

# Chapter 3

## Issues

### Introduction

3.1 The main provisions of the Shipping Legislation Amendment Bill 2015 (the bill), and of the existing legislation, are outlined and contrasted in Chapter 2 of this report. While the bill, in general terms, seeks to address some of the deficiencies in the current legislation, it also responds to long term changes in the Australian freight task.

### The Domestic Freight Task

3.2 Between 2000 and 2012, the volume of domestic freight (transported by road, rail and sea) grew by 57 percent. Over the same period, shipping's share of Australia's total freight transportation fell from 27 percent in 2000 to around 17 percent in 2011–2012 (measured in mass distance terms), and comprised 10 percent of total freight volumes through Australian ports.<sup>1</sup>

3.3 Total domestic freight volumes have quadrupled over the past four decades, predominantly due to growth in road freight and recent strong growth in mining-related rail freight volumes. This growth is projected to continue. Between 2010 and 2030, Australia's overall freight task is estimated to grow by 80 percent – based on projected strong growth in domestic movements of bulk commodity exports (particularly iron ore and coal) and also by continuing growth in road freight.<sup>2</sup> For example, the aluminium industry forecast an additional 50 million tonnes of smelting capacity (almost doubling current production) would be required by 2020.<sup>3</sup> These global estimates also incorporated projected growth in Gross Domestic Product.

3.4 However, coastal shipping is forecast to increase by only 15 percent over the same period – an estimate dependent on increases in 'other coastal freight' offsetting predicted continuing declines in domestic petroleum and iron ore movements. This growth is expected to translate, by 2030, into an increase of total container movements through Australian ports by approximately 2.5 times the volume handled in 2010.<sup>4</sup>

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1 Department of Infrastructure and Regional Development, *Submission 7*, p. 4.

2 Department of Infrastructure and Regional Development, *Submission 7*, p. 4.

3 Australian Aluminium Council, *Submission 3 5*, p. 4.

4 Department of Infrastructure and Regional Development, *Submission 7*, p. 5.

3.5 Approximately 60 percent of the coastal shipping task is composed of dry bulk goods, and approximately 26 percent is liquid bulk goods.<sup>5</sup> Maritime and admiralty lawyers Parley Legal<sup>6</sup> provided the Committee with the following more detailed estimate of the tonnage of the entire coastal trade carried by coastal ships over the two most recent financial years based on Bureau of Infrastructure, Transport and Regional Economics statistics:

Items carried	2012-13 (million tonnes)	2013-14 (million tonnes)
Dry bulk cargo (eg coal, grain)	16.2	21.2
Containerised cargo	4.3	5.2
General cargo	11.8	8.6
Petroleum	6.4	8.7
Non Petroleum bulk liquids	0.6	0.6
Passengers	0.4	0.4
Total	39.4	44.3

3.6 Parley Legal concludes that, with the exception of general cargo, trade by coastal shipping has actually remained steady or has grown. It suggests that the decrease in general cargo may have arisen as a result of economic slowing, combined with a modal shift to road and rail.<sup>7</sup>

### ***The Australian coastal fleet***

3.7 For some types of cargo, there are limited numbers of Australian registered ships available. The vast majority of general, petroleum and chemical products cargoes are currently being transported by foreign flagged vessels. With the exception of the Bass Strait ferries, which are owned by the Tasmanian Government (TT Line Company Pty Ltd), there are no Australian car carriers holding a General Licence. There are also no Australian licensed heavy-lift ships, which are designed to move very large loads that cannot be handled by standard ships.<sup>8</sup>

3.8 In addition, the number of major trading vessels holding an Australian general licence fleet is in decline. Since 2005, the number of major (over 2,000 dead weight tonnes) Australian registered ships with coastal licences has more than halved – from thirty-six vessels in 2004-05 to only fifteen in 2013-14 (six of which are engaged in the Bass Strait trade). In the first two years of the operation

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5 Maritime Union of Australia, *Submission 24*, p. 16.

6 Parley Legal, *Submission 22*, p. 22.

7 Parley Legal, *Submission 22*, p. 22.

8 Department of Infrastructure and Regional Development, *Submission 7*, pp. 5-6.

of the CTA, there was a 63 percent decline in the carrying capacity of the major Australian registered vessels holding a coastal trading licence. The number of foreign ships in Australia on transitional general licences has also halved in recent years, leaving only eight currently operating.<sup>9</sup>

3.9 Australia's coastal fleet is also aging. This is significant as the age of a ship has an adverse impact on its efficiency, the level and cost of maintenance required, and (as the risk of mechanical failure increases) aging vessels also cost more to insure. As at 2013, internationally, 49 percent of trading ships (and 79 percent of the world's gross tonnage) were less than fifteen years old. In contrast, the average age of a major Australian ship operating under a general licence is 23 years and none are aged less than 15 years.<sup>10</sup> Australian ship operators have been progressively retiring their vessels, and not replacing them with general licence vessels.

### ***Passengers***

3.10 The carriage of passengers by coastal shipping is heavily focused on the Bass Strait trade, which is dominated by the general licence ferries operated by TT-Line. The coastal cruise shipping sector currently has seven General Licenced vessels, mainly operating in the expedition cruise market. Domestic passengers are also carried by large foreign-flagged cruise liners but these operate under an exemption from the Act.<sup>11</sup>

## **Issues raised by those in support of the bill**

### ***Reduced costs and greater efficiencies***

3.11 Many of those who expressed support for the bill did so by drawing attention to the deficiencies and consequences of the existing legislation. For example, the Australian Institute of Petroleum strongly supported the bill,<sup>12</sup> which it said would:

- reduce the cost impost of coastal shipping on Australian refineries, increasing their ability to compete against direct imports;
- help deliver cheaper freight costs for fuel supplies;
- create greater choice and flexibility in options to supply fuel to the significant number of terminals around Australia;

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9 Department of Infrastructure and Regional Development, *Submission 7*, p. 4.

