From the desk of Aaron Lane, Legal Fellow

Institute of Public Affairs
THE VOICE FOR FREEDOM
ESTABLISHED-1943

5 April 2017

Senator David Leyonhjelm
Committee Chair
Red Tape Committee
By email: <redtape.sen@aph.gov.au >

Dear Senator

Inquiry into the effect of red tape – cabotage

I refer to the above inquiry, and provide a submission to the Red Tape Committee on behalf of the Institute of Public Affairs ('IPA').

1. About the Institute of Public Affairs

The IPA is an independent, non-profit public policy think tank, dedicated to preserving and strengthening the foundations of economic and political freedom. The IPA supports the free market of ideas, the free flow of capital, a limited and efficient government, evidence-based public policy, the rule of law, and representative democracy. Throughout human history, these ideas have proven themselves to be the most dynamic, liberating and exciting. Our researchers apply these ideas to the public policy questions which matter today.

2. Previous IPA research on cabotage and red tape

The IPA has previously published work on cabotage. In December 2013, the IPA published the research paper '*Coastal Shipping Reform: Industry Saviour or Regulatory Nightmare?'*, authored by Chris Berg and myself.[1] Following this, the IPA made a submission to the Productivity Commission's inquiry into Tasmanian Shipping and Freight in February 2014[2], and a submission to the Productivity Commission's inquiry into Regulation of Agriculture in August 2016.[3] I have attached a copy of the above research paper, and trust that it will be of assistance to the Committee.

The IPA understands that the primary focus of this Committee's inquiry will be on coastal shipping restrictions – and we will confine our written submission to those issues. However, IPA senior research fellow Dr Chris Berg has also made previous commentary on air cabotage[4] – and the IPA would be happy to address the Committee further on this point if required.

[1] Berg, C, Lane, A, Coastal Shipping reform: industry saviour or regulatory nightmare?, Institute of Public Affairs, 13 December 2013. Available online: https://www.ipa.org.au/portal/uploads/Coastal_Shipping_Report-Institute_of_Public_Affairs-Dec_13.pdf

[2]Lane, A, Submission to the Productivity Commission: Response to the Draft Report on Tasmanian Shipping and Freight, 3 February 2014. Available online: http://www.pc.gov.au/inquiries/completed/tasmanian-shipping/submissions/submissions-test2/submission-counter/sub065-tasmanian-shipping.pdf

[3] : Allen, D, Berg, C, Novak, M, Wild, D, A Response to the Productivity Commission Draft Report on the Regulation of Agriculture, Institute of Public Affairs, August 2016. Available online: http://ipa.org.au/portal/uploads/DA-CB-MN-DW-PC-Submission-20160819.pdf

[4]See e.g.: Berg, C, 'A welcome mutiny against protectionism', *The Drum,* 26 May 2015; Berg, C, *The Libertarian Alternative*, Melbourne University Publishing, 2016, pp. 165-167.

The IPA has a research focus on cutting red tape, noting that the economic cost of red tape in Australia is estimated at $176 billion per annum.[5] The IPA was pleased to have contributed to the Committee's previous inquiry into the sale, supply and taxation of alcohol.

3. Response to the Committee's terms of reference

The IPA's submission is that cabotage laws should be repealed to remove protectionist restrictions on competition, and to remove the unnecessary burden of red tape imposed on Australian industry.

Coastal shipping laws have existed in Australia for over a century. The laws are simple economic protectionism, in that the laws are designed to discourage or prohibit foreign-flagged vessels from transporting freight in Australian coastal waters with the purpose of shielding Australian-flagged vessels from competition. Despite these laws, over the last two decades the coastal shipping trade has become more competitive through increased foreign competition. The Australian fleet has been in long-term decline, while the number of foreign-flagged vessels engaged in the Australian coastal trade has continued to increase. The approach of the previous Labor government was to increase the protective effect of cabotage laws in the form of the *Coastal Trading (Revitalising Australian Shipping) Act* 2012 and its associated Acts, which came on top of the *Fair Work Act* 2009 that imposed Australian award wages on foreign registered ships operating with foreign crews. In summary, these changes imposed new red tape on the coastal shipping industry by introducing a complicated three-tiered licensing system – and imposing extensive conditions and reporting requirements.

The 2012 changes were implemented due to a misunderstanding of the purpose of the coastal shipping industry. It was a 2008 report of the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government that laid the groundwork for the 2012 changes. The report's recommendations sought to 'revitalise' the 'Australian Coastal Shipping Industry', by which that committee meant protecting Australian-flagged vessels over foreign-flagged vessels. While that committee's report identified the economic benefits of the coastal shipping industry more generally – it provided almost no evidence for its assumption that the economic benefit varies depending on the colour of a vessel's flag. In economic terms, what matters is how much freight is being moved within Australia's coastal waters – not the ratio of Australian-flagged to foreign-flagged vessels. In policy terms, the priority should be a regulatory framework focused on driving competition and efficiency within the coastal shipping market – not entangling foreign-flagged vessels and consumers in red tape in the hope of artificially increasing the number of Australian-flagged vessels.

By adding to the red tape burden, the 2012 changes to coastal shipping laws have had a negative impact on the Australian economy. The former Labor government's own modelling found that the more effective the policies were at preventing foreign competition, the larger the negative impact would be on the Australian economy.[6] Modelling by Deloitte Access Economics estimated that the aggregate economic impact in GDP terms of the 2012 changes is between -$242 million and -$466 million to 2025.[7] More recent modelling by the Coalition government in 2015, estimated that

[5] Novak, M, The $176 billion tax on our prosperity, Institute of Public Affairs, May 2016. Available online: http://www.ipa.org.au/The-176-Billion-Tax-On-Our-Prosperity.pdf
[6] Department of Infrastructure and Transport, 'Reforming Australia's Shipping: Regulation Impact Statement', August 2011.
[7] Deloitte Access Economics, 'Economic impacts of the proposed Shipping Reform Package', February 2012.

removing all restrictions for accessing the coastal trade would boost the economy by $531.5 million to 2025.[8]

In short, the coastal shipping industry exists to service Australian producers of bulk commodities who rely on competitive transportation to sell their goods. If the Committee accepts this starting position, then the end-point must be cutting red tape by deregulating the market. Government intervention in the economy must be justified – and the only previous justification for coastal shipping laws has been protectionism. Coastal shipping laws have imposed economic barriers that have pushed up transportation costs for Australian businesses. Cutting red tape in coastal shipping will result in lower freight costs for Australian farmers and producers of bulk goods, lower input prices for Australian manufacturers, and lower prices for consumer goods.

4. Comment on the Turnbull government's proposed reforms

The IPA notes that last month the Minister for Infrastructure and Transport, the Hon. Darren Chester MP, released a discussion paper about proposed coastal shipping reforms.[9] This discussion paper proposes eight substantive amendments to the *Coastal Trading Act*:

i. Remove the five voyage minimum requirement for a Temporary License ('TL').
ii. Streamline the licensing process where no General Licence ('GL') vessels are available.
iii. Streamline the TL variation process to reduce duplication and time.
iv. Amend voyage notification requirements to reduce the unnecessary compliance burden.
v. Amend the tolerance provisions by extending the time period for loading date to 30 days and removing volume tolerances.
vi. Replace the current three-tier regime with two tiers by retaining GLs and TLs, and removing Emergency Licenses. This is less ambitious than the 2015 proposals which sought to have a single license category.
vii. Extend the geographical reach of the Coastal Trading Act.
viii. Allow dry-docking, streamlining the regulatory process.

These proposals follow a Productivity Commission recommendation 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."[10]

The IPA considers that all of these proposals will be positive changes to the current regime. The government's proposals are certainly a step in the right direction in the task of reducing red tape on the coastal shipping market. However, they are cautious proposals – perhaps recognising the legislative difficulties that the government faced with its 2015 proposals in the previous Parliament. The IPA's view is that this Committee should not settle for tinkering around the edges. The IPA's submission is that the Committee should be ambitious and navigate a course to repealing this protectionist regime in its entirety. Only a full repeal will achieve the maximum boost to the Australian economy.

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[8] Department of Infrastructure and Regional Development, Cost Benefit Analysis of Regulatory Coastal Shipping Options, Final Report April 2015. Available online: http://ris.pmc.gov.au/sites/default/files/posts/2015/07/Coastal-Shipping-Reform-Cost-Benefit-Analysis.pdf

[9] Department of Infrastructure and Regional Development, Costal Shipping Reforms: Discussion Paper, March 2017. Available online: https://infrastructure.gov.au/maritime/business/coastal_shipping/files/Coastal_Shipping_Reforms_Discussion_Paper.pdf

[10] Productivity Commission, Regulation of Australian Agriculture, Productivity Commission Inquiry Report No. 79, 15 November 2016. Available online: http://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture.pdf

5. Further questions

The IPA trusts that this submission will be of assistance to the Committee. If you have any further questions, please do not hesitate to contact myself: in writing to Level 2, 410 Collins Street, Melbourne 3000;

Yours faithfully,

AARON LANE
Legal Fellow, Institute of Public Affairs

Enc.

