



MINERALS COUNCIL OF AUSTRALIA

SUBMISSION TO SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT COMMITTEE INQUIRY INTO SHIPPING LEGISLATION AMENDMENT BILL 2015

21 AUGUST 2015

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EXECUTIVE SUMMARY

The Minerals Council of Australia (MCA) supports the regulatory reforms contained in the Shipping Legislation Amendment Bill 2015. The Australian minerals industry has a strong interest in a competitive and efficient coastal shipping trade. Bulk commodities such as iron ore, bauxite and alumina account for 70 per cent of Australia's coastal shipping trade.

The participation of foreign ships is a longstanding feature of Australia's coastal shipping trade and essential to the efficient and timely movement of freight. Australia has always had an undersupply of ships providing domestic services. From the commencement of the *Navigation Act 1912*, Australia relied upon British ships (and later other foreign vessels) to supplement its coastal shipping fleet.

The gradual liberalisation of Australia's coastal shipping trade was reversed by the *Coastal Trading (Revitalising Australian Shipping) Act 2012*. This Act made retrograde changes to competition rules, by introducing a new licensing system that gives Australian ships unrestricted access to coastal trade while imposing extensive and onerous conditions on foreign vessels. In addition, the Coastal Trading Act gives Australian ships the power to contest voyages proposed by foreign ships.

Restricting competition in Australia's coastal shipping industry has increased domestic transport and administration costs and made it more difficult to source coastal shipping services when they are needed. In particular:

- For some dry bulk commodity producers, the cost of shipping final product around Australia is now about the same as shipping from Asia to Australia
- For one company, tonnage rates on a key route have increased 63 per cent, from \$18.20 a tonne in 2011 to \$29.70 in 2012. This compares with \$17.50 a tonne being charged by international operators in 2012. This company's demurrage rates also rose from \$14,000 per day in 2011 to \$35,000 per day in 2012
- Another company saw freight changes increase by over \$3,000 a day up and down the east coast of Australia.

The deadweight loss of the existing regulatory regime to the national economy is expected to be between \$242 and \$466 million to 2025. The Productivity Commission has argued that Tasmania – an island state with smaller freight volumes and more marginal ports – is disproportionately harmed.

Further, there is no evidence that current settings are revitalising Australia's domestic maritime fleet. The fleet of major licensed Australian ships has been declining for decades, falling from 30 to 15 between 2006-07 and 2013-14. Since the Coastal Trading Act was introduced, the carrying capacity of the Australian coastal fleet has decreased by 63 per cent.

The Commonwealth Government sought comment on four options for reforming the regulation of coastal shipping. Consistent with the Productivity Commission, the Competition Policy Review Panel and the Commission of Audit, the MCA submitted that Option 2: 'Remove all regulation of access to Coastal Trading and enact legislation to deal with the effects of other Australian laws' was the one most likely to enhance business productivity and economic growth.

The Government's preference is for Option 4: replacing the current tiered licensing system with a single Coastal Trading Permit and requiring foreign ships operating predominantly in Australia to adhere to domestic workplace relations arrangements. This option is set forth in the Shipping Legislation Amendment Bill 2015, passed by the House of Representatives on 25 June 2015.

The regulatory impact statement published with the Bill confirms that Option 2 – opening the coast fully to international competition – would bestow the greatest net national gain. This option was estimated to result in a net benefit of \$786.2 million to the Australian economy (over 20 years from 1 July 2015) and an annual deregulatory saving to business of \$27.9 million. The Government's

preferred option is expected to deliver a net national benefit of \$667.4 million and an annual deregulatory saving of \$21.4 million.

Conversely, Option 1 – simply repealing the Coastal Trading Act – would effectively close the coast to international competition by subjecting all foreign vessels to the Customs Act and a range of other legislative requirements. Option 1 was estimated to impose a net national cost of \$2.5 billion and an annual regulatory cost to business of \$12.3 million. The direct cost to Australian business of applying domestic wages and conditions (under Part A of the Seafarers Award) to foreign crew on foreign ships engaged in coastal trading was estimated at \$14.9 million per year.

