



**Australian Shipowners Association**

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## Senate Committee on Economics Legislation

- Shipping Reform (Tax Incentives) Bill 2012
  - Tax Laws Amendment (Shipping Reform) Bill 2012
  - Shipping Registration Amendment (Australian International Shipping Register) Bill 2012
  - Coastal Trading (Revitalising Australian Shipping) Bill 2012
  - Coastal Trading (Consequential Amendments and Transitional Provisions) Bill 2012
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Submission by:  
Australian Shipowners Association

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ASA Contact: Teresa Lloyd, Executive Director

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Member of the International Chamber of Shipping, International Shipping Federation, Asian Shipowners Forum

Head Office:  
Level 1, 4 Princes Street  
PORT MELBOURNE, VIC 3207  
Telephone: +61 3 9647 6000  
Facsimile: +61 3 9646 2256

Canberra Office  
PO Box 70  
CIVIC SQUARE ACT 2608  
Website: [www.asa.com.au](http://www.asa.com.au)  
E-mail: [admin@asa.com.au](mailto:admin@asa.com.au)

Australian Shipowners Association Limited ABN 73 006 627 934

## 1. Executive Summary

- 1.1. The Australian Shipowners Association welcomes the package of measures introduced into the Parliament and sees this package as providing an opportunity for Australian 'bluewater' shipowners to base their operations in Australia in a situation much closer to a level playing field than has been possible for several decades.
- 1.2. The Australian shipping industry has been in decline over the past decade or more and the package of measures offers the potential to arrest that decline and indeed see a return in ship numbers to a level that offers longer term sustainability to the indigenous industry.
- 1.3. A strong, sustainable local shipping industry offers many benefits including:
  - improve Australia's economy (in 2006, 8.3% of the current account deficit is due to Australia's reliance on foreign ships to carry our external trade)
  - providing the skills required for a maritime nation to function, to run Australia's ports and provide safety and environment regulation;
  - building corporate know-how in critical international business;
  - ensuring essential supply chain security;
  - reduce Australia's greenhouse gas (GHG) emissions via increased use of the most GHG efficient form of transport;
  - relieve Australia's infrastructure, 1 ship would remove 800 B-Double trucks from Australia's roads;
  - increasing border protection via Merchant Navy linkages with defence and customs; and
  - growth of a Maritime Cluster that in itself adds value to the local economy via the establishment of professional and associated services.
- 1.4. The introduction of the Australian International Shipping Register is a major development for Australian shipowners and Australia. Currently, Australian ships carry less than 0.5% of all export cargos from Australia. The opportunity to compete with foreign flagged ships in these trades is now possible as a result of the development of this Register, combined with the seafarers tax offset.
- 1.5. The company tax changes offer flexibility in arrangements and overcome some existing impediments regarding the way ship operation and ownership is structured in Australia. They are welcomed by the industry and provide a range of benefits. We must note however, that the effect of the zero company tax is undermined by the tax treatment of the profits when they are distributed out of the company which results in the measure not providing as much benefit as the shipowners had sought, and is not as competitive as many international regimes.
- 1.6. The coastal trading changes are a complex redesign of a system that has been in operation for decades and which during that time has seen many difficulties, inequities and considerable angst across the industry. It is not considered possible to fix all of the inherent challenges in the coastal trading regime, however the new Bill does address several fundamental issues / deficiencies of the old system with regard to transparency and processes for appeal. These changes are positive and welcomed. The Bill does however appear to result in an increase in the administration of the regime for both the industry and the department responsible. Matters resulting in excessive 'red tape' for no demonstrable benefit should be reviewed to remove onerous and unproductive requirements.

- 1.7. Without undermining the intent and object of any of the Bills, ASA recommends the following amendments to the Bills or matters for consideration in the drafting of the associated regulations:
- 1.8. Tax Laws Amendment (Shipping Reform) Bill
  - 1) Include 'cook' in the list of seafarers under 61-705 2 (b)
- 1.9. Shipping Reform (Tax Incentives)
  - 1) Regulations prescribing management requirements to provide for the outsourcing to Australian businesses.
  - 2) The mandatory training commitment ought to be grandfathered if future changes to increase the training level are made to provide shipowners with certainty regarding their obligations when making investment decisions.
- 1.10. Coastal Trading:
  - 1) A register of General Licence (GL) ships be created and maintained by the Department of Infrastructure and Transport
  - 2) Require evidence of GL discussions prior to Temporary Licence (TL) application or variation.
  - 3) Emergency Licences (EL) to be made available for commercial activities in genuine emergency situations, which should include the GL check occurring prior to the application being made.
  - 4) A sensible solution is required to deal with situations where fewer than 5 voyages are required under a TL.
- 1.11. Coastal Trading Transitional Amendments:
  - 1) That a 6 month implementation period be provided to transition to the new regime.

