



MARITIME UNION OF AUSTRALIA (MUA)

**SUPPLEMENTARY SUBMISSION TO THE
PRODUCTIVITY COMMISSION**

**RESPONSE TO DRAFT REPORT OF 24
JANUARY 2014**

**INQUIRY INTO TASMANIAN SHIPPING AND
FREIGHT**

7 FEBRUARY 2014

Executive summary

- i. We are concerned that the Productivity Commission (PC) may have reached a conclusion about the need for a radical change in the regulatory framework for Australian coastal shipping based on questionable evidence and without a cost benefit analysis being undertaken as to the impact of its proposed approach.
- ii. Recommendation 1 in the draft report may appear, prima facie, quite benign and superficially attractive, in that it urges the Government to undertake a review of coastal shipping, suggesting that review happen quickly and that it aim at achieving the most efficient coastal shipping services possible.
- iii. We agree that there is nothing wrong with a review – the Maritime Union of Australia (MUA) has publicly indicated that a review of coastal shipping legislation could potentially be a useful mechanism to resolve some unintended consequences of the operation of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the CT Act) and to clarify some ambiguities and flaws in the legislation.
- iv. However, it is the detail in the Draft report that points to the outcome of that review that the PC is proposing that is not at all benign.
- v. What the PC is clearly proposing is wholesale deregulation of Australian coastal shipping – in effect the repeal of the CT Act. What is proposed is not even a return to the previous Permit system, or some form of regulatory framework that promotes competition. There are no caveats or qualifications in anything the PC has put forward in the draft report.
- vi. This is in essence is a proposal for the complete dismantling of an entire Australian service industry.
- vii. It would lead to the replacement of a shipping market that provides a combination of both long term contracts and spot market opportunities, with complete reliance on a foreign controlled spot shipping market. What the PC is proposing is elimination of the flexibility provided by the current (and previous) regulatory systems by creating a rigidity through a spot market only option for shippers.
- viii. The PC seems to have relied solely on the economic cost of Bass Strait shipping relative to international shipping and has not had regard to the supply chain impact, nor the non economic or social consequences of its proposed solution, or to the consequences for sea freight shipping in other trades or regions of Australia.
- ix. The PC has not addressed the ship substitution issue either, apparently assuming that any international ship is suitable for Tasmanian trade. It is questionable if international ships with specialist bulk liquids, Ro-Ro and self discharging capability would be available for substitution of the specialist vessel types that service the Tasmanian trade.

- x. The MUA submits that the impact on retention of the maritime skills base in Australia alone would be massive. Where does the PC believe the skills to service Australia's maritime dependency will come from if there are no Australian ships on which to gain the seetime that underpins the quality assurance for ships Masters, Engineers, Ratings, Marine surveyors, ships Pilots, Harbour masters and so on?
- xi. Disturbingly, the PCs deregulation solution can only be achieved by the complete replacement of Australian employment with foreign employment, and replacement of Australian business participation by foreign assets (ships) and foreign investment in the Australian coastal sea freight trade.
- xii. It is one thing in our view for the PC to seek efficiencies in industries that are subsidised or simply cannot compete in a global marketplace, where efficiency measures may lead to import substitution and offshoring of some business activity.
- xiii. It is quite another to propose an efficiency solution that is based entirely on foreign labour substitution in the Australian labour market. This is an extreme solution and is not justified when the draft report actually shows that shipping's relative competitiveness is improving.
- xiv. This is particularly concerning for an industry that it not subsidised – no corporate welfare is directed at Australian shipping, unlike the road and to a lesser extent, the rail sectors with which shipping competes in most domestic freight corridors. In circumstances where shipping operators have taken advantage of shipping tax incentives, the quid pro quo is that such operators must contribute to training.
- xv. We are concerned that the PC has relied on unsubstantiated, and in some cases, incorrect, evidence to support its conclusion. Key evidence that is questionable in our view, includes:
- xvi. That of the ACCC, which has provided only assertion and no evidence that there is a reduced interest by international shipping lines using TLs such that shipper's are unable to secure an international ship to carry their cargo.
- xvii. The evidence by Bell Bay Aluminium that its freight costs increased following introduction of the CT Act. The facts show that its Temporary License (TL) voyages were on ships to which the *Fair Work Act 2009* (FW Act) did not apply.
- xviii. The evidence by the Business Council of Australia that shippers have faced increased costs since 1 July 2012, where again, the facts show that very little cargo where shipper's sought to carry the cargo on TL ships has been successfully contested by a GL holder.
- xix. The Simplot claim about added costs. Again the data shows that the Simplot guestimate is wildly inaccurate.
- xx. We are concerned that there remain in the PC draft report incorrect statements about the effects of the 2012 shipping reform legislation.