This cost-benefit analysis of alternative coastal shipping policies indicate the significant economic gains that flow to the Australia from facilitating greater competition in Australia's coastal trade, and the prohibitive costs that would ensue if additional restrictions were applied.

Some have claimed that the participation of foreign ships facilitates the exploitation of labour. Yet just as Australian crew on Australian ships operating abroad are subject to Australian workplace relations laws, so too have foreign crew operating on foreign ships in Australia traditionally been regulated by the workplace laws of their country of origin. The previous government overturned this established international maritime principle by amending the Fair Work Act and associated regulations. These amendments applied Part B of the Seafarers Award to foreign crew on foreign vessels conducting coastal trade in Australia. Part B Award rates are estimated to cost between \$2,980 and \$3,956 more per ship per day than those of the International Transport Federation Union's Collective Agreement.

Similarly, the Shipping Legislation Amendment Bill applies Part B Award conditions to foreign vessels that are primarily engaged in coastal trading, defined as more than 183 days of coastal trading within a 12-month permit period. But if foreign vessels operating in Australia are primarily engaged in international trading, then their crew are covered by the International Transport Federation Union's Collective Agreement. In many cases, foreign crew will be receiving higher international market rates.

It is also worth noting that the Shipping Legislation Amendment Bill:

- Makes no changes to the Fair Work Act
- Retains the large civil penalties under the Coastal Trading Act for undertaking coastal trading without a permit or for breaching the conditions of a permit
- Introduces an enforcement mechanism for seafarers to recover payments through the Federal Court or Federal Circuit Court
- Introduces a provision that the minister must not issue a coastal trading permit to a foreign vessel that has not correctly paid wages under a previous permit
- Requires that ships engaged in coastal shipping for more than 183 days employ a master or chief mate and a chief engineer or first engineer who is an Australian citizen or resident, or who holds an appropriate visa

Australia's coastal shipping fleet is relatively small, ageing, and expensive to run and maintain. What Australian industries require is greater access to foreign vessels, not fewer transport options.

The ultimate objective of coastal shipping reform should be to facilitate Australia's established comparative advantage in minerals and other commodities, by increasing the efficiency of the bulk transport industry. Retaining or increasing restrictions on the participation of foreign ships would entrench domestic shipping industry assistance at the expense of the wider Australian community.

Recommendations

- The Rural and Regional Affairs and Transport Committee should advise the Senate to pass the Shipping Legislation Amendment Bill without delay
- The committee should consider the net national benefits of maximising Australian industry's access to competitive freight services by abolishing cabotage licensing entirely.

1. AUSTRALIA'S COASTAL TRADE HAS ALWAYS NEEDED FOREIGN SHIPS

The participation of foreign ships is a longstanding feature of Australia's coastal shipping trade and essential to the efficient and timely movement of freight. Australia has always had an undersupply of ships providing domestic services. From the commencement of the *Navigation Act 1912* in 1913, British ships were relied upon to supplement Australia's coastal shipping fleet. In 1958, other foreign ships were permitted to participate in the Australian market if no British ships were available.¹

According to the regulatory impact statement on the Shipping Legislation Amendment Bill, further amendments to the Navigation Act over the next 60 years 'had the practical effect of progressively easing access to the coastal trades for foreign ships where supplementation of the Australian fleet was necessary'.²

The gradual liberalisation of Australia's coastal shipping trade was reversed by the *Coastal Trading (Revitalising Australian Shipping) Act 2012*. While Australian-flagged ships enjoy unrestricted access to coastal trade under a five-year general license, foreign-flagged vessels only have access to a 12-month temporary license or, in exceptional circumstances, a 30-day emergency license.³