## 2. Introduction

- 1.1. This submission is made on behalf of the Australian Shipowners Association (**ASA**). ASA represents Australian companies which own or operate:
- international and domestic trading ships;
  - cruise ships;
  - offshore oil and gas support vessels;
  - domestic towage and salvage tugs;
  - scientific research vessels; and
  - dredges.
- 1.2. ASA also represents employers of Australian and international maritime labour and operators of vessels under Australian and foreign flags.
- 1.3. The trading fleet or 'bluewater' Members of ASA include companies whose primary business is to provide sea transport services to the freight market as well as companies whose shipping operations form an element of their supply chain, hence some of ASA's Members are very large cargo interests. ASA Members participating in domestic trade utilise the existing regime of coastal licences, single voyage permits and continuing voyage permits. ASA Members are active in dedicated international trades under both Australian and foreign flags.
- 1.4. The Association provides an important focal point for the companies who choose to base their shipping and seafaring employment operations in Australia.
- 1.5. ASA's purpose is to pursue strategic reforms that provide for a sustainable, vibrant and competitive Australian shipping industry and to promote Australian participation in meeting domestic needs for sea transport services and contribution to Australia's international trade to the benefit of Australian shipowners, their customers and the Nation.
- 1.6. ASA's Members are:
- |                                   |                                |
|-----------------------------------|--------------------------------|
| ANL Container Line                | P & O Maritime Services        |
| ASP Ship Management               | PB Towage                      |
| BlueScope Steel                   | Queensland Alumina Limited     |
| BP Australia                      | Rio Tinto Marine               |
| Caltex Australia Limited          | SeaRoad Shipping               |
| Carnival Australia                | Shell Tankers Australia        |
| EMAS Offshore                     | Sugar Australia                |
| Farstad Shipping (Indian Pacific) | Svitzer Australia              |
| Maersk Supply Service             | Swire Pacific Offshore         |
| Mermaid Marine                    | Teekay Shipping (Australia)    |
| MODEC Management Services         | The Shell Company of Australia |
| Newcastle Port Corporation        | Tidewater Marine               |
| North West Shelf Shipping Service | Toll Marine Logistics          |
| Origin Energy                     |                                |
- 1.7. ASA Members represent a very broad cross-section of the maritime industry and on some matters of coastal trading the ASA Membership have very different views. On these matters, this ASA submission reflects the view of the 'Australian shipowner' (as distinct from the 'shipper' or 'cargo interest' view).

### 3. Tax Bills

- 3.1. ASA appreciates the tax changes that have been proposed which, generally speaking, will have the effect of deferring the tax payable by companies until the point of distribution of profits. This will increase cash flow thus enabling business to reinvest and grow the business and assist securing finance necessary for capital expenditure.
- 3.2. The broad range of measures addressed in the tax packages is supported by ASA and offers flexibility to shipowners and operators regarding their business structures, capital expenditure/investment and operating costs.
- 3.3. The complex nature of all of the measures will take some time for many owners and operators to fully assess the impact and benefits.
- 3.4. The tax structure that has been developed is, however, less generous than other structures available internationally due to the tax treatment of the profits when they are distributed out of the company and as a result the investment that will result is less certain than had other, more beneficial structures been introduced. The benefit to the shipowning and operating community, and indeed the Australian economy would have been greater had a more attractive regime been developed.

#### Exempt Shipping Income

- 3.5. ASA welcomes the treatment of shipping income to be exempted from Income Tax, which is a significant policy initiative that recognises the global and highly mobile nature of shipowning and ship operating companies.
- 3.6. The intention of the regime is to provide Australian companies with a corporate tax regime that is competitive with the tax treatment of shipping industries available internationally, in order that those businesses remain in Australia thereby building strategic corporate capacity.
- 3.7. Income Tax Exemption has the effect, for those businesses that are eligible, of improving cash flow and gaining access to finance by deferring the tax charge to the point of distribution of profits.

