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5 April 2016
Red Tape Committee
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Shipping Australia Limited's Submission to the effect of red tape on cabotage

1. Introduction

Shipping Australia Limited (SAL) is a peak shipowner association with 36 member lines and shipping Agents and 50 corporate associate members, which generally provide services to the maritime industry in Australia. Our member lines are involved with over 80 per cent of Australia's international trade and car trade as well as over 70 per cent of our break-bulk and bulk trade. A small number of our members are also actively engaged in the provision of coastal cargo services to Australian consignors and consignees; this number has reduced since legislative changes in 2012.

A major focus of SAL is to promote efficient and effective maritime trade for Australia whilst advancing the interests of ship-owners and shipping agents. SAL also provides secretariat services to the liner companies and agencies that are members of conferences, discussion agreements, consortia and joint services that have their agreements registered under Part X of the *Australian Competition and Consumer Act 2012*. These agreements specifically seek to facilitate and encourage growth of Australia's liner shipping trades.

As part of the inquiry into the effect of red tape on the economy and community, SAL welcomes the opportunity to provide input into the impact of red tape associated with shipping cabotage. Following consultation with members, SAL is pleased to make the following submission. SAL considers that the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CTA) has had a detrimental effect on the movement of domestic cargo by ships, partly through its policy intent and partly through its unwieldy red tape. This regime has proven to be inefficient and burdensome on shippers and the shipping industry, restricting access to the Australian market and resulting in the limitation of access of local businesses to efficient and cost-effective shipping services.

2. The effects on compliance costs (in hours and money), economic output, employment and government revenue

- 2.1 **Volume and loading dates.** Compliance with aspects of the CTA regulations, such as volume and loading date tolerances, licences between port pairs, and licence amendment timing, causes administrative burden and is purely red tape. A reputable shipping line has indicated that it spends excessive time monitoring compliance with tolerances, spending \$200 each time an amendment is required. It has never had an amendment request rejected. This raises the question of why an allocation is required if amendments are always accepted? In 2016–2017, this shipping line spent \$3,600 in lodging licences or amendments to the licence and spent 200 man hours across a number of functions to ensure compliance. This includes workshops discussing the best ways to effectively manage compliance with the licence and actual day-to-day management.
- 2.2 **Reporting requirements.** The reporting requirements of the CTA (and associated regulation) are cumbersome and inefficient. The reasoning behind needing to report on both forecast and actual cargo carried is unclear, since the final actual container load is the number that will determine whether the applicant is compliant with the licence. The same difficulty is experienced when complying with the per port forecast and actuals. The definition of a voyage as “from port to port” causes additional workload for vessels that routinely visit a number of ports. It would be more efficient to make one report covering the multi-port journey.
- 2.3 **Complicated planning and compliance.** Shipping lines are continuously looking for administrative efficiency in all aspects of their business. To achieve this, they develop standardised international procedures, however, to meet the requirements of Temporary Licences under the CTA, international operators must develop additional bespoke processes. These include: applying cargo booking limits per port to remain within licence cargo limits and micro-management of the overall coastal portfolio to meet reporting requirements. This negatively impacts the efficiency of the business by:
- Restricting its ability to capitalise on any demand fluctuations, causing lost bookings and revenue. Shipping lines face the problem of predicting customer booking patterns which can be volatile at times. One shipping line reports a loss of \$810,000 revenue of cargo as a result of the strict upper tolerance limits of a licence and the inability to amend the licence quickly enough to allow additional cargo to be embarked;
 - The lower cargo tolerance limit of the licence is equally difficult to manage, if booked cargo does not arrive the vessel will breach licence conditions. The timeline for completing a licence amendment request involves a minimum two business days to process, but container vessels are usually in port for much less time;
 - The Temporary Licence inflexibility results in poor customer experiences since the customer is unable to book and obtain confirmation quickly. It can take a few days for the administration to be done, including having the licence increased to allow the shipping line to be compliant, before a requested cargo shipment can be confirmed
 - On some occasions shipping lines have required customers to delay their booking by one week, until the next ship calls, resulting in additional costs and poor customer experience. One shipping line reports that the estimated cost impact of this delay is \$210,000. There is also an uncalculated loss of revenue to the customers due to delays in transporting their cargo.
- 2.4 **Inflexibility of discharge port.** In the context of bulk and break-bulk cargoes, external factors such as port congestion or bad weather have created a situation where it is efficient the change the discharge port. However the lack of flexibility in the Temporary Licence system to allow

such minor changes and the time delay to get a licence amendment approved has resulted in ships waiting idly at costs in the vicinity of \$20,000 per day.

