



SUBMISSION

TO THE HOUSE OF REPRESENTATIVES STANDING
COMMITTEE ON INFRASTRUCTURE AND COMMUNICATIONS
INQUIRY INTO THE SHIPPING REFORM BILLS

APRIL 2012

RECOMMENDATIONS

1. The object clause (clause 3) of the Coastal Trading (Revitalising Australian Shipping) Bill 2012 should be amended so that it reads:
 - (1) The object of this Act is to provide a regulatory framework for coastal trading in Australia that:
 - (a) promotes a viable shipping industry that contributes to the broader Australian economy; and
 - (b) facilitates the long term growth of the Australian shipping industry; and transport system; and
 - (c) enhances the efficiency and reliability of Australian shipping as part of the national transport system; and
 - (d) maximises the use of vessels registered in the Australian General Shipping Register and the Australian International Shipping Register in coastal trading;whilst ensuring:
 - (e) **the economically efficient movement of freight; and**
 - (f) **the continued viability of the industry despatching the freight.**
2. The requirement that a temporary licence (which permits engagement in the coastal trade for over a limited time and for a limited number of voyages) must be for a minimum of five voyages should be removed.
3. The Government should be asked for an estimate of the number of additional Australian flagged vessels that will enter service as a result of the shipping reform package.

Background on the Australian Logistics Council

The Australian Logistics Council is the peak national body representing the major and national companies participating in the Australian freight transport and logistics supply chain.

Vision

To be the lead advocacy organisation to all levels of Government and industry on freight transport and logistics supply chain regulation and infrastructure issues.

Mission

To influence national transport and infrastructure regulation and policy to ensure Australia has safe, secure, reliable, sustainable and internationally competitive supply chains.

2011 – 2013 Strategic Intent

To establish the Australian Logistics Council as the 'go to' organisation representing the major and national companies participating in the Australian freight transport and logistics supply chain.

Objectives:

1. Be the nationally recognised voice of Australia's freight transport and logistics supply chain.
2. Be the leading advocate of appropriate national regulation and infrastructure to ensure Australia enjoys the full benefits of freight transport and logistics policy development and reform.
3. Promote and encourage greater recognition by Government and the community of the importance of the freight transport and logistics industry's contribution to Australia's economy.

ALC Members are major and national companies participating in the Australian freight transport and logistics supply chain. ALC also has a number of Associate Members, which include associations, organisations, government agencies and companies participating in the Australian freight transport and logistics supply chain.

Australia's freight task is estimated to triple by 2050 – from 503 billion tonne kilometres to 1,540 billion tonne kilometres, with local demand for total freight movements increasing by as much as 60% by 2020.

The Transport and Logistics Industry is a critical part of the Australian economy, generating 14.5% of Australia's GDP and providing more than 1 million jobs across 165,000 companies. ALC estimates that every 1% increase in efficiency will save Australia around \$1.5 billion a year.

Introduction

The Australian Logistics Council (**ALC**) welcomes the opportunity to comment on the shipping reform package introduced into the House of Representatives.

On 9 September 2011, the Government announced its shipping policy reform agenda *Stronger Shipping for a Stronger Economy*.

Broadly, the policy constitutes:

- tighter cabotage rules;
- the establishment of an Australian International Shipping Register, which includes:
 - access to the tax exemption and other tax incentives;
 - mixed crewing arrangements enabling employment of foreign seafarers at internationally competitive rates and conditions, consistent with the Maritime Labour Convention and other international labour treaties;
 - requirement for a minimum of two Australian seafarers, preferably in the positions of Master and Chief Engineer;
 - workers' compensation arrangements consistent with Maritime Labour Convention requirements ;
 - application of the same maritime safety, environmental and occupational health and safety standards as apply to primary Australian register vessels; and
- tax changes including:
 - zero corporate income tax on shipping income (currently an undefined term) for Australian ship operators. This replaces an earlier proposal of a 'tonnage tax' on shipping and provides Australia with a tax regime similar to places such as the UK and Singapore, although to access it the operator must "lock-in" to a 10 year commitment to owning Australian registered ships and meeting Australian maritime safety conditions and satisfy minimum training requirements;
 - a tax scheme combining a reduction in the depreciation period from 20 to 10 years, a balancing charge deferral, and relaxed capital gains tax (CGT) provisions if CGT applies, commonly called roll-over relief; and
 - exemption from Royalty Withholding Tax liability for foreign owners of vessels where the vessel is leased under a bareboat charter to an Australian company;

According to government figures, around 25 per cent of the domestic freight task (on a per kilometre basis) is carried by ships.¹

Moreover, it is recognised within the freight sector that modal choice depends on a number of factors including price, timeliness and reliability, availability (frequency) and flexibility of service, suitability of mode for product and pick-up and delivery times falling within preferred windows of time for transport customers.²

That is why ALC has long advocated the position that the effect of regulation should not distort the mode by which consumers dispatch freight.

ALC has consistently participated in the debate on coastal shipping reform. The general ALC position is contained in its February 2011 submission *Response to the Reforming Australia's Shipping Discussion Paper*³.