- xxi. For example, the reference to the need for hiring Australian workers on TL ships. This is incorrect.
- xxii. We are uncertain if the radical solution proposed by the PC would in fact deliver the shipping cost efficiencies presumed (though unquantified). There are two matters that seem to have been overlooked in the PC draft report.
- xxiii. First, the visa requirements for foreign seafarers. Repeal of the CT Act will presumably end the CT Act s112 protection for TL ships by eliminating the availability of the Maritime Crew Visa (MCV), which for imported ships ceases to allow work rights after 5 days. International vessels regularly trading the Tasmania to the mainland route would presumably need to remain in that trade to offer the service levels required of Tasmanian shippers (even if the frequency was less than the daily service which some have suggested amounts to over servicing of the market). In the circumstances, it would be inevitable that Customs Australia would declare those ships to be imported, and the MCV would cease to have effect.
- xxiv. In those circumstances some other visa type that conveys work rights to the foreign seafarers would be required, like a 457 visa. As the PC is aware, that visa requires market rates to apply, which could in fact increase the wage costs over those that derive from Part B of the Seagoing Industry Award 2010.
- xxv. Second, the PC has not addressed the legal issue arising from the decision of the High Court regarding the power of the industrial regulator to set terms and conditions of employment for seafarers operating in the Australian jurisdiction. Again, the assumption that foreign seafarers can operate in the Australian coastal trade under international labour standards could prove to be an unattainable outcome.
- xxvi. Finally we note that the PC has misunderstood, and therefore sought to denigrate, the Labour Relations Compact signed by the social partners. The Compact is working. Its requirements establish international best practice in shipping labour relations and seafarer labour utilisation.
- xxvii. In view of the issues raised by the union, and addressed in detail in the sections that follow, the MUA strongly recommends that the PC re-consider the extreme solution proposed. At the very least, the PC should quantify the implied benefits and address the costs. Those benefits and costs should be weighed up against the benefits and costs of other efficiencies that could be gained in the freight supply chain, such as reductions in State Government, regulatory and service provider charges.
- xxviii. The MUA believes the PC has a responsibility to temper the so called magic bullet solution it has proposed that seems to have gained currency in some sectors of industry, the community and the media, and which has the capacity to distort a much needed high quality and rigorous public policy discussion about this important Australian industry.

1. Background

- 1.1 The Maritime Union of Australia (MUA) lodged a submission (Primary submission) with the Productivity Commission (PC) regarding its inquiry in to Tasmanian shipping and freight on 13 December 2013. The MUA submission included an Appendix which incorporated the MUA submission to the Tasmanian Freight Logistics Coordination Team examining Tasmania's freight infrastructure.
- 1.2 This submission (Supplementary submission) responds to the PC's draft report of 24 January 2014.
- 1.3 The MUA gave evidence to the PC at its public hearing in Melbourne on Monday 3 February 2014.

2. A summary of key issues raised by the MUA in its primary submission

- 2.1 In the MUA primary submission to the PC, the union made the following points, in summary:
 - In relation to sea freight, it is critically important that Tasmania's domestic freight movement which requires a sea leg i.e. distribution to the Australian mainland, and its international export requirements by sea, are examined separately given they are two distinct freight markets characterised by significantly different regulatory and economic frameworks.
 - A failure by the PC to properly understand these differences and to base its analysis and findings on a full and proper understanding of those distinctions could result in the PC replicating the inaccuracies that featured in the Tasmanian Freight Logistics Coordination Team (TFLCT) Discussion Paper on Interim Observations and Directions for Tasmanian freight infrastructure following the release of the TFLCT Chair's Interim Findings of August 2013.
 - It would be instructive if the PC were to break down the costs of sea freight into its component parts, such as ship operating costs (including regulatory charges e.g. those imposed by the Australian Maritime Safety Authority), stevedoring costs, port charges (including the mandated return to State Governments at both ends of the Tasmanian sea freight chain), regulatory transaction costs such as required through activation, as necessary, of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the CT Act).
 - Such a rigorous analysis has never been attempted to our knowledge, so the proportional contributions of those components to overall freight costs are unknown. The lack of such analysis has impeded the development of evidence based policy options, particularly those which are discretionary to Government such as imposition of State Government port charges. The absence of rigorous analysis of the kind we believe should be undertaken often leads to a bias towards ideologically motivated policy solutions focussed on labour market

issues, when in fact even radical labour market solutions such as a real wage reduction would have only marginal impact on freight costs relative to positive discriminatory State Government port charging (i.e. positive to coastal shipping relative to international shipping).

- The PC should also analyse exchange rate fluctuations and the impact on the cost of capital given the high capital costs of ships, whether purchased or chartered, to examine the relative impact on freight rates.

2.2 The remainder of this submission focuses on the issues raised in the PCs Draft report of 24 January 2014.

3. Chapter 1 - Overview

3.1 The PC does not appear to have taken on board the MUA suggestions, and has, as we suggested might occur, repeated some of the misunderstandings and inaccuracies contained in the Tasmanian Freight Logistics Coordination Team (TFLCT) Discussion Paper on Interim Observations and Directions for Tasmanian freight infrastructure in relation to coastal shipping. This contrasts to the TFLTC Final Report (released since the MUA lodged its primary submission to the PC on 13 December) which dealt with coastal shipping in a more balanced way in that report, notwithstanding that it has still gone on to recommend that the Tasmanian Government lobby for changes to the coastal shipping arrangements, to provide greater service choice for Tasmanian business by removing all restrictions on the ability of international vessels to carry domestic cargo within Australian waters.

Note: We have provided at **Attachment A** a list of the TFLTC Recommendations that we think would be worthy of more detailed investigation.

