Australian Government

Department of Infrastructure and Regional Development

Select Committee on Red Tape

Inquiry into the effect of restrictions and prohibitions on business (red tape) on the economy and community:

The Effect of Red Tape on Cabotage

Submission by the Department of Infrastructure and Regional Development

April 2017

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Introduction

Red Tape

The Department is a key Commonwealth safety and security regulator. The Department has direct regulatory responsibilities in air, maritime, rail and road transport, and the governance of self-governed and non-self-governed territories. The Department's goals are to ensure:

- The Australian transport system operates within a fair, clear, and robust regulatory environment that fosters safety, security, efficiency, competition and achieves the appropriate balance between these outcomes; and
- Appropriate governance frameworks are in place for Australia's territories and effective infrastructure and services are delivered to Australia's non-self-governing territories.

A key strategy of the Department is to provide clear and consistent best-practice regulation to the transport industry, taking into account Australia's international agreements. To this end, the Department has maintained effective safety and security standards while also reducing red tape, by achieving efficiencies through administrative improvements, eliminating duplication and removing ineffective compliance requirements.

The Department has a comprehensive program of regulatory review under which it regularly reviews, audits and evaluates its regulations to ensure they are efficient, effective and fit for purpose. The Department's policy makers seek out practical solutions, balancing risk with the need for regulatory frameworks that support a stronger, more productive and diverse economy. Consistent with the Government's Regulatory Reform Agenda, the Department undergoes a rigorous approach to policy making that seeks to ensure that regulation is never adopted as the default solution, but rather introduced as a means of last resort.

Further information on the portfolio's efforts to reduce red tape can be found at: www.infrastructure.gov.au/department/deregulation/index.aspx.

Cabotage

Generally speaking, cabotage is the practice of providing access to domestic transport markets by foreign transport carriers.

While aviation and maritime cabotage are conceptually similar, the issues and considerations vary considerably.

The ability of the local aviation and maritime industry to meet the commercial requirements of the domestic economy is fundamentally different. The industries also have different risk profiles (impacting approaches to safety regulation), and are affected by international regulatory frameworks in different ways.

This has resulted in tailored approaches to the regulation of cabotage rights in the aviation and maritime industries.

In the maritime context, Australian flagged vessels operated by Australian seafarers are given priority access to domestic shipping in Australia, although foreign shippers can partake in the

domestic shipping market subject to the licensing requirements laid out in the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Coastal Trading Act).

The Australian Government's aviation policy settings take a stricter approach to aviation cabotage: foreign airlines are generally only permitted to undertake aviation cabotage under exceptional circumstances, where no Australian carrier is able to meet the needs of the client.

This contrasting approach is consistent with the international experience: Countries take a range of approaches to maritime cabotage ranging from fully closed through to fully open, however almost no countries have traded aviation cabotage rights extensively and major aviation nations such as Canada, China and the United States do not permit aviation cabotage.

Maritime Cabotage

In Australia, maritime cabotage is regulated through the administration of the Coastal Trading Act. The Coastal Trading Act was introduced in 2012 and replaced Part VI of the *Navigation Act 1912*.

Within the Department, the Coastal Trading Section is responsible for administering the Coastal Trading Act and its associated regulatory regime. This involves the processing of coastal trading licence applications (submitted through the Coastal Trading Licencing System, CTLS), undertaking compliance and enforcement activities and supporting clients engaged in coastal trading understand and meet their legislative requirements.

The object of the Coastal Trading Act is to provide a regulatory framework for coastal trading in Australia that:

a) promotes a viable shipping industry that contributes to the broader Australian economy; and
b) facilitates the long term growth of the Australian shipping industry; and
c) enhances the efficiency and reliability of Australian shipping as part of the national transport system; and
d) maximises the use of vessels registered in the Australian General Shipping Register in coastal trading; and
e) promotes competition in coastal trading; and
f) ensures efficient movement of passengers and cargo between Australian ports.

Access to the domestic market by foreign shippers

With the introduction of the Coastal Trading Act in 2012, the regulations regarding foreign shippers engaging in cabotage in Australia were updated. Under the Coastal Trading Act, all companies wishing to engage in domestic shipping around Australia must be the holder of a coastal trading licence authorising a particular vessel or voyage.

