
REGULATION IMPACT STATEMENT: COASTAL SHIPPING REFORM

This Regulation Impact Statement has been prepared in accordance with the Australian Government Guide to Regulation handbook (2014) by the Department of Infrastructure and Regional Development with input from the Department of Employment. It is intended to assist with the assessment of proposed options to reform coastal shipping regulation in Australia through reducing regulatory burden and red tape, with a view to promoting a viable, vibrant domestic maritime sector which contributes to the broader Australian economy.

FOREWORD

Coastal shipping is the movement of goods by sea on entirely domestic journeys. It has generally been utilised in Australia for the movement of containers and bulk goods where road and rail transport is unavailable or unviable but also includes the movements of passengers on entirely domestic voyages.

The Australian Government regulated coastal shipping for more than 100 years through various iterations of the *Navigation Act 1912* and, more recently, through the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Coastal Trading Act).

The primary interest of regulating coastal shipping has been to allow the participation in the domestic economy by ships not registered in Australia where there is a shortfall of Australian tonnage available to meet the demand of shippers. Over time, restrictions to foreign ships operating in the domestic economy have generally eased (with the notable exception of the *Coastal Trading (Revitalisation of Australian Shipping) Act 2012*) as the demand for services has outgrown the supply of Australian ships.

A long term goal of successive Australian Governments has been to foster an efficient and internationally competitive Australian maritime industry to provide domestic and international transport services. The options set out in this Regulation Impact Statement all seek to deliver this outcome.

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DEFINITIONS

Australian General Register	Sometimes referred to as the ‘first register’ the Australian General Register is where Australian ships seeking to engage in both domestic and international trade are registered. The General Register is established through the <i>Shipping Registration Act 1981</i> . This Act of Parliament is the responsibility of the Minister for Infrastructure and Regional Development.
Australian International Shipping Register	Sometimes referred to as the ‘second register’ the Australian International Shipping Register is where Australian ships seeking to primarily operate overseas may elect to register. This register was introduced as a part of the 2012 reform package. The AISR offers reduced regulatory burden and allows the use of foreign labour in some circumstances but requires the ship to spend at least 51% of its time engaging in international voyages. The AISR is established through the <i>Shipping Registration Act 1981</i> . This Act of Parliament is the responsibility of the Minister for Infrastructure and Regional Development.
Australian ship	An Australian ship is a ship registered either on the Australian General Register or on the Australian International Shipping Register. Ship nationality is established in Australia through the <i>Shipping Registration Act 1981</i> .
Coastal Shipping	The carriage of domestic passengers or cargoes on purely domestic voyages.
Deadweight tonnage	A measure of the total carrying capacity of a ship in tonnes. It is calculated as the difference between the ship’s lightship (unloaded) and its loaded displacement. As such, it includes the weight of crew, passengers, fuel, water, and stores as well as cargo. Often abbreviated to “DWT”.
Demurrage	A cost payable to a chartered ship owner on failure to load or discharge the ship within the time agreed. Based on stakeholder feedback, demurrage is conservatively estimated to cost \$12,000 per day on average.
Domestic Voyage	A voyage carrying goods or passengers between two ports in Australian territory. A domestic voyage does not include a voyage not carrying cargo or passengers.
Exclusive Economic Zone	Consistent with Article 57 of the United National Convention on the Law of the Sea the exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.
Foreign ship	A ship registered under the laws of a country other than Australia.
Landside businesses	Maritime related businesses located on land.

Australian General Register	Sometimes referred to as the ‘first register’ the Australian General Register is where Australian ships seeking to engage in both domestic and international trade are registered. The General Register is established through the <i>Shipping Registration Act 1981</i> . This Act of Parliament is the responsibility of the Minister for Infrastructure and Regional Development.
Major trading fleet	Ships in the Australian trading fleet that have deadweight tonnage greater than or equal to 2,000 tonnes (see deadweight tonnage).
Maritime Crew Visas	The Maritime Crew visa (subclass 988) is a temporary visa for crew who are employed on non-military ships on international voyages to Australia.
Roadstead	An area affording less protection than a harbour where ships can load, unload and anchor safely.
Seagoing Industry Award 2010	The modern award covering the seagoing industry which provides for minimum pay rates and employment conditions.
Temporary Business Long Stay visas (subclass 457)	Temporary Work (Skilled) visas (subclass 457) allow skilled workers to come to Australia and work for an approved business for up to four years. Skilled workers must be sponsored by an approved business. A business can sponsor someone for this visa if they cannot find an Australian citizen or permanent resident to do the skilled work. Requirements of sponsor businesses include that they must contribute to the training of Australians.