The Coastal Trading Act has reduced access to foreign shipping at a time of global oversupply of shipping capacity. Conversely, the fleet of Australian ships suitable for domestic maritime transport has been declining for decades. The number of major Australian registered ships with coastal licenses has halved from 30 in 2006-07 to 15 in 2013-14. Since the Coastal Trading Act was introduced, the carrying capacity of the Australian coastal fleet has decreased by 63 per cent.⁴

In addition, Australia's coastal fleet is older and more costly to operate by international standards. The average age of a major Australian ship with a general license is 23 and none are aged less than 15 years – the upper age limit preferred by shippers. Older ships are slower, less efficient and reliable, and require larger crew contingents. They also attract higher insurance premiums.⁵

The higher operating cost of Australia's ageing fleet is contributing to its declining participation in international trade. The regulatory impact statement notes that: 'Domestic coastal trade suffers from either high freight charges or loss of business to the road and rail freight sectors.'⁶

Similarly, the Commission of Audit observed that: 'While the volume of domestic freight has been growing steadily over the past 40 years, coastal shipping has remained largely static.'⁷ The commission attributed the lack of growth in coastal shipping to both the predominance of bulk commodities in coastal trade and the adverse competitive and cost effects of cabotage licensing.

The Deputy Prime Minister points out that without reform, coastal shipping will continue to decline as a share of the national freight task, notwithstanding growing volumes:

Between 2000 and 2012, while the volume of freight across Australia actually grew by 57 per cent, shipping's share of the Australian freight task fell from about 27 per cent to just under 17 per cent. Between 2010 and 2030, Australia's overall freight task is expected to grow by 80 per cent, but coastal shipping is only forecast to increase by 15 per cent.⁸

The regulatory impact statement concludes that: 'the current situation is such that foreign participation in the Australian domestic maritime industry is essential for the foreseeable future.'⁹

¹ Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), p. 46.

² *ibid.*, p. 47.

³ *ibid.*, pp. 52, 90f. See also the Productivity Commission, [Final Report on Tasmanian Shipping and Freight](#), released on 24 June 2014, Canberra, p. 149.

⁴ Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), p. 51f.

⁵ *ibid.*, p. 50.

⁶ *ibid.*, p. 50.

⁷ Commission of Audit, [Towards Responsible Government, Phase 2 Report](#), March 2014, p. 27.

⁸ The Hon Warren Truss MP, Deputy Prime Minister and Minister for Infrastructure and Regional Development, [Second Reading Speech on the Shipping Legislation Amendment Bill 2015](#), Hansard 25 June 2015, p. 7576.

⁹ Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), p. 49.

2. RESTRICTING COMPETITION IN COASTAL TRADE RAISES COSTS

Bulk commodities such as iron ore, bauxite and alumina account for 70 per cent of Australia's coastal shipping trade.¹⁰ However, the Coastal Trading Act imposes unnecessary costs and uncertainty on the Australian minerals industry and other businesses that rely on coastal shipping.

The Coastal Trading Act replaced single and continuous voyage permits with a tiered licensing system that discriminates against foreign ships. Single and continuous voyage permits required applicants to specify voyage dates and tonnage amounts and were subject to a public interest criterion. In contrast, the Coastal Trading Act requires foreign vessels applying for temporary license to:

- Undertake a minimum of five voyages during the 12-month term of the license
- Detail, at the time of application, loading dates, cargo types and volumes, as well as ports of loading and unloading, for the 12-month period ahead.

The Department of Infrastructure and Regional Development provides information about temporary license applications to general license holders, so they can nominate their availability to conduct any of the notified voyages. In the event that a general license holder is available, the shipper is obliged to negotiate with that licence holder. This negotiation may be arbitrated by the department, but ultimately the minister (or his or her delegate) decides whether to grant or reject the temporary license application.¹¹

Box 1: How the Coastal Trading Act imposes costs and uncertainty

The regulatory impact statement on the Shipping Legislation Amendment Bill affirms that: 'Few applications are contested but this process reduces productivity and increases uncertainty'.¹² One MCA member company reported that its very first temporary license application was contested and that it spent hundreds of thousands of dollars arguing its case through lengthy court processes. The company was ultimately unsuccessful because the Full Federal Court ruled that it is procedurally incorrect for the Department of Infrastructure and Regional Development to take commercial matters (such as freight rates) into account when granting a temporary license.

