



National Farmers'
F E D E R A T I O N

National Farmers' Federation

**Submission on Shipping Legislation
Amendment Bill 2015**

21 August 2015

NFF Member Organisations



Australian Chicken Growers' Council Ltd



CANEGROWERS



COTTON AUSTRALIA



Goat Industry Council of Australia inc.



NEW SOUTH WALES IRRIGATORS' COUNCIL



RICEGROWERS' ASSOCIATION OF AUSTRALIA INC.



Statistics on Australian Agriculture

Australian agriculture makes an important contribution to Australia's social, economic and environmental sustainability.

Social >

There are approximately 115,000 farm businesses in Australia, 99 percent of which are family owned and operated.

Each Australian farmer produces enough food each year to feed 600 people, 150 at home and 450 overseas. Australian farms produce around 93 percent of the total volume of food consumed in Australia.

Economic >

The agricultural sector, at farm-gate, contributes 2.4 percent to Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production in 2013-14 was \$51 billion – a 6 per cent increase from the previous financial year.

Yet this is only part of the picture. When the vital value-adding processes that food and fibre go through once they leave the farm are added in, along with the value of all economic activities supporting farm production through farm inputs, agriculture's contribution to GDP averages out at around 12 percent (over \$155 billion).

Environmental >

Australian farmers are environmental stewards, owning, managing and caring for 52 percent of Australia's land mass.

Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 94 percent of Australian farmers actively undertaking natural resource management.

The NFF was a founding partner of the Landcare movement, which in 2014, celebrated its 25th anniversary.

Introduction

The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

Transport of agricultural produce forms a significant cost in the agricultural supply chain, and freight infrastructure is a critical element in the capacity of the sector to move its products efficiently to market. Many goods shipped by the agriculture industry are perishable in nature and their value diminishes with the passage of time. It is therefore essential that Australia has a competitive, reliable sea freight service underpinning the capacity of agricultural producers to meet consumer demand by moving ever-increasing volumes of food and fibre to both domestic and international markets.

The importance of coastal shipping reform

The *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Coastal Trading Act) and related legislation was introduced in 2012 with the object of providing 'a regulatory framework for coastal trading in Australia that promotes a viable shipping industry which contributes to the broader Australian economy; facilitates long-term growth of the Australian shipping industry; enhances the efficiency and reliability of Australian shipping; and maximises the use of Australian vessels registered under the Australian General Shipping Register.'

Despite these goals, there is no evidence that the legislation has had any revitalising effect on either Australian shipping or the broader economy. If anything, the anecdotal evidence suggests that the reforms have had the opposite effect.¹ The cost of shipping goods by sea has increased and there is a perception that the Australian coastal trade is all but closed to foreign ships, with a resulting reduction in access to freight services. There has been no take up of the international shipping register and no obvious signs of significant investment in the Australian fleet.

In March 2014, the National Commission of Audit noted that cabotage rules are effectively industry assistance that increases costs and reduces competition, and ensures 'significant cost disadvantage for Australian businesses reliant on the movement of bulk

¹ <http://globalia.com/globaltalksbusiness/australias-coastal-shipping-reforms-face-criticisms>, 20 October 2013

commodities' and recommended abolishing cabotage policy². This followed the Productivity Commission's draft report on Tasmanian shipping and freight, which found that the 'cumulative effect' of recent changes to Australian coastal shipping laws was 'reduced interest from international vessels engaging in the Australian coastal trade', 'reduced shipping options for users of domestic shipping services' and increased 'costs of providing domestic coastal services'.³

The Competition Policy Review Final Report, March 2015⁴ found that cabotage restrictions on coastal shipping raise the cost and administrative complexity of coastal shipping services, and recommended that they be removed, unless there were demonstrable 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.

The NFF welcomed the introduction of the *Shipping Legislation Amendment Bill 2015*, which is a significant step toward delivering on the Government's commitment to reform coastal shipping regulation to boost competition around the Australian coast. Current regulatory restrictions continue to have adverse effects on agricultural producers through increased shipping costs and reduced access to freight services. These effects are particularly acute in Tasmania which is heavily reliant on sea freight given its geographic isolation from the mainland.

Key facts and figures

Australia's total coastal freight task is almost 50 million tonnes each year (2012/13 figures).⁵ Coastal freight flows increased in the five years to 2008 and then decreased sharply.