ALC believes that some elements of the proposed package are worthy of support.

However, taken as a whole:

- ☐ the funding envelope available to fund the tax incentives contained in the package may not be enough to encourage the hoped for expansion of the Australian flagged commercial shipping fleet; and
- ☐ the move away from the way in which the current single voyage permit (**SVP**) system is administered may make the use of commercial shipping a less attractive option for shippers, leading to greater costs and competition for space on land based transport as well as increased congestion around cities and higher carbon emissions.

On that basis, ALC makes the following comments on the legislative package:

Coastal Trading (Revitalising Australian Shipping) Bill 2012 (the Coastal Trading Bill)

ALC wishes to make two specific comments on this Bill.

Addition to the objects of the Bill

Page vii of the regulation impact statement (**RIS**) prepared for the Bill says:

The Government has a clear intention to use the temporary licence system to encourage replacement of foreign ships with Australian ships so some substitution can be expected

whilst page viii says (in part):

¹ *Stronger Shipping for a Stronger Economy*
http://www.infrastructure.gov.au/maritime/shipping_reform/files/Stronger_Shipping_for_a_Stronger_Economy.doc accessed 6 April 2012

² Meryck and Associates (2007): *International and Domestic Shipping and Ports Study*

³ The original discussion paper released by the Government raising possible reforms to coastal shipping

This regulatory impact statement relies on the material and views provided by stakeholders through all of those processes. The key themes to emerge from consultation could be summarised as follows.

- There is broad support for the intent of the reforms to stimulate the Australian shipping industry and build a strong Australian maritime base into the future;
- Shippers support an effective, efficient and internationally competitive domestic shipping industry, but are concerned that Government intervention could increase freight rates and make some currently marginal trades uneconomic;
- More specifically shippers fear that restricting the use of Continuing Voyage Permits and Single Voyage Permits could lead to different modal choices (from maritime to land-based transport) or in particular cases, to the relocation of production offshore depending on the increase in transport costs;

The RIS is notable for the fact that, whilst spending some time in quantifying the advantages shipowners receive from the proposed tax benefits, no attempt is made to quantify the additional costs shippers face.

The most direct observation was made in paragraph 156 of the RIS, which says:

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

Logistics operators have benefitted from the practice that has grown up under the SVP system of permitting 'triangular voyages' –where an overseas vessel offloading overseas cargo at a domestic port, running a single voyage on the coastal trade and then returning with a full load to another offshore destination.

This freight carrying capacity has led, amongst other things, to keeping a downward pressure on prices, particularly with regards to the carriage of freight between the eastern seaboard and Fremantle.

ALC also notes the addition of a fourth object to the legislation between the publication of the exposure draft of the Bill and the legislation as introduced into Parliament.

Subclause 3(1) now reads:

- (1) The object of this Act is to provide a regulatory framework for coastal trading in Australia that:
 - (a) promotes a viable shipping industry that contributes to the broader Australian economy; and
 - (b) facilitates the long term growth of the Australian shipping industry; and transport system; and
 - (c) enhances the efficiency and reliability of Australian shipping as part of the national transport system; and

- (d) **maximises the use of vessels registered in the Australian General Shipping Register and the Australian International Shipping Register in coastal trading.**

whilst clause 34 was amended at the same time so the Minister may have regard to the object of the legislation when considering whether to grant a temporary licence.⁴

Finally, clause 63 permits the Minister to issue a 'show cause' notice (which can lead to a temporary licence being cancelled) where the Minister thinks a temporary licence is 'being used in a way that circumvents the purpose of the general licence provisions or the object of the Act'.⁵

Efficiency is served if shippers have the maximum capacity to use the most efficient method of shipping cargo from port to port without, for instance, a somewhat arbitrary splitting of shipments that may be enforced because of a particular interpretation the proposed legislation.⁶

As important a policy goal as maintaining an Australian coastal fleet is, the efficient movement of cargo should also be a key national goal.

Moreover, legislation regulating a particular mode of transport should not operate in a way that could distort the choice of how freight is to be moved.

ALC therefore believes the objects clause of the Coastal Shipping Bill should read:

- (1) The object of this Act is to provide a regulatory framework for coastal trading in Australia that:
 - (a) promotes a viable shipping industry that contributes to the broader Australian economy; and
 - (b) facilitates the long term growth of the Australian shipping industry; and transport system; and
 - (c) enhances the efficiency and reliability of Australian shipping as part of the national transport system; and
 - (d) maximises the use of vessels registered in the Australian General Shipping Register and the Australian International Shipping Register in coastal trading;whilst ensuring:
 - (e) **the economically efficient movement of freight; and**
 - (f) **the continued viability of the industry despatching the freight.**

⁴ Through the addition of paragraph 34(2)(f) of the Coastal Shipping Bill

⁵ As pages 34 and 35 of the explanatory memorandum for the Coastal Shipping Bill explains: 'The purpose of the general licence provisions is to ensure that an Australian vessel operating under a general licence is given the opportunity to maximise its trade.'

