

COASTAL TRADING

Six years ago the Australian government introduced the rather optimistically named Coastal Trading (Revitalising Australian Shipping) Act 2012 ("the Act"). The Act is widely regarded as failing in its aim to revitalize Australian shipping. It was introduced to stimulate Australian coastal trade by providing a system under which lower costs would make shipping financially attractive to Australian businesses, however, not on Australian ships.



Policy and legislation is a difficult balance of opposing interests, and in the case of coastal shipping, on the one side there is the need for stimulation of coastal shipping by decreasing costs. On the other side there is the need to protect seafaring jobs and industry for Australian seafarers and businesses.

The Act was introduced to stimulate Australian coastal trade, but it has done so by allowing international ships to provide lower cost services. In 2012, 30 vessels held general licences to trade around the Australian coastline. Since the Act was introduced that number has dropped to 17. Far from the Australian shipping industry being revitalized it has further stagnated.

Australian Shipping Challenges

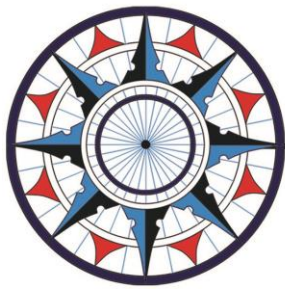
The Australian International Shipping Register (AISR) was established for Australian shipowners who engage predominantly in international trading. Since its inception the AISR is yet to have a single vessel register. Attractive tax incentives are available for vessels registered on the AISR however, the vessels must be;

- Operated solely by Australian residents or nationals, and
- 24m or greater in tonnage length, and
- On demise charter to Australian based operators, or
- Owned by Australian nationals for at least half of the shares.

By virtue of being Australian owned, the vessels are then subject to Australian workplace laws, including the Fair Work Act 2009 and Fair Work Regulations 2009. Hence, minimum wages and national employment standards apply. Potentially, seafarers on these vessels will receive better rights and wages than on international vessels. However, this comes at a cost and the additional expense of the service has contributed to the fact that as of 2017 there was not a single vessel registered on the AISR.

Australian owned vessels are expensive to run, and the alternative is to use international vessels with cheaper labour. This is most often achieved through the provision of temporary licences. The Fair Work Act 2009 applies to international vessels on temporary licences once they have completed two domestic voyages within 12 months.





The Coastal Trading Amendment Bill

The Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 ("the Coastal Trading Bill 2017") was introduced in September 2017 and proposes several amendments to the Act. With the Act aimed at "revitalizing" seeing a decrease in the number of Australian coastal trading vessels, an amendment bill by the same name raises some concern.

The Coastal Trading Bill 2017 proposes;

- Removing the five-voyage minimum requirement for temporary licences,
- Simplifying licence variation, consultation and notification processes,
- Amending the tolerance provisions for temporary licence voyages,
- Abolishing the separate category of emergency licences, and
- Extending the regime to cover, for example, voyages involving offshore petroleum facilities.

The Coastal Trading Bill 2017 amendments mostly relate to the provision of temporary licences. Temporary licences permit vessels to engage in coastal trade in Australian waters for a 12 month period, limited to the voyages authorized under the licence. Presently, a vessel must commit to 5 voyages as a minimum and state these voyages in advance when applying for the temporary licence. The Coastal Trading Bill 2017 will remove this requirement. Foreign vessels can then be granted temporary licences based on an individual voyage. This amendment creates greater flexibility for the international vessels and Australian businesses.

International vessels and Australian business also favour the amendment of tolerance provisions, from 20% above or below the designated cargo, to 200% above and 100% below. Breaches of the licence tolerances are presently the most common breach under the Act. The tolerance limitations are considered to be out of touch with the industry and an unnecessary restriction on the service.

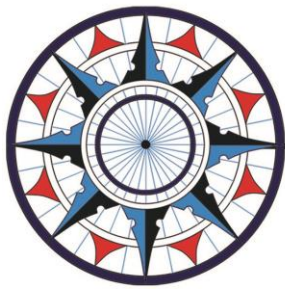
The third most significant amendment is the extension of the definition of coastal trading to include the carriage of liquid fuel product between offshore installations, floating production storage, offloading vessels, and ports. The Coastal Trading Bill 2017 will bring these voyages within the scope of a temporary licence and exempt the voyages from being considered "imported" under the Customs Act 1901 and thereby subject to import duty.

The Impact

This amendment will be instrumental in opening up the transportation of liquid fuel from Australian offshore operations to Australian refineries. Previously, these products have been seen to be taken to refineries in foreign countries in order to avoid the import duty. While this amendment removes an impediment to business for Australian refineries it also further opens the shipping market to international vessels.

While this may mean an increase in shipping business around Australia the possibility of an Australian owned and operated shipping industry becomes more remote. The Coastal





Pacific Maritime

LAWYERS & CONSULTANTS

Trading Bill 2017 will simplify administration and reduce costs for international vessels, thereby reducing costs for Australian businesses to engage international vessels.

The lowering of costs for international vessels makes it even more difficult for Australian vessels to enter the market and operate competitively. In their submissions prior to the drafting of the Coastal Trading Bill 2007, Ports Australia submitted that already businesses are importing products internationally as the cost of the product and the international shipping are cheaper than local shipping of a local product.

There are benefits. The international ships use our Australian ports, Australian tugs, deliver to Australian business, and export Australian goods. However, rather than another amendment, the government ought to be exploring how to inspire Australian shipping.

This amendment not only decreases the contestability of an Australian shipping industry, it actively makes entry an even steeper challenge. For a country that uses shipping for 99% of imports and exports it is at the very least, confusing, that there is not an Australian shipping fleet.



Written by:

Kendall Messer
Pacific Maritime Lawyers
Trainee Solicitor

