

Chapter 2

Overview of the bills and the proposed licensing regime

2.1 The Stronger Shipping for a Stronger Economy package of legislation is comprised of the following five bills:

- Coastal Trading (Revitalising Australian Shipping) Bill 2012;
- Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012;
- Shipping Registration Amendment (Australian International Shipping Register) Bill 2012;
- Shipping Reform (Tax Incentives) Bill 2012; and
- Tax Laws Amendment (Shipping Reform) Bill 2012.

2.2 There are four key elements to the reform package: tax reform, an Australian international shipping register, a new licensing regime and workforce development.¹

2.3 The Object of the Coastal Trading (Revitalising Australian Shipping) Bill 2012 is set out in subclause 3(1) and states:

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
- (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 in coastal trading.

2.4 A brief overview of each bill is provided below. The Department of Infrastructure and Transport highlighted to the committee the interlocking nature of the bills. Although each bill 'may work independently, in terms of the intent of the reform they work as a package':

...the government's decision to provide taxation incentives for the industry has been underpinned by reforms to the licensing arrangements as well and, with the establishment of the Australian International Shipping Register, they have been designed in response to concerns from industry thinking

1 The Hon. Anthony Albanese, MP, Minister for Infrastructure and Transport, 'Stronger Shipping for a Stronger Australia', AS26/2011 Speech to the Maritime Industry, Sydney, 9 September 2011.

about a range of measures to provide a more robust and strong platform for investment for Australian shipping.²

Coastal Trading (Revitalising Australian Shipping) Bill 2012

2.5 The Coastal Trading (Revitalising Australian Shipping) Bill 2012 provides for a regulatory framework for vessels to access coastal trading in Australia. It replaces the regulatory arrangements currently set out in Part VI of the *Navigation Act 1912*.³ The bill clarifies that a vessel cannot engage in coastal trading without the appropriate licence issued under the provisions of the bill. The bill proposes to:

- establish three types of licences to authorise vessels to carry passengers or cargo between Australian ports:
 - general licences (a period of no more than 5 years unrestricted carriage);
 - temporary licences (limited to 12 months restricted carriage); and
 - emergency licences (restricted carriage);
- establish processes and decision making criteria for the conditions, and the application and cancellation of licences, sets out Ministerial exemptions from the Act and conditions for the enforcement of the Act; and
- strengthen the review process by providing for review of decisions by the Administrative Appeals Tribunal (AAT) and the delegation of powers to the Minister and Secretary.⁴

2.6 The restrictions placed on Temporary Licences (TLs) are discussed further below. In addition, a general licence holder has the ability to nominate for the trade on any TL application. This replicates the current regulatory environment:

The proposed legislation mirrors the current practice under Part VI of the Navigation Act 1912, which provides operators of foreign registered vessels the ability to apply for a permit to carry Australian domestic cargo and passengers on the basis that there is no licensed vessel available, adequate and that it is in the public interest.⁵

2 Ms Karen Gosling, Executive Director, Surface Transport Policy, Department of Infrastructure and Transport, *Committee Hansard*, 15 May 2012, p. 1.

3 Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012 repeals Part VI of the Navigation Act. See Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, p. 4.

4 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp 4, 19, 22.

5 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp 6–7.

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

2.7 The Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012 provides for transitional arrangements for the provisions in the Coastal Trading (Revitalising Australian Shipping) Bill (including a transitional general licence). It also makes consequential amendments to the following Commonwealth laws:

- *Navigation Act 1912*;
- *Australian Maritime Safety Authority Act 1990*;
- *Occupational Health and Safety (Maritime Industry) Act 1993*; and
- *Seafarers Rehabilitation and Compensation Act 1992*.⁶

Shipping Registration Amendment (Australian International Shipping Register) Bill 2012

2.8 The Shipping Registration Amendment (Australian International Shipping Register) Bill 2012 proposes to establish a new Australian International Shipping Register. It details the register's operation, administration and seafarer employment conditions. The object of the Australian international register is to:

- facilitate Australian participation in international trade;
- provide an internationally competitive register to facilitate the long term growth of the Australian shipping industry; and
- promote the enhancement and viability of the Australian maritime skills base and the Australian shipping industry.⁷

2.9 An Australian international register is intended to provide an alternative for domestic ship operators to registering under open registers (which allow ships from other countries to register, not just those of the home nation).⁸ An Australian international register will allow vessels to use crews of different nationalities and still maintain a link with the national flag. The EM explains that this link will ensure that the regulators of the 'flag state' continue to monitor and enforce compliance with

6 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012, pp 4–8.