Coastal Shipping Reform:
Industry Saviour or Regulatory Nightmare?

Chris Berg
Aaron Lane

December 2013

Institute of Public Affairs
Free people, free society

Executive Summary

On July 1 2012, the Gillard Government passed the most extensive suite of changes to coastal trading since the *Navigation Act 1912* in the form of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and its associated Acts.

They come on top of the *Fair Work Act* 2009, which imposed Australian labour standards on foreign-registered ships operating with foreign crews in the Australian coastal shipping trade.

The combination of these changes have negative effects for the Australian economy and for Australian businesses and consumers.

- These changes are intended to reduce the number of foreign vessels currently carrying coastal freight, and to make Australian ships more competitive. They do so by significantly increasing the regulatory burden on foreign-flagged ships.
- Foreign-registered ships temporarily operating on the coastal trade must undertake at least five voyages in twelve months, and the loading dates, origin and destination, cargo types and volumes are specified at the start of that period.
- Foreign-registered ships can only carry cargo if there are no Australian-flagged ships (or foreign-flagged ships transitioning to Australian flags) that can do so.
- Foreign-flagged ships carrying foreign crews have to pay Australian award wages, which are far in excess of International Transport Workers' Federation rates.

These changes are aimed at encouraging the use of vessels that employ solely Australian resident crews. In doing so, the changes have the effect of significantly reducing the flexibility in the coastal shipping trade, and squeezing foreign-flagged ships out of the market.

As a result of the 2012 changes alone, the net present value of the coastal shipping industry's net economic benefit to the Australian economy is between $76 million and $150 million *less* than it would be in the absence of these changes.

It is clear that the changes will increase transport costs. This could result in bulk commodities being sourced from cheaper overseas markets, thus negatively affecting Australian commodity producers. Increased transport costs could also be passed downstream to consumers.

This paper examines the broader economic effects that seem likely to arise as a result of these changes.

Finally, this paper asks what ought to be done about coastal shipping. It concludes that a market-driven, open regulatory framework should instead govern Australian shipping, and it calls on the Abbott Government to implement changes as a matter of priority.

Contents

1.0 Introduction

Coastal shipping is important for many Australian industries. It exists to move predominantly dry bulk commodities around Australia in a cheaper and more efficient manner than road or rail transport on certain routes.

Australian coastal shipping operated in a relatively stable regulatory environment during the twentieth century.

However, the Rudd and then Gillard governments have changed that regulatory environment considerably with two separate but interacting changes:

- First, the *Fair Work Act* in 2009 imposed Australian industrial relations law upon most foreign-registered and foreign-crewed vessels that operated in the Australian coastal trade.
- Second, the 2012 Coastal Shipping changes changed the manner by which vessels were allowed to carry cargo on the coastal trade, changing the system of licences and permits to a system of general and temporary licences.

As part of each of these changes, there were a range of other regulatory impositions and restrictions. The sum total of these reform packages has substantially increased the regulatory burden on foreign ships, and – by raising the cost of foreign labour on the coastal shipping trade – has artificially inflated the competitiveness of Australian crews.

Coastal shipping is a vital part of the Australian economy. Any changes that increase the cost of shipping will reverberate around the many industries that rely on it.

This paper first details the shape and importance of the shipping industry. It then explains what changes have occurred in the lead up to the 2009 and 2012 changes, what those changes have done and the regulatory burdens they have imposed. Finally, it explores the effects of those changes on Australian shippers, maritime jobs, and the economy as a whole.

2.0 The Australian coastal shipping trade in Australia

The transportation of goods and personnel between two domestic ports is known as coastal trading. This is distinct from international shipping, where goods are transported between countries, but it is important to recognise that the distinction is not always clear.

2.1 The size and changing composition of the coastal trade

The Department of Infrastructure, Transport, Regional Development and Local Government (DITRDLG) has identified a number of separate possible definitions of "coastal shipping". Some of the commonly used definitions include:

- All commercial vessels operating on the coast … [including] tugs, offshore supply vessels, dredges, barges and offshore tourist vessels;
- Large trading vessels engaged in the coastal trade … moving cargo/passengers around the coast.
- Vessels that are licensed to engage in the coastal trade; on the basis that these are the vessels that are the primary means of meeting the coastal transport task.
- Vessels that are operated by Australian entities …
- Australian-registered vessels operating in the coastal trades … controlled by Australian entities and crewed by Australian seafarers.[1]

The variety of definitions of what constitutes the coastal trade makes it challenging to accurately account for the size and composition of the coastal shipping trade, and make estimates particularly sensitive to methodological changes.

Compounding this problem is the "poor availability of accurate information" about the coastal shipping fleet.[2] As a House committee concluded in 2008, "Varying interpretations of the Australian trading fleet coupled with fluctuating statistics illustrate the challenge in gauging the exact numerical state of the Australian trading fleet and its coastal component."

For example, many foreign vessels carrying cargo from international ports into Australian ports conduct 'triangular trades'. Triangular trades describe circumstances where a ship unloads a foreign cargo in Port A and is scheduled to load cargo in Port B for an international destination. It therefore organises to carry other cargo between Port A and B. In this manner, much of Australian coastal shipping is conducted by foreign vessels.

Unfortunately, DITRDLG changed the methodology by which they account for ownership and tonnage in 2007.

Nonetheless, we can see substantial changes in the mixture of foreign- and Australian-registered ships operating in Australia (to demonstrate changes over time we will use 2005-6 figures).

Between 1996 and 2005-06, we can see a significant change in the composition of the coastal shipping trade. In 1996, only four of the 42 vessels engaged in coastal shipping were foreign-registered vessels. By 2006, 11 out of 44 were foreign-registered.

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[1] House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry Inquiry into coastal shipping policy and regulation*, October 2008, 7.

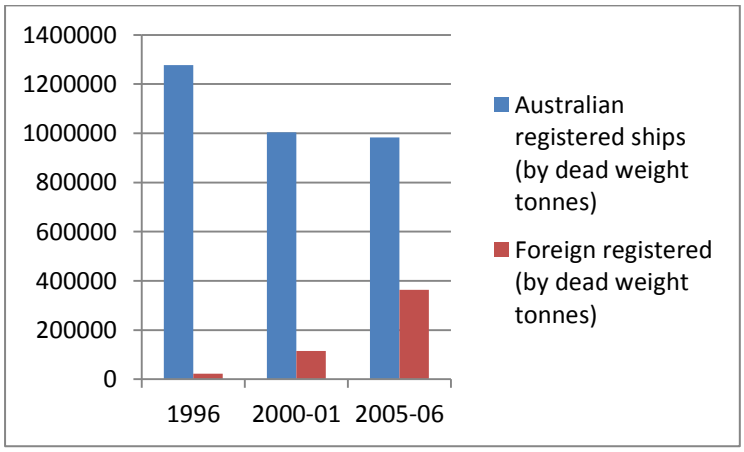
[2] Department of Infrastructure, Transport, Regional Development and Local Government, *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 2008, 8.

Chart 1: Australian and foreign coastal shipping

Note: Ships above 2000 dead weight tonnes. Source: DITRDLG submission

This change is more striking when we look at the tonnage carried on the coastal shipping trade, because the economics of shipping favours larger ships carrying more goods over time.

Chart 2: Australian and foreign coastal shipping by tonnage



Note: Ships above 2000 Dead Weight Tonnes. Source: DITRDLG submission

Nonetheless, these figures from 2005-06 understate the significance of the composition of the Australian trading fleet. In 2011, the Department of Transport reported that "22 Australian-registered, licensed vessels were competing on the coast with over 400 foreign flagged ships operating under permit."[3]

The discrepancy between the figures above and the 2011 figures reflects a number of different factors, including definitional issues, and the growth in Australia's shipping task in recent years due to the mining boom. We will come to the distinction between foreign ships operating under permit and Australian licenced ships shortly.

Suffice to say that the Australian fleet – both engaged in coastal shipping and international shipping – has been in a long-term decline relative to foreign-registered vessels.

[3] Department of Infrastructure and Transport, *Submission to House of Representatives Standing Committee on Infrastructure and Communications in relation to* Coastal Trading (Revitalising Australian Shipping) Bill 2012 *and related bills,* 4 October 2012, 3.

2.2 What the coastal trade carries and where it goes

Shipping cargo can be broken into three categories: containerised goods, liquid bulk and, most commonly, dry bulk goods. Where international shipping is characterised by containerised goods, the vast majority of Australian coastal shipping is in dry and liquid bulk.

Table 1: Cargo type by share of coastal freight

	Loaded (%)	Unloaded (%)
Dry bulk	64.9	64.3
Liquid bulk	20.3	20.9
Containerised goods	9.7	9.0
Other	5.1	5.8

Source: BITRE.

