Australian Shipowners Association

Productivity Commission Inquiry into Tasmania's Shipping Costs and Competitiveness of Tasmania's Freight Industry

Supplementary Submission by: Australian Shipowners Association

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1. Introduction

1.1. This submission is provided with the Australian Shipowners Association (ASA) now having had the benefit of access to the draft report of the Productivity Commission on Tasmanian Freight and Shipping.

1.2. ASA supports draft recommendation 1, in that the Australian Government should proceed with a review of coastal shipping regulation as soon as possible. In particular, the Australian Government should:

- Reduce red tape by removing the 5 voyage minimum in temporary licence applications.
- Introduce express temporary licences.
- Repeal the amendment to the Fair Work Regulations 2009 (FW Regs) which commenced on 1 January 2010, so that temporary licenced ships are not subject to Australian pay rates.
- Remove the need for the Department of Infrastructure to adjudicate on 'reasonable commercial terms'.

1.3. ASA is concerned that some of the statements contained in the draft report are inaccurate and are made without an appropriate understanding of the context of the industry.

1.4. This supplementary submission aims to assist the Commission by providing corrections of fact and context in relation to some incorrect statements and assumptions that are contained in the draft report, including Appendix C.

2. Overall comments on the draft report

2.1. The following information is provided to assist the Commission in ensuring that the final report is an objective analysis of the various influences on Tasmanian shipping and Australian coastal shipping policy in general, in areas where ASA has knowledge and experience.

2.2. In our view, the report does not give enough weight to the submission provided by the Department of Infrastructure, the administrator of the CT Act.

2.3. By way of general comment on the language used in the report, the use of the term 'shipper' is confusing and in parts of the report it is difficult to discern whether the term is referring to the cargo interest or the provider of shipping services. 'Shipper' would normally be used to describe the cargo interest.

Coastal shipping Regulation

2.4. The report (page 20) states 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."

2.5. ASA is not aware of any evidence to support this statement. Furthermore, with respect to international container trade the logic of this assumption, while convenient for detractors

of Australian shipping, does not stack up when the facts are considered. There are two key factors to consider in the context of this assumption:

- The last regular international container service withdrew from Tasmania in April / May 2011 – approximately 14 months prior to the passage of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act).

- With regard to the shipping of other bulk goods, it is important to note that the CT Act codified existing practice under Part VI of the *Navigation Act 1912* (Nav Act 1912), thereby introducing a more transparent regulatory framework around Australia's existing cabotage policy.

2.6. These two points are fundamental to considerations around how the CT Act has influenced the cost of shipping services across Bass Strait and in our view, statements drawing a direct link between the existence of the CT Act and increases to the cost of Bass Strait shipping should be removed from the final version of the Productivity Commission report.

2.7. It is clear that the biggest influencers on the ability of Tasmania to access direct international shipping services and forgo the additional costs associated with transhipment are the volume of cargo and the increasing global trend which has seen international container lines service large volume 'hubs' with very large container ships.

Impact of Coastal Trading Act on Labour Costs

2.8. As an opening comment, it is appropriate to point out that the Government, when introducing the CT Act, made it clear during its consultation process that the application of the *Fair Work Act 2009* (FW Act) and associated industrial instruments was to remain essentially as it was under the previous permit system.[1]

2.9. Much is made in the report of the impact of the introduction of the CT Act on Tasmania. On page 124 of the report it is asserted that:

…
"vessels transporting dry and bulk liquid bulk freight under temporary licences must now hire Australian workers and pay Australian wages; increasing shipping costs and freight rates in the process."
…..

2.10. This statement is not correct. There is no obligation on foreign flagged vessels operating under temporary licences transporting Australian domestic cargo to hire Australian workers. This is an erroneous statement that is repeated in the key points text box contained within Appendix C as well as other parts of the report. Further, the requirement to pay Australian wages (for vessels on the 3rd voyage in a 12 month period) has been in place since January 2010 and came as a result of a change to the *Fair Work Regulations 2009* (FW Regs). This was not a result of the introduction of the CT Act.