7 Explanatory Memorandum, Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, p. 9.

8 'Open registers are often called "Flags of Convenience" and currently 53% of the world fleet is registered in open registers. The decision to register one's vessel in an open register is often based on commercial benefit as some open registers offer "cheap registration fees, low or no taxes and freedom to employ cheap labour".
House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, p. 9.

safety and environmental standards and other matters 'which underpin the reputation of the national flag'. The bill proposes that the Australian Maritime Safety Authority (AMSA) will regulate these vessels.⁹ The EM expounds:

Australia's rapidly expanding commodity trade is driving an increase in the shipping task. Establishing an Australian International Shipping Register provides an opportunity for domestic ship operators to increase their involvement in international trade, without the need to re-register offshore.

...

Consistent with the operation of other quality international registers, vessels on the International Register will be permitted to operate with mixed crews. This reflects the global nature of shipping, with crew drawn from across the world. The Government has determined that at least two senior positions (engineering and deck officers) are to be filled by Australians. This reflects the policy intent to build the domestic maritime skills base, by providing an opportunity for Australians to gain the necessary international seafaring experience.

To ensure that the International Register is competitive, international labour terms and conditions will apply to seafarers working on board ships registered in the International Register while they are engaged in international trading.¹⁰

2.10 International labour terms and conditions will apply to seafarers working on board vessels that are registered on the Australian International Register while they engage in international trading. These are provided through the International Labour Organizations' (ILO) Maritime Labour Convention (MLC) which Australia has ratified. These conditions are stipulated in the *Navigation Act 1912* and the *Navigation Amendment Act 2011*.¹¹

2.11 The *Fair Work Act 2009* does not apply to AISR vessels when they are engaged in international trading, and the *Seafarers Rehabilitation and Compensation Act 1992* will not apply to AISR vessels at any time.¹² However, in accordance with the MLC, the bill 'provides for compulsory insurance for ship owners for

9 Explanatory Memorandum, Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, pp 1, 2.

10 Explanatory Memorandum, Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, p. 1.

11 Explanatory Memorandum, Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, p. 2.

12 Supplementary Explanatory Memorandum, Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, p. 2.

compensation in the event of death or long-term disability of a seafarer due to an occupational injury, illness or hazard'.¹³

2.12 In addition, the bill provides for collective agreements for seafarers on international voyages. The collective agreements are to be made with the seafarers' bargaining unit (SBU) 'which will include all employee organisations that have members on the ship who they are entitled to represent'.¹⁴

2.13 The bill proposes that the previous Australian Register of Ships will become the Australian General Shipping Register (the General Register), and the bill specifies the transitional provisions for the General Register for vessels currently engaged in Australian coastal trading.¹⁵

2.14 Vessels registered on either the Australian International Shipping Register or the General Register may apply for the tax incentives specified in the Tax Laws Amendment (Shipping Reform) Bill 2012 (discussed below).¹⁶

Shipping Reform (Tax Incentives) Bill 2012

2.15 The bill establishes a mechanism for members of the shipping industry to obtain a certificate as an initial step in establishing their eligibility to access a range of taxation concessions which are outlined in the Tax Laws Amendment (Shipping Reform) Bill 2012.

2.16 The EM highlighted that there are 30 other jurisdictions which Australian vessels compete with, many of which receive fiscal support under their home registrations:

Many of these countries have introduced fiscal support measures as a means of retaining ships on their national registers rather than see their national flag ships move to foreign registers over which they have less direct control. This action has seen their formerly shrinking national registries attract back many of the defecting ships and is consistent with the findings of the House of Representatives Committee on Infrastructure, Transport, Regional Development and Local Government which noted that

13 Explanatory Memorandum, Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, pp 4–5. See also 'Correction to the Explanatory Memorandum', Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, p.1.