Dry bulk commodity freight includes cement, iron ore, manufactured steel, sugar cane, gypsum, alumina/bauxite, soda ash, retort coke, and fertiliser.[4] If we include coastal shipping with export and imports, Australia has one of the largest dry bulk commodities industries in the world, second only to China.[5]

Alumina/bauxite and iron ore are the most predominant coastally traded commodity, making up 40 per cent and 20 per cent of market movements respectively; commonly being transported along the Weipa-Gladstone, Gladstone-Brisbane, Gladstone-Newcastle and Pilbara-Port Kembla/Whyalla shipping routes.

Coastal shipping favours dry and liquid bulk because the market for containerised transport is most competitive in road and rail. Coastal shipping takes longer – roughly twice as many hours as road transport. One estimate suggests that containerised coastal shipping is only competitive for distances above 2,200 kilometres.[6]

[4] DAE, 'Economic impacts of the proposed Shipping Reform Package', February 2012, 17.
[5] National Bulk Commodities Group, *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 11 April 2008, 2.
[6] Department of Infrastructure, Transport, Regional Development and Local Government, *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 2008, 17.

Chart 3: Coastal freight carried on the top ten routes, 2010–11 (million tonnes)

Note: The top ten routes for coastal freight flow are selected based on the summed coastal freight over recent ten years, though the volume illustrated in the chart is for the most recent financial year.

The statistics of some ports include data for other associated ports, terminals or facilities. The full list of ports and grouped ports/terminals/facilities is in "Appendix A: Australian ports".

Source: BITRE (2012).

2.3 How economically significant is the coastal trade?

There is a widespread belief on all sides of the industry that the coastal trade is a key part of Australia's economic system. In 2004-05, shipping carried 24 per cent of the domestic freight task.[7] Coastal shipping is an important part of Australia's transportation system. A competitive market for coastal shipping relieves pressure on Australia's road and rail network, lowering transport costs – and consequently, prices – across the economy.

However, more precise information about the contribution to Australian economy provided by the coastal trade is not available. In its 2008 report, the House of Representatives committee regretted that no evidence could be found on this important question. While DITRDLG keeps comprehensive statistics about freight movement and cargo, they offer no economic context for these figures.[8]

[7] House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry Inquiry into coastal shipping policy and regulation*, October 2008, 11.
[8] Ibid., 12.

2.4 What is wrong with foreign-registered ships operating in Australia?

The title of the House of Representatives' 2008 committee report into Australian coastal shipping is titled *Rebuilding Australia's Coastal Shipping Industry*. It is an extensive document which lay the groundwork for the 2012 changes, and it is explicit about its purpose: to redress the composition of Australian shipping towards Australia-registered and operated ships and away from foreign ships. The report described the decline in Australian-registered shipping as "arguably … a crisis", and:

> There is a view amongst many in the Australian maritime industry that Australia would benefit from a revived and expanded coastal shipping sector …
>
> The strongest argument for revitalising Australia's coastal shipping industry is an economic one. A strong domestic shipping industry can assist in the alleviation of land transport bottlenecks, infrastructure constraints and environmental impacts, as well as provide economic benefits derived from the creation of local employment and the growth of maritime services. Australian defence, maritime safety and security could also benefit from an expanded coastal shipping sector.[9]

This assumption is held constant throughout much of the political discussion about foreign- and Australian-registered ships. The House of Representatives' report spends much energy explaining the economic and environmental benefits of the coastal shipping industry as a whole, but provides scant argument about why it is desirable that it be constituted of Australian-registered ships.

To a large degree, the decline of Australian shipping has been the result of government policies – such as industrial relations law – that favour foreign-ships operating in Australian waters. Wages on Australian ships are among the highest in the world.

However, even in the absence of these policy constraints, there are many reasons to welcome foreign ships operating on the Australian coastal shipping trade. Foreign-registered ships constitute 99 per cent of the international shipping trade operating in Australia.[10]

Encouraging foreign ships to operate in Australian waters provides flexibility to the country's transport requirements. As the National Bulk Commodities Group points out, "Australian ship owners and/or operators haven't been able to commercially justify stand-by tonnage to meet the inevitable peaks in supply and demand cycles."[11]

Many of the claims made in the *Rebuilding Australia's Coastal Shipping Industry* are, in fact, strong arguments *for* foreign shipping. For instance, "the alleviation of land transport bottlenecks, infrastructure constraints and environmental impacts" is a goal as easily served by foreign- as Australian-registered ships.

Indeed, servicing our coastal shipping task is a question of flexibility. Caltex told parliament that flexibility is critical for its coastal shipping task. Caltex's uses of temporary shipping licences were

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[9] House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry Inquiry into coastal shipping policy and regulation*, October 2008, v.

[10] Australian Shipowners Association, *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 2008, 3.

[11] National Bulk Commodities Group (NBCG), *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 20 April 2012.

usually in response to "unplanned events arising from changes in the company's operations or external factors, such as power cuts, extreme weather events or off-test product received from suppliers."[12] Allowing foreign ships to operate in Australia when market opportunities arise is the key to that flexibility.

One further argument offered by *Rebuilding Australia's Coastal Shipping Industry* is that a strong domestic shipping industry will have flow-on effects that support the Australian economy, supporting industries such as shipbrokers, port agents, ship managers, port service companies, and stevedores and terminal operators.[13] Once more, the report does not distinguish between benefits conferred by Australian-registered ships operating the coastal trade, and the coastal trade in general.

[12] Caltex Australia Limited, *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 20 April 2012, 5.

[13] House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry Inquiry into coastal shipping policy and regulation*, October 2008, 19.

3.0 Reforming Australian coastal shipping

3.1 Background

The Australian shipping industry has been on a long-term trajectory from a *laissez faire* regulatory environment to a highly regulated industry.

Nineteenth century shipping was largely unregulated. For much of the colonial era, coastal shipping dominated Australia's transport networks. However, this dominance was undermined from the 1890s by the expansion of inland rail networks. In the early decades of the twentieth century, roads also added significant competitive pressure upon coastal shipping.

These pressures were compounded by economic upheaval of the depression of the 1890s and the political pressure of maritime strikes. The response of the Australian industry was to cartelise in order to oppose foreign ships, which in some circumstances paid their crew lower wages and were alleged to benefit from foreign subsidies.

The new Commonwealth Government announced an inquiry into shipping in 1904, and in 1912 the *Navigation Act*, which governed coastal shipping throughout the twentieth century, was legislated.

The practice of restricting access to sea transport in domestic waters is known as cabotage – it also applies to rights and restrictions on air and other transport services.

Cabotage and industrial relations law are closely intertwined. Indeed, the ability of cabotage to limit foreign crews operating on the Australian coastal trade was the basis of Australian maritime unions' support for cabotage itself.[14]

The 1912 *Navigation Act* divided the coastal shipping industry into two regulatory categories:

- ships operating under *licence* – a permanent and unrestricted licence to carry cargo and passengers subject to a range of conditions, including industrial relations requirements; and
- ships operating under *permit* – a temporary permit to carry nominated cargo, but subject to a lesser range of conditions.

The industry's regulatory framework has been periodically reformed over the last 100 years.

One significant series of changes occurred in the mid-1980s. The Hawke government introduced financial incentives for the purchase of more efficient vessels with less labour requirements.

Over the last decade, coastal shipping laws were listed on the legislative review program for review by the Productivity Commission from a competition law perspective.[15] However, such a review was not forthcoming and instead, a 2008 House of Representatives inquiry examined the laws from the perspective of 'Rebuilding Australia's costal shipping industry'.[16]

[14] Richard Webb, *Coastal shipping: an overview*, Research Paper No 12. Parliamentary Library, 3 May 2004.
[15] Gary Banks AO, *Advancing the reform agenda: selected speeches*, Productivity Commission, December 2012, 50.
[16] Ibid.

3.2 Fair Work Act and the coastal shipping industry

Throughout the twentieth century, foreign seafarers operating on permit ships have been generally exempt from Australian industrial relations requirements. For example, under the Workplace Relations Regulations, foreign seafarers operating under permit on the Australian coastal trade were exempt from the *Workplace Relations Act* 1996.[17]

The logic for this is simple: Australian crews on ships registered in Australia are subject to Australian labour relations law no matter where they operate in the world; likewise, foreign crews operating in Australia on foreign ships on temporary permits should be subject to the labour standards of their country of origin.

Nevertheless, this has long been opposed by maritime unions, who have described foreign labour standards as "unfair competition".

The Australian Industrial Relations Commission confirmed the status quo in 2003, in a determination covering a CSL Pacific Shipping vessel operating on the Australian coast under permit. The CSL ship, *CSL Pacific*, was registered in the Bahamas and was crewed by Ukrainian nationals. The crew was paid at less than Australian award rates. The Maritime Union of Australia applied to the AIRC to impose Australian labour standards on *CSL Pacific*, and CSL appealed to the Australian High Court.