1.1. _____

[1] Department of Transport and Infrastructure Supplementary submission to the Senate Economics Legislation Committee

3. Appendix C Coastal Trading Legislation

3.1. A number of assertions are made in Appendix C of the draft report which are inaccurate and potentially misleading and are addressed in the paragraphs below.

C.2 Amendments to workplace relations legislation

3.2. Under paragraph C.2 the report states that "under the previous permit system, unlicensed (permit) vessels were not engaged in 'coastal trading' (see section C.4) and, therefore, these vessels were permitted to pay the International Transport Workers' Federation (ITF) prevailing wage rate." This statement appears to refer to a time prior to 1 January 2010 when changes made to the FW Regs came into force.

3.3. The above statement does not take into account any legislative requirements imposed on shipowners by their flag state. Flag states may impose minimum terms and conditions of employment for employees that work in ships registered in their country (as Australia does). The ITF is an international union for transport workers who negotiate on an enterprise basis for collective agreements with shipowners. There are thousands of ITF agreements in place globally (covering over 120,000 seafarers) and the terms and conditions contained in these agreements will vary.[2]

3.4. Paragraph 3 under C.2 asserts that from 1 January 2011 Part B of the Seagoing Industry Modern Award (SIA) applied to unlicensed vessels, and, *for the first time*, required employers of workers on these vessels to provide their workers with certain minimum conditions of employment such as including wage rates, hours of work and allowances. This assertion is misleading in two ways. Firstly, the effect of the change to the FW Regs took effect from 1 January 2010. From that time until the commencement of Part B of the SIA employers of employees on unlicensed (permit) vessels were obliged to abided by the national minimum wage and National Employment Standards (for vessels travelling under their 3rd single voyage permit in 12 months). Secondly, it is likely that flag state regulation and/or collective agreements with the ITF would have governed terms and conditions of employment for vessels carrying Australian coastal cargo under permit.

3.5. Table C.1 titled "Workplace relations amendments to prevailing conditions in the seagoing industry" is confusing and does not assist the reader in understanding prevailing wages in the seagoing industry. It is unclear what this table is attempting to achieve. For example, reference to "old" and "new" wage rates are not quantifiable (is old pre 2012 or pre 2010?). Also, wages and conditions of employment are generally a matter between and employer and employee. For example, if an employer was determined to be a national system employer and the employee a national system employee, they would be covered by the FW Act regardless of the flag of the vessel.

3.6. Section C.2 asserts that SIA Part B wages were around twice the amount of the ITF market rates that prevailed previously. The Deloitte Access Economics Report 2012 is referenced. However, as identified above, many different ITF agreements are currently in circulation, each of which may contain different terms and conditions including rates of pay. This, when combined with fluctuation in foreign exchange rates effecting pay, will affect any differential. It will also depend on how many hours the crew members work while the vessel is sailing under licence. It is difficult to generalise about what the difference in labour costs will be between the SIA Part B and those payable on a foreign vessel, given the large number of variables that exist. In most cases it is reasonable to say that Part B of the SIA has resulted in a requirement to increase the pay of some members of the ships' crew,

1.1.

[2] See www.itfglobal.org for information on ITF agreements

particularly at lower ranks. Generally, for senior officers being paid the prevailing market rate on international ships, wage rates are similar to SIA Part B rates.

C.4 Coastal trading reforms: licensing requirements

3.7. Section C.4 appears to mix licencing arrangements under the CT Act and regulatory obligations (such as Marine Orders) made under the Nav Act 1912. The CT Act has no effect on the regulatory requirements imposed on different vessels, other than in relation to the carriage of domestic cargo. It is unclear how this paragraph is relevant to the Commission's inquiry.

3.8. The following paragraph on Page C.10 of the report states that "Shippers and the users of shipping services can only enter into contracts for the period that the general license is in force." The purpose of this statement is not clear. Is the purpose of this statement to make an observation on commercial reality? If so, this would be a subjective assumption and it is important to note that there is no statutory requirement for shippers and users of shipping services to only enter into contracts for the period that a general license is in force.

Transitional general licenses

3.9. The paragraphs on page C.14, under the subheading "Transitional general licences" are confusing and hard to follow. The purpose of a transitional general licence is to allow foreign vessels that had been licenced to engage in the coasting trade under the Nav Act 1912 to continue to operate and honour existing commercial contracts (some spanning 10 years).

