

Dissenting Report by Labor Senators Sterle and McCarthy

Background

1.1 When the former Government took office in 2007, the Australian shipping industry was in decline. Under the Howard Government (1996 to 2007), the number of Australian-flagged vessels fell from 55 in 1996 to 21 in 2007, with only four operating on international routes.

1.2 In accordance with its *Stronger Shipping for a Stronger Economy* election policy statement, the former Government introduced into the Parliament the *Coastal Trading (Revitalising Australian Shipping) Bill 2012* and a package of related bills¹ designed to revitalise the Australian shipping industry.

1.3 The legislation created a standalone regulatory framework for vessels trading around the Australian coastline. Previously, all vessels engaged in such activities, irrespective of flag and crew nationality, were regulated by the *Navigation Act 1912*.

1.4 The legislation was the culmination of a four year process which involved a parliamentary inquiry and repeated rounds of consultation with industry, unions and other key stakeholders.

1.5 A key objective of the legislation was to facilitate the long term growth of the Australian shipping industry by 'levelling the playing field' and providing the industry with a stable fiscal and regulatory regime, one that would encourage greater investment and promote international competitiveness.

1.6 The legislation does not preclude the use of foreign vessels. To the contrary, it permits the use of a foreign vessel where a suitable Australian vessel isn't available to carry cargo or passengers, so long as they pay Australian-level wages on domestic sectors.

1.7 In addition to a new licensing regime, the former Government's reforms included taxation incentives for flagging ships in Australia and to encourage the employment of Australian seafarers; a new second (or international) register with tax benefits for vessels engaged predominately in the international trade; and a maritime skills development package.

1.8 The legislation passed the Parliament on 18 June 2012, and became law on 1 July 2012. In both the House and the Senate, the Federal Coalition voted against Labor's new laws.

1 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.

Current Government's approach (since 2013)

1.9 From the outset, the current Government has been determined to substantially alter the 2012 legislation, arguing as they did in a two-page dissenting report from the House Standing Committee on Infrastructure and Communications that it was "likely to significantly increase costs to users of coastal shipping" and "the objective of revitalising the Australian shipping industry is unlikely to be achieved."²

1.10 On 25 June 2015, the Government tabled its *Shipping Legislation Amendment Bill 2015*. The Bill sought to repeal the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and deregulate the Australian domestic shipping industry.

1.11 The Bill would have removed the preference for Australian-flagged and crewed vessels, and replaced the three-tiered licensing regime with a single permit system that granted access to vessels of any nationality to work the Australian coastline for a twelve month period. It would have also significantly extended the period of exemption from domestic wage standards for foreign vessels.

1.12 The Bill passed the House on 14 October 2015.

1.13 However, on 26 November 2015 the Senate declined to give it a second reading, noting:

- (a) the official modelling attached to the Bill forecasted that 93 per cent of seafarer jobs on Australian vessels would be lost under the legislation and 88 per cent of the Bill's "deregulatory savings" would come from replacing Australian wage standards with third world wage standards; and
- (b) evidence given before a Senate inquiry that senior officials from the Department of Infrastructure and Regional Development had advised Mr Bill Milby of North Star Cruises that for his company to remain competitive under the proposed legislation, he should reflag his vessels to a foreign State, sack his Australian crew and hire a foreign crew on cheap foreign wages.

1.14 Despite the failure to repeal the 2012 legislation, the continuing uncertainty surrounding its longevity has deterred investment in Australian flagged vessels and the Australian merchant fleet has continued to shrink. Since the 2013 election, 12 vessels have been reflagged to a foreign State.

Issues raised by the Bill

1.15 The Bill now before the Parliament represents the Government's second attempt to wind back the 2012 coastal trading reforms.

2 Coalition members, Dissenting report, House of Representatives Standing Committee on Infrastructure and Communications, Advisory Report on Bills referred 22 March 2012 (Shipping Reforms), op. cit., pp. 51-53.

