



# Coastal Shipping Reform

## Considerations for Tasmania

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## Executive Summary

Tasmania is uniquely positioned as Australia's only island state with an almost total reliance on shipping to transport goods to and from its markets. Whilst Tasmanian businesses enjoy a high frequency service provided by three shipping lines across Bass Strait, this comes at a cost. These costs have increased due to the limited provision of an international shipping service and increased Port of Melbourne costs, which is the main port of landing for Tasmanian exports.

Export off-island is vital to the Tasmanian economy, which is currently experiencing incremental economic growth and increasing export volumes, but higher average unemployment rates compared to mainland Australia. Addressing the issues of Bass Strait Shipping to achieve the best possible outcomes – namely to secure a reliable and cost effective shipping service, is the key objective for our economic future.

The Australian Government is considering a change to existing Coastal Shipping legislation to support improved competition, reduced freight pricing and more choice for Australian exporters. Considerations for and against these proposed changes form significant debate within the freight industry and are summarised below.

### *Summary of reasons supporting Coastal Shipping Reform*

- Alternate freight service options for Tasmanian Exporters
- More competition in the marketplace
- Better pricing for Tasmanian Exporters
- Diversification of shippers reduces the reliance on local operators and duopoly effect

### *Summary of reasons for retaining the current Coastal Shipping Law*

- Retaining a long term reliable shipping service that is Employment for Tasmanian communities
- Maintaining an Australian Shipping and seafarer presence in the market
- Ensuring Tasmanian Exporters are given long term freight service provision that is not determined by overseas shipping companies and service providers

### *Summary of suggested strategies to assist Tasmanian Exporters*

- Treat Tasmania as a unique case for Australia Coastal Shipping considerations
- Allow the market to set the price for freight
- Strategic relief from cabotage for specific cases
- More effective aggregation of freight
- Recognising the value proposition of locally owned and operated shipping services

## Foreword

While RDA Tasmania has included all relevant information at its disposal, this document is only current to the date of publication (9<sup>th</sup> November 2016).

At the time of writing, ongoing developments are occurring in respect to Bass Strait Shipping. For instance, the announcement by DP World made on the 26<sup>th</sup> October 2016 to establish a container terminal in Burnie to start operation in late 2017.

Tasports and DP World propose an initial minimum \$20million staged investment in new port infrastructure and terminal capacity enhancements<sup>1</sup>.

It is expected this new facility will reduce pricing in containerised freight to key destinations as well as boosting international trade and providing access to new markets with better freight choice for Tasmanian exporters.

## Acknowledgement

RDA Tasmania acknowledges that the majority of the content for this document is derived from the Australian Senate website, the Productivity Commission Inquiry into Tasmanian Shipping and Freight 2014 and other government publications and reports.

These reports have not been used in any way to form a viewpoint that either supports Coastal Shipping reform or maintaining the existing legislation. Rather the information contained in these reports has been used in this document to describe and illustrate the complexities of the current environment.

RDA Tasmania gratefully acknowledges the input provided by members of the Tasmanian Logistics Committee in the preparation of this document.

## Purpose

This report has been prepared to give an understanding of the events that shape the current Coastal Shipping Reform debate for Tasmania. Existing and proposed legislation along with considerations, for both retaining the existing regime and implementing change in respect of allowing foreign flagged vessels to trade within Australian waters, have been included in this report.

A conclusion and executive summary has been compiled to summarise the main points of the document along with suggestions and recommendations as to how Tasmania's freight needs are best considered for the future. It must be stressed that this **report does not provide an RDA Tasmania opinion** on which initiatives and / or recommendations best fix the issues identified. It merely aims to summarise and offer an understanding of the key themes surrounding Coastal Shipping Reform.

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<sup>1</sup> <https://www.loydshistaustralia.com.au/lla/market-sectors/ports/DP-World-to-push-ahead-with-Burnie-terminal-540786.html>

## Background

### Tasmania

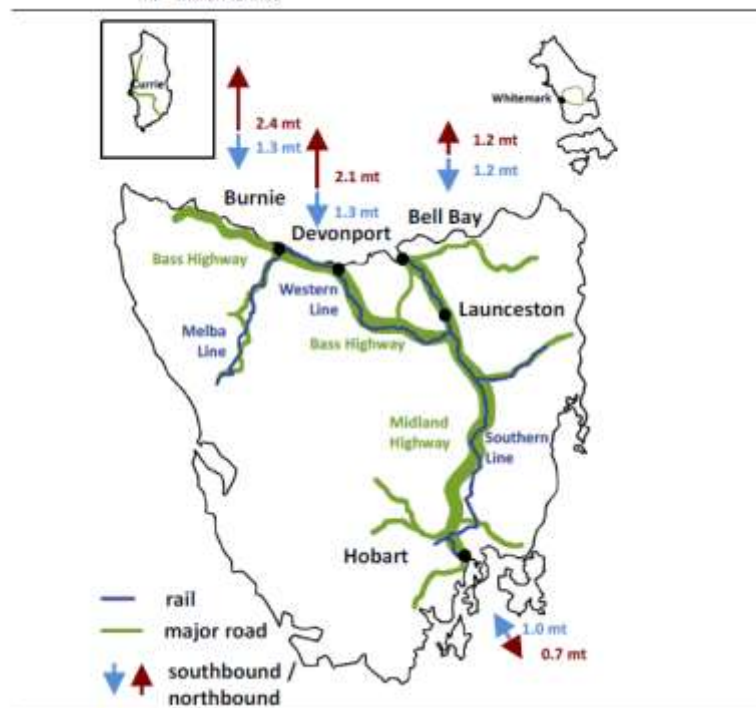
Tasmania is uniquely positioned as Australia's only island state with an almost total reliance on shipping to transport goods to and from its markets. Whilst Tasmanian businesses enjoy a high frequency service provided by three shipping lines across Bass Strait, this comes at a cost. These costs have increased due to the limited provision of an international shipping service and increased Port of Melbourne costs, which is the main port of landing for Tasmanian exports.

