

ABB Grain Ltd
ABN 59 084 962 130

Port Terminal Services Access Undertaking

**Submission to the Australian Competition & Consumer
Commission**

1. Introduction

Purpose of submission

- 1.1** ABB Grain Ltd (“**ABB**”) is an accredited exporter of bulk wheat under the *Wheat Marketing Act 2008 (Cth)* (“**WEMA**”) and is also a provider of Port Terminal Services (as defined in the WEMA) in the State of South Australia.
- 1.2** The WEMA requires that in order to be accredited as a wheat exporter on and after 1 October 2009, ABB must submit an access undertaking under Part IIIA of the *Trade Practices Act 1974 (Cth)* (“**TPA**”), which is approved by the Commission on or before that date.
- 1.3** This submission is made by ABB in support and explanation of a Port Terminal Services Undertaking by ABB of even date submitted to the Commission (“**Undertaking**”).
- 1.4** Consistent with the objectives of the WEMA and Part IIIA of the TPA, the Undertaking submitted by ABB seeks to:
- achieve an appropriate balance between the legitimate interests of ABB as a provider of Port Terminal Services and the need for certainty and transparency of access for exporters of wheat using ABB’s export terminals as required under the WEMA and TPA; and
 - provides a level of regulatory oversight that will ensure that the requirements of the applicable legislation will be met, and also takes account of the competitive nature of the industry, the need for transitional certainty, and the existing level of regulatory oversight under the WEMA by the Wheat Export Authority.
- 1.5** ABB respectfully requests the Commission to approve the attached Undertaking before 1 October 2009.

Template Undertaking and submission

- 1.6** As the Commission is aware, in March 2009 ABB, GrainCorp Operations Limited (“**GrainCorp**”) and Co-Operative Bulk Handling Limited (“**CBH**”) submitted a template port terminal services undertaking (“**Template Undertaking**”) prepared by all three bulk handlers jointly for discussion purposes. The purpose of submitting the Template Undertaking was to provide a common basis for each bulk handler’s individual Access Undertaking, thereby minimising duplication to the extent possible and simplifying the Commission’s process of assessing access undertakings relating to as many as 20 separate port terminals.
- 1.7** For the avoidance of doubt, ABB notes the submission of the Template Undertaking does not fetter the Commission’s regulatory processes in relation to the Undertaking under the TPA in any manner, but was provided as a means to commence constructive dialogue given the time constraints involved under the WEMA and ABB is appreciative of the constructive approach by the Commission’s senior management.
- 1.8** The Undertaking submitted by ABB is based on the Template Undertaking but has been tailored to apply to ABB’s operations. In particular, each of ABB, GrainCorp and CBH recognised that it would be necessary to prepare separate ring-fencing and port operational arrangements to suit their internal structures and address the particular characteristics of the different geographical areas in which they operate. Aspects of this submission are also based on preparatory work undertaken jointly by ABB, GrainCorp and CBH.

Structure of submission

- 1.9** This submission is structured as follows:
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|------------------|--|
| Section 2 | Sets out an Executive Summary |
| Section 3 | Sets out background information in relation to ABB, including the Port Terminal Services provided by ABB |
| Section 4 | Sets out background information in relation to the South Australian wheat industry |
| Section 5 | Sets out information in relation to competitive dynamics in the export wheat industry |
| Section 6 | Sets out information in relation to information flows and the ring-fencing arrangements set out in the Undertaking |
| Section 7 | Sets out information in relation to price benchmarking of Port Terminal Services provided by ABB and non-discriminatory access provided by ABB |

Section 8 Sets out ABB's submissions in relation to the compliance of the Undertaking with requirements for acceptance under the TPA

Section 10 Sets out a conclusion

2. Executive summary

Key features of the Undertakings

2.1 ABB's proposed Undertaking in relation to the provision of Port Terminal Services has the following key features:

- (a) **Publication of price and non-price terms for standard services:** ABB is required to publish prices and non-price terms for access to, and use of, standard Port Terminal Services;
- (b) **Non-discriminatory access:** ABB is required to provide access to the Port Terminal Services in accordance with price and non-price terms that include efficiency, fairness and transparency as central elements and must not, except as set out in the Undertaking, discriminate between access seekers, or in favour of its own operations¹;
- (c) **Negotiate access in good faith:** ABB is obliged to negotiate with access seekers in good faith in accordance with a detailed negotiation process to ensure that such negotiations are progressed according to benchmark timeframes;
- (d) **Ring fencing:** ABB is required to implement and maintain certain ring fencing arrangements in relation to wheat exporting - particularly in the use of information that it obtains through its port operations. Compliance with such restrictions will be subject to an independent audit process; and
- (e) **Arbitration of access disputes:** The Undertaking contains a detailed dispute resolution mechanism which will provide access seekers who are dissatisfied with the terms and conditions on which they can obtain access (including price) with an ability to have those terms and conditions reviewed by an independent arbitrator, with further oversight by the Commission.

Duration of the Undertaking

2.2 The proposed term of the ABB Undertaking is 2 years.

2.3 ABB considers that a lesser term may impose an unreasonable administrative burden on both ABB and the Commission if the Undertaking is required to be renewed.

¹ . Operationally, the Undertaking recognises that decisions must be taken that will necessarily advantage one user over another in the context of that decision alone. However, the Undertaking provides a mechanism for preventing preferential self-dealing and ensuring decisions are made on the basis of objectively verifiable commercial factors.

- 2.4 ABB also considers that a longer term is not appropriate given the potentially transitional nature of the oversight of wheat exports by the WEA, the review of the wheat export arrangements by the Productivity Commission in 2010 and the likelihood that the newly deregulated wheat export industry will undergo rapid change and evolution over the next few years.

The Undertaking represents an appropriate balance for an industry transitioning from one wheat exporter to multiple sophisticated international exporters

- 2.5 ABB considers that the Undertaking meets the requirements for acceptance by the Commission under Division 6 of Part IIIA of the TPA. ABB also considers that the Undertaking provides a reasonable and appropriate approach and level of regulation given that:
- (a) having regard to its short duration, it is likely that the Undertaking may be only a transitional measure while the industry adapts to deregulation;
 - (b) ABB has a history of providing open access to third party exporters (particularly in relation to the export marketing of other grains that have also been the subject of export deregulation);
 - (c) ABB does not have any incentive or ability to monopoly price or deny access. Rather, its primary incentive is to maximise throughput at its ports (which each operate below maximum capacity) and ensure that Australian wheat exports remain competitive in the global market. When taken with the non-discrimination and binding dispute resolution provisions in the Undertaking and other matters set out below, this is a powerful safeguard and constraint;
 - (d) the current and likely access seekers are sophisticated domestic and international purchasers of Port Terminal Services, who are well resourced, have substantial countervailing power given their size, financial and buying power, an ability to build or acquire their own loading facilities and, in the case of international participants, an ability to source wheat internationally and sidestep ABB's export terminals in relation to the international wheat market. These access seekers are also well placed to raise any concerns either in accordance with the dispute resolution processes set out in their contract with ABB, the Undertaking, with regulators or through the upcoming Productivity Commission review;
 - (e) there is (and will remain) substantial oversight of the export arrangements by Wheat Export Australia under the WEMA, the Commission under the Undertaking and, in

2010, a Productivity Commission review. This level of oversight (and the implicit threat of further regulatory intervention) operates as a significant constraint on any ability or incentive for ABB to monopoly price or deny or hinder access; and

- (f) there are a number of other constraining commercial factors (as set out in this submission) which ensure that access will be available on commercial terms. Either individually or in aggregate, those factors give further confidence that Port Terminal Services will be provided on a non-discriminatory basis.

- 2.6 Finally, the Undertaking is only of a short duration (no more than 2 years) and will therefore be subject to review by the Commission as experience of deregulation in Australia develops amongst industry participants and stakeholders.

Vertical information flows do not provide any material benefit to the export terminal operator as the WEMA requires transparent and timely publication of shipping data

- 2.7 The Commission has considered on a number of occasions the level of information that participants in the grain storage and handling industry obtain from up-country operations and found that the competition issues raised by these information flows are not significant. The information available from up-country operations is of limited competitive value given trading and stock movements and, in any event, much of it is publicly available in an aggregate form or by field agents.

- 2.8 In providing Port Terminal Services, ABB will likewise have access to very little information about its competitors that is not already publicly available, or readily observable by any person experienced in the grain industry. Importantly, the WEMA requires publication of available data on wheat export shippers. This information about the volume of grain to be exported on one or more vessels is readily available to all market participants in the same form. ABB notes it does not (and cannot) provide ABB with any visibility of the exporters' customers, sale prices, future tenders or contracts, or wider global trading operations or trading position.

- 2.9 In any event, to the extent that any third party might have perceptions about ABB having access to confidential information of its competitors, this issue is addressed in the Undertaking through the non-discrimination, ring-fencing and binding dispute resolution procedures.

Conclusion - the Undertaking addresses the acceptance criteria in the TPA

- 2.10** In these circumstances, ABB considers that the Undertaking represents a reasonable, measured and balanced approach to access regulation in relation to Port Terminal Services provided by ABB. In particular, the Undertaking contains:
- (a) a detailed negotiate/arbitrate model with publication of prices and non-price terms before the start of each season. There is no need for *ex ante* approved pricing given the lack of incentive to monopoly price, the countervailing power of customers to negotiate and the potential recourse to binding arbitration under the oversight of the Commission if a customer is not satisfied;
 - (b) specific provisions relating to the provision of access on non-discriminatory terms which are supported by ring fencing and audit arrangements. Given the WEMA data publication requirements, there is no real ability to use information obtained through operation of facilities in the supply chain in an anti-competitive manner. In these circumstances, ABB considers that it would not be appropriate to require it to undertake major changes to its operational structure and processes to address what is at best a theoretical risk in relation to wheat exports. This is particularly the case while it has been demonstrated to be unfounded in relation to other grains (such as barley) which have also been subject to export deregulation; and
 - (c) together with the WEMA, provisions providing for the operation of the shipping nomination and queuing processes and the availability of shipping stem information to enable monitoring of compliance.
- 2.11** ABB submits that the Undertaking satisfies the criteria for acceptance by the Commission under Division 6 of Part IIIA of the TPA. Specifically:
- (a) the access arrangements (as already exist and now expanded and more fully documented in the Undertaking) promote the economically efficient use of, and investment in, ABB's bulk wheat export terminals, and also promote competition in upstream and downstream markets by giving industry confidence that the transition to deregulation will not be hindered by port access issues arising from anti-competitive behaviour;
 - (b) the proposed process for publishing pricing and a binding third party arbitration process is, and provides for outcomes, consistent with the Pricing Principles set out in section 4ZZCA of the TPA;

- (c) the access arrangements will promote ABB's legitimate business interest in providing access on price and non-price terms and conditions that ensure that it receives a return on investment that is commensurate with risk; and
- (d) the public interest and the interests of access seekers is served by ABB continuing to provide access to Port Terminal Services to accredited wheat exporters but under more fully documented arrangements which ensure certainty, transparency and non-discrimination such that the public and access seekers can be confident of a successful transition from a single desk to competition in the export of bulk wheat.

2.12 Accordingly, ABB respectfully submits that the Undertaking should be accepted by the Commission.

3. ABB Grain Ltd

Background

- 3.1 ABB is a publicly listed Australian company with diversified operations across the rural value chain including the provision of storage and handling services, grain trading and marketing, grain processing, malt manufacture and pastoral and rural services.
- 3.2 ABB today is substantially the result of the merger between ABB (formerly the Australian Barley Board) and AusBulk Ltd (formerly South Australian Cooperative Bulk Handling Ltd or SACBH) in 2004.
- 3.3 The port terminals the subject of the Undertaking were (with the exception of Outer Harbor) built by SACBH using the funds of its grower members. The value of grower contributions to infrastructure of SACBH was capitalised and returned to growers in the form of shares in AusBulk Ltd when SACBH restructured in 2000. ABB's port terminals have never been owned by government. They are private assets from which the shareholders of ABB should be entitled to derive a commercial return.
- 3.4 ABB has a long history of providing efficient access to its competitors in non-regulated grains such as canola and pulses. More recently there has been a smooth transition to a deregulated barley market in South Australia, with no material complaints by ABB's competitors about access to export terminal services.

