

DEPARTMENT OF INFRASTRUCTURE AND TRANSPORT

SUPPLEMENTARY SUBMISSION TO

**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON
INFRASTRUCTURE AND COMMUNICATIONS**

IN RELATION TO:

Coastal Trading (Revitalising Australian Shipping) Bill 2012

*Coastal Trading (Revitalising Australian Shipping) (Consequential
Amendments and Transitional Provisions) Bill 2012*

*Shipping Registration Amendment (Australian International Shipping
Register) Bill 2012*

Shipping Reform (Tax Incentives) Bill 2012

Tax Laws Amendment (Shipping Reforms) Bill 2012

1. COMPETITIVENESS

- a. Response to the criticisms of the new regime leading to reduced competition, which in turn may lead to decreased productivity and increased transport costs – raised by Maersk Line (sub 12), NBCG (sub 10), AI Group (sub 19).*

The Department reiterates previous statements by the Minister for Infrastructure and Transport that the new coastal trading arrangements are not aimed at reducing competition or ‘closing the coast’ to foreign flagged vessels. Australia has one of the most liberal coastal trading regimes in the world and foreign flagged vessels will continue to have an important role in serving the coastal market. The aim of the new arrangements is to make transparent the role of foreign flagged vessels in the coastal trade to enable all industry participants to understand what cargo is being carried by these vessels.

Some of the claims regarding reduced competition arise from a report commissioned by the Australian Dry Bulk Shipping Users into the proposed coastal trading arrangements. The report prepared by Deloitte Access Economics (DAE) claims that the coastal trading reforms will increase freight costs by up to 16 per cent. The report states that a key assumption underpinning its modelling is that the Government intends phasing out Temporary Licences within five years, thereby requiring all shippers to use General Licence vessels. This assumption is incorrect and calls into question the validity of claims regarding decreased competition and associated increases in freight costs.

Each Temporary Licence will be issued for a period of 12 months. This is in contrast to the current arrangements where foreign flagged, foreign crewed vessels operate under Continuing Voyage Permits (CVP), which are of three months duration or Single Voyage Permits (SVP). Extension to a 12 month period will provide holders of these licences with greater certainty regarding their shipping arrangements. Importantly, there is no restriction on the issue of consecutive Temporary Licences. If a General Licenced operator is unable to transport the cargo and the Temporary Licence holder meets all other statutory requirements, the TL will be issued.

In addition, the DAE report and a range of submissions do not acknowledge that as part of the shipping reforms the Government is offering generous tax incentives, including an income tax exemption for eligible Australian flagged vessels to bring Australian conditions more into line with international practice. Foreign flagged vessels have access to beneficial taxation arrangements offered by foreign governments. These arrangements have entrenched cost differentials, disadvantaging Australian shipping and have effectively enabled subsidised foreign vessels to undercut domestic shipping operations. The proposed tax incentives seek to reduce operating costs, which can be passed onto freight customers through more competitive freight rates.

The new arrangements will enable all industry participants to see what cargo is seeking to be moved under Temporary Licences. Providing this information to the market could open up new business opportunities for existing and new Australian interests. This transparency combined with the tax benefits will enable Australian shipping to more effectively compete with the foreign vessels

Further the establishment of the Australian International Shipping Register (AISR) will provide additional incentives for competitively priced shipping services to be available on the Australian coastline. Operating under a Temporary Licence, AISR vessels will be permitted to undertake limited trade on the coast. These vessels will be permitted to have mixed crewing arrangements, with only two senior positions (preferably the Master and Chief Engineer) filled by Australian citizens or residents. Foreign crew may be employed in all other positions. AISR vessels will also have access to the full suite of tax concessions. These measures will ensure these vessels enjoy a competitive cost structure.

2. CONSULTATION

- a. The Australian Logistics Council has requested an estimate of the number of flagged ships that will enter the service (ALC, sub 18, pp. 2 and 10) – can the Department indicate if this has been foreshadowed in any documents released by the Department to date?*

Given the range of considerations that the shipping investors and companies may have regard to in assessing where vessels will be registered or entered into service it is not appropriate for the Department to speculate on the number of vessels that may take the opportunities afforded by the new investment platform.

The reforms, which draw on international practice, provide industry with a platform to encourage new investment in the Australian shipping industry. More than 30 countries offer concessional tax treatment to shipping companies prepared to base themselves in the country offering the concessions. Variables that a shipping company may take into account when making the decision to register in a particular country include the availability and cost of capital, wage and salary costs, national affiliations and the regulatory regime.