Inadequate consultation with industry

1.16 Compared to the extensive consultative process which was undertaken prior to the introduction of the 2012 reforms, the consultation associated with the preparation of this Bill was negligible:

- On 21 March 2017, the Minister released the Coastal Shipping Reforms Discussion Paper seeking stakeholder views on a range of proposed legislative amendments and proposed seafarer training initiatives. A total of 67 submissions were received by the closing date (12 May 2017).
- On 20 April 2016, the Minister held one face-on-face meeting with each of the maritime unions (i.e. Maritime Union of Australia, the Australian Maritime Officers Union and the Australian Institute of Marine Power Engineers). The discussions centred on the importance of Australia maintaining a skilled maritime workforce.
- On 27 April 2016, the Minister hosted two meetings, one attended by users of coastal shipping and the other by stakeholders with passenger shipping interests. The entities consulted in these sessions were:
 - Minerals Council of Australia;
 - Cement Industry Federation;
 - National Farmers Federation;
 - Australian Industry Group;
 - Australia Aluminium Council;
 - Rio Tinto Marine;
 - DP World;
 - Gypsum Resources Australia Representative;
 - Incitec Pivot;
 - Business Council of Australia;
 - Superyacht World;
 - Tourism & Transport Forum;
 - Carnival Australia; and
 - Ocean Alliance NSW.

1.17 Notably, Maritime Industry Australia Ltd (MIAL) – the major peak body that represents Australian-based shipping operators and other Australian-based maritime businesses – nor any of its members (with the exception of Carnival Australia), were invited to participate in either of the meetings hosted by the Minister on 27 April 2016.

1.18 Lastly, no draft of the Bill was circulated publicly for feedback prior to its tabling in the Parliament on 13 September 2017. By comparison, the 2012 legislation was subjected to two rounds of exposure drafts.

Failure to build bipartisanship

1.19 On repeated occasions prior to tabling the Bill, the Minister acknowledged the industry's desire for policy stability and long term investment certainty, and committed himself to building bipartisan support for the changes he would end up bringing forward.

1.20 On 26 April 2017, the Minister told a Shipping Australia luncheon:

One final and important point – I want to see change as much as you do, and I am acutely aware of the need to work towards a reform agenda in a bipartisan...

1.21 In the foreword to his own discussion paper, the Minister wrote:

Another key message from my recent stakeholder consultations is that regulatory certainty, ideally bipartisanship, is essential for investment to be made in the industry and for users of coastal shipping services to plan and invest on the basis that they will rely on coastal shipping services to transport domestic freight.

1.22 However, at no stage before or after the release of the Discussion Paper was the Opposition consulted about the merits or otherwise of possible amendments to the existing legislation. Nor was it given a briefing on the final version of the Bill before it was tabled in the Parliament.

Deregulation by the 'back door'

1.23 The claim that the Bill "does not propose substantial changes to the current coastal trading regime" is false.³

1.24 There are two sets of amendments which are particularly problematic.

Amendments to the tolerance provisions

1.25 The current Act establishes acceptable tolerance limits for TL voyages, being +/-20 per cent for the nominated cargo/passenger volumes and +/- five days for the authorised loading date, without the shipper needing to seek a variation to their existing TL. If sought, a variation must be approved or rejected by the Minister within two business days.

1.26 The Bill proposes to increase the volume tolerance limits to 200 per cent more or 100 per cent less. It also proposes a loading window tolerance of 30 days either side of the authorised date.

3 Senate Rural and Regional Affairs and Transport Legislation Committee, Advisory Report from Inquiry into the Provisions of the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017, December 2017, p. 31.

Implications

1.27 These changes would further deregulate what is already one of the world's most liberal coastal trading regimes.

1.28 The proposed amendments would make it almost impossible for a GL (Australian-flagged) vessel to contest work because their owner/operator would never know the actual volume or the precise loading date. As the Australian Institute of Marine and Power Engineers (AIMPE) put it in its submission responding to the Discussion Paper:

The ultimate voyage carried out may bear no resemblance to the original voyage for which the Temporary License was granted.

1.29 In its submission to this inquiry AIMPE was even more blunt. The proposed amendment to the tolerance provisions:

...would be welcomed by foreign flag ship operators however it would make it much easier for foreign ship operators to exploit the system and could be far more easily manipulated. AIMPE strongly opposes this change to further open the coastal trading industry to foreign ships with foreign crews under temporary licences.⁴

1.30 According to Maritime Industry Australia Ltd (MIAL):

The integrity of the current structure of the regime is supported by meaningful tolerance provisions. ... Changes to the tolerance provisions in both time and cargo/passenger volume will have the effect of undermining the licensing regime.⁵

1.31 This is a view echoed by the Maritime Union of Australia (MUA):

The consequence of enacting ... [the proposed changes to the tolerance provisions] would be that it would be commercially impossible for an Australian vessel to contest for cargo, as the owner/operator would never know the actual cargo or passenger volume and/or the precise loading date. If enacted, this will undercut and decimate the ability for Australian workers on Australian ships to compete to earn a living in their own country.⁶

1.32 Operators of vessels involved in the coastal trade have also expressed concern about changes to the tolerance limits, including CSL which currently owns three Australian-flagged vessels operating around the coastline.⁷ According to another, ANL:

...the current date tolerance seems reasonable.⁸

4 Australian Institute of Marine and Power Engineers, *Submission 1*, p. 10.

5 Maritime Industry Australia Ltd, *Submission 14*, p. 4.

6 Maritime Union of Australia, *Submission 18*.

7 CSL, *Submission to Coastal Shipping Reforms Discussion Paper*, April 2017, p. 1.

8 ANL, *Submission to Coastal Shipping Reforms Discussion Paper*, 10 May 2017, p. 4.

1.33 Lastly, True North Adventure Cruises, the operator of tourism vessels off north-west Western Australia, has warned that the proposed changes to the tolerance limits would allow shippers and foreign operators to 'game' the system:

This amendment would allow foreign applicants for temporary licences to apply for a greater number of licences and then only operate when they have "SOLD" passenger places in their vessel e.g. a foreign small cruise vessel could apply for 100 temporary passenger voyage licenses to cruise Sydney Harbour (or the Great Barrier Reef, or the Kimberley's) then park their vessel at the relevant jetty and sell their product using the foreign vessel with foreign crews, competing directly with an existing Australian owned, operated and crewed vessel.

Streamlining the TL variation process

1.34 Currently, there are two types of licence variations to an existing TL – 'authorised matters' (a change to a loading date or volume on an existing planned voyage) and 'new matters' (authorising an entirely new voyage on an existing TL).

1.35 In the name of 'streamlining', the Bill proposes replacing the two types of licence variations with a single TL variation provision.

Implications

1.36 Reclassifying the addition of a new voyage to an existing TL from a 'new matter' to an 'authorised matter' would halve the time available to a GL holder (i.e. the operator of an Australian-flagged vessel) to apply for that new voyage from the current two days to just 24 hours. Simply put, this would make it more difficult for Australian vessel owners/operators to compete for work.

1.37 According to Maritime Industry Australia Ltd (MIAL):

This proposed change undermines the position of GL holder as for new voyages they will only have one day to respond to a TL application rather than the current 2 days.⁹

1.38 In his second reading speech (13 September 2017) the Minister assured the Parliament that the Bill "makes amendments to the existing regulatory regime, rather than fundamentally restructuring it".

1.39 However, the analysis above confirms that not to be the case.

1.40 According to MIAL:

...there is nothing in the Bill to assist Australian shipowners compete with foreign ships that have all but unfettered access to coastal trades. We held low expectations on that front and unfortunately haven't been disappointed there.¹⁰

1.41 To be sure, the Regulation Impact Statement is explicit about the Bill's goal of increasing the presence of foreign vessels around the Australian coastline:

9 Maritime Industry Australia Ltd, *Submission 14*, p. 3.

10 Media release, *Coastal Shipping – the challenge continue*, 13 September 2017

...the current framework makes it unattractive for foreign ships to enter the coastal trading sector. ... These amendments ... will remove the barriers that currently face many foreign flagged vessels under the current system.¹¹

1.42 Not only is the Australian maritime industry concerned the Bill will tilt the playing field further in favour of foreign operators, but other transport modes are equally concerned that it will put them at a competitive disadvantage. In particular, the Freight on Rail Group wrote in their submission in response to the Discussion Paper:

...the proposed amendments have the potential to introduce an unreasonable competitive advantage to foreign ships that may choose to compete in the domestic freight market. This unreasonable competitive advantage arises as the proposed amendments allow foreign shippers to compete in the domestic freight market against land freight transport operators that have to comply with all laws and regulations. In particular, exemptions would allow foreign ships to incur substantially lower wages, conditions and associated workplace relations costs when compared to rail, road and Australian-based coastal shipping companies.¹²

Conclusion

1.43 For sound economic, environmental and national security reasons, Australia needs a strong and growing merchant fleet of its own. Our long term national interest demands nothing less.

1.44 However, the Bill currently before the Parliament will only accelerate the industry's decline, eventually consigning Australia's status as a proud maritime nation to the history pages. That would be an unbelievable development given we are an island continent, almost all of our imports and exports are transported in the hull of ships, and even more significantly, a tenth of global sea trade flows through our ports.

1.45 Accordingly we recommend the Bill be opposed in its entirety.

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Deputy Chair

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Senator for the Northern Territory

11 Regulation Impact Statement, *Coastal Shipping (Revitalising Australian Shipping) Amendment Bill 2017*, pp. 9, 14.

12 Freight on Rail Group, Submission to Coastal Shipping Reforms Discussion Paper, May 2017, p. 11.