10 Department of Infrastructure and Regional Development, *Submission 7*, p. 5; Minerals Council of Australia, *Submission 10*, p. 3.

11 Department of Infrastructure and Regional Development, *Submission 7*, p. 6.

12 Australian Institute of Petroleum, *Submission 5*, p. 3.

- reduce administration costs for industry and government – the administration costs imposed on the petroleum industry under the current legislation had no practical purpose, as there were no Australian registered petroleum tankers available to contest proposed coastal trading voyages;
- significantly reduce the complexity of rules relating to the shipping of petroleum products in Australia; and
- facilitate supply chain operations that best meet emerging fuel supply needs in regional markets across Australia.

3.12 To similar effect, the Minerals Council of Australia observed:

**Dr Kunkel:** Our industry helps underpin the coastal shipping industry, including jobs in the industry, because we are its biggest customer. Bulk commodities such as iron ore, bauxite and alumina account for 70 per cent of Australia's coastal shipping trade. The Australian minerals industry makes use of Australian coastal ships whenever it can—for example Rio Tinto Bauxite and Alumina owns and operates four ships with Australian crew as part of its integrated operations. At the same time, coastal shipping needs to be competitive and not be propped up by measures that raise costs and damage productivity.

The dynamic nature of modern supply chains, and the small scale of Australia's coastal fleet, means that minerals producers cannot always source Australian vessels when they need them ... The problem of undersupply has been exacerbated by the burdens of the Coastal Trading Act. Under the Act, extensive and onerous conditions are imposed on foreign vessels, including the requirement to undertake five voyages in a permit year and to provide detailed information about those planned voyages up to a year in advance. The current Act also gives Australian ships the power to contest voyages proposed by alternative ships. For some dry bulk commodity producers the cost of shipping final product around Australia is now about the same as shipping from Asia. Further, the ability of a general licence holder to contest a temporary licence application reduces productivity and increases uncertainty. The government's preferred option is one that the Minerals Council supports. It will deliver important net benefits to the economy as a whole. It is a sensible, pragmatic reform in the national interest.<sup>13</sup>

3.13 Shipping Australia Ltd noted that moving long-haul freight by sea was four times more environmentally efficient than rail, and twenty times more efficient than road, in terms of greenhouse gas emissions. Australia's future transport demand could not be achieved by road and rail without billions of dollars of investment in infrastructure. However, there was excess capacity available on ships currently plying the Australian coast, and it made 'absolute economic, environmental and social sense'

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13 Dr Kunkel, *Committee Hansard*, 7 September 2015, p. 24.

to have policies in place that enabled maximum use of these existing resources and capacity.<sup>14</sup>

3.14 The bill is therefore seen as providing direct economic benefits, regulatory savings and greatly increased flexibility for shippers (and thus a benefit for the Australian economy generally).

3.15 The Committee heard considerable criticism of increases in shipping costs as a result of the CTA. For example, Bell Bay Aluminium (BBA) – a Tasmanian manufacturer unable to use transport options other than shipping to transport its alumina – told the Committee:

Following the introduction of the Coastal Trading Act 2012, BBA faced a 63% increase in costs from \$18.20/t alumina (2011) to \$29.70 (2012). This compared with \$17.50/t charged by international operators in 2012. Demurrage<sup>15</sup> rates also rose from \$14,000 in 2011 to \$35,000 in 2012. The combined effects of this legislation increased annualised costs by at least A\$4 million on freight alone.<sup>16</sup>

3.16 Cristal Mining, which ships approximately 21,000 tonnes of mineral sands products from Bunbury to Adelaide each month noted that:

The CTA imposes an additional cost to the freight task of approximately \$5 million per annum when Cristal is forced to use an Australian flagged ship – this cost makes the viability of Cristal’s mining and processing operations marginal.

Foreign-flagged licence holders can operate on the Australian coast at a freight rate of \$22.50 per tonne. Since July 2012, general licence holders have been charging freight rates up to \$35 per tonne. Also Cristal is subject to demurrage on each voyage it requires. Foreign-flagged licence holders demurrage rates are \$10,000 per day, whereas the general licence holders demurrage rates are \$28,000 per day. These disparities have caused considerable financial difficulties for Cristal and other industry users dependent on the carriage of product on the Australian coast.<sup>17</sup>

3.17 The Cement Industry Federation also made a number of relevant observations, including the fact that:

- coastal shipping is central to the Australian cement industry supply chain and represents approximately 15 percent to 17 percent of its total costs;

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14 Shipping Australia Ltd, *Submission 25*, p. 3.

15 Demurrage is an ancillary charge paid by a charterer to a shipowner for delay in loading or discharging cargo.

16 Bell Bay Aluminium, *Submission 21*, p. 2.

17 Cristal Mining Australia Ltd, *Submission 6*, p. 3.

- it currently costs more to ship cement products from one Australian port to another than to import the product directly from Asia
- reducing coastal shipping regulation was not about replacing Australian mariners with foreign workers, it is about the market distortion caused by the CTA that penalises Australian manufacturers and pushes them overseas.<sup>18</sup>

3.18 However, the Committee was also told that the CTA had not increased costs in the containerised freight segment of the industry. ANL Container Line said that its average revenue per TEU had actually fallen 8 percent in the last three years. Almost uniquely, ANL said that, in its view, the current system was 'working well':

