

## Shipping reform legislative package

### Introduction

- 2.1 The bills have been described as forming part of a policy framework to reform coastal trading in Australia, create an Australian International Shipping Register (International Register) and establish tax incentives, in order to revitalise the industry.<sup>1</sup> If enacted, the legislation will take effect from 1 July 2012.
- 2.2 Many submissions received to this inquiry contained general comments on the legislative package; comments relating to specific bills within the package were also made by various stakeholders. The majority of discussion focussed on the Coastal Trading bills and more specifically on the operation of the new Temporary Licence (TL) regime, and the application of TLs to different parts of the industry. These issues will, in turn, form the majority of the Committee's consideration in this report.
- 2.3 There was little comment made on the terms of the SRA (AISR) bill, with any comments made being generally in the context of how vessels registered in the International Register will be regulated under the Coastal Trading bills.
- 2.4 The main issues discussed in relation to the taxation bills involve the operation of the new income tax exemption and the refundable tax offset (seafarer tax offset).

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1 See Chapter 1, paragraphs 1.4-1.5.

- 2.5 Before considering each bill and the comments received in relation to them, some general observations made in submissions will be canvassed, including those relating to:
- the effect of the legislative package on the competitiveness of the industry;
  - the adequacy of the level of consultation with industry prior to introduction of the legislation; and
  - the suggestion of the need for a Productivity Commission inquiry.

## Industry competitiveness

### Industry substitution

- 2.6 Concerns were raised by inquiry participants about the potential for the proposed licensing regime to lead to the substitution of coastal shipping services for road transport services.<sup>2</sup> The Australian Association for Maritime Affairs Incorporated (AAMA) commented that the proposed voyage permit system (ie TLs and Emergency Licences) would increase the cost or decrease the availability of shipping to carry domestic sea freight, thereby increasing the competitive advantage of long distance road and rail transport.<sup>3</sup> The Business Council of Australia (BCA) made a similar point and stated that if the reforms lead to higher cost and poorer quality shipping services then users would have an incentive to choose alternative options such as land-based transport.<sup>4</sup> Maersk Line submitted that a dedicated coastal service would increase costs for coastal trade from the East to West coasts, and would render it difficult to compete with rail services and or migrating sourcing.<sup>5</sup>

### Preference for Australian ships versus restriction of foreign vessels

- 2.7 The DIT stated that one of the intentions of the legislative reform is to encourage the use of Australian flagged ships:

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2 See, for example, NBCG, *Submission 10*, p. 11.

3 AAMA, *Submission 6*, pp. [1] and [2].

4 BCA, *Submission 17*, p. 2.

5 Maersk Line, *Submission 12*, p. [2].

The package provides incentives to invest in Australian ships and for shippers to use those ships. The tax elements, the establishment of an Australian International Shipping Register and preference for Australian flagged and crewed ships in the coastal trades are designed to encourage investment in Australian ships.<sup>6</sup>

2.8 The BCA stated its concern about the tightening of access by foreign vessels to the coastal trade.<sup>7</sup> Maersk Line was also concerned about the intention to limit foreign flagged vessels in the coastal trade and abandon the use of international shipping solutions in place, because of its potential to increase overseas sourcing of products and decrease Australian production.<sup>8</sup> This view was shared by the National Bulk Commodities Group Inc (NBCG), which stated that the reforms will benefit overseas manufacturers and create an environment where import substitution prospers.<sup>9</sup>

2.9 A general observation was made by the NBCG that because the requirements for a TL are more demanding than for the current permit system, smaller dry bulk shippers will have little alternative but to charter a General Licence (GL) vessel.<sup>10</sup> The NBCG voiced its concern over the inconsistency between the shipping reform agenda and the National Competition Policy, as discussed in the RIS.<sup>11</sup> In this regard, the RIS concluded that whilst the regulatory reforms proposed are strictly inconsistent with the Competition Principles Agreement (as set up by the Council of Australian Governments in 1995), 'reasonable and transparent access to coastal trades by foreign vessels' would still continue, and 'the proposed new licensing arrangements are no less competitive than the current permit system.'<sup>12</sup>

2.10 The Australian Industry Group (AIG) expressed concern that:

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

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6 DIT, *Submission 2*, p. 28.

7 BCA, *Submission 17*, p. [1].

8 Maersk Line, *Submission 12*, p. [1].

9 NBCG, *Submission 10*, p. 11.

10 NBCG, *Submission 10*, p. 8.

11 NBCG, *Submission 10*, p. 4.

12 DIT, RIS, August 2011, pp. 20 and 78,

<[http://www.infrastructure.gov.au/maritime/shipping\\_reform/files/RIS\\_post\\_OBPR\\_20110816\\_formatted.pdf](http://www.infrastructure.gov.au/maritime/shipping_reform/files/RIS_post_OBPR_20110816_formatted.pdf)> viewed 11 April 2012.

coastal shipping, including trade exposed Australian companies that must compete with international competitors, will be subject to increased transport costs and reduced competitiveness.<sup>13</sup>

2.11 The AAMA stated that:

By trying to restrict foreign shipping from carrying domestic sea freight, as opposed to allowing Australian business to use the cheapest shipping transport available at the time, the permit policy has the effect of increasing the cost of domestic sea freight to Australian business and thus the national economy.<sup>14</sup>

2.12 The DIT stated, in a supplementary submission provided to the inquiry, that the new legislation is not aimed at reducing competition but rather at making the role of foreign flagged vessels in the coastal trade more transparent, and that this increased transparency, coupled with the new tax incentives, will enable industry participants to more effectively compete with foreign flagged vessels.<sup>15</sup>

2.13 The Committee notes the view of industry representatives about cost increases, loss of flexibility, and increases in regulatory burden for foreign flagged and International Register vessels. The Committee supports, however, DIT's view that providing incentives to invest in, and prefer the use of, Australian registered ships may well revitalise the industry.

## Level of consultation

2.14 Most of the feedback received through submissions was generally positive about the level of consultation and involvement of industry in the development of the legislation. The Australian Maritime Officers Union (AMOU) was 'highly satisfied with the level and quality of consultation on the development of the bills.'<sup>16</sup> ANL was similarly satisfied with the 'high degree of industry consultation and discussion.'<sup>17</sup> The MUA was highly satisfied with the level and quality of consultation, remarking that the opportunity for stakeholders 'to participate in the policy and

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13 Australian Industry Group (AIG), *Submission 20*, p. 6.

14 AAMA, *Submission 6*, p. [2].

15 DIT, *Supplementary Submission 2.1*, p. 2.

16 Australian Maritime Officers Union (AMOU), *Submission 7*, p. [2].

17 ANL Container Line Pty Ltd (ANL), *Submission 11*, p. 2.

legislative development of shipping reform has been exhaustive and comprehensive.<sup>18</sup>

2.15 Shipping Australia Limited (Shipping Australia) stated that it was:

... excluded from the task force and advisory groups set up to advise the Minister on the proposals prior to the actual drafting of the detailed provisions and subsequent release of exposure drafts of the legislation. In the latter respect, Shipping Australia has been closely consulted and we have appreciated that opportunity to provide advice on the practical implications of what was being proposed.<sup>19</sup>

Shipping Australia further stated that 'some of the provisions, at least in the Coastal Trading Bill 2012, are confusing and, in our view, require substantial amendment to meet what we understand to be the objects of the Bill', and indicated that these problems could have been addressed if the Federal Government had extended the implementation date until at least the end of 2012.<sup>20</sup> ANL, however, commended DIT for its efforts in meeting the ambitious timetable advanced by one year, and producing 'the sound package of bills'.<sup>21</sup>

2.16 The Cement Industry Federation (CIF) stated that it would prefer 'to understand what productivity gains are to be made through a compact between Unions and the shipping industry' prior to any vote in the Parliament,<sup>22</sup> referring to the industry/union compact foreshadowed in the RIS.<sup>23</sup> CSR Limited (CSR) stated that outcomes should be achieved by the industry/union compact prior to introduction of the bills in Parliament.<sup>24</sup> The NBCG was unaware as to 'when the outcome of the compact between the maritime unions and ship owners/operators will be known, as the compact was central to the Government's decision to proceed with these reforms.'<sup>25</sup> The Committee asked DIT if it could indicate when any further information will be released in relation to the outcomes of the compact, but was advised that, as DIT was not involved

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18 Maritime Union of Australia (MUA), *Submission 21*, pp. 2 and 4-5.

