DEPARTMENT OF INFRASTRUCTURE AND TRANSPORT

SUBMISSION TO

THE SENATE ECONOMICS LEGISLATION COMMITTEE

IN RELATION TO:

Coastal Trading (Revitalising Australian Shipping) Bill 2012

Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012

Shipping Registration Amendment (Australian International Shipping Register) Bill 2012

Shipping Reform (Tax Incentives) Bill 2012

Tax Laws Amendment (Shipping Reforms) Bill 2012

INTRODUCTION

On 22 March 2012, the Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, introduced into the House of Representatives the Australian Government's *Stronger Shipping for a Stronger Economy* legislative package. These Bills, listed below, give effect to the Government's stated policy objective of revitalising the Australian shipping industry. The package comprises the following five Bills:

- Coastal Trading (Revitalising Australian Shipping) Bill 2012;
- Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012;
- Shipping Registration Amendment (Australian International Shipping Register) Bill 2012;
- Shipping Reform (Tax Incentives) Bill 2012; and
- Tax Laws Amendment (Shipping Reforms) Bill 2012.

The Senate Selection of Bills Committee jointly referred the proposed legislative package to the Senate Committee for Economics (the Economics Committee) for inquiry and report. The Economics Committee sought submissions from interested individuals and organisations, and the Department of Infrastructure and Transport (the Department) is pleased to provide this submission, which makes particular regard to the concerns raised during the consultation processes and how these are reflected in the legislation as introduced into Parliament.

POLICY CONTEXT

Overview of the Australian Shipping Industry

The Australian shipping industry has been in decline over an extended period. Without action, there are unlikely to be any Australian registered vessels operating in the major trades within the next five years. This decline is, in part, due to the regulatory and competitive settings faced by the domestic industry.

Australia's coastal trading framework is one of the most liberal in the world. Foreign flagged and crewed vessels can operate in the domestic economy under permit, which allows these vessels to be exempted from certain Australian regulatory requirements. While the Fair Work Regulations 2009 extended award coverage to a number of permit vessels, foreign flagged vessels continue to enjoy favourable cost structures when compared to Australian licensed vessels.

Since the early 1990s, many developed countries have implemented fiscal and policy measures to support their domestic shipping industries. Access to beneficial taxation and other arrangements further entrenches operating cost differentials. The inability of Australian vessels to compete on a level playing field with international operators has led to the current decline.

In 2010–11, 22 Australian registered, licensed vessels were competing on the coast with over 400 foreign flagged ships operating under permit.

Despite Australia's expanding export trade, Australian shipping has little involvement in international trade. Only four Australian registered vessels are involved solely in international trade.

Notwithstanding that Australia has the fourth largest shipping task in the world, it does not rank in the top 35 countries whose citizens own and operate ships.

Age of the Fleet

The average age of the Australian fleet now sits at almost 20 years, which is around eight years older than those in the world fleet. Newer vessels incorporate modern technologies, making them more productive and environmentally efficient. An international study has concluded that the cost of operating a 20 year old large bulk carrier is some 40 per cent more than for a five year old ship.[1]

Maritime Skill Shortages

Demographic analysis of the Australian maritime workforce indicates an ageing workforce.[2] When combined with reducing training opportunities on Australian vessels and shortages of skilled maritime workers in the international labour market, Australia will face critical shortages in the deck and engineering officer skills that form the basis of land and sea side maritime industry skills. Shortages are being exacerbated by the demand for maritime labour emanating from the offshore and shore-based industries.

In 2008, a Parliamentary Inquiry by the House of Representatives Committee on Infrastructure, Transport, Regional Development and Local Government (the Committee) identified maritime training and skills shortages as one of the national challenges facing the maritime transport system. Skills Australia, in its 2010 report, *Australian Workforce Futures: A national workforce development strategy*, identified maritime transport professionals as a specialised occupation where the impact of declining employment opportunities is potentially significant.

[1] Martine Stopford, *Maritime Economics* (3rd edition, 2009), p 227.

[2] Thompson Clarke Shipping Pty Ltd, 'Maritime Skills Availability Study' (2002 report commissioned by the Australian Maritime Safety Authority)

The Department of Education, Employment and Workplace Relations has reported employers indicating that 49 per cent of their seafarer workforce is aged 45 years or older. This compares with 38 per cent of the Australian workforce overall and is particularly evident among Masters (more than three quarters of whom are over 45) and Chief Engineers (nearly two thirds are over 45).

Practical experience on a ship ("sea time") is necessary to develop seafarer qualifications, but without a strong domestic maritime industry to provide trained personnel, on-shore industries that require maritime skills, such as piloting, regulation and inspection, will suffer, as will Australia's ability to set and enforce maritime safety, environment and security standards.

Industry estimates that three times more deck officers and five times more engine officers will enter retirement age than those that have recently entered the industry.

Building a strong skills base is hindered by the complexity and fragmentation of existing training structures including: the need to conform to international standards for some competencies; mandatory sea time to gain most maritime skills qualifications; training delivery and funding splits between Commonwealth and State jurisdictions; and different skills training paths for officers/engineers and ratings. These factors create cost and practical challenges for employers and training institutions in funding and providing maritime skills training.

A pool of maritime skills in Australia is necessary even if it was totally reliant on international shipping. Land based activities necessary for operations of ports, and the regulation of Australia's maritime environment in respect of safety, security and marine environment protection, require maritime skills gained through service aboard seagoing ships.

Current International and Domestic Policy Settings

Global Context

Shipping is one of the most international industries. It is highly competitive with investors seeking to operate and register their vessels in low cost regimes and to source crews from low cost countries. A ship may be built in one country, owned by a corporation headquartered in another, financed in another, operated by a company in a different country, registered in another, managed by a company in yet another country and crewed by international seafarers from a variety of countries.

Owners and operators tailor their operations to cherry pick the best options to suit their commercial objectives. National governments without competitive fiscal and regulatory regimes for their shipping industries have seen their national commercial trading fleets decline. The widespread introduction of tax concessions reflects the fact that global shipping operates in a world where little or no tax on profits is the rule.[3]

[3] Kristen Knudsen, 'The Economics of Zero Taxation of the World Shipping Industry', in *Maritime Policy and Management*, 21(1), p 45.

In response to this, a number of countries across Europe, North America and Asia have successfully introduced differential corporate tax arrangements and created new international registers to retain national tonnage. As part of the 2008 Inquiry, the Committee considered evidence on the success of these incentives noting that they had resulted in attracting increased tonnage back to national registers.[4]

Australian Policy Settings

Coastal Trade

The economic regulatory framework for coastal shipping is established by Part VI of the *Navigation Act 1912*, the Navigation (Coasting Trade) Regulations 2007 and the Ministerial Guidelines for Issuing Coasting Trade Licences and Permits. Part VI gives licensed vessels limited preference to carry domestic cargos but does not reserve domestic cargo for Australian controlled or crewed vessels.

