National Farmers' Federation

Submission on the Options Paper: Approaches to regulating coastal shipping in Australia

30 May 2014

NFF Member Organisations

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Australian Dairy Farmers

ALPA

Australian Livestock Exporters' Council ALEC

AUSTRALIAN Pork

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Introduction

The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers, and more broadly, agriculture across Australia. The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. NFF also has a number of associate members who participate in the agricultural supply chain. Together, NFF represents a broad cross section of the agricultural sector, encompassing the breadth and the length of the supply chain.

The agricultural sector, at farm-gate, contributes 2.4 percent to Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production in 2011-12 was $46.8 billion. Yet this is only part of the picture. When the vital value-adding processes that food and fibre go through once they leave the farm are added in, along with the value of all the economic activities supporting farm production through farm inputs, agriculture's contribution to the GDP averages out at around 12 percent (or $155 billion). In 2009, Australian agriculture produced 93 per cent of all food consumed domestically in Australia and 1 per cent of all food consumed in the world.[1]

Transport of agricultural produce forms a significant cost in the agricultural supply chain, and freight infrastructure is a critical element in the capacity of the sector to move its products efficiently to market. Many goods shipped by the agriculture industry are perishable in nature and their value diminishes with the passage of time. It is therefore essential that Australia has a competitive, reliable sea freight service underpinning the capacity of agricultural producers to meet consumer demand by moving ever-increasing volumes of food and fibre to both domestic and international markets.

Coastal shipping reform

The *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Coastal Trading Act) and related legislation was introduced in 2012 with the object of providing 'a regulatory framework for coastal trading in Australia that promotes a viable shipping industry which contributes to the broader Australian economy; facilitates long-term growth of the Australian shipping industry; enhances the efficiency and reliability of Australian shipping; and maximises the use of Australian vessels registered under the Australian General Shipping Register.'

Despite these goals, there is no evidence that the legislation has had any 'revitalising' effect on either Australian shipping or the broader economy. If anything, the anecdotal evidence suggests that the reforms have had the opposite effect.[2] The cost of shipping goods by sea has increased and there is a perception that the Australian coastal trade is all but closed to foreign ships, with a resulting reduction in access to freight services. There has been no take up of the international shipping register and no obvious signs of significant investment in the Australian fleet.

[1] National Farmers' Federation (2012) *NFF Farm Facts: 2012*, Canberra, p5.
[2] http://globial.com/globialtalksbusiness/australias-coastal-shipping-reforms-face-criticisms, 20 October 2013

The National Commission of Audit recently noted that cabotage rules are effectively industry assistance that increases costs and reduces competition. It found that cabotage ensures 'significant cost disadvantage for Australian businesses reliant on the movement of bulk commodities' and recommended abolishing cabotage policy[3]. This followed the Productivity Commission's draft report on Tasmanian shipping and freight, which found that the 'cumulative effect' of recent changes to Australian coastal shipping laws was 'reduced interest from international vessels engaging in the Australian coastal trade', 'reduced shipping options for users of domestic shipping services' and increased 'costs of providing domestic coastal services'.[4]

The NFF welcomes the opportunity to contribute to the discussion by highlighting restrictions in the legislation that have adverse effects on agricultural producers through increased shipping costs and reduced access to freight services. These effects are particularly acute in Tasmania which is heavily reliant on sea freight given its geographic isolation from the mainland.

Coastal trading regulation

The key policy objective of any coastal trading regulation should be to promote Australia's economic growth and productivity through competitive, efficient and effective maritime transport services. Any other related policy objectives should be in the national interest and not aligned only to sectional interests.

The five voyage requirement

The Coastal Trading Act seeks to encourage ships to register on the Australian General Register by restricting access to temporary and emergency licenses. Ships seeking to undertake less than five coastal trading voyages have no other option. Temporary license applications must specify at least five voyages that will be undertaken in a 12 month period and emergency licenses are only available in a limited number of 'emergency' circumstances such as flood, bushfire and other natural disasters.