19 ANL, *Submission 11*, p. 11.

20 Shipping Australia Limited (Shipping Australia), *Submission 8*, pp. 1-2.

21 ANL, *Submission 11*, p. 2.

22 CIF, *Submission 16*, p. 5. The CIF submitted on behalf of the Australian Dry Bulk Shipping Users.

23 See Chapter 1, paragraph 1.14.

24 CSR, *Submission 9*, p. 3.

25 NBCG, *Submission 10*, p. 10.

in developing the compact, any questions should be referred to the relevant industry parties.<sup>26</sup>

- 2.17 This inquiry has been seen by industry as an extension of the consultation process; the Australian Logistics Council (ALC) sought an estimate of the number of Australian flagged vessels that will enter into service as a result of the legislative reforms.<sup>27</sup> In its supplementary submission, DIT stated that:

Given the range of considerations that 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.<sup>28</sup>

- 2.18 In considering the development of the shipping reform package, as outlined in Chapter 1 of the report, the Committee acknowledges DIT's efforts to provide adequate opportunities for consultation.<sup>29</sup>

## **Request for a Productivity Commission inquiry**

- 2.19 It was suggested that a Productivity Commission inquiry should be conducted into the coastal shipping industry, in order to determine the most cost effective policy for the freight task in Australia, and to ensure proper scrutiny of the productivity and economic consequences that the CT (RAS) bill and the shipping reforms more generally will have on the Australian economy. It was further suggested that, until this assessment has been made, the CT (RAS) bill should be deferred and the existing system maintained.<sup>30</sup>
- 2.20 The ALC called for a Productivity Commission review of the interaction between a range of new regulations affecting the business community, including these reforms.<sup>31</sup>

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26 DIT, *Supplementary Submission 2.1*, p. 3.

27 Australian Logistics Council (ALC), *Submission 18*, pp. 2 and 10.

28 DIT, *Supplementary Submission 2.1*, p. 3.

29 See Chapter 1, paragraphs 1.9-1.21.

30 CSR, *Submission 9*, p. 3; Sucrogen Australia Pty Ltd (Sucrogen), *Submission 14*, p. 4; Sugar Australia Pty Ltd (Sugar Australia), *Submission 23*, p. 5 (in identical terms to that in submission 14); MCA, *Submission 15*, p. 1; CIF, *Submission 16*, p. 7 (in identical terms to that in submission 15); BCA, *Submission 17*, p. [2].

31 ALC, *Submission 18*, p. 10.

- 2.21 In its supplementary submission, DIT indicated that '[a]ny decision regarding a referral to the Productivity Commission is a matter for Government' and that 'further review would add little to the issues that are already well documented', making reference to the consultation with industry that has been conducted over the past four years, resulting in documents including the 2008 Report and the RIS.<sup>32</sup>

## **Coastal Trading (Revitalising Australian Shipping) Bill 2012**

- 2.22 The CT (RAS) bill establishes the regulatory framework for access to coastal trading in Australia, replacing regulatory arrangements in Part VI of the Navigation Act. Within this framework, the object of the bill is to:

- promote a viable shipping industry that contributes to the economy;
- facilitate the long term growth of the industry;
- enhance the efficiency and reliability of Australian shipping as part of the national transport system; and
- maximise the use of vessels registered in the Australian General Shipping Register (General Register) in coastal trading.<sup>33</sup>

- 2.23 The key features of the CT (RAS) bill are as follows:

- it establishes three types of licence (General, Temporary and Emergency), which will authorise vessels to carry passengers or cargo between ports in Australia;
- it contains provisions relating to the application of the bill to various kinds of vessels, including provisions allowing the Minister to grant exemptions from the bill for vessels and people;
- it provides new definitions of coastal trading and voyage;
- it deals with the application process for licences (and variations of licences), the decision-making process including criteria for making decisions on the grant of licences, conditions of licences, cancellations of licences, Ministerial exemptions, appointment and enforcement of requirements; and

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32 DIT, *Supplementary Submission 2.1*, p. 4.

33 CT (RAS) bill, clause 3.

- it provides for review of certain decisions by the Administrative Appeals Tribunal (AAT) and the delegation of functions and powers.<sup>34</sup>

2.24 A vessel must have an appropriate licence issued under the CT (RAS) bill in order to engage in coastal trading:

- a GL holder must be registered in the General Register and has unrestricted rights to carry domestic cargo and passengers;
- a TL holder can be registered in either the International Register or under a law of a foreign country, and has restricted rights to carry domestic cargo and passengers; and
- an Emergency Licence (EL) holder can be registered in the General Register, the International Register or under a law of a foreign country, and has restricted rights to carry domestic cargo and passengers.<sup>35</sup>

2.25 The following table may assist with understanding the main features of the new licensing system:

Table 2.1 Licensing Regime for coastal trading

Licence	Eligible vessels	Main criteria
General	Australian flagged vessel; and Registered in the General Register	Unrestricted access to the coastal trade: Five year duration
Temporary	Registered in the International Register; or Foreign flagged vessel	Restricted access to the coastal trade: 12 month duration
Emergency	Registered in the General Register; Registered in the International Register; or Foreign flagged vessel	Restricted access to the coastal trade: 30 day duration

Source *Coastal Trading (Revitalising Australian Shipping) Bill 2012 and its Explanatory Memorandum.*

## Issues arising in consultation with industry

### Object of the Coastal Trading (Revitalising Australian Shipping) Bill 2012

2.26 The object of the CT (RAS) bill is outlined in paragraph 2.22 above, and includes a focus on promoting growth of the industry and maximising use of vessels registered in the General Register. As raised above in paragraphs 2.6-2.13, there was concern raised about the reduction in the

34 CT (RAS) bill, EM, p. 4; CT (RAS) bill, clause 5.

35 CT (RAS) bill, EM, pp. 4 and 6; CT (RAS) bill, clauses 21, 40 and 72.

competitiveness of the industry that would result from the introduction of the reforms.

- 2.27 A group of three affiliated companies, including CSR, Sucrogen Australia Pty Ltd (Sucrogen) and Sugar Australia Pty Ltd (Sugar Australia) provided individual submissions to the inquiry, and each stated that:
- ... the Objects should include a clause which reflects the role that the coastal trading framework has in promoting an efficient and effective and competitive supply chain for Australia's internationally trade exposed industries.<sup>36</sup>
- 2.28 The CIF stated that the objects of the CT (RAS) bill should necessarily include an object 'to ensure coastal shipping services in Australia become more internationally competitive,' and stated that if the bill fails to ensure this then 'imports of commodities, likely delivered on foreign vessels, may replace those Australian commodities which are highly reliant on efficient coastal shipping.'<sup>37</sup> Caltex Australia Limited (Caltex) similarly recommended that the object be 'amended to take into consideration the competitiveness of Australian industry in general.'<sup>38</sup>
- 2.29 The BCA suggested, as they have done throughout the consultation process, that new objects be inserted into the CT (RAS) bill, namely:
- 'the development of a competitive market for coastal shipping services'; and
  - 'to ensure globally competitive shipping costs and services for users of coastal shipping'.<sup>39</sup>
- 2.30 The Minerals Council of Australia (MCA) called for 'a legislative framework that supports the interest of the consumers of shipping services: flexibility and internationally competitive prices.'<sup>40</sup>
- 2.31 The ALC stated that, '[a]s important a policy goal as maintaining an Australian coastal fleet is, the efficient movement of cargo should also be a key national goal.'<sup>41</sup> The ALC suggested that clause 3 of the CT (RAS) bill be amended to include that, in addition to the listed objects of the bill to provide a regulatory framework for coastal trading in Australia, it must ensure:

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36 CSR, *Submission 9*, p. 2; Sucrogen, *Submission 14*, p. 2; Sugar Australia, *Submission 23*, p. 2.

37 CIF, *Submission 16*, p. 5.

38 Caltex Australia Limited (Caltex), *Submission 4*, p. 6.

39 BCA, *Submission 17*, p. 2.

40 MCA, *Submission 15*, p. 1.

41 ALC, *Submission 18*, p. 7.

- 'the economically efficient movement of freight'; and
  - 'the continued viability of the industry despatching the freight.'<sup>42</sup>
- 2.32 The AIG suggested that the objects of the CT (RAS) bill be amended 'to consider the needs of the users of coastal shipping and the impact of cabotage on the broader economy.'<sup>43</sup>
- 2.33 The Australian Shipping Consultants Pty Ltd (ASC) suggested the objects be amended to include that the regulatory framework for coastal trading in Australia provide 'efficient and cost effective freight solutions to Australian cargo interests.'<sup>44</sup>
- 2.34 The DIT stated that the object of the CT (RAS) bill reflects the policy intent of the Federal Government and that it does address the 'increase in competitiveness and provision of efficient and cost effective freight solutions', and further stated that the object clause was developed in consultation with the industry.<sup>45</sup>
- 2.35 The Committee is satisfied that the suggestions from industry in relation to efficiency and viability of the industry are covered by paragraphs 3(1)(a) and (c) of the CT (RAS) bill. The major issue not reflected in the object relates to Australia's international competitiveness. As the object of the CT (RAS) bill reflects the Federal Government policy focus on the Australian shipping industry and fostering its growth, efficiency and viability, the insertion of objects specifically related to international competitiveness would not be in line with this policy.