Export off-island is vital to the Tasmanian economy, which is currently experiencing incremental economic growth and increasing export volumes, but higher average unemployment rates compared to mainland Australia. Addressing the issues of Bass Strait Shipping to achieve the best possible outcomes – namely to secure a reliable and cost effective shipping service, is the key objective for our economic future.

### Definition of Cabotage

Cabotage by definition *"is the transport of goods or passengers between two places in the same country by a transport operator from another country. It originally applied to shipping along coastal routes, port to port but now applies to aviation, railways and road transport as well".*<sup>2</sup>

Figure 2 Tasmanian freight movements (major ports), 2012-13  
mt = million tonnes



Source: Productivity Commission Inquiry into Tasmanian Shipping and Freight 2014

<sup>2</sup> <https://en.wikipedia.org/wiki/Cabotage>

## Productivity Commission report into Bass Strait Shipping 2014

The Productivity Commission completed its investigation into Tasmanian Shipping and Freight in 2014 (as part of the Australian Government's (Liberal) election commitment) and noted the following in regard to the current shipping service provision for Tasmanian exporters:

*"There are three shipping lines providing overnight daily services between Tasmania's northern ports and the Port of Melbourne: Toll ANL, SeaRoad Holdings, and the Tasmanian Government-owned TT-Line. Toll has over 50 per cent market share, with the other two providers holding roughly equal shares of the remainder. The later daily departure time and faster speed of the TT-Line service and its greater capacity for handling trailerised fresh freight means that it offers a distinct service.*

*Notably, ANL also provides international shipping services. In the absence of a direct international container service, other international shipping lines servicing Tasmanian importers and exporters must utilise one of the three Bass Strait shipping lines.*

*Overall, and as supported by participants' submissions and evidence, the existing shipping lines provide high quality — but high cost — services to Tasmanian shippers (users of shipping services). While producers in Tasmania have diverse needs and many would prefer a lower-priced and less frequent service, they have mostly adapted their business operations to the current level and cost of service.*

*Only 15 per cent of Tasmanian northbound products require an overnight service, yet up to half of all goods transported have logistic chains built around the immediate flow of product after production.*

*Whether the current shipping industry structure provides for effective competition and efficient shipping services is unclear. Some participants, primarily ship owners and larger shippers, consider that the three shipping lines compete for volume on price and service offerings.*

*However, many of these same participants expressed concerns about 'excessive' Bass Strait shipping costs. Others, especially smaller shippers, also contended that there is an inherent lack of competition on what is essentially a niche route.*

*In their view, there are essentially the two commercial shipping firms operating with high levels of capacity utilisation and limited necessity to compete aggressively on that route, with limited influence from the Tasmanian Government-operated TT-line"<sup>3</sup>*

Among the recommendations made by the Productivity Commission in its final report (2014):

### **Productivity Commission Bass Strait Shipping Report - RECOMMENDATION 1 (CHAPTER 4)**

***The Australian Government should proceed with the foreshadowed review of coastal shipping regulation (including cabotage) as a matter of priority. The objective of the review should be to achieve the most efficient coastal shipping services feasible for Australia. <sup>4</sup>***

<sup>3</sup> Productivity Commission inquiry into Tasmanian shipping and Freight 2014Page 9 and 10

<sup>4</sup> Productivity Commission inquiry into Tasmanian shipping and Freight 2014Page 29



## What we know

### Current operators and support mechanisms

#### Current Tasmanian Operators

Three main shippers provide a regular Bass Strait Shipping Service from Devonport and Burnie Ports to Melbourne: Toll ANL, SeaRoad Holdings, and the Tasmanian Government-owned TT-Line.

Between these shippers approximately 900 sailings occur annually between Melbourne and Tasmania (and return) with approximately 320,000 container movements (235,000 full and 85,000 empty). In addition approximately 65,000 wheeled unit (trailers) movements occur with 50,000 full trailers and 15,000 empty trailers<sup>5</sup>.

Almost 99 per cent of Tasmania's freight is carried by sea, with the remainder by air. The majority of Tasmania's sea freight is destined for domestic markets, with just over 11 per cent of freight transhipped through Melbourne for international export.

The net outflows and inflows of freight are approximately the same and this substantiates the reliance Tasmania has on sea freight as a lifeline for its economy.

#### Support Mechanisms – Tasmanian Freight Equalisation Scheme (TFES)

*"The TFES provides financial assistance for cost incurred by shippers of eligible non-bulk goods moved by sea between Tasmania and mainland Australia. The amount of assistance is based on the difference between the freight costs of moving the goods by sea and the notional freight costs of moving them by road over an equivalent distance.*

*The objective of the scheme is to provide Tasmanian industries with equal opportunities to compete in other markets, recognising that, unlike their mainland counterparts, Tasmanian shippers do not have the option of transporting goods interstate by road or rail. Assistance is also available for eligible non-bulk goods shipped between the main island of Tasmania and either King Island or the islands of the Furneaux Group".<sup>6</sup>*

Until 2015 this scheme cost approximately \$95 million per annum with the export freight component supported with funding of \$60 million and the remainder \$35 million supporting the Bass Strait Passenger Vehicle Equalization Scheme (BSPES) -introduced in 1996. In March 2015, the Australia Government announced an extension of the TFES (commencing 1st January 2016) to include the 11 per cent (approximately) of international exports from Tasmania that were not currently supported by the scheme. With a commitment of \$50.75 million additional funding per annum for the next 4 years this funding will ease the cost of international export for many Tasmanian businesses that trade internationally.<sup>7</sup>

<sup>5</sup> Industry Sourced data October 2016

<sup>6</sup> <https://infrastructure.gov.au/transport/programs/maritime/tasmanian/>

<sup>7</sup> <https://infrastructure.gov.au/transport/programs/maritime/tasmanian/>

## News Article

### *Tasmanian Freight Equalisation Scheme kicks in amid optimism from freight industry*



*The freight industry is optimistic an extension to the Tasmanian Freight Equalisation Scheme, which starts today, will help producers access more markets. The \$200 million extension allows exporters to receive increased payments for transport across Bass Strait.*

*Under the previous arrangements, one third of containerised goods from the island state were eligible for assistance, and goods shipped from Tasmania to overseas ports via Melbourne were generally not eligible. Freight Logistics Council chairman Steve Henty said some industries had already started gearing up to take advantage of the new scheme.*