The tax concessions proposed by the Australian Government are designed to be competitive with major international flag competitors that are well regarded such as the UK and other European countries. As noted in the 2008 Report by the Committee, implementation of fiscal incentives by a range of countries had been successful in attracting increased tonnage back to national registers.¹

- b. The industry/union compact – can the Department indicate when any further information will be released in relation to the outcomes of the compact? Will it be prior to the commencement of the legislation? (as raised by CSR (sub 9, p.1), NBCG (sub 10, p.10) and the Australian Dry Bulk Shipping Users (ADBSU) (sub 16 p.5) in its submissions*

The Department is not involved in developing the compact. Accordingly, any questions regarding this matter should be referred to the relevant industry parties.

¹ House of Representatives Committee on Infrastructure, Transport, Regional Development and Local Government, Parliament of Australia, *Rebuilding Australia's Coastal Shipping Industry* (2008), p10

3. PRODUCTIVITY COMMISSION INQUIRY

- a. *Was a Productivity Commission inquiry into the coastal shipping market ever considered, would one be in the future? (see CSR (sub 9, p. 3), Sucrogen (sub 14, p. 4), Sugar Australia (sub 23, p. 5), Minerals Council (sub 15, p. 1), ADBSU (sub 16, p. 7), Business Council (sub 17, p. 2)).*

Any decision regarding a referral to the Productivity Commission is a matter for Government.

However, the Department considers that further review would add little to the issues that are already well documented. As detailed in the Department's first submission to the Committee, the issues surrounding Australia's shipping policy have been examined in detail in consultation with industry on a number of occasions over the past four years including by the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government, which released its final report in 2008. The Department also prepared a Regulatory Impact Statement on the proposed reforms, available at http://www.infrastructure.gov.au/maritime/shipping_reform/.

4. COASTAL TRADING (REVITALISING AUSTRALIAN SHIPPING) BILL 2012

- a. *Is there the possibility of removing the minimum of five voyage requirements for TL applications and variations? Why does there have to be a minimum number limit? How does the Department respond to the claims that this could lead to applications for 'fictitious' voyages just to make up the numbers? What should the alternative be for shippers with only 2 to 3 voyages per year, especially in industries where there is no suitable Australia flagged vessel? (see for example, Shipping Australia (sub 8, p.3), ALC (sub 18, pp.2 and 8), Australian Shipping Consultants (sub 28, pp.2-3), Caltex (sub 30, p. 10))*

The insertion of the minimum of five voyages is designed to add a level of planning into an application for Temporary Licence rather than provide access to coastal cargo on an ad hoc basis, with no subsequent commitment to provide services to Australian shippers. One element of the current arrangements that makes it difficult for Australian registered vessels to build a viable and substantial business for domestic trade is the SVP arrangements. The ability of foreign flagged vessels to seek approval for ad hoc cargo movements on the Australian coast does not provide sufficient visibility of potential trade for Australian vessels to build a business case to support investment in the Australian shipping industry.

The 2008 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government's report, *Rebuilding Australia's Coastal Shipping Industry*, recommended reforms to the current regime for accessing the coastal trades, noting:

"The Committee received submissions from a variety of sources suggesting that various reforms are needed in regards to the licensing, but in particular the permitting, provisions of Part VI [of the the *Navigation Act 1912*]"²; and

² *Ibid* p 26

“Shipping and ship owner organisations have argued that the system is too flexible and open to interpretation which can impact negatively on business planning.”³

The Australian Shipowners Association noted in its submission to the above inquiry that “there is continuing dissatisfaction with a lack of consistency and predictability” with the issuing of permits.

The Department does not agree that applicants will be required to make up ‘fictitious’ voyages. The large majority of operators already use five or more permits per year. For example, in 2010-11, a total of 1433 permits were issued. 1394 (or 97%) of these were issued to companies that used five or more permits in that one year.

For the small number of operators requiring fewer than five voyages, the new arrangements may require some reconsideration of their operating arrangements. The decision to impose a minimum seeks to encourage shippers and operators to plan ahead and consider what their shipping requirements will be over an extended period of time, rather than on a voyage- by-voyage basis.

Options for those operators who expect to have fewer than five voyages including working with a General Licensed operator to see if they can carry all or part of the load. Alternatively, Temporary Licensed operators, which are likely to include shipping agents are likely to have scope to make voyages available. We are continuing consultations with the sectors and operators most directly impacted on how the system will work for them in practice.

b. The submissions call for changes to the objects of the CT (RAS) Bill to include issues such as increasing industry competitiveness, and providing efficient and cost effective freight solutions – would the Department consider amending clause 3 of the Bill to include some of the suggestions made?