Cargo is moving with the potential for more, licence requirements are clear and so are the extra wage requirements under the Fair Work Act ... There are currently no impediments to cargo moving in terms of freight rate or available space. The current regime gives some discipline and order in terms of certainty of ongoing space and rate stability to consumers.<sup>19</sup>

3.19 In addition to the inefficiencies set out in Chapter 2, it was also suggested that the transitional general licence concept had failed to act as a bridge to a general licence because there was no obligation on an operator to make that transition, only a hope or expectation that they might. Since 2012, eight major trading ships which had operated under transitional general licences no longer operated in the Australian coastal trades, with their cargoes now being carried by foreign flag ships operated by foreign crews under temporary licences, which had become an ongoing feature of Australia's coastal shipping.<sup>20</sup>

#### ***Other economic benefits and regulatory savings***

3.20 The cost benefit analysis (CBA) included with the Explanatory Memorandum noted that passage of the bill would produce:

- an estimated economic benefit of approximately \$667.4 million over a 20-year period commencing on 1 July 2015;
- annual regulatory savings to businesses from the single permit system of \$2.4 million; and
- annual labour cost savings totalling approximately \$19 million.<sup>21</sup>

3.21 This last figure of \$19 million was the subject of considerable discussion during the Committee's hearing. The Department explained that the figure did not

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18 Cement Industry Federation, *Submission 33*, pp. 2-5.

19 ANL Container Line Pty Ltd, *Submission 38*, p. 5.

20 Australian Institute of Marine and Power Engineers, *Submission No 2*, p. 5.

21 Explanatory Memorandum, pp 75-6.

relate to reductions in the wages of *Australian* seafarers, but only to the changed timing of the requirement to pay Australian wages to *foreign* seafarers who participated in coastal trading:

The \$19 million is the reduction in wage costs that are predicted as a regulatory save for foreign flagged ships ... At the moment under the current legislation they have to start paying their foreign workers – it is a foreign ship with foreign workers – under the Fair Work Act system once they have done two voyages ,, over a 12-month period. This \$19 million in savings under the proposed legislation is that a foreign ship can do up to 183 days ducking in and doing work ... cumulative over a 12-month period. They can do that before they start paying the Australian wages ... I want to reiterate this has nothing to do with Australian ships.<sup>22</sup>

3.22 Analysis undertaken for the RIS also estimated that the current legislation could be expected to reduce Gross Domestic Product by between \$242 million and \$466 million from 2012 to 2025 in 2012 net present value terms.<sup>23</sup>

3.23 One example of this was provided by Gypsum Resources Australia (GRA), which contended that its competitiveness in the Australian gypsum market was largely dependent on the competitiveness of its coastal shipping services:

In February 2014 GRA applied for, and was subsequently denied, a temporary licence to enable it to compete for gypsum sales in Brisbane. The dominant factor in the denial was an objection by a general licence holder ... The denial of the licence rendered GRA's tender for the work uncompetitive. These customers were lost to Thai and WA gypsum which were transported on international vessels. Neither GRA nor the general licence holder benefited.<sup>24</sup>

3.24 Added to issue of costs was an 'unworkable procedural licence structure, including onerous reporting.'<sup>25</sup> As the Minerals Council stated:

... for us a lot of it is not the question of cost, even though that is important; it is the inflexibility of the current licensing arrangements. Our members run very dynamic schedules. Just-in-time production and delivery now extends to the minerals industry as with every other. A lot of customers do not maintain stockpiles of certain ores; they have to be provided at very short notice. And, again, we now have 15 Australian flagged ships, so, when a producer gets an order and wants to get that product to market quickly but does not have access to an Australian vessel, they have to apply for a temporary licence and do no fewer than five voyages. They have to indicate all details of those voyages in

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22 Dr Morehead, *Committee Hansard*, 7 September 2015, p. 54.

23 See analysis of this estimate by The Australia Institute, *Submission 30*, p 7.

24 Gypsum Resources Australia Pty Ltd, *Submission 15*, p. 2.

25 Australian Shipping Consultants, *Submission 17*, p 1.

advance, including tonnage rates, ports and discharge ports. All those details have to be outlined and publicised. Then, after having done all that, they are subject to contestation by another shipper and have to go through another level of uncertainty and delay. That is just too much of an impost to be able to produce efficiently. It is why we are getting that perverse outcome of what is meant to be encouraging a vibrant domestic industry leading to substitute importing from Asia or other economies instead.<sup>26</sup>

### ***Need for competition***

3.25 Many who supported the bill framed their support in terms of a need for greater competition. For example Shipping Australia Ltd said that the utilisation of excess capacity on ships plying the Australian coast would provide 'a significant additional transport option for domestic shippers, would also increase competition amongst existing providers, furthering the downward pressure on freight rates and assisting the viability of Australian manufacturers, primary producers and consumers of domestic goods.'<sup>27</sup>

3.26 The Business Council of Australia saw the bill as removing anti-competitive trading restrictions and excessive red tape in the coastal trading sector, as well as improving the efficiency of Australia's shipping transport sector and lifting the competitiveness of Australian manufacturing (metals, food, chemicals, petroleum etc), including in many parts of regional Australia.<sup>28</sup>

3.27 The Australian Aluminium Council observed that 'the current regime led to what was essentially a General Licence holder monopoly for the dry bulk market. This produced higher shipping costs for our industry and a perverse situation where the General Licence holder could use foreign flagged vessels for journeys at a higher cost than could be accessed directly by the customer.'<sup>29</sup>

### ***Emergency permits***

3.28 A number of submissions referred to a need for greater flexibility in the issue of emergency permits. As noted in para 2.10, the CTA restricts the issue of emergency permits to specified situations of natural disaster. This was said to be even less flexible than the position under the old *Navigation Act 1912*. The bill makes no provision for emergency permits.

