

Chapter 5

The Australian shipping industry

5.1 This chapter examines the overall shipping industry in Australia, and the various reviews and reforms that have recently been announced that will examine, in part, the role of coastal shipping in Australia.

5.2 Further commentary is provided on the Government's response to the committee's interim report, particularly regarding the Government position that no further reviews into the maritime industry are necessary, as they would be 'unlikely to change the current decline of the Australian shipping industry'.¹

Current shipping industry

5.3 A number of issues have been raised with the current status of the Australian shipping industry. It has been argued that Australia is not using its port and shipping infrastructure as effectively as it could, and that:

freight volumes domestically and internationally have been growing rapidly, but a larger and larger share of this freight is being transported in trucks and trains, adding to Australia's congestion problems...Increased congestion on our vast oceans shouldn't be a costly problem, but road and rail congestion, which weighs increasingly on Australians' quality of life, certainly is.²

5.4 While FOC vessels may have an impact on the Australian shipping industry, economic conditions also play a major role in the viability of the shipping industry. The industry has an 'inherent inflexibility in responding to changing economic conditions' and is 'subject to the vagaries of international trade'. It has been reported that demand for shipping fell following the global financial crisis. However, this fall in demand was accompanied by advances in technology and the development of 'mega-ships', thus reducing the need for smaller vessels.³

1 *Senate Hansard*, 10 May 2017, p. 3345.

2 Adam Creighton, 'Let's get the most out of infrastructure spending', *The Australian: Special Report*, 24 February 2017, <http://www.theaustralian.com.au/national-affairs/opinion/lets-return-to-rational-infrastructure-spending/news-story/382a9f28ea94401d76ff4066ffacd945> (accessed 24 February 2017).

3 Michael Murray, 'Explainer: why Hanjin's ships are stranded around the globe', *The Conversation*, 14 September 2016, <https://theconversation.com/explainer-why-hanjins-ships-are-stranded-around-the-globe-65337> (accessed 29 May 2017).

5.5 In Australia, this reliance on larger vessels is reflected by the fact that in 2016, the growth in cargo volumes was 'typically being delivered by a combination of more port visits and larger ships'.⁴

Decline in general licences

5.6 A 2016 review by the Strategic Marine Group (SMG) of commodity shipping along the Australian east coast found that prominent businesses were using loopholes in the CT Act. The review found that the current legislative environment entrenches 'foreign control of Australia's maritime supply chain', and moves economic benefits off-shore.⁵

5.7 SMG found that there was a sufficient volume of coastal commodity movements to justify the use of dedicated Australian vessels, with an average of 163 voyages conducted per month on the east coast, using temporary licences. The number of general licences being issued was declining, and foreign-flagged and crewed ships were 'being introduced on a quasi-permanent basis'. The review determined that general licences were declining due to a number of factors, including:

- the financial costs associated with using Australian crews;
- the cost to shipping companies of infrastructure in and around ports, especially when compared with the lower cost of infrastructure access for road and rail transport;
- shipping no longer being a mainstream business, given structural changes in Australian industries such as steel and sugar;
- insufficient capital for Australian ship owners to acquire ships that would challenge foreign vessel use; and
- little incentive for ship owners to utilise general licences.⁶

5.8 The review concluded that Australian shipping could be revitalised, but it would require bipartisan political support and the correct policy settings, including legislation to make Australian international shipping more commercially attractive.⁷

4 Australian Maritime Safety Authority, *Port State Control – 2016 Report*, p. 7.

5 Peter Bremner, 'Industry Opinion: Aussies at a disadvantage with coastal bulk trades', *Lloyd's List Australia*, 22 November 2016, <https://www.lloydslistaustralia.com.au/lla/market-sectors/dry-bulk-and-commodity-trades/INDUSTRY-OPINION-Aussies-at-a-disadvantage-with-coastal-bulk-trades-543312.html> (accessed 23 November 2016).

6 Peter Bremner, 'Industry Opinion: Aussies at a disadvantage with coastal bulk trades', *Lloyd's List Australia*, 22 November 2016.