### The operation of Temporary Licences

- 2.36 The operation of the new TLs was the major focus of discussion in the submissions provided to the inquiry.
- 2.37 Subclause 28(1) of the CT (RAS) bill allows for the owner, charterer, shipper, master or agent of a vessel to apply for a TL for one or more vessels to be used to engage in coastal trading over a 12 month period.<sup>46</sup> Subclause 28(2) of the CT (RAS) bill provides that the application must include:
- the number of voyages, which must be at least five;

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42 ALC, *Submission 18*, pp. 2 and 7.

43 AIG, *Submission 20*, p. 3.

44 Australian Shipping Consultants Pty Ltd (ASC), *Submission 28*, p. 4.

45 DIT, *Supplementary Submission 2.1*, p. 5.

46 CT (RAS) bill, EM, p. 23.

- the expected loading dates;
- the number of passengers or kinds and volume of cargo expected to be carried (if any);
- the type and size/capacity of the vessel to be used to carry the passengers or cargo (if known);
- the ports at which the passengers or cargo are expected to be taken on board and disembarked or unloaded; and
- other information as prescribed by the regulations.

2.38 Shipping Australia claimed that when significant volumes need carriage at short notice, it is impossible to forecast the movement of project cargo in the breakbulk shipping industry and cargoes in the bulk shipping industry over a 12 month period in terms such as are listed in the paragraph above.<sup>47</sup> Mobil Oil Australia Pty Ltd (Mobil) reiterated that it is not possible to be definitive about these requirements for individual voyages over a 12 month period and that it anticipates that there will be an ongoing need to apply for variations.<sup>48</sup> Caltex stated that its coastal trade is not known nor planned more than three months in advance, and that it will be reliant on making variations throughout the 12 month period to ensure the information provided to DIT is accurate.<sup>49</sup>

2.39 In response to industry feedback indicating that it would be impossible for applicants to provide reliable information on voyage movements 12 months in advance, DIT revised the CT (RAS) bill to provide that a TL would only authorise those voyages that are known over the period of 12 months.<sup>50</sup> The DIT stated that when new voyages are anticipated, the licence holder should seek a variation of the TL to obtain authorisation for the new voyages (any such application to increase the number of voyages must have a minimum of five voyages).<sup>51</sup>

2.40 The Tourism & Transport Forum (TTF), in response to the second exposure draft of the CT (RAS) bill, expressed concern that cruise ship '[o]perators will be expected to detail the number of passengers to be carried by a ship at the time of a temporary licence application', which

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47 Shipping Australia, *Submission 8*, p. 2.

48 Mobil Oil Australia Pty Ltd (Mobil), *Submission 27*, p. 3.

49 Caltex, *Submission 4*, p. 7.

50 DIT, *Submission 2*, pp. 10-11.

51 CT (RAS) bill, EM, p. 23.

would be impossible to predict, and apply for a variation if the numbers change.<sup>52</sup>

- 2.41 The Committee notes that the introduction of 'acceptable tolerance limits' into the CT (RAS) bill might allay this and other concerns raised. Clause 37 provides that a TL must specify the number of passengers authorised to be carried under a licence (if any) and that the number of passengers is subject to acceptable tolerance limits. Acceptable tolerance limits are defined in clause 6, and include not more than 20 per cent more, or less, of the number of passengers authorised to be carried under the licence. Therefore, in the event of a change of passenger numbers, an application to vary a TL will only be required if the numbers change outside the acceptable tolerance limits.
- 2.42 Mobil expressed its dissatisfaction with the acceptable tolerances provided for in relation to loading dates and volumes, given that it is being asked to forecast its shipping requirements 12 months in advance.<sup>53</sup>

#### Minimum number of voyages

- 2.43 The minimum number of voyages that must be applied for in a TL is now five, having been reduced from 10 in earlier exposure drafts of the CT (RAS) bill.
- 2.44 The TTF stated, in its submission to this inquiry, that the concerns it had raised in its submission to DIT in response to the second exposure draft of the CT (RAS) bill had not been addressed; one such concern made in that submission related to the requirement that a TL holder undertake 10 voyages per licence, which fails to reflect that 'many cruise ships may only conduct one or two coastal voyages as part of a larger itinerary'.<sup>54</sup> This requirement has since been reduced to a minimum of five voyages, which goes only some way to appeasing this specific concern.
- 2.45 Shipping Australia expressed a similar concern that 'the minimum of five voyages ... discriminates against the smaller coastal shipper who may ... have two or three voyages per year'.<sup>55</sup> Shipping Australia strongly recommended that there be no minimum number of voyages required in

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52 Tourism & Transport Forum (TTF), *Submission 13*, pp. [5].

53 Mobil, *Submission 27*, p. 3.

54 TTF, *Submission 13*, pp. [1] and [4].

55 Shipping Australia, *Submission 8*, p. 3.

order to apply for a TL.<sup>56</sup> The ALC also suggested the removal of the 'five voyage threshold to eligibility to apply for a TL'.<sup>57</sup>

- 2.46 Many other submitters supported the removal of the five voyage minimum requirement in order to apply for a TL, suggested that the requirement is impractical, or recommended that a solution be found to deal with situations where fewer voyages are required.<sup>58</sup> The AIG suggested that the number of voyages to be authorised by a TL should be three or more.<sup>59</sup>
- 2.47 The ASC stated that removal of the single voyage concept will complicate procedural arrangements and impose impossible restrictions, and further that these concerns had been raised throughout the consultation process but 'regrettably so far to no avail'.<sup>60</sup>
- 2.48 In its supplementary submission, DIT stated that, in relation to the removal of the Single Voyage Permit:

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.<sup>61</sup>

- 2.49 Sucrogen stated that the only way that its bioethanol business could obtain flexibility, due to the lack of an Australian licenced vessel in the trade, would be to apply for a TL, not knowing whether it would need to use it or not.<sup>62</sup>

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56 Shipping Australia, *Submission 8*, p. 3.

57 ALC, *Submission 18*, pp. 2 and 8.

58 These submitters included: ASC, *Submission 28*, pp. 3-4; Australian Institute of Petroleum Limited (AIP), *Submission 29*, pp. 4 and 6; Caltex, *Submission 4*, pp. 7-8; Australian Shipowners Association Limited (ASA), *Submission 25*, p. 9.

59 AIG, *Submission 20*, p. 5.

60 ASC, *Submission 28*, pp. 2-3.

61 DIT, *Supplementary Submission 2.1*, p. 4.

62 Sucrogen, *Submission 14*, pp. 1-2.

- 2.50 In its supplementary submission, DIT stated that operators will need to adapt to the new arrangements, as follows:

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 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 include 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.<sup>63</sup>

- 2.51 In relation to applications to vary TLs, Shipping Australia stated that the proposed variation provisions are too complex, and recommended that there be no minimum number of voyages required for variation of a TL.<sup>64</sup> The Shell Company of Australia Limited was concerned about 'the burdensome requirements and practical application of the Temporary Licence, the variation process and how this will actually work particularly in respect of urgent requirements.'<sup>65</sup> Caltex stated that the five voyage minimum for variation of TLs is not practical or reasonable, and that it would be forced to include fictitious voyages to meet the minimum requirement.<sup>66</sup>
- 2.52 The Committee understands the positions as outlined by industry members and DIT, and encourages all parties to continue to consult and work together to effectively implement the new arrangements. The Committee encourages DIT to take into consideration the concerns expressed in relation to the burdens of complying with the minimum of five voyages requirement in an application for a TL, or variation of a TL.
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63 DIT, *Supplementary Submission 2.1*, p. 5.

64 Shipping Australia, *Submission 8*, p. 3.

65 The Shell Company of Australia (Shell), *Submission 19*, p. [1].

66 Caltex, *Submission 4*, p. 10.

The Committee is confident that DIT will continue to work with industry and review the practical operation of the minimum voyage requirement once it comes into force.

### Definition of voyage

2.53 The CT (RAS) bill allows for GL holders to contest for voyages in a TL application. Voyages can include the movement of a vessel from one port to another port in which only some of the cargo need be unloaded.<sup>67</sup>

2.54 Caltex proposed that:

a voyage be defined by the entirety of a movement on an 'empty to empty' basis rather than on a 'port to port' basis ... for certain classes of cargo only, such as crude oil, petroleum feedstock and finished petroleum products, where the segmenting of cargo would lead to increased operational risk, as well as uneconomic and inefficient supply chains.<sup>68</sup>

2.55 BP Australia Pty Ltd (BP) stated that GL holders should not be able to contest single voyages within a journey of hydrocarbon sector shipping, due to various operational and environmental risks as vessel transfers increase needlessly, a reduced ability to urgently respond to energy needs, and higher transport costs.<sup>69</sup> In support of this, the Australian Institute of Petroleum Limited (AIP) suggested that GL holders be prevented from contesting for particular voyages or cargo 'in the circumstance where shipping supply chains are integrated (as they are in the petroleum industry).'<sup>70</sup>

2.56 The Committee notes that the above suggestion could be implemented by including a list of circumstances in which GL holders cannot contest for single voyages within a journey of cargo, including those circumstances mentioned above. These could be provided for in regulations, and clause 31 of the CT (RAS) bill could be amended to accommodate this.

