

Submission

to the

House of Representatives Standing Committee on
Infrastructure and Communications

Inquiry into the Shipping Reform Bills

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Introduction

The Department of Education, Employment and Workplace Relations welcomes the opportunity to provide a submission to the House of Representatives Standing Committee on Infrastructure and Communications in relation to two elements of the shipping reform package which present implications for the Fair Work legislation. These are:

- Replacing the current coastal shipping licensing and permit system with a three-tier framework of general licences/temporary licences/emergency licences. These changes will require consequential amendment to the Fair Work Regulations 2009 (FW Regulations).
- Establishing an Australian International Shipping Register (AISR) which will allow Australian-registered vessels to operate with a majority foreign crew (a minimum of two Australian residents will be required, desirably in the positions of the Master and Chief Engineer) employed under internationally recognised terms and conditions when engaged in international trade.

Coastal Trading (Revitalising Australian Shipping) Bill 2012

Application of the *Fair Work Act 2009* to licence and permit ships

It is the Australian Government's policy that all seafarers working regularly on ships in Australian waters should have the benefit of Australian workplace relations laws and a fair safety net of employment conditions.

- Prior to the *Fair Work Act 2009* (FW Act), seafarers working on vessels operating under a permit issued under Part VI of the *Navigation Act 1912* (the Navigation Act) were not covered by Australian workplace relations laws, resulting in some foreign seafarers being paid less than Australian employees performing the same work on the same domestic maritime routes.

In order to give effect to the above policy the Government consulted with industry stakeholders about ways to ensure that while the FW Act applied generally to the coasting trade, foreign crewed ships only intermittently carrying coastal cargoes were not covered by the FW Act. Following that consultation, the Government decided to extend the FW Act to cover all licenced ships and permit ships regularly carrying coastal cargoes in Australian waters.

From 1 January 2010, the Fair Work Regulations extended the operation of the FW Act to:

- Licenced and certain permit ships, operating pursuant to their licences and permits, engaging in the coasting trade in Australia's territorial sea, the exclusive economic zone (EEZ) and the waters above the continental shelf; and
- ships with a majority of crew who are Australian residents, and whose operator is an Australian resident, has its principal place of business in Australia, or is incorporated in Australia, while the ship is operating in Australia's territorial sea, the EEZ, the waters above the continental shelf and beyond the limits of these areas.

Permit ships are covered by the FW Act if they are operating either:

- under a continuing voyage permit (CVP) issued on or after 1 January 2010 (FW Regulations 1.15D(b) and 1.15E(2)); or
- under a single voyage permit (SVP) issued on or after 1 January 2010, if either:
 - more than two SVPs had been issued for the same ship in the preceding 12 months (FW Regulations 1.15D(c) and 1.15E(3)); or
 - a CVP had been issued for the same ship in the preceding 15 months (regulations 1.15D(d) and 1.15E(4)).

FW Act application under the Coastal Trading (Revitalising Australian Shipping) Bill 2012

As a consequence of the Bill, amendments to the FW Regulations are required to ensure that the FW Act continues to apply to the same categories of ships engaged in the coasting trade once the new licensing regime commences operation on 1 July 2012. The Department notes advice from the Department of Infrastructure and Transport that it is not intended that there be any discernable change in the current level of Fair Work coverage under the Bill.

Currently the FW Regulations (specifically regulations 1.15B and 1.15D - 1.15E) extend coverage of the FW Act to ships engaged in the coasting trade, relying on the Navigation Act definitions of licence, CVP and SVP. As a result of the Bill, consequential amendments will be required to the regulations to reflect the new three-tier framework of general licences/temporary licences/emergency licences contained in the Bill.

In addition, the current permit definitions will need to be maintained on a transitional basis for a period of 15 months after 1 July 2012 reflecting the application of the FW Act to ships operating under SVPs or CVPs in the 12-15 months immediately prior.

The Department notes that these changes to the FW Regulations will be the subject of consultation with the referring States and the Territories in accordance with the *Multilateral Inter-Governmental Agreement for a National Workplace Relations System for the Private Sector*.

Application of the Seagoing Industry Award 2010

Ships covered by the FW Act while engaged in the coasting trade are also covered by the Seagoing Industry Award 2010 (SIA). The SIA applies to national system employers and their national system employees engaged in the seagoing industry in the classifications set out in the award. While most ships covered by the FW Act became covered by Part A of the SIA from 1 January 2010, permit ships became covered by Part B of the SIA from 1 January 2011, in recognition of the need to provide a transition period for ships not previously covered by federal workplace relations legislation.

The FW Act enables certain parties to make application to seek to vary the SIA. Since its commencement on 1 January 2011, there has been one application (under section 158 of the FW Act) to vary Part B of the SIA – made by the Australian Institute of Marine and Power Engineers – that was subsequently discontinued.

The Department notes that following commencement of the Bill, the SIA will need to be amended to reflect the new three-tier framework of general licences/temporary licences/emergency licences.

Workers' compensation and occupational health and safety arrangements under the Coastal Trading (Revitalising Australian Shipping) Bill 2012

The *Occupational Health and Safety (Maritime Industry) Act 1993* (the OHSMI Act) will apply to a vessel that is engaged in coastal trading under:

- a general licence;
- a temporary licence if the vessel is registered on the Australian International Shipping Register (AISR) or the Australian General Shipping Register; and
- an emergency licence if the vessel is registered either under the AISR or the Australian General Shipping Register.

The *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) will apply to a vessel engaged in coastal trading under a general or emergency licence if the vessel is registered in the Australian General Shipping Register. The Seafarers Act will not apply to a vessel registered on the AISR that is engaged in coastal trading under a temporary licence.

Shipping Registration Amendment (Australian International Shipping Register) Bill 2012

The Bill provides for the establishment of the AISR which is designed to facilitate the growth of the Australian shipping industry by providing an internationally competitive register to support Australian shipping operations in international trade. Vessels on the AISR will operate with a majority foreign crew (a minimum of two Australian citizens or residents will be required, preferably in the positions of Master and Chief Engineer).

The Department notes that as Australia has not previously operated an international shipping register there is no precedent regarding relevant workplace relations arrangements that could apply to vessels on the AISR. The Government's decision is that seafarers working on an AISR vessel engaged in international trade will be employed under internationally recognised terms and conditions in line with the International Labour Organisation (ILO) Maritime Labour Convention 2006 (MLC).

Employment terms and conditions

Schedule 2 of the Bill contains provisions relating to the employment of crew on board AISR vessels. The provisions of the Bill seek to regulate those employment terms and conditions that are not already dealt with in other legislation such as the Navigation Act. This approach ensures that crew on AISR vessels are entitled to internationally recognised wages and conditions of employment, without duplicating provisions already in the Navigation Act, Marine Orders and other relevant legislation.

Specifically, the Bill expressly provides for:

- minimum wages at a level that is no less than those determined by a specified International Transport Federation agreement
- minimum annual leave entitlements
- dispute resolution
- collective agreements as a requirement of registration on the AISR and
- protection of rights associated with freedom of association.

Workers' compensation and occupational health and safety arrangements under the Shipping Registration Amendment (Australian International Shipping Register) Bill 2012

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.