



# MINERALS COUNCIL OF AUSTRALIA

SUBMISSION TO THE SENATE STANDING  
COMMITTEE ON RURAL AND REGIONAL AFFAIRS  
AND TRANSPORT INQUIRY INTO THE POLICY,  
REGULATORY, TAXATION, ADMINISTRATIVE AND  
FUNDING PRIORITIES FOR AUSTRALIAN SHIPPING

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5 MARCH 2019

## EXECUTIVE SUMMARY

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The Minerals Council of Australia (MCA) welcomes the opportunity to provide a submission to the Senate Standing Committee on Rural and Regional Affairs and Transport inquiry into the policy, regulatory, taxation, administrative and funding priorities for Australian shipping. As the largest international exporter in Australia and largest user of coastal shipping services, the Australian minerals industry has a strong interest in ensuring Australia's shipping is supported by policies that help make the industry competitive and cost-effective.

As the mining boom has shifted to the production phase, the minerals industry is focused on maximising production and shipments of mineral commodities to key markets in the Asia-Pacific region. Export volumes of iron ore, coal and bauxite have increased significantly in the last decade and made shipping a critical part of the supply chain.

The participation of foreign ships is a longstanding feature of Australia's coastal shipping trade and is essential to the efficient and timely movement of freight. However, the *Coastal Trading (Revitalising Australian Shipping) Act 2012* made retrograde changes to competition rules that have failed to revitalise the domestic shipping fleet as intended and made the remaining Australian vessels more expensive than international vessels.

While Australian-flagged ships enjoy unrestricted access to coastal trade under a five-year general license, foreign-flagged vessels only have access to a 12-month temporary license. In addition, the Coastal Trading Act gives Australian ships the power to contest voyages proposed by foreign ships. In 2014, the Federal Court ruled that commercial matters – such as freight rates, contractual terms or the economic position of the cargo-owner – cannot be regarded as a determining factor in the minister's decision to permit a foreign-flagged vessel to conduct coastal voyages.

According to the Bureau of Infrastructure, Transport and Regional Economics the carrying capacity of the Australian coastal fleet has decreased by 69 per cent in the period from when the Coastal Trading Act was introduced in July 2012 to June 2016. In the same period the number of registered Australian-flagged vessels has fallen from 19 to 14.

The Productivity Commission, the Australian Competition and Consumer Commission, the Competition Policy Review Panel and the Commission of Audit have all concluded that there are considerable economic benefits to be achieved by liberalising the Coastal Trading Act. The Productivity Commission has estimated that removing restrictions on coastal shipping would boost the Australian economy by between \$19 million and \$36 million a year.

Conversely, retaining regulatory burdens on coastal shipping will maintain pressure on the hundreds of thousands of jobs in Australian industries that rely on the efficient transportation of freight by sea – including minerals extraction and processing, petroleum, cement, steel and agriculture.

Further, the MCA opposes the Federal Government's biosecurity import levy, which would be imposed on top of existing biosecurity charges for sea-freight and be largely directed to consolidated revenue. The MCA welcomes the government's decision to establish an industry steering committee to redesign the levy and submits that it should be removed from the 2019-20 Budget, pending full consultation with all affected industries.

### Recommendations

The support a productive shipping industry for Australia the MCA recommends:

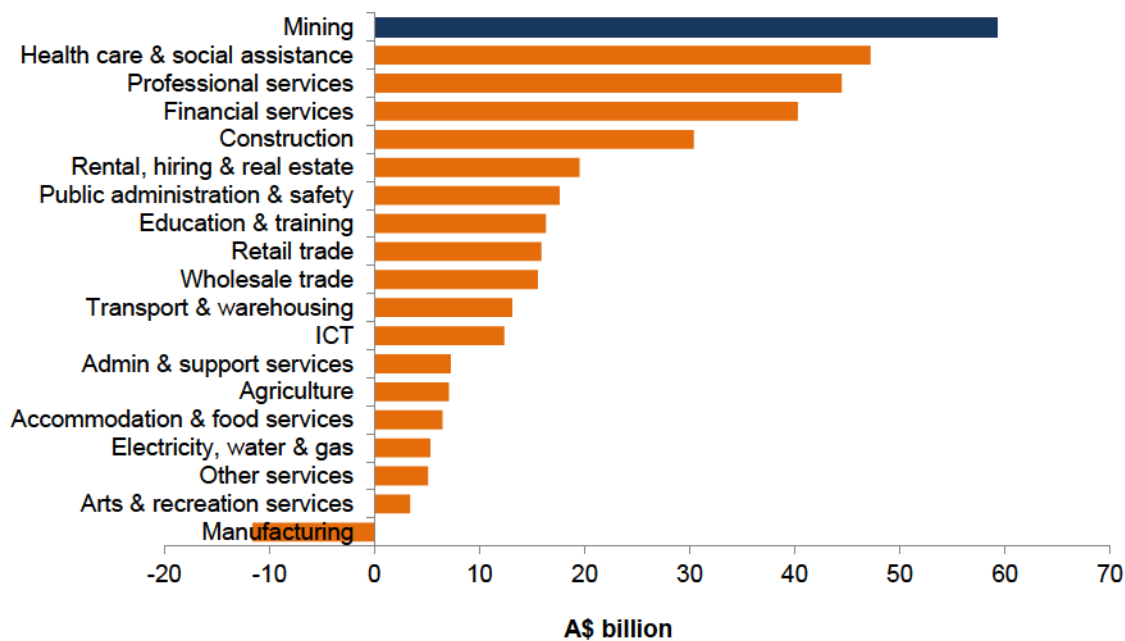
- The Australian government must continue to foster competition in international and coastal shipping through its policy settings and avoid unnecessary interventions which are likely to result in unintended consequences such as higher costs for exporters or lower productivity at ports.

- The Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 proposes a number of improvements to the operation and administration of the Coastal Shipping Act. While the MCA broadly supports these remedial measures, they do not go far enough. The government should also:
  - Introduce a single permit system allowing unrestricted trade for domestic and foreign vessels
  - Ensure that Australian and foreign-registered vessels are subject to the same conditions of access and operation by removing the ability of domestic ships to contest voyages proposed by foreign ships.
- The government should remove the biosecurity import levy – which was not informed by a biosecurity risk assessment or regulation impact statement – from the 2019-20 Budget and direct the industry steering committee to consult fully with all affected industries.

## 1. THE IMPORTANCE OF COMPETITIVE INTERNATIONAL SHIPPING

The resources sector is a key industry in the Australian economy that has underpinned a rise in incomes and prosperity across the country. It is Australia's largest source of export revenue, provides high-paid jobs for thousands of people and pays billions of dollars to governments each year in taxes and royalties. As shown in chart 1, the resources sector has been the largest contributor to economic growth in Australia over the 10 years to 2017-18. The industry is able to deliver these benefits because it is a global leader in technological innovation and one of the most productive resources industries in the world.

**Chart 1: Contribution to GDP growth 2007-08 to 2017-18**



Source: Australian Bureau of Statistics, [Australia System of National Accounts, 2017-18](#), ABS cat. no. 5204, released 26 October 2018.

As a large exporter of bulk commodities such as iron ore, coal and bauxite, logistics systems have a key role in the success and competitiveness of the Australian resources sector. Mineral and energy commodities are Australia's largest source of export revenue and have increased by 395 per cent since the start of the mining boom in 2001.<sup>1</sup> In 2017-18 resources exports were a record high \$221 billion and accounted for 55 per cent of Australia's total export revenues.<sup>2</sup> This income stream is being driven by higher volumes of key minerals exports, reflecting the transition of the mining boom from the investment phase to the production phase.

As the mining boom has shifted to the production phase the minerals industry is focused on maximising production and shipments of mineral commodities to key markets in the Asia-Pacific region. Export volumes of iron ore, coal and bauxite have increased significantly in the last decade and made shipping a critical part of the supply chain.

One advantage Australian minerals producers have is on shipping costs. While Australia is located closer to the Asia-Pacific region than some of our key competitors (such as Brazil for iron ore, West Africa for bauxite and the US, Colombia and South Africa for coal) this geographic advantage cannot be grounds for complacency. The Australian government must continue to foster competition in international shipping through its policy settings and avoid unnecessary interventions which are likely to result in unintended consequences such as higher costs for exporters or lower productivity at ports.