The High Court ruled that despite being a foreign vessel, the AIRC was constitutionally within its rights to apply Australian awards to the Ukrainian crew.[18]

Despite the High Court's finding that the AIRC had jurisdiction over CSL, it declined to impose Australian awards on CSL. It was not appropriate to impose Australian workplace law on foreign crews operating on permit in domestic trades. To impose such requirements would be a significant drain on productivity, and would be contrary to the spirit of the 1996 law. Furthermore, such an imposition would "most likely place the employer in a position where necessary changes in the name of efficiency would be resisted. Inappropriate work practices based partially on award provisions and partially on custom and practice might be the order of the day."[19]

The Rudd government's *Fair Work Act 2009* ended this long running principle. Under the Act, the Seagoing Industry Award binds all carriers operating in the Australian coastal trade, whether Australian-flagged or foreign-flagged.

The differential between foreign wages and Australian award rates was substantial. Rio Tinto believes that, in its experience, the cost of crewing a dry bulk carrier on the coastal trade with international seafarers is just 26 per cent of the cost of crewing it with Australian seafarers.[20]

The Australian reported in July 2010 that "shippers are passing on the costs of regulations that require them to pay local wages to foreign seafarers carrying domestic freight between Australian ports." The article identified ships involved in the triangular trade as particularly affected. The

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[17] Workplace Relations Regulations 2006 (Repealed), r 1.1; See also: Australian Shipowners Association, 'Cabotage and Industrial Relations', accessed at <http://www.asa.com.au/maritime-workforce/industrial-relations/cabotage-and-industrial-relations> on 26 November 2013.

[18] *Re Maritime Union of Australia and Others; Ex Parte CSL Pacific Shipping Inc* (2003) 214 CLR 397.

[19] Australian Shipowners Association, *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills (Supplementary)*, 2008.

[20] Rio Tinto, *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills (Supplementary)*, 2008, 5.

managing director of Toll Holdings told *The Australian* that "shipping companies will say it is no longer economical to pick up coastal freight. We've already had two international shipping companies, one of which is China Shipping, that have said 'we will no longer pick up coastal containers in the future." [21]

In response to a Department of Infrastructure and Transport Discussion Paper in 2011, *Reforming Australia's Shipping*, Ai Group stated that as a consequence of the recent industrial relations changes, "cabotage arrangements are too costly and inflexible for Australian industry."[22]

3.3 The 2012 changes

During the 2010 election, the Labor Party promised a reform of coastal shipping regulations, aiming to increase the number of Australian flagged vessels engaged in the coastal trade. The Minister for Infrastructure and Transport, the Hon. Anthony Albanese MP, suggested that "encouraging Australian-flagged ships to work our own blue highway is a prime aim of this reform agenda."[23]

On July 1 2012, the Gillard government's coastal shipping reform package came into effect. The Acts are intended to reverse the decline in the number of Australian-registered ships: the Revised Explanatory Memorandum (REM) to the *Coastal Trading (Revitalising Australian Shipping) Bill 2012* (CT(RAS) Bill) warns that "without action, there are unlikely to be any Australian registered vessels operating in the major trades within the next five years."[24]

A reform of shipping laws has been on the agenda for some time. In 2008, a House of Representatives Inquiry recommended reform of the *Navigation Act 1912* and the licence and permit system in operation at the time, as well as the introduction of tax incentives for Australian-flagged vessels and increased training.[25]

The Gillard government pledged at the 2010 federal election to undertake a wide-ranging reform of the *Navigation Act 1912*. The consultation process resulted in a package of licence and tax changes outlined in five Bills:

- *Coastal Trading (Revitalising Australian Shipping) Bill 2012* (CT(RAS) Bill)
- *Coastal Trading (Revitalising Australian Shipping (Consequential Amendments and Transitional Provisions Bill 2012* (CT(CATP) Bill)
- *Shipping Registration Amendment (Australian International Shipping Register) Bill 2012* (SRA(AISR) Bill)
- *Shipping Reform (Tax Incentives) Bill 2012* (SR(TI) Bill)
- *Tax Laws Amendment (Shipping Reform) Bill 2012* (TLA(SR) Bill)[26]

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[21] Annabel Hepworth, 'IR laws blamed for ship cost rise', *The Australian*, 12 July 2010, 1.
[22] Australian Industry Group (Ai Group), *Response to the 'Reforming Australia's Shipping' Discussion Paper*, 7 February 2011, 9.
[23] The Hon. Anthony Albanese MP, 'Shipping reforms will make us a maritime player once more' *The Australian*, 13 September 2011, accessed at http://www.minister.infrastructure.gov.au/aa/opinion/2011/aao_016_2011.aspx on 24 August 2012.
[24] *Coastal Trading (Revitalising Australian Shipping) Bill 2012* (CT(RAS) Bill), Revised Explanatory Memorandum (REM), 1.
[25] HoR SC(ITRDLG), *Rebuilding Australia's Coastal Shipping Industry*, 4-10.
[26] House of Representatives Standing Committee on Infrastructure and Communications (HoR SC(IC)), *Advisory report on Bills referred 22 March 2012*, May 2012, 1.

These Bills took effect on July 1 2012, and Minister Albanese claims the "new licensing regime … provide[s] … clarity and transparency" to the shipping industry.[27]

Central to these changes is a complicated licensing system that grants Australian-registered vessels unlimited access to the coastal trade for the term of the licence, while restricting the ability of foreign vessels to operate in Australian waters through temporary licences with extensive conditions and reporting requirements.

[27] The Hon. Anthony Albanese MP, 'Our Shipping Our Future', *Speech to NATSHIP12, National Shipping Industry Conference*, Melbourne, 7 August 2012, accessed at <http://anthonyalbanese.com.au/speech-to-natship12-national-shipping-industry-conference-our-shipping-future-park-hyatt-melbourne> on 13 August 2012.

4.0 Licensing the Coastal Trade

4.1 Pre-July 1 2012

Before the Gillard Government's shipping changes were enacted on July 1 2012, ships were licensed to undertake coastal trade using a system of licences and temporary permits. A licenced vessel had unrestricted ability to carry coastal cargoes and passengers. Alternatively, there were two permits available, either a specifically continuing voyage permit (CVP) or a single voyage permit (SVP). The licence and permit system can be summarised as follows:

Table 2: Pre-July 1 licence and permit system

Access to Market	Allowable operations	Wage rates	Flag	Owner/operator
Licence	Unrestricted ability to carry coastal cargoes and passengers - vessel must not be in receipt of foreign subsidy	SIA (Part A)	Unrestricted	Unrestricted
Single Voyage Permit	Restricted to single voyage based on application, defined date of voyage and tonnage - subject to criteria of licenced vessel ability, adequacy, and in the public interest	SIA (Part B)	Unrestricted	Unrestricted
Continuing Voyage Permit	Restricted to voyages under a three month period based on application, defined date of voyage and tonnage - subject to criteria of licenced vessel ability, adequacy, and in the public interest	SIA (Part B)	Unrestricted	Unrestricted

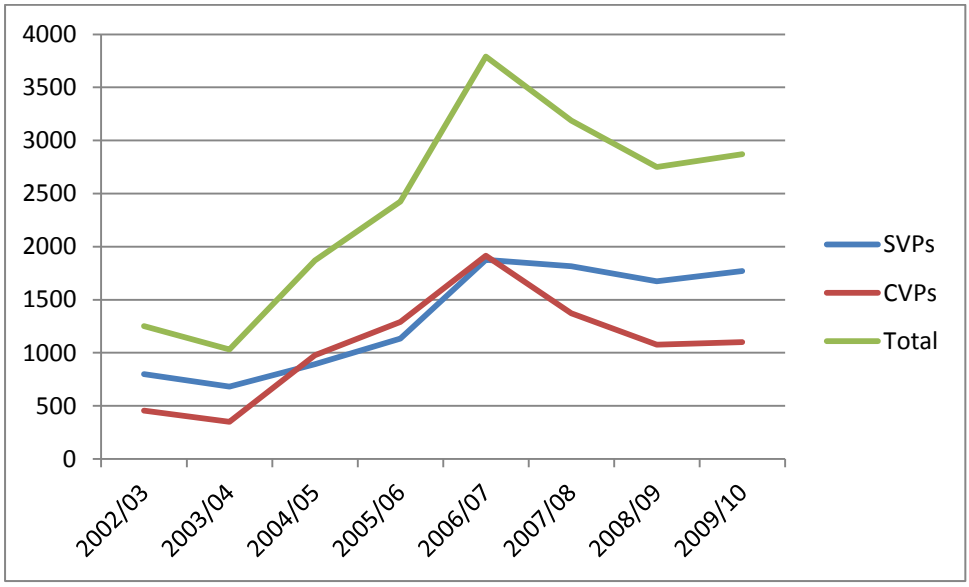
Department of Infrastructure and Transport (DIT), 'Reforming Australia's Shipping: Regulation Impact Statement' (RIS), 2011.

