C Coastal trading regulation

|  |
| --- |
| Key points |
| * Recent changes to Australian coastal trading regulation have been: in 2009, changes to workplace relations were passed, and when combined with awards modernisation processes, in 2011 Australian wage rates were extended to workers on foreign flagged vessels inside Australia’s Exclusive Economic Zone; in 2012, hiring, licensing, and vessel registration requirements changed; and tax exemptions applied to certain Australian ship operators. * The cumulative effects of the changes are likely to decrease the desirability of engaging in Australia’s coastal trade for international vessels; increase the costs of providing domestic coastal trading services; and reduce the level of competition in Australia’s coastal trading network. * These changes are likely to have a substantial impact on Australia’s shipping industry, and also those Australian businesses who rely on shipping services to transport their goods to market. * Tasmania, as an island state, is particularly vulnerable to regulatory reforms which affect the desirability of engaging in the coastal trades. A number of participants to this inquiry have stated that shipping costs have risen over the past few years, and that the increased costs are attributable to the recent regulatory reforms. Tasmania’s markets are likely to be affected as follows: * *Dry and liquid bulk —*Tasmania’s bulk (dry and liquid) market that utilises temporary licenced vessels must hire Australian workers in senior positions and pay Australian wages for foreign flagged vessels engaged in their third and subsequent coastal trading voyages in a 12 month period, increasing shipping costs. * *Containerised and other cargo* — the Bass Strait route is served by Australian‑owned vessels for containerised cargo, and therefore the hiring and wage reforms have not directly affected the market. It is unclear whether the tax reforms will reduce shipping costs, but they are relevant to current plans for new ship investments. * *Tourist numbers* — tourist numbers from Victoria to Tasmania are lower than they could be as the reforms adversely affect the appeal of the Bass Strait route. Elsewhere throughout Australia, large cruise vessels compete on an open coast basis, with the potential for lower fares for tourists. * Removing these reforms will be of some benefit to Tasmania, however, removing them will not fully ameliorate the relatively high costs of shipping across Bass Strait. |
|  |
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## C.1 Introduction

Coastal shipping can be broadly defined as the interstate carriage of cargo or passengers from a state/territory to another state/territory via water. Whilst common for a vessel to undertake intrastate and/or international legs along with an interstate leg during any single voyage, intrastate and international legs are not coastal trading. This appendix outlines some of the recent legislative changes to Australia’s coastal trading network, and the impact of those changes on Tasmania.

Section C.2 covers the 2009 amendments to the Fair Work Regulations 2009 (Cwlth), and the award modernisation process under the *Fair Work Act 2009* (Cwlth), whereby foreign flagged vessels which engage in Australian coastal trading are obliged to pay Australian seafaring wages to their workers.

Sections C.3 to C.5 discuss the coastal trading reforms introduced in 2012. The three main ‘reforms’ were to: vessel registration requirements; licensing vessels to engage in coastal trading; and a range of tax exemptions for vessels and ship operators.

Section C.6 outlines the likely impacts of the recent reforms on coastal trading in Tasmania.

## C.2 Amendments to workplace relations legislation

Under the previous award system, unlicensed (permit) vessels were not engaging in ‘coastal trading’ (see section C.4) and, therefore, these vessels were permitted to pay the International Transport Workers’ Federation (ITF) prevailing wage rate.

From 1 January 2010, amendments to the Fair Work Regulations 2009 (Cwlth) extended the application of the *Fair Work Act 2009* (Cwlth) to all workers engaged in coastal trading. From 1 January 2011, vessels that were licensed or under permit (see section C.4), as well as majority Australian‑crewed vessels, were required to pay prescribed wage rates.

Following a process of award modernisation, the Maritime Industry Seagoing Award 1999 was replaced by the Seagoing Industry Award (SIA). On 1 January 2010, Part A of the SIA applied to vessels covered by the *Fair Work Act 2009* (Cwlth), except unlicensed (permit) vessels. From 1 January 2011, SIA Part B applied to unlicensed vessels, and for the first time, required employers of workers on those vessels to provide their workers with certain minimum conditions of employment such as including wage rates, hours of work, and allowances.

Table C.1 illustrates the changes in the prevailing wage rates for different vessel licences before and after the amendments.

Table C.1 Workplace relations amendments to prevailing wages in the seagoing industry**a**

|  |  |  |  |
| --- | --- | --- | --- |
| Vessel ownership | License type | Old wage rate determined by: | New wage rate determined by: |
| Australian-owned vessel | Licensed | MISA 1999 | SIA 2010 Part A, plus EBA negotiated additions |
| Unlicensed (permit) | ITF market rate | SIA 2010 Part B |
| Foreign flagged vessel | Licensed | MISA 1999 | SIA 2010 Part A, plus EBA negotiated additions |
| Unlicensed (permit) | ITF market rate | SIA 2010 Part B |

a The SIA applied to licensed vessels on 1 January 2010, and to unlicensed vessels on 1 January 2011. EBA = Enterprise Bargaining Agreement. ITF = International Transport Workers’ Federation. MISA = Maritime Industry Seagoing Award 1999. SIA = Seagoing Industry Award 2010.