### The timeframe and criteria used to decide Temporary Licence applications

2.57 According to the CT (RAS) bill, the Minister must decide an application for a TL within 15 business days after the day the application is made.<sup>71</sup> This timeframe is variably extended if the Minister receives notices in

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67 CT (RAS) bill, clauses 6 and 7.

68 Caltex, *Submission 4*, p. 16.

69 BP Australia Pty Ltd (BP), *Submission 24*, p. [2].

70 AIP, *Submission 29*, p. 6.

71 CT (RAS) bill, subclause 34(4).

- response from GL holders, indicating that they want to contest for part or all of the voyages in the TL application.<sup>72</sup>
- 2.58 CSR expressed the view that, for the sake of business certainty, the same decision period should be retained even if notices in response are received.<sup>73</sup> The NBCG stated that a period of 15 days to adjudicate on a TL application is unworkable, and that even a period of no more than 48 hours can present challenges.<sup>74</sup>
- 2.59 CSR noted that there are no appeal rights to the AAT for the refusal by the Minister of a TL.<sup>75</sup> The same concern was raised by CSR in its submission to DIT in response to the first exposure draft of the Coastal Trading Bill 2012. This situation has been addressed in the CT (RAS) bill as introduced: subclause 107(2) now does allow for a person who made an application for a TL to apply to the AAT for review of a decision by the Minister to refuse the application.
- 2.60 The CIF was concerned about the decision framework the Minister will use to determine whether or not a TL application will be accepted.<sup>76</sup> The CIF stated that whether or not a TL has been applied for in the past should be irrelevant – this is one of the criteria the Minister may have regard to in deciding an application for a TL, as outlined in paragraph 34(2)(a) of the CT (RAS) bill – and that ‘[t]he only relevant factor should be whether or not a general licence vessel is able to carry the cargoes to the shipper’s specifications.’<sup>77</sup>
- 2.61 The Committee observes the change in language from the second exposure draft of the CT (RAS) bill to the CT (RAS) bill as introduced (reflected in paragraph 34(3)(d)), which now allows the Minister to consider the ‘reasonable requirements of a shipper of the kind of cargo specified’, rather than a specific shipper’s requirements.
- 2.62 Sucrogen and Sugar Australia stated that reasonable requirements must include commercial terms and shippers’ standards, and that vessels which do not meet a shipper’s standards should not be imposed upon them simply because a GL vessel might meet capacity and be available.<sup>78</sup> The

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72 CT (RAS) bill, clauses 32 and 34.

73 CSR, *Submission 9*, p. 2.

74 NBCG, *Submission 10*, p. 6.

75 CSR, *Submission 9*, p. 3.

76 CIF, *Submission 16*, p. 5.

77 CIF, *Submission 16*, p. 6.

78 Sucrogen, *Submission 14*, p. 3; Sugar Australia, *Submission 23*, p. 3 (in identical terms to that in submission 14).

AIG highlighted the importance of the requirement that the Minister have regard to the requirements of the specific shipper of the cargo, regardless of how reasonable or significant, when deciding whether or not to grant a TL in circumstances where a notice or notices in response had been received by the Minister.<sup>79</sup>

- 2.63 When a notice in response is received by the Minister, the parties must then negotiate on whether the GL vessel is equipped to carry the cargo specified in a timely manner, having regard to the requirements of the shipper of the cargo.<sup>80</sup> The Minister may, therefore, be considered to be taking into account issues such as the commercial terms and specific shipper's standards when having regard to the outcome of negotiations between the parties (as required under paragraph 34(3)(a)), as they in turn considered those issues in the course of negotiating.
- 2.64 In light of the statements made by AIG and industry members above, it is important that the Minister does not impose a GL vessel on a shipper that the shipper is not reasonably satisfied with.

### Exemption from the coastal trading regime for certain passenger vessels

- 2.65 The definition of 'coasting trade' in section 7 of the Navigation Act provides, among other things, that a ship shall not be deemed to be engaged in the coasting trade by reason of the fact that it carries passengers who hold through tickets to or from a port beyond Australia and the Territories.
- 2.66 The wording of this exemption has been amended in the meaning of 'coastal trading' in clause 7 of the CT (RAS) bill. Subclause 7(1) provides for the circumstances in which a vessel is taken to be used to engage in coastal trading, for or in connection with a commercial activity. Subclause 7(2) provides that subclause 7(1) does not apply in respect of, among other things, a passenger who holds a through ticket to or from a port outside Australia **and** disembarks at a port in Australia for **transit purposes only**.
- 2.67 The TTF stated that the definition and interpretation of 'coastal trading' under clause 7 'would effectively shut down the expedition cruise sector from July 2012' as it will forbid operators 'from carrying any passengers from an international port, disembarking them at their final port in order

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<sup>79</sup> AIG, *Submission 20*, p. 6.

<sup>80</sup> CT (RAS) bill, subclauses 32(3) and (4).

[to] remain in Australia either to continue touring, or return to their residence.’<sup>81</sup> The TTF stated that:

Currently, passengers holding tickets to or from Australia are able to transit through a state to arrive at their final port of disembarkation, regardless of whether they then leave Australia or continue to travel overland to other Australian destinations.<sup>82</sup>

2.68 The DIT stated in its submission that:

The current coverage of the coasting trade regulatory regime will be continued under the new coastal trading legislation ... The current exemptions from the definition of coasting trade under the Navigation Act are being replicated; for example ... a vessel carrying international passengers from an overseas port for disembarkation in an Australian port would also be exempt; a vessel originating from an Australian port carrying domestic passengers bound for overseas is also exempt.

The definition of ‘coastal trading’ has been clarified in the CT Bill to avoid potential loopholes.<sup>83</sup>

2.69 The DIT went further in its clarification that the change in the definition ‘in practice replicates current arrangements’ and stated that ‘[t]he inclusion of the additional wording provides for vessels which are clearly operat[ing] on an international voyage, but which berth at an Australian port and passengers disembark for a short (transit) period.’<sup>84</sup>

## Possible exemptions from the coastal trading regime

### Cruise shipping industry

2.70 There is a current Ministerial Notice that exempts cruise liner passenger vessels, over 5000 gross tonnes, from the coasting trade requirements of the Navigation Act (except for those between Victoria and Tasmania).<sup>85</sup>

2.71 The 2010 Discussion Paper stated that:

81 TTF, *Submission 13*, p. [1].

82 TTF, *Submission 13*, p. [1].

83 DIT, *Submission 2*, pp. 13-14.

84 DIT, *Supplementary Submission 2.1*, p. 6.

85 DIT, ‘Ministerial Guidelines for Granting Licences and Permits to Engage in Australia’s Domestic Shipping’, approved 21 December 2009 by the Hon. Mr Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, < [http://www.infrastructure.gov.au/maritime/freight/licences/ministerial\\_guidelines.aspx](http://www.infrastructure.gov.au/maritime/freight/licences/ministerial_guidelines.aspx)> viewed 30 April 2012. The Ministerial Notice was issued under section 286(6) of the *Navigation Act 1912*; Commonwealth of Australia Gazette 2011, no. S197, 19 December 2011.

Consideration will be given to extending this exemption to all cruise vessels over 500 tonnes and engaged in a cruise of two nights or more on the basis that the cruise shipping market has unique characteristics.<sup>86</sup>

- 2.72 The TTF supported the suggestion that exemption from coastal trading licences be extended to all cruise ships over 500 tonnes, as was canvassed in the 2010 Discussion Paper.<sup>87</sup>
- 2.73 In its supplementary submission, DIT gave an outline of consultations with the cruise industry following the publication of the 2010 Discussion Paper: whilst representatives of foreign flagged operators supported extending the exemption so as to make the cruise market competitively neutral, the Australian registered and licensed operators opposed extending the exemption.<sup>88</sup> The Committee notes DIT's view that '[a]ny further consideration of this policy would be a matter for Government.'<sup>89</sup>

#### Petroleum industry

- 2.74 The AIP and Mobil suggested that because there are currently no Australian registered bulk liquid tankers available to carry petroleum products around the coast, and there is little likelihood of any being available in the foreseeable future, a strong case can be made for the exemption from the provisions of the CT (RAS) bill of the shipping of petroleum products, as it 'represent[s] unnecessary regulation.'<sup>90</sup> This reflects the view of some stakeholders in the cruise and petroleum sectors that industry sectors should be recognised in the CT (RAS) bill.
- 2.75 The Committee notes that the decision to exempt industries from the provisions of the CT (RAS) bill is a decision of the Minister (available under clause 11).<sup>91</sup> It is not the Committee's role to determine whether the current lack of a GL vessel in the petroleum industry should provide a valid reason for exemptions from regulations imposed on other sectors of the shipping industry.