ABB Grain's Port Terminal Services

- 3.5 ABB owns eight port terminals in South Australia:

TABLE 1

ABB Wheat Export Capacity by throughput storage capacity

Port Terminal	Shipping bin capacity (mt)
Port Adelaide	60,000
Outer Harbor	65,000
Port Giles	75,000
Wallaroo	150,000
Port Lincoln	300,000
Thevenard	200,000
Port Pirie	-
Ardrossan	-

Source: ABB

- 3.6 Port Terminal Services, as defined in the WEMA, are not provided at Ardrossan (shallow port servicing the mining industry) or Port Pirie (closed as an export port for operational reasons) and these two ports are therefore not listed in the Port Schedules to the Undertaking. However, ABB accepts that if Port Pirie or Ardrossan were re-

commissioned for export grain they would be covered by the Undertaking.

- 3.7 Details of the Port Terminal Services provided at each of ABB's export-active port terminals are set out in the Schedule to the Undertaking.
- 3.8 Some of the terminals such as Port Adelaide have static storage capacity well in excess of shipping bin capacity (in the case of Port Adelaide total capacity of over 400,000 mt). However, much of this capacity is vested in concrete verticals which are inefficient to use on the export pathway.

Capacity and capacity management

- 3.9 The throughput rate of ABB's port terminals is not so much constrained by storage capacity as it is by the load rates of each terminal as shown in the following table:

**TABLE 2
ABB Wheat Export Capacity by Load Rate**

	Days/Year*	Maintenance Days	Available Days	Load Rate Capacity Tonnes/Hour	Total Capacity***
Port Adelaide	363	20	343	750	2,058,000
Outer Harbor	363	20	343	2200	6,036,800
Port Giles	363	20	343	800	2,195,200
Wallaroo	363	20	343	600	1,646,400
Port Lincoln	363	20	343	2500	6,860,000
Thevenard	363	20	343	800	2,195,200
Total Shipping Capacity					20,991,600
*Good Friday/Christmas Day not worked					
** Basis 55% wheat/45% other					
*** Assume 8 hours workable in 24 hour period					

Source: ABB

- 3.10 ABB's extensive at-port storage and efficient freight systems mean that access is generally available to grain exporters, although this may be disrupted from time to time by issues such as machinery breakdowns, labour strikes or quality problems.

The port rules

- 3.11 An important part of the supply chain is the management of shipping to ensure the orderly and efficient loading and dispatch of ships. ABB does not have sole control over the order in which ships arrive and are loaded. The order of loading ships on berth at South Australia's ports is determined by:

- (a) the shipping stem (published on ABB's website www.abb.com.au (example attached – ATTACHMENT 1));
- (b) the port rules of the port operator, Flinders Ports (refer to Flinders Ports website www.flindersports.com.au \Policies\Port Rules - excerpt para 4.12 Grain berth Loading Priorities Port Adelaide Rules attached: ATTACHMENT 2); and
- (c) ABB's port loading protocols (published on ABB's website www.abb.com.au – see ATTACHMENT 3).

3.12 The ability that ABB could have to discriminate in favour of its own Marketing Division's ships is very significantly constrained by the transparency of the shipping stem (updated daily), the rules of the port and ABB's own loading protocols which are (and will continue to be) applied on a transparent, objective and non-discriminatory basis.

3.13 To the extent that ABB has any day-to-day operational discretion, the Undertaking also requires that ABB exercises that discretion in a non-discriminatory manner. In addition, ABB's contracts with customers contain clear dispute resolution procedures, and the Undertaking itself contains a binding dispute resolution procedure which can be invoked if an access seeker is unable to agree the terms of access to the Port Terminal Service.

4. **The South Australian wheat industry**

Overview

- 4.1 The South Australian grain supply chain has some characteristics that set it apart from Western Australia and the East coast of Australia. In particular:
- With 6 active export ports (and ports located close to each other in the Spencer Gulf), South Australia has “surge” capacity to cope with large harvests by diverting ships to nearby ports to optimise the shipping program;
 - The grain belt is located relatively close to ports, allowing direct deliveries by road from farm during harvest. In fact, on the dense grain region of Yorke Peninsula, 95% of the crop is within 80km of a port terminal and rail is not available at all; and
 - Road transport competes very effectively against rail in many parts of South Australia because of proximity to port.
- 4.2 The supply chain in South Australia is also relatively cost efficient, again because of proximity to port and ABB’s investment in the supply chain.
- 4.3 Accordingly, even in large harvests South Australia would not expect to encounter the extent of short term shipping bottlenecks experienced in Western Australia and the East coast following the 2008/09 harvest.
- 4.4 South Australia supplies approximately 16% of Australia's wheat exports. Wheat and barley are the primary grain varieties grown in South Australia, accounting in a typical year for 45% and 35% of total grain production respectively. Approximately 80% of wheat produced in South Australia is exported in bulk, with the remainder sold domestically or exported in containers.
- 4.5 As set out in Figure 1 below, the major grain production areas in South Australia are:
- the Northern Area (stretching from Quorn in the north to Roseworthy and Stockwell in the south), which is responsible for approximately 30% of total grain production;
 - the Eyre Peninsula (stretching from Pintumba in the west to the Spencer Gulf in the east), which produces approximately 28% of total production;
 - the Yorke Peninsula, which produces approximately 19% of total production;

- the Murray Mallee, which is responsible for approximately 14% of total production; and
- the South East (stretching from Taillem Bend in the north to Millicent in the south), which produces approximately 7% of total production.

Figure 1 - South Australian storage and transport network



Source: www.abb.com.au

4.6 Wheat is delivered to port by both rail and road transport. Australian Rail Track Corporation (“ARTC”) owns the main interstate standard gauge line. The other grain lines, including sidings at ABB sites are owned by Genesee & Wyoming Australia Pty Ltd (GWA) and comprise narrow gauge on Eyre Peninsula, with principally standard gauge on the mainland together with a small section of broad gauge. GWA is the main rail provider operating in South Australia and from time to time other rail providers (Pacific National and El Zorro) have operated in South Australia. Access regimes apply to the ARTC and GWA tracks.

4.7 GWA has, in the recent past, publicly raised the withdrawal of its rail services due to the poor condition of the Eyre Peninsula track in particular and the unpredictability of the grain harvests. This led AWB and ABB in 2005 to agree to underwrite a minimum volume of grain movements, and since then the State and Federal governments have funded an upgrade of the Eyre Peninsula track.

- 4.8 With the abolition of the single desk for wheat, AWB no longer has the ability confidently to predict its relative share of wheat exports. Accordingly, it is likely that in the future ABB, as a major storage and handling provider, will need to underwrite the provision of GWA's rail services to South Australia on its own, thereby reducing execution costs for the benefit of South Australian growers.

Logistics services provided by ABB

- 4.9 Exporters who accumulate grain up-country in ABB storages have the choice in South Australia of choosing a bundled ABB storage and logistics solution known as *Export Select*, or organising their own logistics, risk management and cargo assembly (*Export Standard*).
- 4.10 Under the *Export Select* option, in return for a bundled fee, ABB commits to outturn grain purchased up-country at the port. This service encompasses storage, freight, insurance, cargo assembly, quality management and loading on ship. *Export Select* allows ABB the maximum flexibility to choose grain paths and manage the supply chain in the most efficient way. ABB's preferred method of transport to port is rail, because it is more efficient and is more environmentally friendly. However, ABB will also use road where necessary or sensible.
- 4.11 Alternatively under *Export Standard* exporters may unpack these services. They may provide their own rail resource, purchase GWA rail from ABB as a separate component or choose road movement, either negotiating directly with trucking companies or using ABB's logistics services. Needless to say, ABB still needs to be closely informed of *Export Standard* movements to ensure that the assembly of cargos at port is coordinated with the at-port storage and the shipping stem.

Wheat exports from South Australia

- 4.12 As set out above, the South Australian grains industry is export focussed. In a typical year 80% of the grain produced in South Australia is exported with the remainder sold domestically or exported in containers.
- 4.13 Wheat exporters accumulate cargoes by either:
- Posting prices at up-country silos and buying from growers on the day of delivery to the silo;
 - Forward contracting with growers who deliver to silos against the contract;
 - Taking a transfer of title from growers who have "warehoused" their grain (ie stored it temporarily in the silos);

- Buying grain from another trader; or
- Buying grain directly from a grower ('on-farm').

4.14 Prior to the dismantling of the wheat single desk, AWB was the only company, with some limited exceptions, permitted to export bulk wheat from South Australia. The 2008/09 harvest was the first opportunity for other companies to export wheat. Currently 23 companies have been accredited by WEA to export bulk wheat. The 2008/09 South Australia harvest was below average (approximately 4.5m tonnes, compared to an average of 5.8m tonnes) and accordingly, the full effects of deregulation remain at a transitional stage, but are already positive.

4.15 The following table shows the shipping program from South Australian ports for all commodities from 1 October 2008 to 26 March 2009:

[CONFIDENTIAL TABLE 3

Source: ABB]

Regulation in South Australia

The bulk loading sites

4.16 The *Maritime Services (Access) Act 2000 (SA)* ("MSA") creates a regime for economic regulation of the bulk loading plants ("the belts") at the South Australian ports at which ABB operates. Under the MSA, the Essential Services Commission of South Australia ("ESCOSA") is responsible for the regulatory regime.

4.17 The belts were formerly owned by the Department of Marine & Harbours (later Ports Corp) and sold to SACBH (now AusBulk) in 1997. It was a condition of the sale that an access regime be established.

- 4.18** The regime stops at the belts (i.e. it does not extend to the grain terminals). However, it provides a useful insight into a regulatory environment.
- 4.19** The port access regime under the MSA encourages parties to reach their own commercial agreement in relation to access to the belts subject to a negotiate/arbitrate model that confines the role of ESCOSA to determine 'fair commercial terms' in the event of a dispute. The port access regime under the MSA has not been certified as an effective access regime under Division 2A of Part IIIA of the TPA.
- 4.20** The form of price regulation is price monitoring, accompanied by negotiate/arbitrate access arrangements in relation to certain services (including at grain berths).
- 4.21** Under the MSA, ESCOSA is also required to conduct periodic reviews of the price regulation under the regime. In its 2007 Ports Pricing and Access Review, ESCOSA concluded that the current regimes should continue beyond 30 October 2007 for a further 3 year period. It concluded that there was no justification of introducing more heavy-handed price regulation than currently existed and that price monitoring continued to provide an appropriate mechanism to inform access seekers.

ABB s87B Merger Undertaking

- 4.22** ABB is currently subject to a s87B Undertaking provided to the Commission. The undertaking was given to address the Commission's concerns regarding the merger of ABB and AusBulk, and in particular potential concerns regarding the implications of the merger for competition between traders, particularly barley traders.
- 4.23** The undertaking prohibits ABB from unfairly or unreasonably discriminating between grain traders as to the terms and conditions of access to AusBulk's grain terminals.
- 4.24** The undertaking will expire on 20 September 2009. The undertaking concedes that there may be grounds for an earlier termination if the barley single desk is removed. The South Australian barley single desk was removed in 2007.