- 2.5 **FWA Provisions.** The red tape of compliance with the *Fair Work Act (2009)* (FWA) and the additional wage cost per voyage, regardless of the volume of cargo carried, are the most damaging economic factors imposed on cabotage cargoes: they severely limit participation in coastal shipping and competition in the domestic freight sector.

The FWA requires payment of Seagoing Industry Award Part B wages to the crews of foreign ships when carrying coastal cargoes. SAL estimates the additional crew cost due to the application of the FWA to a container ship undertaking coastal voyages for Melbourne to Fremantle and Brisbane to Fremantle to be \$33,000 and \$60,000, respectively. These costs apply regardless of the quantity of domestic cargo carried. The administrative burden of compliance is also substantial.

Analysis of the Department's record of vessels issued with a Temporary Licence indicates that, from commencement of the CTA on 1 July 2012 up to 14 March 2016, the number of coastal voyages where the FWA was applicable was 5,917.

Applying the lower cost voyage estimate (Melbourne to Fremantle, \$33,000) across the total number of Temporary Licence voyages where the FWA costs are applicable it can be conservatively estimated that the additional cost imposed to carry coastal cargo since implementation of the CTA has been \$195 million, or \$40 million /year.

This figure is supported by media reports that Alcoa had estimated shipping alumina from Western Australia to Victoria using a foreign flag vessel would reduce Portland Aluminium's shipping costs by approximately \$7 million per year¹.

This additional cost is paid by productive sectors of the Australian economy (as they attempt to use the most energy-efficient and lowest emission-intensive mode of transport while also elevating congestion and damage to landside infrastructure) to international seafarers who do not have any expectation to receive this payment, do not pay any tax or even spend this money in Australia. International seafarers are now protected from exploitation by the Maritime Labour Convention which entered force on 20 August 2013 and is enforced by AMSA.

SAL estimates the additional administrative costs of managing compliance with the FWA for domestic business to be approximately \$80,000 per year. The following list details further the red tape imposts of the FWA to cabotage:

- The administrative burden for compliance
 - recording of working hours and calculation of FWA payments
- Difficulty in ensuring that Part B payments reach intended personnel
 - implementing administrative arrangements for ensuring payments reach crew members often employed by a third party,
 - more difficult or not possible on slot charter/swap arrangements
- Risk of prosecution and substantial court costs
 - maintaining an audit trail and proof of payment records
- Inequitable and unacceptable costs on variable domestic cargoes
 - the freight charged on domestic cargo carried must cover all of the additional costs of FWA wages – thus increasing the cost of domestic freight,
 - cargo rates should vary depending on the volume of domestic cargo carried, which is not commercially feasible, so the shipping line carries substantial risk if the expected volume is not received,

¹ <http://www.abc.net.au/news/2015-11-13/alcoa-under-fire-for-hiring-foreign-ship-crew-to-move-cargo/6937030>

- difficult to sell cargo space without certainty of cost and schedule
- Uncertainty of cargo carriage – for liner services operating on a fixed schedule, if not enough domestic cargo is available to offset the additional costs, then none of the cargo may be carried, thus delaying delivery and discouraging future consignments.

2.6 **General.** Adherence to the coastal licence requirements in Australia is time-consuming and complex. Some shipping lines have five separate desks involved in managing the day-to-day tasks associated with the coastal market. Shipping lines operating a coastal service in New Zealand do not face the same regulatory requirements or complexity as in Australia. There are nil licence or reporting requirements and due to this, the management of coastal cargo sits with just one person and has been operating effectively.

The effect of red tape on economic output is best described by what would be gained by its removal: reduced administrative and compliance costs would enable more international vessels to participate in the coastal trade bringing increased frequency and certainty to domestic schedules. In turn this would increase the demand for coastal shipping and increase the competition between domestic providers, resulting in lower freight rates for all Australian shippers both domestic and international.

Australian coastal shipping services need to be competitive, otherwise it will be cheaper to source foreign product rather than transport similar goods around the Australian coast.