Applicants for a temporary license must specify, in some detail, at least five future voyages to be undertaken. Details provided about proposed voyages, including the number of voyages, the kinds and volume of cargo or number of passengers and ports of loading and disembarkation, effectively set the parameters of the license to engage in the coastal trade and cannot change unless formally varied. The same information is made publicly available and provided to holders of general licenses, who then have an opportunity to nominate for the voyages that are the subject of the license. This process, including any response to a general licence holder's nomination, has little regard for the preferred contractual arrangements of the temporary license applicant and its clients. In this respect, the process is unique in that it encourages unrelated third parties to impose their own commercial preference on the proposed contractual arrangements of others. It results in a delay of at least one week in deciding whether to grant the application, which is longer than the period taken to grant coastal trading permits under the pre-Coastal

[3] Australian Government National Commission of Audit Phase Two Report, March 2014, section 2.3.
[4] Productivity Commission, *Tasmanian Shipping and Freight: Draft Report*, January 2014, http://pc.gov.au/projects/inquiry/tasmanian-shipping/draft

Trading Act regime[5]. Application fees are not refunded if the license applicant changes their mind. After the notification and response period, a departmental officer decides whether to grant the temporary license having regard to various factors guiding the exercise of discretion.

It is clear from this process that the Coastal Trading Act gives Australian-registered ships every opportunity to exclude foreign-registered ships from accessing the Australian coastal trade. While this has not always been the result, it is likely to have acted as a deterrent to foreign ships seeking to service the Australian market. It is also a clear attempt to restrict the capacity of foreign workers to work in Australia. There is no direct policy statement on how a minimum five voyage requirement will assist in revitalising the Australian shipping industry and there is similarly no evidence that it has resulted in an expansion of the Australian coastal trading fleet. The requirement is in the nature of 'red tape' and should be repealed.

The Australian International Shipping Register

The *Shipping Registration Amendment (Australian International Shipping Register) Act 2012* (the AISR Act) established the Australian International Shipping Register (AISR) 'to provide a competitive registration alternative for Australian shipowners and operators who predominantly engage in the international trades.'[6] Ships registered on AISR are eligible for income tax exemption and other tax incentives. Despite what appear to be generous tax incentives, there are currently no ships registered on the AISR.[7]

If this is so, almost two years later, it is reasonable to ask why there is such a lack of interest in the AISR. The answer must be at least in part attributable to the legislative framework surrounding the AISR. In addition, it is likely that incentives designed to join the Australian register have not been sufficient to displace the relative attractiveness of foreign shipping registers.

One feature of the AISR Act that has attracted little comment since its inception is the requirement for any ship seeking registration on the AISR to have a collective agreement with the 'seafarer's bargaining unit', comprised of relevant maritime unions. This is in lieu of the application of the *Fair Work Act 2009* (Fair Work Act). The requirement to bargain with all relevant maritime unions and the absence of any alternative (such as negotiating directly with seafarers) is likely to have operated as a deterrent to registration. The legislative framework requires the making of the 'bargain' for those who seek access to the AISR and in doing so, extinguishes the element of choice in relation to employers. This is because any perceived advantages flowing from the disapplication of the Fair Work Act are immediately offset by the position of veto held by the seafarers' bargaining unit; refusal to accede to demands made on behalf of seafarers will mean the conditions for registration on the AISR cannot be met. In other words, access to the AISR is available on a 'take it or leave it' basis with seafarer conditions set by maritime unions

[5] Evidence given to the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government inquiry into coastal shipping policy and regulation, October 2008 at paragraph 3.7.

[6] Department of Infrastructure and Regional Development, *Australian International Shipping Register*, http://www.infrastructure.gov.au/maritime/business/coastal_trading/aisr.aspx

[7] Australian Maritime Safety Authority, *List of Registered Ships*, 26 May 2014, http://amsa.gov.au/vessels/shipping-registration/list-of-registered-ships/

and paid for by those responsible for the costs of labour. The provision is highly unusual as a feature of the Australian federal law and should be repealed.

Workplace regulation

The Fair Work Act was the first piece of federal legislation to extend Australian workplace laws to foreign ships engaged in the Australian coastal trade. Under the previous regime, 'permit ships' operating under the *Navigation Act 1912* were expressly excluded from coverage of the *Workplace Relations Act 1996.*

From 1 January 2010, the National Employment Standards commenced applying to certain ships operating under single voyage and continuing voyage permits in the Australian coastal trade. In addition, the Fair Work Act was extended to cover 'majority Australian-crewed ships'. From 1 January 2011, the *Seagoing Industry Award 2010* (Part B) commenced operation in relation to permit ships and for the first time, regulated the wages and conditions of seafarers on permit ships.

