



Shipping Australia Limited
ABN 61 096 012 574
Suite 606, Level 6, 80 William Street, Woolloomooloo NSW 2011
PO Box Q388 QVB PO, Sydney NSW 1230
www.shippingaustralia.com.au
Tel: (02) 9167 5838
admin@shippingaustralia.com.au

SAL20282

22 October 2020

Coastal Trading Reform Review Team – Department of Infrastructure

Attention:

Andrew Johnson
Assistant Secretary
Maritime and Shipping Branch
Department of Infrastructure, Transport, Regional Development and Communications

By email to: coastaltrading@infrastructure.gov.au
andrew.johnson@infrastructure.gov.au

Shipping Australia Limited's Submission on the "Coastal Trading Reform for Cargo Vessels - Discussion Paper - September 2020"

A) Background

1. Shipping Australia Limited is a peak shipowner association with 29 member lines and shipping agents. A small number of our members are engaged in the provision of coastal cargo services to Australian consignors and consignees; this number has reduced since legislative changes in 2012. Our member lines are involved with over 80 per cent of Australia's international liner container and car trade as well as over 70 per cent of Australia's break bulk and bulk trade. Our member ships' agents are responsible for arranging logistics for visiting ships and for embarking and disembarking maritime crew members. We have 41 corporate associate members, which generally provide services to the maritime industry in Australia including port and terminal operations, pilotage, insurance, and legal advice. Our member lines and agents employ more than 3,000 Australians, according to a 2018 survey.

B) Opening remarks

2. Shipping Australia has previously made numerous submissions to government reviews and parliamentary committee inquiries on coastal shipping and maintains that the objects of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Act) have not been achieved. It has not 'promoted a viable shipping industry that contributes to the broader Australian economy' or 'ensured efficient movement of passengers and cargo between Australian ports' or anything in between, in fact it has effectively done the opposite. Thus, it remains questionable if the Act is at all fit-for-purpose.

3. Our comments below are based on the proposals and boundaries outlined in the Department's discussion paper. It is acknowledged that this requires that options for coastal

trading reform are to be within the parameters of the current system, needing to retain protections for Australian shipping, and preserving the need for licences for coastal trading.

4. The background to the discussion paper *inter alia* reflects that “*legal and operational implications of the proposals will need to be considered in detail at a later date*”. Currently, prescriptive requirements related to the licensing regime are included in the Act, and hence the proposals included in this discussion paper will require legislative amendment. It is suggested that matters associated with the legal and operational implications are articulated and dealt with concurrently to ensure the realisation of the paper’s proposals, while ensuring the objects of the Act are preserved.

5. It is pleasing to note that the Department of Infrastructure, Transport, Regional Development and Communications has considered and incorporated Shipping Australia’s earlier comments on a cargo and route nomination model for general licence holders as well as automatic approval of temporary licences when or where no general licence ships are present.

6. At first sight the proposals set out in the paper would reduce the administrative burden on industry and provide more efficient coastal shipping options for Australians. Shipping Australia is generally in favour of a reduction of the administrative burden (and automatic approval of temporary licences) which would assist certain classes of vessels that general licence holders currently do not operate; container, multi-purpose and Ro-Ro (other than Bass Strait), to utilise their current spare incidental capacity to carry coastal cargo.

C) Comments relating to the dry bulk sector

7. Australia’s dry bulk fleet comprises mainly of four vessels (as listed in the table below) with one transshipment vessel and three specialised vessels, all of which are now rather aged. As there are so few dry bulk-carrying Australian vessels on the General Register, Shipping Australia supports reducing the administrative process in the dry bulk sector.

Ship	IMO Number	Length	Year built	Home Port
Aburri	9111773	79.9	1995	Darwin
Accolade II	8012425	101.93	1981	Port Adelaide
Donnacona	9226396	166.3	2001	Dampier
Goliath	9036430	143	1993	Devonport

D) Responses to questions

8. Our answers to the questions included in the discussion paper questions are given below.

(a) *Do you support the proposal to separate licencing frameworks for cargo and passenger vessels?*

The premise of this question is curious, because in reality such a separation took effect (and is still in existence) approximately six months after the Act came into force in 2012 when passenger ships exceeding 5,000 GT were granted a “Section 11” exemption from requirements of the Act.