Another problem is the absence of cost-effective relief when operations are disrupted through no fault of the shipper. An MCA member company had a ship due under a temporary license with a fixed five-day loading date window. On approach to Australia, the ship encountered bad weather and other problems that delayed its arrival until the last day of the loading window. However, an emergency license could not be sought as the situation did not qualify as an emergency as identified in the regulations. At the same time, applying for a variation to the company's temporary license would have exposed the voyage to contestation from a general license holder. Had the ship arrived outside of the five-day window and before the process of contestation was completed, the company would have been left with an unlicensed ship that it would be obliged to employ at the load port.

Information supplied to the MCA by member companies confirms that the Coastal Trading Act has increased domestic transport and administration costs and made it more difficult to source coastal shipping services when they are needed. For example:

- The cost of shipping final product around Australia is now about the same as shipping from Asia to Australia for some dry bulk commodity producers. This has led to a situation where, for example, manganese ore is reportedly now being imported into Australia instead of being shipped from the Northern Territory to interstate ports.

¹⁰ Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), p. 48.

¹¹ *ibid.*, pp. 52f, 90f.

¹² *ibid.*, p. 91.

- Tonnage rates on a key route increased by 63 per cent between 2011 and 2012 (from \$18.20 per tonne to \$29.70 per tonne), whereas international operators were charging \$17.50 per tonne in 2012. The same company has reported that demurrage rates rose from \$14,000 per day in 2011 to \$35,000 per day in 2012.
- Freight charges in select cases have increased by more than \$3,000 per day up and down the east coast of Australia.

Companies stress that the requirements of the Coastal Trading Act are particularly onerous given the minerals industry's unpredictable commercial environment. Running a dynamic schedule for bulk commodities like bauxite and alumina requires full flexibility for cancellations and additions. It is extremely difficult – and unreasonable – for a bulk shipper to provide accurate information about planned voyages a year in advance.

The regulatory impact statement on the Shipping Legislation Amendment Bill highlights the inflexibility of the current regime for bulk shippers:

While the existing framework has supported the transition of the Australian industry to more specialised niche market services, it has not provided adequate flexibility to the users of shipping services wishing to access cheap, reliable and globally competitive services utilising otherwise unoccupied foreign tonnage already on the coast ...

[A]ccess to more efficient and cost effective transport services will enhance the viability of transport reliant industry sectors and will increase choice for transport service consumers.

Without remedial attention, these shortcomings will continue to entrench the existing issues in the coastal shipping industry.¹³

The Productivity Commission reached the same conclusion in its 2014 inquiry into Tasmanian shipping and freight:

The existing regulatory framework clearly affects Australian coastal shipping more broadly. The cumulative effect of the 2009 and 2012 changes has been a reduced interest from international vessels engaging in the Australian coastal trade and, consequently, reduced shipping options for users of domestic and international shipping services. They also increase the costs of providing domestic coastal services, to which Tasmania remains especially exposed.¹⁴

¹³ Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), p. 53.

¹⁴ Productivity Commission, [Final Report on Tasmanian Shipping and Freight](#), released on 24 June 2014, Canberra, p. 8.

3. LIBERALISING COASTAL TRADE BOOSTS NATIONAL INCOME

A period of wide-ranging microeconomic reform beginning in the 1980s delivered significant improvements in Australia's policy and regulatory environment. Successive waves of financial, tariff, labour market and product market reform increased competitive pressures in the economy and provided firms with greater flexibility to respond to market incentives.

Improved cost competitiveness, productivity and flexibility are essential if Australia is to secure future gains from mineral resource development. Australia's minerals industry has entered a more demanding phase in recent years, marked by lower commodity prices, high operating and capital costs, new competitive rivals and persistent policy uncertainty. Without renewed commitment to regulatory reform, future gains from increased investment, exports, jobs and tax revenues are at risk.

