National Farmers’ Federation

Submission to the Department of Infrastructure and Regional Development

Coastal Shipping Reform Discussion Paper

12 May 2017
The National Farmers’ Federation (NFF) is the voice of Australian farmers. The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF’s membership comprises all of Australia’s major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.
Statistics on Australian Agriculture

Australian agriculture makes an important contribution to Australia’s social, economic and environmental fabric.

Social >

There are approximately 132,000 farm businesses in Australia, 99 per cent of which are Australian family owned and operated.

Each Australian farmer produces enough food to feed 600 people, 150 at home and 450 overseas. Australian farms produce around 93 per cent of the total volume of food consumed in Australia.

Economic >

The agricultural sector, at farm-gate, contributes 2.4 per cent to Australia’s total Gross Domestic Product (GDP). The gross value of Australian farm production in 2016-17 is forecast at $58.5 billion – a 12 per cent increase from the previous financial year.

Together with vital value-adding processes for food and fibre after it leaves the farm, and along with the value of farm input activities, agriculture’s contribution to GDP averages out at around 12 per cent (over $155 billion).

Workplace >

The agriculture, forestry and fishing sector employs approximately 323,000 employees, including owner managers (174,800) and non-managerial employees (148,300).

Seasonal conditions affect the sector’s capacity to employ. Permanent employment is the main form of employment in the sector, but more than 40 per cent of the employed workforce is casual.

Approximately 60 per cent of farm businesses are small businesses. More than 50 per cent of farm businesses have no employees at all.

Environmental >

Australian farmers are environmental stewards - owning, managing and caring for 52 per cent of Australia’s land mass. Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 94 per cent of Australian farmers actively undertaking natural resource management.

The NFF was a founding partner of the Landcare movement, which recently celebrated its 20th anniversary.
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Executive Summary

The National Farmers’ Federation (NFF) is the peak industry body representing Australian farmers and agribusiness across the supply chain, including all of Australia’s major agricultural commodity groups.

The Australian agriculture sector is reliant on a competitive and efficient transport system to access domestic and international markets. The high cost of coastal shipping imposes an additional burden on farm businesses who access coastal freight to deliver their products into markets. Tasmania in particular is heavily impacted by inefficient coastal shipping arrangements.

The NFF welcomes the reform proposed in the Coastal Shipping Reforms Discussion Paper of March 2017 (the Discussion Paper). The current legislations make shipping uncompetitive and mean that freight that should go by sea is being carried on the road and rail networks. The amendments proposed are a step toward ensuring that Australia’s coastal shipping arrangements promote growth and prosperity in the long term.

Despite this, there are some areas of Australia’s coastal shipping scheme that have not been addressed in the Discussion Paper that should be the subject of reform. The NFF makes recommendations on areas for further reform.
1. Introduction

Our vision for Australian agriculture is to become a $100 billion industry by 2030. The sector is a source of strength in the Australian economy, positioned to capitalise on growing global demand for safe, high quality food and fibre over coming decades.

To achieve our vision, the sector needs regulatory and public policy settings that foster growth and productivity; innovation and ambition. This includes efficient transport systems that enable Australian products to move quickly from the farm-gate into domestic and overseas markets at a price that delivers a return to the farmer. In the agriculture sector, all commercial produce is transported from farm-gate to market and approximately two-thirds of all Australian produce is exported. For many farmers, shipping is an essential link in the supply chain, making affordable shipping a critical issue for Australian farmers. Tasmania in particular is heavily reliant on shipping.

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. Cost efficient pathways to market are essential to drive down freight costs and current coastal shipping regulations have resulted in a less competitive shipping sector in Australia and higher costs and more red tape for Australian farmers.

