

**Australian Industry Group's Response to the
Productivity Commission's Draft Report on Tasmanian
Shipping and Freight**

7 FEBRUARY 2014

Productivity Commission Inquiry into Tasmanian Shipping and Freight



1. Introduction

- 1.1 The Australian Industry Group (Ai Group) welcomes the opportunity to provide a response to the Productivity Commission's Draft Report of January 2014 on *Tasmanian Shipping and Freight* (Draft Report).
- 1.2 Ai Group is a leading industry organisation representing employers in the manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, labour hire, printing, defence, mining equipment, aviation and other industries. Together, Ai Group and its affiliates represent the interests of approximately 60,000 businesses which employ in excess of 1.2 million staff.
- 1.3 Ai Group represents numerous companies which are extensive users of shipping to transport raw materials, components and finished products, including to and from Tasmania.
- 1.4 Ai Group concurs with the recommendation in the Productivity Commission's Draft Report that the Australian Government should proceed with its foreshadowed review of coastal shipping regulation as soon as possible, with the objective being to achieve the most efficient coastal shipping services feasible for Australia.
- 1.5 Ai Group also agrees with the acknowledgement in the Draft Report that the cost of coastal shipping has increased following changes to the *Fair Work (Regulations) 2009 (Cth)* and other aspects of coastal shipping policy.¹
- 1.6 It is the view of Ai Group that the existing cabotage and coastal shipping arrangements are:
- Too costly and inflexible;

¹ Productivity Commission 2014, *Tasmanian Shipping and Freight*, Draft Inquiry Report, Canberra, p.127

- Having an adverse impact on industry and employment in Tasmania, and Australia more broadly.

2. Coastal Shipping Regulation

2.1 In February 2011, Ai Group made a submission in response to *Reforming Australia's Shipping – A Discussion Paper for Stakeholder Consultation* released on 1 December 2010 by the then Minister for Infrastructure and Transport. The submission argued that:

- The then existing cabotage arrangements were too costly and inflexible;
- The more restrictive cabotage regime proposed in the Discussion Paper was highly inappropriate and would be damaging for industry and employment in Australia;
- The workplace relations proposals in the Discussion Paper were steps in the opposite direction to what was needed.

2.2 In April 2012, Ai Group made a submission to the House of Representatives Standing Committee on Infrastructure and Communications in respect of its inquiry into the *Coastal Trading (Revitalising Australian Shipping) Bill 2012* and an associated transitional Bill. The following extract is relevant:

“In March 2012, Ai Group made a submission to the Department of Infrastructure and Transport in response to the second exposure drafts of the Coastal Trading Bill and the CA&TP Bill (Ai Group's March 2012 Submission). In the submission we expressed our concerns that the proposals, if enacted, would lead to further increases in transport costs for the users of coastal shipping. Increased transport costs would be significant blow to Australian manufacturers, retailers and other trade exposed industries that are already being impacted by a high Australian dollar, high input costs and rising energy costs.

Since December 2009, foreign ships permitted to engage in domestic coastal shipping (permit vessels) have been required to comply with the obligations of the *Fair Work Act*. Prior to this time these ships were excluded from the coverage of Australian workplace relations legislation and awards.

As a consequence of this change, Fair Work Australia developed a Part B for the *Seagoing Industry Award 2010* to cover permit vessels.

Since the new arrangements under the *Fair Work Act* came into effect, Ai Group members have expressed concern that the arrangements are deterring foreign ships from operating in Australian waters and are leading to large price increases for goods transported by foreign ships.

The Australian companies which are users of shipping need access to sea transportation at reasonable prices in order to:

- Enable them to remain competitive and productive;
- Preserve employment in the industries which use shipping;
- Avoid increased congestion and higher maintenance costs on Australia's road and rail networks; and
- Avoid increasing Australia's greenhouse gas emissions as a result of replacing shipping with more carbon-intensive forms of transportation (eg. air transportation).

