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Committee Secretary

Inquiry into the Amendments to the Annex of the Convention on Facilitation of International Maritime Traffic, 1965.

Joint Standing Committee on Treaties

Parliament House, Canberra

Via webform: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/OnlineSubmission](https://www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission) and email: [jsct@aph.gov.au](mailto:jsct@aph.gov.au)

Dear Committee Secretary

**Shipping Australia submission to the Inquiry into the Amendments to the Annex of the Convention on Facilitation of International Maritime Traffic, 1965.**

**About Shipping Australia**

Shipping Australia is an industry association that represents the participants in Australia's international supply chain. We have over 30 full members, which includes large ocean shipping lines and shipping agents active in Australia. We have over 40 corporate associate members, which generally provide services to the maritime industry in Australia. These services include port and terminal operations, pilotage, insurance, and legal advice among other things. Our members handle the vast majority of containerised seaborne cargo imports and exports to and from Australia. They also handle a considerable volume of our car trade and our bulk commodity trade. Our members employ more than 3,000 Australians.

**Shipping Australia's submission**

**Introductory economic comments**

1. International trade is carried by ocean-going ships on a global basis; it therefore follows that regulation of international trade and ocean-going ships should be carried out on a global basis. Where domestic law applies, this should be completely aligned with international law. Where absolute alignment is not possible then domestic law should be as aligned as closely as is possible to international law so as to not hinder trade.
2. Ultimately, this alignment is necessary because international trade is highly beneficial to countries and populations around the world and to Australia specifically. Hindering trade therefore hinders the well-being of the people of Australia.
3. Seaborne trade is particularly important in the world trading system, and to Australia specifically, because the vast amount by volume and value of physical trade is carried by ocean-going ships.
4. According to BITRE, Australia's total cargo (international and coastal) volumes in 2020-201 was just shy of 1.71 billion tonnes, of which, 1.5 billion tonnes were exports with a value of \$354.8 billion. Australia imported 97.1m million tonnes of goods worth \$246.6 billion in the same time frame. In the same time frame, BITRE reports that 6,315 uniquely identified cargo ships made a

total of 30,613 port calls and, of that number, 6,219 uniquely identified cargo ships made 17,303 voyages to Australian ports directly from overseas ports.

5. Transaction costs in trade (related to such things as border procedures) directly and indirectly incur costs of [between one percent and 15% of the value of traded goods](#) (Walkenhorst and Yasui).
6. It therefore follows that, provided that any adverse issues in relation to safety, the environment or other such issues, are appropriately managed, then any policy that results in greater trade liberalisation – and specifically makes it easier for ships to deliver cargo to Australia – is good policy for Australia.

### **Comments on the Amendments to the Annex of the Convention on Facilitation of International Maritime Traffic (FAL)**

7. Shipping Australia therefore wholeheartedly supports the objectives in the pre-ambble to the 1965 Convention on Facilitation of International Maritime Traffic (FAL 1965) namely “to facilitate maritime traffic by simplifying and reducing to a minimum the formalities, documentary requirements and procedures on the arrival, stay and departure of ships engaged in international voyages”.
8. We also support the objectives in Article 1 of FAL namely that: “all appropriate measures [should be taken] to facilitate and expedite international maritime traffic and to prevent unnecessary delays to ships and to persons and property on board”.
9. Shipping Australia believes that the Amendments to the Annex of the Convention on Facilitation of International Maritime Traffic should be adopted in Australia to ensure that there is consistency and harmonisation between Australia and the rest of the world in respect of the facilitation of international maritime traffic.
10. Shipping Australia also would like to make several other, further general comments, which should be considered as vital foundations for any policy or legislative reform in this area.

### **A harmonised Australian framework**

11. It is clear from a variety of incidents (such as ships being cleared by Federal authorities for biosecurity purposes to entry into Australia but then turned away by State authorities; or the ongoing problems that shipping experienced during the COVID lockdowns) that there needs to be an end to the current disharmonious and fragmented approach to shipping policy and regulation in Australia.
12. Shipping Australia also sees this disharmonious approach with e.g., notifications required. Different jurisdictions will impose different notification requirements on ships. This disharmony is unnecessary and costly. Shipping Australia notes that any costs generally passed on, either directly as an ancillary charge or as a surcharge, or, alternatively, such costs are incorporated into the cost of carriage.
13. In essence, disharmony in jurisdictional and administrative matters results in higher costs, which are usually passed on ultimately the end consumer. Everyday Australian families are therefore penalised for bureaucratic inefficiency and red tape.
14. Shipping Australia strongly believes that these incidents conclusively demonstrate that there ought to be one single set of shipping- and port-governance related laws in Australia.