The Coastal Trading Act replaced the permit system with the new licence system and consequential changes were made to the *Fair Work Regulations 2009* (Fair Work Regulations) to ensure continued application of the Fair Work Act to foreign ships in the Australian coastal trade.

The application of Australian workplace laws to foreign ships both while undertaking temporary licensed voyages and on 'majority Australian-crewed ships' has introduced a number of inefficiencies. First, the laws only apply to voyage legs authorised by the temporary license. That is, the Fair Work Act applies to a seafarer while on a voyage to deliver cargo or passengers around the Australian coast, but does not apply to the same seafarer on the same ship on the return voyage without any cargo or passengers. Similarly, a seafarer is covered by the Fair Work Act while there are a majority of Australian crew members on board. If the composition of the crew changes mid-voyage (for example, if a number of foreign workers are boarded to undertake a particular task), the ship ceases to become 'majority Australian-crewed' and the Fair Work Act ceases to apply[8]. These are strange outcomes and ones which must at the very least involve complex bookkeeping. At least one shipping company has indicated that it will no longer engage in trade in Australian waters because the majority Australia-crew requirement means that it cannot possibly know whether the Fair Work Act applies to its seafarers at any given point in time.[9]

More importantly though, the extension of Australian workplace laws to foreign workers on foreign ships engaged in the coastal trade has significantly increased the costs of shipping around Australia. Evidence given to the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government inquiry into coastal shipping policy and regulation in 2008 indicated that the cost differential between ships operated with Australian crews and foreign crews was approximately $2 million per year.[10] While there is little direct evidence available, the

[8] *Fair Work Ombudsman v Pocomwell Limited (No 2)* [2013] FCA 1139
[9] AM program, *Employers of drilling rig painters deny exploitation,* http://www.abc.net.au/am/content/2013/s3884767.htm
[10] House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government inquiry into coastal shipping policy and regulation, October 2008 at paragraph 3.21

decline in value of the freight task of loaded coastal cargo (almost 10 per cent in 2011-12, compared with the previous year[11]) combined with increased labour costs resulting from the extension of Australian award wages and conditions to foreign seafarers in the coastal trade suggests two possible outcomes. Firstly, as the anecdotal evidence seems to suggest, shipping costs may have increased to accommodate these factors. Alternatively, or in addition, the two factors combined may have deterred foreign ships seeking to provide services around the Australian coast (for example as part of a through voyage between foreign ports). The draft Productivity Commission report on Tasmanian shipping and freight directly attributed changes of this nature to the Coastal Trading Act and associated regulation. While the final report has not yet been released, it is unlikely that the findings will change materially.

The net results have been a less competitive shipping sector in Australia and higher costs and more red tape for Australian farmers, many of whom rely on maritime transport services to get their goods to market. The impact is felt more severely in Tasmania because of its heavy reliance on sea freight.

Conclusion

The NFF supports an immediate repeal of the Coastal Trading Act to reduce the red tape and compliance burden on the agriculture industry and encourage greater competition in the Australian coastal trade. A repeal of this nature would be unlikely to require complex transitional arrangements as the current licencing regime would no longer apply and access to the coastal trade would be readily available for ship owners or operators seeking to engage in coastal shipping. No transitional arrangements would be required in relation to the suggested repeal of collective bargaining measures in the AISR Act as the AISR has never been used. Ceasing coverage of the coastal trade through regulations to narrow coverage of the Fair Work Act may require interim transitional arrangements relating to voyages underway at the time of the commencement of any reform but should not extend to cover voyages authorised by a temporary license but not yet undertaken. New regulations would be required to make clear that the position on coverage of ships in the coastal trade has been reversed by expressly excluding such ships from coverage.

In summary, the NFF calls on the Coalition Government to:

1. Implement Option 2 by repealing the Coastal Trading Act and legislating to preserve importation rules as necessary to avoid unintended harsh outcomes or further restricted access to the coastal trade;
2. Repeal collective bargaining provisions in the AISR Act;
3. Repeal regulations in the Fair Work Regulations that extend the Fair Work Act to ships engaged in the Australian coastal trade and to majority Australian-crewed ships; and
4. Make new regulations to expressly exclude ships engaged in the coasting trade from coverage of the Fair Work Act.

[11] Department of Infrastructure and Transport, BITRE, *Statistical Report Australian Sea Freight 2011-12*.