7 Peter Bremner, 'Industry Opinion: Aussies at a disadvantage with coastal bulk trades', *Lloyd's List Australia*, 22 November 2016.

5.9 A bipartisan approach has also been supported by Maritime Industry Australia (MIA), which argued that 'industry is frustrated by the way legislation may change each time there is a change of government'.⁸

5.10 Both the MIA and Shipping Australia have stated that the 2012 legislative amendments, including the CT Act, have increased administrative complexity and that 'not only are foreign vessels not trading on Australian routes, but there has not been any movement of Australian ships to enter the field'. The need to pay Australian wages to foreign crew under certain circumstances was seen as 'a major disincentive' to foreign vessels moving cargo between Australian ports.⁹

Environmental concerns

5.11 A number of concerns have been raised about the global risk FOC vessels present to the environment.

5.12 With regards to carbon emissions, reports have argued that without regulation, over the next 30 years emissions from shipping will rise to nearly 17 per cent of the world's total, and shipping:

which carries much of the world's goods, is the only economic sector not now subject to any treaty on climate change, country-by-country emissions controls or reduction targets of any kind – even though it emits around 3-4% of global gas emissions and has a carbon footprint the size of Germany's.¹⁰

5.13 Reducing the impact of FOC vessels on the environment is particularly problematic. Developing countries operating less-restrictive FOC registries receive substantial financial benefit from offering less regulatory control. A number of shipping-dependent countries operating FOC schemes have been pressured to 'water down, delay or dismiss action on reducing pollution or emissions'.¹¹

5.14 WWF-Australia submitted to the committee that ships operating in Australian waters should adhere to the highest standards:

Key aspects of acceptable environmental standards for shipping include a range of measures starting with the seaworthiness of ships and the

8 Andrew Kidd Fraser, 'Owners press again for coastal reform', *The Australian: Special Report*, 24 February 2017, <http://specialreports.theaustralian.com.au/710712/owners-for-coastal-reform/> (accessed 24 February 2017).

9 Andrew Kidd Fraser, 'Owners press again for coastal reform', *The Australian: Special Report*, 24 February 2017.

10 John Vidal, 'Shipping 'progressives' call for industry carbon emission cuts', *The Guardian*, 19 October 2016, <https://www.theguardian.com/environment/2016/oct/19/shipping-progressives-call-for-industry-carbon-emission-cuts> (accessed 7 November 2016).

11 John Vidal, 'Shipping 'progressives' call for industry carbon emission cuts', *The Guardian*, 19 October 2016.

seamanship of crews through to compulsory pilotage, adequate navigational aids such as electronic charts and vessel management systems, and adequate portside waste reception facilities. All these measures must be supported by an effective regulatory, compliance and enforcement regime such as the port state control measures undertaken by inspectors from the Australian Maritime Safety Authority.¹²

5.15 It was also argued by WWF-Australia that the use of crews with little to no experience with Australian coastal conditions increases the likelihood of groundings and other environmental shipping incidents, but this risk could be reduced by employing local, appropriately trained pilots.¹³

5.16 DIRD advised the committee that, given Australia's dependence on sea transport and port operations, it was at continual risk of pollution to the marine environment. Australia is a party to a number of IMO conventions dealing specifically with ship-related marine pollution, including the International Convention for the Prevention of Pollution from Ships and several conventions addressing oil pollution and damage.¹⁴

National transport strategies

5.17 A number of opinions have been expressed on the necessary steps needed to reinvigorate and support the Australian shipping industry. Differences in stakeholder opinions, depending on their role in the industry, will continue to make any meaningful progress in improving the industry challenging.

5.18 As was canvassed in the committee's interim report, a number of stakeholders have argued for stricter cabotage provisions in Australia.¹⁵ However other stakeholders, such as shipping owners and their representatives, argue for a lessening of the restrictions and administrative burdens put in place with the CT Act in 2012.