The increases in transport costs to the users of coastal shipping were acknowledged in the Regulatory Impact Statement (RIS) for the Government's reforms:

"4.1.1 Effect of cabotage on voyage patterns

155. The methodology does not allow for differences between voyage patterns in the base and policy cases because it would require detailed information about voyage patterns to estimate. For example, under a more liberal cabotage policy, a foreign ship may be permitted to pick up a coastal cargo after unloading an overseas cargo at the same or at a nearby port and then carry the coastal cargo as part of its return trip overseas. Under a tighter cabotage policy, this might not be permitted. Instead, a domestic ship dedicated to the task might have to undertake a return trip in ballast. By restricting opportunities for shippers of coastal cargoes to engage foreign ships that happen to be nearby, tightening the cabotage policy is likely to lead to additional empty voyages for both Australian and foreign ships. Empty voyages mean additional fuel consumed as well as ships' time.

156. With a tighter cabotage policy, Australian shippers of domestic freight incur higher costs from lost opportunities to take advantage of cheap transport in passing foreign ships and having to pay for empty repositioning voyages by domestic ships. Part of the cost of empty voyages by foreign ships may be passed on in the form of higher freight rates to the Australian exporters and importers that employ the foreign ships to carry their international cargoes."

In addition to increased costs, it is clear from the above extract that a tighter cabotage policy would have negative environmental consequences.

In Ai Group's view an appropriate balance needs to be struck which takes into account the interests of Australian companies (shipping companies as well as companies which use shipping to transport their goods), Australian workers (those employed by shipping companies plus those employed by the users of shipping) and Australian consumers (who will be forced to pay the higher prices associated with increased transport costs)."

2.3 The *Coastal Trading (Revitalising Australian Shipping) Act 2012* came into operation on 1 July 2012. The Act has resulted in increased costs for users of shipping transport.

3. Relevant workplace relations developments, other than the *Coastal Trading (Revitalising Australian Shipping) Act 2012*

3.1 In addition to the coastal trading legislation, there have been a number of important developments over recent years regarding the application of Australian workplace relations laws and industrial awards to foreign-flagged ships, including the following:

- In 2002, the Australian Industrial Relations Commission roped CSL (registered in the Bahamas and operating with a Ukrainian crew) into the *Maritime Industry Seagoing Award*. CSL appealed to the High Court but lost in a unanimous High Court decision.
- From 27 March 2006, the *Workplace Relations Act 1996* excluded "persons insufficiently connected with Australia" from the application of the Act (s.12(1)). The *Workplace Relations Regulations* defined the following persons as "persons insufficiently connected with Australia":

"A person who:

- (a) is a non-citizen; and
- (b) is a member of the crew performing duties on a permit ship"; and

"A foreign corporation in the capacity as the employer of a person who:

- (a) is a non-citizen; and
 - (b) is a member of a crew performing duties on a permit ship..”
- The original *Fair Work Regulations 2009* which came into effect on 1 July 2009 extended the operation of the *Fair Work Act 2009* to ships with an Australian licence, ships with an Australian permit and majority Australian-crewed ships operating in Australian waters.
 - The Australian Government accepted that the original *Fair Work Regulations 2009* were too restrictive and, in December 2009, the *Fair Work Regulations 2009* were amended. Amongst other changes, Regulation 1.15E was amended, as discussed in the following extract from the Explanatory Statement for the *Fair Work Legislation Amendment Regulations 2009 (No.2)*):

“Regulation 1.15E formerly provided that, for subsection 33(3) of the FW Act, the FW Act will apply to all licensed ships, permit ships and majority Australian-crewed ship in the EEZ and the waters above the continental shelf from 1 January 2010. The effect of the regulation was to extend the FW Act to regulate employment relationships on these vessels, whether or not crew members and their employers are Australian.

This amendment to regulation 1.15E ensures that the FW Act applies only to licensed ships and permit ships regularly carrying passengers and cargo in Australian waters. Foreign ships that only intermittently carry passengers and cargo in Australian waters would be excluded from coverage by the FW Act. Regulation 1.15E now extends the application of the FW Act to the following types of ships in the exclusive economic zone and the continental shelf:

- licensed ships, where the licence is in force or is issued on or after 1 January 2010;
- permit ships that have been issued with a continuing voyage permit that is in force or is issued on or after 1 January 2010;
- permit ships that have been issued with a single voyage permit on or after 1 January 2010 and:
 - the ship has previously been issued with at least two single voyage permits over the previous 12-month period; or
 - the ship was issued with a continuing voyage permit in the 15-month period immediately preceding the date the current single voyage permit was issued;
- Australian majority-crewed ships.