*Sources*: (Australian Industrial Relations Commission 1999; Fair Work Commission 2010).

The SIA Part B wages were around twice the amount of the ITF market rates that prevailed previously (Deloitte 2012). Labour costs account for around 10-15 per cent of total voyage costs (chapter 4), and therefore an effective doubling of labour costs has the potential to change the profitability of some foreign flagged vessels engaging in coastal trading in Australia.

Further, the amendments ensure that any vessels entering Australia’s Exclusive Economic Zone — which are majority Australian-crewed — are required to pay their workers SIA Part A wages. This requires foreign flagged vessels (which are majority Australian‑crewed) operating on international routes to/from Australia to pay SIA Part A wages. Prior to the changes, these vessels would have paid their workers ITF market rates. The Commission estimates that solely based on the leave accrual provisions, the labour costs associated with remunerating workers at the SIA Part A rate, is more than 80 per cent above the SIA Part B rate. The Commission has not analysed other provisions that exist in SIA Part A which do not exist in SIA Part B such as allowances for: handling and securing cargo; disturbances of sleep; study; living away from home; and meals and accommodation. The true labour costs of remunerating a worker under SIA Part A could potentially be twice as much as they are for SIA Part B.

## C.3 Coastal trading reforms: vessel registration

Prior to 2012, coastal trading was regulated by Part VI of the *Navigation Act 1912* (Cwlth). The *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cwlth) (“the Coastal Trading Act”) and consequential amendments Act[[1]](#footnote-1) established the new regulatory framework on 1 July 2012.

The objectives of the changes are to provide a regulatory framework that:

1. promotes a viable shipping industry that contributes to the broader Australian economy
2. facilitates the long term growth of the Australian shipping industry
3. enhances the efficiency and reliability of Australian shipping as part of the national transport system
4. maximises the use of vessels registered in the Australian General Shipping Register in coastal trading
5. promotes competition in coastal trading
6. ensures efficient movement of passengers and cargo between Australian ports. (Coastal Trading Act s 3)

The new regulatory framework introduced three main changes. The changes affected vessel registration requirements (see below); licensing requirements to engage in coastal trading (section C.4); and certain tax exemptions for vessels and ship operators (section C.5).

### Vessel registration

Vessel registration is fundamental to coastal shipping as the flag flown by a vessel determines the license types the vessel can operate under as established by the Coastal Trading Act. It is a requirement that every Australian-owned commercial vessel (with some exceptions — see below) be registered.

At a high level, there are two sets of registers: national registers, and international and open registers. National registers enable domestically-owned vessels to register so they can engage in coastal trading within their territorial waters. Depending on how registers are established under domestic law, international registers may allow domestically-owned vessels to engage in both coastal and international trade. Similarly, open registers allow foreign-owned vessels to engage in both coastal and international trade in multiple countries, subject to domestic legislation of the coastal state.

#### Registration requirements prior to the 2012 reforms

Prior to the shipping ‘reform’ package, ships were registered on the Australian register of ships under the *Shipping Registration Act 1981* (Cwlth). It was a requirement that every Australian-owned ship over 24 metres in tonnage length (excluding Government ships, fishing vessels and pleasure craft) be registered.

Foreign owned ships were not permitted to be registered on the Australian register of ships.

Under the *Navigation Act 1912* (Cwlth) (which was the relevant Act prior to the 2012 changes), whether a ship was registered in the Australian register of ships had little bearing on its ability — or licensing conditions — to engage in coastal trading (see section C.4).

#### Registration requirements after the 2012 reforms

The *Shipping Registration Amendment (Australian International Shipping Register) Act 2012* (Cwlth) amended the *Shipping Registration Act 1981* abolishing the Australian register of ships and creating two new registers:

* the Australian General Shipping Register (“the general register”)
* the Australian International Shipping Register (“the international register”).

The general register effectively replaced the Australian register of ships and has the same registration requirements as applied under the *Shipping Registration Act 1981* (Cwlth) prior to the commencement of the changes. One important point to note is that only ships registered on the general register are permitted to apply for general licences to engage in coastal trading (see section C.4).