If a licensed vessel is not available, a foreign flagged, foreign crewed vessel may carry the cargo under either a single voyage permit (SVP) or continuing voyage permit (CVP). Permits are also issued under Part VI. These vessels are exempt from certain Australian regulatory requirements. Further, the vessels are operating with much lower cost structures due to factors including foreign tax subsidies.

Decision Making Framework

As noted, the regulatory framework comprises the Navigation Act, Regulations and Ministerial Guidelines. The Committee found that the Guidelines may not provide the clarity of direction required by decision makers when administering the Act.[5] Further, the Committee expressed concern that, as governments can readily change the Guidelines, future interpretations of the Guidelines can create uncertainty for industry. In light of this, the Committee recommended that consideration be given to incorporating matters that are currently addressed in the Guidelines into the Regulations.[6]

Fiscal Settings

Currently, the local shipping industry does not have access to the type of fiscal or tax concessions available to ship owners or operators in other countries. This has not always been the case.

As noted by the Committee, in 1987, the Australian Government introduced capital grants assistance to support the purchase of vessels. In 1989, this was extended to include accelerated depreciation. The Committee noted that arising from these reforms, between

[4] House of Representatives Committee on Infrastructure, Transport, Regional Development and Local Government, Parliament of Australia, *Rebuilding Australia's Coastal Shipping Industry* (2008), p 10.

[5] Ibid p 29.

[6] Ibid p 34-35.

1988 and 1994, 36 new vessels were introduced into the Australian fleet.[7] These incentives ceased in 1996.

Impact of these Domestic Policy Settings

Taken together, the current policy settings institutionalise a two-tiered system of shipping costs. Based on the experience of the last 15 years, the inability of Australian vessels to compete on a level playing field with international operators is likely to result in the continued decline of the Australian shipping industry.

CONSULTATION PROCESS

The reforms have been undertaken through a very open process with industry. Over the past four years the industry has been widely and extensively consulted on the suite of Bills that comprise the shipping reform legislative package. The consultations have been both formal and informal.

House of Representatives Committee on Infrastructure, Transport, Regional Development and Local Government Inquiry

In 2008, the House of Representatives Committee on Infrastructure, Transport, Regional Development and Local Government undertook an inquiry into coastal shipping policy and regulation (*Rebuilding Australia's Coastal Shipping Industry*). The Committee received 81 submissions from 66 stakeholders – all major interests in the Australian shipping industry were represented.

Shipping Policy Advisory Group

In February 2009, the Minister for Infrastructure and Transport established a Shipping Policy Advisory Group to review the recommendations in the *Rebuilding Australia's Coastal Shipping Industry* report and to advise him on how best to implement them. The 10 member group represented a diverse range of stakeholder interests including shippers, ship owners and operators and unions.

Discussion Paper

The outcomes of these deliberations were incorporated into *Reforming Australia's Shipping – A Discussion Paper for Stakeholder Consultation*, which was released in December 2010. The Paper outlined the Government's proposed shipping policy framework and sought industry and public comment on the proposals.

[7] Ibid p 39.

Reference Groups

Three Industry Reference Groups were subsequently established to focus and report on each area of the reform package, namely, the new regulatory and licensing regime, the tax reforms and incentives, and the maritime workforce and development arrangements. The Reference Groups met on multiple occasions between February and the end of May 2011 to discuss and develop the implementation of the proposed regulatory, fiscal and workforce skills measures outlined in the Discussion Paper.

Each Reference Group comprised about 10 members and, again, all major interests were represented, including shippers, ship owners and operators, unions, academia and government.

In December 2011, exposure drafts of the Coastal Trading Bill and Coastal Trading (Consequential Amendments and Transitional Provisions) Bill were released on the Department's website for public consultation. Stakeholders were given until 31 January 2012 to comment on the draft Bills and a total of 22 submissions was received. In February 2012, second exposure drafts of the Bills, together with exposure Bills relating to the taxation measures and international shipping register, were released for public comment – 27 submissions were received.

The Department held over 25 individual consultations with industry representatives and other interested parties. In addition, industry was kept abreast of developments and given the opportunity to comment via Industry Forums hosted by the Department. Three Forums were held in November 2011, December 2011 and 28 February 2012.

The industry comments received on 28 February 2012 were taken into account and considered as the Bills were finalised for introduction into Parliament and, consistent with the Department's undertaking at that workshop, liaison with key industry stakeholders continued as the Bills were settled.

LEGISLATIVE FRAMEWORK

Overview

The *Stronger Shipping for a Stronger Economy* legislative package is an integrated reform package designed to revitalise the Australian shipping industry. This package is consistent with the recommendations of the Committee and reflects international findings that the success of a shipping policy is derived from the full array of policy instruments in a reform package, not just the fiscal elements.[8]

[8] J.R.F. Hodgson & M.R. Brooks, *Recent Developments in International Shipping Policy and Their Implications for Canada* (2003), p 80.

Coastal Trading (Revitalising Australian Shipping) Bill 2012 and Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012

The Coastal Trading (Revitalising Australian Shipping) Bill 2012 (the CT Bill) establishes the regulatory framework for access to coastal trading in Australia. It replaces the regulatory arrangements set out in Part VI of the Navigation Act. Part VI of the Navigation Act will be repealed by the Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012 (the CATP Bill).

The CT Bill aims to address the range of concerns identified by the Committee and to implement a regulatory framework, which reflects the principles of modern regulatory policy, including transparency and certainty.

Key Elements of the CT and CATP Bills

Consistent with the Government's stated policy aims, the object of the Bill is to:

- promote a viable shipping industry which contributes to the broader Australian economy;
- facilitate long-term growth of the Australian shipping industry;
- enhance the efficiency and reliability of Australian shipping as part of the national transport system; and
- maximise the use of Australian vessels registered in the Australian General Shipping Register.

The CT Bill provides that no ship may engage in coastal trading (as defined) unless it has the appropriate licence issued under the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

The CT Bill establishes three types of licences (general licences, temporary licences and emergency licences), which will authorise ships to carry passengers or cargo between ports in Australia.

1. **General Licence (GL):** A GL is available to Australian ships registered in the Australian General Shipping Register (the General Register) established under the *Shipping Registration Act 1981*. A GL is valid for up to five years and enables a ship to have unrestricted access to coastal trading in Australia.

2. **Temporary Licence (TL)**: A TL is available to foreign registered ships and Australian ships registered in the Australian International Shipping Register (the International Register) established under the *Shipping Registration Act 1981*. This licence is valid for 12 months. It enables the holder of the licence to engage in Australian coastal trading for specific cargo or passenger movements authorised in the licence – for example, the licence will authorise a specific number of voyages to be undertaken for the specific kinds and volumes of cargo or passengers to be

transported between specified ports.