A note at the end of regulation 1.15E sets out the application of the FW Act in the exclusive economic zone and the continental shelf to licensed ships, permit ships and majority Australian-crewed ships is subject to Australia's international obligations relating to foreign ships, and any concurrent jurisdiction of a foreign State."

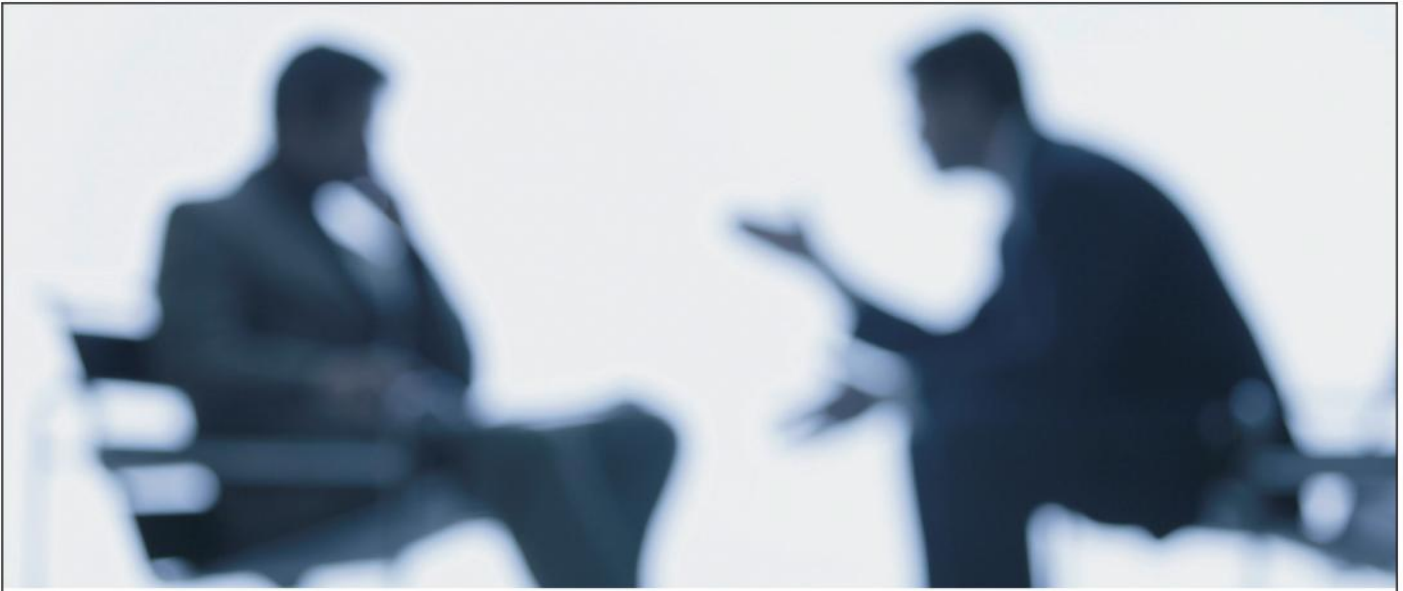
- Fair Work Australia (now the Fair Work Commission) developed a Part B for the *Seagoing Industry Award 2010* which from 1 January 2011 has covered permit vessels.

3.2 The developments since 2009 have led to an overly restrictive and costly cabotage and coastal trading regime being imposed.

4. Conclusion

4.1 The current cabotage and coastal trading regime is deterring foreign ships from operating in Australian waters and has resulted in large price increases for goods transported by foreign ships.

4.2 Accordingly, Ai Group concurs with the recommendation in the Productivity Commission's Draft Report that the Australian Government should proceed with its foreshadowed review of coastal shipping regulation as soon as possible, with the objective being to achieve the most efficient coastal shipping services feasible for Australia.



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