

Shipping Reform Bills 2012

Introduction

1.1 On 22 March 2012, five Shipping Reform Bills were introduced into the House of Representatives by the Minister for Infrastructure and Transport:

- Coastal Trading (Revitalising Australian Shipping) Bill 2012 (CT (RAS) bill);
- Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012 (CT (CATP) bill);
- Shipping Registration Amendment (Australian International Shipping Register) Bill 2012 (SRA (AISR) bill);
- Shipping Reform (Tax Incentives) Bill 2012 (SR (TI) bill); and
- Tax Laws Amendment (Shipping Reform) Bill 2012 (TLA (SR) bill).¹

1.2 On the same day, the Selection Committee referred the bills to the House Standing Committee on Infrastructure and Communications for inquiry and advisory report.² The Selection Committee gave reasons for the referral and highlighted principal issues for consideration, as follows:

An initial draft of the Coastal Trading Bill was available for comment just prior to Christmas. Serious deficiencies were found with the original bill so a second draft was released for comment,

1 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 22 March 2012, p. 3933.

2 House of Representatives, *Votes and Proceedings*, No.101 – 22 March 2012, p. 1384.

together with the other bills in the package, in March. An extremely short consultation period was proposed. Two weeks later the bill has been introduced so it is unlikely that any of the concerns raised in the consultation process would have been incorporated into the bill. As such, the committee should consider the impact of the bills on the Australian shipping industry to determine whether they will have their desired effect, that is, to revitalise the Australian shipping industry and increase the number of Australian flagged vessels. Additionally, if the package is deficient the Coalition may look to formulating amendments.³

- 1.3 This chapter will provide an introduction to the shipping reform package encompassing the bills, information on the conduct of the inquiry and an outline of the background to the legislation. Chapter two will outline the specific issues arising in the inquiry in relation to each bill, as identified in consultation with industry.

Shipping reform package

- 1.4 There are four key elements of the Federal Government's shipping reform package, namely:
- tax reforms to remove barriers to investment in Australian shipping and to foster the global competitiveness of the shipping industry;
 - a strengthened and simplified regulatory framework with a transparent licensing regime supported by clearly stated objectives;
 - the establishment of an Australian International Shipping Register (AISR) to encourage Australian companies to participate in the international trades; and
 - establishment of a Maritime Workforce Development Forum to progress key maritime skills and training priorities.⁴
- 1.5 As part of this reform package, the bills have been proposed in order to revitalise the Australian shipping industry by comprehensively reforming

3 House of Representatives Selection Committee, *Report No. 49: Private Members' business and referral of bills to committees*, 22 March 2012, pp. 3-4.

4 Department of Infrastructure and Transport (DIT), 'Stronger Shipping for a Stronger Economy', Brochure, September 2011, <http://www.infrastructure.gov.au/maritime/shipping_reform/files/Stronger_Shipping_for_a_Stronger_Economy_Print_Layout.pdf> viewed 7 May 2012.

fiscal, regulatory and workforce aspects of the industry.⁵ A major objective of the reform is to increase the size of the national fleet, which has declined from 55 vessels in 1995-96 to 22 vessels in 2010-11.⁶

- 1.6 Revitalising the industry by creating a new policy framework for Australian coastal shipping was recommended by the former House Standing Committee on Infrastructure, Transport, Regional Development and Local Government in its 2008 *Rebuilding Australia's Coastal Shipping Industry* report (2008 Report).⁷

Conduct of the inquiry

- 1.7 As with other bills referred for inquiry during the 43rd Parliament, the Committee considers that its role is not to replicate the entire policy debate; its role is to review the legislation itself, in order to determine whether it will effectively implement the stated policy, and to consider views of those individuals and organisations who may have been involved in processes leading to the introduction of the legislation. To that end, those who participated in the consultation process leading up to the introduction of the legislation were invited to prepare submissions. As is consistent with current practice, a media alert was issued and details of the inquiry were made available on the Committee's website. The Committee particularly welcomed comments regarding the extent to which any concerns raised during the consultation process were reflected in the legislation as introduced.
- 1.8 The Committee received 30 submissions, 1 supplementary submission and 1 exhibit to the inquiry. These are listed at Appendix A. The Committee notes that the bills were referred to the Senate Economics Legislation Committee and the Senate Education, Employment and Workplace Relations Legislation Committee for consideration,⁸ and that a public

5 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 22 March 2012, pp. 3933-3934.