- In 2003/04, the coastal freight task was 53.194 million tonnes.
- In 2007/08, the freight task **peaked** at 59.534 million tonnes.
- In 2012/13, the freight task was the **lowest in 10 years** at 49.051 million tonnes.
- The number of ships in the Australian trading fleet has declined from 115 to 96 since 2003.

There are approximately 330 seafarers employed on Australian ships in the coastal trade.

- There are 6 ships on the Australian General Shipping Register.
- Each ship is manned by approximately 22 crew.

² Australian Government National Commission of Audit Phase Two Report, March 2014, section 2.3.

³ Productivity Commission, *Tasmanian Shipping and Freight: Draft Report*, January 2014, <http://pc.gov.au/projects/inquiry/tasmanian-shipping/draft>

⁴ Harper, Anderson, McCluskey & O'Bryan, *Competition Policy Final Report March 2015* http://competitionpolicyreview.gov.au/files/2015/03/Competition-policy-review-report_online.pdf

⁵ Figures quoted from the Bureau of Infrastructure, Transport and Regional Economics (BITRE) *Australian Sea Freight 2012/13*. Figures for 2013/14 are not yet publicly available, but are held by the Department of Infrastructure and Regional Development and might be sourced through Senate Estimates.

- On average, there are 2.5 crews per ship.

Workplace relations law is an important factor in businesses decision making in the shipping industry, because of its impact on labour costs and productivity.

- On 27 March 2006, permit ships were exempted from Australian workplace relations laws.
 - The number of ships in the coastal trade **increased** from 35 (2006/07) to 46 (2010/11).
- From 1 January 2011, permit ships became covered by the Seagoing Industry Award 2010. For the first time, Australian wages and conditions applied to all workers on these ships while in the Australian coastal trade.
 - The number of ships in the coastal trade **decreased** from 46 (2010/11) to 38 (2012/13).

The above figures are drawn from the table below, extracted from *Australian Sea Freight 2012/13*⁶.

Table 5.1 Number of ships in the Australian trading fleet

Financial year	Major trading fleet						Total	Major Australian registered ships with Coastal Trade Licences/ General Licences ^a
	Coastal trading		International trading		Minor trading fleet			
	Australian registered	Overseas registered	Australian registered	Overseas registered	Australian registered	Overseas registered		
	(number)							
2003–04	31	6	11	41	18	8	115	37
2004–05	35	3	7	41	16	5	107	36
2005–06	32	3	9	38	18	5	105	33
2006–07	30	7	9	38	17	4	105	30
2007–08	28	14	10	37	16	3	108	27
2008–09	29	15	7	36	17	2	106	27
2009–10	28	16	7	41	17	3	112	23
2010–11	26	20	8	37	16	1	108	21
2011–12	23	17	6	36	19	3	104	21
2012–13	20	18	6	33	16	3	96	13 ^b
Average per cent change	(%)							
1 year	-13.0	5.9	0.0	-8.3	-15.8	0.0	-7.7	-38.1
5 years	-6.8	5.4	-7.9	-1.9	0.8	0.3	-1.9	-12.1

a Data for 2003–04 to 2011–12 were based on extracts from the Coastal Trade Licences and Permits (COTLAP) system, 2012–13 results were based on extracts from the Coastal Trade Licensing System (CTLS).

b In 2012–13, there was one Australian registered ship with a General Licence that was not licensed in 2011–12, six previously licensed vessels were decommissioned or changed from being Australian registered, and three vessels had a Coastal Trade Licence in 2011–12 were active in 2012–13 but did not hold a General licence.

Note: Blank cells mean no data was recorded for the categories.

Sources: LJI (2014), Infrastructure (2013, 2014), Shipping companies (various) – personal communications.

Tasmanian Statistics

The Tasmanian share of the freight task is now over 3 million tonnes each year. Freight carried to and from Tasmania has **decreased** from 4.068 million (2003/04) to 3.141 million (2012/13).

⁶ Published by the Bureau of Infrastructure, Transport and Regional Economics' (BITRE)

Tasmania's gross state product (GSP) was \$23.9 billion for the 2012 year, and in 2010/11, the farm gate value of production (GVP) of agriculture, forestry and fishing was \$1.98 billion (almost 9%) of the total. This comprised:

- agriculture - \$1.150 billion;
- forestry - \$235 million; and
- fishing - \$597 million.