3. **Emergency Licence (EL)**: An EL is available to all types of ships, whether Australian or foreign registered. The holder of this licence is limited to the carriage of cargo or passengers in an emergency situation. The regulations will prescribe the scope of events that may be defined as an emergency. It is envisaged that these events will include natural disasters and extreme weather events. An EL will only be valid for a period not exceeding 30 days.

Under current arrangements, foreign flagged vessels are able to operate under a licence. The new arrangements, will limit GLs to Australian flagged vessels. These vessels will have access to the tax incentives.

To facilitate the smooth transition to the new arrangements, the CATP Bill establishes a **Transitional General Licence (TGL)**. Only foreign registered vessels that are operating under a licence (issued under Part VI of the Navigation Act) immediately before commencement of the CATP Bill may apply for a TGL. Foreign flagged vessels operating under permit will not be eligible for TGLs. That is, the new arrangements maintain the status quo for foreign flagged vessels (that are operating under a licence issued under Part VI of the Navigation Act), with unfettered access to the coast for the transitional period. Table 1 compares the new and current arrangements.

Table 1: Comparison of current and proposed coastal trading permit and licensing arrangements

Part VI	Coastal Trading Bill
Licensed Vessel – Australian flagged	General Licence
Licensed Vessel – Foreign flagged	Transitional General Licence
Continuing Voyage Permit	Temporary Licence
Single Voyage Permit/Urgent Single Voyage Permit	Temporary Licence
N/A	Emergency Licence – natural disasters, extreme weather events, other emergencies as specified in regulation

The establishment of a TGL recognises that the owner/operator of a foreign registered vessel may not be able to readily transfer the vessel into Australian registration. A TGL will be valid for five years but may be renewed for a further five years, subject to justification on why the ship could not be registered in Australia – for example, that the ship is unable to close its foreign registration due to financial, commercial or legal reasons. A ship operating

under a TGL has the same unrestricted access to coastal trading as an Australian ship operating under a GL and may nominate for TL trades.

The CT Bill provides for details of the application process, including variations, for each type of licence. It also establishes the decision making process, including criteria for making decisions. This is in contrast to the current regulatory regime, where details of the requirements are set out in Ministerial Guidelines.

The CT Bill provides for enhanced penalty provisions that modernise and provide greater scope for action if there are attempts to undermine the objectives of the system.

The CT Bill also provides for merits review by the Administrative Appeals Tribunal (AAT) of certain decisions. This improves on the current regime, which only allows for AAT review in relation to decisions to cancel a CVP.

KEY ISSUES

While industry comments addressed a range of issues across the CT and CATP Bills, the majority of concerns focused on the operation of TLs. This is consistent with the findings of the Committee report, which noted that the "the wide range of views relating to the permit system cannot be overstated".[9] This discussion will focus on these matters.

Temporary Licence Applications

The TL application process generated extensive industry debate. The CT Bill provides that an applicant for a TL must specify the number of voyages (which must be at least five), expected loading dates, kinds and volume of cargo (or number of passengers, depending on the type of vessel), type of vessel, size or capacity of the vessel, ports of discharge or disembarkation and other matters prescribed in the regulations. Tolerances have been factored in for loading dates (five days either side of loading) and cargo volumes (+/- 20 per cent).

Once an application is received, the Department will publish the application (except information that is commercial in confidence and/or contains personal details of an individual) and directly inform holders of GLs and other persons directly affected by the application. A GL holder then has the right to nominate for a voyage (to carry a particular kind of cargo from one port to another port) contained in an application for a TL (this is discussed in more detail in a separate section).

The first exposure draft of the CT Bill, released for public consultation between 19 December 2011 and 31 January 2012, provided that a TL application should include information of the applicant's shipping task (or requirements) over a period of 12 months. Industry feedback clearly indicated that it would be impossible for applicants to provide reliable information on voyage movements that far in advance. Stakeholders indicated that

[9] House of Representatives Committee on Infrastructure, Transport, Regional Development and Local Government, above n 3, p 27.

TL applicants would only be able to provide accurate data for the first few months at best. In the absence of reliable information, GL holders (using Australian ships) would not be able to nominate.

In view of these comments, the CT Bill was revised to provide that, although a TL is valid for 12 months, it would authorise only the voyages that are known, which may cover a period less than 12 months. By requiring a TL application to specify known information, such as voyages, cargo/passengers and ports, a holder of a GL would be able to determine if he/she has the capability to provide the service and therefore nominate to undertake the trade (specified in the temporary licence application).

Variations of Temporary Licences

A clear message from industry was that the temporary licensing system needed to provide sufficient flexibility to accommodate late scheduling changes or other upstream/downstream events that may occur in the supply chain. In providing this flexibility, it was critical to ensure that the integrity of the regulatory arrangements was maintained.

In response to this, the CT Bill now provides for two categories of variation:

1. **Variation of matters authorised by TLs (sections 43–49):** This process enables the holder of a TL to vary details of voyages that have already been authorised. For example, if the loading date extends beyond the five day tolerance, or there is a change of port.

2. **Variation of licences to include new matters (sections 50–58):** This enables the TL holder to seek approval for additional voyages.

In both circumstances, GL and TGL holders will be able to nominate for these voyages.

The timeframes for making decisions on variation applications have also been changed to accommodate industry views. For a variation of matters already authorised by the licence, there is now an expedited variation process that provides for two business days to decide an application. For a variation concerning new matters (for example, additional voyages), the decision making period is seven business days.

Nominating for Segments in a Temporary Licence Application

The extent to which a GL holder can nominate for voyages in relation to a TL application generated significant debate, specifically, whether the GL holder should be required to carry the entire trade.

Stakeholders' views were polarised, with some industry representatives strongly supporting the ability of a GL holder to be able to contest 'segments' within a TL application while others argued that it would be inefficient to divide a particular cargo between two or more carriers. Views varied depending on the cargo being carried and geographical location.

The CT Bill provides that GL holders may nominate for a single voyage (for example, Melbourne to Tasmania) or partial cargos. This will enable GL holders to build and maximise their trade consistent with the Government's policy intention to revitalise the Australian shipping industry.

Minimum of Five Voyages

The CT Bill provides that a TL application, and any subsequent application for variation for matters not yet authorised by an existing licence, must include a minimum of five voyages. These provisions seek to address the long standing concerns that the permit system, specifically SVPs, have enabled foreign registered and crewed ships to operate in the Australian coastal trade almost without restriction. As noted earlier in this submission, this has facilitated the long term decline of the Australian shipping industry.

Although a TL will continue to allow foreign ships to be used to engage in coastal trading, it is not simply a permit re-badged. Industry participants will have greater visibility of what voyages these vessels are undertaking. Currently, SVPs are issued without any regard to what previous voyages the same vessel may have undertaken, or whether these vessels are undertaking regular scheduled services that could be supported by an Australian licensed vessel.

The CT Bill provides for a more rigorous application process for a TL. Authorising the number of voyages also makes the role of foreign registered vessels in the domestic trade more transparent.

