



Submission to the Productivity Commission: Response to the Draft Report on Tasmanian Shipping and Freight

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1.0 About the Institute of Public Affairs

The Institute of Public Affairs is an independent, non-profit public policy think tank, dedicated to preserving and strengthening the foundations of economic and political freedom.

Since 1943, the IPA has been at the forefront of the political and policy debate, defining the contemporary political landscape.

The IPA is funded by individual memberships and subscriptions, as well as philanthropic and corporate donors.

The IPA supports the free market of ideas, the free flow of capital, a limited and efficient government, evidence-based public policy, the rule of law, and representative democracy. Throughout human history, these ideas have proven themselves to be the most dynamic, liberating and exciting. Our researchers apply these ideas to the public policy questions which matter today.

The IPA's specific research areas include the environment, deregulation, workplace relations, energy, political governance, intellectual property, telecommunications, technology, housing, education, health and agriculture.

The IPA publishes a wide variety of research papers and supporting opinion pieces, as well as host conferences and lectures across the country. The IPA also publishes the *IPA Review*, Australia's longest running political magazine. In 2008, the *IPA Review* was awarded the Sir Anthony Fisher Memorial Award for best magazine.

Aaron Lane is a Research Fellow with the Institute of Public Affairs. His research is focused on economic policy and industrial relations. He is an Australian Legal Practitioner, admitted to practice law in the Victorian and Commonwealth jurisdictions. He has previously lectured in economics and law at Deakin University, and the Melbourne Institute of Business and Technology.

His academic qualifications include a Bachelor of Commerce, Bachelor of Laws (Hons), Graduate Diploma of Legal Practice, and Master of Arts.

2.0 Background

2.1 Productivity Commission inquiry into Tasmanian Shipping and Freight

On 29 November 2013, the Treasurer requested the Productivity Commission (**Commission**), pursuant to the *Productivity Commission Act* 1998, to undertake an inquiry into the current arrangements for supporting freight and passenger services between the mainland and Tasmania.

The Commission released a draft report on 24 January 2014 (**Draft Report**). A final report is due on 7 March 2014. The Institute of Public Affairs (**IPA**) welcomes the opportunity to comment on the Commission's Draft Report.

2.2 Draft Report

As the Draft Report identifies, Tasmania is more exposed to coastal shipping regulation, as the Tasmanian economy has a heavy reliance on sea transport for bulk goods due to its geography. The effects of anti-competitive coastal shipping laws will be amplified as interstate shipping cannot be substituted for road or rail.

The Draft Report is highly critical of the existing coastal shipping regulatory framework. The findings of the Commission are summarised well on pages 18 and 19 of the Draft Report, and do not require restating in this submission.

2.3 Summary of Institute of Public Affairs' position

On 23 December 2013, the IPA released a research report '*Coastal shipping reform: industry saviour or regulatory nightmare?*' (**IPA Report**). As the Draft Report makes findings and recommendations in relation to coastal shipping, the IPA considers that the IPA Report may be useful to the Commission. The IPA's comments on the Draft Report will be confined to the issue of coastal shipping regulation.

The IPA report examined coastal shipping regulation in Australia, and in particular analysed:

- the *Fair Work Act* 2009 which imposed Australian industrial relations law upon most foreign-registered and foreign-crewed vessels that operated in the Australian coastal trade; and

- the 2012 Coastal Shipping bills that changed the manner by which vessels were allowed to carry cargo on the coastal trade, changing the system of licences and permits to a system of general and temporary licences.

The IPA report recommended, amongst other things, that the coastal shipping laws be repealed.

The IPA submits that it is open to the Commission to adopt the IPA's position and recommend that coastal shipping laws be liberalised, without the need for a further review.

3.0 Institute of Affairs response to the Draft Report

3.1 Institute of Public Affairs report into coastal shipping

The IPA has recently provided the Commission with a copy of the IPA Report. The IPA seeks to annex the IPA Report to this response to the Draft Report.

Summary of IPA Report

The coastal shipping industry exists to move predominantly dry bulk commodities around Australia in a cheaper and more efficient manner than road or rail transport on certain routes.

Australian coastal shipping operated in a relatively stable regulatory environment during the twentieth century. Over time, the coastal shipping trade has become more competitive – mainly due to foreign vessels entering the market.

However, in 2012, the former Labor government introduced a suite of Bills with the stated aim of “revitalising” the Australian shipping industry. The 2012 changes came on top of the *Fair Work Act* 2009, which imposed Australian labour standards on foreign-registered ships operating with foreign crews in the Australian coastal shipping trade.