3.2 The PC has not in the view of the MUA, clearly distinguished the costs of shipping as a freight transport mode in the domestic freight market from shipping in international trade, and as a result appears to have confused the different regulatory systems that apply in the two markets, notwithstanding there is, potentially, some overlap.

3.3 The PC has chosen at this stage not to undertake a rigorous cost breakdown of the drivers of overall freight costs in the Tasmanian freight supply chain, selectively focusing on the operational costs of shipping, without fully examining other cost drivers in the supply chain that deliver the overall freight rate. We note the submission of Simplot which claims that changes to the *Fair Work Act 2009* (FW Act) and application of the Seagoing Industry Modernised Award (SIMA) from 1 January 2011 has added \$150,000 to its supply chain costs (which we further analyse in section 5.1.5 below), whereas its submits that the Port of Melbourne License Fee (PLF) to recover the port dredging cost has added \$350,000 to its Bass Strait shipping task.¹ That submission would suggest that there are considerable cost impacts from discretionary State Government charges which could deliver more dramatic cost reductions than the

¹ Productivity Commission, *Inquiry into Tasmanian Shipping and Freight, Draft Report*, 24 January 2014 P141

extreme solution of introducing foreign labour standards into the Tasmanian freight chain as proposed by the PC.

- 3.4 Importantly, the PC has not identified precisely what coastal shipping reform is necessary to attract the reduction in shipping costs such that implementing that reform would outweigh the costs, nor attempted to quantify the cost saving to industry sectors or to the Tasmanian economy from such reform. No benefit-cost analysis has been undertaken, and as a result, no downside to a change in coastal shipping regulation has been included in its draft report.
- 3.5 The fact is that the 2012 shipping reforms introduced through the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act) made only subtle differences to the previous shipping regulatory arrangements under Part VI of the former *Navigation Act 1912*. Conceptually the 2 regulatory schemes are quite similar. This was acknowledged by the Department of Infrastructure and Regional Development (DIRD) submission quoted in the PC draft report.²
- 3.6 We note that the PC has indicated that data limitations have constrained its ability to review in detail the commercial aspects of Bass Strait shipping³, so we query how it was able to so confidently arrive at its conclusion that “*the Australian Government should proceed with the foreshadowed review of coastal shipping regulation as soon as possible. The objective of the review should be to achieve the most efficient coastal shipping services feasible for Australia*”, particularly as the PC has not indicated precisely what efficiency it believes such a review might be intended to achieve.⁴
- 3.7 We also note the PC’s analysis of the so called freight cost disadvantage that underpins the Tasmanian Freight Equalisation Scheme (TFES) where it reports that freight rates “*can differ for a number of reasons — the nature of the shipped product and its volume, the source and destination of the freight task, the direction of travel, the timing and frequency of the service, and the degree of competition in the provision of freight services.*”⁵ This being the case, it is difficult to see how reforming the CT Act as recommended would have an impact on those freight rate factors.
- 3.8 The PC concluded that “*Given these considerations, determining with any confidence the precise freight cost disadvantage at a particular point in time is challenging. The Commission noted in its 2006 review of the freight subsidy schemes that it was unrealistic to suggest that any one ‘road freight equivalent’ was truly representative of a comparable freight task. This remains the case.*”⁶
- 3.9 We submit that the Bureau of Infrastructure, Transport and Regional Economics (BITRE) methodology for estimating the cost disadvantage, by relying on a comparison with road freight rates, is flawed in any case, in

² Ibid P19

³ Ibid P7

⁴ Ibid, Draft Recommendation 1, P28

⁵ Ibid P10

⁶ Ibid

that it does not take into consideration the subsidisation of road transport that occurs though the under recovery of the cost of providing road infrastructure in overall road transport freight costs. We presume the work of the COAG Heavy Vehicle Charging and Investment Reform (HVCI) being managed by the National Transport Commission (NTC), which was established to undertake a feasibility study investigating alternative charging systems for heavy vehicles will result in a move to recover more of the cost of providing road infrastructure, which will presumably be reflected in road freight costs and be taken into consideration by BITRE estimates in future. This will have the effect of reducing the so called cost differential, while at the same time shipping's relative competitiveness will improve, even on short haul routes such as the Tasmania to Melbourne leg of some 420 kms.

- 3.10 We suggest that the PC final report recommend that BITRE review its methodology to take into consideration the subsidisation of road freight costs by the under-charging for road infrastructure in determining the freight cost disadvantage.
- 3.11 We note that the PC concludes that *“The economics of shipping improve relative to other transport modes with the distance traversed. As such, shipping is typically not economic relative to road for distances comparable to Bass Strait.*

The efficiency of Tasmanian shipping and freight is driven by several direct and interrelated factors: the lack of competition; scale; and capital.