*"Whilst it [the scheme] will be of benefit to existing markets what we're seeing is it's opening up markets that were previously not available due to the shipping costs," he said. "Some exciting things are artisan barley for gluten free beer into Europe, an expansion of onions into markets. Cherries have grown considerably and added with some free trade agreements which makes it [the scheme] particularly lucrative for the cherry market."*

*The change means that exporters will be paid \$700 per container for exports transported across Bass Strait from Tasmania.*

*Mr Henty said the industry was working to address capacity constraints. "One of the private operators is upping tonnage, putting in a larger ship that will increase the capacity across the Bass Strait by 25 per cent," he said. "Not only that, we've had a couple of new international services calling into Tasmania too."*

*The scheme was announced by former prime minister Tony Abbott in March 2015.*

*Freight subsidies designed to alleviate Bass Strait shipping costs, and described as being critical to Tasmania's prosperity, were first introduced in 1976. Tasmanian exporters had lobbied for changes to the federal subsidy scheme for a number of years.<sup>8</sup>*

*Source: ABC News January 1<sup>st</sup> 2016*

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<sup>8</sup> <http://www.abc.net.au/news/2016-01-01/tasmanian-freight-equalisation-scheme-kicks-in/7063000>



## Proposed Legislation

### *Shipping Legislation Amendment Bill 2015*

In 2015, the Australia Government (Coalition) introduced proposed amendments to the *Coastal Trading (Revitalising Australian Shipping) Act 2012* to:

- replace the existing system of three levels of licences for coastal shipping with a single permit
- allow vessels to be registered on the Australian International Shipping Register (AISR) if they undertake 90 days international trading a year (instead of the current requirement to be ‘predominantly engaged’ in international trade) and allow these vessels to engage in coastal shipping and
- alter the workplace relations environment so that:
  - only seafarers on vessels engaged in coastal shipping for six months or more are covered by the *Fair Work Act 2009* (the FWA) and
  - making a collective agreement with workers is no longer a condition for being registered on the AISR.<sup>9</sup>

The intention of the proposed Bill is to:

- open the Australian coastal shipping market to increased foreign competition
- increase flexibility in the coastal shipping sector
- seek to reduce the cost of coastal shipping
- extend regulation to cruise ships, transshipment vessels supporting the operation of offshore facilities (and those transporting liquid fuel products from them to Australia) and certain other activities and
- provide a limited form of protection to domestic shippers against foreign competition in the form of a degree of competitive neutrality (at least in regards to wage costs).<sup>10</sup>

## Existing Legislation

### *Coastal Trading (Revitalising Australian Shipping Act) 2012*

In 2012, the Australian Government (Labor) passed legislation “*Coastal Trading (Revitalising Australian Shipping) Act 2012*” which was designed to respond to the long term decline in the number of Australian flagged trading vessels by providing various tax incentives and introducing specific measures to create a more equal “playing field” for all shippers operating within Australian Territorial waters.

The specific measures in the Act were designed to increase the competitiveness of Australian ships and to provide them, in effect, with comparative advantages over foreign ships (at least in terms of operational and scheduling flexibility).

<sup>9</sup>

[http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1516a/16bd053](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1516a/16bd053)

<sup>10</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1516a/16bd053](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1516a/16bd053)

Using the classification system noted below, Australia’s coastal shipping regime would be classified as partially open, tending towards closed (depending on how significant a barrier to foreign competition the ‘notice in response’ system represents).<sup>11</sup>

**Table 1: cabotage arrangements of selected jurisdictions<sup>12</sup>**

Country	Type of regime	Policy measures	Policy objective
<b>Canada</b>	Closed	Access to coastal trade and short sea shipping restricted to Canadian ships unless none are available, in which case foreign ships may be used under waiver.	Provide a protected environment in which Canadian short sea shipping can prosper without being exposed to full force of international competition.
<b>European Union</b>	Partially open	Maritime transport services within a member state (that is, purely national connections) can be offered by companies of other member states. Some member states restrict access to flags of EU members while others don’t.	Liberalisation between EU members while supporting the policies of EU member states to support their own shipping industries. Increase opportunity to access EU cargo while maintaining some restrictions to EU flags.
<b>United States</b>	Closed	Highly restrictive. Coastal trade restricted to US built, US owned, US crewed and US flagged ships. Waivers may be granted but only in the interest of national defence.	Promotion and maintenance of the US merchant marine industry to protect national and economic security of country.
<b>New Zealand</b>	Partially open	Access to coastal trade restricted to NZ ships and foreign ships that pass NZ as part of an international voyage. Minister may authorise another ship on terms the minister thinks appropriate.	Part of a move toward liberalisation of a range of public policy areas in the 1990’s. There were calls to reintroduce tighter regulation after the <i>Rena</i> oil-spill incident to ensure appropriate safety and environmental protection.
<b>Japan</b>	Partially open	Access to coastal shipping of cargo or passengers restricted to Japanese ships, with the exception of vessels from a limited number of other countries which have been granted access pursuant to treaties or which have obtained a permit.	National security, the reliable transport of everyday goods for local residents and the secure employment of domestic crew members.
<b>China</b>	Closed	Foreign vessels not permitted to engage in coastal shipping.	Protecting China’s economic interests and ensuring its sovereignty and safety.

<sup>11</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1516a/16bd053](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1516a/16bd053)

<sup>12</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1516a/16bd053](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1516a/16bd053)

The key reforms introduced by the Act included tax measures to remove barriers to investment in Australian shipping and to foster the global competitiveness of the shipping industry such as the Seafarers offset (in effect, a wage subsidy via the tax system for ships employing Australian crews; a provision to abolish that offset is in a Bill which is before the Senate) and other initiatives such as:

- the establishment of a new shipping Registrar (the AISR) to encourage Australian companies to participate in the international shipping trade
- a new regulatory framework including a three-level licensing regime for coastal trading and
- the establishment of a Maritime Workforce Development Forum to progress key maritime skills and training priorities.

