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The Secretary
House of Representatives Standing
Committee on Infrastructure and Communications
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Re. *Coastal Trading (Revitalising Australian Shipping) Bill 2012; and Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012*

The Australian Industry Group ('Ai Group') makes this submission to the House of Representatives Standing Committee on Infrastructure and Communications ('Committee') in response to its inquiry into the *Coastal Trading (Revitalising Australian Shipping) Bill 2012* ('Coastal Trading Bill') and the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012* ('CA&TP Bill').

Ai Group is one of the largest national industry bodies in Australia representing employers in manufacturing, construction, automotive, food and other industries, many of which are extensive users of coastal shipping to transport raw materials, components and finished products. Together, Ai Group and its affiliates represent the interests of approximately 60,000 businesses which employ in excess of 1.2 million staff.

The Australian Government needs to keep the interests of all stakeholders foremost in mind when considering changes to the existing arrangements governing the shipping industry. Such stakeholders include the users of shipping as well as Australian consumers. The views of the maritime unions and Australian shipping companies are just two amongst many views which the Government needs to take into account.

The Coastal Trading Bill and the CA&TP Bill are part of the Australian Government's *Stronger Shipping for a Stronger Economy* reform agenda to revitalise the coastal shipping industry. Ai Group is supportive of these efforts but not at the cost of making employers in other industries less competitive and productive, and threatening the jobs of workers in other industries.

In March 2012, Ai Group made a submission to the Department of Infrastructure and Transport in response to the second exposure drafts of the Coastal Trading Bill and the CA&TP Bill (Ai Group's March 2012 Submission). In the submission we expressed our concerns that the proposals, if enacted, would lead to further increases in transport costs for the users of coastal shipping. Increased transport costs would be significant blow to Australian manufacturers, retailers and other trade exposed industries that are already being impacted by a high Australian dollar, high input costs and rising energy costs.

Since December 2009, foreign ships permitted to engage in domestic coastal shipping (permit vessels) have been required to comply with the obligations of the *Fair Work Act*. Prior to this time these ships were excluded from the coverage of Australian workplace relations legislation and awards.

As a consequence of this change, Fair Work Australia developed a Part B for the *Seagoing Industry Award 2010* to covered permit vessels.

Since the new arrangements under the *Fair Work Act* came into effect, Ai Group members have expressed concern that the arrangements are deterring foreign ships from operating in Australian waters and are leading to large price increases for goods transported by foreign ships.

The Australian companies which are users of shipping need access to sea transportation at reasonable prices in order to:

- Enable them to remain competitive and productive;
- Preserve employment in the industries which use shipping;
- Avoid increased congestion and higher maintenance costs on Australia's road and rail networks; and
- Avoid increasing Australia's greenhouse gas emissions as a result of replacing shipping with more carbon-intensive forms of transportation (eg. air transportation).

The increases in transport costs to the users of coastal shipping were acknowledged in the Regulatory Impact Statement (RIS) for the Government's reforms:

“4.1.1 Effect of cabotage on voyage patterns

155. The methodology does not allow for differences between voyage patterns in the base and policy cases because it would require detailed information about voyage patterns to estimate. For example, under a more liberal cabotage policy, a foreign ship may be permitted to pick up a coastal cargo after unloading an overseas cargo at the same or at a nearby port and then carry the coastal cargo as part of its return trip overseas. Under a tighter

cabotage policy, this might not be permitted. Instead, a domestic ship dedicated to the task might have to undertake a return trip in ballast. By restricting opportunities for shippers of coastal cargoes to engage foreign ships that happen to be nearby, tightening the cabotage policy is likely to lead to additional empty voyages for both Australian and foreign ships. Empty voyages mean additional fuel consumed as well as ships' time.