OVERVIEW – THE REGULATION IMPACT STATEMENT PROCESS

The Regulation Impact Statement process is set out in the Australian Government Guide to Regulation available at www.cuttingredtape.gov.au. The guide sets out seven primary areas that must be addressed.

RIS Question 1 - What is the policy problem you are trying to solve?

RIS Question 2 - Why is government action needed?

RIS Question 3 - What policy options are you considering?

RIS Question 4 - What is the likely net benefit of each option?

RIS Question 5 - Who will you consult and how will you consult them?

RIS Question 6 - What is the best option from those you have considered?

RIS Question 7 - How will you implement and evaluate your chosen option?

This document has been arranged into seven sections aligned to the above questions in line with advice from the Office of Best Practice Regulation. Each section addresses a RIS question and the relevant sub questions set out in the Australian Guide to Regulation.

In line with the Australian Government Guide to Regulation, this Regulation Impact Statement explores each of the considered policy options, their benefits and costs, relative merits and alternatives.

EXECUTIVE SUMMARY

The cost of Australian domestic shipping services is uncompetitive on a global scale and the movement of manufacturing inputs and completed products on the Australian coast can be more expensive than importing inputs or finished products from other countries. Despite the recent global oversupply of shipping capacity, the declining number of trading ships on the Australian registry has exacerbated the existing shortage of Australian tonnage on domestic routes. The current legislative framework allowing foreign ships to participate in the domestic economy, the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Coastal Trading Act) is inefficient and burdensome on both shippers and the shipping industry.

The current regulatory framework for coastal shipping has not arrested the decline of the Australian shipping industry. Rather, it has restricted access to the Australian market and has resulted in a situation where Australian businesses frequently cannot access efficient, flexible and cost-effective shipping services suitable to meet their business needs. Given Australia's export orientated economy, with its focus on minerals and energy, a viable shipping industry, including a sustainable coastal trading sector is critical to the ongoing prosperity of the nation.

Four options were examined during the policy development process. These included a non-regulatory option.

Option 1 – remove all regulation of access to coastal trading

This Option involves the repeal of the Coastal Trading Act without consideration of the residual effects of other legislation and is the non-regulatory option considered. In practice, Option 1 would significantly increase the difficulty for foreign ships to compete in the coastal trading market. Modelling agreed by the Office of Best Practice Regulation contends this option would have a net economic cost of \$2.5 Billion. In addition, the annual regulatory burden estimated using the Regulatory Burden Measurement framework and agreed by the Office of Best Practice Regulation is estimated to be \$12.53 million.

Option 2 – remove all regulation of access to coastal trading and enact legislation to deal with the effects of other Australian laws

This Option also involves the repeal of the Coastal Trading Act and introduction of a range of other legislative provisions within a number of Acts to ensure open market access to coastal trade by all vessels. Modelling agreed by the Office of Best Practice Regulation contends this option would have a net economic benefit of \$786.2 million. In addition, the annual regulatory saving estimated using the Regulatory Burden Measurement framework and agreed by the Office of Best Practice Regulation is estimated to be \$27.9 million.

Option 3 – continue to regulate coastal trade, but minimise industry burden and cost

This Option involves the Australian Government continuing to regulate coastal trade under an amended Coastal Trading Act, which would see major burdens and costs to industry removed. This option would retain some protection for the Australian flagged coastal fleet while providing greater flexibility to buyers of shipping services and both Australian and foreign flagged suppliers of coastal shipping services. Modelling agreed by the Office of Best Practice Regulation contends this option would have a net economic benefit of \$705.3 million. In

addition, the annual regulatory saving estimated using the Regulatory Burden Measurement framework and agreed by the Office of Best Practice Regulation is estimated to be \$27.9 million.