The international register is a new register, and as stated in the Explanatory Memorandum:

International registers have been established by a number of traditional maritime countries to offer their ship owners an alternative to registering under open registers. International registers offer some of the advantages of open registers, such as the ability to use crew of different nationalities, while maintaining the link between ownership/management of the vessels and the national flag. Maintaining this link ensures that the maritime safety regulator and other regulators of the ‘flag state’ continue to have control of safety and environmental standards, enforcement and compliance, and other matters which underpin the reputation of the national ‘flag’. (Albanese 2012)

Ships that are permitted to be registered in the international register are:

1. trading ships that are Australian-owned ships;
2. trading ships that are wholly owned by Australian residents, or by Australian residents and Australian nationals;
3. trading ships that are operated solely by Australian residents, or by Australian nationals, or by both;
4. trading ships that are on a demise charter[[2]](#footnote-2) to Australian-based operators. (s 15B)

A prerequisite for registering on the international register is that a collective agreement must exist between the ship owner and the seafarers’ bargaining unit (that is, the relevant seafarer employee organisation).

The registrar must refuse to register the ship if the registrar is satisfied that ‘the ship will not be predominantly used to engage in international trading’: s 15F(3)(a). This ensures that those ships registered on the international register predominantly engage in international trade, potentially restricting the level of competition between those ships and those on the general register. Ships registered on the international register are not permitted to apply for a general licence to engage in coastal trading (see section C.4).

It is a condition of registration of a ship on the international register that, where possible, the following positions be filled with Australian nationals or Australian residents:

* master or chief mate; and
* chief engineer or first engineer.

The ship can be cancelled from the international register under a range of circumstances including that the ship has not been or will not be predominantly engaging in international trading, or that a collective agreement is not in force.

## C.4 Coastal trading reforms: licensing requirements

Until the shipping changes commenced in 2012, coastal trading was regulated by Part VI of the *Navigation Act 1912* (Cwlth). Under that Act, coastal trading was governed by a licencing and permit regime covering both domestic and foreign flagged ships. After the reforms commenced, the licencing regime was amended to include additional classes of licences, which had differing regulatory obligations on ship owners depending on whether the vessel was Australian registered, internationally registered, or a foreign flagged vessel.

### Coastal trading under the Navigation Act

The previous licencing and permit regime under the *Navigation Act 1912* (Cwlth) is depicted in figure C.1.

In order for ships to be licensed under the Act, the owner was required to make an application to the Minister to engage in the ‘coasting trade’ (as it is referred to in that Act). There are no ownership restrictions on which ship owners may apply to be licenced to engage in the coasting trade. That is to say, both Australian and foreign flagged ships can apply to become a licenced ship. The major licence condition placed on ships when engaging in the coasting trade is that they must pay the seamen employed the prevailing Australian wage rate. It is not a licence condition that such seaman be Australian citizens.

A ship can alternatively apply for a permit as an unlicensed ship. There are two types of permit: single voyage permit (SVP) and continuing voyage permit (CVP). In order to obtain a permit, the Minister must be satisfied that there is a market gap, either because there is no licensed ship available for the service, or because the current level of service by licensed ships does not meet the needs of the port(s). The Minister must also consider that it is in the public interest that unlicensed ships be allowed to engage in the trade. If either a SVP or a CVP is issued, the ship is not engaging in the coasting trade for the purposes of the Act.

Under the Navigation Act there is no requirement to pay the seamen employed on these voyages Australian wage rates. However, following the commencement of amendments to the Fair Work Regulations on 1 January 2010 and the commencement of Parts A and B of the SIA (on 1 January 2010 and 1 January 2011, respectively), there is an obligation to pay seafarers Australian wages (see section C.2).

Figure C.1 The previous process for licensed ships to engage in the coasting trade and the process for unlicensed ships**a**

Under the (repealed) *Navigation Act 1912* (Cwlth)

|  |
| --- |
| The figure shows a flow diagram of the procedures involved in applying for, and having granted, a l license to engage in coastal trading under the Navigation Act.  The figure also shows a flow diagram of the procedures involved in applying for, and having granted, a permit under the Navigation Act. |

a In addition to the legislated process illustrated, a series of Ministerial Guidelines were established to assist in the practical application of the regime, and these were largely codified when the package of shipping changes commenced on 1 July 2012. While notionally ‘new regulation’ therefore, the changes did not constitute new required practices or obligations on ship operators.

While a CVP is in force, the Minister may decide that it is no longer in the public interest that such trade be undertaken and can issue the ship owner a show cause notice as to why their permit should not be cancelled. The Minister must, after allowing the ship owner to make representations, then decide whether it is in the public interest for that permit to remain.

The obligations on licensed and unlicensed ship owners are described in table C.2.