14 Explanatory Memorandum, Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, p. 5.

15 Explanatory Memorandum, Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, pp 2–3; see also the provisions of the general licence conditions in Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp 18–22.

16 See Explanatory Memorandum, Shipping Reform (Tax Incentives) Bill 2012, p. 4.

supportive fiscal measures had resulted in an increase in additional tonnage back to national registers.¹⁷

2.17 Eligibility for the certificate is assessed by the Department of Infrastructure and Transport (DIT). Initially, an applicant is required to obtain a *notice* from DIT 30 days before lodging a tax return. A notice is intended to 'provide a certain level of comfort for the applicant that they will subsequently qualify for a certificate' and 'provide the Department with timely data in order to quantify the extent to which the Australian shipping industry is being assisted by these tax concessions'. A *certificate* is required annually which will include some reporting and allow DIT to collect data on the use of the tax concessions.¹⁸ Key eligibility requirements for the certificate include:

- having a substantial proportion of commercial, technical or strategic operations and crew management in Australia; and
- a training requirement (to be specified in regulations to the bill).¹⁹

2.18 The decision to refuse to issue, vary or revoke a certificate or notice is reviewable by the Administrative Appeals Tribunal (AAT).²⁰

Tax Laws Amendment (Shipping Reform) Bill 2012

2.19 The key taxation measures of the shipping reform package are contained in the Tax Laws Amendment (Shipping Reform) Bill 2012. The bill amends the *Income Tax Assessment Act 1997*, the *Income Tax Assessment Act 1936* and the *Taxation Administration Act 1953*.

2.20 Currently shipping companies pay a 30 per cent tax rate which is in line with companies in other industries. In addition, shipping vessels are depreciated at an average age of 20 years; and while a company can claim salaries and allowances to seafarers as a tax deduction, they do not have access to refundable tax offset provisions.²¹ The bill proposes the following tax incentives:

- an income tax exemption for eligible ship operators on qualifying shipping income as defined by the Shipping Reform Tax Incentives Bill 2012;

17 Explanatory Memorandum, Shipping Reform (Tax Incentives) Bill 2012, pp 1–2.

18 Explanatory Memorandum, Shipping Reform (Tax Incentives) Bill 2012, pp 7, 11; Explanatory Memorandum, Tax Laws Amendment (Shipping Reform) Bill 2012, p. 9.

19 Explanatory Memorandum, Shipping Reform (Tax Incentives) Bill 2012, p. 8. The Maritime Workforce Development Forum is developing the criteria for the training requirement for consideration by the Minister.

20 Explanatory Memorandum, Shipping Reform (Tax Incentives) Bill 2012, p. 13.

21 Explanatory Memorandum, Tax Laws Amendment (Shipping Reform) Bill 2012, p. 9.

- accelerated depreciation of vessels via a cap of 10 years 'providing companies with a greater depreciation in the early income years than is currently the case';
- roll-over relief from income tax on the sale of a vessel;
- an employer refundable tax offset for Australian resident seafarers' salaries, wages and allowances on qualifying vessels where the seafarer is employed on the vessel for at least 91 days in the income year; and
- royalty withholding tax exemptions for payments made on the lease of shipping vessels by Australian resident companies on a bareboat basis on vessels used commercially to ship cargo or passengers (the aim is 'to reduce the costs for Australian shipping operators of securing vessels that may be crewed by Australian workers').²²

Compact

2.21 The discussion paper for the reforms outlined that that the 'shipping reform package is conditional on a compact between industry and unions to deliver productivity and efficiency reforms to better align practices in the Australian shipping industry with international best practice'. It is intended that the compact should consider the following:

- Ship based cost reduction targets, including work practice productivity and efficiency gains;
- A process to review minimum manning levels by shipowners, the maritime unions and the Australian Maritime Safety Authority, to determine the optimum operational crewing levels on board vessels that do not compromise safety or environmental outcomes; and
- Introduction of riding gangs on board vessels involved in the coastal trade to undertake additional maintenance on terms and conditions of employment established under the Fair Work Act.²³