#### Outsourcing of management requirements

- 3.8. ASA supports the notion that in order to qualify for the shipping tax exemption, certain management activities (strategic, technical, commercial, crew) will be required to be conducted within Australia. The exact requirements are, however, to be specified in regulations.
- 3.9. **It is recommended that the relevant regulations allow an operator to qualify for the shipping tax exemption regime even though that operator may outsource any or all of these management requirements to a 3<sup>rd</sup> party, provided the relevant services are being conducted within Australia.**

#### Mandatory Training Commitment

- 3.10. ASA supports the notion that in order to qualify for the shipping tax exemption, a mandatory training commitment would apply. The level of that commitment is to be specified in regulations.

- 3.11. ASA supports the creation of the Maritime Workforce Development Forum to establish a workforce plan for the maritime industry that will inform the Minister regarding what is an appropriate mandatory training commitment.
- 3.12. Shipowners will need certainty regarding their training obligation.
- 3.13. It is recommended that the training obligation that exists at the time an entity enters the tax regime ought to be the maximum obligation that applies to that entity throughout their participation in that regime.**
- 3.14. Changes to increase the mandatory training levels should only apply to new participants in the tax regime.

### Effective Life for Tax Purposes of 10 Years

- 3.15. ASA welcomes the change to the 'Effective Life' to 10 years which provides the shipping industry with a more consistent tax treatment vis-a-vis most other capital intensive Australian industries.
- 3.16. Depreciation of capital assets has the effect of improving cash flow and deferring the tax charge to the point of disposal of the asset.

### Roll-over relief

- 3.17. ASA welcomes the introduction of a rollover relief upon disposal of a qualifying vessel, which is a common feature of shipping tax regimes available internationally.
- 3.18. This will have the effect of deferring the tax charge otherwise arising by reducing the tax cost, and available future tax depreciation, of the replacement vessel.

### Royalty Withholding Tax

- 3.19. ASA welcomes the royalty withholding tax exemption, which corrects the current inconsistency between the treatment of bareboat charters and time charters.
- 3.20. This change removes the regulatory barriers that currently exist to operating ships under bareboat charters.
- 3.21. Bareboat charters allow greater control by the charterer over matters such as crewing and flag, hence enabling access to bareboat charters (by applying the same tax treatment as time charters) will enable ships to be operated by Australian companies with a greater level of Australian content.

### Seafarer Tax Offset

- 3.22. ASA welcomes the introduction of the tax offset, which will serve to allow Australian seafarers to fill the senior positions on ships at a competitive rate with their international counterparts most of whom are able to access income tax exemption in their home countries. This is critical to the successful introduction of ships on the Australian International Shipping Register (AISR).
- 3.23. The offset will also encourage the employment of more Australians across the spectrum of the crew compliment on a ship engaged in international trades.

- 3.24. The structure of this measure, being a tax offset to the employer, is supported as this will lower the employment cost (to be competitive with foreign flagged ships) without any diminution of the take home pay for the seafarers from existing levels.
- 3.25. The fixed rate of 30% is acceptable. It does not represent the entire amount of tax payable, particularly for the higher paid positions, however ASA can accept that this rate is a 'reasonable' level and expect that a fixed rate will result in straight forward administration.
- 3.26. The 91 day requirement to qualify for the offset is supported by ASA. This is comparable with other regimes that apply internationally.
- 3.27. ASA supports the inclusion of ballast voyages and coverage of periods of leave accrued. These inclusions ensure that the 'normal' shipping activities are covered without artificial exceptions and recognise the unique employment arrangements inherent in the Australian shipping industry.
- 3.28. The administration of the regime will need to adopt a pragmatic approach to the qualifying persons, periods, ships, etc. The burden that could be imposed via a convoluted and administratively complex regime to implement this measure could result in seriously undermining the intent/benefit. ASA seeks a sympathetic approach to ensure that the intent of encouraging Australian shipowners to employ Australian seafarers in international trading ships is realised.
- 3.29. The categories of those employed on the ship listed in the Bill have excluded the cook. It is understood that the intention was that the cook was included via the 'integrated rating' reference, however the cook is not an integrated rating and for the purposes of clarity and certainty should be listed separately.
- 3.30. It is recommended that the ship's cook be included in the list of qualifying seafarers.**

#### 4. Australian International Shipping Register

- 4.1. The establishment of the AISR through the *Shipping Registration Amendment (Australian International Shipping Register) Bill* (AISR Bill) is supported by ASA and provides the opportunity for Australian businesses to own and operate ships in Australia, building strategic and commercial skills in Australia while allowing the ships to operate in a cost competitive environment.
- 4.2. AISR vessels will at all times be in direct competition with foreign flagged vessels, whether they will be trading internationally or on the coast under Temporary Licences.
- 4.3. It is essential that they compete on as near as possible to a level playing field.
- 4.4. For that reason, ASA strongly supports the decision by the Government not to apply the *Seafarers Rehabilitation and Compensation Act 1992* (Seacare) to AISR vessels at any time.
- 4.5. The Seacare regime is a very generous workers compensation regime by international standards and indeed, by Australian community standards. Obtaining the necessary insurance to comply with the Seacare requirements adds a cost burden on those operators that is not borne by foreign flagged ships which can provide coverage via standard Protection and Indemnity (P&I) insurance.