Farmers are significant land managers in the state, with almost a third of Tasmania's land area of 68,300 sq km committed to agriculture. In Tasmania, approximately 10,500 people are employed directly in agriculture forestry and fishing - close to 9% of the working population in Tasmania.

Exports (intra and overseas)

The vast bulk of our agricultural product is sold interstate and overseas. Farm exports in 2010/11 easily exceeded \$550 million (farm gate equivalent value) when account is taken of pharmaceutical products. The share of exports to Asian destination exceeded 50%. In addition, it is estimated that a further \$1.8 billion of raw and value-added product was shipped to the mainland.

In 2011/2012, total exports from Tasmania were valued at \$3.196 billion. Agricultural products represented some 30% of that total – approximately \$1 billion. Almost 25% of total exports (\$502 million) were destined for ASEAN countries. Major products exported to ASEAN countries included dairy (\$42 million); seafood (\$32 million) and wood products (\$20 million estimated from private forestry sector). Key destinations included Japan (35%), China (21%), and Hong Kong (21%).

The Challenge of the Bass Strait

The Bass Strait link is an unavoidable part of the supply chain between Tasmania and the Australian mainland. This means that the cost of transport across this tract of water must be competitive to realise economic potential – as must be the cost of moving product and people around the national road highway on the Australia mainland.

The 2006 Productivity Commission (PC) Inquiry established that Bass Strait freight rates were at the time equal to or higher than most other short haul sea freight distances around the world. This continues to be the situation today – with sea freight rates from northern Tasmania to Melbourne port being similar to the freight rates for the same product from Melbourne port to Asia shipping hubs and beyond. Agricultural produce accounts for some 30% of total northbound freight; and it tends to be perishable and subject to seasonal demand.

Tasmanian Freight Equalisation Scheme

Tasmania needs to be seen as one link in the national transport network - its geographical location should not put it at an economic disadvantage.

The Australian government commits more than \$3.0 billion per year to highway road and rail on the mainland to help deliver productivity and efficiency gain; yet makes no similar

commitment to Tasmania. Inexplicably, this investment does not appear to be equated with the expenditure under the TFES.

The Federal Government invests more than \$3.0 billion annually in construction and maintenance of the national road highway structure in the mainland states. At a current representative cost of approximately \$2.5 million/lane/km to build a national road highway system and not less than \$0.5 million/km to upgrade to highway standard, the investment is ever-increasing.

What's wrong with the current coastal shipping laws?

The key policy objective of any coastal trading regulation should be to promote Australia's economic growth and productivity through competitive, efficient and effective maritime transport services. Any other related policy objectives should be in the national interest and not aligned only to sectional interests.

The five voyage requirement

The Coastal Trading Act seeks to encourage ships to register on the Australian General Register by restricting access to temporary and emergency licenses. Ships seeking to undertake less than five coastal trading voyages have no other option. Temporary license applications must specify at least five voyages that will be undertaken in a 12 month period and emergency licenses are only available in a limited number of 'emergency' circumstances such as flood, bushfire and other natural disasters.

Applicants for a temporary license must specify, in some detail, at least five future voyages to be undertaken. Details provided about proposed voyages, including the number of voyages, the kinds and volume of cargo or number of passengers and ports of loading and disembarkation, effectively set the parameters of the license to engage in the coastal trade and cannot change unless formally varied.

Nomination requirements

The same information is made publicly available and provided to holders of general licenses, who then have the right to nominate to undertake the authorised voyages. This process means that a temporary license applicant and its customers have no right to choose who they contract with to deliver the freight services they require. A third party can take over their contracted voyage, without any obligation to meet the agreed terms. For example, initial contracting parties might agree on a price of \$20 per tonne. A third party then nominates to undertake the voyage, ships the contracted goods at a price of \$25 per tonne, and leaves the initial parties to work out the difference. In this respect, the process is unique: it encourages unrelated third parties to impose their own commercial imperatives on the contractual arrangements of others. It acts as a disincentive to contract before permits are issued, results in delays in the grant of applications⁷, and increases costs.

⁷ Evidence given to the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government inquiry into coastal shipping policy and regulation, October 2008 at paragraph 3.7.

It is clear from this process that the Coastal Trading Act gives Australian-registered ships every opportunity to exclude foreign-registered ships from accessing the Australian coastal trade. While this has not always been the result, it is likely to have acted as a deterrent to foreign ships seeking to service the Australian market. It is also a clear attempt to restrict the capacity of foreign workers to work in Australia. There is no direct policy statement on how a minimum five voyage requirement will assist in revitalising the Australian shipping industry and there is similarly no evidence that it has resulted in an expansion of the Australian coastal trading fleet. The requirement is in the nature of 'red tape' and should be repealed.