Benchmarking of shipping costs is intrinsically difficult and therefore typically subject to caveats. That said, benchmarking work by Aurecon (commissioned by the TFLCT) found Bass Strait shipping to be 24 per cent more expensive than comparable European services, which they largely attributed to relatively higher input costs for Bass Strait providers (labour costs and fuel).⁷

- 3.12 This is an unsurprising conclusion, and would be the same if road or rail transport costs were compared with Europe. Australia has a different labour market cost structure, while fuel costs are a factor of Australia's geographic positioning relative to major refining capacity in Asia along with movements in the exchange rate. In this respect we question the PC's continual reference to shipping being a “high cost” service – cost is a relative factor - so what is the high cost in relation to?
- 3.13 We urge the PC to examine a Working Paper produced by the University of Sydney's Institute of Transport and Logistics Studies which found that there are service factors that impact on modal choice, such as offering integrated supply chain services that are important, not just distance.⁸

⁷ Ibid P16

⁸ Brooks et al, Institute of Transport and Logistics Studies, University of Sydney, Working Paper ITLS-WP-11-20, *Understanding Mode Choice decisions: A study of Australian Freight Shipping*, October 2011

- 3.14 The PC acknowledges that it does not have access to data on shipping company operating costs and revenues to reach an informed decision on operator profitability i.e. whether there is any price gouging by shipping lines.⁹ We note however that the Bass Strait route is probably the only domestic sea freight route in Australia where there is active shipping operator competition, and the fact that operators have submitted to the PC that they are intending to invest in new ships aimed at improving efficiency and service quality, under conditions that allow shippers to negotiate long term freight contracts, is a positive characteristic that is not available to shippers in many other routes around Australia that are reliant, for at least some of their shipping requirements, on the shipping spot market. In such circumstances, those shippers have no control over price, quality or frequency of the international carriers' service.
- 3.15 We take issue with the reliance by the PC on a central assertion made by the Australian Competition and Consumer Commission (ACCC) which claimed that "*the regulatory requirements to carry domestic cargo act as a general disincentive to (international lines) entering the domestic shipping market.*"¹⁰
- 3.16 If the ACCC provided evidence to the PC which showed that shippers have been unable to source or secure a foreign flagged international ship to carry their cargo under the regulatory framework provided by the CT Act, then the assertion may be correct. However, there is unlikely to be such evidence, as shippers, through their agents, are by and large able to secure an international ship operating under a Temporary License to carry their cargo. Regrettably this has occurred in part due to the gaming behaviour of certain TL holders who are exploiting the CT Act with impunity by creation of a market in TLs, despite the detailed knowledge of the Minister's delegate in DIRD.
- 3.17 If the timing of carriage of that cargo by international lines (including delivery date), or the quality of the service does not meet the particular shipper's requirement, that simply reinforces the point we make about the unreliability of the spot market compared to the security and reliability of a long term freight contract using an Australian registered ship operating under a General License.
- 3.18 There is no evidence that enables the PC to assert that "*The cumulative effect of the recent changes has been a reduced interest from international vessels engaging in the Australian coastal trade and, consequently, reduced shipping options for users of domestic shipping services.*"¹¹ On the contrary, the evidence shows there has been a slight increase in the number of international ships carrying domestic cargos since the introduction of the CT Act. In a 12-month period in 2010/11, 350 different international ships carried at least one domestic cargo under an SVP or a CVP. In the same 12-month period in 2012/13, after the CT Act was

⁹ Productivity Commission, *Inquiry into Tasmanian Shipping and Freight, Draft Report*, 24 January 2014 P17

¹⁰ Ibid P20

¹¹ Ibid

introduced, 354 international ships carried at least one domestic cargo on a TL.

- 3.19 Furthermore, the fact that shippers have the flexibility to use a foreign flagged international ship under the regulatory framework provided in the CT Act demonstrates that the legislation does not impede competition but on the contrary, increases competition by providing the opportunity for Australian flagged ships operating under a GL to have a fair opportunity to contest for the cargo, where the Australian GL ship operator can offer long term stability in the freight price as well as other niche market service requirements e.g. roll-on roll-off capacity, or self discharging capacity (which alleviates the need for land side stevedoring), all of which are features of competition. The PC has noted this where it reports that the *“ability to negotiate freight rates can be a significant factor in actual rates charged. Medium to large, frequent and fairly uniform shipments generally attract lower freight rates. Shippers of these goods can use their status as ‘anchor’ clients to negotiate more favourable rates with carriers.”*¹² It might be also noted that Australia’s largest coastal shipping operator uses both GLs and TLs to meet shipper needs, and in so doing is able to balance the shipper’s desire for freight rate stability over time under long term contractual arrangements, with the need to meet peaks in freight moment through use of TLs, with the effect of offering an overall lower freight rate. This is the essence of the flexibility provided in the current regulatory framework.
- 3.20 The PC appears to have assumed that a ship is a ship and that any international ship could substitute for the types of ships operating in the Bass Strait trade. The PC does not seem to have fully taken into consideration the specialist nature of ships in certain trades and factored in the availability or cost of ship substitution, though it referred to the ship suitability issue when referring to King Island shipping needs.¹³ Spot market ships are often not fit for purpose, which can have cargo damage and safety consequences. The MUA gave evidence, which can be corroborated with Coronial inquiry reports, that failure to provide fit for purpose ships has resulted in up to 3 stevedoring worker fatalities on the Australian waterfront in recent years.
- 3.21 We note that the PC has reported that if there is to be a review of coastal shipping regulation, any consideration of so called anti-competitive provisions should only be considered in the context of the overall net benefit to the community as a whole.¹⁴
- 3.22 We are concerned that the PC has reached a conclusion about coastal shipping in the absence of that level of rigour. Nevertheless, the MUA is confident that if a genuinely rigorous analysis were undertaken as part of a review of coastal shipping, the findings would confirm the desirability of maintaining a role for an Australian shipping fleet and domestic sea freight transport capability. The reasons are:

¹² Ibid P57

¹³ Ibid P48

¹⁴ Ibid P127

- To provide choice to shippers and deliver the right ship for the task. We submit that it is an illusion for those advocates of deregulation of shipping that Australian ships and international ships would compete in the same sea freight routes. This happens nowhere in Australia now and will not happen in the Tasmanian trade were there deregulation as proposed by the PC. Shippers will have less choice under a deregulated market.
- To provide an alternative to the spot market and deliver competition, not just on today's freight rate, but on freight rates over time. This will deliver business certainty, as well as deliver on all the other attributes of competition, such as just-in-time reliability, safety, compliance with domestic law and other risk minimisation factors.
- To underpin the maintenance of a domestic maritime skills base.
- The maintenance of a merchant fleet to support the national Defence and national security effort.

3.23 All these features would combine to create a net benefit to the Australian community.

4. Chapter 2 – Tasmania's freight in context

- 4.1 We note that in the PC's analysis of estimating the sea freight cost disadvantage, it reports that the wharf to wharf sea freight disadvantage (dry freight) has reduced from \$671 in 1996/97 to \$448 in 2011/12, and for refrigerated freight, from \$671 to \$415 over the same period. This indicates that shipping competitiveness is rising dramatically, (a 33% reduction in the cost disadvantage for dry freight and 38% reduction for refrigerated freight, over 15 years), with most of that improved competitiveness occurring since 2006/07 i.e. over the last 5 years. The bulk of that freight cost differential could be eliminated through a more targeted port charging regime by State Governments.
- 4.2 We note that Table 4.2 on P11 of the Draft report shows that crewing, wages, administration and on-costs contributes just 15% of a Tasmanian sea voyage cost, whereas capital costs (35-45% - and subject to exchange rate movements and monetary policy) and fuel costs (30%) contribute some 65-75% of sea voyage costs, yet the entire focus of the PC solution is on deregulation of the coastal shipping labour market.
- 4.3 We note also that the Tasmanian Government submission to the PC, which draws from the Aurecon study prepared for the TFLCT, refers to a freight cost differential of between \$74 and \$289 per TEU.¹⁵ This equates to approximately \$3.70-\$14.50 per tonne.¹⁶ Given this small freight cost differential, the proposed PC solution, which points to the total deregulation of Australian coastal shipping, appears an excessive response, particularly given its implications for the remainder of Australia's coastal shipping trade and the likely net cost to the Australian community.

¹⁵ Ibid P61

¹⁶ MUA calculation – based on a TEU containing 20 tonnes of freight

- 4.4 The deregulation of Australian coastal shipping in circumstances where that sector provides training berths to more than 40% of Australia's maritime cadets and trainee's raises the question of who will provide the ships (seatime) for tomorrow's maritime skills base, required across all facets of the Australian maritime industry.

5. Chapter 4 – Sea freight

- 5.1 We are concerned that the PC has continued to refer to the "high costs" of shipping across Bass Strait. Cost is a relative concept and the evidence contained in the PC draft report does not sustain the "high cost" label. The Aurecon study of allegedly comparable European routes found a cost differential (of 24%), but qualified that by referring to the higher Australian domestic labour cost and fuel cost structures (of 23%), resulting in effect, in an equivalency of shipping costs.¹⁷
- 5.2 Similarly, Toll Shipping's submission quoted in the PC report queries the Aurecon methodology, suggesting that if it had factored in all the costs in the quoted TEU charges, the European charges would probably be higher than Bass Strait TEU charges.

Regulatory environment

- 5.3 We wish to highlight an inaccuracy in the PC report where it refers to the effect of the 2012 shipping reforms, in particular where the report states that "*vessels transporting dry and liquid bulk freight under temporary licences must now hire Australian workers and pay Australian wages; increasing shipping costs and freight rates in the process*"¹⁸
- 5.4 This is incorrect in relation to the reference to hiring Australian workers. A ship authorised to carry a cargo under a TL is not required by the CT Act to crew the vessel with Australian nationals. In fact no ship authorised to carry a cargo under a TL has been crewed by Australian nationals since the CT Act commenced in 2012, with the possible exception of Transitional General Licensed (TGL) ships that may have been authorised under a TL to carry a cargo, noting that those ships were previously crewed by Australians when they were Licensed ships under the former Part VI provisions in the *Navigation Act 1912*.
- 5.5 Furthermore, it is important to clarify (as articulated in Appendix C) that the reference to payment of Australian wages is a reference to Australian Award wages, not market rates (i.e. rates contained in Fair Work Commission (FWC) approved Enterprise Agreements). Furthermore, the relevant Award (the Seagoing Industry Modernised Award 2010) contains a Part B, which sets the wage rates and employment conditions that are applicable to ships operating under a TL. Those rates and conditions, which are lower than those applicable to seafarers on Australian registered ships, were derived by the FWC from agreements that apply in the international shipping labour market and encompassed in the International

¹⁷ Ibid See Box 4.2 on P113

¹⁸ Ibid P124

Transport Workers Federation Total Crew Cost (TCC) Standard Agreement that is referenced in most shipping Charter Party agreements.

