



**CEMENT INDUSTRY  
FEDERATION**



## **Cement Industry Federation Submission: Senate Red Tape Review into Cabotage**

***April 2017***



**The Effect of Red Tape on 'Cabotage' in Australia**



## 1. Overview and Key Recommendations

Current Australian coastal shipping cabotage arrangements have contributed to a declining Australian shipping fleet, an increased cost and administrative burden and reduced productivity for Australian manufacturers, including the cement industry.

When the Full Court of the Federal Court of Australia ruled in 2014 that Australian manufacturers cannot negotiate the commercial terms for moving their freight around Australia's coastline due to the conflicting objects of the Coastal Trading Act and related legislation<sup>1</sup>, it must be time to consider rescinding the legislation and start again.

Coastal shipping cannot grow without a strong vibrant Australian manufacturing sector. Increasing regulation through cabotage arrangements will never succeed when the associated regulatory cost burden is passed directly through to key customers.

*The Cement Industry Federation recommends that all related coastal shipping legislation be rescinded and replaced with a simple framework that truly promotes internationally competitive and efficient coastal shipping in Australia.*

*In the interim, Australian cement manufacturers urgently request that the Federal Minister for Infrastructure and Transport determine under Section 11 of the Coastal Trading Act 2012 that 'cement and clinker' be exempt from the Coastal Trading Act and related legislation (as per passenger vessels over 5000 gross tonnes<sup>2</sup>). It is requested that immediate consideration be given to this recommendation to ensure cement manufacturers are no longer unfairly taxed through Australian cabotage arrangements.*

It is important to note that:

- ❖ The Australian cement industry has been affected by coastal shipping legislation as the cost of 'cabotage' is passed directly through to Australian manufacturers.
- ❖ The future vitality of the Australian coastal shipping sector is intrinsically linked to the current and future demand from its key customers, especially the Australian manufacturing sector. If Australian manufactured products are replaced by imports, the demand for coastal shipping will decline.
- ❖ Since 2012-13, imports of clinker and cement from Asia to Australia have increased from 2.4 million tonnes to 3.5 million tonnes in 2015-16. Asian imports have replaced Australian production from three cement manufacturing plants that are no longer in operation as integrated cement facilities. The cement industry's reliance on coastal shipping in Australia has therefore been reduced.
- ❖ Cabotage regulation is estimated to increase Australian coastal shipping costs by up to 16 per cent in the dry bulk sector<sup>3</sup>.
- ❖ Taxing cement manufacturers through hidden, distortionary cabotage measures is not the solution – if it is in the national interest to provide assistance to the Australian maritime sector it should be a transparent budgetary measure paid by all taxpayers.

## 2. Australian Cement Manufacturing

The Cement Industry Federation represents all Australian manufacturers of integrated cement and cement products.

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<sup>1</sup> The Full Court of the Federal Court of Australia, *CSL v Minister for Infrastructure and Transport* 10, February 2014.

<sup>2</sup> Coastal Trading (Revitalising Australian Shipping) Act 2012 - Section 11 exemption for cruise vessels. See <https://www.legislation.gov.au/Details/F2012L02585/Supporting%20Material/Text>

<sup>3</sup> Deloitte Access Economics, *Economic impacts of the proposed Shipping Reform Package*, February 2012.



Over 1,000 people are directly employed with thousands more involved in the downstream production and distribution of concrete. Sales of cement materials are around 9 million tonnes, with CIF member companies reporting an annual turnover in excess of \$2.2 billion.

Our key import competition is from Asia – including Japan, China and Indonesia. Australia's cement manufacturing plants are located in Berrima (New South Wales), Gladstone (Queensland), Railton (Tasmania) and Port Adelaide and Angaston (South Australia).

Australian cement manufacturers rely on coastal shipping to move its products for processing and for sale. Other transport modes are usually not an option due to the regional locations of our cement plants and the relative cost of moving high volumes of product.

Australian cement manufactured products must be internationally competitive to remain viable. As an 'import competing' industry (all product is sold domestically) it should not be subjected to unnecessary regulatory imposts its competitors do not face.