In his second reading speech on the 2012 package, the then Minister for Infrastructure and Transport, Mr Albanese, confirmed that seafarers working on vessels engaged in coastal shipping would continue to be covered by the Fair Work Act 2009 (FWA).<sup>13</sup>

The commencement of the FWA ended the different wage treatment between foreign seafarers and Australian seafarers engaged in coastal trading. Under the FWA and the Fair Work Regulations 2009, all vessels engaged in coastal trading in Australia were required to pay Australian award rate wages to their crew. However, subsequent amendments to the FWA Regulations partially wound back that change.

## Other Considerations

### *Harper Review – Competition and Consumer Act 2010 (CCA)*

#### **Liner shipping (Part X) and cabotage (coastal shipping and aviation)**

The Harper Review's Terms of Reference (3.3.5) require it to consider whether existing exemptions from the competition law and/or historic sector-specific arrangements are still warranted. This includes Part X of the CCA, which exempts international liner cargo shipping from certain competition provisions, including cartel conduct, contracts, arrangements or understandings that affect competition, and exclusive dealing.

Liner shipping is a vital mechanism through which goods cross Australia's borders, both for export and import. Many items moved by sea cannot be transported by air because of their weight or volume. These include not only finished goods but also intermediate inputs for Australian businesses. The importance of international trade to Australia's economy, and the prospects for stronger growth in trade as Asia develops, focus attention on the need for efficient and competitive marine transportation.

Part X of the CCA allows liner shipping operators to enter into agreements among themselves in relation to the freight rates to be charged, and the quantity and kinds of cargo to be carried, on particular trade routes, and to register those agreements with the Registrar of Liner Shipping (an office created under Part X). Registration confers an exemption from the cartel conduct prohibitions and sections 45 and 47 of the CCA.

<sup>13</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1516a/16bd053](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1516a/16bd053)

Although the test for registering a conference agreement under Part X involves assessing the agreement's 'overall benefit' to Australia, it does not expressly require assessing its competitive effects. Also, the test is not assessed by the primary competition regulator, the Australian Competition and Consumer Commission (ACCC), but by the Registrar of Liner Shipping.

No other industry enjoys legislative exemption from Australia's competition laws. This is despite the fact that other industries have similar economic characteristics to the liner shipping industry, particularly the international airline industry. If participants in other industries wish to make agreements that would otherwise contravene the competition law, they are required to seek authorisation from the ACCC. The Panel therefore considers that Part X should be repealed and the liner shipping industry should be subject to the normal operation of the CCA.

The ACCC should be given power to grant block exemptions (see Recommendation 39 and Section 22.3) for conference agreements that meet a minimum standard of pro-competitive features. For example, conference agreements that co-ordinate scheduling and the exchange of capacity, while allowing confidential individual service contracts and not involving a common conference tariff and pooling of revenues and losses, should be eligible for a block exemption. Other forms of agreement that do not qualify for the block exemption, and thereby risk contravening Part IV provisions, should be subject to individual authorisation.

Repeal of Part X will mean that existing liner shipping agreements will no longer be exempt from the competition law and some may contravene it. A transition period will therefore be needed to establish which agreements qualify for the block exemption and for other agreements to either seek authorisation or be modified if needed to comply with the CCA. The Panel considers a transition period of two years should be sufficient.

The Panel is aware that the Australian Government is undertaking a separate review of coastal shipping regulations but observes that cabotage restrictions raise the cost and administrative complexity of coastal shipping services. The Panel notes that restrictions on air cabotage are stricter than shipping cabotage and that the current blanket restrictions are likely to be inefficient. Cabotage restrictions that are not in the public interest should be removed.<sup>14</sup>

A recommendation resulting from this review was made specifically relating to "Cabotage – Coastal Shipping and Aviation"

The Australian Competition and Consumer Commission – Harper Review Recommendation:

**ACCC Harper Review - Recommendation 5 — Cabotage — coastal shipping and aviation**

*Noting the current Australian Government Review of Coastal Trading, cabotage restrictions on coastal shipping should be removed, unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs, and the objectives of the government policy can only be achieved by restricting competition.*<sup>15</sup>

<sup>14</sup> Competition Policy Final Review – Page 38-39 March 2015

<sup>15</sup> Competition Policy Final Review – Page 40 March 2015

## The case for Coastal Shipping Reform

The intention of the *Shipping Legislation Amendment Act 2015* proposed by the Australian Government (Liberal) in 2015 is to:

- open the Australian coastal shipping market to increased foreign competition
- increase flexibility in the coastal shipping sector
- seek to reduce the cost of coastal shipping
- extend regulation to cruise ships, transshipment vessels supporting the operation of offshore facilities (and those transporting liquid fuel products from them to Australia) and certain other activities and
- provide a limited form of protection to domestic shippers against foreign competition in the form of a degree of competitive neutrality (at least in regards to wage costs).<sup>16</sup>

### Summary of the previous, current and proposed coastal shipping regimes

The table below provides a generalised summary of the coastal shipping regimes under the **Navigation Act**, (the Act) and that proposed by the Shipping Legislation Amendment Bill 2015.

**Table 2: Summary of Australian coastal shipping regimes**

NAVIGATION ACT				
Licence or permit	Activities allowed	Crew /wage conditions	Flag	Owner or operator
Permanent and unrestricted licence	Unrestricted ability to carry coastal cargoes and passengers	Australian <sup>[110]</sup>	Australian	Australia
Single voyage permit	A single voyage to carry pre-determined cargo or passengers	Foreign <sup>[111]</sup>	Foreign	Foreign
Continuing voyage permit	Carrying specified cargo for a period of up to three months between specified ports	Foreign <sup>[112]</sup>	Foreign	Foreign

<sup>16</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1516a/16bd053](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1516a/16bd053)