The first exposure draft of the CT Bill provided for a minimum of 10 voyages, however, following industry consultations and feedback, the minimum was lowered to five. This has received general support from industry.

Stakeholders who currently operate under one or more, but less than five, permits will be impacted by this requirement in the CT Bill; based on 2010–11 data, up to 15 operators are likely to be affected. It is expected that there will be a need for these stakeholders to revise their business operations to adapt to the requirements of the new legislation.

Third Party Comment

Consistent with current regulatory arrangements, the CT Bill allows third parties to comment on a TL application. Feedback from the first exposure draft of the CT Bill also indicated that industry favoured the retention of this provision. 'Third parties' are persons, bodies or organisations that would be directly affected by the grant or refusal of the TL application (section 33, CT Bill). Third party comments will be considered by the Minister (or delegate) in deciding a TL application (section 34, CT Bill).

Review Rights

The new system will be more transparent and would provide for merits review by the AAT of certain Ministerial decisions.

Under the Navigation Act coasting trade regime, merits review by the AAT is limited to a decision to cancel a CVP.

Under the CT Bill, the following persons may appeal to the AAT for a review of a decision:

- an applicant for a TL or an applicant for a variation where the application is refused;
- a GL holder who nominated for a trade specified in a TL application, or application for variation where such nomination has been refused;
- any person whose interest is affected by the decision to:
    - cancel a GL or TL;
    - refuse to exempt a particular vessel or person;
    - grant an exemption subject to conditions; or
    - refuse to declare a vessel undertaking intra-State voyages to be covered by the CT Bill.

Publishing and Reporting

Transparency is a cornerstone of the new regulatory system. The CT Bill provides for enhanced reporting and publishing arrangements.

Stakeholders expressed concern that this may lead to the disclosure of commercially sensitive information, or price signalling in the market. This is not the intention. The CT Bill will exempt publication of commercial in confidence information and information containing personal details of an individual (consistent with the Commonwealth's Privacy Principles).

In addition, information to be published will be consistent with what is currently reported in the Statement of Cargo Actually Carried reports (SOCAC) – currently published on the Department of Infrastructure and Transport website.

The reporting and publishing requirements in the CT Bill are consistent with relevant Commonwealth statutes regarding collection, storage and disclosure of information.

Meaning of 'Coastal Trading'

The current coverage of the coasting trade regulatory regime will be continued under the new coastal trading legislation. The legislation will apply to vessels engaging in interstate voyages, with the ability to allow intra-State vessels to opt in to the Commonwealth licensing regime. The current exemptions from the definition of coasting trade under the Navigation Act are being replicated; for example, a vessel carrying international cargo with a through bill of lading will continue to be exempt; a vessel carrying international passengers from an

overseas port for disembarkation in an Australian port would also be exempt; a vessel originating from an Australian port carrying domestic passengers bound for overseas is also exempt.

The definition of 'coastal trading' has been clarified in the CT Bill to avoid potential loopholes.

Role of Australian International Shipping Register (AISR) Vessels in the Coastal Trade

The Government's policy intent has always been that the International Register is intended for ships that primarily trade in the international market. Stakeholders expressed concern regarding the need for safeguards to ensure that the any activity by International Register vessels in the coastal trades is limited.

To address this, the following provisions have been included:

- the object of the Act provides for maximising the use of vessels in the General Register;
- a GL (which allows unrestricted access to coastal trading) is available only to vessels in the General Register;
- an International Register ship may engage in coastal trading under either a TL or an EL only;
- a holder of a GL has the right to nominate to carry the cargo/passengers specified in the TL application of an International Register ship.

There is also a provision in the Shipping Registration Amendment (Australian International Shipping Register) Bill 2012 that requires applicants to provide evidence that a ship will be predominantly used to engage in international trading prior to registration in the International Register.

Customs and Migration Requirements

Under Part VI of the *Navigation Act 1912*, ships operating under a 'permit' or a 'Ministerial permission' (contained in a Ministerial Notice issued under subsection 286(6) of the Navigation Act), are 'not deemed engaging in coasting trade'. The Australian Customs and Border Protection Agency has based its decision to consider permit vessels to be 'not entered for home consumption' for the purposes of the *Customs Act 1901* (the Customs Act) on this provision. This has the flow-on effect of exempting these vessels from certain taxation and migration requirements.

It is the Government's intention to maintain the current regulatory arrangement for ships operating under either a TL or EL. To give effect to this intention, the CT Bill provides that ships operating in Australian coastal waters under a TL or TL are not imported into Australia for the purposes of the Customs Act only because they are operating under a TL or EL.

The Department of Immigration and Citizenship has also confirmed its support for the continued use of Maritime Crew Visas for foreign seafarers working on board foreign and International Register ships engaging in coastal trading under a temporary or emergency licence.

Impact on the Seacare Scheme

Under existing regulatory arrangements, permit vessels are not subject to Part II of the *Navigation Act 1912*, the *Occupational Health and Safety (Maritime Industry) Act 1993* (the OHS(MI) Act) and the *Seafarers Rehabilitation and Compensation Act 1992* (the Seafarers Act).

In light of strong industry representations supporting the retention of the current arrangements, consequential amendments are being made to the OHS(MI) Act and the Seafarers Act to ensure that these Acts do not apply to foreign ships operating under either a TL or EL. These amendments are contained in the Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012 and have been welcomed by industry stakeholders.

Industry stakeholders advocated that ships registered in the International Register and engaged in coastal trading under a TL or EL should be treated in the same manner as foreign ships to ensure that the International Register ships are able to compete on a level playing field.

The consequential amendments to the Seafarers Act will, therefore, also ensure that the Act does not apply to International Register ships operating under either a TL or EL.

The Government has, however, made it clear that International Register ships will be subject to the same safety and environmental standards as those applying to ships in the General Register. The OHS (MI) Act will apply to all Australian registered ships wherever they are located.

Application of the Fair Work Act

There has been some public commentary regarding the application of the *Fair Work Act 2009* (the Fair Work Act) under the new coastal trading arrangements.

Part VI of the *Navigation Act 1912* explicitly provides that seafarers working on a vessel (whether Australian or foreign registered) that is operating in coasting trade under a license are required to be paid Australian wages. Furthermore, such seafarers working on licensed vessels are covered by the Navigation Act, including Part II of that Act, which deals with some employment conditions. The Fair Work Act, its implementing regulations and the relevant award (the Seagoing Industry Award 2010) made under that Act, apply to seafarers working on licensed vessels while engaged in the coasting trade.

Migration law requires that vessels licensed under Part VI of the Navigation Act should employ Australian citizens, or Australian permanent residents, or foreign seafarers with appropriate work rights.