3.29 Alcoa of Australia Ltd and the Australian Aluminium Council suggested that the 10-day permit approval period proposed under the bill should be

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26 Dr Steen, *Committee Hansard*, 7 September 2015, p. 27.

27 Shipping Australia Ltd, *Submission 25*, p 3.

28 Business Council of Australia, *Submission 40*, p. 1.

29 Australian Aluminium Council, *Submission 35*, p. 2.



accompanied by a 24-48 hour 'emergency' permit provision to allow shippers to respond to unforeseen circumstances such as vessels needing to be substituted due to weather delays, port congestion and force majeure events. Without an ability to qualify a vessel within 24–48 hours, disruptions to production supply became a real risk for Australian businesses. It was suggested that perhaps a higher fee could be payable when an emergency permit was sought – much like an emergency passport.<sup>30</sup>

## **Issues raised by those opposed to the bill**

### ***Inconsistencies in the cost benefit analysis***

3.30 Many of those who opposed the bill drew attention to what were seen as inconsistencies in the accompanying cost benefit analysis. For example, The Australia Institute was of the view that 'neither the RIS [Regulation Impact Statement] nor the CBA [cost benefit analysis] are documents that provide a sound basis for decision making and policy development. Both largely ignore the economic context of the coastal shipping industry and contain various omissions and technical flaws that reduce their usefulness.'<sup>31</sup>

3.31 Parley Legal claimed that the Australian registered shipping industry was in fact much larger than the RIS inferred.<sup>32</sup> In addition, a number of technical shortcomings were suggested,<sup>33</sup> including:

- its failure to properly identify all costs and benefits as it did not include the costs to those whose jobs would be lost under the proposal; while the costs to Australian seafarers were not considered, the benefits accruing to foreign-owned companies were included;
- its use of faulty methodology – using theoretical data derived from the Bureau of Infrastructure, Transport and Regional Economics model, without any comparison against empirical data from the annual coastal licensing voyage reports for accuracy;
- its assumption of very high exchange rates (\$A0.90 and 1.00 to the \$US) which were said to overstate the benefits of the reform to users of shipping by up to 35 percent;

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30 Alcoa of Australia Ltd, *Submission 14*, p. 1; Australian Aluminium Council, *Submission 35*, p. 2; Bell Bay Aluminium, *Submission 21*, p 2.

31 The Australia Institute, *Submission 30*, p 5.

32 Parley Legal, *Submission 22*, p. 15.

33 See generally submissions from the Maritime Union of Australia (*Submission 31*); Parley Legal (*Submission 22*); Maritime Industry Australia Ltd (*Submission 24*); and North Star Cruises (*Submission 36*).

- the apparent inclusion in its calculations of Weipa to Gladstone bauxite shipping by Rio Tinto – this is intrastate shipping not covered by the coastal shipping regime;
- the apparent exclusion of non-Bass Strait General/Break bulk cargo from its calculations;
- the inclusion, as a regulatory saving, of a reduction in reporting – this was said to be true only for companies previously reporting as temporary licence ships; companies operating general licence ships would actually face a doubling of the reporting burden under the bill; and
- incorrect statistics on the number of ships operating in the expedition cruise ship market.

3.32 The Department responded to criticisms of the RIS (and the CBA) by noting that it was 'a very conservative document' that had been 'accepted by the Office of Best Practice Regulation as meeting government requirements for these regulatory statements':

It is a transparent document. It reports all the assumptions that are made that underpin it. The Australia Institute make statements about a deficiency in not considering a loss of jobs in the Australian seafaring sector. That is a result of the methodology for producing a RIS, where, in technical terms, job losses are regarded as an opportunity cost, basically a transfer within the economy. So the absence of the analysis of the loss of seafaring jobs is not a deficiency of the RIS given the purpose that the RIS has.

In terms of the analysis of job losses, the figure that is quoted in the RIS and that is referred to in the Australia Institute document is a figure of the number of seafarers in the bluewater sector coming out of the 2012 maritime industry census, which is the most definitive data we have got, which is 1,177 seafarers. We believe that the analysis which the Australia Institute does is an overestimate of the losses of jobs.<sup>34</sup>

### ***Consultation***

3.33 A number of those who opposed the bill expressed disappointment at the consultation process that had given rise to the bill. For example, Maritime Industry Australia Ltd was of the view that 'poor consultation has resulted in a flawed solution being developed'.<sup>35</sup>

Consultation on the proposed solution was extremely limited. The industry round table on 2 February is noted as including 'The attendees at this meeting were the largest companies and stakeholder groups in the

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34 Mr Sutton, *Committee Hansard*, 7 September 2015, p. 56.

35 Maritime Industry Australia Ltd, *Submission 24*, p. 15.

industry ...' This is a misrepresentation. A number of vocal but relatively minor cargo interests were included at the same time the largest carrier of coastal containers (ANL) was not invited.

Participants were provided with 2.5 days notice of the event which meant that several CEOs and senior executives were unable to make the meeting. This was the only discussion that took place on the development of the proposed Bill.<sup>36</sup>

3.34 The Department responded by noting that the round table, which was 'focused on seeking views from businesses and industry associations affected by the existing regulatory framework,' was actually one of the last consultation sessions:<sup>37</sup>

It was consultation in relation to the options paper commenced towards the beginning of last year – March, from memory – following the launch of the options paper. We advertised sessions in relation to consultation around the country and undertook both group sessions – which were open to everybody from the industry and more broadly – and offered one-on-one sessions with those companies that wanted to present separately to that. In conclusion – not in conclusion, because consultation has continued since then – the Deputy Prime Minister held an industry round table in February this year and invited a range of people, stakeholders.