5. Competitive dynamics in the export wheat industry

Introduction

- 5.1** The wheat export supply chain in Australia is highly competitive, being characterised by:
- (a) a very large number of growers, who determine what crops (or wheat varieties) they will grow and the persons to whom they will sell those crops;
 - (b) a number of storage and handling and logistics services providers; and
 - (c) a large number of grain marketers - many of whom are substantial multi-national corporations - who compete for sales of wheat at a global level.
- 5.2** ABB considers that, having regard to these industry dynamics (in particular comparatively low barriers to entry as a grain exporter and countervailing power of customers), there is no need for intrusive access regulation in relation to Port Terminal Services and the Undertaking represents an appropriate approach to access regulation in relation to Port Terminal Services. In this regard, the establishment of 23 accredited bulk wheat exporters has led to a substantial share of wheat exports being obtained by international exporters as well as existing incumbents such as AWB.
- 5.3** A brief outline of the competitive constraints in the wheat export supply chain is set out below, and the following sections provide more detailed information on these industry characteristics.

History of access

- 5.4** ABB has a long history of providing efficient access to its competitors in non-regulated grains and the provision of access to third parties has not given rise to any material concerns in the past or, in South Australia in particular, under the deregulated export market for wheat.
- 5.5** ABB has enjoyed a very good relationship with its port terminal customers over many years. There have been no disputes under the ESCOSA access regime regarding access to or the pricing of ABB's bulk loading plants and there have not, to ABB's knowledge, been any instances where access to export facilities has been refused to any credible bulk exporter.
- 5.6** There has only been one dispute notified to the ACCC pursuant to the s87B Undertaking. The dispute involved the imposition of a \$1.50 per tonne throughput fee which was claimed to be unreasonably discriminatory. The matter was arbitrated in 2006 and awarded in ABB's favour.

No ability to take advantage of vertical information flows

- 5.7 ABB does not have access to any competitively sensitive information of its customers which is not publicly available and which would provide it with any meaningful competitive advantage in relation to either domestic or export sales of wheat. The continuation of AWB as a substantial wheat exporter and competitor, and the emergence of new exporters, is actual objective hard evidence of that fact in the current environment without the Undertaking. In any event, information and other ring-fencing arrangements are addressed in the Undertaking.

No ability or incentive to provide discriminatory access or to monopoly price

- 5.8 ABB considers that it is constrained by the following competitive dynamics from providing discriminatory access or implementing monopoly pricing.
- Many grain marketers seeking access to Port Terminal Services are large multi-national companies with a substantial degree of bargaining power;
 - ABB port terminals currently operate well below capacity and, accordingly, ABB does not have any incentive to deny access for third parties to Port Terminal Services. Rather, ABB's clear incentive is to maximise throughput in order to defray costs and optimise the efficiency of port operations;
 - The possibility of new entry, and the reality of competition from other export terminals in Victoria, operates as a material competitive constraint; and
 - The use of Port Terminal Services is subject to a high level of external scrutiny, by Wheat Exports Australia, the Commission and a forthcoming Productivity Commission review. This threat of heavier-handed regulation operates as a substantial competitive constraint.

- 5.9 In any event, any potential concerns about pricing conduct, the availability of non-discriminatory access and leveraging of information is addressed by the binding arbitration procedure and ring fencing provisions in the proposed Undertaking.

- 5.10 Further details in relation to the bargaining power of customers, incentives given the level of capacity utilisation and competition from other operators is set out below. Further details in relation to confidentiality and ring-fencing arrangements is set out in Section 6.

Power of customers

- 5.11 Many of ABB's export terminal customers (who are also ABB's marketing competitors) are strong Australian companies (AWB, CBH,

GrainCorp) or powerful multinationals (Cargill, Glencore, Toepfer, Bunge). In the first harvest after wheat export deregulation, 21 new bulk wheat exporters have entered the market, demonstrating that it is dynamic and that there are no demonstrated access issues in relation to grain export terminals.

- 5.12** Each of the companies referred to in paragraph 5.11 has the resources and skills to assess the services provided by ABB and the extent to which access pricing and terms are reasonable. When taken with:
- (a) the level of transparent and publicly available information (including as required by the WEMA);
 - (b) the commercial incentive for ABB to maximise throughput at each of its export grain terminals;
 - (c) the substantial level of scrutiny by Wheat Exports Australia, the Commission and, leading up to the 2010 review, the Productivity Commission (and consequent threat of heavier-handed regulation if there is evidence of any misuse of market power); and
 - (d) the non-discrimination, binding arbitration and other provisions in the Undertaking,

this level of countervailing power will continue to operate as a powerful constraint on ABB.

Capacity under-utilisation

- 5.13** As demonstrated in Table 4 below, there is significant excess capacity at each of ABB's port terminals:

[CONFIDENTIAL TABLE 4

Source: ABB]

5.14 It is clearly in ABB's financial interest to increase the amount of grain through its terminals. In this regard, ABB does not have the financial capacity to purchase (let alone the commercial desire to take on the risk of purchasing) the entire South Australian wheat crop. ABB therefore relies heavily on other marketers to accumulate and export through ABB's facilities and to provide an active market in which to trade grain.

5.15 [*Confidential*

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[CONFIDENTIAL FIGURE 2

Source: ABB]

[*Confidential*

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5.16 ABB has also invested close to \$130 million in its Outer Harbor terminal. The business case for a reasonable return on investment depends in part on attracting grain in western Victoria to Outer Harbor via a least cost path, which provides an additional incentive to ensure competitive terminal services and pricing.

Competition from other grain terminals

5.17 ABB's port terminal at Port Adelaide competes with GrainCorp's port terminals at Geelong and Portland and to a lesser extent ABA's Melbourne Port terminal, as grain on the Victorian and South

Australian standard gauge can be consigned to Geelong, Portland, MPT and Port Adelaide. In order to attract Victorian grain, ABB's port charges need to be competitive.

- 5.18** In this regard, ABB has, in the past, been actively involved in attracting grower customers from the border areas of Victoria through its own site at Werrimull in Victoria's northern Mallee, taking wheat from that area for export through Port Adelaide.

Threat of development of new port terminal

- 5.19** Although clearly involving certain costs and investment, ABB considers that it is possible for another party to enter and develop a new grain terminal in South Australia. For example:
- In 2001, AWB and ABB (prior to the ABB and AusBulk merger) proposed to develop a grain terminal at Port Stanvac, just south of Adelaide;
 - In 2002, AWB purchased land at Myponie Point, north of Wallaroo, with the aim of developing a new deep-water port;
 - In 2006, ABB commenced work on a new terminal at Outer Harbor;
 - In 2006, Flinders Ports partnered with Toll and later Asciano to install a shiploader at the berth adjoining Port Adelaide (Berth 29) which now competes with ABB for the loading of mineral sands, demonstrating an ability to install export loaders should other wheat exporters wish to do so; and
 - In 2009, Centrex Metals announced that it had purchased land with a view to developing a deep water port at Sheep Hill, 20km north of Tumby Bay in South Australia. The port will be focussed on iron ore, but is also expected to export between 1-3m tonnes of grain each year.

- 5.20** The possibility of new entry is also demonstrated by the construction and entry of Melbourne Port Terminal in 1998.

- 5.21** In summary, ABB regards the threat of new port development or new export grain facilities, as more than theoretical. The effect of this threat is a clear incentive (and commercial requirement) for ABB to operate its grain terminals in an efficient and competitive manner.

6. Information Flows and Ring-fencing

- 6.1** ABB conducts its Port Terminal Service through its National Supply Chain (NSC) division and its wheat accumulation and marketing activities through its Marketing division.
- 6.2** The NSC Division and the Marketing Division are located on different floors of ABB's offices in Adelaide, have different staff and report to different ABB Executive General Managers. The ring-fencing provisions offered by ABB in the Undertaking also seek to formalise disciplines (reinforced by clear audit protocols) whereby certain information relating to applications for access to port and the execution of those applications will be restricted to NSC staff and not made available to Marketing Staff.
- 6.3** To accommodate these new requirements ABB will:
- introduce new policies and procedures;
 - capture auditable arm's length transactions between NSC and ABB's Marketing Division; and
 - modify its systems to ensure that restricted information cannot be passed on to unauthorised persons.
- 6.4** In light of the factors set out in paragraphs 6.7 - 6.9 below, ABB considers that the ring-fencing provisions contained in the Undertaking represent a fair and reasonable approach to the issue of protecting confidential information.
- 6.5** ABB is aware that there have been a small number of criticisms in the past from competitors that ABB Marketing (or indeed other bulk handlers) may have an unfair advantage by being able to access information on ownership of stocks within storage systems.
- 6.6** However, ABB considers that these concerns are overstated in the context of access to export port terminals and do not justify the significant cost and disruptive burden, lack of flexibility and inefficiency that would result from a requirement to physically separate ABB's NSC and Marketing divisions and systems. This is particularly the case given that the Undertaking applies to only one type of grain (which is, in any event, exported) and the introduction of onerous and unnecessary ring-fencing arrangements has a clear potential to create considerable inefficiencies and costs to the detriment of the Australian industry and Australian growers.
- 6.7** ABB considers that any concerns about unfair informational advantages are overstated as knowledge of ownership of grain stocks at port does not bestow any practical competitive advantage on ABB's Marketing division. In this regard:

- Port Terminal Services are essentially a logistical function which takes place *after* the competition to accumulate the grain has been played out.
- The ownership of the grain at port has in any event been blurred by products like Export Select where a trader only has title to co-mingled grain within the whole system until it is outturned to the trader from the shipping spout.
- Any advantage which may have accrued in the past by being able to jump shipping queues has been obviated by the transparency of publication of the shipping stem.
- Any arbitrage that may be available is generally captured up-country through on the spot segregation rather than at port after the wheat has been co-mingled.
- While the provision of Port Terminal Services will provide ABB with certain information about the amount and quality of the wheat being shipped, the destination of the wheat and the timing of export, ABB will not have any information about:
 - the identity of the ultimate customer (unless there is a monopoly buyer at the relevant destination port). This is particularly the case as grains are often traded several times while they remain in the logistics or delivery chain;
 - the price at which, or other terms on which, the wheat was sold;
 - the date on which the exporter won the tender, or entered into the contract, to supply the wheat;
 - whether the exporter is fulfilling the entire customer order from wheat exported from that port (or whether the exporter is supplementing the order from wheat exported from any other port around the world);
 - whether the grains exported will be blended with any other grains at another location after export;
 - each of the other arrangements that the exporter may have to acquire wheat, trade wheat or supply wheat, either in Australia or overseas; or
 - any of the customers future tenders, contracts, marketing proposals or trading positions.

- 6.8** Put simply, a snapshot of information about the volume of grain to be exported on one or more vessels will not provide ABB with any visibility of the exporters' wider trading operations or any competitively meaningful information in relation to the exporters' stocks, customers or future contracts (either supply or purchase).
- 6.9** On this basis, ABB considers that the ring-fencing provisions contained in the Undertaking represent a reasonable balance between the need for NSC customer confidentiality and the desirability of avoiding incurring significant costs on structural separations to address concerns with little substance and which would impose significant inefficiency costs on industry (and, ultimately, growers).

7. Price Benchmarking and non-discrimination

7.1 The Undertaking offers a commitment to the provision of access (including pricing) which does not unreasonably discriminate between traders or between a trader and the Marketing division of ABB.

7.2 In the context of:

- a competitive export market;
- the countervailing power of competitors;
- the lack of incentive to limit throughput;
- a demonstrable absence of disputes in the past;
- no evidence of monopoly pricing (see below);
- substantial regulatory oversight and the resulting threat of heavier-handed regulation;
- potential competition both from new entrants and exiting export grain terminals;
- Parliament's direction that the port operators be allowed to function in a commercial environment; and
- the clear protections provided to access seekers in the Undertaking,

ABB believes that a heavier handed approach such as introducing an 'ex ante' pricing model is not warranted.

7.3 ABB from time to time receives comments, from growers more so than marketers, about its charges. These comments are, understandably, more strident in years of drought (as South Australia has experienced in the last 3 seasons) when storage and handling charges represent a proportionately greater impost on farm incomes.