- 5.6 This is clearly understood by DIRD which developed the 2012 shipping reform legislation when it submitted that there is no evidence to demonstrate a link between any increases in freight costs and introduction of the 2012 reforms.
- 5.7 In the limited instances where an operator of an Australian registered (flagged) ship which has a General License (GL) has been able to successfully contest a cargo against the desire of the shipper to use a vessel authorised by a TL is evidence that the 2012 reforms have maintained the flexibility and balance between GLs and TLs (as the former Navigation Act provisions provided as between the then "Licensed" ships and ships issued with a Permit).
- 5.8 An analysis of voyage data shows that contrary to the many assertions in submissions to the PC that the 2012 shipping reforms reduced flexibility and added cost, that Tasmanian shippers have actually taken greater advantage of the new shipping legislation and made greater use of TLs than under the previous Permit system. The analysis shows that in a 12-month period in 2010/11, shortly before the 12 months up to introduction of the shipping reforms, international ships carried out 146 Permit voyages (i.e. during 2010/11) loading or discharging in Tasmania. The transition from Permits to TLs was complete by 31 October 2012. In the subsequent 12 months, international ships carried out 214 Tasmanian voyages under a TL (2012/13). All these voyages carried bulk cargos – zero TEUs were carried by Permit or TL.¹⁹
- 5.9 We are disappointed that the PC has not undertaken a more thorough analysis of the actual impacts of the 2012 shipping reforms on Tasmanian shipping. Despite noting that "*the exact nature of their* (the shipping reforms) *impact is uncertain*"²⁰ the PC has quoted several submissions to apparently support its conclusion without substantiating the veracity of the submitters claims.
- 5.10 For example, an extract from the Bell Bay Aluminium (BBA) submission is reported, where BBA says that "*Following introduction of the Coastal Trading Act 2012, BBA faced increased costs from \$18.20 a tonne in 2011 to \$29.70 in 2012, or 63 per cent. This compared with \$17.50 a tonne charged by international operators in 2012.*"²¹
- 5.11 The union has analysed TL voyage data made available on the DIRD website which suggests that the BBA claim does not stand up to scrutiny. That data shows that only 1 of 14 voyages for BBA alumina transportation

¹⁹ MUA analysis of Permit and TL data for period 1 November 2010 to 31 October 2011 (Permits) and 1 November 2012 to 31 October 2013 (TLs). These 12 month periods due to lack of Permit data in 2011/12 and to ensure data is comparable. Data is available from

http://www.shipping.infrastructure.gov.au/coastal_trading/voyage_reports/index.aspx

²⁰ Productivity Commission, *Inquiry into Tasmanian Shipping and Freight, Draft Report*, 24 January 2014 P125

²¹ Ibid

between 13 November 2012 and 31 October 2013 met the threshold²² for requiring payment of Award wages. For the remaining 13 voyages analysed, international wage rates would have applied.

- 5.12 Accordingly, If Bell Bay's freight costs have increased as it submitted, we cannot see how the requirement to pay Award wages to crew on the Australian leg of a voyage authorised under a TL is the cause.
- 5.13 Equally, the Business Council of Australia (BCA) submission is not only opaque, but absurd, showing it has misunderstood the impact of the 2012 shipping reforms. The only way a shipper could have experienced an increase in shipping costs since 1 July 2012 is if the shipper's application to carry the cargo in a ship authorised under a TL was successfully contested by a shipping operator of an Australian registered ship operating under a GL. The data shows that only one Tasmanian TL cargo application was 'refused' over 18 months, compared with 215 Temporary Licence voyages carried out to or from Tasmania within a 12-month period. It is unclear why the voyage was refused, but the DIRD Temporary Licence Voyage Report show the same cargo (50,000 tonnes of Manganese) was loaded one day later on an international flag vessel (*Doric Valour*). So it is not the case that the cargo was shifted onto a General Licence vessel. There are only 30 TL voyages within 11 applications that are listed on the DIRD website as 'Refused'. This compares to 2,640 voyages authorised under a TL that are reported as being completed – a refusal rate of 1%, or put another way, a successful contested rate of 1%, which is extremely low.
- 5.14 The BCA reference to an additional 1,000 hours of administration is equally absurd and unbelievable. In fact the DIRD has significantly streamlined and computerised the licensing administration procedures to reduce human resource time. Nevertheless, we believe that if transactional costs for stakeholders in using the shipping reforms can be reduced, that should be a priority in any review of the legislation.
- 5.15 In relation to the Simplot claim that the FW Act added \$150,000 to its Tasmania to Fremantle costs, it is not clear over what period this cost increase applied. However, on the basis that on a typical crewing complement on an international container vessel of 26, the additional cost to the operator by payment of the Part B rates to crew being paid less than Award rates over a journey of 4.5 days²³ is approximately \$3,600 per voyage, for the whole ship's cargo of up to 4,500 TEU.²⁴ To add up to an additional cost of \$150,000, Simplot would have had to use a TL on 41 separate voyages (\$150,000/\$3,600) and be the only Australian cargo shipper on these voyages and therefore required to absorb the entire cost

²² Part B wages and conditions are only applicable for the third and subsequent voyages in a 12 month period under a TL. If a shipper uses a different vessel for each voyage then the Part B provisions do not apply.

