brisbane.

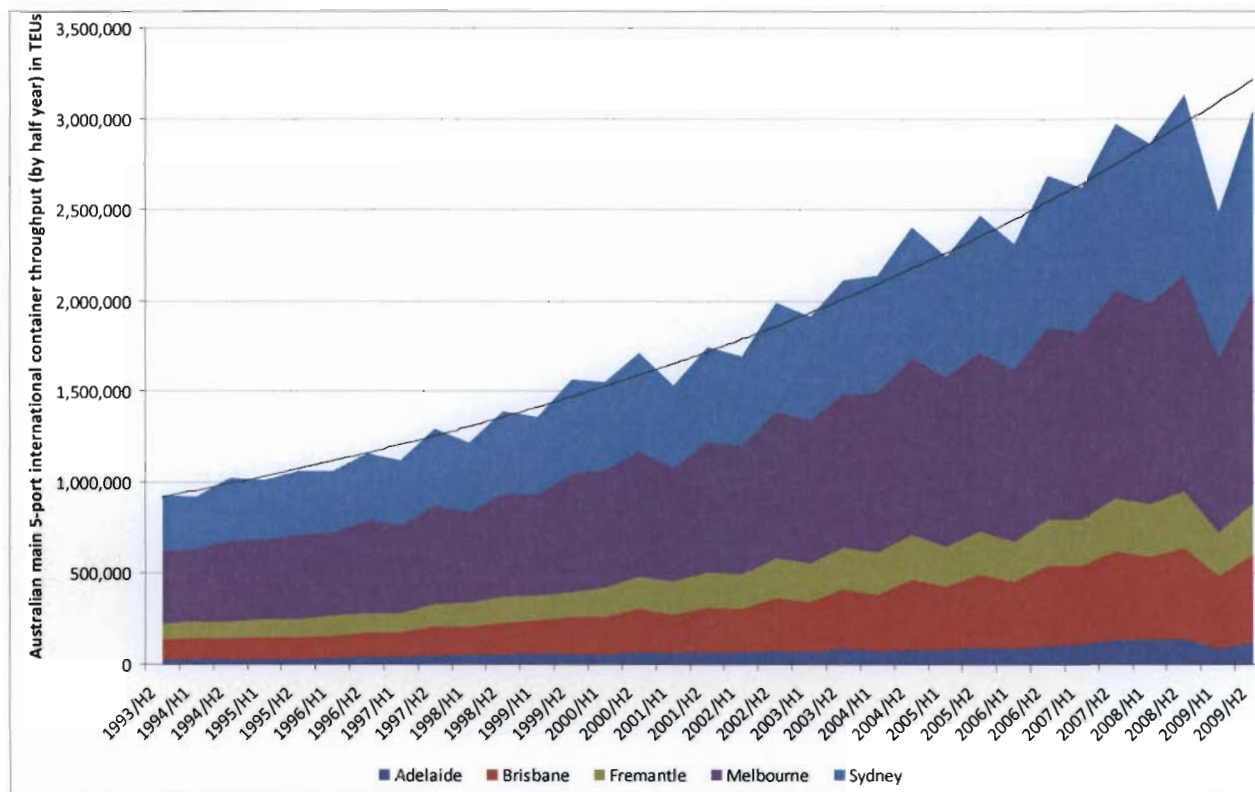
It is a matter for MSQ to decide how it wishes to source its pilots and pilotage services. Strategically however, we would argue, and with appropriate preparations, MSQ could encourage another provider, or indeed directly employ pilots in the Port of Brisbane, if it viewed the introduction of competition as worthwhile. It is not up to Ports Australia to suggest whether MSQ should, or should not, adopt such a course, but we do have a view on ensuring members have

maximum opportunity to avail themselves of introducing competition in pilotage services. This opportunity is compromised in our view if there is granted an Authorisation based on acceptance of an idea that competitive pilotage markets are not functional.

Ports Australia would welcome the opportunity for further discussions with the ACCC on this important matter, and is also happy to provide further information if useful.