### 3. Costs arising from the Coastal Trading Act 2012 and related legislation

Although the *Coastal Trading Act 2012* and related measures have been promoted as a 'Stronger Shipping for a Stronger Economy'<sup>4</sup> legislative package, these policies have not been a success and have led to a further contraction of the Australian coastal shipping sector.

The core reasons for the failure of the 2012 legislative package are:

- ❖ The underlying demand for coastal shipping is derived from the Australian manufacturing sector<sup>5</sup>, which has undergone significant structural change in recent years with increasing reliance on imports; and
- ❖ The increased cost burden associated with further regulating coastal shipping has been borne directly by the manufacturing industry in Australia that can ill afford to be propping up another sector when it must stay competitive with Asian substitutes for its products.

Coastal shipping cannot grow without a strong vibrant Australian manufacturing sector. Increasing cabotage arrangements will never succeed when the associated regulatory cost burden is passed directly through to its key customers.

The 2012 Coastal shipping legislation was not properly scrutinised for its economic and productivity impacts, despite overall **negative cost impacts** being forecast in the related Regulatory Impact Statement (RIS).<sup>6</sup>

The 2011 RIS stated that any productivity gains would not eventuate from *the Coastal Trading Act 2012*, but through a **Productivity 'Compact'**<sup>7</sup> between Australian shipowners and the shipping unions. The signatories of the Compact have been unsuccessful in creating significant change in the competitiveness of the sector due to the regulatory imposts imposed by the underlying legislation.

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<sup>4</sup> Department of Infrastructure and Transport (DIT), 'Stronger Shipping for a Stronger Economy', Brochure, September 2011.

<sup>5</sup> The key customers of Australian coastal shipping are Australian cement, aluminum, petroleum, fertilizer, plasterboard, and sugar producers and manufacturers.

<sup>6</sup> Department of Infrastructure and Transport, 'Reforming Australia's Shipping: Regulation Impact Statement', August 2011.

<sup>7</sup> Bluewater Shipping Reform Labour Relations Compact between Australian Shipowners Association, the Australian Maritime Union of Australia and the Australian Maritime Union of Australia, 30 May 2012.



#### 4. Measuring policy 'success'

The dilemma associated with measuring the success of cabotage coastal shipping arrangements is that the key stakeholders within the sector have different goals and therefore different 'measures of success'. This is reflected in the inconsistencies between the objects of the *Coastal Trading Act 2012* that have resulted in legal uncertainty.

Section 3(1) provides that the object of the Coastal Trading Act is to provide a regulatory framework for coastal trading in Australia that:

- (a) *Promotes a viable shipping industry that contributes to the broader Australian economy;*
- (b) *Facilitates the long term growth of the Australian shipping industry;*
- (c) *Enhances the efficiency and reliability of Australian shipping as part of the national transport system; and*
- (d) *Maximises the use of vessels registered in the Australian General Shipping Register in coastal trading;*
- (e) *Promotes competition in coastal trading; and*
- (f) *Ensures efficient movement of passengers and cargo between Australian ports.*

As noted by Porter<sup>8</sup> in 2014 the Federal Court of Australia, in considering the competing objectives of the Coastal Trading Act, ruled that **price (commercial terms)** could not be considered in determining if a foreign versus a domestic vessel be awarded a licence to operate in Australia coastal shipping.

This ruling means a shipping customer (for example an Australian cement manufacturer) has no say on how much it will cost to move its product from Port A to Port B in Australia.

Increased cabotage regulation has led to the continuing demise of the Australian coastal shipping sector as its protected cost structure cannot compete with its international competitors (or increasingly domestic road and rail). As the related cost burden of coastal shipping cabotage arrangements is passed directly to Australian shipping customers, the urgency in implementing reform measures is highlighted.

For example, the Australian cement industry is a significant customer of coastal shipping. It relies directly on coastal shipping to move its inputs and final products to market around Australia. As an import competing industry it is trade exposed to Asian production. Transport costs are a significant part of its cost base so any related and unnecessary regulatory costs can directly contribute to import replacement over time.

Since 2012-13, imports of cement from Asia to Australia have increased from 2.4 million tonnes to 3.5 million tonnes in 2015-16. These Asian imports have directly replaced Australian production from manufacturing plants that are no longer in operation as integrated cement facilities. It is therefore in the interests of all stakeholders within the Australian coastal shipping sector to consider the true consequences of cabotage regulation.