6 Coastal Trading (Revitalising Australian Shipping) Bill 2012 (CT (RAS) bill), Explanatory Memorandum (EM), p. 1.

7 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=itrdlg/coastalshipping/report.htm> viewed 26 April 2012.

8 Senate Selection of Bills Committee, *Report No. 4 of 2012*, 22 March 2012, p. 3 and Appendix 4.

hearing of the Senate Economics Legislation Committee was held.⁹ Given the referral of identical bills to three Parliamentary Committees, an inquiry by two of those committees, the receipt by both this Committee and the Senate Economics Legislation Committee of comprehensive submissions, some in identical terms, and the proposed commencement date of 1 July 2012, the Committee resolved that public hearings not be held. In order to obtain additional information in response to matters raised in submissions, the Committee sought a supplementary submission from the Department of Infrastructure and Transport (DIT) and has incorporated the consequent evidence in this report.

Development of the shipping reform package

2008 Parliamentary inquiry into coastal shipping policy and regulation

1.9 As noted at paragraph 1.6, the 2008 Report was presented in October 2008, following an inquiry by the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government. The Committee recommended ways to enhance the competitiveness and sustainability of the Australian coastal shipping sector by creating a new policy framework, including:

- reform of Part VI of the *Navigation Act 1912*, the *Navigation (Coasting Trade) Regulations 2007* and the *Ministerial Guidelines for Granting Licences and Permits to Engage in Australia's Domestic Shipping*;
- the implementation of a single national approach to maritime safety for commercial vessels;
- the introduction of an optional tonnage tax regime in Australia that is linked to mandatory training requirements;
- the re-introduction of accelerated depreciation arrangements;
- a one year review of the Maritime Crew Visa;
- amendments to the *Seafarers' Rehabilitation and Compensation Act 1992* and the *Occupational Health and Safety (Marine Industry) Act 1993*;
- the creation of a national port development plan to address current and potential capacity constraints in Australia's ports;

9 Senate Economics Legislation Committee, Public Hearings and Transcripts, <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=economics_ctte/coastal_trading_bills_2012/hearings/index.htm> viewed 10 May 2012.

- the creation of a national maritime training authority and the introduction of a national training vessel;
 - a review of Section 23 AG of the *Income Tax Assessment Act 1936*; and
 - the creation of a reform implementation group to implement any future Commonwealth Government reforms.¹⁰
- 1.10 In February 2009, a Shipping Policy Advisory Group (SPAG) was established by the Federal Government in order to provide an industry perspective on the 2008 Report's recommendations. The SPAG consisted of members of Rio Tinto Marine, Teekay Shipping, ANL Container Line Pty Ltd (ANL), the Maritime Union of Australia (MUA), Jepsens International, Australian Shipowners Association Limited (ASA), ASP Ship Management and the National Farmers' Federation.¹¹

2010 Reforming Australia's Shipping – Discussion Paper

- 1.11 In December 2010, after consideration of the 2008 Report's recommendations and the deliberations of the SPAG, the Federal Government released 'Reforming Australia's Shipping – A Discussion Paper for Stakeholder Consultation' (2010 Discussion Paper). In the 2010 Discussion Paper, the Federal Government outlined the issues that it would consider, as follows:
- Measures to reduce costs for Australian ships and place the industry on a sustainable footing with its international competitors;
 - Enabling Australian companies using Australian registered ships to pay a new tonnage tax or remain with the current tax regime which will be bolstered through accelerated depreciation arrangements; the new tonnage tax to carry with it a requirement for mandatory training;
 - Exemption from the payment of Royalty Withholding Tax of owners of vessels where the vessel is leased under a bareboat charter to an Australian company;

10 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, p. xiii, <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=itrldg/coastalshipping/report.htm> viewed 26 April 2012.