15. The Offshore Constitutional Settlement of 1979 has its ultimate origin in the discovery of oil in the seabed of the Bass Strait, which led to a reconsideration of the Australian offshore regime, the eventual passage of the Petroleum (Submerged Lands) Act 1967 (Cwlth) and the passage of the Seas and Submerged Lands Act 1973 (Cwlth), leading, later to the decision in *New South Wales v The Commonwealth* (1975), which is referred to as the Seas and Submerged Lands Case. The Offshore Constitutional Settlement led to the States having jurisdiction over the first three nautical miles of the territorial sea.
16. Since then, maritime trade has grown and grown. Maritime trade and associated logistics are now a massive part of our economy, and it is only likely to become bigger over time.
17. We also strongly believe that the Federal Government should have sole oversight, governance, and control of the ports and shipping sector in Australia.
18. This could be achieved in many ways and has, historically, been achieved in many ways. There could be agreements between the States for Federal Legislation, for instance, as in the Offshore Constitutional Settlement itself, which led to the Coastal Waters (State Powers) Act 1980 under paragraph (xxxviii) of section 51 of the Constitution of the Commonwealth in which the States requested that Federal Parliament to legislate.
19. Yet another way, is for the creation of a model piece of legislation that is then substantially adopted across Australia as was seen with the various Workplace Health and Safety Acts, and was also seen with the various Defamation Acts. Another way would be an inter-governmental agreement, such as the agreement that led to the National Oil Spill Response Plan.
20. Shipping could be regulated under a revision to the Offshore Constitutional Settlement and port governance could be reformed through the passage of a model port governance piece of legislation which each State and Territory enacting their own supporting legislation.

**Single window – yes! Multiple single windows – no!**

21. Shipping Australia is also strongly supportive of the “Single Window Concept”. In “Section 1 – definitions and general provisions” in the “Amendments to the Convention on Facilitation of International Maritime Traffic, 1965”, we note that the definition of “Single Window” reads as follows: “an environment that allows for the submission or provision of standardized and harmonized information and declarations to a single entry point, typically by electronic means”.
22. Shipping Australia notes that the definition refers to a “single entry point”. There are two elements here – there should be a “single” point and that point should be the point of “entry”.
23. Sadly, we note that the Australian approach to implementation so far appears to be focused on a Single Window that is neither single – as in, there are multiple ‘single’ windows being developed (by ports, port authorities and state authorities). Public service officials have also indicated that the Single Window won’t be the entry point either – it will sit behind these other systems that are being developed.
24. What appears to be envisaged, is that a ship will arrive in Australia, repeatedly fill in data in these various multiple windows, and that data will then flow through to the main Single Window. Creating multiple windows that then feeds a Single Window does not meet the definition of Single Window as defined in the Amendments to FAL.
25. It is, in fact, the complete and exact opposite i.e., the simplification of cross-border transactions.
26. If Australia is to live both within the letter and spirit of the Amendments to FAL then a ship should arrive, provide data once – and once only – to a portal of some description (i.e., to the

Single Window) and then be allowed to carry on its business without having to provide further data. Any public service officials, who want information of any kind, shape, or form should be directed to acquire that information from the data provided to the Single Window.

27. We turn now to the definition in the Amendments to the Annex of “Actual time of arrival”. This will need a little tweak if incorporated into Australian law. The definition refers to the “Actual time of arrival” being when a ship “first comes to rest, whether at an anchorage or at a dock, in a port”. The Committee should note the phrase “comes to rest”. A ship can physically arrive in Australia at a port and, if the port is not ready receive the vessel, the ship will have to wait outside the port limits. In most places around Australia, the vessel will simply go to an anchorage and will wait there.
28. However, some locations in Australia do not have an anchorage because the sea is too deep at that location. So, ships will drift along the coast for a time before resuming power and then sailing back along the coast in the direction from whence it came before reducing power and then drifting along the coast again. In such circumstances, the ship does not come to rest so, under the definition in the standards in the amendment, it would not have actually arrived.
29. Any incorporation of this definition into Australian law needs to be amended to take account of this operational reality.

#### **Comments in respect of the National Interest Analysis**

30. Shipping Australia has some comments and issues in relation to the notes to the National Interest Analysis (including attachments) document published on the website at [https://www.aph.gov.au/-/media/02\\_Parliamentary\\_Business/24\\_Committees/244\\_Joint\\_Committees/JSCT/2023/Maritime\\_Traffic/NIA\\_-\\_International\\_Maritime\\_Traffic.pdf?la=en&hash=7D9C9DB866D598836817835C61D8880ACDB9E242](https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/JSCT/2023/Maritime_Traffic/NIA_-_International_Maritime_Traffic.pdf?la=en&hash=7D9C9DB866D598836817835C61D8880ACDB9E242) and marked “[2023] ATNIF 12”.
31. We refer to this document as “ATNIA”.