Until recently, seafarers, who in most cases are foreigners, employed on a vessel operating under a 'permit' (issued under Part VI of the Navigation Act) had not been covered by the Commonwealth workplace relations legislation. The Fair Work Regulations 2009, however, modified the application of the Fair Work Act in respect of licensed and permit vessels, so that the Fair Work Act applies to:

- a licensed ship in the territorial sea, exclusive economic zone (EEZ) and/or the waters above the continental shelf;
- a ship operating under a CVP in the territorial sea, the EEZ and/or the waters above the continental shelf;
- a ship operating under a SVP (if the ship has operated under two or more SVPs in the 12 months before the current SVP is issued) in the territorial sea, EEZ and/or waters above the continental shelf;
- a ship operating under a SVP (if the ship was issued a CVP in the 15 months before the current SVP) was issued in the territorial sea, EEZ and/or waters above the continental shelf.

The Seagoing Industry Award 2010 (SIA) covers national system employers who are engaged in the seagoing industry and their national system employees in the classifications listed in the SIA.

Part A provisions commenced on 1 January 2010 and apply to ships covered by the Fair Work Act (other than permit ships).

Part B provisions commenced operating on 1 January 2011 and apply to vessels operating under a permit granted under the Navigation Act.

The CT and CATP Bills will not change the current coverage of the Fair Work Act in respect of vessels engaging in coastal trading. In view of this, it is expected that the shipping reform bills will not impact on employment costs for ship owners or operators.

Minor changes to the Fair Work Regulations 2009 and the SIA will need to be made to remove references to permits and reflect the terms that will be used under the CT Bill. The Department of Infrastructure and Transport and the Department of Education, Employment and Workplace Relations will continue to work together on these changes.

Shipping Registration Amendment (Australian International Shipping Register) Bill 2012

The Shipping Registration Amendment (Australian International Shipping Register) Bill 2012 (the AISR Bill) provides for the establishment of a new International Register, its operation, administration and seafarer employment conditions.

The International Register established by the AISR Bill provides an alternative registration option for ships that are predominantly engaged in international trading. The previous Australian Register of Ships will effectively become the General Register.

Key Elements of the AISR Bill

Consistent with the Government's stated policy aims, the objects of the International Register are to:

- facilitate Australian participation in international trade;
- provide an internationally competitive register to facilitate the long term growth of the Australian shipping industry; and
- promote the enhancement and viability of the Australian maritime skills base and the Australian shipping industry.

The key contents of the Bill are as follows:

- It establishes two registers – the General (which is a continuation of the Australian Register of Ships, which exists under the current legislation) and International Registers – including transitional provisions relating to the Australian Register of Ships, and outlines specific conditions of registration in the International Register.
- It deals with the application process for registration, including the ability to refuse or cancel registration in the International Register, the criteria for making such decisions and internal review process for review of these decisions.
- It provides for employment conditions in accordance with the International Labour Organization's (ILO) Maritime Labour Convention (MLC) and other relevant ILO treaties to which Australia is a signatory, including work agreements, and determination of minimum wages and paid annual leave for seafarers working on board ships registered in the International Register that are engaged in international trading.
- It provides for collective agreements to be negotiated by a seafarers' bargaining unit (SBU), dispute resolution procedures, protection against victimisation and compulsory insurance for death or long-term disability.
- It also provides additional enforcement powers for the Australian Maritime Safety Authority (AMSA) for the purpose of ascertaining whether it complies with the working, living and crewing condition provisions of the Act, and establishes a civil penalty and infringement notice regime.

KEY ISSUES

Regulatory Control – 'Quality Flag"

In establishing the International Register, the Government was adamant that it should not risk Australia's reputation in the international maritime community. International registers have been established by a number of traditional maritime countries to offer their ship owners an alternative to registering under open registers (sometimes referred to as 'flags of convenience'). International registers offer some of the advantages of open registers, such as the ability to use crew of different nationalities, while maintaining the link between ownership/management of the vessels and the national flag. Maintaining this link ensures that the maritime safety regulator and other regulators of the 'flag state' continue to have control of safety and environmental standards, enforcement and compliance, and other matters which underpin the reputation of the national 'flag'.

In establishing an Australian International Shipping Register, the Government is seeking to ensure that it maintains its international reputation for high quality maritime safety standards, while ensuring the register is a competitive alternative for Australian ship owners and operators to registering offshore. Accordingly, the same standards of safety, environmental and occupational health and safety standards will apply to vessels registered in both the International and General Registers. These objectives have broad industry agreement.

As with ships registered in the General Register, AMSA will regulate International Register ships, including ensuring their compliance with the labour law provisions contained in the AISR Bill. The International Register will apply substantial Australian ownership requirements for those registering ships. This is critical to ensure that there is a clear nexus between ship ownership and Australia, thus providing AMSA with the 'regulatory reach' to monitor and enforce standards.

Refusal or Cancellation of Registration

AMSA will have the ability to refuse or cancel a ship's registration in the International Register. These powers are consistent with the Government's objective to maintain Australia's reputation in the global maritime community and have not been disputed by industry.

By their nature, ships registered in the International Register are likely to be outside Australian waters for the majority or totality of their operations. As such, AMSA will have limited opportunity to inspect these ships regularly, as it does with vessels operating on the Australian coast. To mitigate this risk, AMSA will have the power to request a pre-registration inspection. If AMSA is not satisfied that the ship is of a sufficiently high standard, it may refuse registration in the International Register.

Prior to making such a decision, however, there are a number of matters listed in the legislation that AMSA must have regard to – this is not a decision that will be taken lightly.

Similarly, AMSA is obliged to refuse registration in the International Register if it is evident that the ship will not be predominantly used to engage in international trading or a collective agreement has not been made between the ship owner and the seafarers' bargaining unit (this is discussed in a separate section). The reason for this is to reinforce a key objective for the establishment of the International Register in the first place, namely, to encourage Australian participation in the international trades. The International Register is not designed to exist simply as an alternative register to the General Register.

The ability for AMSA to cancel a ship's registration in the International Register is also consistent with the need to protect Australia's reputation. The legislation specifies the reasons that may lead to cancellation of a ship's registration.

Global Competitiveness

Industry has strongly advocated the need for the International Register to be globally competitive. Consistent with other quality international registers, ships registered in the International Register will be permitted to operate with mixed crews. This reflects the global nature of shipping, with crew commonly drawn from across the world. The Government has determined, however, that at least two senior positions (engineering and deck officers) are to be filled by Australians. This reflects the policy intent to build the domestic maritime skills base, by providing an opportunity for Australians to gain the necessary international seafaring experience. These are also the positions primarily responsible for a ship's safety at sea.

To ensure that the International Register is competitive, international labour terms and conditions will apply to seafarers working on board ships registered in the International Register while they are engaged in international trading. A minimum safety net is provided through the application of the MLC, which Australia has ratified. The MLC is, however, silent on the issue of minimum wages. The AISR Bill therefore refers to the minimum wages specified in the International Transport Workers' Federation (ITF) Uniform Total Crew Cost Collective Agreement as a safety net.