<sup>1</sup> Australian Bureau of Statistics, [International Trade in Goods and Services, Australia, October 2018](#), ABS cat. no. 5368.0 released 5 February 2019.

<sup>2</sup> *ibid.*



## 2. COASTAL SHIPPING IN AUSTRALIA

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The mining industry is the largest user of coastal shipping in Australia. Bulk commodities account for 80 per cent of Australia's coastal shipping trade by tonnage, with bauxite and other aluminium ores and concentrates comprising 34.2 per cent, and iron ore and concentrates 7.5 per cent.<sup>3</sup> Tens of thousands of jobs rely on the efficient transportation of freight by sea – including minerals extraction and processing, petroleum, cement, steel and agriculture.

The participation of foreign ships is a longstanding feature of Australia's coastal shipping trade and is essential to the efficient and timely movement of freight. However, the *Coastal Trading (Revitalising Australian Shipping) Act 2012* made retrograde changes to competition rules that have failed to revitalise the domestic shipping fleet as intended and made the remaining Australian vessels more expensive than international vessels.

Under the Coastal Trading Act, Australian-flagged ships enjoy unrestricted access to coastal trade under a five-year general license, while foreign-flagged vessels only have access to a 12-month temporary license or, in exceptional circumstances, a 30-day emergency license.<sup>4</sup> In addition, the Act gives Australian ships the power to contest voyages proposed by foreign ships.<sup>4</sup>

The contestability provision exemplifies how the Coastal Trading Act diminishes productivity and increases uncertainty. When a foreign vessel applies for a temporary license, the minister must notify all general license holders of the application (and other bodies that the minister considers would be directly affected if the application were granted). If a domestic shipping company indicates that it is able to conduct any nominated voyages under its general license, this triggers a mandatory consultation process between the foreign shipping company and the general license holder. This negotiation may be arbitrated by the department, but ultimately the minister (or his or her delegate) decides whether to grant or refuse the temporary license application.<sup>5</sup>

In assessing a temporary license application, the minister (or his or her delegate) *must* have regard to the following factors:

- The outcome of negotiations
- Whether, and to what extent, the vessel authorised by the holder's general licence is equipped to carry the passengers or cargo specified in the application
- Whether those passengers or cargo can be carried on the expected loading dates or within 5 days before or after the relevant date
- If the application relates to the carriage of cargo – the reasonable requirements of a shipper of the kind of cargo specified in the application.<sup>6</sup>

The Coastal Trading Act also nominates several factors which the minister (or his or her delegate) *may* consider, including 'any other matters the Minister thinks relevant.'<sup>7</sup>

A majority decision of the Full Court of the Federal Court of Australia clarified that commercial matters – such as freight rates, contractual terms or the economic position of the cargo owner – are not part of the mandatory consideration of 'the reasonable requirements of a shipper of the kind of cargo specified in the application'. While commercial matters cannot be excluded from consideration, the minister (or his or her delegate) cannot give them a weighting that is inconsistent with the primary protectionist objective of the Coastal Trading Act.

As Chief Justice Allsop explained:

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<sup>3</sup> Data provided to the MCA secretariat by the Bureau of Infrastructure, Transport and Regional Economics, 9 May 2017.

<sup>4</sup> Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), pp. 52, 90f.

<sup>5</sup> Productivity Commission, [Tasmanian Shipping and Freight: Final Report](#), 7 March 2014, released on 24 June 2014, Canberra, p. C.13; Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill 2015](#), pp. 90f.

<sup>6</sup> Commonwealth of Australia, [Coastal Trading \(Revitalising Australian Shipping\) Act 2012](#), Section 34(3).

<sup>7</sup> Commonwealth of Australia, [Coastal Trading \(Revitalising Australian Shipping\) Act 2012](#), Section 34(2).