Table C.2 Eligibility and conditions imposed on licensed and unlicensed ships under the *Navigation Act 1912* (Cwlth)

Australian or foreign flagged ships

|  |  |  |
| --- | --- | --- |
| Subject matter | Australian ship | Foreign flagged ship |
| **Eligibility to apply for:** | | |
| * licence | ✓ | ✓ |
| * single voyage permit | ✓ | ✓ |
| * continuing voyage permit | ✓ | ✓ |
| **Is the ship engaging in the coasting trade?** | | |
| * licence | ✓ | ✓ |
| * single voyage permit | 🗶 | 🗶 |
| * continuing voyage permit | 🗶 | 🗶 |
| **Conditions imposed on:** | | |
| * licence | seamen employed on the ship shall be paid Australian wages | seamen employed on the ship shall be paid Australian wages |
| * single voyage permit (prior to 1 January 2011) | no conditions, unless Minister prescribes conditions | no conditions, unless Minister prescribes conditions |
| * continuing voyage permit (prior to 1 January 2011) | no conditions, unless Minister prescribes conditions | no conditions, unless Minister prescribes conditions |
| * single voyage permit (after to 1 January 2011) | seamen employed on the ship shall be paid Australian wages | seamen employed on the ship shall be paid Australian wages |
| * continuing voyage permit (after to 1 January 2011) | seamen employed on the ship shall be paid Australian wages | seamen employed on the ship shall be paid Australian wages |

### Recent changes in coastal trading

In 2012, the Government introduced a range of measures that sought to ‘create a stable regulatory environment and provide internationally competitive fiscal incentives to encourage the revitalisation of the Australian shipping industry’ (Albanese 2012).

The two Coastal Trading Acts replaced Part VI of the *Navigation Act 1912* (Cwlth), creating a new licensing regime for vessels to engage in coastal trading. The Shipping Registration Amendment Act removed the pre-existing Australian register of ships, creating a general register and an international register (section C.3).

The effect of the Coastal Trading Acts is to replace the previous licensing and permit regime with a system of:

* general licences
* temporary licences
* transitional general licences
* emergency licences.

Emergency licences are only available in the event of natural disasters and are not discussed.

#### General licences

The process for general licences is depicted in figure C.2. The prerequisites for a general licence are that the vessel is registered in the general register (see section C.3), and that each seafarer working on the vessel (when engaged in coastal trading) is permitted to work in Australia. In effect, this license is the same as a license issued under the previous regime of the *Navigation Act 1912* (Cwlth).

General licences are granted to vessel owners for a period not exceeding five years. During the time that the licence is valid, the vessel has unrestricted access to Australian coastal waters, although there is no requirement that the vessel undertake any voyages. Shippers and the users of shipping services can only enter into contracts for the period that the general licence is in force.

Conditions placed on all general licences are that the vessel must remain registered in the general register, and that the seafarers employed during the times when the vessel is engaged in coastal trading must be permitted to work in Australia.

Figure C.2 The general licensing process for vessels registered in the general register to engage in coastal trading

Under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cwlth)

|  |
| --- |
| The figure shows a flow diagram of the procedures involved in applying for, and having granted, a general license to engage in coastal trading under the Coastal Trading Act. |

#### Temporary licences

The process involved in applying for, and the granting of, a temporary licence is shown in figure C.3.

Figure C.3 The temporary licensing process for eligible vessels to engage in coastal trading

Under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cwlth)

|  |
| --- |
| The figure illustrates the procedures involved in applying for, and having granted, a temporary license to engage in coastal trading under the Coastal Trading Act 2012. |

Vessels registered in the general register are not permitted to apply for temporary licences. The only eligible vessels are those that are registered in the international register, and foreign flagged vessels.

A temporary licence is valid for 12 months. When applying for a temporary licence, the applicant must nominate at least five voyages to be authorised by the licence and information such as the expected loading dates, the number of passengers or cargo to be carried and the ports at which the passengers or cargo are to be loaded and unloaded.

After receiving an application for a temporary licence the Minister must notify all general and transitional general licence holders of the application, as well as bodies or organisations (or the members of either) that the Minister considers would be directly affected if the application were granted.

General licence holders are then given an opportunity to nominate one or more voyages that they could undertake under their general licence, and notify the Minister. If a general licence holder does nominate any voyage(s), the temporary licence applicant must negotiate with the general licence holder ‘whether, and to what extent, the vessel authorised by the holder’s general licence is equipped to carry the passengers or cargo specified in the application’: s 32(3)(a), and whether they can be carried in a timely manner. The Minister then makes a decision as to whether to grant or refuse the temporary licence application.

