

# **A REVIEW OF PART X OF THE TRADE PRACTICES ACT 1974**

A joint submission by the Western Australian Shippers Council  
Incorporated (WASC) and the Chamber of Commerce & Industry of  
Western Australia (CCIWA)  
to the Productivity Commission.

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Address: 180 Hay Street, East Perth, WA 6004

Phone: 08 9365 7637

Fax: 08 9365 7616

## **Submission**

The Chamber of Commerce & Industry of Western Australia (CCIWA) is the peak industry body in Western Australia, representing some 5000 businesses across all industry sectors many being involved in exporting, importing or both.

The Western Australian Shippers Council (WASC) is a designated secondary shipper body for Western Australian shippers.

As such both organisations welcome the opportunity to present views for the record on the current inquiry into the future directions of Part X of the Trade Practices Act 1974.

The WASC provided a detailed submission for the review held in 1993 when our unequivocal recommendation was for retention and strengthening of the Part X provisions. However our submission and that of CCIWA to the last review held in 1999 highlighted considerable changes to the international shipping industry since the 1993 review and the necessity and effectiveness of the shipping conferences in our opinion had declined and more competitive independent operators had emerged.

The CCIWA and WASC philosophically support maximising competition within the Australian economy, which would call for the termination of Part X, however two major implications have always been carefully considered in the debate on whether to retain or rescind Part X:

- 1. If Part X is rescinded is there risk, particularly for Western Australia that service levels will be greatly reduced?*

Whilst in the past CCIWA and WASC have both considered this a possibility it is now our belief that market forces will determine the level of service to and from Fremantle and whether Part X remains or not shipping lines will continue to provide service purely on the commercial viability.

There has been a concentration of shipping in the last few years involving the world's major shipping lines forming alliances. These alliances now virtually control the shipping on the major east-west trades into and out of Europe the USA and Asia and massive new building programmes are under way to service them. As there are no plans to our knowledge for significant demolition of existing vessels on the east –west routes it is realistic to expect that there will be a flow on effect of larger vessels moving out to other routes providing greater capacity all round and more competitive freight rates. We therefore believe that market forces, which already dictate the level of service provided to and from Australia, will continue to do so and not provisions provided under Part X of our Trade Practices Act. .

*2. What would be the effect on shipping rates should Part X be rescinded?*

Since the last review of Part X in 1999 there has been an increase in the imbalance in trade with imports much greater than exports in container shipments. This situation has benefited exporters because shipping lines have had to accept market forces setting the freight rates rather than the system of using conference set tariff rates. CCIWA and WASC believe that should Part X be rescinded then such market forces would in the main continue to dictate freight rates and adequate safeguards be provided, as in other industries, through provisions set out under Part 1V of the Trade Practices Act.

There is no doubt that changes will continue in the international shipping industry and therefore prediction of future direction is difficult. Due to this uncertainty for Australian shippers the need for protection is considered a continuing necessity however in recent years experience has shown that such protection is not adequately provided through the current provisions of Part X of the Trade Practice Act.

We have seen in recent years a liking by shipping lines to form 'Discussion Agreements', which in the view of CCIWA and WASC are formed in an effort to limit competition on price and capacity through combining conference and non-conference carriers in a specific trade. Through Part X protection shipping lines in this way can discuss the freight rate levels each is charging which we believe results in a reduction

of competition in that trade. With the advent of Discussion Agreements we have also seen a considerable increase in the number of additional charges imposed primarily on Australian Importers as well as frequent and considerable freight rate increases. Such practices have a severe detrimental effect on trade and complaints against specific Discussion Agreements have been raised on more than one occasion with the Australian Consumer and Competition Commission (ACCC).

There is no doubt that the Part X provisions are not as effective as they were and even supporters of retention see the need for amendments to be made. CCIWA and WASC believe that to be of benefit to Australian shippers the amendments necessary would be totally unacceptable to the shipping lines (i.e. price fixing no longer exempt, discussion agreements no longer eligible) and consequently we could end this review in a status quo situation, which from a shippers point of view is also unacceptable.

Given the prevailing market situation and the unsatisfactory protection under current Part X provisions CCIWA and WASC support adopting the option of:

“Abolishing Part X, thus requiring shipping lines and shipper bodies to seek individual exemptions through the authorisation process established under Part V11 of the Trade Practices Act”

However in our opinion for this to be effective and to operate efficiently the following should be considered:

1. The process of obtaining authorisation – *recommend initial interim authorisation*
2. Processes for reviewing and revoking authorisations – *recommend a much speedier process be introduced.*
3. Type of activity that can be authorised – *recommend Discussion Agreements not be allowed.*
4. Careful consideration of allowing price fixing: *recommend only through demonstration of offsetting public benefit.*
5. Continuance of shipper body powers currently provided for under Part X – *Recommend:*

*1 Maintain the Australian Peak Shippers Association as the peak industry shipper body and investigate possible funding options.  
2. Maintain where appropriate role of secondary shipper bodies.*

6. Possible consequence of inability to impose obligations on shipping lines should conferences move offshore - *Recommend Shipping Lines be required to maintain a registered office in Australia.*

## **Conclusion**

Since the last review international liner shipping arrangements have or are being reviewed by governments of our major trading partners. It is the understanding of CCIWA and WASC that many of these countries are considering rescinding any special considerations they have provided in the past in the form of exemptions from their usual anti-competitive legislations.

CCIWA and WASC believe that government is currently reviewing Australian criminal law legislation with a view to criminalising cartel behaviour. CCIWA and WASC suggest that should this be the case there will be severe conflict between the Australian criminal law legislation and the current exemption provisions of Part X of the Trade Practices Act.

CCIWA and WASC believe that there is no longer any justification for the liner shipping industry to be granted any special provisions in relation to Australian competition policy and should, as with all other industry sectors, be subject to all aspects of the Trade Practices Act.

11<sup>th</sup> August 2004