7.4 Benchmarking of port terminal charges is notoriously difficult due to the lack of standardisation of charges and the number of variables created by seasonal conditions and buyer behaviours.

7.5 [*Confidential*]

7.6 [Confidential]

]

[CONFIDENTIAL: TABLE 5

]

7.7 [Confidential]

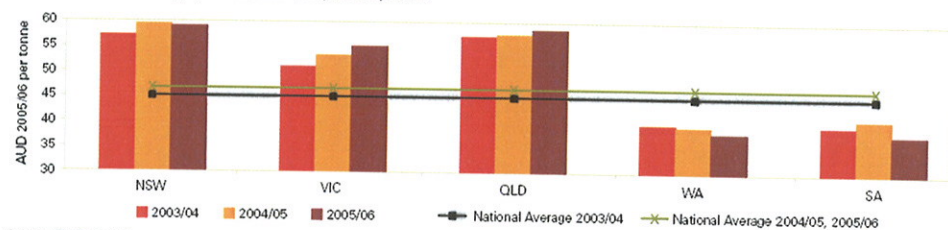
]

7.8 This conclusion is also consistent with earlier work done by the Wheat Export Authority on the total supply chain costs for the purposes of reporting to growers on the performance of AWB (see Figure 3 below):

FIGURE 3

Meeting The Challenges of Charges
WEA Analysis

FIGURE 1: Total real supply chain costs compared by state.



Source: EWC analysis.

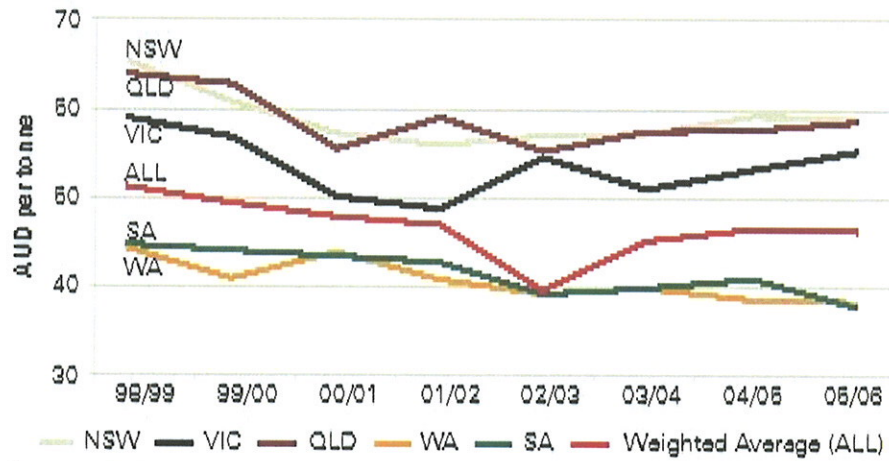
Source: WEA Growers Report 2007 Addendum

Figure 3 clearly demonstrates that during the relevant period (the three years up to and including 2005/06), South Australia's supply chain was very competitive on a national basis.

7.9 Again, looking at the trend of supply chain costs over a longer period of eight seasons, the cost efficiency of the South Australia supply chain is evident.

FIGURE 4

FIGURE 6: Trends in Real Supply Chain Costs by State (AUD 2005/06 per tonne).



Source: EWC analysis.

7.10 Accordingly, on the basis of this independent evidence -- and particularly when taken with the non-discrimination and binding dispute resolution provisions in the Undertaking and substantial regulatory oversight -- ABB considers that the Undertaking sets out a fair and reasonable approach to the regulation of access to Port Terminal Services.

8. Compliance with TPA requirements

- 8.1 For the reasons set out above, ABB considers that it is appropriate for the Commission to accept the proposed Undertaking having regard to the requirements of the TPA.

The level of regulation is sufficient

- 8.2 In its 2007 Ports Pricing and Access Review, ESCOSA found that a light-handed approach to regulation of port services, based on published pricing and a negotiate/arbitrate model, was sufficient. In particular, ESCOSA stated that:

“... the Commission recommends that the current light-handed form of price regulation (price monitoring) be maintained. Submissions to the Commissions Draft Report supported this proposal. The price monitoring regime will allow port operators to set their own prices, but such action will be constrained by the threat of re-regulation. The Commission believes that this regime will minimise regulatory costs and maximise the benefits of regulation for all port stakeholders”

...

“Given that stakeholders making submissions to the Draft Report were unanimously in favour of the continuation of the current light-handed price monitoring regime, the Commission has no reason to deviate from this position in this Final Report”.

- 8.3 For the reasons set out in section 6 above, ABB considers that the level of regulation proposed by the Undertakings is sufficient.

The objects of Part IIIA

- 8.4 To the extent that port terminal facilities cannot be economically duplicated, an undertaking to provide access to services from those facilities on transparent and non-discriminatory terms (backed up by binding dispute resolution procedures) would promote the economically efficient use of those facilities and competition in vertically related markets, thereby promoting the objects of Part IIIA.
- 8.5 However, critically, the assumption that port terminal facilities cannot be economically duplicated has not been fully established. To the contrary, and as set out in Section 5 above, ABB considers that there is genuine scope for competitive new entry, and there is genuine scope for intra-port competition, particularly between South Australian and Victorian grain export terminals.
- 8.6 Given that ABB has historically provided access to Port Terminal Services in the absence of a formal access undertaking, ABB submits that the Commission should accept an undertaking that requires it to

publish reference prices for a set of standard services without a further requirement to submit price and non-price terms and conditions to the Commission for prior approval as part of the undertaking. This approach would protect investment incentives and promote economically efficient investments in port terminal facilities.

- 8.7** On this basis, ABB submits that the Undertaking is sufficient to promote the economically efficient operation of, use of and investment in bulk wheat export terminals and thereby promote effective competition in upstream and downstream markets by giving industry confidence that the transition to deregulation will not be hindered by port access issues arising from anti-competitive behaviour.

The pricing principles specified in section 44ZZCA of the TPA

- 8.8** The Undertaking requires access to Port Terminal Services to be provided on non-discriminatory terms and has provisions specifically prohibiting ABB from discriminating in favour of its own business. This, together with a binding dispute resolution process, ensures that ABB will continue to provide access at prices that generate expected revenue that is at least sufficient to meet the efficient costs of providing access to the Port Terminal Services including a return on investment commensurate with risk.

- 8.9** Furthermore, an undertaking that allows ABB to determine its own access prices at the first instance (backed up by clear non-discrimination and binding dispute resolution provisions) will retain the incentives to reduce costs. In contrast, an undertaking that requires ABB to provide access at cost-based prices would dampen incentives to reduce costs and require further compensating regulatory mechanisms to provide this incentive such as CPI-X mechanisms which involve difficult regulatory judgments.

- 8.10** Accordingly, ABB submits that the published pricing proposed under the Undertaking is consistent with the Pricing Principles set out in section 44ZZCA of the TPA.

The legitimate business interests of the provider

- 8.11** ABB has a legitimate business interest in providing access to its Port Terminal Services on price and non-price terms and conditions that ensure that it receives at least a return on investment that is commensurate with risk. ABB is satisfied that the Undertaking would achieve this outcome.

The public interest, including the public interest in having competition in markets

8.12 ABB considers that the public interest would be served if ABB continues to provide access to Port Terminal Services on terms and conditions determined by ABB, subject to clear non-discrimination provisions and a binding process for resolving any dispute about the terms of access. It would protect incentives to make economically efficient investment in Port Terminal Services which would promote the public interest in the long run. It also balances the potentially large cost of regulation with the relatively minimal benefits of access regulation in this case.

8.13 The more fully documented arrangements under the Undertakings ensure certainty, transparency and non-discrimination such that the public can be confident of a successful transition from a single desk to competition in the export of bulk wheat

The interests of persons who might want access to the service

8.14 Under the Undertaking, ABB will continue to provide access to Port Terminal Services to any accredited wheat exporter that meets reasonable prudential requirements. Such users are adequately protected by the requirement to publish pricing for standard services, the obligations not to discriminate and the detailed negotiate/arbitrate mechanisms.

8.15 In addition, ABB notes that if the Commission did not approve the Undertaking or required onerous regulatory requirements, there is a real risk that exporters of bulk wheat who provide Port Terminal Services may cease to be accredited wheat exporters. This may reduce competition between exporters of bulk wheat, which would not be in the interest of the Australian export industry or Australian farmers who would face reduced choice of bulk wheat exporters.

9. Submission

9.1 It is submitted that the Commission should accept the ABB Undertaking because the ABB Undertaking provides a reasonable and appropriate level of regulation given:

- (a) there is a long and consistent history of open access to South Australian grain terminals;
- (b) there is no record of extensive disputes over access to either regulated or unregulated ABB port assets;
- (c) South Australia's unique supply chain configuration means that shipping bottlenecks are infrequent;
- (d) ABB's supply chain network is recognised by the industry to be relatively efficient and cost effective;
- (e) the publication of ABB's shipping stem, loading protocols and port rules provides a high level of transparency;
- (f) there is no incentive to deny access or monopoly price because ABB's primary motivation is to maximise throughput;
- (g) the likely access seekers are sophisticated traders who are well resourced and have countervailing power; and
- (h) there are a number of other constraining influences on ABB's behaviour which give further confidence that Port Terminal Services will be provided on a non-discriminatory basis.

9.2 There is no doubt that the efficiency of South Australia's supply chain is the result of substantial investment by ABB over almost half a century, culminating in the investment of \$130m at Outer Harbor to provide the mainland South Australia with a deep-water grain terminal. In this regard, ABB notes the report of the ADC Infrastructure Summit (Brisbane 6/7 October 2008) which stated that:

"Australia is unique among OECD nations in pursuing a policy of mandated third party access to privately owned "essential" infrastructure, a matter discussed in some detail by the summit's Institutional Barriers working group. However private asset owners, for example in port facilities, will not invest if they cannot be confident of capturing the benefits of their investment. Encouragement of negotiation between commercial entities, rather than reliance on regulation, may be a better approach in fostering both infrastructure capacity

growth and optimal use of any existing level of capacity."²

- 9.3** ABB's Undertaking in the form submitted provides wheat exporters with a predictable and accountable access regime, while not unreasonably compromising ABB's commercial activities and its investment perspectives.
- 9.4** For the reasons set out in this submission, the Undertaking also satisfies the criteria for acceptance by the Commission under Division 6 of Part IIIA of the TPA.