If the application is granted, conditions imposed on temporary licences are that the vessel be registered in the international register or be foreign flagged and that if any authorised voyage is not to be undertaken to inform the Department of Infrastructure and Regional Development. Temporary licences can be varied (eg where the number of passengers or cargo to be carried changes) or can be changed to include new matters (eg a further voyage). In both instances, general licence holders and bodies or organisations that would be directly affected by such changes are invited to make comments to the Minister, to assist the Minister in forming a decision as to whether the change should be permitted.

During the temporary licence period, the Minister may issue a show cause notice to the temporary licence holder if the Minister considers that ‘the temporary licence is being used in a way that circumvents the purpose of the general licence provisions or the object of this Act’: s 63(1).

#### Transitional general licences

Under the *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012* (Cwlth), transitional general licences were created to transition those vessels which were granted a licence under s 288 of the *Navigation Act 1912* (Cwlth), immediately prior to its repeal. This was to ensure that there was a smooth transition to the new licensing scheme introduced by the shipping changes. In effect, transitional general licences guaranteed that foreign flagged vessels which were licensed would still be able to engage in coastal trading in an unrestricted manner. However, under the new regime, when foreign flagged vessels engage in coastal trading they are required to employ seafarers that are permitted to work in Australia and pay wages determined by the Minister for Infrastructure and Regional Development.

In deciding whether to grant a transitional general licence, the Minister may have regard to ‘whether the owner intends to register [the vessel] under the *Shipping Registration Act 1981*, but is unable to do so immediately because of commercial obligations or requirements under a foreign law’.[[3]](#footnote-3)

Transitional general licences have the same conditions as those imposed on general licence holders (apart from the requirement to be registered in the general register). Transitional general licences are valid for no more than five years and can only be renewed once. In practice, vessels which currently have transitional general licences have a maximum 10 year period where they can engage in coastal trading, whilst being obliged to employ seafarers permitted to work in Australia. At the expiration of the transitional general licence (assuming the foreign flagged vessels wish to continue engaging in Australia’s coastal trading), they will have to either:

* transfer to a general licence (thus become an Australian vessel, hiring Australian workers and continue to pay them SIA Part A wages)
* apply for a temporary licence (while still permitted to be foreign flagged, the vessel has to hire prescribed Australian workers and pay SIA Part B wages for the third and subsequent voyages in a 12 month period).

Thus, if the foreign flagged vessel wants unfettered access to Australia’s coastal trading (as it has under the transitional general licence), it will have to become an Australian registered vessel. If the foreign flagged vessel seeks to only engage in coastal trading in a more ad hoc manner, then it can apply for a temporary licence (with the obligation to pay SIA Part B wages for the third and subsequent voyages in a 12 month period), where all general licence holders have a right to compete for the voyages in the temporary licence application.

## C.5 Coastal trading changes: tax exemptions

In addition to the measures previously discussed, the shipping package introduced two tax Acts[[4]](#footnote-4) to provide a framework for tax incentives:

1. to encourage investment in the Australian shipping industry; and
2. to encourage the development of sustainable employment and skills opportunities for Australian seafarers (Tax Incentives Act s 3).

Briefly, the effects of the changes are to:

* exempt eligible ship operators from income tax on core shipping activities
* depreciate qualifying vessels over a shorter effective life than would ordinarily have prevailed
* postpone any tax liability arising from the disposal of a qualifying vessel for an additional 12 months than would ordinarily occur
* permit a refundable tax offset for the use of Australian resident seafarers
* exempt lease payments to foreign vessel owners being subject to the standard 30 per cent royalty withholding tax.

It was stated in the Explanatory Memorandum to the tax amendment Act that the proposed taxation ‘reforms’ would cost the Australian Government nearly $50 million in foregone taxation revenue, in its first year of operation and would steadily increase (table C.3).

Table C.3 Financial impact as a result of the shipping taxation ‘reforms’

Over the forward estimates

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | 2012-13 | 2013-14 | 2014-15 | 2015-16 | Total impact |
| Financial impact ($m) | 49 | 66.8 | 68.7 | 70 | 254.5 |

*Source*: Swan (2012)

The likely effects of the tax changes are twofold:

1. existing eligible vessels registered in either the general or international register (see section C.3) will be able to access the tax incentives
2. foreign flagged vessels may be sufficiently incentivised to:
   1. register in either the general or international register as part of becoming eligible for the tax incentives
   2. lease their vessels to an Australian shipping operator due to the exemption from the requirement to pay royalty withholding tax.

For vessels registered in either the general or international register, the tax incentives represent a windfall gain to the vessel owners. These owners were previously required to pay company tax at the rate of 30 per cent on income from core shipping activities, and are now no longer required to do so.

The Commission has yet to receive any evidence to suggest that there has been any increase in the number of foreign flagged vessels registering in Australia, and therefore it is unclear whether the tax incentives have been accessed by what were previously foreign flagged ships.