#### 5. Incorrect Promotion of Cabotage Arrangements

##### **“Cabotage is an environmental and security reform”**

Claims that Australian registered vessels operating on the coast are better for our marine ecosystems or for Australia's security overlook the fact that in percentage terms, almost all shipping traffic is not for domestic 'coastal shipping' but for international trade. Australian ships provide no automatic guarantee of a more environmentally friendly operation or better security. The existing regulatory framework is key to preventing environmental issues on our coastline.

##### **“Cabotage rules in Australia are 'simple and transparent”**

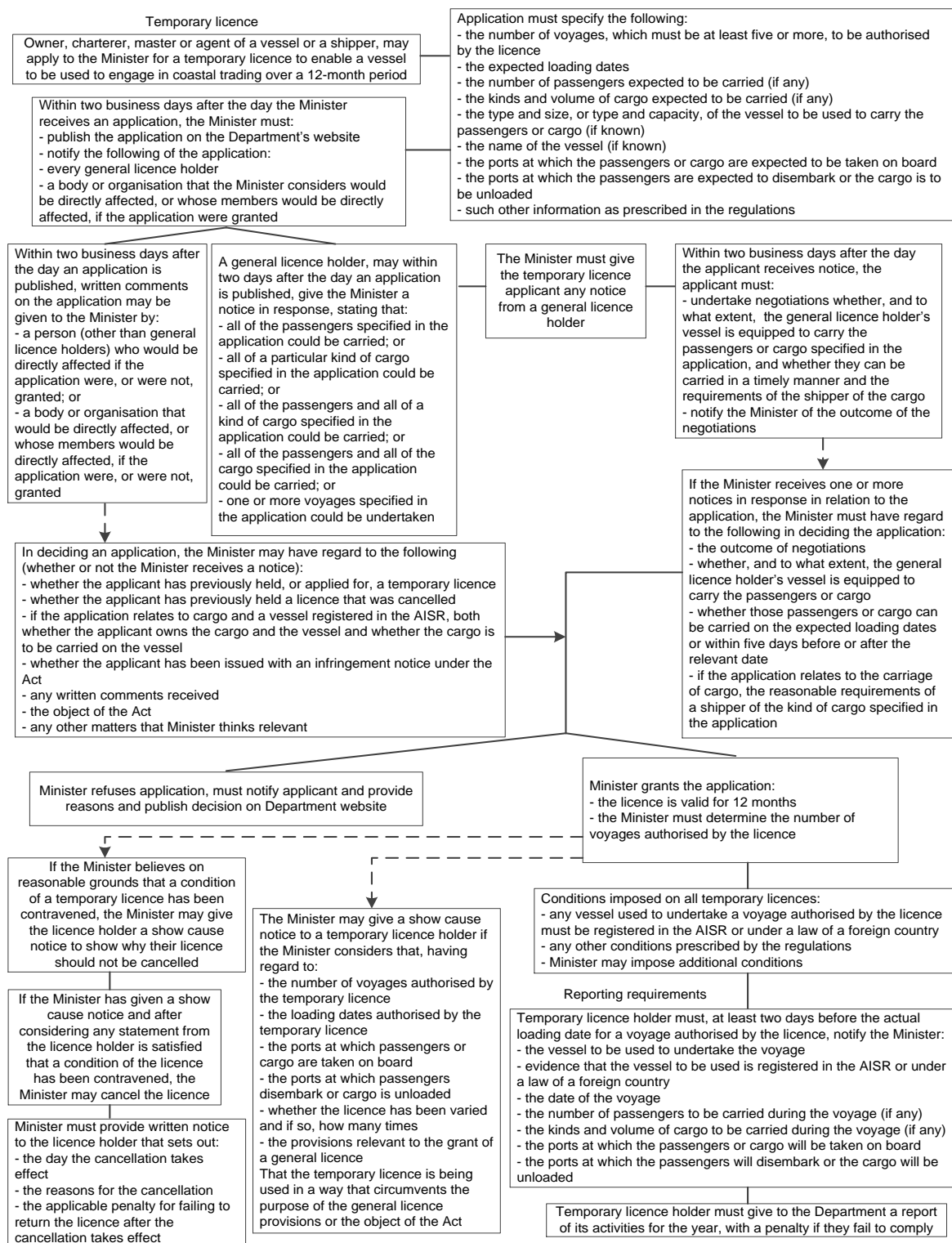
The current arrangements are not simple and transparent as seen in *Figure 1*.