Another key element to facilitate the global competitiveness of the International Register is the fact that the Fair Work Act and the Seafarers Act do not apply to ships registered in the International Register when they are used to engage in international trading. Protections afforded by these Acts have instead been replaced by provisions based on MLC standards. The Fair Work Act will, however, apply to International Register ships engaged in coastal or intra-State trading under a TL or EL.

Requirement for a Collective Agreement

The AISR Bill contains a requirement for a collective agreement to be made between the ship owner and the SBU prior to registration in the International Register. This collective agreement cannot set wages and conditions below that set in the AISR Bill or Chapter 2 of the Navigation Act.

The concept of the SBU is to streamline the negotiation process for employers in those workplaces where multiple unions have coverage.

Shipping Reform (Tax Incentives) Bill 2012

The purpose of the Shipping Reform (Tax Incentives) Bill 2012 (the SRTI Bill) is to provide a framework for the taxation incentives for the Australian shipping industry, to encourage ship ownership and ship operations in Australia, as well as to encourage the employment of Australian seafarers.

The SRTI Bill sets out the arrangements for access to the income tax exemption (ITE) and other tax concessions through the issue of a certificate confirming that applicants have satisfied the requirements to enter the regime. It also provides companies applying for these concessions the opportunity to obtain a 'notice' that will give them a degree of comfort during the first financial year of entry into the scheme that the arrangements they propose will meet the requirements of the Bill. This reduces the pressure on both applicants and the Department when tax returns are being compiled.

The SRTI Bill does not provide for automatic entitlement to the concessions, but sets out the initial eligibility requirements to accessing the income tax concessions. Further eligibility requirements will reside in the income tax law.

The SRTI Bill provides for the issue of two types of certificate before lodging a tax return. The first establishes core eligibility criteria for access to accelerated depreciation, rollover relief, the seafarer refundable tax offset and the income tax exemption concessions by defining an eligible company and an eligible vessel. An eligible vessel is defined as over 500 gross tonnes and not in the list of excluded vessels in subsection 10(4).

The second establishes additional initial criteria for the ITE by specifying additional conditions for this concession that are designed to enable the growth of a maritime cluster of activities in Australia. The conditions are that:

- the vessel is registered in Australia by an Australian company;
- the company is able to meet the strategic, commercial, technical and crew management requirements that will be detailed in a regulation to be made under the SRTI Bill; and
- the company can meet the training requirements, also to be specified in a regulation under the SRTI Bill (and likely to be based on recommendations of the Maritime Workforce Development Forum).

The certificate will apply for a whole or part year, depending on when the applicant is able to satisfy all of the conditions. For example, if a company demonstrates its eligibility for entry into the ITE from a particular date during the financial year, then that will be the date of

effect. If the certificate is being sought for the first time in a year after 2012–13, the applicant will also need to hold a notice from the Department for that first year.

The SRTI Bill also provides for the collection of data in relation to these reforms, including:

- company name, ship name and registration;
- progress against the approved training plan and agreed management requirements for the ITE; and
- the number of seafarers for which a refundable tax offset is claimed.

The SRTI Bill also provides for the lock out arrangements, which were envisaged as part of the Government's approach to the tax concessions. Essentially, the Minister may allow a grace period for a company to repair a breach of the conditions attached to the ITE. If the breach is not rectified, a company, and any associates of that company, can lose its eligible status for up to 10 years. There are provisions for the Minister to determine whether there are acceptable commercial reasons that would support a lesser lock out period.

To aid in the effective administration of the law, provisions in the SRTI Bill enable decisions to be reviewed by the AAT if disputed. The SRTI Bill also provides that information obtained from applicants for a certificate (or a notice) may be provided to the Commissioner of Taxation. In addition, the Minister may delegate his powers under the SRTI Bill to officers of the Department or the Australian Tax Office.

KEY ISSUES

Minor changes were made to the SRTI Bill between the exposure draft and the version introduced into Parliament to ensure transhipment vessels were included as eligible vessels, and to ensure the definition of shipping cargo included cargo carried under contract, but for which a bill of lading was not specified.

Tax Laws Amendment (Shipping Reform) Bill 2012

Operation of Existing Law

Shipping companies are currently taxed in line with companies in other industries and are not afforded concessional tax treatment. As such:

- a shipping company pays tax at the company tax rate (currently 30 per cent);
- shipping vessels are depreciated based on an average effective life of 20 years;
- a balancing adjustment arising from the disposal of a shipping vessel is assessed in full in the income year in which a profit from disposal is made; and
- a company can claim salary, wages and allowances paid to seafarers as a tax deduction, but do not have access to refundable tax offset provisions.

The key taxation elements of the shipping reform package are outlined below.

Income Tax Exemption

A new category of exempt income is created for ship operators under certain circumstances. The ITE applies to all qualifying shipping income for eligible shipping 'vessels' as defined in the SRTI Bill.

A 'vessel' is an eligible shipping vessel if the ship operator has applied for, and obtained, a certificate in respect of the vessel from the relevant Minister that certifies that the company satisfies the qualifying conditions set out in the SRTI Bill.

Only income derived in respect of an eligible vessel from certain shipping activities will qualify for the ITE. A generous approach is taken to defining the activities that generate income eligible for the ITE, ensuring that a substantial part of shipping activities are included.

To be eligible, companies will need to demonstrate that they have a substantial proportion of commercial, technical or strategic operations, as well as crew management based in Australia.

Accelerated Depreciation

The effective life of an eligible vessel is capped at 10 years for companies that have been issued with a certificate under the SRTI Bill in respect of the vessel. The decline in value of the depreciating asset (the vessel) will, therefore, be calculated over a shorter period of time, providing companies with a greater deduction in the early income years than is currently the case.

Roll-Over Relief

A balancing adjustment amount is included in the second income year after the income year in which an existing vessel is disposed of. If another vessel is held on the second anniversary on the disposal of the original vessel, then the balancing adjustment amount is rolled over.

Seafarer Tax Offset

A company is eligible for a refundable tax offset (a seafarer tax offset) for salary, wages and allowances paid to Australian resident seafarers who are employed to undertake overseas voyages on qualifying vessels, if the company employs the seafarer on such voyages for at least 91 days in the income year.

Royalty Withholding Tax Exemption

Payments made for the lease of shipping vessels are exempt from royalty withholding tax. This exemption applies to payments made by Australian resident companies for the lease, on a bareboat basis, of qualifying vessels that are used commercially to ship cargo or passengers for consideration. This aims to reduce the costs for Australian shipping operators of securing vessels from overseas.

Shipping Information

The Australian Taxation Office is permitted to disclose taxpayer information collected under the taxation laws to the Department of Infrastructure and Transport for purposes consistent with the SRTI Bill to enable the effective administration of that law. The Department will not hold any Tax File Number information.