Since that separation, the cruise industry has shown a massive growth rate, and one would conclude that the exemption has enabled that growth. However, the exemption also takes away other protections of the CTA, such as importing of a vessel, which may have contributed to the reduction in cruise ship maintenance work being conducted in Australia.

Overall, Shipping Australia supports the principle of separate licencing frameworks for cargo and passenger vessels.

(b) Is the nomination of routes/cargo a workable solution?

The nomination of routes/cargo is a workable solution provided that it is fully transparent, authentic and has full contestability. General licence holders should be required to meet set criteria to show that they are realistically ready, willing and able to serve that route/cargo.

Furthermore, there needs to be adequate checks and balances to ensure that anyone who holds a general licence for a given route/cargo actually does provide those services. It should not be possible for a general licence holder to simply nominate a route/cargo and then never provide services.

(c) Does the nomination system provide the right level of opportunity for GL holders to contest cargo on TL voyages?

As described, the nomination system provides an appropriate level of opportunity for general licence holders.

It is noted that the s3(2)(a) of the Act includes *unrestricted* access to general licence holders. This section of the Act would still be met so long as general licence holders still have unrestricted access to all routes and cargoes even if they do not nominate. This appears to be the case in the proposal which states that general licence holders can (not must) nominate, however this point may require legal clarity to ensure its compliance within the current objects of the Act.

(d) Do you foresee any unintended consequences of the nomination system?

Shipping Australia is concerned that a person or company could apply for a general licence on a given nominated route or cargo but then never actually provide any service. We consider that given the time, effort and expense in setting up a service, any potential temporary licence holders could be discouraged from even considering whether to attempt to provide a service if the route/cargo has already been nominated by a general licence holder.

The reasonableness test is clearly intended to eliminate this behaviour. It is not clear how this test could remain valid over multiple routes over a five-year period. Shipping Australia considers that the ability to maintain a nomination for five years without review is too long. There needs to be either a process of continual performance review, or the ability to trigger an intersessional review where the ability of the GL to provide the service (particularly where multiple routes/cargoes are nominated) falls into doubt.

(e) Does the nomination system provide the coverage needed for operators servicing regional and remote communities to continue to provide these multi-stop itineraries?

Certainty and flexibility with the provision of shipping services is crucial to operators and end users. The nomination system appears to be flexible enough to meet this requirement, however there is always a risk of unintended consequence of regulatory change.

As benefits and coverage of the proposed nomination system would only be evident on implementation, the mitigation process suggested at question (q), below could provide certainty to regional communities who rely on shipping services.

(f) Do you believe the new nomination process reduces the administrative burden on licence holders? If not, do you have an alternative process you can propose?

The proposals appear to substantially reduce the administrative burden on temporary licence applicants, particularly where there is no nominated general licence holder. The proposals could be seen to increase the administrative burden on general licence holders by introducing the option for them to nominate specific routes and cargoes, however this should be offset by a reduction in unhelpful correspondence about irrelevant temporary licence applications.

The reasonableness test to be applied by the Department will be the key to eliminating frivolous or vexatious applications which could otherwise complicate and paralyse the proposed system.

(g) Is 30 business days an appropriate amount of time to notify TL holders of a new GL nomination? This timeframe is based on the 20 day assessment period plus 10 day window that allows automatic voyages approvals for TL's to be maintained to provide a reasonable period for the TL holders and shippers to adjust their operating schedules.

Once a supply chain is set up and is running, it will take time for Australian shippers and consignees of cargo to re-negotiate or terminate their contractual arrangements.

Thirty business days is a tight timeframe and would limit the ability of TL operators and Australian domestic shippers to commit on regular supply contracts. A timeframe of at least 60 days is considered more reasonable.

(h) Will the aligning of timeframes for authorised and new matters improve business processes?

Alignment of timeframes will simplify compliance with the process and is supported. The increase in the consultation timeframe for Authorised Matters by one day is accepted in the interests of improving simplicity.

(i) Do you agree with the proposed timeframes for licence applications listed in Table 2?