²³ 4.5 days is the length of a voyage between Melbourne and Fremantle. There are no TLs listed for cargos from Tasmania to Fremantle, so it appears that Simplot used the GL Bass Strait services from Tasmania to Melbourne and the trans-shipped to an international ship for the voyage to Fremantle.

²⁴ This is the size of the most common ships that used TLs on the Melbourne to Fremantle route, according to the TL Voyage Reports and cross-referenced with IHS Fairplay's commercial ship database.

of the Award rates. We query the veracity of the Simplot claim based on those facts, unless of course container lines are price gouging customers and blaming the FW Act and Award provisions. If that is the case, we query why the ACCC has not addressed such price gouging.

- 5.16 In contrast to many of the claims made in the report and the submissions, it appears that competition has remained robust and trade to Tasmania has actually increased since the CT Act was introduced. A comparison of Statements of Cargo Actually carried in 2010/11 and Temporary Licence Voyage Reports in 2012/13 show that the number of domestic voyages by unlicensed international flag vessels increased by almost 50% in the two comparison periods. In both time periods the voyages were carried out by over 60 different vessels, and in both time periods the majority of these vessels carried out only one or two voyages and were therefore not subject to the Fair Work Act (unless they carried out domestic voyages elsewhere in Australia). This demonstrates a healthy level of competition and to the availability of international vessels, contrary to the ACCCs unsubstantiated assertions.
- 5.17 It should be noted that Temporary Licence Voyage Reports refer entirely to bulk cargos (dry bulk, liquid bulk and LPG), as containers and ro-ro cargos are carried on the six Bass Strait vessels to Melbourne.

Figure 1: Comparison between the number of domestic voyages on international ships loading or discharging in Tasmania in 2010/11 and 2012/13

	Number of voyages loading or discharging in Tasmania on international vessels	Number of ships	Ships with 15+ voyages	Ships with 1-2 voyages
2010-11	146	61	2	48
2012-13	215	64	4	41

Source: The data is taken from the Statements of Cargo Actually Carried provided by the Department (2010-11) and from Temporary Licence Voyage Reports (2012-13) and because the transition to TLs was not complete until 31 October 2012.

Note: *In each case the data is from 1 November to 31 October for the years specified. This is because of a gap in the data made available by the Department between November 2011 and June 2012.

Information request: *What specific benefits would there be for Tasmanian shippers from removing restrictions on coastal shipping?*

- 5.18 One matter we suggest the PC examine if it proceeds with its suggestion that restrictions on coastal shipping be removed (by repeal of the CT Act), (which presumably is being suggested by the PC so that Tasmania to Melbourne cargo be carried in international ships under circumstances

where the foreign crew on those ships would be paid international standards and not FW Act and Award standards) is the Customs requirements for those ships and associated visa requirements for the foreign crew on imported ships.

- 5.19 As the PC would be aware, repeal of the CT Act would remove the protection of s112 (Customs treatment of certain vessels) such that those ships, if regularly trading the Tasmania to mainland route, would presumably be determined by Customs to be imported and as a consequence the Maritime Crew Visa (MCV) 5 day rule would apply, resulting in those seafarers requiring another form of visa that provides work rights.
- 5.20 Such a visa, like the 457 Visa, requires payment of market rates. In those circumstances, payment of Part B Award rates may well be a more attractive proposition.
- 5.21 We note that the PC has not outlined how it believes the High Court judgement of 2003 (in *Re The Maritime Union of Australia & Ors; Ex parte CSL Pacific Shipping Inc [2003] HCA 43 - Gleeson CJ, McHugh, Gummow, Kirby, Hayne, Callinan and Heydon JJ - 7 August 2003*) where the High Court held that the Australian industrial regulator (currently the Fair Work Commission) has jurisdiction to apply Australian Award conditions to a foreign flagged vessel with foreign crew whilst engaged in the Australian coastal trade, might be addressed. The PC proposition that removing the provisions of the CT Act will have some dramatic labour cost impact may be unduly raising undeliverable expectations.
- 5.22 We note that the PC has asserted that there is little evidence that the productivity compact between the Australian Shipowners Association and the maritime unions has delivered benefits, and as a result has sought to discredit the fundamentals of the Regulation Impact Statement (RIS) that accompanied the exposure draft shipping reform Bills in 2011/12.
- 5.23 The Draft report cites an example of manning levels, which it says were expected to fall from an average of 18-20, and that this does not appear to have eventuated. The first point to make is that the average crewing level on Australian coastal trading vessels is already 17, not 18-20, and on some vessels down to 16. This is world's best practice crewing for the vessel classes.
- 5.24 Furthermore on crewing levels the Compact committed the parties "*to consider, on a case by case basis, the crewing requirements of each ship in an operator's fleet to determine what scope there is to revise or restructure current operational manning.*"²⁵ This is occurring. For example, the MUA is deep in negotiations with Rio Tinto and its crewing agents for a restructure of the crewing complement on the Rio Tinto bauxite vessels servicing the aluminium industry. Once concluded, the new standard is expected to be trialled and introduced on a range of other like vessels.