National freight and supply chain strategy

5.19 On 24 November 2016, the government announced the development of a national freight and supply chain strategy. The strategy will be developed after an independent inquiry examines ways to improve productivity and efficiency in the

12 WWF-Australia, *Submission 14*, p. 1.

13 WWF-Australia, *Submission 14*, p. 2.

14 Department of Infrastructure and Regional Development, *Submission 7*, pp. 11-12.

15 Detailed discussion on the issue of cabotage can be found in Chapter 2 of the committee's interim report.

Australian freight supply chain. The inquiry, due for final reporting in March 2018, will then inform the development of the strategy.¹⁶

5.20 Following the announcement of the strategy, the Minister for Infrastructure and Transport, the Hon Darren Chester MP, noted the importance of the Australian shipping sector to the economy. He highlighted that containerised port freight was forecast to double while non-containerised freight would grow by three quarters over the next 14 years. The Minister stated that the national strategy would look at the whole supply chain, and would therefore include ports and shipping together with other transport modes.¹⁷

5.21 The Minister went on to argue that coastal shipping reform would be progressed, to implement a 'regulatory regime which prioritises safe shipping and the protection of our unique marine environment'. Minister Chester stated he had consulted with shippers, shipping representatives and maritime unions, to ensure collaborative approaches between government and key stakeholders in delivering benefits to the maritime sector.¹⁸

5.22 The committee encourages the inquiry into the national freight and supply chain strategy to consider the important role that Australian shipping plays in the freight supply chain. Ensuring the viability of the sector and those it employs will require the government to consider the vital functions of Australian shipping alongside terrestrial modes of transport, and the danger that FOC vessels pose to both workers and the supply chain.

Coastal shipping reform

5.23 On 21 March 2017, the Minister for Infrastructure and Transport, the Hon Darren Chester MP, announced possible reforms to coastal shipping. The Minister noted that approximately 15 per cent of Australia's domestic freight is moved by ship, 'but with Australia's extensive coastline and broad network of ports, there is the potential for shipping to play a larger role in the national freight task'.¹⁹

5.24 The Minister stated that the aim of the reforms was to ensure that shipping had an increasing role in the national freight network, and to reduce the regulatory

16 Department of Infrastructure and Regional Development, *National Freight and Supply Chain Strategy*, 26 May 2017, <https://infrastructure.gov.au/transport/freight/national-strategy.aspx> (accessed 26 May 2017).

17 The Hon Darren Chester MP, 'Consensus will launch maritime reform', *The Australian: Special Report*, 24 February 2017, <http://specialreports.theaustralian.com.au/710712/consensus-will-launch-maritime-reform/> (accessed 24 February 2017).

18 The Hon Darren Chester MP, 'Consensus will launch maritime reform', *The Australian: Special Report*, 24 February 2017.

19 The Hon Darren Chester MP, Minister for Infrastructure and Transport, 'Call for comment on proposed coastal shipping reforms', *Media Release DC063/2017*, 21 March 2017.

burdens and administrative issues currently being experienced by shipping companies and local businesses.²⁰

5.25 A discussion paper was released, seeking comment from stakeholders on the key amendment proposals. The reforms will seek to address issues around the temporary licence scheme, and will consider removal of the five voyage minimum requirement for a temporary licence, among other things. The discussion paper also highlights potential seafarer training initiative options.²¹

5.26 In supporting the implementation of an effective coastal shipping industry in Australia, Shipping Australia argued for the removal of the five-voyage minimum required for temporary licences, but also called for the removal of 'the application of the Fair Work Act to coastal freight'.²²

Committee view

5.27 Removal of the five voyage minimum requirement for temporary licences will likely be welcomed by a number of industry stakeholders, who have previously argued that this requirement was overly burdensome on industry and restrictive to competition. However, the committee notes that removal of the five voyage minimum would likely further increase the presence of FOC vessels in Australian waters. With no minimum requirements, FOC vessels could sporadically trade along the Australian coast, with minimal oversight.

5.28 Removing the five voyage minimum would also make it increasingly harder for appropriate wages to be paid to foreign crews, who currently should receive Australian wages from the third voyage in Australian waters onwards, if the voyages occurred within a 12-month period. With no minimum voyage number, there may be less oversight of vessels and more opportunity for the exploitation of foreign workers in Australian territory. This would also place a further burden on the work of Australia's regulatory and oversight bodies, such as the FWO, to ensure that seafarers in Australian waters are treated adequately and paid legal wage rates.