The Australian International Shipping Register

The *Shipping Registration Amendment (Australian International Shipping Register) Act 2012* (the AISR Act) established the Australian International Shipping Register (AISR) 'to provide a competitive registration alternative for Australian shipowners and operators who predominantly engage in the international trades'.⁸ Ships registered on AISR are eligible for income tax exemption and other tax incentives. Despite what appear to be generous tax incentives, there are currently no ships registered on the AISR.⁹

If this is so, more than three years later, it is reasonable to ask why there is such a lack of interest in the AISR. The answer must be at least in part attributable to the legislative framework surrounding the AISR. In addition, it is likely that incentives designed to join the Australian register have not been sufficient to displace the relative attractiveness of foreign shipping registers.

One feature of the AISR Act that has attracted little comment since its inception is the requirement for any ship seeking registration on the AISR to have a collective agreement with the 'seafarer's bargaining unit', comprised of relevant maritime unions. This is in lieu of the application of the *Fair Work Act 2009* (Fair Work Act). The requirement to bargain with all relevant maritime unions and the absence of any alternative (such as negotiating directly with seafarers) is likely to have operated as a deterrent to registration.

The legislative framework requires the making of the 'bargain' for those who seek access to the AISR and in doing so, extinguishes the element of choice in relation to employers. This is because any perceived advantages flowing from the disapplication of the Fair Work Act are immediately offset by the position of veto held by the seafarers' bargaining unit; refusal to accede to demands made on behalf of seafarers will mean the conditions for registration on the AISR cannot be met. In other words, access to the AISR is available on a 'take it or leave it' basis with seafarer conditions set by maritime unions and paid for by those responsible for the costs of labour. The provision is highly unusual as a feature of the Australian federal law and should be repealed.

⁸ Department of Infrastructure and Regional Development, *Australian International Shipping Register*, http://www.infrastructure.gov.au/maritime/business/coastal_trading/aisr.aspx

⁹ Australian Maritime Safety Authority, *List of Registered Ships*, <http://amsa.gov.au/vessels/shipping-registration/list-of-registered-ships/>

Workplace regulation

The Fair Work Act was the first piece of federal legislation to extend Australian workplace laws to foreign ships engaged in the Australian coastal trade. Under the previous regime, ‘permit ships’ operating under the *Navigation Act 1912* were expressly excluded from coverage of the *Workplace Relations Act 1996*.

From 1 January 2010, the National Employment Standards commenced applying to certain ships operating under single voyage and continuing voyage permits in the Australian coastal trade. In addition, the Fair Work Act was extended to cover ‘majority Australian-crewed ships’. From 1 January 2011, the *Seagoing Industry Award 2010* (Part B) commenced operation in relation to permit ships and for the first time, regulated the wages and conditions of seafarers on permit ships.

The Coastal Trading Act replaced the permit system with the new licence system and consequential changes were made to the *Fair Work Regulations 2009* (Fair Work Regulations) to ensure continued application of the Fair Work Act to foreign ships in the Australian coastal trade.

The application of Australian workplace laws to foreign ships both while undertaking temporary licensed voyages and on ‘majority Australian-crewed ships’ has introduced a number of inefficiencies. First, the laws only apply to voyage legs authorised by the temporary license. That is, the Fair Work Act applies to a seafarer while on a voyage to deliver cargo or passengers around the Australian coast, but does not apply to the same seafarer on the same ship on the return voyage without any cargo or passengers. Similarly, a seafarer is covered by the Fair Work Act while there are a majority of Australian crew members on board. If the composition of the crew changes mid-voyage (for example, if a number of foreign workers are boarded to undertake a particular task), the ship ceases to become ‘majority Australian-crewed’ and the Fair Work Act ceases to apply¹⁰. These are strange outcomes and ones which must at the very least involve complex bookkeeping. At least one shipping company has indicated that it will no longer engage in trade in Australian waters because the majority Australia-crew requirement means that it cannot possibly know whether the Fair Work Act applies to its seafarers at any given point in time.¹¹