22 Explanatory Memorandum, Tax Laws Amendment (Shipping Reform) Bill 2012, pp 3, 10–11. 'For the purposes of Australia's domestic laws, payments under a bareboat charter (where a ship is provided without crew or captain) constitute a payment for the use of, or right to use the ship and, therefore, fall within the definition of a royalty. As a result, the non resident ship owner may be subject to [Royalty Withholding Tax] RWT, imposed on the gross royalty receipts'. Department of Infrastructure, Transport, Regional Development and Local Government, 'Reforming Australia's Shipping: A Discussion Paper for Stakeholder Consultation', 1 December 2010, p. 10.

23 Department of Infrastructure, Transport, Regional Development and Local Government, 'Reforming Australia's Shipping: A Discussion Paper for Stakeholder Consultation', 1 December 2010, p. 12.

Overview of the proposed licensing regime

2.22 As part of the shipping reform package, it is proposed that Part VI of the *Navigation Act 1912*, which specifies the current licensing regulations, be repealed. Instead, under the provisions of the Coastal Trading (Revitalising Australian Shipping) Bill 2012 a three tiered licensing regime is proposed consisting of general (GL), temporary and emergency (EL) licences. Provision is made for Transitional General Licences (TGLs) to be issued to licensed vessels currently engaged in Australian coastal trading.

2.23 Foreign-registered vessels and vessels registered on the Australian International Shipping Register (AISR) will need a TL to engage in coastal trading in Australian waters.

Temporary licences

2.24 A TL is limited in both time and the number of voyages (a minimum of five) authorised by the licence:

Unlike [the proposed] general licence which enables a vessel to have unrestricted access to coastal trading, a temporary licence is restricted to the matters authorised in the licence—for example, the number of voyages, kinds and volume of cargo or number of passengers, ports of loading and disembarkation etc.²⁴

2.25 Within two business days of receiving an application for a TL the Minister will publish the application on the department's website and general licence holders and organisations directly affected by the application will be notified. In response, a 'holder of a general licence may nominate to carry one, or more, of the voyages for a particular kind of cargo specified in the application'.²⁵ The EM 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. It is expected that the applicant of a temporary licence would disclose truthful and accurate information to enable the holder of a general licence to determine whether it is able to carry the trade and nominate to do the service.²⁶

2.26 If one, or more, responses are given in relation to an application for a TL, the Minister must have regard to:

- the outcome of the negotiations;

24 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, p. 22.

25 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, p. 24.

26 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, p. 34.

- whether, and to what extent, the vessel authorised under a general licence is equipped to carry the passengers or cargo;
- whether those passengers or cargo can be carried in a timely manner;
- the reasonable requirements of the shipper of the cargo if the application relates to the carriage of cargo.²⁷

2.27 The Minister is required to make a decision on the application within 15 business days. The details of granted TLs must be published on the department's website. Decisions to refuse an application will also be published on the department's website.²⁸

2.28 There is no limit to the number of times an applicant may seek to vary a TL. However, any application to increase the number of voyages must have a minimum of five voyages included and general licence holders affected by the variation will be notified and details of the application will be published on the department's website. The assessment period for such a decision is seven business days.

2.29 Variation of TLs to include new matters is stipulated in Subdivision D of the coastal trading bill. Subclause 51(2) (application to vary temporary licence) is identical to the requirements set out in subclause 28(2) on the application for TLs which states:

The application must be in writing and specify the following:

- (a) the number of voyages, which must be 5 or more, to be authorised by the licence;
- (b) the expected loading dates;
- (c) the number of passengers expected to be carried;
- (d) the kinds and volume of cargo expected to be carried (if any);
- (e) the type and size, or type and capacity, of the vessel to be used to carry the passengers or cargo (if known);
- (f) the ports at which the passengers or cargo are expected to be taken on board;
- (g) the ports at which the passengers are expected to disembark or the cargo is expected to be unloaded;
- (h) such other information as is prescribed by the regulations.²⁹

2.30 For variation to a TL on a matter previously authorised, such as changes to the port routes agreed upon, the assessment period is limited to two business days.³⁰

27 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp 25–26.