11 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, 'Stronger Shipping for a Stronger Australia', *Speech AS26/2011*, 9 September 2011; The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, 'Reforms to the Australian Shipping Industry', *The Australian, Opinion Piece AAO-004/2010*, 8 December 2010.

- Making changes to income tax arrangements for Australian resident international seafarers to remove disincentives for companies employing Australians;
 - Establishing an Australian International Shipping Register to facilitate Australian participation in international shipping;
 - Working with industry, unions and education providers to consider ways to improve maritime skills development and training; and
 - Making changes to the single and continuous voyage permit system.¹²
- 1.12 Forty-six submissions were received in response to the 2010 Discussion Paper.¹³
- 1.13 In January 2011, three industry reference groups were established by the DIT in order to consult with and provide advice to the Federal Government on the taxation, regulatory and workforce elements of the reforms outlined in the 2010 Discussion Paper. The industry reference groups included shippers, ship owners and operators, unions, academics and government members.¹⁴
- 1.14 In August 2011, the DIT released a Regulation Impact Statement (RIS) that relied on material and views of stakeholders gained throughout the consultation process. The RIS summarised the key themes that had arisen from the consultation process, as follows:
- There is broad support for the intent of the reforms to stimulate the Australian shipping industry and build a strong Australian maritime base into the future;
 - Shippers support an effective, efficient and internationally competitive domestic shipping industry, but are concerned that Government intervention could increase freight rates and make some currently marginal trades uneconomic;
 - More specifically shippers fear that restricting the use of Continuing Voyage Permits and Single Voyage Permits could lead to different modal choices (from maritime to land-based transport) or in particular cases, to the relocation of production offshore depending on the increase in transport costs;
-

12 DIT, 'Reforming Australia's Shipping - A Discussion Paper for Stakeholder Consultation', 1 December 2010, pp. 4-5, <http://www.infrastructure.gov.au/maritime/shipping_reform/files/Position_paper_shipping_reform_final.pdf> viewed 11 April 2012.

13 DIT, 'Reforming Australia's Shipping: Regulation Impact Statement' (RIS), August 2011, p. vii, <http://www.infrastructure.gov.au/maritime/shipping_reform/files/RIS_post_OBPR_20110816_formatted.pdf> viewed 11 April 2012.

14 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, 'Stronger Shipping for a Stronger Australia', *Speech AS26/2011*, 9 September 2011; DIT, *Submission 2*, p. 7.

- While differences exist among stakeholders on productivity and efficiency gains, there is general agreement on the range of fiscal and regulatory measures required;
- There is broad support for an optional tonnage tax, withdrawal of royalty withholding tax, accelerated depreciation, concessional seafarer taxation and changes to the cabotage regime with a view to an increased Australian presence in the coasting trade;
- The development of a second shipping register is welcomed as it would enable Australian shipping to compete more effectively in the international sphere;
- There is a willingness by industry and unions to develop a 'compact' that will underpin the reforms; and
- The new regulatory regime needs to consider the operational flexibility that shipping and shippers indicate is present in the current regulatory framework.¹⁵

1.15 Some of these concerns were again raised in submissions provided to the Committee in the course of this inquiry.¹⁶

2011-12 Exposure Drafts of the Bills

1.16 On 19 December 2011, the DIT released first exposure drafts of the Coastal Trading Bill 2012 and Coastal Trading (Consequential Amendments and Transitional Provisions) Bill 2012, along with a discussion paper, to which 22 submissions were received.¹⁷

1.17 On 20 February 2012, second exposure drafts of the renamed Coastal Trading (Revitalising Australian Shipping) Bill 2012 and Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012 were released, along with a discussion paper outlining the changes made in the second exposure drafts. Also at this time, an exposure draft of the Shipping Registration Amendment (Australian International Shipping Register) Bill 2012 and discussion paper were released, as well as an exposure draft of the Shipping Reform (Tax Incentives) Bill 2012 with an explanatory memorandum and

15 DIT, RIS, August 2011, p. viii, <http://www.infrastructure.gov.au/maritime/shipping_reform/files/RIS_post_OBPR_20110816_formatted.pdf> viewed 11 April 2012.