With the number of Australian-flagged vessels operating in the coastal trade decreasing, foreign vessels licensed under permit had become increasingly important. However, DIT estimates suggest that around 75 per cent of the coastal trade is still carried by Australian vessels, with the other 25 per cent of total coastal sea freight carried on foreign vessels operating under the SVPs and CVPs that had characterised the pre-July 1 2012 system.[28]

The number of voyages undertaken by foreign vessels operating under permit had been trending up over the last eight financial years:

[28] Department of Infrastructure and Transport (DIT), 'Reforming Australia's Shipping: Regulation Impact Statement' (RIS), August 2011, 13.

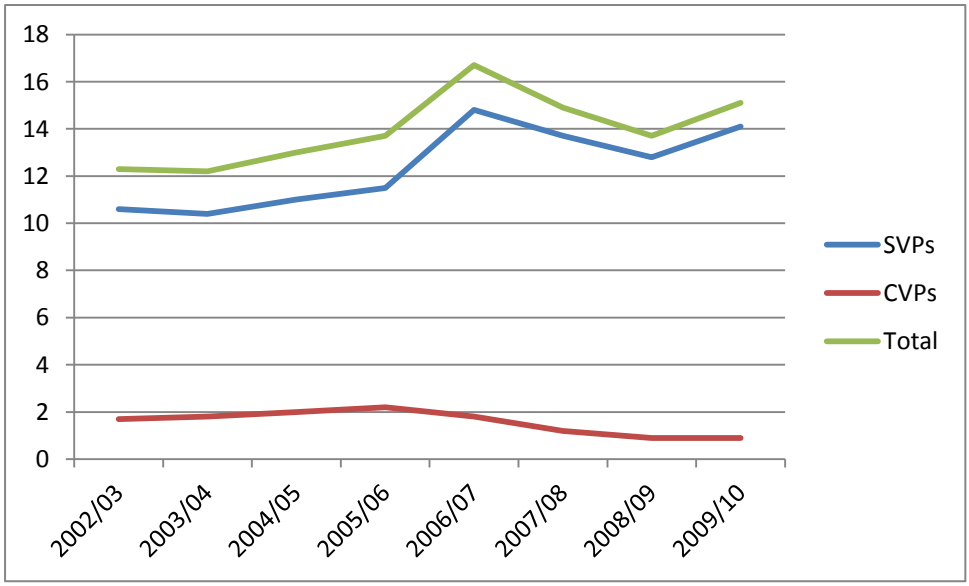
Chart 4: Single and continuing permit authorised voyages



Source: BITRE.

The volume of freight carried by vessels operating under permit had also increased:

Chart 5: Freight carried by single and continuing permit vessels (million tonnes)



Source: BITRE.

4.2 Industrial relations under the Fair Work Act and pre-July 1 2012

Under the *Fair Work Act* 2009*,* Australian-flagged ships in possession of a general licence were subject to the conditions laid out in the SIA (Part A), while foreign vessels operating under permit were covered by the less onerous SIA (Part B).

The SIA (Part B) wage rates and conditions are well in excess of International Transport Workers' Federation (ITF) rates, and the SIA (Part A) conditions and wage rates are higher again. Also, it is

important to consider that thanks to the maritime unions, majority Australian crews are likely to be receiving wages and conditions far in excess of the award rates.

For example, under SIA (Part A) an employee accrues leave entitlements at a rate of 0.926 for each day of duty, yet under SIA (Part B) "notwithstanding the NES [National Employment Standards], each employee will be entitled to payment of leave of eight days for each completed month of service and pro rata for any shorter period."[29] It has been estimated that Australian-flagged vessels subject to SIA (Part A) "incur crew costs that are approximately 61 per cent greater for a mini bulker and over 99 per cent greater for a handy size bulker" in comparison to foreign-flagged vessels subject to SIA (Part B).[30]

4.3 Post-July 1 2012

The current licence system, which came into effect on July 1 2012, is even more complicated and potentially costly to shippers, and hence consumers. The old system of licences and permits has been replaced by a three-tier licence structure:

- General licences (GLs) provide 'unrestricted access to engage in coastal trading in Australian waters.' These are available for Australian-flagged vessels, registered on the Australian General Shipping Register.
    - General licences are available for foreign-registered vessels, but only if they intend to transition to Australian registration within five years.
- Temporary licences (TLs) provide 'access to coastal trading in Australian waters … limited in time and … also to the voyages authorised by the licence.'
- Emergency licences (ELs) provide 'access to engage in coastal trading in Australian waters which is also time limited and is to deal with the identified emergency situation'[31] – emergency situations are defined by the *CT(RAS) Regulation 2012* as natural disasters or an event 'that endangers, or threatens to endanger' life, property, the environment and 'requires a significant and coordinated response.'[32]

It is envisaged that GLs will operate on an unrestricted basis for five years, TLs are limited to specified voyages for 12 months, and ELs to specified voyages for 30 days.[33] The table below gives further information:

[29] *Seagoing Industry Award,* December 2009, accessed at <http://www.fwa.gov.au/documents/modern_awards/pdf/MA000122.pdf> on 20 July 2012, 24.
[30] National Bulk Commodities Group (NBCG), *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 20 April 2012, 8.
[31] CT(RAS) Bill REM, 8.
[32] *Coastal Trading (Revitalising Australian Shipping) Regulation 2012* (CT(RAS) Regulation), 6.
[33] HoR SC(IC), *Advisory report*, 24.

Table 3: Post July 2012 licence system

Access to market	Allowable operations	Crew/wages	Flag	Owner/ operator
General Licence	Australian registered vessels: - Unrestricted ability to carry coastal cargoes and passengers - Access to taxation incentives	- Australian residents - Seagoing Industry Award Part A wages	Australian	Australian
	Foreign registered vessels: - Unrestricted ability to carry coastal cargoes and passengers - Five year transition to Australian registration - No access to taxation incentives	- Australian residents including s457 visa during transition - Seagoing Industry Award Part A wages	Foreign	Australian or foreign
Temporary Licence	Voyage, time and trade limited	- Australian International Shipping Register vessels: mixed Australian and foreign - Foreign vessels: unrestricted - Seagoing Industry Award Part B wages	Unrestricted	Unrestricted
Emergency Licence	Limited to situations specified in Regulations (for instance, natural disasters)	- Unrestricted - Seagoing Industry Award Part B wages	Unrestricted	Unrestricted

Source: DIT RIS.

4.4 Raising the regulatory bar for Temporary Licence Holders

Temporary licence applicants must undertake a minimum of five voyages during the 12-month term of the licence. Loading dates, cargo types, volumes, and ports of loading and unloading are all to be specified at the time the application is made.[34] This information must then be published on the Department's website (subject to commercial-in-confidence requirements) to allow general licence holders to nominate to carry that cargo instead, in line with the requirements of the shipper. The Minister must then decide whether to grant the temporary licence within 15 business days.[35]

Initially it was intended that TL applicants would have to meet a minimum of ten voyages but in consultation with industry it was decided this was too onerous. However, foreign-owned shipping companies' submissions to the Senate Standing Committee on Economics' inquiry into the Shipping Reform Bills suggested that even committing to five voyages 12 months in advance is often impractical.

The practical implications of TLs have been the source of most of the controversy surrounding this legislation. TL applicants must make details of their voyages available on the DIT website, and if a GL holder is available to carry even some of the cargo, TL applicants must then negotiate with the GL holder to determine who carries what.[36]

This presents a problem for anyone seeking to ship cargo. Ships operating under general licence are Australian-registered, which means they are required to employ Australian crews and hence pay

[34] Ibid., 29.
[35] Ibid., 24-29.
[36] CT(RAS) Bill REM, 24-6.

wages and entitlements at SIA (Part A) rates – although in practice it is important to keep in mind that MUA-negotiated enterprise bargaining agreements (EBAs) will typically grant wages and conditions in excess of the award.

This leaves anyone seeking to ship cargo with the uncertainty of increased transport costs, as a GL vessel may nominate to carry the cargo that the shipper was initially intending to transport via TL vessel. For dry bulk shippers, who often operate on thin margins with little scope to absorb increasing costs, the potential increases in transport costs are troubling. International shipping companies have also warned of the problems the legislation could pose for shippers.