As part of each of these changes, there were a range of other regulatory impositions and restrictions. The sum total of these reform packages has substantially increased the regulatory burden on foreign ships, and – by raising the cost of foreign labour on the coastal shipping trade – has artificially inflated the competitiveness of Australian crews.

The changes were anti-competitive. The changes prohibitively increased regulatory burden on foreign-flagged vessels, and protected Australian-flagged vessels. Australian-flagged vessels were further protected through access to taxation incentives.

The 2009 and 2012 changes ignored the fact that the coastal shipping trade exists primarily to service Australian producers of bulk commodities. About 85 per cent of all coastal shipping cargo comprises of dry and liquid bulk.

As a result of the 2012 changes alone, the net present value of the coastal shipping industry’s net economic benefit to the Australian economy is between \$76 million and \$150 million less that it would be in the absence of these changes. Job losses were also forecast for the shipping industry.

A productivity compact between the maritime unions was used as justification for the 2012 changes. The compact does not make any specific, quantifiable commitment to productivity improvement.

3.2 Response to the Draft Report

The IPA makes the following specific comments in response to the Draft Report:

Coastal shipping laws are inherently anti-competitive

The Draft Report rightly makes a comparison between coastal shipping laws before and after the 2012 changes. In this regard, there is no doubt that the 2012 changes decreased competitiveness in the coastal shipping industry, and increased the price of bulk transport. However, all coastal shipping laws – to the extent that they restrict or prohibit operators – are inherently anti-competitive. The IPA submits that it is not enough to simply wind back the 2012 changes; coastal shipping laws should be repealed to liberalise the bulk transport market.

Coastal shipping laws conflict with national competition law policy

The IPA notes that the Commission’s finding at page 123 of the Draft Report:

The new [coastal shipping] regulations reduce the commercial attraction for international vessels to engage in the Australian coastal trade... [The regulations] also increase costs of providing domestic coastal services and reduce the level of competition in Australia’s coastal trading network.

As the IPA Report identifies at pages 31-32, the weakening of competition in the coastal shipping industry is out of step with the broader regulatory framework, in particular competition law policy.

No economic justification for 2012 changes

We note the comment of the Commission at page 126 of the Draft Report: “...the justification for the 2012 changes is now questionable”.

The IPA refers the Commission to sections 6.2 and 6.3 (pages 25-28) of the IPA report. The IPA submits that there was never any proper economic justification for the 2012 changes.

In regards to the compact between the shipping unions, the IPA also refers the Commission to section 7 (pages 29-30) of the IPA report. The labour relations compact does not at any point make specific, *quantifiable* commitment to productivity improvement.

Accordingly, the IPA considers that it is open to the Commission to be stronger in its assessment.

Information Request 5

We note Information Request 5 in the Draft Report. The Institute of Public Affairs considers that the specific benefits to Tasmania in repealing the coastal shipping laws would be an increase in the amount of vessels engaged in the coastal shipping trade, cheaper coastal shipping services, and thereby an increase in the competitiveness of Tasmanian goods.

Draft Recommendation 1

We note Draft Recommendation 1 in the Draft Report.

In light of the Commission's findings, the Institute of Public Affairs submits that it is open to the Commission to call for a repeal of the coastal shipping laws without the need for a further review.

The IPA understands that the Commission has only examined coastal shipping laws application in the context of Tasmanian freight. However, the Commission identified that Tasmania is particularly vulnerable to the negative consequences of coastal shipping laws. In this regard, the IPA submits that Tasmania is a reliable case study. Therefore, it is open to the Commission to come to conclusions about the overall effects of coastal shipping regulation in the wider Australian bulk transport market, without the need to conduct a further review.

The IPA submits that the Commission amend Draft Recommendation 1 to read:

The Australian Government should liberalise the coastal shipping market by repealing coastal shipping laws as soon as possible.

At the Public Hearing in Melbourne on 3 February 2014, it was clear that the Commission was not minded to accept this submission.

Therefore, in the alternative, the IPA submits that a future review into coastal shipping should focus on whether coastal shipping laws should continue to exist at all. The IPA considers that the starting point for the future review should be that cabotage laws are inherently anti-competitive and have negative economic consequences, as evidenced by the Draft Report. In this regard, the onus should be on stakeholders to prove the economic necessity of coastal shipping regulation. In carrying out this task, the IPA considers that the terms of reference should require the Commission to give

primary weight to the economic effects of coastal shipping laws on producers of bulk goods and the wider Australian economy, rather than owners of Australian-registered coastal shipping vessels.

ANNEXURE

Berg, C., Lane A., *Coastal Shipping Reform: Industry Saviour or Regulatory Nightmare?*, Institute of Public Affairs, December 2013.