CURRENT REGIME				
General licence	Unrestricted ability to carry coastal cargoes and passengers	Australian (Part A of the Award) <a href="#">[113]</a>	Australian	Australian
Temporary licence	Time, trade and/or voyage limited	Australian (Part B of the Award) <a href="#">[114]</a>	Australian (AISR registered) or Foreign (all other cases)	Australian (AISR registered) or Foreign (all other cases)
Emergency licence	Limited to emergency situations.	Australian (Part A of the Award) <a href="#">[115]</a>	Australian or Foreign	Australian or Foreign
PROPOSED REGIME				
Licence or permit	Activities allowed	Crew /wage conditions	Flag	Owner or operator
Coastal shipping permit	Unrestricted ability to carry coastal cargoes and passengers.	<p>AGSR vessels: Australian (Part A of the Award)<a href="#">[116]</a></p> <p>AISR vessels whilst operating in Australian waters: Australian (Part A of the Award) <b>and</b> minimum Australian crew requirements<a href="#">[117]</a></p> <p>Foreign vessels if engaged in costal shipping for:</p> <ul style="list-style-type: none"> <li>less than 183 days: foreign wages<a href="#">[118]</a></li> <li>more than 183 days: Australian (Part B of the Award) <b>and</b> minimum Australian crew requirements<a href="#">[119]</a></li> </ul>	Australian or Foreign	Australian or Foreign

### *The case for opening up coastal trading to foreign flagged vessels*

As the table above demonstrates neither the Act nor the previous system under the *Navigation Act* entirely excluded foreign-flagged ships from coastal shipping in Australian waters. Instead, the Act and previous system under the *Navigation Act* favoured Australian ships by providing them with a comparatively greater level of operational and scheduling flexibility compared to foreign ships.

However, the changes made by the Act appear to have had a further effect of squeezing foreign-flagged ships out of the market by increasing the regulatory burden they face, at least compared to the previous regime under the *Navigation Act*.

It has been argued that the changes made by the Act have caused transport costs to rise (although this is disputed), resulting in bulk commodities being sourced from cheaper overseas markets and negatively impacting Australian commodity producers. As a result, the proposed changes emphasise the needs of the Australian economy as a whole over the interest of Australian shippers by seeking to reduce the cost of coastal shipping by opening the coastal shipping industry to increased foreign competition.<sup>17</sup>

### *183 day rule and foreign vessels*

The proposed changes will allow foreign vessels to engage in coastal shipping year-round. However, the 183 day rule will offer a limited form of protection to Australian shipping from foreign competition, although arguably at the expense of economic efficiency. That limited protection is in the form of a degree of competitive neutrality, at least in regards to wage costs.

This is because under the proposed regime, foreign vessels that either intend to (or actually engage in) coastal shipping for more than 183 days will be subject to Australian wage and crewing. In contrast, foreign vessels that engage in coastal shipping for less than 183 days are not required to pay Australian wages or have a minimum number of Australian crew on board.

As a result, foreign ships that engage in year-round coastal trading (or at least for more than 183 days) will have their cost advantage over Australian shippers (lower wages costs) partly ameliorated. However, as foreign ships that engage in coastal trading for less than 183 days are not required to pay Australian wages, it is possible that foreign shipping companies will simply 'cycle' vessels of a similar size and purpose that they own, lease or charter for periods of less than 183 days each, thus ensuring year-round coverage for their clients without incurring Australian wage costs.

This is because the permits attach to individual vessels, not the entities that own, lease or control them. In such circumstances, foreign vessels would appear to have a substantial competitive advantage over Australian shippers, at least in relation to wage costs.<sup>18</sup>

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<sup>17</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1516a/16bd053](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1516a/16bd053)

<sup>18</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1516a/16bd053](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1516a/16bd053)

### *Competition in Coastal Shipping*

In the case of Tasmania, three existing operators -namely Toll, Searoad and TT Line, provide the majority of shipping services between Tasmania and the Port of Melbourne. Whilst pricing for freight is mainly determined by the market, there has been concerns that the “duopoly” effect between these operators does have some influence on pricing flexibility and this in turn may not produce the best outcome for Tasmanian Exporters.

Furthermore, possible expectation by these operators at receiving guaranteed market share may in turn reflect pricing that may not be as competitive should international operators be allowed access to the market place.

Therefore, the opportunity to promote competition in the market place that is sustainable over the longer term and allows the best possible pricing for freight and ongoing profitability for the shippers should be considered.

### *The case for cabotage relief in bulk mineral shipments from Tasmania*

In the majority of bulk mineral shipments leaving Tasmania to an international port destination, only a foreign shipper is able to provide an ongoing viable service for local exporters.

In the absence of any local service provision, there is a strong case for cabotage relief for the foreign shipper on the basis “in effect” there is no local shipping service (and associated jobs) to protect. Therefore it appears illogical to impose cabotage and create an impost that is unnecessary and further stymies the competitiveness of Tasmanian exporters in global markets.

Additionally, the lack of relief for bulk commodity shipments could potentially threaten the ongoing long term viability of Tasmanian based industry where no low cost alternate shipping options can be sourced.



*Hobart Port - Tasmania*

## News Article

### ***Albanese's coastal shipping laws cause Australian farmers to suffer***

NATIONAL Farmers Federation general manager, Sarah McKinnon, says a lack of competition on the Australian coast is causing the nation's farmers to suffer. In a statement released this week, Ms McKinnon noted Productivity Commission figures showed estimated average transport costs from farm gate to destination at 21% of farm gate value and in some cases as much as 50%.

*"Shipping costs are high because there is a lack of competition around the Australian coast," Ms McKinnon wrote. "Despite rhetoric about 'revitalising the Australian shipping industry' at the time, coastal shipping rules introduced in 2012 (by former minister Anthony Albanese) have served to hasten the long term industry decline. "In the first two years of operation, there was a 63% decline in carrying capacity across the major registered Australian vessels."*

*Ms McKinnon said laws giving coastal shipping preference to Australian-flagged ships were pricing foreign vessels out of the market.*

*"Under the current regime, a person can contract with a shipping company to ship their goods at an agreed price. If the ship that will carry the goods is not registered in Australia, it must be covered by a temporary licence – the application for which triggers notification to all Australian registered ship operators that a proposed voyage is up for grabs and they can do it themselves if the Infrastructure and Transport Department approves," she wrote.*

*"Assume for a minute that the Department approves the contract takeover - the new operator can then renegotiate the contract at will, increase the tonnage rate, and leave it to the original contracting parties to work out who should cover the extra cost." Removing barriers to entry would improve coastal shipping service efficiency, she maintained. "This will be particularly beneficial for Tasmanian producers, who rely more than most Australians on shipping to get their goods to market," Ms McKinnon stated.*