### ***Loss of employment***

3.35 As indicated above, many of those who opposed the bill cited concern at the potential for loss of employment in the shipping industry. The Maritime Union of Australia (MUA) stated broadly that 'under the Bill there will be no jobs created, there will only be job losses – and severe job losses,'<sup>38</sup> and that the bill would destroy the Australian shipping industry because 'it intentionally removes all preferential treatment for Australian ships, which has been at the heart of maritime and shipping policy in Australia for over a century.'<sup>39</sup>

3.36 More specifically, the MUA claimed that the bill would remove over 2000 highly qualified Australian seafarers (on MUA analysis, and over 1000 on the Government's own analysis) and over 10,000 related Australian maritime jobs.<sup>40</sup>

3.37 Subsequently, in response to a question taken on notice, the MUA refined its estimate as a total of 1980 job losses across the following industries and regions:

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36 Maritime Industry Australia Ltd, *Submission 24*, pp. 15-16.

37 Department of Infrastructure and Regional Development, Answer to Question on Notice; Ms Zielke, Committee ansard, 7 September 2015, p 58.

38 Mr Pickette, *Committee Hansard*, 7 September 2015, p. 13. See also Australian Maritime Officers Union, *Submission No 26*.

39 Maritime Union of Australia, *Submission 31*, p. 2.

40 Maritime Union of Australia, *Submission 31*, p. 3.

Bass Strait: **382** – approximately 60 percent Tasmania and 30 percent Victoria  
LNG: **176**

Petroleum and gas trade: **72**

Dry bulk trade: **226** – mainly in the eastern states

Bauxite/alumina trade: **136** – mainly in Queensland and New South Wales

Northern Australia remote community servicing: **302** – mainly from North Queensland and the Northern Territory

Cruise shipping: approximately **150**

Other:<sup>41</sup> **500** – mainly in the Northern Territory and Queensland.<sup>42</sup>

3.38 Maritime Industry Australia Ltd estimated job losses from general and transitional general licence ships of at least 1300 – a figure that took account only of seagoing jobs lost, and which did not include shore-side positions that would also be lost following business restructuring or closure.<sup>43</sup>

3.39 The reason for this anticipated loss of employment is the disparity in wages paid to Australian and foreign crew members. Based on data provided by the Maritime Union of Australia, The Australia Institute estimated overseas crew wages at 67 percent of Australian wages for a master seaman, and 31 percent for an able seaman. As crewing costs made up between 36 percent and 42 percent of ship operating costs, this put Australian crews at a 15–20 percent disadvantage against international ships in terms of operating costs.<sup>44</sup>

3.40 Some considered that employment should be considered more broadly than just the maritime industry. For example, Ports Australia was of the 'strong view' that:

... policy on the regulation of coastal shipping can no longer be based on the proposition that it maintain a relatively small number of high costs jobs for Australian seafarers particularly at the expense of jobs elsewhere in the Australian economy including the manufacturing sector. It has had a particularly deleterious impact on Tasmania. We are at a loss to comprehend the reason why the supporters of the current regime remain steadfastly oblivious to these job losses in favour of a highly protected few.<sup>45</sup>

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41 Carpentaria Management Services, Paspaley Pearlring Co, Port of Brisbane Corporation, V-Ships, Gardline and P&O Maritime Services.

42 Answer to Question on Notice, received 29 September 2015.

43 Maritime Industry Australia Ltd, *Submission 24*, p. 14.

44 The Australia Institute, *Submission 30*, p. 6.

45 Ports Australia, *Submission 37*, p 3.

3.41 In relation to the bill's effect on employment, the cost benefit analysis included with the Explanatory Memorandum noted, first, that Australia's coastal seagoing workforce was estimated at 1177 jobs, and that 'there is the potential for some seafarer jobs to be lost, even with the requirement to maintain a minimum contingent of Australian crew on board vessels spending more than 183 days undertaking coastal shipping in a permit period.' However:

The issue of any impact on Australian jobs must be considered in the broader context of increased domestic shipping activity – the increase in associated on-shore work and the impact lower shipping costs will have on onshore industries reliant on shipping services. The reforms may allow these industries to be more competitive and this may prevent further job losses in Australian manufacturing, resources and other industries. The modelling undertaken for the cost-benefit analysis did not include the cost of the potential loss of Australian seafarer jobs.<sup>46</sup>

3.42 In relation to job losses in the maritime industry, the Department stated that the RIS did not identify specific job losses because it was not required to identify actual job losses, and it presumes that those who lose a job will move to another job.<sup>47</sup>

3.43 In any event, job losses remain essentially conjectural – based on an assumption that all shipowners will make a commercial decision to reflag and then restrict their involvement in coastal shipping to less than 183 days. Some shipowners (for example, Rio Tinto) had indicated that they intended to maintain their current level of Australian crewed vessels. Others (for example, the Tasmanian government-owned TT Line) were likely to.

3.44 The Committee also heard that there was a growing measure of international harmonisation in the terms and conditions of shipping and employment for seafarers:

The combined effect of International Regulations enforce common standards to safety, as administered under the Port State (MOU) inspection regime (AMSA), and for improved crew standards enforced by the Maritime Labour Convention, equally embraced by National as well as Open Registry ships. These developments add to the common ratification of many other International Conventions, all having the effect of raising and maintaining a more or less common standard across ships of all registries. Wage levels do still vary and are negotiated sometimes individually by Shipowners and their labour, although increasingly the so-called ITF standard agreements are gaining prominence.<sup>48</sup>

3.45 The Department noted that Australia was a signatory to the Maritime Labour Convention 2006, which had been ratified by more than 80 percent of the world's

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46 Explanatory Memorandum, pp 69, 75.