In contrast, the Coastal Trading Act explicitly privileges one industry at the expense of all others, particularly suppliers of bulk commodities.¹⁵ The Act is supposed to provide a regulatory framework that, in addition to supporting the Australian shipping industry, 'enhances the efficiency and reliability of Australian shipping', 'promotes competition in coastal trading' and 'ensures efficient movement of passengers and cargo between Australian ports'.¹⁶ Yet in reality, the Act has introduced inefficiencies into coastal shipping that impose net costs on the broader Australian community.

The Productivity Commission has maintained that the Coastal Trading Act is not delivering a net economic benefit to Australia:

The then Australian Department of Infrastructure and Transport has previously estimated that the changes associated with the Coastal Trading Act could cost the Australian economy as much as \$202 million in net present value terms over 20 years ...

In addition, the Regulatory Impact Statement (RIS) that found a net benefit to Australia from the 2012 changes (and so informed the parliamentary consideration and decision to introduce them) appears flawed. That RIS assumed substantial benefits would flow from a productivity compact with the maritime unions and would be sufficient to offset costs otherwise associated with the licensing and taxation reforms. These assumed benefits included a reduction in crewing numbers, fewer days per year in dry dock due to maintenance work being undertaken by riding gangs and lower accommodation standards on new ships ...

The compact does not provide for any definitive productivity improvements rather it provides a process to consider and negotiate potential improvements ... Further, the compact has yet to deliver on its RIS assumed benefits.¹⁷

The Productivity Commission argued that Tasmania is disproportionately harmed:

As an island state, Tasmania is particularly vulnerable to regulatory changes that increase the cost of engaging in coastal trade ... [Imposing additional costs on international lines] is particularly pertinent for Tasmania, where freight volumes are smaller and the viability of port calls by international lines is more likely to be marginal. In fact, evidence suggests there has been a reduction in the number of foreign-flagged dry and liquid bulk vessels calling at Tasmania. The number of voyages fell from a total 239 voyages conducted under single (and urgent single) and continuing voyage permits in 2011-12 to around 198 voyages conducted in 2012-13.¹⁸

The Productivity Commission recommended that the government expedite its review of coastal shipping 'with the objective of increasing the competitiveness of Australia's coastal shipping'. This review 'should recommend the removal of any anticompetitive provisions from relevant legislation, unless a clear case publicly demonstrates that there is a net benefit to the community as a whole'.¹⁹

¹⁵ Chris Berg and Aaron Lane, [Coastal Shipping Reform: Industry Saviour or Regulatory Nightmare?](#) Institute of Public Affairs, December 2013, p. 27.

¹⁶ Commonwealth of Australia, [Coastal Trading \(Revitalising Australian Shipping\) Act 2012](#), Section 3.

¹⁷ Productivity Commission, [Final Report on Tasmanian Shipping and Freight](#), released on 24 June 2014, Canberra, p. 152f.

¹⁸ *ibid.*, p. 149ff.

¹⁹ *ibid.*, p. 8.

The Competition Policy Review Panel also reasoned that cabotage licensing is justified only if it can be shown that the costs of restricting competition are more than offset by benefits to the nation:

The Panel considers that reform of coastal shipping and aviation cabotage regulation should be a priority. Consistent with the approach the Panel recommends for other regulatory reviews, the Panel considers that restrictions on cabotage for shipping and aviation should be removed, unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs and the objectives of the policy can only be achieved by restricting competition.²⁰

The Commission of Audit judged cabotage licensing to be 'effectively industry assistance' and advised that: 'To ensure a more efficient coastal shipping industry, the Commission recommends cabotage be abolished.'²¹

There is no credible economic analysis to suggest that restricting access to foreign ships is good policy. As noted above, the positive assessment of the regulatory impact statement on the Coastal Trading Act assumed substantial productivity gains that appeared 'unrealistic' to the Productivity Commission.²² Subsequent cost-benefit analyses (conducted for both industry and government) have shown that shielding the domestic shipping industry from competition imposes significant net national costs.