⁶ See for instance the various capacity for general licensees to nominate what cargo they can carry, and when, discussed on pages 25 and 26 of the explanatory memorandum for the Coastal Trading (Revitalising Australian Shipping) Bill.

Threshold for eligibility to apply for a temporary licence

As page 23 of the explanatory memorandum for the Coastal Trading Bill says:

The Bill provides that a temporary licence covers a period of 12 months. However, only those voyages where the required information is known (including expected loading dates, loading and discharge ports and cargo type and volumes) would be authorised. An application for a temporary licence is subject to a minimum of five voyages. One exposure draft of the Bill released for public consultation proposed that the minimum number of voyages be set at ten voyages. There was broad consensus from industry that many operators could not provide sufficient detail for ten voyages and that five voyages was more practical.

The Bill provides that a general licence holder can nominate to carry passengers or cargo as stated in the temporary licence application (or a variation) and the minimum number of voyages underpins this process.

Clause 34 of the Coastal Shipping Bill provides that when deciding whether to grant a temporary licence, the Minister may take into account:

- (a) whether the applicant has previously held, or applied for, a temporary licence;
- (b) whether the applicant has previously held a licence that was cancelled;
- (c) whether the applicant has been issued with an infringement notice under this Act;
- (d) any written comments received by the Minister in relation to the application;
- (e) any report given to the Department by the applicant under section 62;
- (f) the object of this Act;
- (g) any other matters the Minister thinks relevant.

Given the matters the Minister may have regard to when making the licensing decision, there is no logical reason why a shipper cannot apply for a temporary licence if 'a' voyage is anticipated over the relevant 12 month period should the commercial need emerge.

In the absence of an explanation why the arbitrary figure of five voyages was picked, ALC would recommend the five voyage threshold to eligibility to apply for a temporary licence be removed from the legislation.

Shipping Reform (Tax Incentives) Bill 2012

Taxation Laws Amendment (Shipping Reform) Bill 2012

ALC generally supports the observations made by Moore Stephens, Accountants and Advisors, in its 5 March 2012 submission in response to the exposure draft legislation and explanatory material in relation to the tax incentive for the shipping industry released by the Government on 20 February 2012.

That submission reflects comments made by ALC, including:

- ☐ The shipping Reform (Tax Incentives) Bill 2012 provides that a company that holds a 'shipping exempt income certificate' deriving income from 'shipping activities' will

be exempt from tax on that income. However, no franking credit will arise to the franking account of a company holding a certificate and only deriving exempt shipping income. That means that the distribution of profits (arising out of exempt shipping income) to resident shareholders will appear to be subject to taxation at the taxpayers marginal rates and distributions to foreign resident shareholders subject to dividend withholding tax. This outcome could mean that the incentive package in the Bill may be insufficient to attract foreign investors to place money into Australian flagged shipping assets;

- ☐ The Bill also provides a refundable tax offset of 27% of the gross payment amount (salary, wages, commissions, bonuses or allowances excluding living away from home allowances and expense payment fringe benefits) paid to seafarers to a company participating in this legislative scheme employing a seafarer for at least 91 days in an income year on international voyages. However, to encourage an increase in the number of seafarers employed, the definition of 'gross payment amount' should be expanded to include the total remuneration package and other employer costs); and
- ☐ The definition of voyage should be extended to include ballast voyages, that are sometimes necessary (for example, a tanker undertaking a voyage to carry crude oil from Australia to a foreign port but does not carry any cargo on the return trip to Australia) to allow a vessel to return empty.

Conclusion

One of the features of the Gillard Government has been the continued implementation of 'seamless economy' reforms designed to enhance the productivity of the Australian economy.

However, the logistics sector has faced industry specific reregulation through the introduction of the Coastal Shipping Bill and the recent Road Safety Remuneration Bill.

Moreover, as discussed in the ALC submission on the Road Safety Remuneration Bill made to this committee, the sector faces compounding, and in some cases, conflicting, regulatory burdens as the sector has to deal with not only industry specific regulation such as the:

- ☐ Road Safety Remuneration Bill;
- ☐ Coastal Shipping Bill;
- ☐ Heavy Vehicle National Law (to be introduced this year); and
- ☐ Rail Safety National Law (to be introduced this year)

but also laws of general application such as:

- ☐ workplace health and safety (or OHS) legislation; and
- ☐ the Fair Work Act.

The interaction of this regulation will undoubtedly impact on the logistics industry. It would be appropriate for a Productivity Commission review of the interaction of these pieces of legislation during the second half of 2014.

However, in the interim, ALC notes that the burdens involved in the changes contained in the Coastal Shipping Bill will only yield a net public benefit if and only if the tax incentives contained in the shipping reform package will lead to an increase in the number of Australian flagged vessels available to undertake the freight task.

An estimate of the number of ships entering service is not made in the RIS. ALC trusts that such an estimate will be provided during the Committee's inquiry.

Otherwise, ALC asks the Committee to support the proposed amendments to the Coastal Trading Bill.

Australian Logistics Council

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ASSOCIATE MEMBERS



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