47 Mr Sutton and Ms Zielke, *Committee Hansard*, 7 September 2015, p 56.

48 Australian Shipping Consultants Pty Ltd, *Submission 17*, p. 4.

global shipping tonnage. The Convention provides an international safety net of standards regulating seafarer employment relationships for the world's 1.5 million seafarers and creates a level playing field for shipowners and operators.<sup>49</sup>

### ***Loss of employment-related skills***

3.46 In addition to possible effects on maritime employment, those opposed to the bill also saw it affecting Australia's wider maritime skills base, and reducing skills and opportunities in related onshore fields such as pilotage, port harbourmasters, towage, marine rescue and salvage, bunkering, maritime regulators, maritime training, marine law, marine certification and marine insurance.<sup>50</sup>

3.47 For example, a submission from the National Maritime Training Partnership considered that there was little in the bill to encourage the development of future generations of seafarers. Given the high regard in which AMSA qualifications were held, this was seen as a missed opportunity. Also, no mention was made of the need for Australian qualifications to be held by those in the Australian maritime industry.<sup>51</sup>

3.48 Australian Shipping Consultants Pty Ltd saw it as 'obvious' that positions for seafarers, officers and ratings would reduce with a declining coastal fleet, and that this would, in turn, result in reduced funds for local training. However, it was also submitted that training would still take place (including for Australians) on foreign ships. It was unlikely that Australia would find itself unable to fill the demand for the numerous land and port based positions requiring professional and experienced mariners – they would just be sourced more widely, including from the many international applicants attracted to life and work in Australia.<sup>52</sup>

### ***Cabotage and national interest considerations***

3.49 Cabotage refers to the laws by which countries reserve the carriage of cargoes on their coast to ships of that country.<sup>53</sup> Such laws were said to be common internationally, were a response to the dilemma posed by the over-availability of low-wage foreign ships, and were used by most of Australia's major trading partners.

3.50 For example, in the United States, cabotage is provided for in the US *Merchant Marine Act 1920* (also known as the Jones Act), which reserves to US-flagged vessels (which must also be US-citizen-crewed and constructed in the US) the

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49 Department of Infrastructure and Regional Development, *Submission 7*, p. 16.

50 Maritime Union of Australia, *Submission 31*, p. 3; Australian Maritime Officers Union, *Submission 26*, p.5.

51 National Maritime Training Partnership, *Submission 1*, p. 1.

52 Australian Shipping Consultants Pty Ltd, *Submission 17*, p. 6.

53 Australian Institute of Marine and Power Engineers, *Submission 2*, p. 12.

right to transport cargo and passengers between US ports.<sup>54</sup> Similarly, in Canada, a foreign vessel cannot transport cargo within domestic waters if a Canadian vessel is available (however a trade agreement negotiated between Canada and the European Union could see changes to cabotage laws and Canadian waters may be opened up to European vessels).

3.51 Even countries with relatively low labour costs had sought to assist their coastal shipping industries. For example:

- in Indonesia, article 8 of Maritime Law No 17 of 2008 provides that activities relating to domestic sea transportation must be performed by an Indonesian sea carriage company using an Indonesian flagged vessel manned by Indonesian crews; non-Indonesian sea flagged vessels are prohibited from carrying passengers and/or goods between islands or ports in Indonesian waters, and these principles have been extended to all maritime operations in the offshore oil and gas sector;<sup>55</sup>
- India's cabotage laws make it mandatory to use domestic ships for cargo transport between Indian ports unless an Indian vessel is not available and a freight tax is imposed foreign ships engaged in inter-port trade (these laws are currently being reviewed and proposed changes include increasing access for some vessels and a tax on foreign vessels that operate along the east coast of India); and
- in Brazil, coastal shipping laws are designed to protect domestic interests and foreign vessels can only be used if they are carrying Brazilian tonnage or if they have been built in a Brazilian shipyard.

3.52 In addition to maintaining levels of maritime employment and skills, cabotage laws were also seen as potentially making a contribution to national security. Without a significant 'home fleet' as a 'first back-bone of logistics support' available to be used to service needs arising out of natural disasters, warlike threats or war emergencies – where large numbers of ships of varying types would be required to move military or civilian cargoes around the vast Australian coastline – Australia 'could be placing itself at some risk in a future event'.<sup>56</sup>

3.53 This view was supported by the MUA, which said that the bill would significantly impact on Australia's fuel security by removing one of the mechanisms

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54 Maritime Union of Australia, *Submission 31*, p. 5.

55 Australian Institute of Marine and Power Engineers, *Submission 2*, p. 13.

56 Australian Shipping Consultants Pty Ltd, *Submission 17*, p. 5.

by which Australia could increase security of supply of domestic refined petroleum products, being reservation of Australian petroleum tanker capacity.<sup>57</sup>

3.54 The Committee was also told that ships on the Australian General Register employed only seafarers who had successfully submitted to rigorous criminal background checking, whereas foreign seafarers working on temporary licence vessels need only to have been granted an 'electronically generated Maritime Crew Visa which involves a substantially lower standard of scrutiny':

High consequence and dangerous cargoes, like weapons grade ammonium nitrate for the mining industry, is currently traded on the Australian coast on foreign ships with crew sourced from nations where those citizens pose a higher security risk than Australians.<sup>58</sup>

3.55 In the words of the Australian Institute of Marine and Power Engineers, passage of the bill would mean that:

Australia would knowingly concede a large degree of sovereign control over vessels which are routinely operating in Australian waters. This is because in international maritime law, the flag of the ship determines the law applying to the ship. Foreign flag ships are subject to the laws of the flag country – except to the extent that another country imposes conditions on that ship operating within the country's transport sector.