When, in early 2012, the previous government made its coastal shipping policy announcement and released the associated regulatory impact statement, an alliance of shipping users commissioned Deloitte Access Economics (DAE) to model the economic impacts of the proposed changes. DAE concluded that the changes would see freight prices rise by 16 per cent and, in net present value terms, the aggregate impact on gross domestic product over the period to 2025 could be a reduction of between \$242 million and \$466 million. In the short term, the associated loss of employment would be 570 full time equivalent employees (although some of these workers would be redeployed over the longer term).²³

The regulatory impact statement on the Shipping Legislation Amendment Bill cites the DAE modelling in its assessment of the Coastal Trading Act:

The current regulatory and policy settings for coastal shipping are expected to cost between \$242 and \$466 million to 2025 and, to date, has had little appreciable effect upon the Australian shipping industry. Consequently, maintenance of the current settings is not recommended. These settings will likely continue to have a negative effect on growth in the broader Australian economy due to the existing restrictions on access to timely, flexible and cost effective shipping services.²⁴

The Commonwealth Government sought comment on four options for reforming the regulation of coastal shipping. Consistent with the Productivity Commission and the Commission of Audit, the MCA submitted that Option 2: 'Remove all regulation of access to Coastal Trading and enact legislation to deal with the effects of other Australian laws' was the one most likely to enhance business productivity and economic growth.

The Government's preference is for Option 4: replacing the current tiered licensing system with a single Coastal Trading Permit and requiring foreign ships operating predominantly in Australia to adhere to domestic workplace relations arrangements. This option is set forth in the Shipping Legislation Amendment Bill 2015, passed by the House of Representatives on 25 June 2015.

The regulatory impact statement published with the Bill confirms that Option 2 – opening the coast fully to international competition – would bestow the greatest net national gain (Table 1). This option was estimated to result in a net benefit of \$786.2 million to the Australian economy (over 20 years from 1 July 2015) and an annual deregulatory saving to business of \$27.9 million. The Government's

²⁰ Competition Policy Review Panel, [Final Report](#), 31 March 2015, p. 210.

²¹ Commission of Audit, [Towards Responsible Government, Phase 2 Report](#), March 2014, p. 29.

²² Productivity Commission, [Final Report on Tasmanian Shipping and Freight](#), released on 24 June 2014, Canberra, p. 8.

²³ Deloitte Access Economics, [Economic Impacts of the proposed shipping reform package](#), February 2012.

²⁴ Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), p. 52.

preferred option is expected to deliver a net national benefit of \$667.4 million and an annual deregulatory saving of \$21.4 million.

Table 1: National and deregulatory benefits of alternative coastal shipping policies (\$millions)²⁵

Coastal shipping policy option	Net national benefit to 2035	Annual deregulatory saving to business
1. Close the coast to international competition by treating all foreign vessels as imported	-\$2,500	-\$12.3
2. Open the coast fully to international competition by abolishing cabotage licensing	+\$786.2	+\$27.9
3. Amend the Coastal Trading Act by removing major burdens and costs to industry	+\$705.3	+\$26.6
4. Introduce a new single permit allowing unrestricted coastal trading, with provisions to preserve Australian skills (option preferred by government)	+\$667.4	+\$21.4

Source: Regulatory impact statement published with the Shipping Legislation Amendment Bill 2015

Conversely, Option 1 – simply repealing the Coastal Trading Act – would effectively close the coast to international competition by subjecting all foreign vessels to the Customs Act and a range of other legislative requirements. Option 1 was estimated to impose a net national cost of \$2.5 billion and an annual regulatory cost to business of \$12.3 million. The direct cost to Australian business of applying domestic wages and conditions (under Part A of the Seafarers Award) to foreign crew on foreign ships engaged in coastal trading was estimated at \$14.9 million per year.²⁶

This cost-benefit analysis of alternative coastal shipping policies indicate the significant economic gains that flow to Australia from foreign participation in coastal shipping, and the prohibitive costs that would ensue if additional restrictions were applied.