The object of the Bill as set out in clause 3 reflects the Government’s policy intent and the Department believes addresses the increase in competitiveness and provision of efficient and cost effective freight solutions. In particular, item (a) in the object identifies the importance of shipping being able to contribute positively to the broader Australian economy. The industry will not be able to make a positive economic contribution if it is inefficient.

It should be noted that the object clause was developed in close consultation with the shipping industry – both ship owners/operators and users.

³ Ibid p 27

- c. Why have the words ‘and disembarks at a port in Australia for transit purposes only’ been added to subparagraph 7(2)(a)(ii)? How will this alter the current exemption that cruise ship operators work under in the definition of the coasting trade in paragraph 7(1)(a) in the Navigation Act?*

While the definition of “coastal trading” as set out in clause 7 of the Bill is different to that in section 7 of the Navigation Act 1912, in practice it replicates current arrangements. The insertion of “and disembarks at a port in Australia for transit purposes only” clarifies that a vessel is carrying passengers destined for an overseas port will not be subject to the legislation even if the passenger transit through an Australian port. Only those vessels that carry passengers on an interstate journey (ie: that embark at an Australian port in one state and then disembark at an Australian port in another state) will be required to operate under a General Licence or Temporary Licence. Under current arrangements, they would be required to operate under a Licence or a permit issued under Part VI of the Navigation Act.

The inclusion of the additional wording provides for vessels which are clearly operation on an international voyage, but which berth at an Australian port and passengers disembark for a short (transit) period.

The definition of coastal trade as set out in clause 7 of the Bill does not impact on the exemption nor does the new legislation alter the way that coastal trading applies to these vessels.

- d. Why did the Government decided not to extend the general exemption from coastal trading to all cruise ships over 5000 tonnes, as possible foreshadowed in the 2010 Discussion Paper ‘Reforming Australia’s Shipping – A Discussion Paper for Stakeholder Consultation? Is this still being considered?’*

The movement of passengers is currently regulated under the Navigation Act. Over time however, the practical application of the legislation has resulted in a split approach to cruise vessels:

- a. Vessels over 5000 gross tonnes (gt) are exempt from the coastal trading provisions by way of Ministerial Notices issued under section 286(6) of the current Navigation Act. These Notices have been issued since 1999. To date, all vessels covered by this exemption are foreign flagged.
- b. All vessels under 5000gt are required to operate under the coastal trading provisions. In practice, foreign flagged vessels have operated under permit or avoided the permit requirement by including an international leg in an otherwise domestic voyage. All Australian operators, who operate inter-state are currently licensed under the Navigation Act.

The Government’s Discussion Paper on the shipping reforms issued in December 2010 discussed extending the exemption to cruise vessels over 500 gross tonnes where the vessel is engaging in a cruise of two nights or more. Consultations with the cruise industry demonstrated a range of disparate views on this matter.

Representatives of the foreign flagged operators support the proposal. These operators, who have vessels under 5000 gt, argue that all sectors of the cruise market should be treated equally. That is, there should be competitive neutrality across all sectors of the cruise market.

Australian registered and licensed operators strongly opposed this proposal. In its submission in response to the Discussion Paper, the Australian Expedition Cruise Shipping Association (AECSA) noted that while a crew is required to be paid Australian rates in Australian waters, this crew may be paid lower international rates for time worked in foreign waters. The result is lower net labour costs than an Australian crewed ship that pays Australian rates at all times. This impacts on the overall cost structure of Australian registered operators. Granting of an exemption to all vessels under 5000gt would remove these vessels from the operation of the Fair Work Act. The AECSA has stated that if this exemption was granted “the Australian Expedition Cruise Shipping industry will not be protected from foreign competition”.

Any further consideration of this policy would be a matter for Government.

- e. Would the Department consider requiring GL holders to provide similar information to what TL holders must provide, in terms of the information to be published on the Department’s website? (see subclauses 16(2) and 35(2)).*

No. Temporary Licence holders access to the coastal trade is limited to those matters that have been authorised (specific ports, cargo volumes etc) in their approved application. By contrast, General Licence holders, have unrestricted access to the coastal trade. This is on the basis that they have met the relevant criteria such as employing Australian citizens or residents and having a vessel registered on the Australian General Shipping Register. Accordingly, these vessels can participate in the Australian economy without any restrictions.

The Temporary Licence publishing requirements enable all industry participants to know what trade is being carried under a Temporary Licence on a foreign flagged vessel. It should be noted that the proposed requirements set out in both 16(2) and 35(2), are largely the same as what is currently reported on the Department of Infrastructure and Transport website in regard to Australian Licensed Operators and permit holders. For example http://www.infrastructure.gov.au/maritime/freight/licences/permit_data_archive/2012/150412_210412.aspx.