Consolidated Groups

Part 3-90 of the *Income Tax Assessment Act 1997* (the ITAA) allows certain groups of entities to be treated as single entities for income tax purposes. Following a choice to consolidate, subsidiary members are treated as part of the head company of the group rather than as separate income tax identities.

The income tax treatment of a consolidated group flows from the single entity rule in section 701-1 of the ITAA. Under the single entity rule, an entity is treated as part of the head company for certain purposes while it is a subsidiary member of a consolidated group. Broadly, the taxable income or tax loss is worked out for a consolidated group as if it were a single entity.

As a result, the single entity rule allows the proposed shipping reform tax concessions to apply to a consolidated group. For example:

- if a subsidiary of a head company is issued a certificate in accordance with the SRTI Bill for a vessel, that certificate is treated as having been issued to the head company for that vessel in applying the proposed tax concessions to the consolidated group;
- if a subsidiary is locked out of qualifying for the ITE with respect to a vessel, then any associate and the head company is similarly locked out;
- if a subsidiary joins a consolidated group mid-way through a lockout period, the head company is also taken to be locked out for the remainder of the period;
- if, before the end of the lockout period, the subsidiary entity operating the vessel leaves the consolidated group, the remainder of the lockout period applies to the subsidiary entity; or
- if a subsidiary of a consolidated group ceases to hold a vessel, and replaces that vessel while in the consolidated group, the head company is taken to have ceased to hold the vessel and to have commenced to hold the new vessel for the purposes of the head company seeking eligibility for the balancing adjustment roll-over.

KEY ISSUES

Dividend Exemption

Some members of the shipping industry have taken the view that, without a dividend exemption, the exemption from income tax is only a deferral of tax and not a true exemption. They consider that the benefit provided by the ITE will simply be clawed back when profits are distributed outside of the company as unfranked dividends. Their preference is for the concessions to include a dividend withholding tax exemption and a deemed dividend franking credit for distributions to Australian shareholders.

However, providing a 'deemed' franking credit on profits that have been exempt from tax would not be consistent with the fundamentals underpinning the Australian tax system. Providing an income tax concession directly at the shipping company level allows for further capital to be reinvested in the company before the distribution of profits. This would seem to be a relevant issue for companies that may be currently faced with a lack of investment over time. However, providing a concession at the shareholder level could promote trading in shares in a shipping company without providing additional capital to the company. It is also expected that shareholders will seek to invest where they can get the best yield over a period and whether dividends are franked or unfranked is only one part of their consideration. Industry representatives differ in their view on the absence of a dividend exemption from tax.

Exempt Income Tax versus Non-Assessable Non-Exempt Income (NANE)

Industry preferred that shipping income be treated as NANE, and not as exempt income, as a NANE does not waste a taxpayer's tax losses. Whilst the current tax law has an in-built loss wastage rule that reduces a taxpayer's tax losses with any net exempt income, an alternative formula for reducing an entity's tax losses has been developed. This current rule will be modified to ensure it wastes fewer losses by disregarding 90 per cent of that part of the taxpayer's net exempt income that directly relates to shipping exempt income. This modified rule is an attempt at quarantining the loss wastage rule to tax losses made from shipping activities only.

There is no policy rationale for treating amounts of exempt income as NANE – the long standing revenue policy is to treat amounts that are ordinarily taxable as exempt income, rather than as NANE. Further, amounts are only treated as NANE where it is necessary to avoid double taxation or where the amounts have the form of income that does not really represent a gain to the taxpayer.

Seafarer Refundable Tax Offset (RTO)

Changes were made to the SRTI Bill between exposure and introduction to reflect industry concerns that the seafarer RTO needed to cover remuneration in respect of leave and ballast voyages, due to the nature of employment arrangements for seafarers and the expectation that vessels conveying minerals to overseas destinations would very likely return empty. In addition, the rate of the RTO was increased from 27 per cent to 30 per cent of gross wages to better reflect the average salaries paid in the shipping industry. All bona fide seafarers who

meet the 91 days or more on eligible voyages will be eligible for the RTO. This includes the ship's cook.

LIKELY IMPACTS AND SUPPORT FOR THE GOVERNMENT'S POLICY OBJECTIVES

As previously stated, the aim of this policy reform is revitalisation of the shipping industry. The Government is seeking to achieve this through addressing the cost base of Australian registered shipping, enabling it to compete on a level playing field with international shipping. Reform of the coastal trading regime is focused on improving transparency, in particular, the role of foreign shipping in the domestic economy.

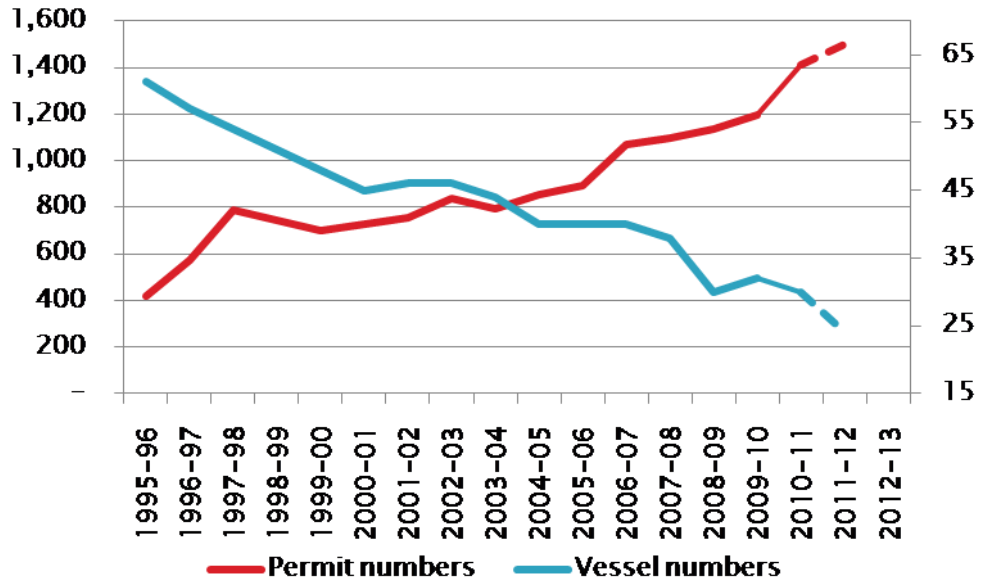
If Australian shipping is to arrest its declining role in the national transport task, improved productivity and efficiencies must be achieved. As a capital intensive industry, improving the return on capital assets is critical. The reforms provide a platform for new investment and to promote the growth of shipping as a mode.

Regulation Impact Statement (RIS)

A RIS outlining, in detail, the Government's shipping reform proposal was finalised in August 2011 and approved by the Office of Best Practice Regulation.

The RIS noted that our regulatory and fiscal frameworks have not kept up with international trends and market reforms by other shipping nations. This had contributed to a decline in the Australian trading fleet, and the graph is reproduced below (Figure 1).