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86 DIT, 'Reforming Australia's Shipping - A Discussion Paper for Stakeholder Consultation', 1 December 2010, p. 12, <[http://www.infrastructure.gov.au/maritime/shipping\\_reform/files/Position\\_paper\\_shipping\\_reform\\_final.pdf](http://www.infrastructure.gov.au/maritime/shipping_reform/files/Position_paper_shipping_reform_final.pdf)> viewed 11 April 2012.

87 TTF, *Submission 13*, p. [2].

88 DIT, *Supplementary Submission 2.1*, pp. 6-7.

89 DIT, *Supplementary Submission 2.1*, p. 7.

90 AIP, *Submission 29*, p. 5; Mobil, *Submission 27*, pp. 2-3.

91 Clause 11 of the CT (RAS) bill maintains the power to exempt under section 421 of the Navigation Act; CT (RAS) bill, EM, p. 17.

### Certain vessels in the Australian International Shipping Register

- 2.76 Sugar Australia suggested the need for exemption from the TL provisions for International Register vessels in certain circumstances where a vessel is owned by a strongly related party or the same party as the shipper, especially from the provisions of the TL that require the Minister to publish the application to GL holders.<sup>92</sup> CSR and Sugar Australia suggested that additional vessels should be allowed to join the International Register where triangulation is permitted, as it would be more efficient than switching to a GL vessel for the coastal section of the international journey.<sup>93</sup>
- 2.77 CSR and Sugar Australia expressed the view that the TL provisions 'work against the Object of the [CT (RAS) bill] in that they will essentially reduce the prospect of any vessels joining the Australian International Shipping Register',<sup>94</sup> due to the need to comply with the TL provisions.
- 2.78 The Committee does not provide specific comment on these views as no additional information was provided for consideration, but the Committee feels they should be recorded for consideration by the Minister.

### Administrative Appeals Tribunal review

- 2.79 There is no provision in the CT (RAS) bill allowing for review by the AAT of a Ministerial decision made under clause 15 to grant or refuse an application for a GL. Clause 107 provides for review by the AAT of other decisions made but not decisions made under clause 15. This issue was raised by CSR in response to the first exposure draft of the Coastal Trading Bill 2012, but subsequent changes made to clause 107 of the CT (RAS) bill do not address the concerns.<sup>95</sup>
- 2.80 Again, the Committee does not provide specific comment on these views as no additional information was provided for consideration, but the Committee feels they should be recorded for consideration by the Minister.

### Register of General Licence Holders

- 2.81 Caltex submitted that GL holders should be required to make public the availability, capabilities and capacity of their vessels in order to facilitate
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92 Sugar Australia, *Submission 23*, pp. 2 and 3.

93 CSR, *Submission 9*, p. 2; Sugar Australia, *Submission 23*, pp. 2 and 3.

94 CSR, *Submission 9*, p. 2; Sugar Australia, *Submission 23*, p. 3.

95 CSR, *Submission 9*, p. 2.

negotiation and discussion of trade prior to TL applications being made. Caltex also proposed amendment of subclause 16(2), requiring the Minister to include the capabilities and capacity of the vessel to which the GL relates in publishing information on the DIT website.<sup>96</sup> The AIP suggested that GL holders should be required to make publicly available similar information to that required to be provided by TL holders, in order to 'ensure competitive neutrality between different types of licence holders' and help facilitate commercial negotiations.<sup>97</sup>

2.82 In its supplementary submission, DIT stated that it would not consider requiring GL holders to make publicly available similar information to that required of TL holders. The DIT further stated that the proposed requirement for publication of information by GL and TL holders – as set out in subclauses 16(2) and 35(2) – is largely the same as currently provided on the DIT website in relation to Australian licensed operators and permit holders. The DIT stated that the reason for codifying these requirements was '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.'<sup>98</sup>

2.83 The Committee acknowledges that a broadened register of GL holders may assist the negotiations of GL and TL holders prior to application for Tls being made, and would potentially reduce the number of TL applications being made unnecessarily. The Committee observes that such an approach may provide practical assistance to operators who expect to have less than five voyages to work '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.'<sup>99</sup> Regulations could require that evidence be provided showing that a TL applicant has checked the availability of GL vessels prior to making the TL application.

## Emergency Licences

2.84 The CT (RAS) bill does not currently allow for an urgent variation of a TL. BP suggested that there are some times when quick diversion of cargo is needed in order to maintain Australia's energy security, and that this can happen within 24 hours after a vessel has departed.<sup>100</sup>

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96 Caltex, *Submission 4*, p. 15.

97 AIP, *Submission 29*, p. 6.

98 DIT, *Supplementary Submission 2.1*, p. 7.

99 DIT, *Supplementary Submission 2.1*, p. 5; see Chapter 2, paragraph 2.50 above.

100 BP, *Submission 24*, p. [2].

- 2.85 There were suggestions made by various representatives of the oil and petroleum industries that ELs should also cover commercial emergencies, including situations such as shortfalls in petrol products, oil industry supply disruption, and the maintenance of liquid fuel supply security, which could be reflected in the emergency situations to be prescribed by the regulations.<sup>101</sup> It was also pointed out that there should be provision made for ELs in this category to be granted essentially upon notification, and certainly within the three business day period as is currently set out in subclause 66(4) of the CT (RAS) bill.
- 2.86 In response to this issue, DIT stated that:
- 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.<sup>102</sup>
- 2.87 The Committee considers that there should be some recognition of commercial situations requiring urgent variation to TLs, and or the possibility of including commercial emergencies, such as those outlined above, as the subject of EL applications, in order to reflect the nature of urgent energy supply situations that can arise. This could include amendments to the decision making timeframe for the Minister in deciding variations to TLs, or applications for ELs, or provision in the regulations to include commercial emergencies that may be covered by ELs.

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101 AIP, *Submission 29*, p. 7; Caltex, *Submission 4*, pp. 11-12; Shell, *Submission 19*, p. [2]; Mobil, *Submission 27*, p. 3.

102 DIT, *Supplementary Submission 2.1*, p. 8.

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

- 2.88 The CT (CATP) bill amends various Commonwealth laws and provides for transitional arrangements consequential to the enactment of the CT (RAS) bill. The key features of the CT (CATP) bill are as follows:
- it repeals Part IV of the Navigation Act (the current regulatory framework for coastal trading), and the definition of coasting trade;
  - it establishes a Transitional General Licence (TGL) for foreign registered vessels that are currently operating under a licence issued under Part VI of the Navigation Act, to engage in coastal trading under the new framework, initially valid for a period of five years, and which may be renewed once for an additional five years;
  - it amends the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS (MI) Act) to provide that it applies to a vessel used to engage in coastal trading under:
    - ⇒ a GL;
    - ⇒ a TL if the vessel is registered under the International Register;
    - ⇒ an EL if the vessel is registered either under the International Register or the General Register; and
    - ⇒ a TGL;
  - it amends the *Seafarers Rehabilitation and Compensation Act 1992* (SRC Act) to provide that it does not apply to the employment of employees on a vessel used to engage in coastal trading registered in the International Register, and that it does apply to the employment of employees on a vessel used to engaged in coastal trading under:
    - ⇒ a GL;
    - ⇒ an EL if the vessel is registered in the General Register; or
    - ⇒ a TGL;
  - it makes transitional provisions for Licences issued under the Navigation Act that were in force immediately before commencement of the CT (CATP) bill to be extended for four months after commencement, or until the date of cancellation, whichever occurs first;
  - it makes transitional provisions for Permits (Single Voyage Permits or Continuing Voyage Permits) in force immediately before commencement of the CT (CATP) bill to be extended either until the

day it would have expired, or for four months after commencement or on the date of cancellation, whichever occurs first;

- it makes transitional provisions for Declarations made under subsection 8AA(2) of the Navigation Act and in force immediately before commencement of the CT (CATP) bill to be extended for four months after commencement;
- it makes transitional provisions regarding applications for Licences or Permits pending under Part VI of the Navigation Act, which were not decided immediately before commencement of the CT (RAS) bill; they will continue to be assessed in accordance with the Navigation Act. Any such Licence or Permit may be granted for a period of up to three months; and
- it provides that certain orders (under section 7 of the Navigation Act), permissions (under section 286(6) of the Navigation Act) and exemptions (section 421 of the Navigation Act) issued under the Navigation Act continue in force until their respective expiry dates.<sup>103</sup>

## Issues arising in consultation with industry

### Application of the related legislation to International Register vessels

- 2.89 In the second exposure draft CT (CATP) bill, vessels registered in the International Register that were engaged in coastal trading *were* subject to the SRC Act. This requirement was subsequently removed in the CT (CATP) bill as introduced, and now these vessels are *not* subject to the SRC Act.
- 2.90 Allianz Australia Insurance Limited (Allianz) stated that this leaves an apparent gap in protection for crew employed on vessels registered in the International Register while engaged in coastal trading. Allianz recommended that proposed section 61AM of the *Shipping Registration Act 1981* (SR Act) – as inserted by Item 13 of Schedule 2 of the (SRA (AISR) bill) – be amended so that it also applies to vessels when engaged in coastal trading, as well as in international trade (as is already the case).<sup>104</sup>
- 2.91 DIT addressed this issue in its supplementary submission to the inquiry, and stated that:

<sup>103</sup> CT (CATP) bill, EM, pp. 1-3, 7 and 11-12.