28 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp 27–28.

29 Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp 32–33.

2.31 Table 1.1 provides an overview of the processing times and requirements for TL applications and variations.

Table 1.1: Processing of Temporary Licence applications and variations

Type of application	Requirements	Processing of application
Temporary licence 12 months restricted carriage	Minimum five voyages. Specify the kinds and volume of cargo or number of passengers, ports of loading and disembarkation for each voyage specified over the 12 month period.	Within two business days, published to department's website. General licence holders and organisations affected are notified. Minister makes a decision within 15 business days; the decision is published on the department's website.
Temporary Licence: increase voyages Unlimited number of variations permitted	Must be increased by a minimum of five voyages. The voyages should specify the kinds and volume of cargo or number of passengers, ports of loading and disembarkation for each voyage.	Within seven business days. Details of the application are published on the department's website. General licence holders and organisations affected are notified.
Temporary Licence: variation (eg. port routes, type of cargo) Unlimited number of variations permitted		Within two business days. General licence holders and organisations affected are notified. Details of the variation published on the department's website.

Source: Adapted from Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp 22–30.

Transitional general licences

2.32 Foreign-registered vessels that currently hold a licence (as opposed to a SVP or CVP) are entitled to apply for a 'transitional general licence' as part of the proposed reforms. The transitional licence may be granted for a period of no more than five years and the application must show evidence that the seafarers working on the vessel

are Australian citizens or hold permanent or temporary visas with the appropriate working rights.

2.33 The provisions of the Transitional general licences are stipulated in Schedule 2, Part 3 of the Coastal Trading (Revitalising Australian Shipping) Bill (Consequential Amendments and Transitional Provisions) Bill 2012. The EM outlines that the Minister must have regard to the following in deciding on such an application:

- whether the owner of the vessel intends to register it under the Shipping Registration Act 1981 but is unable to do so immediately because of commercial obligations or requirements under a foreign law;
- whether the applicant held a licence or permit under the old law that was cancelled;
- any other matters the Minister thinks relevant.³¹

2.34 The same conditions that apply to a general licence apply to a transitional general licence with the exception of the requirement to be registered on the Australian General Register (as a vessel using a transitional general licence must be registered in a foreign country). Further, TGLs do not have access to the tax incentives offered in the reforms.

Table 1.2 outlines the proposed requirements and industrial agreement for each type of licence.

31 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill (Consequential Amendments and Transitional Provisions) Bill 2012, p. 11.

Table 1.2: Proposed licensing requirements

Type of licence	Crew	Registration	Time period	Industrial Agreement	Restrictions
General	Australian citizens, permanent residents, or persons with appropriate work visas	Australian General Shipping Register	No more than five years	Seagoing Industry Award 2010 – Part A	Unrestricted
Temporary	Mixed crews (foreign and Australian), in the case of AISR at least two senior positions are to be filled by Australians	Foreign registered or AISR	No more than 12 months	Seagoing Industry Award 2010 – Part B	Restricted to the matters authorised in the licence—for example, the number of voyages (minimum of five), the type and volume of cargo or number of passengers, ports of loading and disembarkation. Subject to whether general licence holders nominate for the voyages set out in any licence application.
Emergency	Mixed or Australian	Australian General Shipping Register, AISR or foreign	As specified for each licence	Seagoing Industry Award 2010 – Part A	Restricted
Transitional general	Australian citizens, permanent residents, or persons with appropriate work visas	A foreign-registered vessel that holds a licence under current Part VI of the <i>Navigation Act 1912</i> (to be repealed)	No more than five years	Seagoing Industry Award 2010 – Part A	Unrestricted (as per the general licence). However, a transitional general licence may be renewed only once at the discretion of the Minister when pre-existing contracts prevent the vessel moving to the general register. No access to the taxation incentives.

Sources: Adapted from Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp 18–19, 22–23; Explanatory Memorandum, Shipping Registration Amendment (Australian International Shipping Register) Bill 2012, p. 11; Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012, pp 10–12; Deloitte Access Economics, 'Economic impacts of the proposed Shipping Reform Package', February 2012, p. 10.