The reduction of processing time for TL applications from fifteen to seven days is a substantial improvement and the specification of a two-day timeframe for publication of Authorised Matters removes a previous uncertainty.

The workability of these timeframes will only be confirmed through practical experience and it is recommended that all matters such as timeframes, notification periods and the like be published in an instrument such as a regulation or an order that is approved by an appropriate government minister rather than embedded in the Act. Such a system promotes maximum flexibility and enables the regulatory regime to be adapted to trading conditions at the lowest cost with the least time and effort in the future. Shipping Australia does not support prescribing detailed requirements, such as times frames in the Act.

(j) Do you agree that tolerance limits should be removed where voyages do not overlap with a GL nominated route/cargo type?

Yes. Cargo volume limits and notification provisions should be removed for uncontested voyages. This would allow all available cargo to be carried, to provide more accurate data and significantly reduce administrative overheads.

(k) Do you think the current tolerance limits (20 per cent variation of cargo volume and five days variation in expected load date, detailed in Section 2.3) are still appropriate for TL voyages that overlap with a GL nominated route/cargo type, or should these limits be reconsidered?

No, they are not appropriate. The current tolerance limits on cargo volumes and five day tolerance to changes of load date are restrictive and operationally inefficient. Ship delays at ports and terminals frequently exceed five days and recently have exceeded twenty one days.

While in some sectors cargo volumes can be predicted, this is not so for liner services offering regular services, or for making the best use of break bulk capacities once a voyage has been confirmed. Some cargo bookings occur inside the current 48-hour notification limit imposed by the current TL, so the additional cargo cannot be carried despite space and opportunity - this is wasteful. Coastal shipping can be highly competitive with road and rail if the administrative inflexibility of access to it is removed. Removal of restrictions on volumes will increase coastal shipping efficiency and reduce delays to cargo movements.

(l) Do you agree with the proposed amendments to voyage notification requirements, noting that the vessel name is required to exempt the vessel from importation?

Yes. These amendments will improve the efficiency of coastal cargo movement and benefit Australian shippers.

(m) Do you believe emergency provisions are still needed if appropriate changes can be made to streamline TL voyage approvals? Do you agree with the proposed emergency provisions?

Yes. Emergency provisions are still needed, and the proposed emergency provisions are agreed.

(n) Should emergency arrangements provide for emergency changes to be made to the port of discharge port for cargo that has been loaded?

Yes. The nature of emergencies is that circumstances are often unpredictable and frequently changing.

The urgency to deliver cargo may demand that the port of discharge is changed – due to port congestion, road closures or other reason. Therefore, it is essential that emergency arrangements should provide for changes to be made to the port of discharge. Consideration should be given to similar emergency changes to the load port, though this is less likely.

(o) Are there any issues with the proposed handling of emergency situations outside of business hours?

The proposed handling of emergencies outside business hours is sensible and pragmatic. The definition of a genuine emergency proposed at the reference is supported.

(p) Should the Delegate be required to notify GL holders in the event that an Emergency Licence is issued, or if penalties are waived for an emergency voyage?

Yes, in the interests of full transparency. The Delegate should make public the fact that there is a genuine emergency so that any appropriate company / person / or potential licence applicant can respond to the emergency and offer assistance. The Delegate should also especially make clear that there are no penalties if a non-general licence holder carries out a coastal voyage during an emergency situation.

(q) Do you foresee any perverse outcomes as a result of implementing any of the suggested changes? How might these be mitigated?

The proposed changes are supported and will make the carriage of coastal cargo by sea more efficient and available to Australian producers and businesses with the benefits flowing through to the Australia population.

As previously mentioned, there may always be unintended consequences to any regulatory change and the full outcomes of the proposal would only be evident after implementation. Hence, it is recommended that a pilot project and/or trial be considered, via a legislative instrument under the current exemption provisions (section 11) of the Act. Such an approach could test the viability of the paper's proposals and mitigate the possibility of unintended negative consequences to allow tuning prior to pursuing the more challenging process of amending the Coastal Trading Act.

Submission authorised by:

Rod Nairn AM

Chief Executive Officer