Subject to the breadth of available considerations in s 34(2)(g), no provision of the Act makes freight rates (proposed by the general licence holder or the temporary licence applicant) an identifiable consideration ... [B]ut is impossible, in my view, to exclude freight rates and their impact on industry anxious to keep costs down, as legally irrelevant. How much weight to put on freight rates in any particular case will generally be a matter for the decision-maker. There may, however, be circumstances that display such a weight being given to a legally relevant circumstance that it so distorts the operation of the Act beyond and outside the intended operation of the regulatory framework intended by s 3(1) as to be legally unreasonable and inconsistent with the Act. This Act was part of a suite of legislation to revitalise Australian shipping. It was not a piece of legislation to ensure the lowest possible freight rates set by foreign-flagged vessels to shipper interests in Australia and thereby make the development of Australian-owned or registered vessels very difficult. The balance of competing considerations is one for the decision-maker armed with contemporaneous and up-to-date information and chosen government policy.<sup>8</sup>

The previous government sought to solve this problem by redefining the objectives of the Act as fostering a competitive coastal shipping services industry that supports the Australian economy, and maximising the use of available shipping capacity on the Australian coast. The previous government also sought to afford Australian and foreign ships equal access rights to carry coastal goods or passengers.<sup>9</sup> Both of these reforms would have improved the efficiency of the Coastal Trading Act and should be reconsidered.

The Coastal Trading Act has reduced the ease of access to foreign shipping at a time of global oversupply of shipping capacity. Conversely, the fleet of Australian ships suitable for domestic maritime transport has been declining for decades – a trend the Coastal Trading Act has not reversed. According to the Bureau of Infrastructure, Transport and Regional Economics the carrying capacity of the Australian coastal fleet has decreased by 69 per cent in the period from when the Coastal Trading Act was introduced in July 2012 to June 2016. In the same period the number of registered Australian-flagged vessels has fallen from 19 to 14.<sup>10</sup>

The higher operating cost of Australia's ageing fleet is also contributing to its declining participation in international trade. The regulatory impact statement on the Shipping Legislation Amendment Bill 2015 concluded that:

[T]he current situation is such that foreign participation in the Australian domestic maritime industry is essential for the foreseeable future ... The declining tonnage of trading ships on the Australian registry has led to a shortage in Australian capacity on domestic routes and has brought about an increased reliance on foreign ships to provide these services ... Domestic coastal trade suffers from either high freight charges or loss of business to the road and rail freight sectors.<sup>11</sup>

### **The economic benefit of liberalising coastal shipping**

Competitive coastal shipping services matter to businesses, consumers and communities in all Australian states and territories. Coastal ships transport refined petroleum products from Fremantle to Adelaide, newsprint from Burnie to Melbourne and gases from Hastings to Sydney.<sup>12</sup> However, the current regulatory regime for coastal shipping is burdensome, anti-competitive and failing to achieve its own objective of revitalising the local shipping industry.

The Productivity Commission has estimated that removing restrictions on coastal shipping would boost the Australian economy by between \$19 million and \$36 million a year.<sup>13</sup>

Protectionist measures – like those enshrined in the Coastal Trading Act – might preserve some jobs for some time in one industry, but they place many more jobs in other industries at risk by reducing their competitiveness. The Productivity Commission has argued strongly that while the Coastal Trading Act cannot sustainably protect jobs from international competition, it does increase costs for the users of coastal shipping and the broader Australian community:

<sup>8</sup> Federal Court of Australia, [CSL Australia Pty Limited v Minister for Infrastructure and Transport \[2014\] FCAFC 10](#).

<sup>9</sup> Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), p. 51f.

<sup>10</sup> Bureau of Infrastructure, Transport and Regional Economics, [Australian sea freight 2015-16](#), May 2018, p. 63.

<sup>11</sup> Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill 2015](#), p. 49f.

<sup>12</sup> Bureau of Infrastructure, Transport and Regional Economics, [Australian sea freight 2015-16](#), May 2018, p. 30.

<sup>13</sup> Productivity Commission, [Shifting the Dial: 5 Year Productivity Review](#), Report No. 84, Canberra, 3 August 2017, released on 24 October 2017, p. 233.