<sup>104</sup> Allianz Australia Insurance Limited, *Submission 5*, p. [2].

... 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.<sup>105</sup>

2.92 The AMOU expressed concern about the insertion of proposed subsections 19(1AA) and 19(1AB) into the SRC Act – as inserted by Item 20 of Schedule 1 of the CT (CATP) bill – which would mean that the SRC Act does not apply to seafarers on board a vessel registered in the International Register that is a prescribed ship (meaning it is subject to Part II of the Navigation Act), being used to engage in coastal trading. The AMOU suggested that these subsections should not be inserted into the SRC Act.<sup>106</sup>

2.93 The DIT stated in its submission that under current regulatory arrangements, Permit vessels are not subject to Part II of the Navigation Act (regulating conditions for Masters and Seamen), the OHS (MI) Act or the SRC Act, and that:

In light of strong industry representations supporting the retention of the current arrangements, consequential amendments are being made to the OHS (MI) Act and the Seafarers Act to ensure that these Acts do not apply to foreign ships operating under either a TL or EL ...

Industry stakeholders advocated that ships registered in the International Register and engaged in coastal trading under a TL or EL should be treated in the same manner as foreign ships to ensure that the International Register ships are able to compete on a level playing field.

The consequential amendments to the Seafarers Act will, therefore, also ensure that the Act does not apply to International Register ships operating under either a TL or EL ...

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105 DIT, *Supplementary Submission 2.1*, p. 8.

106 AMOU, *Submission 7*, pp. [1]-[2].

The OHS (MI) Act will apply to all Australian registered ships wherever they are located.<sup>107</sup>

- 2.94 The Department of Education, Employment and Workplace Relations (DEEWR) stated that '[t]he Seafarers Act will not apply to a vessel registered on the AISR that is engaged in coastal trading under a temporary licence' and further 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.<sup>108</sup>

- 2.95 In its supplementary submission, DIT confirmed the status of the coverage of the OHS (MI) Act to vessels in the International Register, and reiterated that:

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 ...<sup>109</sup>

### Extension of the transitional period

- 2.96 Some of the petroleum industry stakeholders suggested that the transitional provisions in relation to Permits or Licences operating or pending under the Navigation Act be extended to six months after the commencement of the new legislation.<sup>110</sup> The ASA suggested that having 'the required TLs in place within three months is something that all parties [industry and DIT] may struggle with' and recommended 'that at least 6 months be provided to transition to the new regime.'<sup>111</sup>
- 2.97 The DIT responded to the possibility of extending the transitional provisions for a further six months by saying that it would result in two regulatory regimes being in operation for an extended period of time,

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107 DIT, *Submission 2*, p. 15.

108 Department of Education, Employment and Workplace Relations (DEEWR), *Submission 22*, pp. [4] and [5].

109 DIT, *Supplementary Submission 2.1*, p. [11].

110 AIP, *Submission 29*, p. 7; Mobil, *Submission 27*, p. 4.

111 ASA, *Submission 25*, p. 11.

which it considers ‘may cause ambiguity and confusion with both the shipping and freight industries.’<sup>112</sup>

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

2.98 The SRA (AISR) bill establishes a new International Register as an alternative registration option to the current Australian Register of Ships – which will effectively become the General Register – for ships predominantly engaged in international trading.<sup>113</sup>

2.99 The key features of the SRA (AISR) bill are outlined in the Explanatory Memorandum (EM) accompanying the bill:

- It establishes two registers – the General and International Registers – including transitional provisions relating to the Australian Register of Ships, and outlines specific conditions of registration in the International Register.
- It deals with the application process for registration, including the ability to refuse or cancel registration in the International Register, the criteria for making such decisions, and internal review process for review of these decisions.
- It provides for employment conditions in accordance with the MLC and other relevant ILO treaties to which Australia is a signatory, including work agreements, and determination of minimum wages and paid annual leave for seafarers working on board ships registered in the International Register that are engaged in international trading.
- It provides for collective agreements to be negotiated by a seafarers’ bargaining unit, dispute resolution procedures, protection against victimisation and compulsory insurance for death or long-term disability.
- It also provides additional enforcement powers for the AMSA for the purpose of ascertaining whether it complies with the working, living and crewing condition provisions of the Act, and establishes a civil penalty and infringement notice regime.<sup>114</sup>

2.100 According to DIT, the International Register is being established in order to encourage Australian participation in the international trades, and

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112 DIT, *Supplementary Submission 2.1*, p. 8.

113 DIT, *Submission 2*, p. 17.

114 Shipping Registration Amendment (Australian International Shipping Register) Bill 2012 (SRA (AISR) bill), EM, p. 3.

provide ‘a competitive alternative for Australian ship owners and operators to registering offshore.’<sup>115</sup> ‘The International Register will apply substantial Australian ownership requirements for those registering ships.’<sup>116</sup> Vessels on the International Register will operate with a majority of foreign crew members, with a minimum of two Australian citizens or residents required, preferably in positions of Master and Chief Engineer.<sup>117</sup>

## Issues arising in consultation with industry

- 2.101 Many of the issues in relation to the SRA (AISR) bill, and specifically in relation to International Register vessel requirements, have been raised in respect to the Coastal Trading bills (discussed earlier in this chapter) and the taxation bills (discussed later in this chapter).
- 2.102 An issue arose in relation to the wage setting for work agreements of seafarers working on vessels registered in the International Register, when being used to engage in international trading. Shipping Australia expressed the view, in relation to proposed section 61AE of the SR Act – as inserted by Item 13 of Schedule 2 of the SRA (AISR) bill – that the minimum amount of wages, as determined by the Minister under this section, should not be any higher than the amount of wages specified by the International Transport Workers’ Federation template agreement, even though this can occur at the Minister’s discretion.<sup>118</sup>
- 2.103 In relation to the requirement that at least two senior positions in engineering and deck officer roles are to be filled by Australians, and preferably in positions of Master and Chief Engineer, the ASA stated that there is a need for flexibility in circumstances where the most senior deck and engine officers are not available.<sup>119</sup>

## Shipping Reform (Tax Incentives) Bill 2012

- 2.104 The object of the SR (TI) bill is to provide a framework for taxation incentives in order to encourage both investment in the industry and the development of sustainable employment and skills opportunities for Australian seafarers. A corporation that is issued a certificate for a vessel
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115 DIT, *Submission 2*, pp. 18-19.

116 DIT, *Submission 2*, p. 18.

117 DEEWR, *Submission 22*, p. [4].

118 Shipping Australia, *Submission 8*, p. 4.

119 ASA, *Submission 25*, p. 8.

for an income year can be eligible for tax incentives under the *Income Tax Assessment Act 1997* (ITA Act 1997) for the income year. The corporation can maximise the tax incentives for the first income year for the vessel by applying during that year for a notice.<sup>120</sup>

2.105 The key features of the SR (TI) bill:

- establish eligibility criteria for access to the tax concessions by defining an eligible company and an eligible vessel;
- provide a framework for the DIT to issue applicants with notices and certificates confirming that they have satisfied the requirements for certification;
- provide for the DIT to collect and collate data; and
- provide for decisions to be reviewed if disputed.<sup>121</sup>

2.106 The taxation incentives that will be implemented through the TLA (SR) bill will provide for:

- Accelerated Depreciation and rollover relief for owners of Australian registered eligible vessels;
- An income tax exemption (ITE) for Australian operators of Australian registered eligible vessels on qualifying shipping income;
- A refundable tax offset for employers who employ eligible Australian seafarers; and
- An exemption from royalty withholding tax for foreign owners of eligible vessels leased under a bareboat or demise charter to an Australian operator.<sup>122</sup>

2.107 In order for a company to access the accelerated depreciation, ITE or refundable tax offset (seafarer tax offset) it must demonstrate:

- that it is a trading or financial corporation under Australian law;
- that it has an eligible vessel, being:
  - ⇒ a seagoing vessel;
  - ⇒ not excluded by subclause 10(4) of the SR (TI) bill: some examples of excluded vessels are recreational, fishing, offshore industry, inland waterways, salvage, tugboats, government and defence force vessels;
  - ⇒ of 500 gross tonnes or more; and

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120 Shipping Reform (Tax Incentives) Bill 2012 (SR (TI) bill), clauses 3-4.