The NFF welcomes reform to the current coastal shipping system. It will open up another transport option to the industry which can be used to meet domestic market demand and/or realise supply chain costs savings. Coastal shipping is an opportunity that has not been widely used, in part because of regulatory impediments and restrictions. The costs and inefficiencies of coastal shipping have forced more cargo onto land transport, imposing greater burden on roads. This cost is borne by local Councils, Government and the whole community. The amendments proposed in the Discussion Paper are a positive step in the creation of more competitive and cost efficient shipping arrangements and better vessel utilisation.

3. Proposed 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 the 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. 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.

The Competition Policy Review Final Report, March 2015, found that cabotage restrictions on coastal shipping raise the cost and administrative complexity of coastal shipping services and recommended that they be removed, unless there were demonstrable benefits of the restrictions to the community as a whole that outweigh the costs, and the objectives of the government policy can only be achieved by restricting competition.

In its report on Regulation of Agriculture, the Productivity Commission\(^1\) stated that, despite its intention to maximise the use of Australian vessels, the effect of the coastal shipping reforms in 2012 has been to increase the barriers to entry for foreign flagged vessels and the price of shipping faced by Australian farmers. It was recommended that “as a matter of priority, the Australian Government should amend coastal shipping laws to substantially reduce barriers to entry for foreign vessels, to improve competition in coastal shipping services.”

The Discussion Paper outlines a number of proposed amendments to the Coastal Trading Act. The NFF welcomes these amendments on the basis that they will make coastal shipping arrangements much more flexible, remove layers of red tape and increase access to additional operators around the Australian coast.

1. **Remove the five voyage minimum requirement for a temporary licence (TL)**

The five voyage minimum requirement sought to encourage ships to register on the Australian General Register to obtain a general licence (GL) by restricting access to temporary and emergency licenses. Ships seeking to undertake less than five coastal trading voyages have no other option than to obtain a GL. However, registration for this licence requires that each seafarer working on the vessel must be an Australian citizen, permanent resident or appropriate Australian visa holder.

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 TL must specify, in some detail, at least five future voyages to be undertaken. The details of the voyages, including number, kind and volume of cargo, number of passengers and ports once specified, cannot change unless formally varied. The proposal to remove the five voyage requirement will reduce regulatory burden and allow for flexibility.

Additionally, under the current regime, before granting a TL, the Department of Infrastructure and Regional Development is required to notify operators of

\(^1\) Productivity Commission, *Regulation of Australian Agriculture*, No 79, 15 November 2016.
Australian registered ships of the proposed voyage. Those operators can nominate for the voyage themselves and take over the contract with the approval of the Department. There is no requirement to take over the contract on the terms agreed. This means that the new operator is in a position to renegotiate contracts at will and the original contracting parties remain bound by their contracts, with no right of refusal. It is important that this requirement is also removed alongside the five voyage minimum requirement.

2. Streamline the licensing process where no General licence (GL) vessels are available

This amendment is overdue. Where there are no appropriate GL holders for consultation or to carry the product, the consultation requirements of the licensing process are not needed and are just another layer of regulatory burden.

3. Streamline the TL variation process

Again, streamlining the application process will reduce regulatory burden and increase accessibility to licensing.

4. Amend voyage notification requirements

This amendment is supported for its capacity to reduce regulatory burden.

5. Amend the tolerance provisions

Increased flexibility in the acceptable tolerance limits for TL voyages will reduce the regulatory burden and improve access to licensing.

6. Replace the current three-tier regime with two tiers

Provided that modification of the criteria for issuing GLs and TLs to allow for emergency situations is sufficient to accommodate all emergency situations, the NFF supports this amendment.

7. Extend the geographical reach of the Coastal Trading Act

The NFF is not opposed to this amendment.

8. Allow dry-docking

Measures to ensure that ships operating under a license are not “imported”, including while dry docking, will encourage foreign ships to operate around the Australian coast and use Australian shore-based businesses for maintenance while dry-docked. This is good for all businesses and employees.