In itself, protecting an industry to preserve jobs is not justified. The cabotage restrictions protect some jobs at the expense of growth in other industries (PC 2014g). Protecting an industry from competition not only harms consumers (in this case farmers), but also reduces the incentives of the protected industry to improve its efficiency and competitiveness. Over time, the protected industry falls further behind foreign competitors, requiring ever more protection and increasing the cost to consumers and the community in general.<sup>14</sup>

Some opponents of coastal shipping reform assert that it would induce job losses. But this argument ignores the hundreds of thousands of jobs in other industries – including minerals extraction and processing, petroleum, cement, steel and agriculture – that rely on the efficient transportation of freight by sea. In its final report on the regulation of agriculture, the Productivity Commission recommended that:

As a matter of priority, the Australian Government should amend coastal shipping laws to substantially reduce barriers to entry for foreign vessels, to improve competition in coastal shipping services.<sup>15</sup>

Similarly, the Australian Competition and Consumer Commission stated that liberalising the coastal shipping trade would benefit businesses and consumers:

Restrictions on competition in coastal shipping are potentially at odds with principles of National Competition Policy ... Increased competition in coastal shipping should result in lower freight costs, with flow-on effects of lower prices for manufacturing inputs and consumer goods ... A more efficient coastal shipping industry will help to relieve pressure on Australia's road and rail networks, lowering transport costs and consequently prices, across the economy.<sup>16</sup>

Similarly, the Competition Policy Review Panel reasoned that cabotage licensing is justified only if it can be shown that the costs of restricting competition are more than offset by benefits to the nation:

The Panel considers that reform of coastal shipping and aviation cabotage regulation should be a priority. Consistent with the approach the Panel recommends for other regulatory reviews, the Panel considers that restrictions on cabotage for shipping and aviation 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 policy can only be achieved by restricting competition.<sup>17</sup>

The Commission of Audit also judged cabotage licensing to be 'effectively industry assistance' and advised that: 'To ensure a more efficient coastal shipping industry, the Commission recommends cabotage be abolished.'<sup>18</sup>

While the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 proposes a number of improvements to the operation and administration of the Coastal Trading Act, they do not go far enough. The government should also:

- Introduce a single permit system allowing unrestricted trade for domestic and foreign vessels
- Ensure that Australian and foreign-registered vessels are subject to the same conditions of access and operation by removing the ability of domestic ships to contest voyages proposed by foreign ships.

### **Biosecurity import levy**

In Budget 2018-19, the government announced new 'biosecurity import levy' to be imposed on sea containers and non-containerised cargo from 1 July 2019, with port terminal operators responsible for administering the levy on a quarterly basis. The levy – which was announced without industry consultation – consists of two rates:

- \$10.02 per twenty-foot-equivalent (TEU) unit
- \$1.00 per metric tonne of non-containerised cargo (break bulk and bulk)

<sup>14</sup> Productivity Commission, [Regulation of Australian Agriculture: Final Report](#), 15 November 2016, released on 28 March 2017, p. 392.

<sup>15</sup> Ibid., p. 42.

<sup>16</sup> Australian Competition and Consumer Commission, [Submission to the Government's Options Paper: Approaches to regulating coastal shipping in Australia](#), May 2014, p. 1.

<sup>17</sup> Competition Policy Review Panel, [Final Report](#), 31 March 2015, p. 210.

<sup>18</sup> Commission of Audit, [Towards Responsible Government, Phase 2 Report](#), March 2014, p. 29.

Like many other industries, the minerals industry opposes the imposition of additional biosecurity levy that has not been informed by a biosecurity risk assessment or regulation impact statement. The government has not explained why a new biosecurity tax is required on top of existing biosecurity charges for sea-freight and it has not guaranteed that all revenue raised by the new levy will be used to support Australian biosecurity measures.

As Australia's largest exporter, the minerals industry stands to carry a significant share of the revenue (more than \$100 million) that the levy will raise each year. The levy will impose additional costs on the import of key inputs that are crucial to the ongoing profitability of the sector, including fuel, chemicals, construction materials and mining equipment. One MCA member company estimates that the levy will add an additional \$6 million every year to its operating costs.

The MCA welcomes the government's decision to establish an industry steering committee to redesign the biosecurity import levy. The government should remove the proposed levy from the 2019-20 Budget and consult fully with all affected industries.