The Bill has codified these existing requirements in the interests of transparency and to respond to long standing industry concerns about the reliance on Ministerial Guidelines, rather than legislation, for the operation of the regulatory regime.

- f. Could there be provision made for a commercial emergency licence category, in circumstances of fuel supply emergencies. (see Australian Institute of Petroleum (sub 29, p.7), Caltex (sub 30, pp.11-12), Mobil (sub 31, p.3)).*

The Department appreciates the importance of the issues raised by the petroleum industry in the various submissions to the Committee. Indeed, the Department has worked closely with the industry throughout the legislative development process to ensure its specific concerns, particularly in regard to energy security have been addressed in the legislation. To this end, following the industry roundtable on 28 February 2012, the process for variations of authorised matters (Subdivision C, Division 2) was included in the Bill.

While the Department considers that many of the concerns raised by the petroleum industry can be effectively managed within the provisions of the Bill before Parliament, further consideration is being given to how specific ‘energy security/emergency’ situations may be better addressed. In this regard, the Department is consulting with the Department of Resources, Energy and Tourism. Final advice will be provided to the Minister for Infrastructure and Transport before the resumption of the second reading debate.

5. COASTAL TRADING (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2012

- a. Could the transitional provisions be extended for six months? (see Mobil (sub 31, p.4); Caltex (sub 30, pp.16-17), ASA (sub 25, p.11); AIP (sub 29, p.7)*

The transitional arrangements could be extended for a further six months, however this would result in two regulatory regimes being in operation for an extended period of time. The Department considers this may cause ambiguity and confusion with both the shipping and freight industries.

- b. Suggestion of a potential gap in insurance protection for crew employed on vessels registered in the International Register while engaged in coastal trading (see the suggested amendment to the proposed section 61AM in the Shipping Registration Act 1981, inserted by clause 13 of Schedule 2 of the SRA (AISR) Bill by Allianz (sub 5, p. 2 in order to rectify this)*

The Department notes the issues raised in the submission and confirms that, as currently drafted, there is a potential gap in insurance protection for crew employed on ships registered in the International Register while engaged in intra-State or coastal trading. The policy intent was that crew employed on ships in these circumstances would be covered by relevant State and Territory workers’ compensation. However, given the need to establish a link with a State or Territory (such as having an office in that State or Territory), this protection could prove limited.

The Department is preparing advice to Government on how best to address this matter.

6. TAX LAWS (AMENDMENT) BILL 2012

- a. Some industry criticism of the income tax exemption effectively being a ‘tax deferral regime’ – would you like to provide any further comment on these claims? (see for example: Caltex (sub 30, p. 17), Australian Association for Maritime Affairs (AAMA) (sub 6, p. 1), ANL (sub 11, p. 3), ASA (sub 25, p. 5)*

The notion that the income tax exemption is a tax deferral regime refers to the claim by industry stakeholders that the Government should have provided a dividend exemption for the distribution of profits, ie dividends should be notionally franked rather than unfranked. As the income from shipping activities is not subject to tax then tax would not have been paid in the normal way by the company earning the relevant profits. Some stakeholders argue that dividends should be regarded as franked in order to encourage foreign and domestic investment. Hence they regard the taxing point as having been deferred and passed to shareholders.

However, providing the income tax concession directly at the shipping company level rather than for the distribution of additional profits to shareholders, still allows for further capital to be invested in the company without being taxed. This is consistent with the Government's objective of encouraging re-investment in the shipping industry. It is also worth noting that shareholders will seek to invest where they can get the best yield over a period of time and whether dividends are franked or unfranked may or may not be the critical element in their decision.

5. Coastal Trading (Transitional Provisions and Consequential Amendments) Bill 2012

c. Can the Department clarify the coverage of the OHS (MI) Act to vessels in the International Register (see DIT (sub 2, p. 15) and DEEWR (sub 22, p. 5)?

Department Response

The OHS(MI) Act will apply to all Australian registered ships (whether they are registered in the General or International Register) at all times, wherever they are located (whether they are engaged in intra-State, coastal or international trading). This is consistent with the advice provided on page 5 of the Department of Education, Employment and Workplace Relations' submission, which states that "Seafarers on AISR vessels will at all times be covered by minimum workers' compensation provisions which will meet the requirements of the MLC and vessels on the AISR will at all times be covered by the OHSMI Act".

6. Tax Laws Amendment (Shipping Reform) Bill 2012

b. Does the 'integrated rating' reference in proposed section 61-705 of the ITAA 1997, as inserted by clause 2 of Schedule 3 of the TLA (SR) bill, include the ship's cook? (see ASA (sub 25, p. 7))

Department Response

The Department views the term 'integrated rating' as being inclusive of 'cooks'.