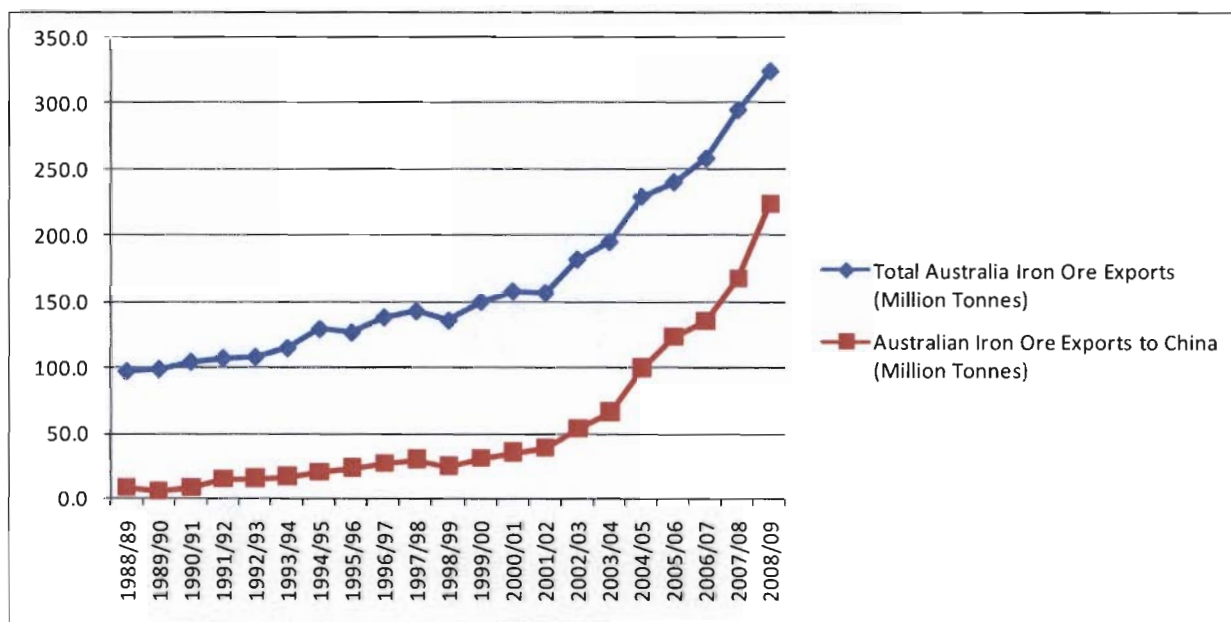
August 2010

**Figure 1 Development of the main 5-port container throughput (six-monthly), 1993-2009**

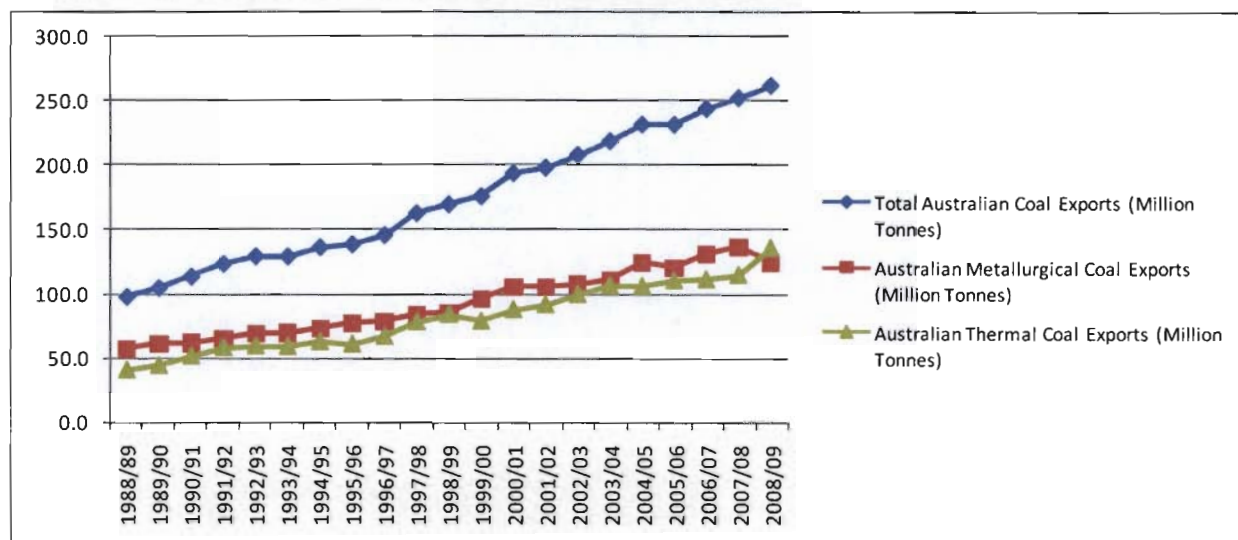


Source: Industry data / analysed & graphed by GHD Meyrick

**Figure 2 Development of Australian iron ore exports, 20 years (1988-2008)**



**Figure 3 Development of Australian coal exports, 20 years (1988-2008)**



Source: GHD Meyrick

Infrastructure Australia and the National Transport Commission

*Background Paper 5* for the NPS “The possible future market challenges for relevant ports”, April 2010