² Freight and Metropolitan Transport: report of ADC Infrastructure 21 Summit p 108

10. Further Information

If any further information on ABB's Undertaking is required, please contact:

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ABB GRAIN LTD
16 APRIL 2009

Attachment 1 - Example of shipping stem information



Shipping Schedule



9th April 2009

ETA	ETB	ETC	ETD	QTY	COMMODITY	NOMINATED	TIME	ACCEPTED	TIME	SHIPPER	AGENT	
SOUTH AUSTRALIA												
ARDROSSAN												
PORT ADELAIDE												
Sea Flower	Arrived	Failed Surveys	15/04/2009	17/04/2009	30,000	Grain	26/02/2009	18:02	2/03/2009	12:00	ABB Toepfer	Monsons Inchcape Shipping Services
Medi Bangkok	13/04/2009	17/04/2009	17/04/2009	19/04/2009	27,000	Grain	27/02/2009	09:00	10/03/2009	10:00	ABB	Inchcape Shipping Services
Hanjin Bombay	20/04/2009	20/04/2009	20/04/2009	21/04/2009	15,000	Grain	27/03/2009	17:02	31/03/2009	14:00	Bunge	Southern Wharf Services
Federica Prima	22/04/2009	25/04/2009	25/04/2009	26/04/2009	10,000	Grain	13/03/2009	10:46	17/03/2009	16:28	AWBHF	Southern Wharf Services
Federica Prima	22/04/2009	25/04/2009	25/04/2009	26/04/2009	14,000	Grain	8/03/2009	09:53	13/03/2009	15:00	ABB	Monsons
Cos Cherry	21/04/2009	31/04/09	31/04/09	2/05/2009	26,000	Grain	23/03/2009	11:17	26/03/2009	11:00	J K International	Inchcape Shipping Services
July M	25/04/2009	3/05/2009	3/05/2009	5/05/2009	28,000	Grain	17/03/2009	17:13	17/03/2009	21:02	AWBHF	Inchcape Shipping Services
Capitain Cook	5/05/2009	5/05/2009	5/05/2009	6/05/2009	11,500	Grain	24/02/2009	11:45	25/02/2009	09:00	ABB	TBA
Joyous Age	1/05/2009	6/05/2009	7/05/2009	9/05/2009	33,000	Grain	11/03/2009	17:59	26/03/2009	11:00	AWBHF	TBA
Giovanni Topic	13/05/2009	13/05/2009	13/05/2009	15/05/2009	20,000	Grain	31/03/2009	08:43	8/04/2009	21:34	Glencore	Monsons
S H Bright	15/05/2009	16/05/2009	16/05/2009	18/05/2009	25,000	Grain	24/03/2009	09:38	26/03/2009	11:00	Glencore	Monsons
African Robin	15/05/2009	19/05/2009	20/05/2009	20/05/2009	8,000	Grain	27/03/2009	11:06	31/03/2009	12:00	ABB	TBA
Maritime Sirinart	20/05/2009	23/05/2009	23/05/2009	24/05/2009	15,000	Grain	31/03/2009	14:38	2/04/2009	12:00	ABB	TBA
Crimson Forest	25/05/2009	27/05/2009	27/05/2009	28/05/2009	15,000	Grain	31/03/2009	15:32	2/04/2009	14:00	ABB	TBA
PLEASE BE ADVISED TERMINAL WILL BE CLOSED FOR MAINTENANCE 27/04/09 TO 30/04/09 ALL INCLUSIVE												
PORT GILES												
Jag Ratan	Arrived	Berthed	Loading	9/04/2009	20,000	Grain	27/02/2009	22:00	11/03/2009	12:00	J K International	Inchcape Shipping Services
Maritime Diamond	1/05/2009	1/05/2009	1/05/2009	1/05/2009	8,000	Grain	23/03/2009	16:37	25/03/2009	13:00	ABB	Southern Wharf Services
PLEASE BE ADVISED TERMINAL WILL BE CLOSED FOR MAINTENANCE 14/04/09 TO 01/05/09 ALL INCLUSIVE												
PORT LINCOLN												
Catriena	12/04/2009	12/04/2009	12/04/2009	14/04/2009	34,000	Grain	22/02/2009	11:33	26/02/2009	13:00	AWBHF	Southern Wharf Services
Sea Flower	18/04/2009	18/04/2009	18/04/2009	19/04/2009	20,000	Grain	26/02/2009	18:02	2/03/2009	12:00	ABB	Monsons
Pacific Royal	18/04/2009	18/04/2009	18/04/2009	19/04/2009	14,000	Grain	4/02/2009	17:59	9/02/2009	13:30	ABB	Inchcape Shipping Services
Hellenic Sky	16/04/2009	20/04/2009	20/04/2009	22/04/2009	50,000	Grain	27/03/2009	16:35	31/03/2009	10:00	Emerald	Inchcape Shipping Services
Hanjin Bombay	22/04/2009	22/04/2009	23/04/2009	23/04/2009	5,000	Grain	27/03/2009	17:02	31/03/2009	14:00	ABB	Inchcape Shipping Services
Federica Prima	27/04/2009	27/04/2009	27/04/2009	29/04/2009	19,000	Grain	6/03/2009	09:53	13/03/2009	15:00	AWBHF	Southern Wharf Services
Federica Prima	27/04/2009	27/04/2009	27/04/2009	29/04/2009	20,000	Grain	13/03/2009	10:46	17/03/2009	16:28	Bunge	Southern Wharf Services
Cos Cherry	3/05/2009	3/05/2009	3/05/2009	3/05/2009	9,500	Grain	23/03/2009	11:17	26/03/2009	11:00	ABB	Monsons
July M	6/05/2009	6/05/2009	6/05/2009	7/05/2009	22,000	Grain	17/03/2009	17:13	17/03/2009	21:02	J K International	Inchcape Shipping Services

Joyous Age	10/05/2009	10/05/2009	10/05/2009	10/05/2009	8,000	Grain	11/03/2009	17:59	26/03/2009	11:00	ABB	TBA
Blue Coral	17/05/2009	17/05/2009	17/05/2009	18/05/2009	25,000	Grain	31/03/2009	14:38	2/04/2009	15:00	ABB	TBA
African Robin	21/05/2009	21/05/2009	21/05/2009	22/05/2009	16,000	Grain	27/03/2009	11:06	31/03/2009	12:00	Glencore	Monsons
Maritime Sirinant	31/05/2009	31/05/2009	31/05/2009	31/05/2009	10,000	Grain	31/03/2009	14:38	2/04/2009	12:00	ABB	TBA
Seminole Princess	28/05/2009	29/05/2009	29/05/2009	30/05/2009	25,000	Grain	1/04/2009	12:00	8/04/2009	13:00	ABB	TBA

PORT PIRE

THEVENARD

CSL Thevenard	14/04/2009	14/04/2009	14/04/2009	15/04/2009	20,000	Gypsum	N/A		N/A		GRA	Lex Mosely
Clipper Trust	19/04/2009	19/04/2009	19/04/2009	20/04/2009	25,000	Gypsum	N/A		N/A		GRA	Lex Mosely
CSL Thevenard	27/04/2009	27/04/2009	27/04/2009	28/04/2009	20,000	Gypsum	N/A		N/A		GRA	Thevenard Shipping Agency
Atlantic	9/05/2009	9/05/2009	9/05/2009	10/05/2009	21,000	Gypsum	N/A		N/A		GRA	Thevenard Shipping Agency

WALLAROO

Pacific Royal	Anchor	15/04/2009	15/04/2009	17/04/2009	25,000	Grain	4/02/2009	17:59	9/02/2009	13:30	ABB	Inchcape Shipping Services
Kalypso	Anchor	21/04/2009	21/04/2009	23/04/2009	30,000	Grain	23/03/2009	11:15	23/03/2009	14:00	Cargill	Inchcape Shipping Services
Maritime Diamond		15/04/2009	28/04/2009	28/04/2009	25,000	Grain	23/03/2009	16:37	25/03/2009	13:00	ABB	Southern Wharf Services
New Ambition		29/04/2009	2/05/2009	2/05/2009	15,000	Grain	26/03/2009	15:47	31/03/2009	15:00	Cargill	TBA
Blue Coral		13/05/2009	14/05/2009	14/05/2009	30,000	Grain	31/03/2009	14:38	2/04/2009	15:00	ABB	TBA

SHIPPING SCHEDULE WILL BE UPDATED DAILY AND IS SUBJECT TO CHANGE

Attachment 2 - Flinders Ports Port Rules



Flinders Ports

SOUTH AUSTRALIA

Port Rules

PORT ADELAIDE

PORT LINCOLN

PORT PIRIE

KLIEN POINT

PORT GILES

WALLAROO

THEVENARD

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THE MASTER OF A VESSEL HAS THE RESPONSIBILITY TO REPORT ANY INCIDENTS VIA THE SIGNAL STATION ON VHF CHANNEL 16 OR 12 OR ON PHONE (08) 8248 3505 THAT OCCURS ON OR NEAR HIS/HER VESSEL OR A MALFUNCTION THAT CAN CAUSE RISK OR DAMAGE TO THE VESSEL OR PORT INFRASTRUCTURE.	15
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1. INTRODUCTION

1.1 Purpose

These Port Rules are intended to inform commercial users of the port of their responsibilities for the safe navigation of vessels in the port. These rules are a summary and are to be used as a guide only of the legislative/contractual requirements.

1.2 Scope

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

- a. Harbors and Navigation Act 1993.
- b. Environment Protection Act 1993.
- c. Maritime Services (Access) Act 2000.
- d. Customs Act 1901.
- e. Quarantine Act 1908.
- f. Occupational Health, Safety and Welfare Act 1986.
- g. Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987.
- h. South Australian Ports (Bulk Handling Facilities) Act 1996.
- i. South Australian Ports (Disposal of Maritime Assets) Act 2000.
- j. Recreational Access Agreement to Commercial Wharves Agreement.

1.3 Authority

Port Management Officers (appointed under Section 29 of the Harbors and Navigation Act 1993) will manage the port waters in accordance with the Act.

Port Management Officers are issued with a photographic identity card which lists the conditions of appointment.

Port Management Officers are responsible for directing and controlling vessel movements in port waters for the purpose of safe navigation of vessels.

This will include the:

- i. movement of vessels into, within and out of port waters;
 - ii. loading and unloading of vessels; and
 - iii. mooring, anchoring and securing of vessels within port waters.
- Flinders Ports will ensure that adequate pilotage, mooring and towing services are available to fulfil the above requirements.

1.4 Powers of Port Management Officers (PMO)

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

A direction may, for example:

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

A person in charge of a vessel must permit a Port Management Officer to:

- board the vessel; and
- inspect the vessel and its cargo; and
- carry out on the vessel any investigation necessary to ensure that the vessel and the business in the course of which the vessel is being used is being operated lawfully.
- a full listing of Port Management Officer appointments is contained in Appendix 1.

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

1.5 Geographic Limits

Port Adelaide Port Boundaries (Port Limits)

Refer to Appendix 2 "Port Adelaide Port Limits" map.

1.6 Pilotage

A vessel 35m or more in length must not be navigated within Port Adelaide, unless:

1. the master of the vessel holds a pilotage exemption certificate issued by Transport SA for Port Adelaide.
Pilots can only be arranged through the vessel's owner/agent.
2. the vessel is navigated under the control, or at the direction of, a licensed pilot (a pilot licensed by Transport SA for pilotage of vessels within Port Adelaide).

3. Unless expressly directed by a licensed pilot, boarding of vessels by the pilot will occur at the pilot boarding ground located 2nm SW of the entrance beacon.

Prior to the vessel entering the port boundary and the vessel being under pilotage;

- a) The licensed pilot must be onboard the vessel, and
 - b) The pilot and master exchange must occur to the satisfaction of the licensed pilot.
4. In general, tidal vessels due to the limited availability of appropriate tidal windows to enter/depart the port are given priority over other shipping traffic.

However, once the vessel is scheduled, a time is fixed and other shipping arranged around the vessel (especially labour commitments) the tidal vessel must not alter her scheduled time or draft. If ETA's or drafts on the tidal vessels are changed and other scheduled vessels are subsequently affected the tidal vessel no longer gets priority and will have to wait for the next available window of opportunity to enter/depart the port.

2. VESSEL TRAFFIC MANAGEMENT

Flinders Ports Signal Station, is manned at all times and maintains a listening watch on VHF channels 16 and 12 (call sign "Adelaide Outer Harbor").

2.1 Radio and Port Communications (Shipping Transit and Advice Register)

2.1.1 Shipping Transit and Advice Register

Pilots, Masters and Exempt Masters are to communicate with Port Signal Station at reporting points to advise, for recording, position/situation and time. All advice messages will be recorded in Port Control Logs for record and information purposes.