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<sup>8</sup> Porter, J., Australian Coastal Shipping: Navigating Regulatory Reform, *Australian and New Zealand Maritime Law Journal*, Vol. 29 (1), February 2015, p.10



**Figure 1: The temporary licensing process for eligible vessels to engage in coastal trading<sup>9</sup> - Under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cwlth)**



<sup>9</sup> Productivity Commission 2014, *Tasmanian Shipping and Freight*, Report No. 69, Inquiry Report, Appendix C, Canberra  
– it is recommended that Members of the Senate Red Tape Committee read this Appendix as it provides an excellent overview of the current cabotage arrangements in coastal shipping

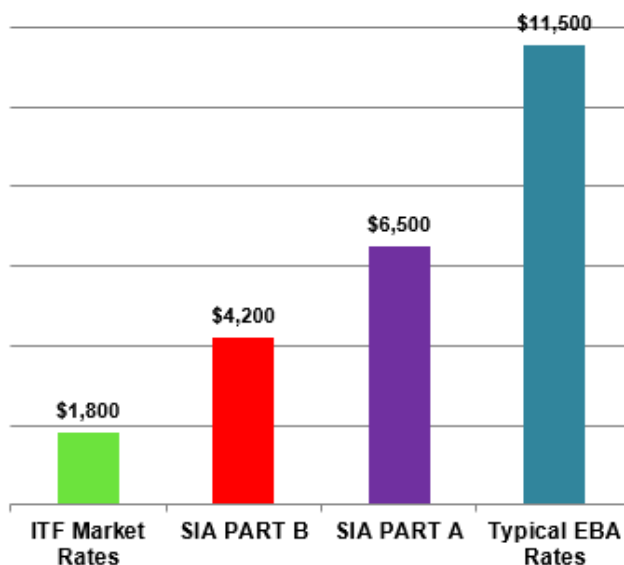


The complexity of the current cabotage arrangements act a disincentive for international shipping charterers to enter the market. As a result, one charterer currently carries the majority of dry bulk product on behalf of Australian manufacturers. This lack of competition increases the opportunity to pass through higher freight and labour costs to Australian manufacturers as seen in **Figure 2**.

**“Most countries in the world have cabotage rules”**

Other countries that impose ‘cabotage restrictions’ move significant volumes of coastal shipping freight and cover less metric miles per tonne than Australia. No other country has the level of restrictive regulatory cabotage practices as Australia and consideration should always given in ensuring the cost burden is not passed through to its domestic customers.

**Figure 2: Daily Rate for an Australian Coastal Shipping Vessel<sup>10</sup>**



**6. Cement Industry Federation Coastal Shipping Principles**

The Productivity Commission provides an overview of the distortionary impacts of coastal shipping in Australia and notes:

*“The cumulative effects of the changes (to coastal shipping legislative arrangements) has been to:*

- *increase the costs of providing domestic coastal trading services;*
- *deter international vessels from engaging in Australia’s coastal trade and direct international services that rely on coastal trade volumes for commercial viability; and*
- *reduce the level of competition in Australia’s coastal trading network.*

*These changes are likely to have a substantial long term impact on Australia’s shipping industry, and those Australian businesses that rely on shipping services to transport their goods to market”.*

**Source: Productivity Commission, Tasmanian Shipping and Freight, Report No. 69, Inquiry Report, Appendix C, Canberra**

<sup>10</sup> National Bulk Commodities Group’s (NBCG), Comments in response to the Australian and New Zealand Productivity Commissions’ discussion paper entitled ‘Strengthening Economic Relations between Australia and New Zealand, Paper B: Transport Services’, October 2012.



The Australian cement industry is required to conduct its business in an internationally competitive environment where product value, price competitiveness and certainty of supply are key elements in appreciating the attractiveness of Australia's dry bulk products. The key principles that the Cement Industry Federation believes should underpin coastal shipping reform are:

- ❖ The provision of coastal shipping services that are competitive with those available internationally;
- ❖ Sufficient open competition in the Australian coastal shipping market that ensures Australian manufacturers (and other customers) can be confident that shipping legislation can be maintained over time; and
- ❖ Any necessary regulatory impost should allow shipping to be managed within modern business constraints – this includes the ability to promptly and predictably alter shipping arrangements at short notice in response to operational, market and emergency factors.