5.29 If the minimum voyage requirement is removed, it would be necessary for the government to implement other reforms to address the issues around regulatory oversight and the potential for foreign crew exploitation.

20 The Hon Darren Chester MP, Minister for Infrastructure and Transport, 'Call for comment on proposed coastal shipping reforms', *Media Release DC063/2017*, 21 March 2017.

21 Department of Infrastructure and Regional Development, *Coastal Shipping Reforms: Discussion Paper*, March 2017, p. 4.

22 Rod Nairn, 'Unleash coastal shipping and let Australians benefit', *Shipping Australia Limited*, Media release, 9 February 2017, <https://shippingaustralia.com.au/unleash-coastal-shipping/> (accessed 22 June 2017).

Industry consultation

5.30 As part of the introduction of the CT Act and the 'Stronger Shipping for a Stronger Economy' package, in 2012 the Hon Anthony Albanese MP, Minister for Infrastructure and Transport, proposed the establishment of the Maritime Workforce Development Forum (Forum), to 'progress key maritime skills and training priorities'.²³

5.31 The Forum was subsequently established and made recommendations in 2013 in relation to maritime crew training. A package of \$5 million was allocated for training incentives and standards, census of the workforce and models to identify future training requirements. The funding allocation was recognition that '47 per cent of our seafarer workforce is aged 50 years or older'.²⁴

5.32 The Forum included 'eight private sector representatives covering rail, ports, shipping, engineering and logistics as well as representatives of the Royal Australian Navy and two union representatives'. However, in 2013 the Forum was disbanded, thereby removing a key advisory body for government on issues of maritime employment and training, diversification of the skill base, and efficient port usage.²⁵

5.33 The committee holds the view that any development of policy for the reinvigoration of the Australian shipping industry must involve key industry participants. There were claims that in the development of the Shipping Legislation Amendment Bill 2015, which sought to make broad changes to shipping regulation, there was a lack of industry consultation.²⁶

5.34 The current Minister has committed to continued engagement with the shipping industry in the development of the national freight and supply chain strategy, and groups that represent a broad range of perspectives would help facilitate that consultation.

5.35 To improve consultation, it would be beneficial to reconvene the Forum, or a similar entity, to provide advice to government in the development of any further proposed legislative changes and prior to any new policy announcements.

23 The Treasury, *Tax Incentives for the Shipping Industry*, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2012/Tax-incentives-for-the-shipping-industry> (accessed 3 July 2017).

24 The Hon Anthony Albanese, Minister for Infrastructure and Transport, 'Training Australia's future maritime workforce', *Media Release*, 19 July 2013.

25 The Hon Anthony Albanese, 'Prime minister for infrastructure' fails industry by scrapping maritime workforce forum', *The Australian*, 22 November 2013, <http://www.theaustralian.com.au/business/in-depth/prime-minister-for-infrastructure-fails-industry-by-scrapping-maritime-workforce-forum/news-story/914a8fb9f9e238caf-d9c1126a87a0f5e> (accessed 3 July 2017).

26 Senate Rural and Regional Affairs and Transport Legislation Committee, *Shipping Legislation Amendment Bill 2015 [Provisions]*, October 2015, pp. 20-21. The Bill failed to pass the Senate.

Recommendation 5

5.36 The committee recommends the re-establishment of the Maritime Workforce Development Forum, or a similar advisory body. The advisory group would comprise a variety of key maritime industry stakeholders and provide advice to government on new Australian shipping policies and workforce development and training opportunities.