Reporting Points are as follows:

- Anchorage to or from/Pilot On Board/Pilot Disembark Point
- Entrance beacon
- Outer Harbor (Signal Tower)
- Osborne (No. 33 Beacon)
- Vessel alongside and secure

2.1.2. Schedule of Users

- Signal Station, Outer Harbor
- Vessels in or adjacent to Port Limits
- Vessels under Pilotage
 - Vessels with Pilotage Exempt Masters
- Port Services Craft
 - Small craft
 - Water Police
 - Metropolitan Fire Service
- Naval and Submarine Corporation traffic
- Tugs
- Other commercial vessels

2.1.3. VHF Marine Channel Frequencies for Port Operations

VHF FREQUENCY	PURPOSE	NOTES
Channel 16	Calling - Distress & Safety	Channel 67 for Distress & Safety
Channel 12 Vessels should monitor VHF at all times in Port Limits for information	Ship/Shore/Ship Operations	Transit advices/messages and information. Also Intership traffic
Channel 6 or 8	Tug operations	Primary channel - 6
Channel 13	Flinders Ports communications and Emergency Exercise/Response	To keep primary channels clear

All radio communication within the Port will be conducted in standard marine navigation vocabulary as specified in the "Radio Telephone Ship Station Operators Handbook", available from the Australian Communications Authority. Communication must be preceded by the identification of the channel the operator is using.

3. COORDINATION OF MARINE SERVICES

Marine Services (pilotage, mooring, tugs, launches and communications) are all coordinated by Flinders Ports Client Services Officer located at 296 St Vincent Street, Port Adelaide, during normal office hours (0830 - 1700, Monday to Friday) or the Signal Station at all other times.

Flinders Ports operates a "One Stop Shop" for ordering and coordination of pilotage, tugs and linesmen in Port Adelaide.

4. VESSEL OPERATIONAL LIMITS - PORT ADELAIDE

4.1 Maximum Lengths

OUTER HARBOR	Daylight In/Out	288m
	Darkness In/Out	288m
OSBORNE	Daylight In/Out	206m
	Darkness In (Vessel Head In)	206m
	Darkness In (Vessel to turn @ Osborne)	183m
	Darkness In (Vessel to turn #3 Basin)	206m
	Darkness Out	206m
INNER HARBOR	Daylight/Dark In/Out	206m
	Car Carriers	165m
	Number 1 Turning Basin	165m

NOTE: Some vessels requiring 3 tugs to turn may be able to operate with 2 Z Peller tugs if available.

Vessels exceeding these lengths may be handled with permission of Flinders Ports. Conditions will apply.

4.2 Tugs Required

In the absence of alternative arrangements being approved by Flinders Ports, the following requirements will apply.

OUTER HARBOR	Vessels up to 90m In/Out not turning	0 Tugs
	Vessels up to 90m In/Out when turning	1 Tug
	Vessels more than 90m and up to 120m In/Out	1 Tug
	Vessels in excess of 120 In/Out	2 Tugs
	Car Carriers swinging on departure with bow thrusters exceeding 1000hp and wind less than 15 knots	1 Tug
	Livestock and Car Carriers operating in winds exceeding 15 knots and Livestock and Car Carriers in excess of 183m when turning	3 Tugs
	Vessels in excess of 206m when turning* (see note re Z Pellers)	3 Tugs
	Vessels in excess of 230m (with or without bow thruster) – See No. 6 OH Turning Basin Guidelines	3 Tugs
OSBORNE AND INNER HARBOR	Vessels up to 90m In/Out not turning	0 Tugs
	Vessels up to 90m In/Out when turning	1 Tug
	Vessels more than 90m and up to 120m In/Out	1 Tug
	Vessels in excess of 120 In/Out	2 Tugs
	All tankers exceeding 176m or with a draft exceeding 9m	2 Tugs (Z Pellers)
	Vessels in excess of 183m when turning* (see note re Z Pellers)	3 Tugs (2 Z Pellers)

*** Due to M Berth being classed as critical infrastructure, all tankers carrying flammable cargo will require 2 tugs and a watchman.**

Switzer Tugs

PORT	TUG NAME	YEAR BUILT	LENGTH O.A.	H.P.	BOLLARD PULL	SCREWS	
Port Adelaide	Tarpan	1984	32.17	3600	50T	2	Z Peller
	Corsair	1977	26.35	2440	43.4T	2	
	Tingari	2000	31.87	4800	60T	2	"
	Tapir	1977	26.35	2440	43.4T	2	

4.3 Tug Ahead

Vessels with a draft of 9.5m and over may require a tug ahead whilst negotiating the Port River.

4.4 Underkeel Clearance (UKC) - Port Adelaide Inner Harbor

- All vessels to maintain 0.3m U.K.C. at all berths at all times.
- All vessels to have an UKC of not less than 7.5% of draft at all times when navigating the Inner Harbor channel.
- Vessels in excess of 200m and all tankers to have an UKC of not less than 10% when navigating the Inner Harbor Channel.
- Vessels with draft in excess of 9.5m may negotiate the Inner Harbor Channel on Ebb tide if:
 - a. sufficient water at OH6, 2 hours after sailing time, or
 - b. sufficient water in the Inner Harbor Channel 3 hours after POB time.
- All vessels to have an UKC of not less than 10% when navigating the Outer Harbor Channel.

4.4.1 *Inner Harbor Height Of Tide Required*
Channel Declared Depth at LW - 9.3m LAT
Underkeel Clearance - 7.5 % of Draft

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

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

4.4.2 Outer Harbor Height Of Tide Required

Channel Declared Depth at LW – 14.2m LAT
Underkeel Clearance – 10.0 % of Draft

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

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

4.5 Number 6 Turning Basin

Vessels over 230m with a draft of 11.0m or more shall only turn:

- If in flood tide rise <0.3m in hour.
- If in ebb tide fall <0.2m in hour.
- Vessels over 230m, with a draft of 12.0m or more, shall only turn in slack water.
-

Vessels over 260m with a draft less than 11.0m shall only turn:

- If in flood tide rise <0.45m in hour.
- If in ebb tide fall <0.35m in hour.

4.6 Number 3 Turning Basin

K Berth within the designated turning area, to be unoccupied when vessels in excess of 191m are to be turned.

If a vessel berthed at Berth 27 extends near to or into the swinging basin, as typically happens when a panamax sized vessel is berthed, then:

Vessels of LOA 180m and above are to use 2 Z's to swing.

4.7 Lines Launch Requirements

1 Line launch required for all berths except 16-20 berths if 2 tugs are used (or bow thruster and 1 tug).

4.8 Launch in Attendance - River Channel

When a ship having limited visibility and/or manoeuvrability is negotiating the River Channel, a Launch may be required to ensure that the River Channel is clear of all other small craft.

4.9 Container Cranes

4.9.1 Whilst berthing at OH7 and another vessel is working alongside OH6 the container crane booms will only be lifted if requested by the pilot/master. The pilot/master must advise the Signal Station if this is required.

4.9.2 A vessel occupying OH6 shall have its own cranes stowed inboard as another vessel manoeuvres past.

4.9.3 All container cranes will be 'parked' at the northern end of OH.7 except when a vessel is berthing at OH.7 (with or without a vessel alongside OH.6) when the cranes shall be 'parked' as follows:

- Numbers 1 and 2 cranes at the southern end of OH.6 or behind any vessel berthed at OH.6.
- Numbers 3 and 4 cranes in the midship half length of the ship when in the berthed position.

4.9.4 Note Cranes 3 and 4 will only travel from the northern end to the 200m mark.

4.10 Clear River (Port River clear of other vessels , subject to pilotage)

The following vessels require a clear river:

- Vessels in excess of 183 m and or having a draft of 9.0 m and over.
- Accolade II at night.
- Tankers if not gas free.
- If a ship is hampered for any specific reason.

4.11 M Berth Maximum Draft

Maximum draft for tankers at M Berth is 10.7m, plus low water tide height minus UKC of 0.3m.

4.12 Grain Berth Loading Priorities (27 Berth, Port Adelaide)

4.12.1 The principal of "first come, first serviced" will be strictly adhered to.

4.12.2 If a ship arrives to load grain cargoes it will automatically be deemed as being ready to load. If the loading berth is/becomes available, the first ship to arrive may occupy the loading berth.

4.12.3 Any vessel requiring the berth will be deemed as being ready to load and shall have the right to occupy the loading berth until proven different by surveys carried out by Australian Quarantine Inspection Service (AQIS), Australian Maritime Safety Authority (AMSA), or Marine Surveyors.

- 4.12.4 If the loading berth is subsequently required by another ship and the ship in the berth is not ready to commence loading due to major survey failure, that ship shall vacate the berth **at its own costs**, in order to allow the other ship to berth.
- 4.12.5 Major survey failure is any work required over and above a requirement to spray (e.g. Major hold cleaning, fumigation etc).
- Spraying* means 6 hour spraying, with crew remaining on board.
- Fumigation* means 24 hour fumigation, with all crew vacating the ship.
- 4.12.6 Vessels, which require spraying only will be allowed to perform the spray and re-survey at the loading berth.
- 4.12.7 If however on re-survey the vessel which has been sprayed fails and the berth is required by another vessel, it will be required to vacate the berth and return **at its own cost**.
- 4.12.8 A ship which is in the loading berth and declines to fully utilise the loading plant shall, if the loading berth is required by another ship which is prepared to survey and work (i.e. fully utilise the Loading Plant), remove and return **at its own cost** and allow the other ship to work the loading berth **until it has completed loading**. Rules are to apply on the basis of a 24 hour loading operation.
- 4.12.9 If the vessel, which takes the berth from another vessel also, fails, that vessel may stay at the load berth to perform tasks to pass survey, unless the berth is also required by a third vessel.
- 4.12.10 If a situation arises where there is a failed vessel at the load berth and another failed vessel at another berth undergoing tasks to pass surveys – the vessel, which passes survey first and obtains the “permission to load”, will be the vessel that has the right to occupy the load berth.
- 4.12.11 Subsequent arrangements made between agents may take precedence over 1 – 4.
- 4.12.12 Such arrangements are to be discussed with and agreed to by Flinders Ports before deviating from the loading priorities guidelines.
- 4.12.13 Flinders Ports shall be the final arbiter in deciding the priority and setting the consistency needed for the cost efficient operation of the loading berth.

5. NAVIGATION OF VESSELS

5.1 Navigation

- 5.1.1 International Rules for the Prevention of Collisions at Sea Regulations apply to all vessels in all State waters, including those within Port Adelaide, unless indicated otherwise.
- 5.1.2 The master or operator of a vessel proceeding along the course of a river or channel must keep the vessel as near to the outer limit of the river or channel which lies on its starboard side as is safe and practicable.

- 5.1.3 The master or operator of a vessel, which can safely navigate outside a channel, must not allow the vessel to hamper the safe passage of a vessel which can safely navigate only inside the channel.
- 5.1.4 The master or operator of a vessel engaged in fishing must not allow the vessel to impede the passage of any other vessel navigating within a channel.
- 5.1.5 The master or operator of a vessel must not, except in an emergency, anchor the vessel in a channel.
- 5.1.6 If a vessel is anchored in a channel in an emergency, the master or operator of the vessel must, as soon as practicable, move the vessel to the side of the channel. The Signal Station must be advised on (08) 8248 3505.
- 5.1.7 The master or operator of a vessel navigating in a channel must only overtake another vessel if this can be done safely.
- 5.1.8 A person must not, except with the approval of Flinders Ports, cause or permit a cable, chain, hawser or rope to be placed across a channel.

5.2 Anchors Not to be Used in Certain Areas

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

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

5.3 Speed

The speed limit in the following waters is seven knots:

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

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

5.4 Signals

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

Note: All round green light - indicates the tide is flooding

All round red light	-	indicates the tide is ebbing
All round white light	-	indicates the tide is slack
All round red light, over all round green light, over all round red light	-	indicates the channel is blocked

6 PERMITS

6.1 Hot Work

A person must not do any work by means of a device that produces a flame or flash exposed to the air on a vessel in a port to which these rules apply, unless:

- (a) Flinders Ports has been notified in writing of the intention to undertake the work; and
- (b) the work has been authorised in writing by the owner of the vessel (including fishing boats) or the owner's agent; and
- (c) the work is carried out in a safe and professional manner, and according to Australian Standard 1674/1980 Section 7,10.

If welding and/or hot work is to be performed, the relevant operator is to be provided with a "permit to Use Welding, Burning or Cutting Equipment on or Within Any Vessel or Any Wharf", under the responsibility of Flinders Ports.