## 7. Key Recommendations

### **Issue 1: Complexity and conflicting objectives of the current Coastal Shipping legislation**

Complexity and conflicting objectives within the current Coastal Trading legislation have resulted in increasing the costs of providing domestic coastal trading services; deterred international vessels from engaging in Australia's coastal trade and direct international services that rely on coastal trade volumes for commercial viability; and reduced the level of competition in Australia's coastal trading network according to the Productivity Commission.

#### **Recommendation**

That all relevant coastal shipping legislation be rescinded by the Australian Parliament and replaced with a simple framework that truly promotes internationally competitive and efficient coastal shipping in Australia.

Any revised legislation must ensure unnecessary regulatory imposts (direct and indirect) that could be passed through to Australian manufacturers be avoided. For example, if it is the national interest to support maritime training it should be subsidised directly by the Federal and State Governments.

### **Issue 2: Lack of competition in the Australian Coastal Shipping Market**

Until reform of the current coastal trading legislation has been undertaken it is critical that the current cost burden that results from cabotage on Australian cement manufacturers is reduced. Imports of clinker and cement have increased from 2.4 million tonnes in 2012-13 to 3.5 million tonnes in 2015-16.

The regulatory impost of cabotage in Australia has increased Australian coastal shipping rates by over 15 per cent during this period - a cost that is not imposed on Asian clinker and cement importers. It costs more to move Australian clinker and cement around Australia's coastline than it does to import our products from Asia to Australia.

#### **Recommendation**

That the Federal Minister for Infrastructure and Transport determine under Section 11 of the *Coastal Trading Act 2012* through legislative instrument that 'cement and clinker' be exempt from Act and related legislation (as per passenger vessels over 5000 gross tonnes<sup>11</sup>). It is requested that immediate consideration be given to this recommendation to ensure the future competitiveness of Australian cement manufacturing.

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<sup>11</sup> Coastal Trading (Revitalising Australian Shipping) Act 2012 - Section 11 exemption for cruise vessels. See <https://www.legislation.gov.au/Details/F2012L02585/Supporting%20Material/Text>



**Issue 3: An Australian cement manufacturer has ‘no say’ on the commercial terms it has to pay to move its product from Port A to Port B in Australia due to cabotage arrangements**

This issue was recently tested by the Full Court of Australia in 2014<sup>12</sup> where it ruled that manufacturers can be forced to use a General Licence vessel even where a Temporary Licence vessel is offering better commercial terms for the same voyage<sup>13</sup>.

**Recommendation**

That the Objects of the Act are amended to ensure the commercial terms of a temporary versus general licenced vessel are given overriding consideration in the determination of providing a temporary licence.

**8. Federal Government’s Discussion Paper – Coastal Shipping Reforms<sup>14</sup>**

The Cement Industry Federation will also be providing comment on the Federal Government’s 2017 Discussion Paper on proposed amendments to the Coastal Trading Act in late April 2017. In summary, comments will include:

- 1. The minimum five voyage requirement to obtain a temporary licence be removed** as this only acts as a barrier to the uptake of coastal shipping. The Cement Industry Federation agrees that providing details in advance for five voyages is impractical and leads to inefficiencies, both in terms of time and the cost in administrative changes for both Government and industry. It should be noted that it recently took three weeks for one of our members to have their temporary licence (TL) application evaluated for a ‘spot market’ shipping requirement.
- 2. Streamlining the licencing process when no General Licence (GL) vessels are available** is a sensible amendment. It is pointless to make it compulsory to consult GL holders and other stakeholders if it can be demonstrated that there are no GL vessels capable of carrying the proposed product.
- 3. Streamlining the TL variation process** will reduce the ‘consultation’ time period and lead to greater administrative efficiencies.
- 4. The need to lodge a ‘voyage notification’ two business days before the loading date of a voyage when the date has not changed should not be required.** The proposed Federal Government amendment is therefore supported to reduce the associated regulatory burden.
- 5. Amending the tolerance limits for loading dates from 5 to 30 days** is a critical amendment as current legislative requirements make it close to impossible to allow for late changes to be made. Removal of the volume tolerance limits, as proposed by Federal Government, would also be welcomed.
- 6. Replacing the current three tier regime to GLs and TLs** is a further sensible amendment to the Coastal Trading Regulations 2012 in terms of simplification and allows emergency situations to be considered with the GL and TL licence framework.
7. Amendments referring to dry docking and other minor amendments are further supported.
8. The Cement Industry Federation does not support using **wage differential payments (ie the difference between Part B and Part A of the Seagoing Industry Award to fund maritime training.**