Swedish-owned shipping services company Wallenius Wilhelmsen Limited (WWL) claims to provide services "not otherwise generally provided for by Australian flag shipping operators" to its coastal trade customers, and warns that the legislation could "quickly lead to the termination of [heavy and break-bulk cargo] services by international carriers."[37] WWL saw the requirement of forecasting cargo loading dates, volumes, and ports of loading and unloading in advance as problematic, stating that it was "completely impractical to provide this data with certainty" as "an international shipping operator such as WWL may have a quarterly or half-yearly international voyage plan … [but] this will always be subject to change arising from changes in international cargo flows, changes in vessels committed to the trade etc."[38]

Similarly, Caltex feared that the legislation would prove insufficiently flexible" to cope with the variability and uncertainty associated with oil industry operations", while also worrying about:

> the unnecessary and increased level of red tape and administrative burden; the imposition of a minimum voyage requirement on temporary licences and variations; the lack of publicly available information on general licence holders; the focus on contestability rather than cooperation; the need for reduced timeframes for Ministerial decisions; and overall the potential for disruptions to efficient, competitive and viable supply chains.[39]

For Caltex, access to foreign vessels is important in order to meet unplanned coastal shipping requirements due to unforeseen changes to operations or external factors.[40]

Even the Australian Shipowners Association, who were very supportive of the changes due to the benefits for Australian shipowners, suggested that the minimum five voyage requirement with all information to be provided in advance could lead to a situation where "applicants who genuinely require fewer voyages than the minimum set [such as smaller shipping companies] will be forced to provide spurious information to make up the set number required," which is "not in the interests of the applicant … GL holders who may wish to nominate or the Department."[41] The ASA considered this eventuality an example of "red tape which must be avoided."[42] DIT did not agree that a fictitious

[37] Wallenius Wilhemsen Logistics (WWL), *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 20 April 2012, 2.
[38] Ibid., 2.
[39] Caltex Australia Limited, *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 20 April 2012, 3.
[40] Ibid., 5.
[41] Australian Shipowners Association (ASA), *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 19 April 2012, 9.
[42] Ibid., 9.

voyages scenario would arise, but acknowledged that "the new arrangements may require some reconsideration of [smaller shipping operators'] operating arrangements."[43]

The new licence scheme significantly increases the complexity of shipping licences. It deliberately raises the regulatory burden on foreign-owned vessels seeking a temporary licence, and for no public interest purpose except to force commodity producers to utilise the shipping services of Australian-flagged vessels in preference to foreign carriers.

[43] HoR SC(IC), *Advisory report*, 24.

5.0 Taxing the Coastal Trade

5.1 Pre-July 1 2012

Before the Gillard Government's shipping changes, shipping companies were taxed in line with other companies and were not afforded concessional treatment. That is:

- a shipping company pays tax at the company tax rate;
- shipping vessels are depreciated based on an average effective life of 20 years;
- a balancing adjustment arising from the disposal of a shipping vessel is assessed in full in the income year in which a profit from disposal is made; and
- a company can claim salary, wages and allowances paid to seafarers as a tax deduction.[44]

A non-resident company is taxed on its Australian source income at the same rate as an Australian company.

5.2 Post-July 1 2012

The SR(TI) Act and the TLA(SR) Act introduced tax concessions for Australian shipping companies operating in the coastal trade. The purpose of the tax concessions is to further protect Australian operators. Australian financial or trading corporations now have access to various tax concessions if the corporation operates an 'eligible vessel' and meets training and management requirements.

An 'eligible vessel' is one that is:

- a seagoing vessel;
- not an excluded vessel under section 10(4) of the SR (TI) Act (which includes recreational, fishing, offshore industry, inland waterways, salvage, tugboats, government and defence force vessels); and
- at least 500 gross tonnes (or between 200 and 500 gross tonnes where the Minister is satisfied that the vessel has been, or will be, used wholly or mainly for carrying shipping cargo to, from or within regional or remote Australia).[45]

In terms of training requirements, the SR(TI) Regulations provide that the shipping company must employ one engineer officer trainee, one deck officer trainee, and one integrated rating or steward trainee, for each vessel that the shipping company operates.[46] This forces shipping companies to engage a minimum number of trainees, regardless of a company's operational requirements.

In terms of management requirements, the SR(TI) Regulations provide that the shipping company must conduct crew management within Australia, plus conduct either its commercial management, strategic management or technical management within Australia.[47] This requirement obviously goes further than simply requiring Australian companies to employ Australian resident crew, and thereby limits the ability of the Australian company to outsource parts of its operation to foreign sub-contractors.

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[44] TLA(SR) EM, 9.
[45] SR (TI) Act, s 10.
[46] SR (TI)_Regulations, r 4.
[47] SR (TI) Regulations, r 5.

Having met the above requirements, in order to access tax concessions, an eligible company operating an eligible vessel must apply to the Minister for a certificate. The certificate will entitle the holder to:

- Accelerated depreciation;
- rollover relief from income tax on the sale of a vessel;
- Income tax exemption for qualifying shipping income; and
- A refundable tax offset for employers who employ eligible Australian seafarers. [48]

Additionally, an exemption from royalty withholding tax exists for foreign owners of eligible vessels leased under a bareboat or demise charter to an Australian operator.[49]

5.3 Cost of tax concessions

The Department of Treasury has estimated the financial impact of the tax concessions to be $254.5 million to 2015-2016.[50]

While Treasury have not published more detailed modelling, it is noteworthy that in 2011-2012 there were only 23 Australian-registered vessels engaged in the coastal trade.[51]

[48] SR (TI) EM, 2.
[49] SR (TI) EM, 2.
[50] TLA(SR) EM, 4.
[51] Bureau of Infrastructure (Department of Infrastructure and Transport), Transport and Regional Economics, Statistical report: Australian Sea Freight 2011-12, August 2013, 59.

6.0 Effects on the Australian economy

When enacting legislation designed to assist a particular industry, it can be easy to lose sight of broader economic realities. Coastal shipping is a service industry; in Australia, it exists primarily to move raw dry bulk commodities, such as bauxite and iron ore and sugar, to downstream refiners. Increasing the costs of coastal shipping – which this legislation does by privileging Australian vessels with higher crew remuneration rates – has obvious implications for Australian businesses and consumers.

6.1 Implications for bulk shippers

While it is important to acknowledge the effects of the legislation on shipping companies, it is of more importance to fully comprehend the effects the legislation could have on the people who actually most require coastal shipping services – the producers and users of dry bulk commodities.

In their submission to the coastal trading inquiry, the Minerals Council of Australia (MCA) urged the government to consider the effects of the reform package on the businesses and industries that are responsible for the majority of Australia's coastal shipping task.

The MCA stated that the minerals industry is "responsible for up to half of the bulk … cargo moved around Australia."[52] As such, their chief concern was that "removing the flexibility of the coastal trading licensing system to adapt to the shipping requirements of customers engaged in highly competitive markets may be counterproductive."[53] Further, it was the opinion of the MCA that a mix of Australian-flagged and licensed and foreign-licensed permit vessels "is critical for creating competition and providing for flexibility."[54]

The Australian Dry Bulk Shipping Users (ABDSU) were even blunter in their submission. Their recommendation was that the Bill required further scrutiny as it:

- Promotes protectionism of Australian shipping without concern for the impact it will have on Australian manufacturing and industry;
- Will significantly impact on Australian manufacturing and industry costs;
- Will encourage foreign product imports over Australian industry;
- Is being incorrectly promoted as an environment and security reform; and
- Provides too much discretion to the Minister which can lead to further instability and uncertainty than the current arrangements of single voyage and continuing voyage permits.[55]

The ABDSU submission notes that cement industry sources have stated "it currently costs the same to move product from China to Australia as it does to move [from] one Australian port to another."[56]

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[52] Minerals Council of Australia (MCA), *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 13 April 2012, 1.
[53] Ibid., 1.
[54] Ibid., 1.
[55] Australian Dry Bulk Shipping Users (ADBSU), *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 19 April 2012, 1.
[56] Ibid., 5.

It is certainly the case that some commodities are subject to price sensitivity and competition from foreign imports. A Deloitte Access Economics study commissioned by the Cement Industry Foundation identified which of the major dry bulk commodities that comprise the bulk of Australia's coastal shipping task may be negatively affected by increases in shipping costs.

Table 4: Price and import sensitivities of key dry bulk commodities in the coastal trade

Bauxite/alumina	Demand for bauxite and alumina depends heavily on demand for aluminium. As aluminium is a highly substitutable good, demand for bauxite is relatively price sensitive. An increase in transport costs could lead to less demand for bauxite.
Gypsum	Import competition from Asia, especially Thailand, is already seeing users of gypsum shift towards imported gypsum. Increased transport costs have the potential to exacerbate that trend.
Sugar	Sugar imports are growing in Western Australia, there is some suggestion from the industry that the *Fair Work Act* has increased the price of domestically produced sugar, and that the CT(RAS) Act could continue to do so.
Steel	The steel sector is already contending with a high iron ore price and a high Australian dollar, making imported steel more attractive. The report suggests that imported steel already accounts for 22 per cent of Australian demand.
Fertiliser	Fertiliser is seen as price sensitive; increased transport costs have the potential to shift demand to imports away from domestically produced fertiliser. Imported fertiliser supplies one third of the Australian market.
Retort coke	As retort coke is a 'low value product', increased transport costs 'will have a proportionally greater impact on the industry.'
Soda ash	Australian producers of soda ash already face strong competition from overseas producers.