3.10. As was dictated by s289 of the Nav Act 1912, crew on board ships in the coasting trade (under licence) were required to pay Australian wages. This continued under the CT Act with the transition to transitional general licences. The CT Act did not alter the wages which were required to be paid to seafarers engaged on vessels operating under licences. The statement that under the new regime when foreign vessels engage in coastal trading they are required to employee seafarers that are permitted to work in Australia and pay wages determined by the Minister for Infrastructure and Regional Development is incorrect. Wage rates for transitional general licensed vessels are determined by the FW Act and SIA.

3.11. This section also asserts that if, after the expiration of a transitional general licence the vessel desires to continue to operate in coastal trading, should the vessel wish to operate under a temporary licence that the vessel (presumably the employer of crew on the vessel) has to hire prescribed Australian workers. This is not correct and it seems this error is repeated in other areas of the report. Vessels operating under temporary licences are not obliged to employ Australian crew on board and are eligible to operate on the coast with crew members holding valid Maritime Crew Visas.

C.5 Coastal Trading Changes: tax exemptions

3.12. It appears that this chapter attempts to make an assessment on the national benefit that has resulted from the tax incentives contained within the shipping reform package. While this discussion might be somewhat relevant to commercial and structural issues on coastal trading, a wider discussion on revenue foregone and "windfall gains" to operators relating to the Australian International Shipping Register (AISR) is not – particularly as the AISR did not exist prior to the introduction of the shipping reform package.

3.13. The report states that "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…" as a result of the income tax exemption, designed to increase the number of vessels on the Australian register. Importantly, the income tax exemption has been a valuable tool to encourage re-investment in Australian shipping. However, ASA takes this opportunity to further stress why it has not resulted in an increase in the number of ships on the general register. While the PC report rightly points out that the eligible vessels are entitled to a tax exemption on specified income, this is in effect a tax deferral for the Australian Government, not revenue forgone. As soon as any profits are paid to shareholders, the liability to pay tax is passed from the company to the shareholder in receipt of unfranked dividends. It is worth noting that if dividends paid were fully franked, the tax incentive would be much more effective in attracting more investment.

C.6 Likely impacts of recent changes

3.14. Section C.6, addressing the likely impact of the shipping reform changes, asserts that remuneration and hiring requirements have changed significantly as a result of changes to the coastal trading licence regime. This submission reiterates to the commission that this assertion is inherently misleading. Changes to remuneration of foreign seafarers working on vessels trading on the coast did not occur as a result of the introduction of the CT Act. It was a result of a policy decision in 2009 amending the FW Regs.

3.15. Page C.18 of the report states that the CT Act has reduced flexibility for Australian vessels as they "must obtain a general license". In our view, this is misleading. Under the old Part VI regime, there were no Australian vessels operating under permit. There would have been no incentive to do so. As such any discussion of reduced flexibility as a result of the CT ACT is misleading and irrelevant.

3.16. Table C.5 of page C.19 is an oversimplification of the company tax regime (no reference is made to the required qualifying conditions) and in our view, discussion of the refundable tax offset for foreign seagoing employee is irrelevant to this study.

Likely effects on containerised cargo

3.17. The report does not seem to address matters of industry practicality in any meaningful way. One example of this is a purported 200% increase to a majority Australian manned foreign vessel (in the likely effect on containerised cargo in Appendix C). The basis of this assertion is unclear. Further, no assessment or evidence is produced as to whether any majority Australian manned international ship has seen an increase in their wage bills in the amounts suggested. In practice, it is highly likely that any vessel with a majority Australian crew (or wholly Australian crew employed by an Australian crew management company) would be subject to an enterprise agreement, and therefore would not be impacted significantly by the commencement of Part B of the SIA or award modernisation more generally.

3.18. There is no evidence to suggest that application of Part B of the SIA represents a barrier to entry into the trade by foreign ships.

Likely effects on Bass Strait passenger movements – Pages C.20 to C.21

3.19. With respect to the somewhat hypothetical argument in this section of the report, it is important to point out that the circumstances around ship based tourism between Victoria and Tasmania are no different now, to what they were prior to the passage of the CT Act.