Australian flagged vessels with Australian crew may apply for a General Licence (GL) that enables unrestricted access to the Australian coast for a five-year period. Where operators wish to perform coastal trading voyages with foreign-flagged vessels, they must apply for a Temporary Licence (TL). A TL is valid for a 12-month period and requires prior authorisation of each individual voyage on the licence. Applications for, and subsequent variations to, these licences carry an application fee between $110 and $400.

In addition to regulations established by the Australian Maritime Safety Authority and international regulations required by the International Maritime Organisation, there are a number of conditions placed on holders of TLs under the Coastal Trading Act. Foreign-flagged vessels being used for multiple coastal trading voyages must pay Australian wages to their crew, regardless of nationality, on the third and each subsequent voyage authorised by a licence. TL holders also face additional requirements including gaining approval for individual voyages, notifying on a voyage prior to loading and reporting on a completed voyage not encountered by GL holders.

Red tape in maritime cabotage

Throughout 2016, the Minister for Infrastructure and Transport, the Hon Darren Chester MP, undertook consultation with representatives from various sectors of the maritime industry. In doing

so, the Minister was informed of a number of administrative issues for shipping companies and Australian businesses reliant on coastal shipping, resulting in substantial regulatory burden. These issues were reported as raising costs and stifling economic activity in the Australian maritime sector and industries using shipping for the movement of freight.

Concerns raised by stakeholders included the 'inflexible' and 'cumbersome' nature of the licensing system (including contestability of licence applications), the lack of competitiveness for Australian shippers. Many stakeholders argued that the combination of these issues generates unnecessary costs for shippers, and consumers. Stakeholders claimed that increased regulation and red tape introduced with the CT Act was damaging sectors directly and indirectly reliant on shipping as a result of higher shipping costs.

While the volume of freight being moved around Australia continues to grow, the proportion of domestic freight moved by shipping has fallen from 26 per cent in 2003-04 to 15 per cent in 2014-2015[1].

Coastal Shipping Reforms Discussion Paper

In order to explore remedies to industry concerns, the Minister released the Coastal Shipping Reforms Discussion Paper (the Discussion Paper) on 21 March 2017. This paper signalled the Minister's intention to introduce legislation to amend the CT Act in order ensure safe, secure and efficient coastal shipping.

The Discussion Paper proposes to reduce red tape by removing the aspects of the coastal trading regime reported as unreasonable limiting, inflexible or onerous for stakeholders. These amendments will provide greater flexibility to buyers and suppliers of shipping services. The unambiguous objective of these proposed amendments is to ensure safe, secure and efficient coastal shipping as part of Australia's national transport system.

The Discussion Paper proposed nine amendments to the CT Act that will facilitate improved efficiency and reduced red tape in maritime cabotage:

1. *Remove the five voyage minimum requirement for a Temporary Licence (TL)*; offering applicants the freedom to apply for individual voyages.
2. *Streamline the licensing process where no General Licence (GL) vessels are available*; eliminating unnecessary additional steps and delays in the application process.
3. *Streamline the TL variation process*; simplifying the licensing process for applicants by combining New Matters and Authorised Matters variations into a single variation type.
4. *Amend voyage notification requirements*; reducing compliance costs by abolishing superfluous steps in the licensing process.
5. *Amend the tolerance provisions*; improving the flexibility of the system and drastically reducing the resources required for licence applications.
6. *Replace the current three-tier regime with two tiers*; simplifying the licensing system through elimination of an unnecessary licence type.
7. *Extend the geographical reach of the Coastal Trading Act*; eliminating duplication with other state and federal legislation.

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1 Source: Bureau of Infrastructure, Transport and Regional Economics, 2017

8. *Allow dry-docking*; simplifying the regulations to avoid duplication with the *Customs Act 1901* and reducing the cost of operating in the Australian maritime sector by minimising exposure of stakeholders to fees and duties.
9. *Minor technical amendments*; clarifying and simplifying clients' obligations under the CT Act to reduce the burden of compliance.

The proposed impact of these amendments is to remove the administrative and legislative issues contributing to complexity and inefficiency, as identified by industry participants, in order to reduce the cost of compliance in the maritime sector. By reducing the regulatory burden through proposals such as those listed above, the Department is working to minimise the effect of red tape on maritime cabotage, promoting increased economic output for both the maritime industry and the Australian economy as a whole.