Port infrastructure

5.37 To ensure the viability of the shipping sector, Australian ports must have the infrastructure to accommodate a variety of vessels and cargo, as ship structures change and develop. The need for appropriate port and landside infrastructure and berth availability was identified by the 2008 shipping inquiry, which recommended the creation of a national port development plan, to help direct funding to critical port projects and enable potential growth in coastal shipping.²⁷

5.38 The development of appropriate port infrastructure will present challenges to the industry, especially in light of declining investment in Australian-flagged vessels. The former chief executive of Ports Australia, Mr David Anderson, noted the need for integrated planning around port and freight precincts, and particularly for the maintenance and protection of shipping channels. Mr Anderson argued that:

If shippers cannot access vessels that are optimal for the task, or vessels cannot be fully loaded, or port managers cannot use berths or tugs effectively because unnecessary restrictions are placed on dredging activity, then the implications for the cost of our trades is readily apparent...shipping channels do not occupy the place they deserve on the public policy landscape.²⁸

5.39 However, the discussion paper released for the inquiry into the national freight and supply chain priorities notes that port dredging to accommodate larger ships will introduce a number of environmental concerns. Additionally, larger ships will also 'create greater peaks in demand for landside infrastructure around already congested ports'.²⁹

27 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, pp 53-56.

28 David Anderson, 'Ships' lanes to wharves are critical infrastructure', *The Australian: Special Report*, 24 February 2017, <http://specialreports.theaustralian.com.au/710712/ships-lanes-to-wharves-infrastructure/> (accessed 24 February 2017).

29 Department of Infrastructure and Regional Development, *Inquiry into National Freight and Supply Chain Priorities – Discussion Paper*, May 2017, p. 13, <https://infrastructure.gov.au/transport/freight/files/national-freight-supply-chain-priorities.pdf> (accessed 26 May 2017).

Government response to interim report – maritime sector reviews

5.40 In its response to the committee's interim report, the Government highlighted a number of reviews already conducted into Australia's maritime industry, in support of its position that no further reviews into the maritime sector were necessary.

5.41 The reviews listed by the government in its response included the:

- Strengthening Economic Relations between Australia and New Zealand report by the Productivity Commission, completed in December 2012;
- Tasmanian Shipping and Freight inquiry report by the Productivity Commission, completed in March 2014;
- Competition Policy Review (the Harper review) completed in March 2015; and
- Regulation of Australian Agriculture inquiry report by the Productivity Commission, completed in March 2017.³⁰

5.42 These reports all briefly discuss Australian coastal shipping in some way. The reports present a consensus view that the coastal shipping reforms of 2012, and the preference for Australian-flagged vessels to undertake domestic voyages, has increased regulation and costs, increased administrative burdens, and restricted competition.³¹

5.43 However, beyond coastal shipping reform, it appears to the committee that the reviews into the maritime sector identified by the government response do not directly address the issues raised by this committee in its interim report, specifically issues around the diminishing Australian shipping industry, loss of jobs for Australian workers, mistreatment of foreign workers, and the serious border security and environmental risks presented by FOC vessels.

5.44 In stating that further reviews would be 'unlikely to change the current decline in the Australian shipping industry', the government response fails to recognise that there are ongoing issues with the Australian maritime sector that have not been addressed. While proposed amendments to shipping legislation in 2015 attempted to make improvements regarding coastal shipping regulation, it did so at a cost to Australian jobs and local businesses, and seafarer wellbeing.

30 Senator the Hon Simon Birmingham, Minister for Education and Training, *Proof Senate Hansard*, 10 May 2017, p. 101.

31 Strengthening Economic Relations between Australia and NZ (2012): <http://www.pc.gov.au/inquiries/completed/australia-new-zealand/report/trans-tasman.pdf>; Tasmanian Shipping and Freight inquiry (2014): <http://www.pc.gov.au/inquiries/completed/tasmanian-shipping/report/tasmanian-shipping.pdf>; Competition Policy Review (2015): http://competitionpolicyreview.gov.au/files/2015/03/Competition-policy-review-report_online.pdf; Regulation of Australian Agriculture (2017): <http://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture-overview.pdf>

Summary and recommendations

5.45 The issues with FOC vessels operating in Australian and international waters are considerable, and it is going to take a concerted global effort to address these concerns. The prevailing international business environment has a preference for cheap labour and the payment of no or minimal tax, with both conditions supported by many FOC arrangements.

5.46 The lack of a genuine link between a ship's flag and the owner of a vessel presents real challenges internationally in terms of accountability and assessment of risk. The reduced transparency that comes from using FOC registration may present a business benefit to ship owners and operators, but it greatly decreases the ability of national authorities to verify who is entering the country, and therefore to determine threats to national security.