*"Which is why it was so surprising when Independent Senator Jacqui Lambie voted against coastal shipping reform introduced by the Coalition in the last term." While current rules might protect some Australian jobs in the short term, they do so at the cost of jobs growth in several other industries, including agriculture.*

*"And in the longer term, those same Aussie jobs will go anyway, as the shipping industry slowly dies," she said. "No-one wants seafarers sitting on the shore watching foreign ships sail by. Sadly, that is what is happening now – and will continue to happen – without much needed reform to restore competition around the coast."*

*"The economy can't afford to let coastal shipping reform sail away," she said.<sup>19</sup>*

Source: Lloyds List Australia 3<sup>rd</sup> August 2016

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<sup>19</sup> <https://www.lloydslistaustalia.com.au/lla/market-sectors/law-and-regulation/FREE-LOCAL-Albanese's-coastal-shipping-laws-cause-Aussie-farms-to-suffer-532321.html>

## Observations

In respect of the viewpoints and research supporting Coastal Shipping reform, the following additional points can be made when considering potential benefits to Tasmanian Exporters:

- **Capacity**

The ability for the current shippers to accommodate long term growth in Tasmanian freight loads and the possible diversity of future freight loads from multiple ports is uncertain – can foreign vessels provide an alternate option?

- **Collaboration**

There is little incentive for local shippers to work together and share excess capacity for benefit of Tasmanian exporters – can foreign vessels provide an alternate option?

- **Contingency**

In times where one shipper is forced from service (in the case of Spirit of Tasmania suffering damage in a freak wind event in port in Melbourne in 2016), can the current shippers collaborate and maintain the freight service requirement – can foreign vessels provide an alternate option?



King Island Port - Tasmania



## The case against Coastal Shipping Reform

### *Protecting Australian Jobs and Australian owned ships*

The overwhelming theme of the Coastal Trading Act 2012 was *“to increase the competitiveness of Australian ships and to provide them, in effect, with comparative advantages over foreign ships”*

In effect this legislation aimed to protect the Australian maritime industry and jobs (with associated wages and employment conditions) against foreign ships crewed by foreign workers being paid lower wage rates. However, it does not appear that these aims are being met.

Despite the introduction of the Act, the number of Australian flagged trading vessels, the proportion of Australia’s international trade carried on Australian flagged vessels, and the number of persons employed in coastal shipping have fallen in recent years.

In addition, the average age of the Australian trading fleet is considerably greater than the global average. These falls occurred whilst globally sea freight was expanding<sup>20</sup>.

The Act has been vigorously supported and defended by the Australian Maritime Union (MUA) since its introduction and this continues as the proposed changes to the Act (to re introduce foreign vessels to domestic routes) are considered.

A well publicised campaign against these changes has been orchestrated to provide the public with an understanding as to why the Act needs to remain for Australia. Specifically, the need to protect jobs and to maintain the security and integrity of Australia’s maritime shipping industry.



SeaRoad Mersey 2

<sup>20</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1516a/16bd053](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1516a/16bd053)

### News Article

#### ***Australian crewed vessels shows that Coastal Shipping Reform is working***

*“The Maritime Union of Australia (MUA) has welcomed news that companies have embraced the new shipping legislation by manning their ships with Australian seafarers.*



*The Panamanian-flagged African Kingfisher and United Kingdom-flagged RTM Piiramu, which is owned by Rio Tinto, will now both operate with full Australian crews.*

*MUA National Secretary Paddy Crumlin, who worked tirelessly on the shipping reform campaign together with union officials and members, said there is much more to come from the legislation.*

*"This is only the beginning, better taxation arrangements for ships will mean that it is affordable - and profitable - for Australian companies to invest in shipping fleets,"*

*"Shipping reform is without doubt, one of the most important pieces of legislation passed by the federal government in Australian maritime history," Mr Crumlin said.*

*MUA Assistant National Secretary Ian Bray has also welcomed the news and said that the new shipping legislation means that cabotage is back on the menu for seafarers worldwide.*

*“Australia has shown the way in international shipping – we have demonstrated that flag of convenience shipping can be defeated and that all seafarers have a right to work in the industry.”*

*“Since the passing of shipping reform we have fended off the campaign by conservative shippers, foreign ship owners and the federal opposition to destroy the legislation and the industry.” Mr Bray said.*

*The federal government introduced shipping reform in June 2012 after a seventeen year long campaign by the MUA.<sup>21</sup>*

*Source – Maritime Union of Australia October 12, 2012*

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<sup>21</sup> [http://www.mua.org.au/australian\\_crewed\\_vessels\\_show\\_that\\_shipping\\_reform\\_is\\_working](http://www.mua.org.au/australian_crewed_vessels_show_that_shipping_reform_is_working)

## News Article

### **Abbott government shipping changes will sink 1000 jobs: research**

*“More than nine in 10 domestic seafarers will lose their jobs if the Abbott government's plan to relax shipping regulations passes Parliament, research suggests.*

*Less than 100 seafarers would remain in employment out of a current workforce of 1177, according to a report written by the Australia Institute, based on government documents supporting its Shipping Legislation Amendment Bill.*



*Opponents to the shipping industry changes say they will cost jobs. Photo: Jessica Shapiro*

*The dire forecast comes as a major Bass Strait freight company, SeaRoad, warned it will reconsider a \$100 million investment in two new cargo vessels if the government pushes ahead and dumps rules that force foreign vessels to pay their crew Australian wages while working domestic routes.*

*Stakeholders, including shipping industry representatives, the ACTU and three Senate crossbenchers, John Madigan, Ricky Muir and Jacqui Lambie, will meet in Melbourne on Friday to discuss the threat to jobs and national fuel security.*

*Senator Madigan, who will co-chair the crisis summit, said the "Abbott doctrine of allowing the car industry to go under was being extended to local shipping" and ACTU secretary Dave Oliver predicted the "death of the Australian shipping industry" unless the bill is blocked.*