9. Minor technical amendments

The NFF is not opposed to any of the clarifications proposed in these amendments.
Funding for Seafarer Training Initiatives

Measures to increase training availability are supported.

4. Further Reform

The reforms will create more opportunity for coastal shipping of a range of agricultural commodities. However, the extent to which coastal shipping increases in practise will reflect the prevailing competitive environment and the extent to which all supply chain participants have fair and transparent access to port terminal services, and at competitive rates for loading and discharge of cargo. There is merit in the Department tracking coastal shipping volumes by port post these reforms, as this may indicate other competitive constraints which are impacting on coastal shipping and should be addressed.

While the amendments proposed by the discussion paper are positive recognition of areas in need of reform in Australia’s current coastal shipping regime, further measures should be considered for their importance in ensuring that Australia has an efficient and competitive shipping system. More broadly, reform should have a focus on creating a competitive environment so that all parties have access to affordable shipping, including at ports.

Nominations

Provision in the current Coastal Trading Act allowing domestic operators to nominate to take over the contract for a voyage under application for a temporary licence without taking on the terms agreed is of key concern. It means that the new operator is in a position to renegotiate contracts at will and the original contracting parties remain bound by their contracts, without a right of refusal. This is highly concerning and places those who are contracting for freight shipping in a precarious position as costs increase for contracts that they are locked into. For example, initial contracting parties might agree on a price of $20 per tonne. A third party then nominates to undertake the voyage, ships the contracted goods at a price of $25 per tonne, and leaves the initial parties to work out the difference. This acts as a disincentive to contract before permits are issued, results in delays in the grant of applications and increases costs. It is imperative that amendments to the five voyage requirement also remove the option for nomination.

The Australian International Shipping Register (AISR)

The Australian International Shipping Register (AISR) was established ‘to provide a competitive registration alternative for Australian shipowners and operators who predominantly engage in the international trades’. Ships registered on the AISR

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2 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.

are eligible for income tax exemption and other tax incentives. Despite this, not a single ship has registered on the Australian International Shipping Register (AISR) since it was created in 2012. The NFF understands that this is due both to high government registration fees and the requirement that before registering, a (non-Fair Work Act 2009) collective agreement must be reached with all relevant maritime unions, effectively on a ‘take it or leave it’ basis.

Any ship seeking registration on the AISR is required 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. Refusal to accede to demands made on behalf of seafarers will mean the conditions for registration on the AISR cannot be met. This 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. The laws only apply to voyage legs authorised by the temporary licence, meaning that a particular seafarer will be covered by Australian workplace laws 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 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. This outcome creates complex bookkeeping arrangements and deters foreign shipping companies from engaging in trade in Australian waters.

The extension of Australian workplace laws to foreign workers on foreign ships engaged in coastal trade has significantly increased to costs of shipping around Australia. 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.

2. Conclusion

Overall, the NFF is supportive of the proposed coastal shipping reforms outlined in the Discussion Paper. Coastal shipping is an underutilised transport option for the agricultural sector due to regulatory impediments and restrictions that increase cost. Reform to coastal shipping is encouraged to increase accessibility and reduce the pressure on land transport. The reforms proposed are consistent with recommendations by the Productivity Commission in March 2017 to reduce barriers to entry for foreign vessels. Further consideration should be given to additional measures that will reduce barriers and improve the efficiency and operation of coastal shipping.

3. Summary of Recommendations

The NFF makes the following recommendations:

- Implement the amendments proposed in the Discussion Paper.
- Ensure that reforms to the five voyage requirement also remove the option for domestic operators to nominate to take over the contract for a voyage under application for a temporary license without taking on the terms agreed.
- Remove the requirement for a ship seeking registration on the AISR to have a collective agreement with the seafarer’s bargaining unit comprised of relevant maritime unions.
- Remove the extension of Australian workplace laws to foreign ships.

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4 Fair Work Ombudsman v Pocomwell Limited (No 2) [2013] FCA 1139.