- 4.6. Seafarers working on AISR ships will have workers compensation protection provided by P&I coverage as is standard across the international industry. It is anticipated that the Australian residents working on AISR ships will negotiate an appropriate level of workers compensation coverage at the time they are engaged – noting that there is a mandatory compliment of senior Australian residents required on-board an AISR ship.
- 4.7. Again, for reasons of direct competitiveness, ASA supports the AISR ships operating without *Fair Work Act 2009* coverage when in international trades. The arrangements for the Minister to determine minimum wages and conditions and workers compensation arrangements are appropriate and supported.
- 4.8. ASA supports the application of the *Occupational Health and Safety (Maritime Industry) Act 1993* to AISR ships as providing an appropriate regime for coverage of occupation health and safety that is in line with international shipping and Australian community standards.
- 4.9. ASA supports a mandatory Australian national/resident crew compliment applying to AISR vessels. ASA would prefer a greater degree of flexibility be provided in circumstances where the most senior deck and engine officers are not available.

## 5. Coastal Trading

- 5.1. The intent to promote the use of vessels registered in Australia has been made quite clear and the flexibility required to move cargo on non-Australian registered ships has been retained via the temporary licence regime.
- 5.2. The administration required to utilise foreign flagged ships has changed considerably. Consideration of prior use of foreign flagged ships / patterns of use / etc will be a feature of the new determination process. This has been lacking in the existing regime and has long been considered a shortcoming in terms of the Government finding a balance between ensuring shipping services are flexible enough to meet the needs of cargo interests by filling capacity gaps with foreign ships while ensuring Australian ships provide the base load of domestic cargo movements.
- 5.3. At the same time, the ‘needs of the shipper’ are now written into the Bill as a consideration that the Minister must take into account.
- 5.4. The increased transparency regarding the process and the appeals procedure are both improvements to the existing regime.

### Temporary Licences (TL)

- 5.5. The timeframe of the TL application (12 months) could make the provision of data for that entire period little more than a ‘best guess’ and, in many circumstances, is unlikely to resemble the actual voyages required. This is due to the unknown nature of many shipping movements. The result will be a raft of variations being sought to the originally provided ‘voyage’ requirements, which will trigger the process of review by General Licence (GL) holders. In total, this process would increase the administration required in order to undertake a voyage with a non-GL ship from that required under the existing legislation/permit regime. Such unproductive red tape must be avoided. It is understood that one means of mitigating this provided for under the Bill is to initially only apply for voyages that are known and to apply for variations to add voyages at later stages.

- 5.6. The ability for a TL holder to add voyages to an application via a variation is designed to eliminate vast amounts of spurious information being provided. This is supported.
- 5.7. The flexibility in applying for variations for either 'matters authorised' or 'new matters', with a shorter time frame for authorised matters, is supported and welcomed.
- 5.8. Critically however, a TL application can only have the voyages approved where all the specific data is provided. Any voyages that are incomplete (be they forecasts with large 'ranges' on some of the required information or where required information is missing) *cannot* be approved as there has been no reasonable opportunity for a GL holder to nominate.

### Minimum number of voyages

- 5.9. The notion that the application must include a set number of voyages is something that can be made to work. The requirement for at least 5 voyages should result in the majority of applicants being able to meet the requirement.
- 5.10. Applicants who genuinely require fewer voyages than the minimum set will be forced to provide spurious information to make up the set number required. This is not in the interests of the applicant, GL holders who may wish to nominate or the Department – who will be processing the application. This is an example of red tape which must be avoided.
- 5.11. It is recommended that a sensible solution be found to deal with situations where fewer than 5 voyages are required under a TL.**

### Tolerances

- 5.12. Few voyages would go ahead absolutely as applied for. The tolerances around the specific data that have been included in s.6 of the Bill should assist to increase the number of voyages that have 'pre-approval'.

### Advice to GL holders of TL applications

- 5.13. ASA supports the system whereby GL holders will be advised automatically of a TL application.