121 SR (TI) bill, EM, p. 2.

122 SR (TI) bill, EM, p. 2.

⇒ registered in the General or International Register.<sup>123</sup>

2.108 Additional requirements exist (which will be outlined in regulations yet to be made available) in order for a company to access the ITE. These include:

- meeting management requirements directed at increasing maritime activities conducted in Australia relating to strategic, commercial, technical and crew management; and
- training requirements directed at increasing the employment and training of Australian seafarers.<sup>124</sup>

## Issues arising in consultation with industry

2.109 The majority of issues raised in relation to the taxation bills relate to the taxation incentives anticipated through the TLA (SR) bill; therefore most of the discussion on taxation reforms occurs later in this chapter.

2.110 In support of the taxation reforms, the MCA stated that '[t]he fiscal and tax provisions in the Bills appear to be a positive development.'<sup>125</sup>

2.111 The introduction of mandatory training requirements, to be linked to the accessibility of tax incentives, was generally supported by inquiry participants. An area of concern for the Company of Master Mariners of Australia was the lack of 'positive requirement' for the provision of training places for cadets on International Register and foreign registered vessels engaged in coastal trading, and it suggested that the legislation should be amended to incorporate 'positive levers' to encourage the employment of Australian cadets and junior officers.<sup>126</sup>

2.112 The DIT stated that the mandatory training requirement is being developed and currently finalised by the Maritime Workforce Development Forum.<sup>127</sup> The Committee understands that the Forum is planning to develop a national approach rather than sector or state-based

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123 SR (TI) bill, EM, p. 4; SR (TI) bill, clause 10.

124 SR (TI) bill, EM, p. 4.

125 MCA, *Submission 15*, p. 1.

126 Company of Master Mariners of Australia, *Submission 30*, p. [3].

127 The Maritime Workforce Development Forum is chaired by Ms Lynelle Briggs, and comprises members from Ports Australia, the MUA, the ASA, Farstad Shipping, the Transport and Logistics Centre, the AMOU, the Australian Institute of Marine and Power Engineers (AIMPE), and Svitzer Australasia: The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, 'Securing Australia's Maritime Future', *Media Release AA019/2012*, 21 February 2012; The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 22 March 2012, p. 3941.

approaches as currently exist, with the details of the training requirement to be contained in regulations.<sup>128</sup>

- 2.113 According to the RIS, the Forum was to have comprised industry, unions and education providers.<sup>129</sup> The Committee was advised that no maritime education and training providers are currently involved in the Forum's deliberations.<sup>130</sup> It was suggested by one submitter that the early involvement of maritime education and training providers (such as the Australian Maritime College) would enhance the likelihood of a successful outcome to training reform, but that maritime education and training providers were not invited to be involved in the Forum.<sup>131</sup>
- 2.114 The composition of the Forum is outside the scope of the Committee's inquiry, but the Committee accepts that the work of the Forum may be assisted by the involvement of maritime education and training providers in the finalisation stages of the mandatory training requirement, or at any review stages that may be scheduled for the future.

## Tax Laws Amendment (Shipping Reform) Bill 2012

- 2.115 The EM to the TLA (SR) bill explains that it:

... amends the *Income Tax Assessment Act 1997*, the *Income Tax Assessment Act 1936* and the *Taxation Administration Act 1953* to provide taxation incentives to stimulate investment in, and revitalisation of, the Australian shipping industry and to foster the global competitiveness of the shipping industry.<sup>132</sup>

- 2.116 The EM also explains that the key elements of the TLA (SR) bill are:

- an income tax exemption for ship operators (Schedule 1);
- accelerated depreciation of vessels via a cap of 10 years to the effective life of those vessels (Part 1 of Schedule 2);
- roll-over relief from income tax on the sale of a vessel (Part 2 of Schedule 2);

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128 SR (TI) bill, EM, p. 8; The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, 'Securing Australia's Maritime Future', *Media Release AA019/2012*, 21 February 2012.

129 DIT, RIS, August 2011, p. v, <[http://www.infrastructure.gov.au/maritime/shipping\\_reform/files/RIS\\_post\\_OBPR\\_20110816\\_formatted.pdf](http://www.infrastructure.gov.au/maritime/shipping_reform/files/RIS_post_OBPR_20110816_formatted.pdf)> viewed 11 April 2012.

130 Dr Barrie Lewarn, *Submission 3*, p. 5.

131 Dr Barrie Lewarn, *Submission 3*, pp. 2, 3, 4 and 5.

132 Tax Laws Amendment (Shipping Reform) Bill 2012 (TLA (SR) bill), EM, p. 3.

- an employer refundable tax offset (Schedule 3); and
- an exemption from royalty withholding tax for payments made for the lease of shipping vessels (Schedule 4).

This Bill also provides for the disclosure of tax information by the Australian Taxation Office in certain circumstances (Schedule 5).<sup>133</sup>

2.117 The Treasury Department estimates the financial impact of these tax incentives to be \$254.5 million over the forward estimates to 2015-16.<sup>134</sup>

## Current law

2.118 The EM to the TLA (SR) bill explains that:

Shipping companies are currently taxed in line with companies in other industries and are not afforded concessional tax treatment.

As such:

- a shipping company pays tax at the company tax rate (currently 30 per cent);
- 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, but do not have access to refundable tax offset provisions.<sup>135</sup>

## Issues arising in consultation with industry

### Income tax exemption

2.119 As stated in the EM to the TLA (SR) bill:

The income tax exemption applies to all qualifying shipping income for eligible shipping 'vessels' as defined in the SR (TI) Bill.

A 'vessel' is an eligible shipping vessel if the ship operator has applied for and obtained a certificate in respect of the vessel from the relevant Minister which certifies that the company satisfies the qualifying conditions set out in the SR(TI) Bill.

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133 TLA (SR) bill, EM, p. 3.

134 TLA (SR) bill, EM, p. 4.

135 TLA (SR) bill, EM, p. 9.

Only income derived in respect of an eligible vessel from certain shipping activities, will qualify for the income tax exemption. A generous approach is taken to defining the activities that generate income eligible for the income tax exemption, ensuring that a substantial part of shipping activities are included.<sup>136</sup>

- 2.120 The ITE was criticised by Caltex as effectively acting as a 'tax deferral regime', in that the tax benefit provided to the company is effectively taken away by a dividend withholding tax for non-resident shareholders or no franking credit for resident shareholders.<sup>137</sup> The AAMA noted this concern within the industry and asked the Committee to investigate whether or not it is correct that ITE measures 'simply defer taxation until any profits that have not been reinvested are taken in the form of dividends, at which point no franking credits are available.'<sup>138</sup>
- 2.121 ANL stated that, whilst the measures of tax exemption or accelerated depreciation 'will enhance cash flows and should assist businesses to reinvest in new vessels,' they are effectively a 'deferment of tax as any dividends paid would still be subject to tax', and this is where the measures are out of step with maritime enhancement regimes in other countries.<sup>139</sup> As '[i]nvestments are decided on the basis of returns to shareholders ... the dividends remaining taxable means that the outcome of these reforms is less certain than if more comparable measures had been put in place.'<sup>140</sup>
- 2.122 The EM to the TLA (SR) bill states that:
- A tonnage tax was initially considered in the early stages of the Shipping policy reform, however an exemption was considered to be more favourable as it would be easier to understand and comply with, and provide greater taxpayer certainty.
- An exemption from income tax for all qualifying shipping income would produce the same benefits as a tonnage tax but without the administration and compliance costs associated with introducing a new tax regime in a new and separate tax Act.<sup>141</sup>
- 2.123 The DIT acknowledged the views taken by some industry members that:

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136 TLA (SR) bill, EM, p. 10.

137 Caltex, *Submission 4*, p. 17.

138 AAMA, *Submission 6*, p. [1].

139 ANL, *Submission 11*, p. 3. This was supported by the ASA, *Submission 25*, p. 5.

140 ANL, *Submission 11*, p. 3. This was also supported by the ASA, *Submission 25*, p. 5.

141 TLA (SR) bill, EM, p. 14.

... without a dividend exemption, the exemption from income tax is only a deferral of tax and not a true exemption ... Their preference is for the concessions to include a dividend withholding tax exemption and a deemed dividend franking credit for distributions to Australian shareholders.<sup>142</sup>

2.124 In its initial submission to this inquiry, DIT stated:

... providing a 'deemed' franking credit on profits that have been exempt from tax would not be consistent with the fundamentals underpinning the Australian tax system. Providing an income tax concession directly at the shipping company level allows for further capital to be reinvested in the company before the distribution of profits ... However, providing a concession at the shareholder level could promote trading in shares in a shipping company without providing additional capital to the company. It is also expected that shareholders will seek to invest where they can get the best yield over a period and whether dividends are franked or unfranked is only one part of their consideration.<sup>143</sup>

2.125 In a summary of its consultative process prior to the introduction of the bills, the Treasury stated that 'there is no precedent for exempting company profits from tax in the hands of shareholders.'<sup>144</sup>

2.126 The supplementary submission prepared by DIT responded in more detail to industry criticism of the ITE effectively being a tax deferral regime:

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.