156. With a tighter cabotage policy, Australian shippers of domestic freight incur higher costs from lost opportunities to take advantage of cheap transport in passing foreign ships and having to pay for empty repositioning voyages by domestic ships. Part of the cost of empty voyages by foreign ships may be passed on in the form of higher freight rates to the Australian exporters and importers that employ the foreign ships to carry their international cargoes."

In addition to increased costs, it is clear from the above extract that a tighter cabotage policy would have negative environmental consequences.

In Ai Group's view an appropriate balance needs to be struck which takes into account the interests of Australian companies (shipping companies as well as companies which use shipping to transport their goods), Australian workers (those employed by shipping companies plus those employed by the users of shipping) and Australian consumers (who will be forced to pay the higher prices associated with increased transport costs).

Objects of the *Coastal Trading Bill*

The proposed objects of the *Coastal Trading Bill* fail to consider the role of coastal shipping in the context of the broader economy. Many Australian businesses rely on the coastal shipping trade to transport raw materials, components and finished products in and around Australia. The Act should acknowledge the need for these businesses, particularly those in trade exposed industries, to operate cost efficiently and remain competitive.

Therefore, we urge the Committee to recommend that the objects of the *Coastal Trading Bill* be amended to consider the needs of the users of coastal shipping and the impact of cabotage on the broader economy.

Application of the *Coastal Trading Bill*

The *Coastal Trading Bill* applies to all vessels engaged in *coastal trading*, as defined by section 7 of the bill. Section 7 lists the scenarios by which a vessel is taken to be engaged in *coastal trading*, which includes a vessel under which a declaration under subsection 12(2) is in force (s.7(c)(ii)).

Subsection 12(2) of the *Coastal Trading Bill* empowers the Minister to make a declaration that the legislation applies to a vessel engaged in commercial activity transporting cargo or people between ports within a State of Australia.

Subsection 12(1) allows the owner of a vessel to make an application to the Minister to opt into the coverage of the Act, but the language used in this subsection and subsection 12(2) does not limit an application to the Minister being made by another party or the Minister making a declaration using his/her own discretion.

The breadth of section 12 risks vessels being roped into the coverage of the Act on the application by third parties. While subsection 12(4) requires the Minister to revoke a declaration if requested to do so by the owner of the vessel, the language in subsections 12(1) and 12(2) should be amended to specify that an application to the Minister can only be made by an owner of the vessel and the Minister can only make a declaration if such an application has been made.

Section 12 should also be amended to make it clear that the Minister cannot make a declaration that a ship be covered by the Act that would not otherwise satisfy the definition of *coastal shipping* in section 7, namely those vessels captured within subsection 7(2).

A new licensing system

The *Coastal Trading Bill* proposes to introduce a new licensing system for ships operating in the Australian coastal trade. This system will replace the current permit system in Part VI of the *Navigation Act 1918* and would significantly tighten the cabotage regime.

The new licensing system will create three new licences:

- General Licence for Australian ships;
- Temporary Licence for Australian registered ships (AISR) or foreign ships; and
- Emergency Licence – unrestricted and only to be provided in emergency situations.

In Ai Group's March 2012 Submission, we identified aspects of the new licensing system proposed in the exposure draft to the *Coastal Trading Bill* that would negatively impact the users of coastal shipping to transport cargo in an around Australia. These aspects included:

- **The requirement for foreign ships to specify a minimum number of voyages in order to qualify for a Temporary Licence**

On this issue, Ai Group said:

“Ships possessing a General Licence will have an unlimited ability to carry coastal cargo and passengers and will have access to tax incentives. These ships must employ Australian crew or crew allowed to work in Australia and provide wages and entitlements to their crew not below Part A of the Seagoing Industry Award 2010.

Foreign ships can only be granted 12 month Temporary Licences which will enable them to carry coastal cargo and passengers on specified voyage not less than 10 times a year. These ships must provide wages and entitlements to their crew not below Part B of the Seagoing Industry Award 2010, which is currently the case under the existing arrangements.