It is sometimes claimed that protection of the Australian shipping industry is necessary to preserve essential maritime skills. While it is vital to develop and maintain skilled maritime roles in Australia (including ship officers, vessel operators, engineers, port pilots and surveyors), this outcome should be pursued by leveraging investment in higher education and training in scientific and technical disciplines, supplemented when necessary by targeted skilled migration. A skilled domestic maritime workforce will not be sustained by making it significantly more costly and less flexible than those of other countries, or by making coastal shipping less competitive with other modes of transport.

Other objections to the abolition of cabotage licensing (such as protecting Australia's access to its offshore resources, maintaining defence capabilities and increasing the number of Australian-flagged ships) are also red herrings. The ultimate objective of coastal shipping reform should be to facilitate Australia's established comparative advantage in minerals and other commodities, by increasing the efficiency of the bulk transport industry.²⁷

²⁵ Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), pp. 58-76.

²⁶ *ibid.*, p. 67.

²⁷ See Chris Berg and Aaron Lane, [Coastal Shipping Reform: Industry Saviour or Regulatory Nightmare?](#), Institute of Public Affairs, December 2013, p. 31f.

4. FOREIGN SHIPS ENGAGING IN COASTAL TRADE MUST ADHERE TO AUSTRALIAN WORKPLACE LAWS

Some have claimed that the participation of foreign ships in Australia's coastal trade facilitates the exploitation of labour. Yet just as Australian crew on Australian ships operating abroad are subject to Australian workplace relations laws, so too have foreign crew operating on foreign ships in Australia traditionally been regulated by the workplace laws of their country of origin. The previous government overturned this established international maritime principle by amending the Fair Work Act and associated regulations. These amendments applied Part B of the Seafarers Award to foreign crew on foreign vessels conducting coastal trade in Australia. Part B Award rates are estimated to cost between \$2,980 and \$3,956 more per ship per day than those of the International Transport Federation Union's Collective Agreement.²⁸

Similarly, the Shipping Legislation Amendment Bill applies Part B Award conditions to foreign vessels that are primarily engaged in coastal trading, defined as more than 183 days of coastal trading within a 12-month permit period. But if foreign vessels operating in Australia are primarily engaged in international trading then their crew are covered by the International Transport Federation Union Collective Agreement.²⁹ In many cases, foreign crew will be receiving higher international market rates.³⁰

It is also worth noting that the Shipping Legislation Amendment Bill:

- Makes no changes to the Fair Work Act
- Retains the large civil penalties under the Coastal Trading Act for undertaking coastal trading without a permit or for breaching the conditions of a permit
- Introduces an enforcement mechanism for seafarers to recover payments through the Federal Court or Federal Circuit Court
- Introduces a provision that the minister must not issue a coastal trading permit to a foreign vessel that has not correctly paid wages under a previous permit
- Requires that ships engaged in coastal shipping for more than 183 days employ a master or chief mate and a chief engineer or first engineer who is an Australian citizen or resident or who holds an appropriate visa.³¹

²⁸ See Chris Berg and Aaron Lane, [Coastal Shipping Reform: Industry Saviour or Regulatory Nightmare?](#), Institute of Public Affairs, December 2013, p. 12 and Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), pp. 50 and 52.

²⁹ The Hon Warren Truss MP, Deputy Prime Minister and Minister for Infrastructure and Regional Development, [Second Reading Speech on the Shipping Legislation Amendment Bill 2015](#), Hansard 25 June 2015, p. 7579.

³⁰ Deloitte Access Economics, [Economic Impacts of the proposed shipping reform package](#), February 2012, p. 7.

³¹ Commonwealth of Australia, [Explanatory Memorandum to the Shipping Legislation Amendment Bill](#), pp. 2-6, 17, 28.