Figure 1: Coastal Freight Task and Australian-Registered Vessels Involved in Coastal Shipping – Australian Flagged Major trading Fleet (>2000 dwt)



Source: REGULATION IMPACT STATEMENT "REFORMING AUSTRALIA'S SHIPPING" August 2011. This was based on BITRE published data, internal Department and industry sources.

The Bureau of Infrastructure, Transport and Regional Economics (BITRE) undertook a cost-benefit analysis, which formed part of the RIS analysis. BITRE based its analysis around four scenarios:

- Scenario A – no replacement of foreign temporary licence ships with Australian ships. The same quantities of freight carried by permit ships in the base case are carried by TL ships in the policy case. No AISR ships are assumed to come into existence.
- Scenario B – for 'other dry bulk', petroleum products and 'other liquid bulk' sectors, Australian ships gain an additional 10 per cent of total freight tonnage from foreign temporary licence ships after five years. International Register ships are used in the triangular trades carrying coastal freight and coal to Asia, carrying a one-third share of coastal freight carried on triangular voyages, with foreign ships accounting for the other two-thirds.
- Scenario C - as for scenario B, but Australian ships gain 20 per cent of the total freight tonnage in the 'other dry bulk', petroleum products and 'other liquid bulk' sectors. International Register ships achieve two-thirds shares of the bauxite and iron ore triangular trades.
- Scenario D - use of foreign ships in the 'other dry bulk', petroleum products and 'other liquid bulk' sectors is phased out altogether over the first five years. The quantities of freight carried by foreign temporary licence ships fall linearly to zero over in 2016–17 and remain at zero thereafter. International Register ships gain all the bauxite and iron ore triangular trades.

The analysis was undertaken almost 12 months ago and there have been some substantial changes to the original model in response to issues raised through the consultation processes. The final package of reforms that has resulted through those processes and is incorporated in the Bills suggest that BITRE's scenarios B and C are the most likely outcomes.

BITRE estimated a combined net present value of the economic cost of the package under scenarios B and C to be a gain of between $40 million and $150 million.

Deloitte Access Economics Report

A Deloitte Access Economics' report (*Economic impacts of the proposed Shipping Reform Package*) was commissioned by bulk shippers (which covers the majority of coastal shipping) and released in March 2012. The report concluded that negative impacts could be expected from the introduction of the shipping reform package, but was based on a misunderstanding of how the proposed licensing system will operate. The misunderstandings are about two fundamental elements of the proposed coastal regulatory system; the first relates to TGLs and the other relates to closing the coastal trades to foreign ships. The operation of the former has been explained in detail above, including that the application of the Fair Work Act will continue as status quo.

Closing the Coast

The report asserts that it is the intention of the Government to "severely limit" access to the TL under the new arrangements, potentially removing access altogether.

This is incorrect. The Government is not 'closing the coast'. Foreign flagged vessels will continue to have a role in coastal shipping. It is understood that Deloitte based its modelling on the assumption that TLs would not be issued after five years.

Age of the Fleet

The reform package provides a platform for investing in newer ships. The tax provisions, in particular those relating to accelerated depreciation, are aimed at being the catalyst to substantially reducing the average of age of the Australian fleet.

More modern designs and the incorporation of newer technologies result in economic and non-economic benefits. Younger ships are more fuel efficient (which lowers ship costs), more environmentally friendly and lessen any impacts from carbon taxes. They are also safer ships. In short, they are able to provide services that better meet the needs of shippers.

Maritime Cluster

The package has the potential to deliver additional benefits through the growth of a maritime cluster in Australia. A study conducted in the UK in respect of the benefits of the introduction of the tonnage tax showed that a larger fleet attracts ancillary but associated activities. [10] These include additional specialised shipping accounting, legal, survey, chartering, ship management, crew management, repairs and maintenance, arbitration activities. Australia is well placed to attract these activities given its stable political system and mature and respected legal and financial frameworks.

Skills

The 2008 Parliamentary Inquiry identified maritime skills shortages as the priority issue for the Australian industry. The proposed legislative reforms, in combination with the establishment of the Maritime Workforce Development Forum, address this fundamental issue.

SUMMARY

The Australian shipping industry is an industry in decline. The number of Australian large trading vessels has decreased significantly since the mid-1990s. The age of the remaining vessels is increasing and currently above the average age of the global fleet. The pool of

[10] Oxford Economics, 'The economic contribution of the UK shipping industry in 2007' in *Oxford Economics* (February 2009).

Australian maritime skills is decreasing and the remaining seafarers are ageing. Within a few years, the shipping industry would be unlikely to retain sufficient critical mass to continue.

The current regulatory framework creates uncertainties for investors. This situation is exacerbated by the fiscal support mechanisms offered in other countries to ship investors, which makes Australia a less attractive proposition for ship investments than other regimes.

There is a consensus among key industry stakeholders about the need for revitalising the industry. There is an appreciation of the benefits of a national fleet, in particular, the berths necessary to train seafarers who will facilitate our export/import trades and ensure we are able to regulate that ships meet the safety, security and marine environment protection standards expected by the Australian community.

The breadth and conflict of interests of key stakeholders means that a consensus about how the industry should be revitalised has been exceptionally challenging. The appropriate balance for the variety of interests has been addressed through lengthy, comprehensive and open consultation processes with stakeholders. The suite of Bills introduced in March 2012 is the result of those consultative processes.

The proposed regulatory regime for accessing the coastal trades modifies the existing system to incorporate greater certainty and more transparency for shippers. It retains the flexibility sought by shippers to use foreign ships in appropriate circumstances. The proposed framework is still liberal by world standards, for example, in the USA ships engaging in the coastal trades must be owned, flagged, crewed and built domestically.

The package provides incentives to invest in Australian ships and for shippers to use those ships. The tax elements, the establishment of an Australian International Shipping Register and preference for Australian flagged and crewed ships in the coastal trades are designed to encourage investment in Australian ships.

The platform to invest will be attractive in comparison with those offered by other countries. Investments that can provide berths for training Australian seafarers on which we rely to facilitate our international trades – running our ports, stevedores, marine pilotage services, our fuel/gas offshore industries – and regulating ships in our coastal seas. It provides a platform for engagement in our international trades at no extra cost to our exporters. It provides a platform to create a maritime cluster associated with a domestic fleet.

The suite of Bills implements a package of shipping reforms that are based on the bipartisan recommendations of the 2008 Parliamentary Inquiry into coastal shipping. The recommendations have been tested and developed through extensive consultations with industry stakeholders, including shippers, owners/operators and maritime unions. The package is designed to meet the practical needs of all stakeholders and has involved balances and compromises. Nevertheless, the fundamental integrity of the package has been retained, namely, to revitalise the Australian shipping industry and increase the number of Australian flagged vessels.