In order to support a vibrant maritime sector and ensure the continued development of maritime skills, the Discussion Paper proposes a number of seafarer training initiative options. The proposals will help to support Australian seafarers and their access to economic opportunities.

Coastal Trading Licensing System Enhancement Project

The Department is in the process of improving the online licence application portal through the Coastal Trading Licensing System (CTLS) Enhancement Project. The CTLS Enhancement Project is scheduled for completion in August 2017. The objectives of the project include improved workflows and automation.

Through improved simplicity, usability and automation of the CTLS online portal, the CTLS Enhancement Project will facilitate easier engagement with the licensing process and compliance with the obligations of the CT Act. Reducing the 'red tape' associated with CTLS will result in reduced resources expended by both the Australian Government and industry stakeholders on achieving legislative compliance, improving efficiency and economic output within the sector.

Maritime cabotage regulations internationally

Regulation of maritime cabotage varies significantly around the world, with countries approaches ranging from 'open coastline' arrangements, where unrestricted foreign access to cabotage services is allowed, to 'closed coastline' arrangements, where foreign companies are banned from engaging in maritime cabotage.

The approach taken by the United States of America (the USA) under the Merchant Marine Act of 1920 (the Jones Act) is the most closed regime. It requires domestic cargoes to be carried by USA built vessels that are registered in the USA, and owned and operated by USA citizens. The Passenger Vessel Services Act of 1886 states that no foreign vessels shall transport passengers between ports or places in the USA, either directly or by way of a foreign port.

In 2005, after previously allowing foreign-flagged vessels to undertake maritime cabotage, Indonesia issued Presidential Instruction No. 5 of 2005 concerning the Empowerment of the Shipping Industries. This, in conjunction with Maritime Law No. 17 of 2008, implemented cabotage principles, reserving coastal trades for Indonesian-flag vessels.

The European Union's (EU) Freedom to provide services within the EU (ocean trade) 2014 legislation allows maritime cabotage for EU based companies operating within other EU countries.

In practice, New Zealand (NZ) has an open coast with regard to maritime cabotage. Coastal shipping is regulated under Section 198 of the Marine Transport Act 1994 that grants access to coastal trade to:

- NZ registered ships;
- Foreign ships on a demise charter to a NZ based operator; and
- Foreign ships passing through NZ waters while on a continuous journey from a foreign port to another foreign port, and stopping in NZ to load or unload international cargo.

Aviation Cabotage

The Australian Government's aviation policy settings

The Australian Government is committed to helping the aviation industry grow in an environment that is safe, competitive and productive. Aviation is an important enabling industry for Australia's international trade and tourism industry, and contributes a significant amount to the economy in itself: Oxford Economics estimates that 4.5 per cent of Australia's Gross Domestic Product is supported by the air transport sector and foreign tourists arriving by air.[2]

The international bilateral system of air services arrangements under the International Convention on Civil Aviation (Chicago Convention) provides the framework for air services negotiations between countries. The aviation industry differs from many other industries in that as countries have exclusive sovereignty over the airspace above their territory, a market for air transport services cannot exist unless a government acts to grant air traffic rights in respect of that market.

The Government is working to increase global liberalisation within this framework while recognising the need to protect the national interest. This means ensuring we have the necessary aviation capacity to meet future demand while supporting the entry of Australian airlines into foreign markets, and negotiating to remove barriers that prevent access in those foreign markets.

Red tape in aviation cabotage

The regulatory process associated with aviation cabotage is not considered burdensome for airlines. The decision regarding whether to approve aviation cabotage in Australia is a policy decision, which is made on a case by case basis.

It should also be noted, the Australian Government is also working to reduce the regulatory burden on the aviation industry by working to drive reform in key areas, including implementing the recommendations of the independent Aviation Safety Regulation Review conducted in 2013.

Domestic air services

Australia has one of the most open and competitive domestic aviation policies of any country. At the Federal level there is no economic regulation of air services, leaving Australian based airlines free to operate any flights and serve any markets they deem commercially viable, subject only to holding the necessary operational safety and security approvals.