#### **ATNIA Attachment A – list of standards with which Australia is in compliance**

32. ATNIA Attachment A, p11, item 6.4. We note the reference to “reported promptly by electronic means to health authorities for the port”. We are of the view that this should be provided to a Federal Health authority and then all other public service officials (State, Territory, Federal, members of the public service, members of executive agencies, etc) can access or contact the Federal Health Authorities.

#### **ATNIA Attachment B – list of standards still being consulted**

33. ATNIA Attachment B, p13, item 1.1 – Australia currently appears to be going down the path of multiple windows. We are also concerned about ‘mission creep’ – public officials are constantly talking about requesting new information from industry. We urge the Committee to emphasise in its final report the importance of aligning tightly with the pre-amble to FAL and Article 1 namely:

*“THE CONTRACTING GOVERNMENTS: DESIRING to facilitate maritime traffic by simplifying and reducing to a minimum the formalities, documentary requirements and*

*procedures on the arrival, stay and departure of ships engaged in international voyages; HAVE AGREED as follows: ARTICLE I The Contracting Governments undertake to adopt... all appropriate measures to facilitate and expedite international maritime traffic and to prevent unnecessary delays to ships and to persons and property on board”.*

34. ATNIA Attachment B, p13, item 2.6.1 – we note the reference to “public authorities” which is in the plural which indicates more than one public authority. This is contrary to the concept of FAL and the Single Window. Any information required by the public authorities should be acquired from the Single Window. The ship should only have to give the information once.
35. ATNIA Attachment B, p13, item 2.11 – shipping companies often complain that the staff at public authorities do not respond in a timely manner to queries that are submitted out-of-hours. Mailboxes are set up but the responses are slow. Shipping is a continuous business; costs continuously accrue. Public authorities need to be more responsive to shipping.
36. ATNIA Attachment B, p14, item 6.11 – we specifically agree with this item and add that Federal law needs to be able to over-ride other authorities / governments etc in times of crisis. This is a key lesson from the COVID pandemic.
37. ATNIA Attachment B, p15, item 6.15 – we note the comment about public health information being provided “where available”. Shipping Australia believes that this should not be conditional – if the information is not available, then the public authorities should create that information and make it freely available. “Freely” – in the sense that it is free of monetary charge and, “freely available” in the sense that it is widely accessible.
38. ATNIA Attachment B, p15, item 6.18 – Shipping Australia asserts that this should not be conditional – contracting governments should ensure that there is a safe ship-shore interface during public health emergencies of international concern.
39. ATNIA Attachment B, p15, item 6.22 – Shipping Australia agrees and adds that the effect of having seafarers designated as key workers ought to be spelled out in detail in Plain English.
40. ATNIA Attachment B, p15, item 6.23 – again, we believe that this should not be conditional. There should be an absolute obligation on contracting governments to ensure that ship can change over crews at all times.

#### **ATNIA Attachment C – list of standards with which Australia is non-compliant**

41. ATNIA Attachment C, p16, 1.3quin – this item should not be subject to “consideration shall also be given to such a mechanism” – communication through the Single Window should be a minimum standard.
42. ATNIA Attachment C, p16, 1.3sext – there should be provision of information to one authority and one pathway only so that the integrity of data is not compromised, and the work is not duplicated. All public authorities should refer to the Single Window for data.
43. ATNIA Attachment C, p17, 2.15 – it is vital that the public authorities should reuse the pre-arrival and pre-departure information where the same information is required in subsequent procedures.
44. ATNIA Attachment C, p18, 6.8 – during COVID there were many shameful incidents in which seafarers were denied access to medical care in Australia. There was a seafarer who had an abscess in his jaw and was denied access to a dentist, there was a seafarer who was denied medical access for his broken ankle. Seafarer access to medical care is a human right and it is not

negotiable. With modern technologies, barrier nursing and infection control, it is feasible to ensure that infectious seafarers are removed from ships and are given appropriate medical care.

Submission authorised by

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CEO, Shipping Australia

### References

“Benefits of Trade Facilitation: a quantitative assessment,” P Walkenhorst and T Yasui, edited By: Philippa Dee (Australian National University, Australia) and Michael Ferrantino (US International Trade Commission, USA): See:

[https://www.worldscientific.com/doi/abs/10.1142/9789812701350\\_0009](https://www.worldscientific.com/doi/abs/10.1142/9789812701350_0009) and see  
[https://doi.org/10.1142/9789812701350\\_0009](https://doi.org/10.1142/9789812701350_0009); ISBN: 978-981-256-051-3

BITRE – the Australian Bureau of Infrastructure and Transport Research Economics, Australian Sea Freight 2020-21

<https://www.bitre.gov.au/sites/default/files/documents/Australian%20Sea%20Freight%202020-21.pdf>