²⁵ ASA and MUA/AMOU, *Bluewater Labour Relations Compact*, May 2012 Clause 6.2

- 5.25 It is important that the PC be aware that minimum crewing levels are determined by International Maritime Organisation (IMO) standards given effect through decisions of the Australian Maritime Safety Authority (AMSA) acting under the powers of the Navigation Act which gives effect to international maritime treaties to which Australia is a signatory, such as the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). In many cases in Australia, operational crewing equates to Minimum Safe Manning as specified by AMSA as the regulator. It would be illegal for the parties to reduce crewing below the minimum safe level as determined by the regulator.
- 5.26 The PC asked the MUA to quantify the impact of efficiencies referred to in the MUA submission that are under negotiation arising from the Compact. In relation to a current set of negotiations the employer has quantified a cost reduction target pa per ship as its objective in a confidential agreement with the MUA and AMOU, and that the restructure of the crew complement, along with improved skilling and better labour utilisation of crewing will deliver an annual cost reduction per ship pa of \$675,000. If this was replicated across the entire Australian coastal fleet of say 20 ships, the annual gain for employers, which is presumed to pass on to shippers in freight rate improvements, is \$13.5 M pa. We now look forward to the PC quantifying (both costs and benefits) its proposition that deregulation of coastal shipping will deliver a net benefit to the Australian community, and that the fundamentals in the RIS were incorrect.
- 5.27 Other elements of the Compact are being implemented through Enterprise Bargaining, such as the improved teamwork provisions and improved dispute resolution, aimed at maximising labour utilisation and labour productivity. The Government's 2012 review of the workers' compensation arrangements for seafarers, which are yet to be actioned by the Government, will deliver reduced workers' compensation costs if all the key recommendations of that review are sensibly adopted.
- 5.28 It is a misunderstanding to assert that the Compact will not deliver efficiency benefits to the industry. If that is the only basis on which the PC believes the RIS lacks integrity, it is incumbent on the PC to provide more than assertion about the Labour Relations Compact.

6. Appendix C: Coastal Trading Regulation

- 6.1 The PC has referred to a Deloitte study (Deloitte 2012) that claims that the Seagoing Industry Modernised Award Part B rates are twice the market rate (ITF rate) that prevailed previously. However, this overstates the difference because the leave factor is dramatically different in Part B compared to Part A of the Award. Part B provides for 8 days leave per month compared to Part A which provides that for each day of duty the employee will accrue an entitlement to 0.926 of a day's leave.
- 6.2 We note that the PC has concluded that Part B labour costs are approximately 50% of Part A labour costs, indicating that foreign ship

operators seeking to access the coastal trade have a substantial competitive edge on an Australian ship operator.

- 6.3 The PC has also misunderstood the seafaring labour market by indicating that there was some dramatic increase in labour costs on foreign vessels with majority Australian crew operating in the coastal trade prior to 1 July 2012, that continued to be licensed after 1 July 2012 (Licensed ships, and since, Transitional General Licensed (TGL) ships). We think the PC may have overlooked the fact that these vessels were covered by FWA approved Enterprise Agreements and remain covered by Enterprise Agreements, so there has in fact been no change as a result of changes to the FW Act and Regulations. This fact significantly changes the basis for the PC assertion at C20 that labour costs could have increased by 200%.
- 6.3 The PC (and other analysts) may have misunderstood the requirements of the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012* relating to the crewing of foreign vessels which have transitioned as foreign vessels under License, to foreign vessels under a Transitional General License. While it is open for the operator to employ Australian nationals on such TGL vessels, it is not necessary, as could be implied from Table C4.

Recommendations from the Final Report of the Tasmanian Freight Logistics Coordination Team that if addressed, could impact on Tasmanian supply chain costs and efficiency

6. Port development is critical for Tasmania and should be progressed on the following basis –
 - a. Formalise a long-term port strategy that recognises Burnie Port as Tasmania’s principal domestic container port in the medium to long term, based on potential for deep water expansion, closest sea travel time to Melbourne, the ability to develop at comparatively lower cost and alignment with land transport networks.
 - b. Ensure investment in other ports is targeted to meet specific freight needs, with no investment in duplicated functions.

13. The demand for different Bass Strait shipping service models, including a lower frequency option, should be investigated. This will require the collection of better data on service needs.

14. Bass Strait seasonal capacity issues should be examined in the context of forecast growth, user needs, alternative lower cost solutions and their relationship to broader port planning.

15. The Tasmanian Government, with customer support, should continue to market-test the commercial interest of international shipping providers to supplying direct bulk and container services to and from Asia and should continue to negotiate with shortlisted providers.

21. As part of the development of the Tasmanian Freight Strategy, the Tasmanian Government should investigate opportunities to promote industry collaboration, enhanced skills training and employment opportunities in the freight, transport and logistics sectors.