Current policy allows for 'investment cabotage'. That is, any foreign investor (airline or other) wishing to operate domestic air services within Australia can do so by establishing an Australian-based subsidiary to operate those services. Subject to Foreign Investment Review Board approval, that subsidiary can be 100 per cent foreign owned.

The subsidiary would be subject to Australian laws and regulations governing the operation of domestic flights, including safety, security, employment and taxation arrangements; and would enjoy unrestricted access within Australia's deregulated domestic market.

A number of Australian domestic airlines, both past and present, have been foreign owned, including Virgin Blue and Tigerair Australia, as well as Regional Express and Skywest.

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2 IATA and Oxford Economics, 'The Importance of Air Transport to Australia', December 2016. http://www.iata.org/policy/promoting-aviation/Pages/benefits-country-reports.aspx

Access to the domestic market by foreign airlines (Cabotage)

The International Civil Aviation Organisation (ICAO) refers to two types of aviation cabotage:

- Stand-alone cabotage – the right of a foreign airline to conduct a service entirely within Australia (for example, a Darwin-Sydney service operated by a foreign airline); and
- Consecutive cabotage – the right of a foreign airline to conduct a service between two points in Australia provided that the service originates or terminates in the home country of the foreign airline (for example, a Singapore-Darwin-Sydney service operated by a foreign airline where the airline can take on new passengers for the Darwin-Sydney leg).

The Australian Government permits short term (generally one-off) cabotage dispensations in exceptional circumstances. Usually, this is when a demand exists that no Australian operator is able to satisfy e.g. the carriage of oversize mining equipment requiring extra-large aircraft, or the large movements of horses associated with the Melbourne Spring Racing Carnival.

Past Government policy has been to consider negotiating cabotage rights in bilateral agreements on a case-by-case basis where it is in our national interest. To date, New Zealand is the only country that Australia has exchanged cabotage rights with, as part of the Single Aviation Market arrangements which were first settled in 1996 and formalised in a 2002 Air Services Agreement. Airlines of New Zealand have the ability to exercise cabotage on any domestic route in Australia under the Single Aviation Market framework but have not chosen to take up this opportunity for scheduled services for commercial reasons.

The Australian Government will also consider cabotage in some exceptional cases, for example for operational reasons when domestic services are temporarily unavailable, or on a longer term basis when a foreign carrier seeks to operate a route which is not currently served by Australian airlines or which requires a government subsidy (such as routes between some of Australia's external territories).

Regulatory implications

In contrast to Australian airlines, foreign airlines serving the Australian market (with international flights or domestic cabotage flights) operate under the operational oversight of their home regulator, and under a Foreign Aircraft Air Operator's Certificate (FAAOC) (issued by CASA).

Whilst CASA performs some surveillance of these operators (and have deemed them as safe to operate services), it relies largely upon primary oversight carried out by the foreign operator's national regulator, and it is the home regulator which is responsible for monitoring and enforcing compliance in accordance with the foreign regulator's safety legislation. CASA exercises more limited powers to monitor and oversight operators under an FAAOC compared with airlines operating under an Australian AOC where CASA is the primary regulator.

Under the international aviation safety regulatory framework, Australia cannot regulate to require foreign carriers operate to the same standards and rules as Australian operators.

Successive Australian governments have taken the view that it is important for airlines carrying domestic passengers to be subject to Australia's full regulatory oversight. The direct oversight by Australian safety regulators of domestic flights is a key driver behind Australia's excellent safety record.

Impact of Cabotage Services

The Department notes some stakeholders suggest cabotage should be "trialled" on selected routes, for example on Northern Australia routes where services are less frequent and relatively expensive.

The frequency and price of these services reflect a fundamental lack of demand. Replacing a service that an Australian airline operates on a marginal basis with a service that a foreign airline can operate more profitably is unlikely to increase competition, lower fares or benefit consumers.

More broadly, the Department notes any potential economic benefit associated with aviation cabotage is premised on the capacity of foreign airlines to import the lower cost base stemming from the foreign regulatory frameworks under which they operate.

The current policy of generally reserving the Australia domestic market for Australian-based airlines ensures domestic airlines all operate on the same level playing field in relation to industrial relations and taxation, as well as the safety and security oversight of the Australian government.

Thank you for inviting the Department to provide a submission.

Yours sincerely

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Deputy Secretary

Department of Infrastructure and Regional Development

5/4/17