3.56 In relation to health and security checks on foreign vessels (specifically those carrying fuel), the Australian Institute of Petroleum stated that these were consistent with International Maritime Organisation requirements and international petroleum company security and safety requirements for company operated vessels and for contractor/spot market vessels. Specific international codes included:

- ISM International Ship Management
- STCW 2010 – Standards of Training, Certification and Watch keeping, Requirements for hours of Work and Rest, Medical fitness standards for seafarers; and
- ISPS – International Ship and Port Facility Security Code.<sup>59</sup>

### ***Unfair competition***

3.57 While those who supported the bill referred to the need to make coastal shipping more efficient through competition, those who opposed it saw this competition as essentially unfair. For example, shipowner Intercontinental Shipping advised that:

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57 Maritime union of Australia, *Submission 31*, p.45.

58 Maritime Union of Australia, *Submission 31*, p. 27.

59 Maritime Union of Australia, *Submission 31*, p. 27.



A number of foreign ship owners have numerous ships visiting Australia every month. By employing a selection of their ships as they become available on the Australian coast they will be able to cover many ships' worth of Australian cargoes. Their foreign crew pays no Australian tax and the owner pays a minute amount of company tax in the form of 'freight tax'. The foreign crew costs are more than \$1,000,000 less than our Australian costs.

On our volume shipped of 358,000 tonnes last year, this represents \$3/tonne, or 11% of our freight rate. Thus they will be able to undercut our rate by 11% to earn the same amount of net revenue.

We will become completely uncompetitive.<sup>60</sup>

3.58 The Australia Institute stated that the effect of the bill would be to ensure that coastal shipping becomes the only service sector facing competition that was able to use foreign labour paid at a foreign rate while actually operating in Australia.<sup>61</sup>

3.59 CSL Australia responded that no other maritime nation requires foreign seafarers on foreign vessels operating within their coastal waters to be paid in accord with national labour agreements.<sup>62</sup>

#### *Temporary benefits*

3.60 The Maritime Union of Australia declared that foreign shipowners involved in international trade who offered their ships for carriage of parcels of Australian coastal sea freight had 'a dramatically different cost structure' and could therefore offer a lower freight rate. That international cost structure was influenced by factors such as international freight pricing, taxation and country of register charges (which are generally non-existent), fuel costs, capital costs, regulatory compliance costs and labour costs.<sup>63</sup>

3.61 However, it was argued that once Australian General Register Ships had disappeared (following the passage of the bill), there was no guarantee that lower freight rates would continue:

Due to relatively low sea freight volumes in Australia, handing over the domestic sea freight market to foreign registered ships would, over time, result in certain foreign shipping lines dominating certain trade routes under essentially monopoly and cartel conditions, and inevitably lead to higher freight rates and a lack of services tailored for the Australian market.<sup>64</sup>

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60 Intercontinental Shipping, *Submission 18*, pp. 1-2.

61 Australian Institute of Petroleum, Answer to Question on Notice.

62 CSL Australia, *Submission 19*, p. 5.

63 Maritime Union of Australia, *Submission 31*, pp. 24-5.

64 Maritime Union of Australia, *Submission 31*, p. 25.

*Impact of the bill on intermodal transport*

3.62 The Committee was also told about the impact of the bill on other modes of transport. Freight on Rail Group drew the Committee's attention to the omission in the RIS of any consideration of the effect of the bill on land freight transport.

Some of the proposed regulatory changes in the Bill would have the effect of providing an unreasonable competitive advantage to foreign ships that might choose to compete in the domestic freight market.

An unreasonable competitive advantage would particularly arise because the Bill proposes allowing foreign ships competing in the domestic freight market against land freight transport operators for up to six months of the year to be exempt from Australia's workplace relations regulations ...

As a consequence we would anticipate there would be negative impacts on land based transport modes ... with consequential reductions in revenue for rail freight businesses ...

The domestic freight market should be regulated on the basis of competitive neutrality between the transport modes. As it is currently drafted, the Bill does not accord with this principle.<sup>65</sup>

3.63 The Rail, Tram and Bus Union of Australia estimated that, if the bill were passed, around 10 to 12 percent of volume of intermodal freight currently transported by rail may shift to foreign-operated coastal shipping services in the short term. This could lead to the loss of around 300 jobs in the non-bulk rail freight sector in the short term.<sup>66</sup>

3.64 The Committee notes estimates in the RIS concerning the projected increase in the transport task over the next 15 years and is confident that any effect that the bill might have on other modes of transport will be restricted and very short term.

***Cruise ships***

3.65 As noted in para 2.19, cruise ships (as defined) remain exempt from the provisions of coastal shipping legislation. Indeed, the industry's 'highly impressive growth profile' – it is the fastest growing sector of Australian tourism and has experienced double digit growth over the past five years – was said to have been facilitated, in part, by this exemption. However cruise ship operators identified some unintended consequences of particular concern to their industry.<sup>67</sup> These included:

- the need for a permit period longer than 12 months in duration; and

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65 Freight on Rail Group, *Submission 29*, pp. 3-4.

66 Rail Tram and Bus Union, *Submission 23*, pp. 2-3..

67 See Carnival Australia, *Submission 28*; Cruise Lines International Association Australasia, *Submission 20*; and Tourism and Transport Forum, *Submission 11*.

- the need to streamline dry-docking arrangements.
- the need to make provision for smaller 'adventure' cruise ships.

#### *Longer permit periods*

3.66 While the bill proposes a general permit period of 12 months, a number of cruise ship operators noted that this did not reflect or support the commercial planning and deployment practices of the industry, which typically operate on a minimum two year planning cycle. Cruise programs were generally published (and available for purchase) two years in advance. There were obvious implications should the Minister refuse to renew a permit after 12 months.