More importantly though, the extension of Australian workplace laws to foreign workers on foreign ships engaged in the coastal trade has significantly increased the costs of shipping around Australia. Evidence given to the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government inquiry into coastal shipping policy and regulation in 2008 indicated that the cost differential between ships operated with Australian crews and foreign crews was approximately \$2 million per year.¹² While there is limited direct evidence available, the

¹⁰ *Fair Work Ombudsman v Pocomwell Limited (No 2)* [2013] FCA 1139

¹¹ AM program, *Employers of drilling rig painters deny exploitation*, <http://www.abc.net.au/am/content/2013/s3884767.htm>

¹² House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government inquiry into coastal shipping policy and regulation, October 2008 at paragraph 3.21

decline in value of the freight task of loaded coastal cargo (almost 10 per cent in 2011-12, compared with the previous year¹³) combined with increased labour costs resulting from the extension of Australian award wages and conditions to foreign seafarers in the coastal trade suggests two possible outcomes. Firstly, shipping costs may have increased to accommodate these factors. Alternatively, or in addition, the two factors combined may have deterred foreign ships seeking to provide services around the Australian coast (for example as part of a through voyage between foreign ports). The Productivity Commission report on Tasmanian shipping and freight directly attributed changes of this nature to the Coastal Trading Act and associated regulation.

The net results have been a less competitive shipping sector in Australia and higher costs and more red tape for Australian farmers, many of whom rely on maritime transport services to get their goods to market. The impact is felt more severely in Tasmania because of its heavy reliance on sea freight.

The Shipping Legislation Amendment Bill 2015

The NFF supports the *Shipping Legislation Amendment Bill 2015*, which will deliver greater competition and increase the availability of shipping services around the Australian coast.

We support the revised object of the Act, to provide a competitive coastal shipping services industry that supports the Australian economy and maximises the use of shipping capacity on the Australian coast.

We support a simpler approach to the issue of permits and the removal of nomination requirements for coastal voyages.

Proposed section 17 requires that information about permits be published as soon as practicable on the Department's website. While we support transparency and access to information, we consider that caution should be exercised in circumstances where the timing of access to information may create opportunities to disrupt commercial activities.

Proposed section 20 requires that permits be provided to the applicant as soon as practicable, and include certain information. In the same way as subsection 13(2)(c)(iv) requires that registration certificates be provided together with an English translation, it may assist in understanding and compliance with permit conditions if those are provided to the applicant both in English and any language identified through the application process as relevant to the persons concerned.

Proposed section 22 deals with the parity condition. We understand the policy intention to be that the parity condition applies to vessels trading around the Australian coast for more than 183 days each year. However, the provisions of section 22 are difficult to understand. Where possible, they should simply state that the parity condition applies to vessels registered under the law of a foreign country that is used on more than 183 days in any year (whether or not that is reflected in the term declaration).

¹³ Department of Infrastructure and Transport, BITRE, *Statistical Report Australian Sea Freight 2011-12*.

Subsection 22(3) defines ‘parity condition’ by reference to the period of employment of a seafarer, rather than the period of use of the vessel. While it is necessary to prescribe the period during which Australian wages and conditions should apply to the seafarer, as currently worded, the provision could be interpreted as applying the parity condition to all seafarers, including on vessels that do not engage in coastal shipping for more than 183 days. It may be worth reviewing the provision to ensure that it gives effect to the policy intention.

Section 41 (of the Coastal Shipping Act) and section 61AKA (of the Shipping Registration Act) deal with the application of the Seagoing Industry Award 2010 to permit ships, presumably so that the modern award aligns with the legislative position. On one view, the provisions could be read as applying the modern award to all vessels operating under a coastal trading permit (notwithstanding the earlier “parity condition” provisions). Care should be taken to avoid such an outcome. It would also be appropriate to write to the Fair Work Commission upon commencement of the legislation, so that the changes can be reflected on the face of the modern award at the appropriate time, to promote certainty and ease of understanding.

Finally, the Bill does not appear to repeal the compulsory collective bargaining provisions of the Shipping Registration Act. The NFF supports a repeal of these provisions, which, for the reasons outlined above, act as a significant deterrent to registration on the Australian International Shipping Register.

Conclusion

The NFF congratulates the Government on the introduction of the *Shipping Legislation Amendment Bill 2015*, which will reduce the red tape and compliance burden on the agriculture industry and encourage greater competition in the Australian coastal trade. We endorse the Bill, with minor revisions to ensure that it gives effect to the policy intention to lift the competitiveness of the Australian economy.