The Maritime Union of Australia submitted that the income tax exemption might not be as effective as it could be, because the exemption did not extend to the distribution of profits via dividends to shareholders, thus lowering its overall appeal to shippers (sub. 32).

Foreign flagged vessels might lease their vessels to Australian operators on a bareboat charter basis because of the cessation of the requirement to pay the royalty withholding tax on bareboat chartered vessels. Prior to the change, the royalty withholding tax exemption only applied to Australian based operators who leased vessels on the basis of time or voyage charter arrangements (whereby a foreign flagged vessel would be leased with an existing and most likely foreign crew). As such, the change can be also viewed as addressing an anomaly. By exempting the bareboat charter vessels from the withholding tax requirement, more Australian operators (and seafarers) may be employed. However, the more foreign flagged vessels that lease their vessels to Australian operators, the greater the foregone taxation revenue from the loss of royalty withholding tax. Further, if by leasing these vessels, new Australian operators enter the shipping industry, they would be entitled to the tax incentives introduced as part of the shipping reforms. These new operators would enter the shipping industry and thereby redirect resources from other areas of the economy where the advantageous shipping tax incentives do not apply. That is to say, the further the policy intent is realised, the Australian Government can expect to forego additional taxation revenue.

## C.6 Likely impacts of recent changes

### Summary of changes

The shipping changes have significantly impacted Australia’s coastal trading through material changes to the licence categories; application processes; and conditions attached to licences to engage in coastal trading in Australia (table C.4). Additionally, remuneration and hiring requirements have significantly changed.

Table C.4 Comparison of license categories and license conditions**a**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Vessel registry | Navigation Act 1912 | | | | | | Coastal Trading Acts 2012b | | |
| Prior to 1 January 2011 | | | | After 1 January 2011 | | | General license | Temporary license | Transitional general license |
|  | Licensed | Unlicensed (permit) | | Licensed | Unlicensed  (permit) | |  |  |  |
|  |  | SVP | CVP |  | SVP | CVP |  |  |  |
| **Eligibility to apply for a licence:** | | | | | | | | | |
| * general registerc | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | 🗶 | 🗶 |
| * international register | n/a | n/a | n/a | n/a | n/a | n/a | 🗶 | ✓ | 🗶 |
| * foreign flagged vessel | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | 🗶 | ✓ | ✓ |
| **Is the vessel engaging in coastal trade?** | | | | | | | | | |
| * general register | ✓ | 🗶 | 🗶 | ✓ | 🗶 | 🗶 | ✓ | n/a | n/a |
| * international register | n/a | n/a | n/a | n/a | n/a | n/a | n/a | ✓ | n/a |
| * foreign flagged vessel | ✓ | 🗶 | 🗶 | ✓ | 🗶 | 🗶 | n/a | ✓ | ✓ |
| **Licence condition to pay Australian wages and/or to hire Australian workers:** | | | | | | | | | |
| * general register | pay wages | 🗶 | 🗶 | pay wages | pay wages | pay wages | hire workers and pay wages | n/a | n/a |
| * international register | n/a | n/a | n/a | n/a | n/a | n/a | n/a | hire workers and pay wagesd | n/a |
| * foreign flagged vessel | pay wages | 🗶 | 🗶 | pay wages | pay wages | pay wages | n/a | pay wages | hire workers and pay wages |

a Under the *Navigation Act 1912* (Cwlth), *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cwlth) and *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012* (Cwlth). b Emergency licenses excluded. c For the purposes of the table, it is assumed that the general register is the same as the Australian register of ships as was in force under the *Navigation Act 1912*. d Applies to the master or chief mate and to the chief engineer or first engineer of the vessel. SVP = single voyage permit. CVP = continuing voyage permit. n/a = not applicable.

Previously, Australian owned vessels could elect to have a general licence or a permit. Since the changes commenced, Australian owned vessels must obtain a general licence, they are not permitted to apply for either a temporary licence or a transitional general licence. This has reduced the flexibility available to Australian vessels to enter and exit the coastal trading market as they see fit. Further, it has the potential to allow Australian owned vessels which have a general licence to wait for internationally registered or foreign flagged vessels to make an application for a temporary licence, and then negotiate with the applicant to undertake those voyages (although there is no guarantee that negotiation would be successful or the voyages would be awarded to the Australian operator).

### Likely effects of the tax changes

The likely effects of the tax changes on freight rates are explained in table C.5. The net effect of the changes is unclear as it is conditional upon shippers passing through any expected benefits of the reforms onto users of shipping services. Additionally, some tax of the changes (such as the accelerated depreciation) are not available for some time, so as to not have retrospective effect.

