

**SUPPLEMENTARY SUBMISSION
TO THE PRODUCTIVITY COMMISSION REVIEW OF
PART X OF THE TRADE PRACTICES ACT 1974**

**From
Chamber of Commerce & Industry of Western Australia and
Western Australian Shippers Council Inc.**

The various first round submissions to the Productivity Commission have been carefully studied and the range of differing opinions considered. However no argument has convinced either the CCIWA or the WASC to alter our original conclusion '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.

Part X of the Trade Practices Act should therefore be rescinded.

The following statements were raised in various first submissions or in the media debate on the Part X Review and we believe worth highlighting:

- *ACCI recognises that if Part X is rescinded, that some transitional arrangements and period may be required to allow the liner shipping industry, both service providers and users, time to adjust. In this regard, a three-year transitional period should be allowed, with the register of agreements under Part X being closed immediately upon enactment of the necessary legislative changes. At the end of the three-year period, any agreements or conduct not covered by an authorisation under Part V11 should be subject to enforcement action by the appropriate regulatory agencies under Part IV of the Act.*

CCIWA and the WASC support the idea of a transition period.

The ACCC being the regulatory agency for Part V11 of the Trade Practices Act have in their submission acknowledged the need for a transitional period and stated:

Existing liner agreements

Recognising that the abolition of Part X and a move to a Part VII regime represents a departure from some long established practices, the ACCC believes it is appropriate to implement some transitional arrangements. To this end, agreements that are registered under Part X would be deemed to be authorised under Part VII. That is, these agreements would continue to be partly exempted from the provisions of Part IV until reviewed by the ACCC. The outcome of an ACCC

review could be that the exemption be allowed to continue, that the exemption be revoked, or that the exemption continues in a modified form. In those reviews, in effect the onus would be on those seeking to retain the immunity of an authorisation to satisfy the ACCC it is in the net public benefit to do so.

- The Australian Peak Shippers Association (APSA) has stated that shippers wish to retain Part X albeit with amendments and has questioned *‘which shippers are critical of aspects of its operation calling for its abolition’* (Lloyds List 4 November) The Western Australian Shippers Council are members of APSA and have made it abundantly clear that we are critical of Part X and recommend that it be rescinded.
- APSA has also claimed that Shipper bodies such as themselves and WASC would no longer be authorised should Part X be rescinded.

However ACCC in their submission state:

‘Organisations seeking protection to aggregate the collective bargaining power of shippers or industry groups can seek protection from competition law under Part VII of the Act. Under the proposed transition arrangements, shipper bodies that are currently recognised by Part X will be deemed to be authorised and will maintain their existing rights, including the right to collectively negotiate with the lines.’

We do agree with APSA’s sentiments in regards to Importers *‘who are their own worst enemies* (same article Lloyds List 4 November). By accepting CIF terms the Importer is exposed and forced to accept whatever shipping arrangements and charges the seller wishes to negotiate/impose.

CCIWA and WASC agree that Importers could take more control of their own shipping arrangements if they negotiated FOB terms with their suppliers. Importers, by purchasing under CIF arrangements can expect no protection either under Part X arrangements or by changes to Part VII legislation.

CCIWA and WASC therefore continue to 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.

John Oliver
President
Western Australian Shippers Council

Keith Seed
Director Trade Services
CCIWA
Executive Officer
Western Australian Shippers Council