Source: Deloitte Access Economics (DAE), 'Economic impacts of the proposed Shipping Reform Package', 2012.

DAE analysis suggests that "the potential for these commodity producers to pass on the cost of the increased freight rate is regarded as minimal and the likelihood of substitution to imports high."[57]

Australian bulk commodity producers are in a bind: the Australian dollar is still relatively high, which makes imports comparatively cheaper. In addition, strong competition has rendered international shipping costs especially low. For intermediate consumers of the bulk commodities listed above, imports are already beginning to look more attractive relative to Australian commodities. For this reason, producers are unlikely to be able to pass on increased coastal shipping costs, and this could have a highly detrimental effect on several Australian commodity producers.

DAE also warned that many primary commodity industries operate on thin margins.[58] This limits producers' ability to absorb the increased costs associated with the new coastal shipping regime – which must necessarily result in either a reduction in output or an increase in prices to maintain margins. In either case, import substitution is likely to be the outcome.[59]

[57] DAE, *Economic impacts of the proposed Shipping Reform Package*, 35.
[58] Ibid. 35.
[59] Ibid. 35.

Major dry bulk shipper CSR confirmed this in its submission to the Inquiry into the Shipping Reform Bills, stating that it had "concerns about the thin freight market in bulk commodity goods" particularly as it related to recovering costs in aluminium markets. They also expressed a concern about "the potential cost increase, loss of flexibility and additional red tape that will occur as a result of this policy."[60]

6.2 Implications for maritime jobs

Ports Australia warns in its submission to the Inquiry that "strengthening the role of coastal shipping … [and] strengthening the role of dedicated national flag shipping … are distinctly separate issues."[61]

The government's legislation conflates the two objectives, but they are not directly analogous. Indeed, it is possible to foresee a situation where consumers of dry and liquid bulk products, frustrated by higher shipping costs, choose to import these products instead of sourcing them domestically, as outlined above. Alternately, increased transport costs for coastal shipping could see substitution towards road and rail as alternate modes of transport.

In either case, a decrease in the use of coastal shipping would occur, and it stands to reason that jobs at Australian ports could be jeopardised.

The regulatory impact statement (RIS) to the CT(RAS) Bill nominates a maritime skills shortage as a major problem that the legislation seeks to address, through increased training obligations for Australian-registered vessels,[62] yet makes no mention of the jobs that could be lost at Australian ports should shipping become uncompetitive relative to road or rail transport as a result of rising transport costs.

In order to get an idea of the ports that could suffer job losses should coastal shipping decline as a method of transporting goods, it is instructive to examine BITRE data providing an analysis of routes on which the use of single and continuing voyage permits was previously common:

[60] CSR Limited, *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, 20 April 2012, 1.
[61] Ports Australia, *Submission to Senate Standing Committees on Economics Inquiry into the Shipping Reform Bills*, May 2012, 3.
[62] DIT, RIS, 23-4.

Table 5: Dry and liquid bulk routes with a pre-2012 heavy dependence on single and continuing permits

Route	Freight transported on permits ('000 tonnes)	Number of voyages
Port Hedland - Port Kembla	3097.3	24
Gladstone - Newcastle	1393.3	28
Hastings - Sydney/Botany/Kurnell	922.7	34
Port Bonython - Sydney/Botany/Kurnell	801.4	16
Gladstone - Brisbane	641	56
Dampier - Port Kembla	404.4	3
Gladstone - Townsville	386.7	22
Milner Bay/Groote Eylandt - Bell Bay/Launceston	372.9	9
Melbourne - Perth/Fremantle/Kwinana	353.7	257
Gladstone - Bell Bay/Launceston	328.6	13

Source: BITRE.

Table 6: Key commodity movements with a pre-2012 dependence on single and continuing permits

Key commodities making use of permits	Route
Soda ash	Adelaide - Newcastle
Retort coke	Newcastle - Bell Bay, Newcastle - Adelaide
Gypsum	Thevenard - All major ports except Perth
Fertiliser	Various routes
Cement	Various routes
Clinker	Birkenhead - Brisbane
Raw sugar	Queensland ports - Melbourne

Source: BITRE.

Many of these ports support whole regions, and could ill-afford to see jobs lost if shipping declines as a favoured transport method.

6.3 Projections for Economic Implications

As part of its regulatory impact statement, the Department of Infrastructure and Transport (DIT) presented four scenarios of the economic impact of the government's shipping reform package:

- Scenario A: The reform package has no effect; Australian and foreign ships carry the same quantities of freight as under the pre-July 1 2012 system.
- Scenario B: Australian ships gain an extra 10 per cent of total dry bulk (excluding iron ore and bauxite), liquid bulk and petroleum products freight tonnage from foreign ships operating on temporary licences.

- Scenario C: Australian ships gain an extra 20 per cent of total dry bulk (excluding iron ore and bauxite), liquid bulk and petroleum products freight tonnage from foreign ships operating on temporary licences.
- Scenario D: Foreign ships cease to carry any dry (excluding iron ore and bauxite) bulk, liquid bulk or petroleum products; quantities of freight carried by foreign vessels declines to zero by 2016/17.[63]

The RIS explicitly states:

> The government has a clear intention to use the temporary licence system to encourage replacement of foreign ships with Australian ships so some substitution can be expected. Scenarios B and C are therefore considered most realistic. Scenarios A and D can be viewed as sensitivity tests of more extreme assumptions.[64]

The Department of Transport estimated the net present value (NPV) of net economic benefits:

Table 7: RIS NPV estimates

Scenario	NPV ($m)
Scenario A (no effect on flagged vessels)	$192
Scenario B	$116
Scenario C	$42
Scenario D (maximum effect: all foreign flagged ships convert to Australian flags)	(-$202)

Source: DIT RIS.

As is evident from the table above, based on the government's own estimations, the more successful the government is in achieving its goal of substitution towards Australian vessels and away from foreign vessels operating in the coastal trade, the less successful the project in NPV terms. When comparing NPVs of potential projects, the idea is usually to go with the highest one – in this case, Scenario A, which is tantamount to the base case; the situation is the same as it would have been in the absence of the coastal shipping changes.

Causing damage to the economy is so rarely the aim of policy that this reform package almost deserves to be applauded for its brazenness in explicitly privileging one industry above the broader Australian economic interest.

The DAE report also modelled the effects of increased domestic production costs and a substitution of imports for domestic production. From this modelling DAE estimates that freight rates on these key commodity routes will increase by 10 to 16 per cent, leading to an increase in the delivered price of these commodities of up to five per cent.[65]

Much of this is due to increased labour costs prompted by fewer foreign vessels gaining access to the coastal trade through the application of the temporary permit system, thus forcing dry bulk

[63] DIT RIS, vi-vii.
[64] Ibid., vii.
[65] DAE, *Economic impacts of the proposed Shipping Reform Package*, 33-4.

shippers to utilise vessels operating under general licence, which are subject to the higher wages and conditions laid out in the SIA (Part A). DAE estimates these labour costs to increase by 60 to 100 per cent per day.[66]

From this, DAE forecasts that 200 FTE jobs could be lost from the maritime industry in the long term, but in the immediate term losses could be in the order of 570 FTE jobs.[67] DAE goes on to forecast that 'the aggregate economic impact of the proposed new licensing arrangements increases from [losses of] between $12 and $22 million in … GDP in 2012 to [losses of] $40 and $82 million in GDP by 2015' through a combination of increased costs on directly affected manufacturing sectors and downstream as foregone domestic production.[68]

It should be noted that DAE had assumed that temporary licences would be phased out after a five-year period – an incorrect assumption.[69] However, DIT's own modelling suggests that the aggregate economic impact in GDP terms to 2025 is estimated at between -$242 and -$466 million.[70]

[66] Ibid., 33.
[67] Ibid., 37.
[68] Ibid., 36-7.
[69] HoR SC(IC), *Advisory report*, 9.
[70] NBCG, *Submission*, 9.

7.0 Productivity promises

Stakeholders were told at the beginning of the shipping reform consultation process that a productivity compact between the MUA, the AMOU and the ASA, brokered by government, would deliver real economic benefits to the shipping industry.