6.2 Bunkers

The agent, on behalf of the vessel's master, is to inform Flinders Ports whenever a vessel is to take on board fuel by means of a completed "Application for Permission to Take On Oil" form.

Approval is given by means of the "Permission to Take On Board Fuel Oil in Bulk" form completed by Flinders Ports and forwarded to the relevant agent.

Conditions relating to bunkering are detailed on "Permission to Take on Board Fuel Oil in Bulk" forms.

Permission is also required if removing sludge or bilge water(s) etc. from vessels.

6.3 Handling of Inflammable Material In Bulk

As for 6.2, the agent is to inform Flinders Ports whenever a vessel is to load or discharge inflammable substances by means of a "notice of Intention to Handle Inflammable Liquid/Inflammable Oil/Liquified Inflammable Gas in Bulk" form.

Approval is given by completion of the assigned portion of the form by Flinders Ports and forwarding back to the relevant agent. Any conditions that may apply are detailed within this response section of the form.

7 MISCELLANEOUS

7.1 **Environment**

Emissions and discharges

- (i) Vessels must not emit smoke or vapour to the extent that it causes danger to any other person.
- (ii) No offensive material is to be discharged from a vessel directly or indirectly into waters or onto land in the port.

7.2 **Ballast**

Directions Relating to Ballast Water

A Port Management Officer may give the master or operator of a vessel in a port directions relating to any ballast water carried on the vessel, including directions:

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

7.3 **Divers**

The Master or Operator of a vessel that is more than 10m in length is to inform Flinders Ports and request permission to carry out diving activities.

Signal when Divers Working

- (1) The master or operator of a vessel that is over 10 metres in length must, at all times while a diver is operating from the vessel, display in a conspicuous position on the vessel the International Code Flag A.
- (2) The master or operator of a vessel that is 10 metres or less in length must, at all times while a diver is operating from the vessel, display in a conspicuous position on the vessel a rigid replica of International Code Flag A, at least 750 millimetres by 600 millimetres in size.
- (3) A diver who is operating in a harbour independently of a vessel must ensure that a rigid replica of International Code Flag A, at least 300 millimetres by 200 millimetres in size, is displayed at all times, from a buoy or float which is moored within 30 metres of the diver or is attached to a line and towed by the diver.
- (4) A diver must not operate in a harbour, independently of a vessel, in a dredged channel used by vessels.
- (5) The master or operator of a vessel navigating in the vicinity of a vessel, float or buoy displaying an International Code Flag A or a replica of that flag, must navigate so as to avoid injury to the diver or interference with the vessel, float or buoy.

- (6) Where this regulation requires an International Code Flag A or a replica to be displayed, the person who is required to display the flag or replica must ensure that it is illuminated during the hours of darkness.
- (7) All vessels passing another vessel which is displaying a diving signal shall pass at a speed not exceeding 4 knots and keep well clear.

7.4 Dangerous Substances

If cargo is of hazardous nature, details are to be provided to Flinders Ports by the agent for action as directed.

Cargo of an explosive nature is to be listed and will be forwarded (by Flinders Ports) to the Director, Workplace Services, Department for Administrative and Information Services.

Hazardous cargo list(s) are to be forwarded to Flinders Ports by the vessel's agents at least 48 hours prior to vessel's arrival. The list should provide all relevant details, including UN number to enable a check to be made.

Flinders Ports has adopted the Standard AS 3846 "The Handling and Transport of Dangerous Cargoes in Port Areas".

7.5 Security

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

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

8. REPORTING OF INCIDENTS

The Master of a vessel has the responsibility to report any incidents via the Signal Station on VHF Channel 16 or 12 or on phone (08) 8248 3505 that occurs on or near his/her vessel or a malfunction that can cause risk or damage to the vessel or port infrastructure.

APPENDIX 1

The appointment as a Port Management Officer confers upon the authorised persons all the powers of the following regulations, but only within the confines of the port nominated and only whilst under the management of Flinders Ports Pty Ltd. Further detail on the content of the regulations can be found on www.transportsa.gov.au/legislation.

Regulations

- Obstructions on wharves 16(2)
- Obstruction of landing places 17(1)
- Use of rail trolley 19(4)
- Directions relating to dangerous or objectionable cargo 21
- Spillage of cargo 22(2)
- Traffic and other directions 35(1) and 35(2)
- Removal of vehicles 37(1) and 37(2)
- Permits 38A(4)
- Smoking and use of combustion equipment in hold 156(1)

The following have been delegated to the Port Management Officers by the powers of the CEO (as referred to in the *Harbors and Navigation Act 1993 - "the Act"*) contained in the Regulations and any directly associated Regulation, stated below:

- Obstructions on wharves - 16(1)
- Obstruction of landing places - 17(1)
- Unauthorised activity on wharf - 18
- Use of rail trolley - 19(1)
- Abandoned cargo - 24
- Unauthorised entry to wharf or contiguous land - 25
- Watch officers in harbors - 26
- Mooring lines in harbors - 30(3)
- Restrictions in certain harbors - 31(1)
- Mooring and unmooring of vessels in certain harbors - 32(1)
- Swimming in harbors - 33
- Traffic signs - 34(1) and 34(2a)
- Parking signs and markings - 36(1)
- Permits (parking) - 38A(1) and 38A(2)

Note that these powers may only be exercised in the ports under the control of Flinders Ports Pty Limited and only by the person nominated below for that port.

Name of Flinders Port Employee	Name of Port(s)
KAVINA Carl DOW Douglas	Port Adelaide, Port Giles, Wallaroo and Klein Point.
BARRETT Marcus HAYWARD Gordon	Port Pirie & Whyalla
COBBAN Robert John HODGSON Alun	Port Lincoln and Thevenard

APPENDIX 2

PORT ADELAIDE - PORT LIMITS

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

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

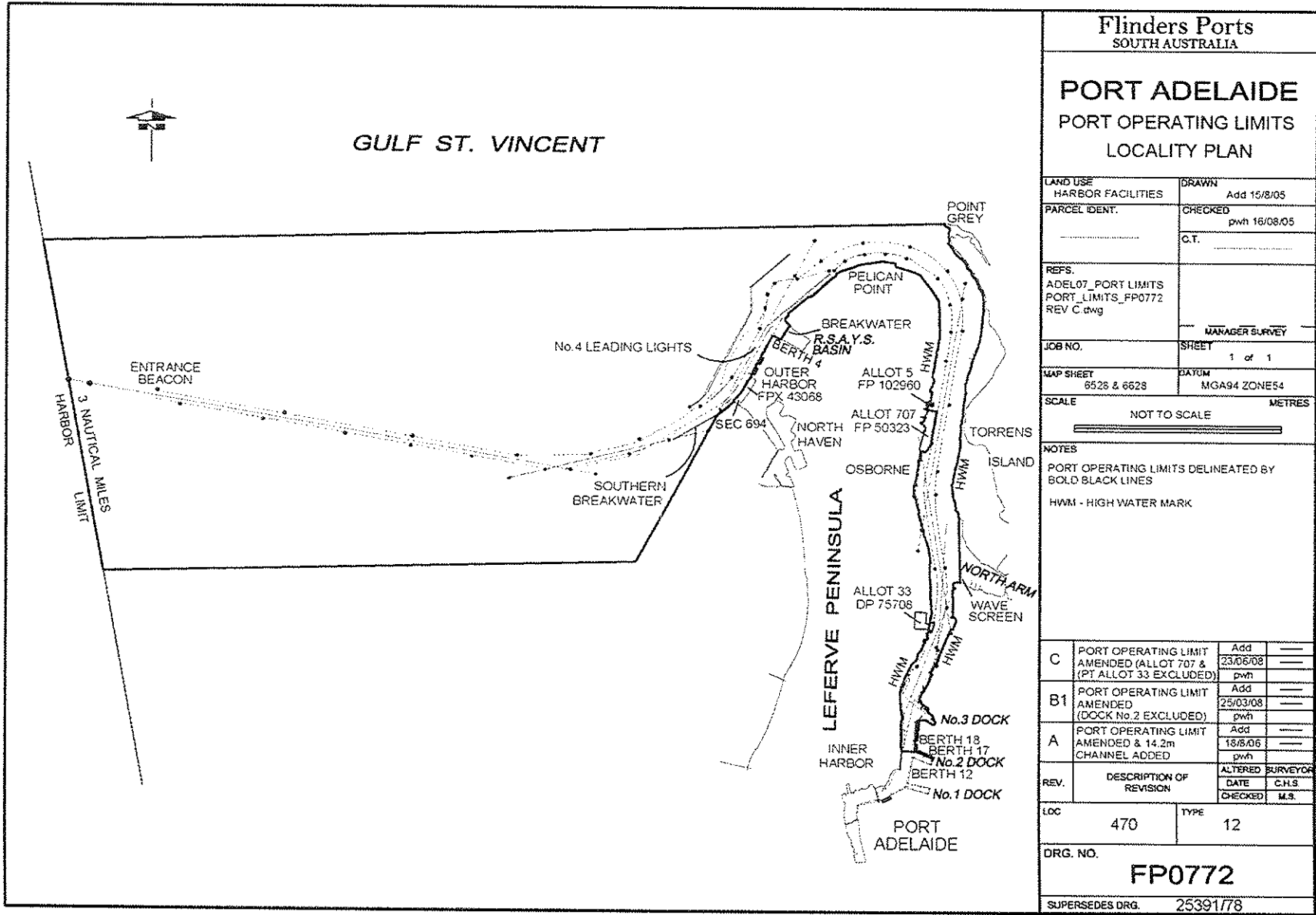
APPENDIX 2

PORT ADELAIDE - PORT LIMITS

- then generally northerly along the western face of the Wave Screen and its production to intersect with the high water mark on Torrens Island;
- then generally northerly along the high water mark to the point of commencement at Point Grey;
- and including Portion of Section 694 Hundred of Port Adelaide being the area described as easement E on FPX 43068,

but excluding:

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



Flinders Ports
SOUTH AUSTRALIA

PORT ADELAIDE
PORT OPERATING LIMITS
LOCALITY PLAN

LAND USE HARBOR FACILITIES	DRAWN Add 15/8/05
PARCEL IDENT.	CHECKED pwt 16/08/05
	C.T.

REFS. ADEL07_PORT LIMITS PORT_LIMITS_FP0772 REV C.dwg	MANAGER SURVEY
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JOB NO.	SHEET 1 of 1
---------	-----------------

MAP SHEET 6526 & 6528	Datum MGAG94 ZONE54
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SCALE	METRES
NOT TO SCALE	

NOTES
PORT OPERATING LIMITS DELINEATED BY BOLD BLACK LINES
HWM - HIGH WATER MARK

C	PORT OPERATING LIMIT AMENDED (ALLOT 707 & (PT ALLOT 33 EXCLUDED))	Add	23/06/08
		pwt	
B1	PORT OPERATING LIMIT AMENDED (DOCK No.2 EXCLUDED)	Add	25/03/08
		pwt	
A	PORT OPERATING LIMIT AMENDED & 14.2m CHANNEL ADDED	Add	18/8/06
		pwt	
REV.	DESCRIPTION OF REVISION	ALTERED	SURVEYOR
		DATE	C.H.S.
		CHECKED	M.S.

LOC	470	TYPE	12
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DRG. NO.
FP0772

SUPERSEDES DRG. 25391/78

PRPA Issue No: 14
Issued : 01/07/2003
Reissued : 09/02/2009
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Attachment 3 - ABB's Initial Port Loading Protocols

ABB Grain Shipping Protocols

In the context of these protocols, "the Company" means ABB Grain.

Export Options

If a Client has not previously nominated the export option they wish to use, they must nominate this option on the Company's standard nomination form (available from either www.abb.com.au or www.ezigrain.com.au).