3. **Any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions**

3.1 **The 5-voyage minimum requirement** is a significant burden which impedes operators that work in the spot charter market from offering coastal services. This is particularly so in the break-bulk, heavy-lift/ project cargo sectors where there are single, short notice demands that often cannot be met. If there is a short notice booking and there is a need for a single voyage to be made, the applicant must find another four voyages to add, in order to lodge the application and meet the 5-voyage minimum. This causes uncertainty, speculation and makes it difficult to accept future cargo bookings or to comply with the 5-voyage requirement. Those offering regular liner services, or routine bulk routes do not have the same difficulties.

3.2 **Cargo tolerance limits.** Liner operators in particular, but also PCC and break bulk operators cannot always predict their cargo volumes very far out; as such, cargo tolerance limits are proving to be a disincentive to providing a coastal service. Tolerance limits of +/- 20% of nominated cargo do not allow for late changes to shipping arrangements beyond the control of the operator, such as the late addition or cancellation of cargo. Unfortunately, late addition or cancellation of cargo is a standard business practice and carriers are often unable to carry additional cargo booked at short notice.

Endeavouring to comply with +/- 20% allowance is difficult to administer and particularly difficult to comply with if the initial application was for a small volume. The requirement to advise of variations two business days prior to loading through an authorised matter variation, is also unworkable.

When cargo volumes cannot be predicted accurately, the tolerance limit prevents making the best use of cargo capacity once a voyage has been confirmed. Some cargo bookings occur inside the current 48-hour notification limit imposed by the current TL, so the cargo cannot be carried despite space and opportunity, this is wasteful and increases cargo costs.

Such was the Incitec Pivot Ltd experience which was described by Senator Xenophon as “crazy” in a parliamentary speech on 25 November 2015:

“Incitec Pivot Ltd chartered a ship to carry fertiliser from its manufacturing plant in Brisbane to its distribution centres in Geelong and Adelaide. However, in the time that the licence was applied for and then approved and the ship chartered, demand for the fertiliser had increased in Geelong. The conditions on the permit would not allow the ship to unload more than an extra 400 tonnes of fertiliser, despite the fertiliser being available and the ship capable of offloading it. As a result, Incitec Pivot Ltd had to transport the fertiliser to Adelaide, where it was then placed on 40 B-double trucks to be driven to Geelong. The cost of this exercise was an additional \$75,000 to Incitec Pivot Ltd.”

- 3.3 **The consultation process** adds complexity to the application process. It is usual for minor changes to occur mainly with respect to the volume of cargo. The consultation process adds considerable additional costs and unnecessary administrative burden to licence applicants. It must also be noted that the consultation process does not entail a requirement for General Licence holders to respond, and delays the application **even when the shipping sector is uncontested**. It is strongly recommended that the consultation requirement for amendments to existing voyages, especially for changes in volumes, be withdrawn. This can have very disruptive effects even after cargo carriage contract rates have been agreed.
- 3.4 **The limited scope of the definition of “coastal trading”** under CTA to cover the carriage of passengers or cargo from/to a port in a State or Territory (Section 7) has caused some difficulties with its operation. In effect this limitation prevents the granting of a TL for a vessel operating between offshore floating production storage and offloading facilities and Australian ports. Thus, international vessels undertaking this role do not receive the protections that the CTA provides from other Australian legislation (such as the Customs Act and Immigration Act).
- 3.5 **Transshipment via overseas port.** Another area of difficulty exists when a domestic cargo is consigned from one Australian port to another Australian port via transshipment at an overseas port. Neither vessel is by definition engaged in coastal trading, however the cargo is domestic. Under the current regulations it appears that the only option is to export and import the cargo at additional cost and administration.
- 3.6 The current **bunker fuel rebate system** for commercial shipping operations and its obligations and entitlements to various duty and tax requirements is another area where red tape exists. The requirement to pay bunker excise to one government agency (Customs) and the related processes to then claim a rebate of the same amount from another government agency (the ATO) is cumbersome for shipping lines who have to allocate resources to administer these processes and incur the financing cost of the excise until rebated. There is no financial benefit to the Commonwealth Government but substantial administrative costs. SAL has raised this issue with ATO representatives with the aim to develop a red-tape reduction proposal to remove this requirement.
- 3.7 **FWA Part B wages no longer necessary.** The entry into force in September 2013 of the Maritime Labour Convention 2006 (MLC) has provided the appropriate regulatory framework for the governance of employment conditions of seafarers, including the principle of a minimum wage which is now referenced in the Convention. Like Australia, open registries including Panama and Liberia have ratified the Convention, enacting legislation. It allows Australia to inspect ships for matters in relation to crew welfare and payment of wages within its jurisdiction. AMSA has shown their effectiveness in enforcing this convention.