### Register of GL holders – not currently part of the Bill

- 5.14. In order that TL applicants can undertake suitable checks prior to making an application for a TL it would be helpful if a register of GL holders was publically available. This should be a function of the Department responsible for issuing GLs. Such a list exists under the current coasting trading regime and we would expect that it would continue. It would be necessary that this list was up to date at all times and include an appropriate level of detail so as to allow potential TL and Emergency Licence (EL) applicants to understand certain specifics of the GL ships available (type of ship, capacity, company contact details, etc).
- 5.15. It is recommended that a publically available register of GL holders be created and maintained by the Department of Infrastructure and Transport.**

### GL checks prior to TL or EL application – not currently part of the Bill

- 5.16. A further improvement to the Bill would be provision for the inclusion in the original TL or emergency licence application (or variation of a TL) for evidence of GL checking and discussion. This information, along with all other details provided at the time of

application, could be taken into account by the Minister in the decision making process and, in circumstances where there is no GL ship of the type requested in the application, could expedite the approval process.

5.17. Most importantly, this amendment would re-frame the Bill from one that sets a scene for a “contest” to one whereby the affected parties have had discussions prior to any Government involvement.

**5.18. It is recommended that original TL or EL applications and variations of TL’s include provision for evidence of GL checking and discussion.**

### GL ability to conduct voyages

5.19. Given the breadth of any one TL application (multiple voyages with multiple ship types carrying multiple cargo types to multiple ports etc) ASA supports the system whereby a GL holder can contest ‘segments’ within the application – that could be individual voyages (port to port); or individual parcels of cargo. The decision to be taken by the Minister must have regard to the objects of the Bill and, as provided for in s.34(3), the specifics of the situation including the interests of all the parties involved. Every possible opportunity must be afforded to a GL holder to utilise their vessel in coastal trades.

### Emergency Licences

5.20. While every attempt to accommodate urgent voyages has been made in the draft Bill, and the variation process being able to be expedited to 2 days is supported and appreciated, there will be circumstances where the approval process for a variation will not be rapid enough to meet every need.

5.21. Throughout the consultation process the position has been maintained by the Government that ELs are only available for humanitarian disaster / relief etc.

5.22. ASA is of the view that it is entirely foreseeable that a trading ship with commercial cargo may be required in “emergency” circumstances (such as an unplanned shutdown of a plant, delivery of contaminated product (thereby requiring immediate replacement), inability of contracted ship to deliver goods, etc). Such circumstances would necessarily be limited to the need to move cargo *within* a 2 day window (otherwise a TL could be used via a ‘matters authorised’ variation which includes the due process that goes with that).

5.23. Clearly in those circumstances the genuine nature of the emergency would need to be articulated, such as the impact on the community of a 2 business day delay. It is proposed that in order to ensure the integrity of the objects of the Bill are upheld, in such circumstances the EL applicant will include in their application a statement regarding the GL vessel checks that they have done prior to seeking an EL. That way, if there is a GL ship available (and suitable) it will have been considered without the need for a ‘nomination’ process that takes up valuable time in an emergency situation. It is expected that the standard appeals and penalty provisions would apply.

5.24. The criteria for grant of an EL could be dealt with in the regulations that need to be developed to define an emergency situation.

**5.25. It is recommended that ELs be made available for commercial activities in genuine emergency situations, which should include the GL check occurring prior to the application being made.**

## Deciding Applications

- 5.26. The language is not specific in this section however it seems that sub-clause (2) could be considered to include a range of issues that combined go toward whether the objects of the Act are being met and that sub-clause(3) meets the suitability and availability and shipper needs tests.
- 5.27. These matters for consideration appear to be clear enough, without being overly prescriptive, to cover the range of issues that interested parties would expect to be considered.

## 6. Appeals Process

- 6.1. The provisions in the Bill seem reasonable given the increased range of scenarios, that, worst case scenario, aggrieved persons have avenues not expressly set out in here through general administrative law principals of natural justice when contesting a decision made under the Act.

## 7. Coastal Trading – Transitional Amendment Bill

### Continuation provisions of permits and licences

- 7.1. There are concerns that the process to obtain a TL, especially the first time around, will be an onerous task and the workload on both the industry and the Department to have the required TL's in place within three months is something that all parties may struggle with.
- 7.2. Coupled with the timeframes associated with the work of the Senate and House of Representatives Committees and the need to have Regulations also in place prior to commencement there is a great deal of concern regarding the timeframe for implementation of the new Coastal Trading regime.
- 7.3. It is recommended that at least 6 months be provided to transition to the new regime.**