5.47 While Australia should take the steps necessary to protect its coastal shipping industry and the people it employs, until there is an international approach to address the deficiencies in FOC shipping, and enforce international conventions and regulatory oversight, it will remain an uphill battle.

5.48 The committee maintains the position put forward in its interim report that shipping plays an essential role in Australia's national transport infrastructure framework, and that the increasing occurrence of FOC vessels operating in and around Australia will continue to be detrimental to the local shipping industry, and place Australia at a competitive disadvantage.

5.49 It is clear that FOC vessels present numerous risks to seafarer safety and wellbeing. The case studies presented in this report are not exhaustive, yet demonstrate these risks. This is in addition to the considerable job losses experienced by local crew members, who are being replaced by foreign workers at an alarming rate. The replacement of Australian workers with foreign crew will continue to deplete the maritime skills base in Australia, and make it harder to reinvigorate the industry in the future.

5.50 The committee argues that reduced costs in shipping should not be sought by paying inappropriate wages to foreign crew. If a business is endeavouring to reduce its overhead and increase its profits, it should not be through the payment of wages that do not meet Australia's minimum wage standards.

5.51 It is unacceptable that seafarers are disappearing and dying in Australian waters, and that no one is held to account for these events. The case of the *MV Sage Sagittarius* highlighted how FOC vessels can operate with a workplace environment of bullying and harassment, with tragic results. While the Coronial Inquest determined that both Hector Collado and Cesar Llanto died as a result of foul play, no one has been charged with their deaths, and this is unlikely to change.

5.52 The committee acknowledges the improvements made in addressing security risks at sea, with the combination of immigration and border protection processes two

years ago when DIBP came into effect. The committee was given assurances that the events of 2012 concerning Captain Salas would not now occur, given the processes and notification systems currently in place.

5.53 The tightened parameters around MCVs have seen a considerable increase in rejected MVC applications over the last year, providing some level of comfort to the committee that risks to Australia's border security from FOC vessels are being addressed. The implementation of APP on cargo ships will further assist DIBP in better assessing the risks of foreign crew.

5.54 Yet, the lack of an Australian-flagged fleet means that dangerous goods such as ammonium nitrate continue to be transported to Australia by FOC and other foreign vessels. It is imperative that immigration and border protection processes remain robust in light of the risks that these goods present to Australian ports.

Government response to the interim report

5.55 The committee is particularly concerned that the government response did not indicate any way forward for ensuring the future viability of the Australian shipping industry, and the employment of Australian seafarers.

5.56 The committee takes the view that, by not agreeing to review the current state of the maritime sector in Australia, the government is failing to address the serious security, economic, human rights and environmental vulnerabilities in the sector that were identified by the interim report.

5.57 The reviews highlighted by the government response were not specific to the maritime sector but rather focus on other topics where shipping, while relevant to the matters being considered, had ancillary importance to the main issues being discussed.

5.58 There has been no comprehensive, whole-of-government review into the potential economic, security and environment risks posed by FOC vessels and their crew, in the modern maritime industry setting. As has been shown by the evidence provided to this inquiry, these remain very real and current risks to our nation.

5.59 In its interim report, the committee's recommendations also advocated for reduced red tape for vessel and port operators, through a harmonisation of national shipping operations, and consultation with industry to identify shared objectives for the future of the maritime sector.

5.60 The committee again calls on the government to give serious consideration to FOC vessels and their interactions with Australian coastal shipping. The committee maintains that these vessels present serious security risks to the Australian coast, which need to be properly addressed.

Recommendation 6

5.61 The committee recommends that the Australian Government undertake a focussed and targeted review of the Australian maritime industry, with a view to growing and supporting the Australian maritime industry and developing policies that appropriately manage the operation of flag of convenience vessels in Australian waters.

Recommendation 7

5.62 The committee recommends that the Australian Government undertake a comprehensive whole-of-government review into the potential economic, security and environmental risks presented by flag of convenience vessels and foreign crews.

Senator Glenn Sterle

Chair