However, it is clear that the tax changes make investment decisions in new vessels more attractive to shippers. All three Bass Strait shipping operators are currently considering new vessel investments, and the commercial shippers have both indicated that the tax changes formed a part of their investment decisions.

### Likely effects on dry and liquid bulk

In 2011-12, vessels operating under permit carried 21.8 per cent and 34.3 per cent of the dry and liquid bulk throughout Australia, respectively (BITRE 2013a). Therefore, to the extent that the reforms have increased the costs of these vessels in transporting bulk commodities throughout Australia, Tasmania is likely to be adversely affected.

A proportion of the total bulk freight task is still undertaken by foreign flagged vessels in Tasmania. As noted by the Department of Infrastructure and Regional Development:

Departmental records indicate that, since 1 July 2012, approximately 28 foreign flagged vessels have undertaken around 127 voyages under temporary licences between the Australian mainland and Tasmania, carrying cargoes ranging from petroleum and propane to gypsum, fertilisers and metals. (sub. 42, p. 38)

Table C.5 Expected changes to freight rates from tax reforms

|  |  |
| --- | --- |
| Explanation of tax measure | If tax measure is passed through to users of shipping services:a |
|  | Expected impact |
| Company tax exemption - Exempt ship owners from 30 per cent company tax on income from core shipping activities | * As all Australian shippers previously paid company tax on all assessable income, this represents a windfall gain. The reduction in tax payable means that shippers can reduce their freight rates and still be in the same financial position as they were prior to the tax exemption. |
| Accelerated depreciation - Depreciate qualifying vessels after 10 years | * The effect of accelerated depreciation on freight rates is unclear given the assessable income exemption of income derived from core shipping activities for company tax purposes. |
| Rollover relief - Additional 12 months before liability arises in relation to disposal of a vessel | * Since Australian shippers are liable to pay less company tax, the effect of rollover relief on freight rates is unclear. |
| Refundable tax offset – Increases amount of deductions for vessels which hire Australian seafarers | * The refundable tax offset should reduce costs for eligible shipping vessels to the extent assessable income (for incidental shipping activities) remains subject to company tax. |
| Foreign withholding tax exemption - Vessels leased to Australian operators are exempt from 30 per cent tax rates | * Should reduce leasing costs for international vessels leased to Australian operators under demise charter arrangements. * It is unclear to what extent foreign flagged vessels were leased to Australian operators prior to the commencement of the reforms, particularly on the Bass Strait route. * It is unclear to what extent the previous withholding tax was passed through to Australian operators, particularly in light of the global excess supply of foreign vessels. * It is unclear whether the exemption from withholding tax is sufficient to induce vessels to be leased to Australian operators, given international tax regimes for shipping. |

a If the tax measures are fully appropriated by shippers then there will be no benefits from the reforms for the users of shipping services.

The 127 voyages undertaken were over an 18 month period, which equates to around 85 voyages per year. Prior to the reforms there were 134 voyages under single and continuing voyage permits in 2011-12 (BITRE 2012). There were a further 105 urgent single voyage permits (SVPs) issued in 2011-12. This suggests that, the number of permit voyages to/from Tasmania have reduced from 239 to 85 per year, although some of these voyages may now be carried out by ships operating under transitional general licences.

The Commission understands that a significant proportion of Tasmania’s liquid bulk cargo is carried under temporary permit. Given the increase in costs associated with the Fair Work Regulation changes and the additional compliance costs associated with the new licencing regime, it can be expected that freight rates for liquid bulk will increase in Tasmania.

### Likely effects on containerised cargo

The three domestic operators across Bass Strait (TT-Line, ANL Toll, and SeaRoad Holdings) are all Australian owned. The recent (non-tax) changes will therefore not directly impact their costs. As before the regulation changes, the current Australian seafarer wage rates are in excess of those paid in other countries (Department of Infrastructure and Regional Development sub 42, p. 38), and to that extent they are adding pressures to the cost of transporting goods across Bass Strait. The regulation changes are likely to have a far more significant impact on international vessels.

Since 1 January 2011, international vessels are obliged to pay around twice the amount for labour than they had previously as a result of the awards modernisation (Deloitte 2012). If the international vessel was majority Australian-crewed, the vessel’s labour costs would have increased around 200 per cent as a result of the changes. Despite evidence suggesting that labour costs represent only 10-15 per cent of total costs (see chapter 4), an increase in costs of this magnitude could have significant implications for the profitability of engaging in either coastal or international trading. This is further magnified given the global oversupply of international vessels.