*With the size of the domestic shipping fleet declining to just 49, the government wants to drive down the price of freight between Australian ports by opening up the sector to more foreign competition. Business complains that shipping freight to and from Asia is cheaper than interstate. Under the proposed changes to the Coastal Trading Act, foreign-flagged ships with all foreign crews would be allowed to pay international wages - about a third of Australian pay – on domestic routes for up to half the year.*

*According to international maritime data, an Australian able seaman receives \$US2742 a month compared to an average \$US850 a month paid to the crew of ships involved in international freight.*

*In the supporting documents to the Shipping Legislation Amendment Bill, introduced by Deputy Prime Minister Warren Truss, the government concedes there will be a "potential loss of Australian seafarer jobs" but does not put a number on how many.*

*But Rod Campbell, who authored the Australia Institute report, commissioned by the Maritime Union of Australia, used ratios provided in the accompanying cost-benefit analysis to project that 93 per cent of the industry would not survive.*

*For example, the Bass Strait non-bulk freight route between Victoria and Tasmania is currently serviced by 100 per cent Australian crew. Under the government's projections that would become 65 per cent foreign and 35 per cent Australian – due only to the likely retention of Australian crew on the two Tasmanian government-owned Spirit of Tasmania ferries.*

*Cruise ship work would decline from 40 per cent Australian to 100 per cent foreign and all movements of iron ore, bauxite, petrol and crude oil between domestic ports would be taken by foreign crew. Mr Campbell was critical of the government's projected economic benefits because they are based on a 2012 Deloitte report that was sponsored by the Cement Industry Federation, the Minerals Council of Australia and the Fertiliser Industry Federation.*

*The Minerals Council and the cement industry have both made submissions in support of the government's plan to the Senate committee reviewing the shipping bill. The bill appears doomed in its current form, with enough crossbench opposition to vote it down with Labor and the Greens.*

*Senator Muir said: 'I've got some serious concerns over what might happen to Australia's shipping industry if this legislation is passed.' Senator Lambie has put her reservations about the bill, particularly its effect on Bass Strait trade, on the public record.*

*In his submission to the Senate inquiry, SeaRoad owner Michael Easy said it was "crucial to Tasmania's future and Australia's credibility" that the current regulations are not thrown out.*

*Canada, the US, Brazil and India all have laws that ensure local shipping crews are favoured over foreign crews. The US insists that all ships working between American ports are even built in the US.*

*Source – Sydney Morning Herald September 4, 2015*

## *Employment in Tasmanian Communities*

The existing coastal shippers (Toll, Searoad and TT Line) are well established in Tasmania and provide a regular and reliable shipping service (for a cost) to Tasmanian exporters. These shippers also provide employment to local Tasmanians therefore the investment they provide to Tasmania cannot be underestimated.

Any downturn or reduction of service provision by these local providers, due to competition, will have an impact on Tasmanian communities which will also negatively influence associated local businesses. These considerations matter to many Tasmanians therefore any possibility of the loss of “local” jobs will be viewed with concern.

## **Observations**

In respect of the viewpoints and research retaining the existing Coastal Shipping legislation, the following additional points can be made when considering potential issues for Tasmanian Exporters:

- ***Integrity and continuity of service***

What guarantees will foreign shippers make to Tasmania to maintain a regular and reliable service should they be allowed to compete with local shippers?

- ***Unforeseen Consequences***

What are the consequences for Tasmania should local shippers be forced out of the market due to cost or inability to compete, leaving foreign vessels as the sole service provider?

- ***Impacts on local Tasmanian communities***

What will the impact be if local shippers remove themselves from the market – ie: employment, impacts on communities and coastal port towns?



*Devonport Port Tasmania*



## Options for Tasmania

Some practical options remain in respect of Coastal Shipping for Tasmania in order to help achieve the desired outcomes – namely a reliable and regular shipping service that is competitively priced. However, the willingness of the parties (Shippers, Government and Exporters) to work together will be crucial to producing the best possible result.

### *Treat Tasmania as a unique case for Australian Coastal Shipping considerations*

Unlike any other state in Australia, Tasmania is unique in its shipping and freight service provision, whereby only Australian shippers provide the current service. This creates advantage and disadvantage for Tasmania should the Coastal Shipping Reforms measures be introduced into the future.

1. Reliance on shipping – Tasmania is heavily reliant on a regular and reliable shipping service to maintain and drive its economy. The localised shippers currently provide this service (for a cost). If reforms are introduced, short term price gain from foreign flagged vessels competing with the local providers will benefit Tasmania. However, this could also remove the local shippers from the market shifting this reliance onto the foreign shippers who may not have the same level of vested interest in maintaining the Tasmanian service for the long term (if it is not economically viable).
2. Tasmanian Freight Volumes – Whilst significant for Tasmania, the annualised freight volumes for Tasmania are not significant in global terms and this has an influence on pricing. The economies of scale considerations are not as pivotal in determining price as can be seen in overseas freight tasks, therefore, it reasonable to conclude that any foreign shipper would have to carefully weigh up the economic viability of providing a service to Tasmania.

### *Allow the market to set the price for freight*

Inadequate freight capacity and seasonal constraint on the existing shipping services has been an ongoing issue for some years. The capital cost of upgrade to the fleet of vessels is not insignificant, so in order for the local shippers to make a long term commitment, there has to be market driven demand and reciprocal commitment from the Tasmanian business community.

Both SeaRoad and Toll have announced new vessels to service the Bass Strait shipping route with the new SeaRoad vessel to commence its upgraded service later in 2016 / 2017. Toll is expected to have two replacement vessels operating its service by 2019.

These vessels will increase capacity in the short to medium term with this expected to drive down pricing on freight as demand remains constant. Over the longer term, as the Tasmanian economy grows, it is envisaged this extra capacity will be utilised.