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142 DIT, *Submission 2*, p. 24.

143 DIT, *Submission 2*, p. 24.

144 The Treasury, 'Tax Laws Amendment (Shipping Reform) Bill 2012: Summary of Consultation Process', April 2012, p. [2], <<http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Tax-Incentives-for-the-Shipping-Industry>> viewed 1 May 2012.

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.<sup>145</sup>

## Accelerated depreciation

2.127 For companies issued with a certificate under the SR (TI) bill, the effective life of an eligible vessel is capped at 10 years. The decline in value of the vessel will be calculated over a shorter period of time than it is currently, which will provide companies with a greater deduction in the early income years.<sup>146</sup> The ASA welcomed this change.<sup>147</sup>

## Roll-over relief

2.128 The EM to the TLA (SR) bill states that:

A balancing adjustment amount is included in the second income year after the income year in which an existing vessel is disposed of. If another vessel is held on the second anniversary on the disposal of the original vessel, then an amount is rolled over.<sup>148</sup>

2.129 The Treasury, in the summary of its consultative process prior to the introduction of the bills, observed that 'stakeholders recommended all proceeds on the sale of a vessel be exempt from tax rather than being given a deferral of tax'. Treasury disagreed, stating that 'there is no policy authority for exempting from tax all sale proceeds on the sale of a vessel.'<sup>149</sup>

## Seafarer tax offset

2.130 The EM to the TLA (SR) bill states that:

A company is eligible for a refundable tax offset (a seafarer tax offset) for salary, wages and allowances paid to Australian

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145 DIT, *Supplementary Submission 2.1*, pp. 8-9.

146 TLA (SR) bill, EM, p. 10.

147 ASA, *Submission 25*, p. 6.

148 TLA (SR) bill, EM, p. 10.

149 The Treasury, 'Tax Laws Amendment (Shipping Reform) Bill 2012: Summary of Consultation Process', April 2012, pp. [1] and [2], <<http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Tax-Incentives-for-the-Shipping-Industry>> viewed 1 May 2012.

resident seafarers who are employed to undertake overseas voyages on qualifying vessels, if the company employs the seafarer on such voyages for at least 91 days in the income year.<sup>150</sup>

- 2.131 One of the qualifying criteria for access to the seafarer tax offset relates to the classification of the work or services that an individual is employed to do on a voyage of a vessel. The proposed section 61-705 of the ITA Act 1997 – as inserted by Item 2 of Schedule 3 of the TLA (SR) bill – lists the qualifying work or services as that of ‘master, deck officer, integrated rating, steward or engineer’.<sup>151</sup> The Committee heard some concerns about how these categories might be interpreted, specifically in relation to engineers and integrated ratings.
- 2.132 The Australian Institute of Marine and Power Engineers (AIMPE) suggested that the term ‘engineer officer’ should be used instead of ‘engineer’ as that ‘is the correct term used in international conventions to which Australia is a signatory’.<sup>152</sup> The ASA observed that a ship’s cook ‘is not an integrated rating’ and is not included in the list of qualifying work or services. The ASA recommended that, ‘for the purposes of clarity and certainty’, cooks should be listed separately.<sup>153</sup> In its supplementary submission, DIT reiterated its position stating that it views the ‘integrated rating’ as being inclusive of ‘cooks’.<sup>154</sup>
- 2.133 In relation to other qualifying criteria required for access to the seafarer tax offset, the AIMPE suggested that it will not apply in respect to periods of employment during international ballast voyages, nor will it apply in respect to periods of paid leave accrued by seafarers during international voyages.<sup>155</sup> The NBCG asked whether international ballast voyages are included as ‘qualifying voyages’, and whether the refundable tax offset rate was to be varied.<sup>156</sup>
- 2.134 The DIT stated in its submission that:

Changes were made to the SRTI Bill between exposure and introduction to reflect industry concerns that the seafarer RTO needed to cover remuneration in respect of leave and ballast voyages, due to the nature of employment arrangements for

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150 TLA (SR) bill, EM, p. 10.

151 TLA (SR) bill, proposed section 61-705 as inserted by Item 2 of Schedule 3.

152 AIMPE, *Submission 26*, p. 4.

153 ASA, *Submission 25*, p. 7.

154 DIT, *Supplementary Submission 2.1*, p. [11].

155 AIMPE, *Submission 26*, p. 3.

156 NBCG, *Submission 10*, p. 6.

seafarers and the expectation that vessels conveying minerals to overseas destinations would very likely return empty. In addition, the rate of the RTO was increased from 27 per cent to 30 per cent of gross wages to better reflect the average salaries paid in the shipping industry. All bona fide seafarers who meet the 91 days or more on eligible voyages will be eligible for the RTO. This includes the ship's cook.<sup>157</sup>

## Royalty withholding tax exemption

2.135 The EM to the TLA (SR) bill states that:

Payments made for the lease of shipping vessels are exempt from royalty withholding tax. This exemption applies to payments made by Australian resident companies for the lease, on a bareboat basis, of qualifying vessels that are used commercially to ship cargo or passengers for consideration. This aims to reduce the costs for Australian shipping operators of securing vessels that may be crewed by Australian workers.<sup>158</sup>

2.136 The Treasury stated that stakeholders welcomed the royalty withholding tax exemption overall.<sup>159</sup> While receiving little comment, the Committee notes the positive observation of the ASA that the exemption would remove the current regulation barrier that exists for operating ships under bareboat charter, thereby enabling access to bareboat charters, and further enabling 'ships to be operated by Australian companies with a greater level of Australian content.'<sup>160</sup>

## Conclusion

2.137 The Committee believes that the stated aims of the bills are desirable and in the national interest.

2.138 In concluding its report, the Committee acknowledges the work of its predecessor in the 42nd Parliament, including recommendations

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157 DIT, *Submission 2*, pp. 24-25.

158 TLA (SR) bill, EM, p. 11.

159 The Treasury, 'Tax Laws Amendment (Shipping Reform) Bill 2012: Summary of Consultation Process', April 2012, p. [1], <<http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Tax-Incentives-for-the-Shipping-Industry>> viewed 1 May 2012.

160 ASA, *Submission 25*, p. 6.

developed to produce a more competitive and sustainable coastal shipping industry. The current inquiry has observed the means by which many of those recommendations have been incorporated through various consultative processes and are now embodied in the consequent proposed legislation. The Committee recognises that debate on maritime policy continues to be active and robust. Consultation conducted by government with industry stakeholders to date suggests that not all issues are agreed on; open and productive discussion will continue to assure that the best outcomes are achieved for Australian coastal shipping.

2.139 The Committee notes that several significant proposed changes to the legislative framework will be contained in regulations which have not yet been introduced. These changes include further requirements for applications for TLs, and requirements to access the ITE, involving management requirements and mandatory training requirements that are currently being finalised by the Maritime Workforce Development Forum.<sup>161</sup> While not making explicit recommendations, in continuing its contribution to the policy and legislative debate, the Committee has identified additional areas for possible regulatory reform:

- the creation of a list of circumstances in which GL holders cannot contest for certain voyages within a longer journey;
- requirements for a broadened register of GL holders to be publicly available, and for evidence to be provided that a TL applicant has checked the availability of GL vessels prior to making a TL application;
- requirements for commercial emergencies to be covered by ELs; and
- the need to utilise the experience of maritime education and training providers in the finalisation stages of the mandatory training requirement, or any review stages that may be scheduled in future.<sup>162</sup>

2.140 One of the stated policy aims of the shipping reform package is to increase the number of Australian flagged ships, that is, ships registered in either the General or International Registers. Based on evidence received in submissions, the Committee concludes that the legislative requirements to register vessels in the General Register and gaining a GL to engage in coastal trading are significantly more favourable than those for registering vessels in the International Register and gaining a TL to engage in coastal trading. In order to take advantage of these more favourable legislative arrangements, the number of vessels being registered in the General

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161 See Chapter 2, paragraphs 2.37, 2.108 and 2.112 for discussion of these issues.

162 See Chapter 2, paragraphs 2.56, 2.83, 2.87 and 2.114 for discussion of these issues.

Register, as compared to the International Register, may increase. The Committee acknowledges that further forecasting is problematic, and notes that DIT was not able to estimate the number of flagged ships that might enter into service due to the legislative changes.<sup>163</sup>

- 2.141 The Committee has endeavoured to report in a timely manner, and has sought the assistance of DIT in ensuring a transparent and thorough process in a limited timeframe. As noted earlier in the report, the Committee understands that its role in considering legislation is not to replicate an entire policy debate. The Committee anticipates that the active and robust discussion referred to above will continue as the legislative changes are implemented.

### **Recommendation 1**

**The Committee recommends that the House should consider and pass the bills.**

Mr Nick Champion MP  
Chair  
May 2012

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<sup>163</sup> DIT, *Supplementary Submission 2.1*, p. 3.