Evidence suggests that only 15 per cent of Tasmanian northbound products require an overnight service, yet up to half of all goods transported have logistic chains built around the immediate flow of product after production (Aurecon 2013). This suggests an opportunity for foreign flagged vessels to collect containerised cargo from Tasmania. However, it is unclear whether the volume (approximately 110 000 TEUs per year) is sufficient to attract this service. An international service could provide an opportunity for some Tasmanian businesses to get their product to market, albeit on a more ad hoc basis, at less cost than the current overnight service. Given the small volume of containers, it is unclear what impact the recent increase in wages for workers on foreign flagged vessels will have on the barriers to international vessels calling at Tasmania.

### Likely effects on Bass Strait passenger movements

Participants noted that voyages commencing in Victoria and terminating in Tasmania cannot be offered following the Ministerial exemption associated with the coastal trading reforms (Lindblad Expeditions sub. 1, Australian Pacific Touring sub. 11, Austrade sub. 41).

The Ministerial Exemption for large cruise vessels commenced on 1 January 2013 and states that vessels in excess of 5000 gross tonnes, capable of at least 15 knots, and carrying more than 100 passengers are exempted from the Coastal Trading Act. However, this exemption does not apply to the carriage of passengers between Victoria and Tasmania. The exemption is the same as the previous exemption first introduced in 1998.

The effect of the exemption is that ‘large cruise vessels’ (i.e. those in excess of 5000 gross tonnes that also meet the other requirements) can engage in ‘coastal trading’ throughout Australian ports — anywhere except between Victoria and Tasmania — and they can avoid the associated costs of complying with the Act.

It seems evident that this policy has the effect of deterring Victorians from visiting Tasmania since the costs of travelling across Bass Strait would be higher (because of the reforms to coastal trading — see section C.4), than they would be from travelling to Tasmania from anywhere else on the Australian mainland. The Commission understands that a significant proportion of visitors to Tasmania are domiciled in Victoria, so the exemption has the potential to materially curtail tourist traffic.

It is also important to note that Tasmanian tourists travelling to Victoria would be subject to the increased costs associated with the reforms.

What is perhaps more significant is that the exemption has the effect of ensuring that large cruise vessels can compete against each other on a completely open coast, with both domestic and foreign flagged vessels exempted from the application of the Coastal Trading Act. This in turn means that vessels travelling from one Australian mainland port to an interstate port (eg Darwin to Cairns, or from Darwin to Hobart) could do so on international vessels. Australian domestic vessels operating on these routes would need to price competitively with international vessels, or risk losing price sensitive tourists. Tourists would be able to access relatively cheaper interstate cruises than those offered between Victoria and Tasmania where the coastal trading reforms apply.

It is likely that the impact on Tasmania will be twofold:

1. Tourist numbers from Victoria to Tasmania would be less than they otherwise would be if the changes did not apply
2. Small cruise and expedition vessels would have to offer significantly higher fares as a result of the changes (since carrying passengers would amount to engaging in coastal trading, and thus increase costs), further reducing tourist numbers to Tasmania. Submissions indicated services have been withdrawn for this reason.

### Conclusion

It is unclear as to the precise net effect of the tax and regulatory changes on freight rates for users of Tasmanian shipping services, but the likely direction of this effect is reasonably clear if there is one.

The Commission considers that the costs of transporting bulk commodities across Bass Strait will rise as a significant proportion of voyages were undertaken by foreign flagged vessels, which since 1 January 2011 are obliged to pay Australian wages to their workers. It appears that the containerised market will not be directly affected as a result of the reforms since at all relevant times the vessels servicing the market were Australian owned, operated, and crewed.

Tourist numbers from Victoria to Tasmania are likely to be lower than they otherwise would be if the route was exempted from the coastal trading reforms. It is unclear why this route is ‘protected’ whereas all other mainland Australian trips to Tasmania are not.

It is likely that the overall impact on Tasmania as a result of the changes is negative. Nevertheless, the removal of these reforms would not fully ameliorate the high costs associated with Bass Strait shipping. As detailed in the draft report, Bass Strait shipping costs are attributable to fundamental and broader economic drivers.

1. *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012* (Cwlth). Collectively, these two Acts are referred to as ‘the Coastal Trading Acts’. [↑](#footnote-ref-1)
2. A demise charter is one where ‘the charterer has whole possession and control of the ship (including the right to appoint the master and crew of the ship)’: *Shipping Registration Act 1981* (Cwlth) s 3. [↑](#footnote-ref-2)
3. *Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012* Sch 2 Pt 3, item 12(2)(a). [↑](#footnote-ref-3)
4. *Shipping Reform (Tax Incentives) Act 2012* (Cwlth) (“the tax incentives Act”) and *Tax Laws Amendment (Shipping Reform) Act 2012* (Cwlth) (“the tax amendment Act”). [↑](#footnote-ref-4)