There are two export options available to the Client:

1. Export Select
2. Export Standard

All Clients must complete the nomination forms for every vessel, unless otherwise agreed with the Company.

Fees

The port handling and shipping fee and the vessel nomination fee will vary depending on the Port being utilised by the Client, the Export Option Nominated, the date of commitment of tonnes to the Export Select option and the timing of nomination. The Company will require a deposit at the time of an accepted nomination.

The Client should refer to the Company's current storage and handling charges (available on the ABB website or provided upon request) for further information.

Access to ABB port terminals

The Company is willing to provide exporters of wheat and other commodities with access to its grain port terminal services at Thevenard, Port Lincoln, Wallaroo, Port Giles and Port Adelaide (inner harbour). The Company has proudly served the South Australian grains industry for over 50 years, providing grain assembly, freight, port storage, throughput and ship loading services to domestic and international marketers and looks forward to the commissioning of a new world-class deep-water terminal at Port Adelaide's outer harbour.

The Company is a party to a voluntary undertaking provided to ACCC in 2004, to the effect that the Company will not unfairly or unreasonably discriminate between traders as to the terms and conditions of access to its port terminals. The undertaking expires on 20 September 2009.

Before being able to access port terminal services, an exporter must:

- Enter into and comply with the terms and conditions of a storage and handling agreement with the Company. To view the current Storage and Handling Agreement (including a schedule of applicable fees and charges) [click here](#).
- The Company will publish a revised storage and handling agreement annually in the September preceding each season to apply for that season. In the absence of special arrangements negotiated between the exporter and the Company, the standard Agreement terms and conditions will apply.

- Be creditworthy, as assessed by the Company.
- In the case of wheat exports, be accredited within the meaning of the Wheat Export Marketing Act, 2008.
- Hold all other licenses and permits required by regulation for the export of the commodity to be shipped.

Vessel Nomination

Acceptance of a nomination of a vessel will be at the discretion of the Company.

Upon acceptance of a nomination, the Client will be allocated an estimated load date(s) based on the ability of the Company or the Client (if they are utilising the Export Standard option) to accumulate the cargo.

Allocation of Estimated Load Dates(s)

Vessels will be allocated estimated load dates based on accumulation priority. To provide fair port access the following will be taken into account in allocating resources and thus determining accumulation priority.

- Vessels already nominated
- Available transport resources, port space and available upcountry stock.
- Client's ability to provide transport resources if using Export Standard
- Lead time provided on nomination
- Ownership/ Changes to ownership of cargo
- Specific quality requests
- Impact on terminal efficiencies
- Changes to Vessel ETAs
- Client willingness to accept overtime costs and/or purchase additional accumulation capacity
- Specific supply chain efficiencies including the ability to fully utilise available transport resources
- Stock already positioned in port
- If any vessel/cargo changes constitute a new nomination
- Clients' ability to provide proof of ownership or transfers (if applicable)

Estimated load dates may change for one or more of the following reasons

- Accumulation Issues
 - Lack of performance of freight providers
- Failure of vessel to pass customary port surveys
- Unable to provide accurate ETA
- Quality problems identified during accumulation for Client's vessel or other vessels already in the queue
- Variation in cargo requirements
- Weather
- Terminal Efficiencies
- Changing ETA's of your vessel or others in the queue
- Acceptance of late nomination
- Cancelled Vessels
- Clients' authority to load or otherwise
- Flinders Ports SA Port rules section 4.12 Grain Berth Loading Priorities
- Ability to utilise cargo already at port
- Payments received
- Vessel delayed at discharge port
- Delays at first port which impact on second port ETA

This is not an exhaustive list.

Vessel Nomination Form

Vessel Nomination form must be completed prior to acceptance and allocation of an estimated load date(s).

Vessel nomination forms must contain

- Name and details of vessel
- Current location of vessel
- Ship broker (or internal sea freight manager) contact details
- Expected ETA 1st load Port

- Load grades and information regarding specific quality parameters,
- Nominated Load Port(s),
- Information regarding the intake of stock from any 3rd party sites and
- In the case of Export Standard, a site accumulation and transport plan.

Load Grades and Specific Quality Parameters

A vessel will not be accepted and allocated an estimated load date(s) until

1. Client holds ownership in their name to cover the requirements or are able to demonstrate remaining ownership in other Company approved third party bulk handlers and the grain is available; or transfers will occur prior to accumulation commencing.
2. If a Client is seeking tighter standards for outturn than that of normally agreed standards (pulses will not apply), the Company and the Client must agree on the costs and liability applicable for meeting the tighter specifications prior to outturn.

When a vessel substitution or variation may be treated as a new nomination

- The nominated vessel is delayed from the original ETA by more than three (3) days;
- A vessel is substituted and the ETA varies by more than three (3) days from original ETA;
- The Client changes load ports;
- The Client changes grades to be loaded; or
- The Client changes specifications of the grade to be loaded.

The Company reserves the right to allocate new load dates.

Estimated load dates are calculated based on the following operating conditions unless otherwise negotiated with the Client.

- The Company provides outturn and intake services for clients on a 5 day week (normal operating hours) basis for a standard shift provided sufficient notice was received for nomination (21 days).
- The Company will use reasonable endeavours to provide the following rail transport capacity for Export Select Accumulations in addition to road capacity:
 - 2 trains for Port Lincoln
 - 2 trains for Inner/Outer Harbor

Subject to receiving sufficient notice for nomination (21 days).

- A Clients' willingness to pay shift penalties for extra labour or purchase additional transport capacity.
- Specific supply chain efficiencies including the ability to fully utilise available transport resources, other site(s) conflicting movements and available up-country labour restrictions.

Notification prior to Vessel Nomination & Company Acceptance

- Any notification prior to the Vessel Nomination (and subsequent Company acceptance) is not considered a Nomination and the Company will not be required to commence grain movements for a vessel accumulation.
- However, the Company may commence accumulation into port subject to port space, where there are no nominated vessels or for supply chain efficiencies purposes.
- It is unlikely that pre-accumulations would commence into Outer Harbor due to limited port space.
- If the Company is required to prioritise accumulations due to conflicting accumulation plans or vessel ETAs then the Company will prioritise the accumulation for the earlier nominated vessel (unless, in the Company's discretion there are over-riding reasons to alter that priority, refer "Guiding Principles..." below).
- The Company will however make reasonable endeavours to commence mobilising upcountry resources to make stock available.

Guiding Principals for determining Accumulation Priority and therefore allocation of Estimated Load Date(s)

1. If a vessel is already nominated for the load port then it will receive accumulation priority even if the new vessel has an earlier ETA unless
 - a. The Company deems it can manage the impact of accepting the second nomination otherwise this vessel accumulation will occur after the initial vessel is completed; or
 - b. the ETA's are within 3 days (and can be confirmed with the ship) and accumulation cannot be stopped without
 - i. significant costs being incurred by the Company;
 - ii. Port efficiencies being negatively impacted.
2. Where Export Select Cargo is already positioned at port it will be allocated to Clients who have in the first instance provided the earlier nomination (and in the form required by the Company).

3. The Company reserves the right not to fully accumulate a vessel cargo into Outer Habor to maximise all Client vessel turnarounds where multiple vessels are arriving in a short timeframe.
4. Specific supply chain efficiencies including an ability to fully utilise available resources may result in vessels loading out of arrival order based on an ability to fully position enough stock at port. This is more likely to occur with minor grade commodities.
5. If a Client is willing to work outside of the standard operating conditions or increase accumulation capacity the vessel may receive accumulation priority if the initial prioritised Client rejects a similar offer.
6. The Company also reserves the right to adjust accumulation priority based
 - a. On increased total terminal efficiencies and an ability to minimise the total accumulation time based on total wait time of all vessels (although an individual Client's vessel may be delayed).
 - b. The majority of the stock for a nominated vessel already being received at port and in a shippable position.
 - c. Vessel ETA changes, to ensure the supply chain continues to operate in an efficient manner.

Berthing Priority

- Flinders Ports SA Port rules section 4.12 Grain Berth Loading Priorities
- Clients must work the vessel 24/7 basis (Labour Ordering conditions)
- If Stock in position and vessel not load ready, Client must vacate the berth if there is another vessel at anchor waiting to berth and can load stock.

Vessel Substitution/Cancellation

In the event that a vessel is substituted and the accumulation plans have already commenced and the vessel is subsequently cancelled without substitution or the substituted vessel is delayed from the original ETA by more than three (3) days a vessel variation fee will apply (refer the Company's current Storage and Handling charges). Where export select option is taken, the Company may be able to mitigate the cost by utilising this cargo for another export select Client provided it does not negatively affect other Client accumulations. The Company reserves it's right to amend the accumulation priority by treating this as a new nomination. Amended load dates will be calculated taking into account accumulation and terminal efficiencies.

In the event of a substituted vessel maintaining the original ETA, the vessel variation fee will not apply. If the vessel variation fee is to apply then it will apply to the original nominated vessel tonnage.

The Vessel Variation Fee does not limit the Company's right to seek further costs from the Client directly in relation to the cancellation of a vessel (within 21 days of the original

ETA) or the delay of a substituted vessel (by more than 3 days from the original ETA) in particular if repositioning costs are incurred to move the tonnage to alternative storage.

Vessel Repositioning

Where cargo has been partly or fully positioned for shipment at a Company's port terminal as a result of a vessel nomination and subsequently the nominated vessel is cancelled or delayed from its original ETA by more than three (3) days, shipping re-positioning or variation fees may apply where the port terminal is blocked and causes other clients (who have a firm vessel nomination with the Company) to experience delays. Where the export select option is taken, the Company may be able to mitigate the cost by utilising this cargo for another export select Client provided it does not negatively affect other Client accumulations.

The Company will use its best endeavours to mitigate the Client's shipping Re-Positioning fees; however, the Client will remain ultimately responsible for Shipping Re-Positioning fees incurred as a result of the aforementioned circumstances.

Specifically, at Outer Harbor, the Client will be invoiced for the freight cost to Inner Harbor as well as the Shipping Re-positioning Fee (refer current storage and handling charges), if the Company has to clear cells at Outer Harbor for another vessel accumulation (where the original ETA is delayed by more than 3 days or the vessel was cancelled or the vessel fails survey significantly). Where Export Select is undertaken then the cargo will be transferred back to the Client's name at outer/inner harbour.

Limitation of Liability

The Company reserves the right to cease loading if, in its opinion, continued loading may result in breaches of any safety or environmental requirements.

The Company will make every effort to ensure the cargo is available to load without delay and will advise the Client of any potential delays, however to the extent permitted by law the Company will not be liable for any losses (including loss of despatch earnings or demurrage incurred) suffered by the Client due to lack of cargo availability or inability to commence ship loading by the estimated load dates.

Disputes

Notwithstanding any other provision of these Protocols or any other agreement between the Company and the Client, in the event that the Client disputes the Company's compliance with these Protocols the following procedures will apply:

- I. The Client must notify the Company in writing of the dispute and the nature of the non-compliance (**dispute notice**).
- II. The Company must respond in writing to the Client within 5 working days of receipt of the notice of dispute (**response**). The response must set out whether the Company accepts or rejects the claim of non-compliance and must provide an explanation or basis for the Company's conclusion.
- III. If the Client is not satisfied by the Company's response it may serve an escalation notice on the Company within 5 working days of receipt of the Company's response (**escalation notice**).

- IV. Upon receipt of an escalation notice the Company must make all reasonable endeavours to arrange a meeting within 5 working days receipt of the escalation notice between the Company's Executive General Manager National Supply Chain and the Client to provide an opportunity for the Client to air its grievances.

Variation of Protocols

In the event that the Company wishes to vary these Protocols, it will:

- consult beforehand with major clients (clients that have shipped over 20,000 tonnes of a commodity in the past 2 years) to assess the impact of the proposed changes
- provide all clients with 30 calendar days written notice of the variations and
- post the amended Protocols on the Company's web site.

END