4. The impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged

4.1 As beneficiaries of shipping, there is a moral imperative for Australians to focus attention on the low-skilled and disadvantaged workers in the industry, such as the ship breakers in the Indian subcontinent.² A commitment to ratifying the *Convention for the Safe and Environmentally Sound Recycling of Ships*³ and to investigate the economic opportunities of developing facilities to recycle decommissioned ships here under Australian occupational workplace health and safety standards are worthy amendments to the current legislation.

4.2 **Coastal shipping as a response to emergencies.** Red tape currently affects members of the community who are acutely disadvantaged following a natural disaster. International vessels provide a highly flexible transport capability that can be applied to mitigate disruptions to the landside networks and support business continuity. Reducing red tape would assist the establishment of disaster response capability, assist faster recovery and reduce the overall costs to communities and the national economy.

4.3 **Streamline Emergency Licences.** The requirement for non-General Licence vessel operators to “*set out the reasons why the voyages cannot be undertaken by a vessel authorised to be used to engage in coastal trading under a general licence*” in their Emergency Licence application should be removed. Alternatively, the process could be streamlined if the relevant State Emergency Management Authority liaised directly with Department’s Shipping Business Unit to directly notify general licence vessel holders for assistance.

Given that an Emergency Licence can be granted within a 24-hour period when a shortfall of liquid fuel is likely to have an adverse impact on the interests of consumers, there is no practical reason why, in an emergency, the same consideration should not be extended to general cargo.

The legislation requiring a Voyage Notification to be submitted at least 2 days before loading should be removed or aligned with the reporting timeframe for cabotage cargo set out by the Australian Customs and Border Protection Service’s Cargo List Report. For coastal cargo Customs requires reporting not less than 24 hours before the estimated arrival at an Australian port or if the voyage is less than 24 hours the report is to be submitted before the estimated time of arrival at the next port of discharge.

5. The effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape

5.1 In June 2015, the former Deputy Prime Minister and Minister for Infrastructure and Regional Development, Hon. Warren Truss, MP attempted to minimise red tape by introducing the *Shipping Legislation Amendment Bill 2015* (SLAB) and its single coastal shipping permit which would replace the current three-tiered licensing system.

5.2 The SLAB would have provided significant benefits across the economy and increased supply of transport services. A fundamental principle of economics is the cost relationship between supply and demand. When demand is stable and supply increases, the result is decreased cost. As in this case, demand for transporting domestic cargo is relatively stable and with the increased supply of transport capacity enabled by the proposed SLAB reforms, the cost of domestic freight would have decreased. This would have had a favourable impact on all Australian consumers and would have increased the resilience of the economy to withstand increasing energy prices.

² <https://www.loydslistaustralia.com.au/lla/market-sectors/wet-bulk-trades/Deadly-tankers-Aussie-connection-541618.html>

³ <http://www.imo.org/en/OurWork/Environment/ShipRecycling/Pages/Default.aspx>

5.3 The SLAB was blocked in the Senate, making the Government's effort to reduce this red tape ineffective. The Government required four of the dissenting Senators to change their view to pass this Bill.

5.4 As coastal shipping is the most energy-efficient and the lowest greenhouse gas emissions-intensive mode of long haul transport, one could logically conclude that reducing the red tape of cabotage to unlock its utilisation would readily align with the Australian Greens Senators. One of the Greens' Four Pillars⁴ is *ecological sustainability*:

“The levels of pollution in our atmosphere mean that business-as-usual will no longer work if we want to avoid dangerous climate change. The future for Australia can still be a prosperous one if we build our economy on green principles rather than short-term self-interest”.

5.5 There are numerous examples that the government could have used to persuade four of the ten Greens Senators that opposing the SLAB was in fact defending ‘short-term self-interest’ rather than building an economy on Greens principles. Had the Governments negotiated more effectively with the Greens and the SLAB passed the Senate the red tape of cabotage tied to coastal shipping would have been removed.