The compact was only made available on the day the House passed the shipping changes – May 30, 2012, only a month before the Bills would take effect. As such, scrutiny of the compact has been limited, although some Opposition members expressed doubts that the "notoriously militant" MUA could deliver meaningful productivity reforms.[71] The Deloitte Access Economics investigation also expressed concern that the quantitative analysis in the RIS was thus subject to considerable uncertainty without publicly available details of the productivity compact.[72]

Those hoping for a document filled with specific examples of productivity improvements to be made will likely be disappointed by the compact. Instead, it is chiefly comprised of motherhood statements articulating the desire of both parties to "deliver productivity and efficiency changes to better align practices in the Australian shipping industry with international best practice."[73]

The key commitments are:

- Commitment to a sustainable industry: "the parties agree that in order to maintain reliable and consistent shipping services … EBA negotiations should be conducted by a single bargaining unit".
- The establishment of a shipboard management committee: "productivity … is largely determined by the effectiveness of shipboard management".
- A workplace culture that "actively encourage[s] a culture of respect across organisations" and occupations.
- Employees are to work as a team "to achieve maximum workforce efficiency".
- Workplace disputes are to be resolved on board "with the resort to union or company industrial officers being the choice of last recourse".
- A reaffirmation that any increase in employer super contributions from 9 to 12 per cent to do not apply to employers already contributing in excess of 12 per cent.
- An affirmation of the importance of merit-based employment.
- Agreement to consider crewing requirements on a case-by-case basis, affirming that a "crew to berth ratio of 2:1 … or less is generally a desirable outcome".
- On workers' compensation: "the parties agree to continue to work with the Seacare Authority and AMSA … on strategies to eliminate fatalities and to decrease injuries".
- Commitment to training: "every area of potential efficiency improvement ought to be considered with a view to increasing the supply of qualified and certified seafarers in accordance with demand requirements determined by agreed workforce planning".

[71] Mr Paul Fletcher MP, 'Shipping Reform', *Parliamentary Speeches*, 31 May 2012, 1-3.
[72] DAE, *Economic impacts of the proposed Shipping Reform Package*, 42.
[73] Australian Shipowners Association (ASA), Australian Maritime Officers Union (AMOU), Maritime Union of Australia (MUA), *Bluewater Shipping Reform Labour Relations Compact*, 30 May 2012, 1.

- Commitment to maintenance riding gangs: ”to undertake fabric maintenance … an important measure that can extend dry docking cycles and ensure ships are maintained to high standards, effectively extending their working life”.
- Wage rates and conditions of AISR ships engaged in the international trade are to be comparable to ITF TCC agreements.[74]

Unfortunately, the labour relations compact does not at any point make specific, *quantifiable* commitment to productivity improvement, rendering the entire document only as good as the MUA’s word. Given their aggressive industrial relations strategies of the past, it remains to be seen whether any of these commitments will result in a more productive Australian shipping industry.

[74] ASA, AMOU, MUA, *Bluewater Shipping Reform Labour Relations Compact*, 2-9.

8.0 What should be done about coastal shipping?

Changes in Australian coastal shipping are not unique. Since the 1970s, ship registrations have been moving away from national shipping registers to open shipping registers. In 2008, some 53 per cent of the world fleet was registered in open registers, allowing shipowners the opportunity to take advantage of the cheap registration, low taxes and cheap labour this option offered.[75]

National flag carriers globally face competition from nations that have explicitly sought to implement favourable tax and subsidy schemes in order to attract shipping investment. The 1990s saw 'traditional maritime countries' such as Hong Kong, Singapore, Canada and the UK introduce measures such as favourable tax schemes for ship owners, ship-financing schemes, mandatory training requirements, cost-offsets for domestic maritime labour, and "the establishment of second, international registers to support development of domestic shipping industries into international markets," leaving Australian-flagged vessels at a further disadvantage. [76]

It is important to recognise that some countries possess a comparative advantage in some areas, while others do not.

However, Australia is burdened by issues such as an ageing maritime workforce – further depleted by the need for labour in the mining and oil and gas sectors – and high labour costs. If ships registered in other countries can provide shipping services at lower costs to Australian commodity producers, it seems that we should be encouraging foreign competition in the coastal shipping sector rather than attempting to squash it.

It remains to be seen whether the coastal trading legislation will have the effect desired by the government – that is, forcing coastal trade off foreign vessels and on to Australian flagged vessels with higher crew remuneration rates.

In any case, the measure of economic success should not be the market share of Australian flagged vessels within the coastal shipping industry. Transportation is a derived market; therefore, the focus of coastal shipping reform should have been on increasing the efficiency of the bulk transport industry to ensure that Australian products remain globally competitive.

Instead, this legislation produces negative consequences for industries in which Australia currently does exercise a competitive advantage. Primary commodity industries often operate on thin margins and can ill-afford to absorb higher transport costs. Some producers may be forced to exit the market, thus leading to a decrease in commodity exploration and extraction, and the jobs associated with those processes.

The weakening of competition is also out of step with the broader regulatory framework, in particular competition law policy. This was identified in 2012 by Gary Banks AO, then chairman of the Productivity Commission, who criticised the coastal shipping changes:

[75] HoR SC(ITRDLG), *Rebuilding Australia's Coastal Shipping Industry*, 9.
[76] Ibid., 16-18.

> [The] rationale [for the changes] clearly goes against the current of competition policy and Australia's structural reform efforts over past decades, with the RIS itself acknowledging that the proposed arrangements were 'strictly inconsistent with the Competition Principles Agreement'.[77]

Mr Banks noted that the changes had raised costs for industry users, weakened inter-modal competition, and had not been subject to a public interest test.[78]

Rod Simms, chairman of the Australian Competition and Consumer Commission, also questioned whether the changes were worth the cost. He stated that "it does not seem economic for Australian shipping even with the current protections in place" particularly where foreign ships "would call at a number of Australian ports anyway".[79]

These comments are not surprising. As this report has cited, because of the 2012 changes economic modelling predicts that freight rates on key commodity routes will increase by 10 to 16 per cent, increasing the price of Australian commodities by up to five per cent. In the immediate term, the changes could result in the loss of up to 570 FTE jobs. In GDP terms, the government's own modelling suggested that the aggregate economic impact to 2025 was between -$242 million and -$466 million.

Prior to the 2013 federal election, the Hon. Warren Truss MP, then Shadow Minister for Infrastructure and Transport, expressed concern about the lack of competitiveness and productivity in the Australian shipping industry and the flow on effect that this is having on domestic bulk producers:

> Some companies are reporting container rates from Melbourne to Brisbane at almost twice the cost of that from Singapore to Melbourne. Others have reported an almost doubling of bulk freight rates on the east west route. This cost impact is having a serious flow on effect to sectors of our manufacturing industry, which as we know, is already struggling to compete. When it is cheaper to ship sugar from Thailand or cement from China than around our coast, there is something going seriously wrong with our regulatory arrangements. Should the Coalition be successful at the forthcoming election, I will be seeking to address these seemingly unnecessary burdens on the shipping industry.[80]

After the election, Mr Truss, now Minister for Infrastructure and Investment, maintained that he was "determined to put the current system under the microscope to streamline processes and foster a vibrant and sustainable shipping industry in Australia".[81] In order to mitigate the potential economic damage of the changes, a review must be conducted as a matter of priority.

Given that a number of parliamentary inquiries have already recently been conducted, any further review process should be expedited. Further, any further review must focus on the true purpose of coastal shipping regulation reform: increasing the efficiency of the bulk transport industry to ensure that Australian products remain globally competitive.

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[77] Gary Banks AO, *Advancing the reform agenda: selected speeches*, Productivity Commission, December 2012, 50
[78] Ibid, 12.
[79] Rodd Simms, *A future regulatory outlook*, Speech to the SMART Inaugural International Symposium for Next Generation Infrastructure conference, 30 September 2013.
[80] The Hon. Warren Truss MP, *Infrastructure: An essential ingredient for productivity*, Speech to the CEDA State of the Nation 2013 conference, 25 June 2013.
[81] The Hon. Warren Truss MP, *Major freight and infrastructure developments*, Speech to the PACSHIP 2013 Shipping & Export Leaders' summit, 8 October 2013.

The coastal shipping market will be most efficient if it is governed by a market-driven, open regulatory framework. On this basis, the Coalition government should:

- exempt foreign-flagged vessels employing foreign crews from the operation of the Australian industrial relations laws, as was the case prior to 2009;
- remove the complex regulatory system of licenses and permits;
- remove the extensive reporting requirements of vessel operators; and
- remove tax concessions.

The Coalition government would do well to truly reform coastal shipping, so that it can best serve Australian industry and consumers instead of the interests of the shipping unions.

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About the authors

Chris Berg is a Research Fellow with the Institute of Public Affairs. He is a regular columnist with ABC's *The Drum*, covering cultural, political and economic issues. He is an award-winning former editor of the IPA Review. His latest book is *In Defence of Freedom of Speech: from Ancient Greece to Andrew Bolt*. A monograph, *The Growth of Australia's Regulatory State*, was published in 2008. He is also the editor of *100 Great Books of Liberty* (with John Roskam) published by Connor Court Publishing in 2010, and *The National Curriculum: A Critique* (2011).

Aaron Lane is a Research Fellow with the Institute of Public Affairs.