### News Article

#### ***Toll Group to replace Bass Strait vessels in 2019***



*TOLL Group expects to have two new ships on the Bass Strait run by mid-2019. The new ships will replace the Tasmanian Achiever and the Victorian Reliance.*

*SeaRoad Shipping announced on Wednesday it was in the process of buying a new gas-powered ship for the Bass Strait run. Toll Group spokesman Christopher Whitefield said yesterday the company was committed to replacing its current Bass Strait vessels with new generation vessels.*

*"The range of new ships currently being evaluated for construction will help us meet Tasmania's freight requirements for decades to come and are a demonstration of Toll's commitment to meeting the state's long-term freight transport needs," Mr Whitefield said.*

*He did not rule out a gas-powered vessel or a hybrid version. He said the ships under evaluation would offer a range of benefits including:*

- *greater operational capacity;*
- *more flexibility for switching capacity from domestic container freight to domestic trailer freight;*
- *reduced loading and unloading time through the use of multiple decks;*
- *a reduced carbon footprint through the use of cleaner or alternative fuel;*
- *the ability to cater for domestic trailer and container freight; and*
- *the ability to cater for current and additional 20-foot and 40-foot export containers.*

*The Toll Group would not reveal the cost, size or freight savings the new ships could bring.*

*Yesterday the Advocate revealed SeaRoad Shipping chairman Chas Kelly's plans to berth a world-first natural-gas fuelled roll-on roll-off freight vessel at Devonport. Both shipping investments were great news for Devonport, Mayor Steve Martin said. Alderman Martin is member of the Tasmanian Logistics Committee.*

*"It's an injection of confidence into Tasmania and certainly the business and agricultural sectors," he said.*

*State Infrastructure Minister Rene Hidding said the Liberal government had been aware of the private sector's plans for Bass Strait and expected the plans to be delivered.*

*"A robust private sector freight industry is key to our overall freight strategy," Mr Hidding said. "We welcome the recent announcements from both Toll and SeaRoad as a vindication of our policy stance on Bass Strait freight." State Opposition leader Bryan Green welcomed the news Toll was backing exporters by investing in two new freight vessels. "This will give exporters confidence about the long term," he said. "In government, Labor was determined to get a better outcome on freight and there are still big challenges in the short-to-medium term." Fresh freight is a serious issue right now, but the Liberals seem too busy patting themselves on the back to address it.<sup>22</sup>*

*Source : The Advocate December 12, 2014*

### ***Strategic relief from cabotage for specific cases***

Treating Tasmania as a unique case in respect of any changes to cabotage has merit whereby there is no local shipper providing a service for specific freight loads leaving Tasmania. This is the case in specific instances in bulk minerals export where there is limited or no local shipper currently servicing the route between Tasmania and overseas destinations.

This then raises the question why these foreign vessels are subject to cabotage when there are effectively no local jobs to protect? Is it simply a tariff that is being charged for no real purpose that is penalising Tasmanian exporters? And if so should it be removed?

### ***More effective aggregation of freight***

Many smaller Tasmanian producers who do not export freight in significant volumes are left with an impost that makes freight transportation expensive and reduces the profitability of their businesses. Unfortunately, not many solutions are forthcoming leaving many small producers to aggregate their freight with similar producers to collectively derive a better freight rate and outcome.

This aggregation is being actively pursued as an option by many primary producers who see collective bargaining as a means of ensuring the regularity and price of their freight service is competitive and realistic in comparison to the larger producers.

<sup>22</sup> <http://www.theadvocate.com.au/story/2759558/toll-plans-replacements/>

*Recognise the value proposition of locally owned and operated shipping services*

The prevalence of Australian owned / crewed vessels providing the shipping service that Tasmania requires across Bass Strait has been ongoing since settlement in the mid 1800's. The local shippers have acquired appropriately equipped vessels to handle the Bass Strait conditions and provide the regularity of service required by Tasmanian exporters and importers alike.

These local shippers in turn provide employment for many Tasmanians who work on the wharves and provide logistical support throughout Tasmania. Whilst these services are provided at a cost, the service provision is consistent and reliable with rarely any disruption.

However, the opportunity to introduce foreign vessels into the marketplace to compete with local shippers is not without fault and while this strategy is seen as a way of extracting the best outcome for Tasmanian exporters, the risks remain high.

Local shippers may be forced to reduce their pricing structure beyond a "break even" mark which may force them to eventually exit the market if they are unable to compete. Along with the loss of service and competition, local jobs and the flow on benefits to local businesses may also be lost.

The opportunity cost of allowing foreign vessels to compete in the Tasmanian marketplace should be carefully considered beyond the immediate price benefit and towards the longer term service provision outcomes and obligations to Tasmanian businesses and communities.



*Port of Melbourne*

## Conclusion and Recommendations

The issue of reviewing and instigating change in Coastal Shipping is vexing for Tasmania as it needs are unique from mainland Australia. Tasmania's reliance on a cost effective, reliable and regular shipping service is vital and unique in the greater Australian context as Tasmania is the only state that is isolated from the mainland due to its coastline.

Presently, the Bass Strait service between Tasmania and Melbourne is serviced by Australian shippers with Australian flagged vessels that are locally crewed. The opportunity to introduce foreign flagged vessels to compete with the existing shippers is tempting in order to introduce further competition into the marketplace and help extract the best possible outcome for Tasmanian exporters.

In simple terms this may be an easy solution for government to legislate, however, in practical terms the outcomes may be far worse than intended if local shippers exit the marketplace due to an inability to compete with foreign vessels on price and service. The possible unintended consequences of local shippers exiting the Bass Strait shipping service may include higher unemployment, a breakdown in Tasmanian logistics supply chains (where the shippers have their own "in house" logistics service) and flow on effects to Tasmanian communities.

Additionally, the potential exit of local shippers from the marketplace leaves Tasmania susceptible to the whims of the foreign shipping companies who may not view the needs of Tasmania as their prime concern or responsibility when considering their long term business models.

Conversely, insulating the local shippers from foreign competition by retaining the current legislation does not necessarily mean that "targeted" cabotage relief cannot be offered to foreign shippers who provide service to Tasmanian exporters where no local shipping service provision is available. This option should be pursued in order to support Tasmanian exporters who can access international shipping routes directly from Tasmania.

The adage of price versus service shapes this argument with both considerations forming significant ongoing debate and opinion. Qualified independent research may be required to substantiate the claims made, along with further consultation with all major stakeholders to ensure the needs of Tasmania are considered and protected accordingly.



*Bell Bay Port Tasmania*