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<sup>12</sup> The Full Court of the Federal Court of Australia, *CSL v Minister for Infrastructure and Transport* 10, February 2014

<sup>13</sup> Porter, J., *Australian Coastal Shipping: Navigating Regulatory Reform*, *Australian and New Zealand Maritime Law Journal*, Vol. 29 (1), February 2015, p.10

<sup>14</sup> Department of Infrastructure and Regional Development, *Coastal Shipping Reforms – Discussion Paper*, March 2017





## 9. Further contact

Thank you for the opportunity to provide the above comments. Further details about the Cement Industry Federation can be found at [www.cement.org.au](http://www.cement.org.au)

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## Attachment: Coastal Shipping Facts

### Size of the Coastal Shipping Market

The volume of goods and commodities that are moved around Australia's coastline using coastal shipping is often overstated. Over 95 per cent of Australian shipping is for exporting and importing goods and commodities to and from Australia. This is not coastal shipping and is not covered by the *Coastal Trading Act 2012* and related legislation – **Figure 1<sup>15</sup>**.

**Figure 1: Australian International and Coastal Shipping**



Australian coastal shipping is used to move Australian **manufactured** input requirements and final products around Australia's coastline – including cement, aluminium, steel, fertiliser, petroleum, sugar, plasterboard and other smaller manufacturing products. Australian coastal shipping represents **4 per cent** of Australia's shipping trade.

### Australian manufacturing facilities create the demand for coastal shipping

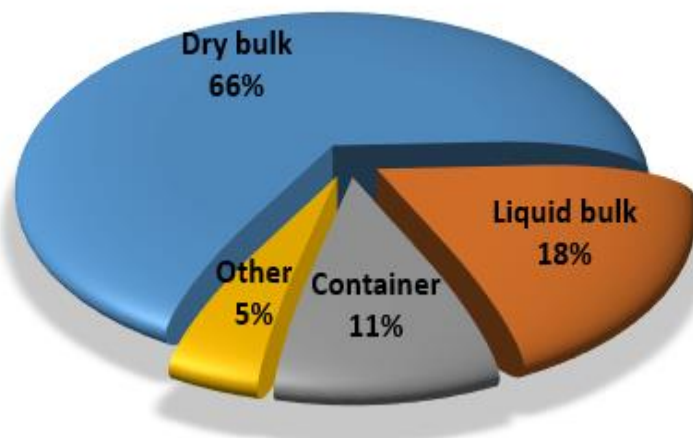
Australia's coastal shipping task can be broken down into key categories - **Figure 2<sup>16</sup>**. Australian manufacturing (dry bulk and liquid bulk freight) - is approximately 85 per cent of Australia's coastal shipping task.

<sup>15</sup> Bureau of infrastructure, Transport and Regional Economics, Statistical Report Australian Sea Freight, 2013-14

<sup>16</sup> Bureau of infrastructure, Transport and Regional Economics, Statistical Report Australian Sea Freight, 2013-14



Figure 2: Australian Coastal Shipping freight



**Australian manufacturing coastal shipping requirements include:**

- Iron ore for Australian iron and steel manufacturing
- Bauxite for Australian alumina manufacturing
- Australian manufactured alumina for Australian aluminium manufacturing
- Crude oil (domestic and imported) for Australian petroleum refinement
- Australian refined petroleum products
- Coal for Australian manufacturing requirements
- Cement clinker for Australian cement manufacturing
- Australian manufactured cement
- Gypsum for Australian plasterboard manufacturing
- Raw sugar for refined sugar manufacturing
- Australian manufactured fertiliser used by Australian farmers