6. **Alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation**

6.1 Reduction of red tape is **currently achieved** by the application of Section 11 of the CTA which has granted exemption to the cruise shipping sector since 2012 and has been recently extended to the end of 2018.

6.2 While the reliance on a Ministerial determination to provide exemption for cruise ships greater than 5,000 GT lacks certainty, it has resulted in exceptional growth in this sector as outlined by the International Association's 2015 Industry Source Market Report:⁵

- Australian ocean cruise passenger numbers broke through the one million mark for the first time in 2015, rising 14.6 per cent to 1,058,781 passengers from 923,726 in 2014
- A surge in domestic cruising fuelled the growth of Australian passenger numbers, with local cruisers growing by 42 per cent from 189,796 in 2014 to 269,915 in 2015. The increase of 80,000 was twice as great as any other destination in real numbers.

6.3 **Exemptions for uncontested sectors.** The exemption granted to cruise shipping is on the basis “*that Australia does not currently have any Australian registered vessels in this category*”. Applying the same principle to other uncontested (no Australian flag or General Licence participants) shipping sectors, such as large container, pure car carrier, heavy lift and break-bulk, would enable vessels in these categories to also be granted exemption reducing unnecessary red tape. This would improve efficiency and lead to substantial growth of coastal cargo for these sectors. Building a strong customer demand for coastal shipping services is the policy shift needed before Australia can hope to establish a sustainable and viable domestic shipping industry.

⁴ <http://greens.org.au/four-pillars>

⁵ <https://www.cruising.org.au/AU-CLIA-Annual-Report-2015.pdf>

7. How different jurisdictions in Australia and internationally have attempted to reduce red tape

- 7.1 **India** has identified the need to shift the movement of cargoes away from its severely congested roads and railways and onto ships. To encourage this shift, the Indian Ministry of Shipping has recently issued an order relaxing cabotage laws for specialised vessels, such as ro-ro and ro-pax ships, pure car carriers, pure car and truck carriers, LNG vessels and project cargo carriers. The Ministry has recognised that the operational cost of Indian vessels is estimated to be higher than that of foreign vessels due to duties and taxes on bunker fuel, income tax on seafarers' income, and other taxes paid by Indian flag vessels.
- 7.2 **In the United Kingdom**, there are no cabotage restrictions for foreign ships, no crew nationality requirements for UK-registered non-strategic vessels and non-resident seafarers' wages are bound by international labour standards.
- 7.3 **The New Zealand** cabotage laws differ considerably to the bureaucratic and inflexible laws that shippers and carriers presently endure in Australia. There is no permit/licensing regime and no reporting requirements.

New Zealand coastal shipping is regulated in the main under Section 198 of the *Marine Transport Act 1994* (NZ) and related provisions of the *NZ Ship Registration Act*. Section 198 (1A) provides that a foreign ship that is not on demise charter to a NZ-based operator may only load and unload coastal cargo at a New Zealand port at which it loads or unloads international cargo or at a NZ port it is scheduled to pass in the course of its continuous journey. The terms of Section 198 are limited in scope and are flexible in design, following a move to a more liberalised approach to a range of public policy areas in the 1990s.

8. Conclusion

In conclusion, SAL reiterates that the current three-tiered licensing regime introduced via the *Coastal Trading (Revitalising Australian Shipping) Act 2012* inherently is cumbersome and bound with red tape. SAL considers that Australia will benefit from increased use of coastal shipping which would result from a reduction in red tape. This can be achieved by:

- a. Removing the requirement to apply for licences in blocks of 5
- b. Providing an exemption for uncontested vessel types
- c. Removing or broadening cargo tolerances, particularly for unit-based cargo such as cars and containers
- d. Providing the ability to amend discharge ports in instances where external factors such as congestion or weather may cause substantial delays to the ship
- e. Removing the application of the FWA provisions;
- f. Removing contestability from emergency licence applications;
- g. Removing the requirement to pay the bunker tax excise and then seek a rebate.

Throughout the 1980s, the consecutive Hawke and Keating Governments commenced the process of moving Australia away from protectionism to make Australia more competitive internationally. The removal of red tape associated with cabotage is a continuation of this process which will benefit the living standards of Australians and promote the utilisation of an underutilised resource, namely, international cargo ships that make more than one port call in Australia.

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