16 CSR Limited (CSR) raised concerns about increased costs, loss of flexibility and the importance of the introduction of measures from the compact prior to the commencement of the legislation, *Submission 9*, p. 1; The Australian Association for Maritime Affairs Incorporated (AAMA) raised concerns about the increased competitive advantage that long distance road and rail transport will experience as a result of the new licensing regime, *Submission 6*, p. [2].

17 CT (RAS) Bill 2012, EM, p. 3; DIT, *Submission 2*, p. 7.

discussion paper. At the same time, the Treasury Department released an exposure draft of the Tax Laws Amendment (Shipping Reform) Bill 2012 with explanatory material. In response to these exposure drafts and materials, 27 submissions were received.¹⁸

- 1.18 The DIT submission to this inquiry stated that during the consultation process it conducted over 25 individual consultations with industry representatives and interested parties, as well as three industry forums in November 2011, December 2011 and February 2012, in which industry was informed of developments and given the opportunity to comment.¹⁹

February 2012 Deloitte Access Economics Report

- 1.19 The Australian Dry Bulk Shipping Users²⁰ commissioned Deloitte Access Economics (DAE) to analyse the economic impacts of the shipping reforms on the industries reliant on bulk sea freight and on the economy more broadly.²¹
- 1.20 The headline findings in the DAE report on the 'Economic impacts of the proposed Shipping Reform Package' (DAE Report) are as follows:
- The analysis presented in this report demonstrates that changed licensing arrangements proposed under the Australian Government's shipping reform package, *Stronger Shipping for a Stronger Economy*, will lead to an increase in the cost of coastal shipping and, by extension, freight rates of up to 16%.
 - A variety of factors, such as the competitiveness of downstream industries and the scope for import competition, suggest that these cost increases are likely to be borne predominantly by the users of coastal sea freight. Not only will this diminish competitiveness, it will also bear negatively and potentially significantly on future investment decisions.
 - The precise magnitude of the long term economic impacts is difficult to determine given the myriad of factors at play. However, the modelling undertaken here suggests that, in net present value terms, the aggregate impact on gross domestic

18 CT (RAS) Bill 2012, EM, p. 3; DIT, *Submission 2*, p. 7.

19 DIT, *Submission 2*, p. 7.

20 The Australian Dry Bulk Shipping Users consist of the following companies and industry associations: Cement Industry Federation (CIF), CSR, Penrice, Pacific Carbon, the Fertiliser Industry Federation of Australia and the Minerals Council of Australia (MCA).

21 Deloitte Access Economics (DAE), 'Economic impacts of the proposed Shipping Reform Package', February 2012, p. 2; National Bulk Commodities Group Inc (NBCG), *Exhibit 1*. The Business Council of Australia (BCA) and the NBCG provided in-kind support to the DAE project.

product over the period to 2025 will be between -\$242 million and -\$466 million.

- The associated loss of employment over the long term is, in net terms, relatively modest at up to 200 full time equivalent employees. Much of the displaced labour is absorbed in other sectors, given the relatively tight labour market conditions that currently characterise the Australian economy. However, in the immediate term, the displacement is considerably higher, with an estimated peak loss of 570 FTE employees.²²

1.21 The Committee notes the claim made by DIT that the findings of the DAE Report were 'based on a misunderstanding of how the proposed licensing system will operate,' in relation to the Transitional General Licences (TGLs) and closing the coastal trade to foreign ships.²³ The Committee also notes the claim made by DIT that the DAE Report:

... states that a key assumption underpinning its modelling is that the Government intends phasing out Temporary Licences within five years, thereby requiring all shippers to use General Licence vessels. This assumption is incorrect and calls into question the validity of claims regarding decreased competition and associated increases in freight costs.²⁴

22 DAE, 'Economic impacts of the proposed Shipping Reform Package', February 2012, p. iii.

23 DIT, *Submission 2*, p. 26.

24 DIT, *Supplementary Submission 2.1*, p. 2.