The qualifying requirement of not less than 10 voyages a year is too onerous. It is not unusual for a foreign ship operating under the current system to do less than three voyages a year. In fact the current system allows for foreign ships to apply for a single voyage permit. We therefore urge the Government to reconsider this requirement and amend (s.28(2)(a)) to specify that the number of voyages authorised by the licence must be three or more. It also important that a mechanism for the issuance of single voyage permits is retained, with appropriate criteria which should be limited to emergencies.”

We acknowledge that the requirement of not less than 10 voyages a year, as specified in the exposure draft to the *Coastal Trading Bill*, was changed to 5 or more voyages a year following the Department's consultation with stakeholders, but in our view this change does not go far enough. Ai Group reiterates the calls it made in its March 2012 Submission (above) and urges the Committee to recommend that section 28(2)(a) of the *Coastal Trading Bill* be amended to specify the number of voyages to be authorised by a Temporary Licence must be 3 or more.

- **Publishing of applications for Temporary Licences and the ability for a holder of a General Licence or an affected third party, such as a union, to object and make comments in relation to the application on the basis that the cargo or passengers proposed to be carried by the foreign ship can be carried by the holder of a General Licence**

On this issue, Ai Group said:

“Also problematic is the publishing of applications for Temporary Licences (s.30) and the ability for a holder of a General Licence (s.31) or an affected third party, such as a union, (s.33) to object and make comments in relation to the application on the basis that the cargo or passengers proposed to be carried by the foreign ship can be carried by the holder of a General Licence. The Minister will then be required to take this into account when exercising his discretion to grant or not grant the Temporary Licence to the foreign ship (s.34(3)). This could result in significant delays and frustrate the intent of the legislation. It will also deter foreign ships from making applications because of potential union activity against their

operations, with a consequent cost impact on Australian companies due to the reduced competition.

Notably, the provision enabling comments from third parties (s.33), such as unions, to any application by a foreign ship for a Temporary Licence did not feature in the first exposure draft of the Coast Trading Bill 2012 released by the Government. We strongly oppose this provision notwithstanding the fact that presumably the representatives of users of shipping, such as Ai Group, would have the ability to provide comments.

However, we are pleased that the Minister, when making a decision, must have regard to the requirements of the shipper of the cargo (s.34(3)(c)). This is very important as it relates to scheduling and cost concerns of the shipper.”

Following the release of the exposure draft of the *Coastal Trading Bill* and the consultation with stakeholders, the above feature of the temporary licensing system has become more onerous. Section 30 of the Coastal Trading Bill, in its current form, requires the Minister to notify every holder of a General Licence and a body or organisation that the Minister considers would be directly affected, or whose members would be directly affected, such as a union, if the application for a Temporary Licence were granted. This requirement did not appear in the exposure draft of the *Coastal Trading Bill* and is a backward step.

Furthermore, the requirement for the Minister to turn his/her mind to the requirements of the shipper of the cargo when deciding an application for a Temporary Licence in section 34(3)(c) of the exposure draft has, without explanation, been limited under section 34(3)(d) of the *Coastal Trading Bill*. The Bill now provides that the Minister, in deciding an application for a Temporary Licence, need only have regard to the reasonable requirements of the shipper of the kind of cargo specified in the application. As outlined in Ai Group’s March 2012 Submission, the requirements of the shipper are very important and should not be disregarded, however significant or reasonable.

It is clear by the Government’s policy that General Licence holders will be the preferred transporters of domestic cargo and passengers. While Australian registered ships operating in the coastal trade will benefit from this protectionist scheme, users of coastal shipping, including trade exposed Australian companies that must compete with international competitors, will be subject to increased transport costs and reduced competitiveness.

We have not identified any problems with the transitional provisions proposed within the CA&TP Bill.

We urge the Committee to recommend appropriate amendments to the Bill so that users of coastal shipping are not adversely impacted by the legislative changes.

Yours sincerely

Stephen Smith
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