3.67 The industry suggested that cruise ship operators be able either to obtain a longer term permit or, alternatively, that they be issued with a rolling permit that remained valid until it was breached.<sup>68</sup>

#### *Dry dock arrangements*

3.68 All cruise ships are required to undertake mandatory dry docks, with the timing and duration determined by the age and condition of the ship. On average, most ships deployed in the Australasian region are required to dry-dock twice within a five year period. In addition to these scheduled dry docks, there are occasions where mechanical issues arise which require a ship to be dry-docked for repair. These, by definition, tend to be unplanned and emergency in nature with extremely short lead times. An average dry dock period would last for 14 days, with an average cost to the shipowner of over A\$20 million.<sup>69</sup>

3.69 Previously, a ship entering dry dock in Australia was regarded by Customs as having been imported under the Customs Act. This interpretation has had a significant detrimental impact on both maritime repair facilities in Australia, and the economic benefits that accrue from dry-docking activities, and many scheduled dry docks have now moved to Singapore.

3.70 While the proposed permit system appears to simplify the dry dock arrangements, it does so only for those ships which have decided to undertake domestic shipping activity that requires a permit. Additionally, where a ship enters a dry dock while holding a permit, there is an issue as to whether the time in dry dock is recognised in calculating the days the ship has engaged in coastal shipping; if so, this has the potential to limit domestic cruise activity and, if the time spent in dry dock is as a result of an emergency, may result in an intended breach of the 183 day threshold.

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68 Cruise Lines International Association Australasia, *Submission 20*, p. 2.

69 Cruise Lines International Association Australasia, *Submission 20*, pp. 4-5.

3.71 The industry proposes that the Customs Act be amended to ensure that cruise ships entering dry dock in Australia<sup>70</sup> are not deemed to be imported – this would then remove the need for dry docking and importation to be part of the permit system and allow cruise ship operators to maximise their coastal shipping activity within the 183 threshold.<sup>71</sup>

#### *Smaller 'adventure' cruise ships*

3.72 Noting that expedition cruise shipping represented the 'high-end and high-value part of the cruise ship market', but that expedition cruise ships generally fell below the exemption threshold outlined above, Tourism and Transport Forum proposed that the benefit of the exemption should be extended to smaller cruise ships.<sup>72</sup>

3.73 One Australian expedition cruise ship operator – North Star Cruises Australia – noted that the effect of the bill was to allow small foreign-owned and operated expedition cruise ships to operate in Australian regions and allow foreigners unfettered access to any remote areas of Australia without oversight by police, Customs or immigration. North Star proposed that the words 'is greater than 15,000 GRT' be inserted in subparagraphs 13(1)(a)(ii) and (iii) of the bill as a means of supporting the position of smaller operators.<sup>73</sup>

### **Committee comments**

3.74 The Committee has considered this Bill from a national rather than a purely sectional perspective. The existing legislation – the Coastal Trading Act – is clearly inadequate. It has failed to revitalise coastal shipping – indeed it seems, perversely, to have facilitated its continuing decline, making it often more economic to import goods than to ship them locally. There are now fewer Australian flagged vessels, there is less reason to use them, and there are more and more impediments which prevent shippers making efficient and rational transport choices.

3.75 Coastal shipping essentially remains a service industry, dependent on others for its continuing health. Yet the legislation governing shipping seems self-absorbed, and intent on making things as difficult as possible for those seeking to use its services. As the Committee was told, the emphasis on the views of shippers – those responsible for the cargoes moving on the ships – is entirely appropriate; the demand for shipping capacity is derived from the requirement for the

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70 Garden Island in Sydney is now the only dry dock facility for large vessels in Australia.

71 Cruise Lines International Association Australasia, *Submission 20*, p. 5.

72 Tourism and Transport Forum, *Submission 11* p. 1.

73 North Star Cruises Australia Pty Ltd, *Submission 36* p. 11.

movement of raw materials and manufactured products, not the needs of ships or their crews.

3.76 Failing to pass the bill will not change the course of Australia's coastal shipping industry. Its slow decline is likely to continue, with the expiration of transitional general licences and ongoing changes to Australian manufacturing hastening that decline.

3.77 On the other hand passing the bill is likely to enable Australian producers to access cheaper, more flexible and more responsive options for transport. As Ports Australia put it: the coast should be liberalised to ensure coastal shipping services are more accessible and price competitive; adopting this strategy will assist the manufacturing sector and offers the best prospect of developing the coastal shipping task. The Committee also notes with approval the observations of mineral sands miner Cristal Mining Australia Ltd in its submission to the inquiry:

The last 30 years of reviews demonstrate the objective of a viable and sustainable Australian-flagged coastal shipping fleet is receding ever further into the distance. That objective, although nationally reassuring, should not be placed ahead of the economic viability of many other Australian businesses that depend on reasonable cost coastal shipping options. The jobs of a very small number in the maritime sector cannot artificially be made more valuable than those of thousands in transnational value-adding industries ... We need to stop insisting on a highly regulated, costly and inefficient protectionist environment to attempt to preserve a declining coastal shipping industry because all the other Australian industries dependent on coastal freight are being disadvantaged.<sup>74</sup>

3.78 The bill is a response to failure. It removes impediments, leverages strengths and reduces costs, and its passage will benefit the economy generally.

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74 Cristal Mining Australia Ltd, Submission , p 4.

**Recommendation 1**

**3.79 The Committee recommends that the bill be passed.**

**Recommendation 2**

**3.80 The Committee recommends that the Government give further consideration to:**

- **the desirability of providing a mechanism for emergency permit applications; and**
- **the need to clarify the effect of the bill on the operators of cruise ships.**

**Senator the Hon Bill Heffernan**

**Chair**