Option 4 – reduced regulatory burden option with provisions to retain skills and provide minimum protections for seafarers on foreign vessels engaged predominantly in coastal shipping

This Option involves the Australian Government continuing to regulate coastal trade, with the existing licensing system replaced by a single permit allowing unrestricted trading on the coast for both Australian and foreign ships. Under this option reporting requirements would also be reduced and simplified. To support an Australian skills base, foreign ships trading on the coast for more than 183 days in a one year permit period would be required to have crew that are Australian citizens or residents or that hold appropriate Australian work rights as the master or chief mate and the chief engineer or first engineer of the ship. In addition, these ships would also have minimum standards for crew pay and conditions set out in regulations. To further strengthen skills development opportunities, the requirements for entry to the Australian International Shipping Register will be amended to remove current restrictions and barriers to entry. Modelling agreed by the Office of Best Practice Regulation contends this option would have a net economic benefit of \$667.4 million. In addition, the annual regulatory saving estimated using the Regulatory Burden Measurement framework and agreed by the Office of Best Practice Regulation is estimated to be \$21.4 million.

During the development and examination of these options, extensive consultation was undertaken with industry stakeholders, industry and employee representative groups and with other interested parties. The consultation process included the publication of an Options Paper and open and private consultative sessions across Australia. Stakeholders were also asked to complete an online survey to assist in the development of the cost benefit analysis and were consulted on the regulatory burden calculations for the current system. In addition, further consultation was undertaken through an industry roundtable held by the Deputy Prime Minister in February 2015.

Of the options considered, Option 4 is the preferred option. It will significantly reduce industry costs and burden and will remove impediments to foreign ships seeking to access the Australian coast. This option will retain measures to support the ongoing supply of maritime skills in the Australian economy and protect wages and conditions for seafarers on foreign ships operating primarily in the Australian coasting trade. It will not deliver the greatest economic benefit of the options that have been identified, but the minimum protections for foreign seafarers and Australian seafarer skills contained within the option are considered to be fundamental parameters of a reformed coastal shipping regulatory framework.

The preferred option will be implemented by making legislative amendments to the Coastal Trading Act. The preferred option will be evaluated through a range of mechanisms including regular reviews under the regulator performance framework, monitoring by the Cabinet Implementation Unit and internal reviews and audits within the Department of Infrastructure and Regional Development.

INTRODUCTION: A BRIEF HISTORY OF COASTAL SHIPPING REGULATION IN AUSTRALIA

Australian Governments have been considering with the issues involved in coastal shipping regulation for over a century. The problem of a decline in cost effective and suitable Australian ships has developed over a number of decades due to an undersupply of Australian ships providing services in the domestic economy. This undersupply has led to foreign ships being permitted to participate in the domestic economy to ensure efficient and timely freight movement services are available to other sectors.

Successive governments have sought to facilitate this foreign access through a range of regulatory approaches aimed at granting Australian industry access to competitive shipping services, while also supporting the ongoing viability of an Australian flagged fleet.

Commencing in 1913, the *Navigation Act 1912* provided a regulatory framework governing a range of aspects related to maritime navigation, among these regulation of the coastal trade.

The Navigation Act has seen a number of developments with respect to coastal shipping, each seeking to balance the need for services with the availability of British and then Australian ships.

On commencement of the Act, all ships engaging in coastal trading were required to hold a licence. The conditions placed on licence holders required adherence to standardised pay, seafarer conditions, and employment levels. This original Act included provisions permitting the Governor-General to declare the carrying of passengers between specified ports in Australia by British ships to not be deemed coastal trading.

Single and continuing voyage permits, allowing an unlicensed British ship to engage in coastal trading were first introduced in 1921. These permits were only available where the Minister was satisfied that no licensed ship was available or that the serviced as carried out by a licensed ship or ships would have been inadequate. Permits could be issued unconditionally or subject to any condition the Minister saw fit.

In 1926 amendments to the Navigation Act allowed the Governor-General to grant permission to unlicensed British Ships of such size and speed as specified to carry passengers between set port pairs where the Governor-General was satisfied that the tourist traffic between the ports was injured or retarded. While passengers were included in previous iterations of the regulation, this was the first direct recognition of tourism related maritime transport.

In 1958, the Navigation Act was further amended to permit the Minister to grant a permit to a foreign ship if no British ships were available. This amendment signalled the commencement of the current coastal trading policy allowing foreign participation in the market. A permit could not be granted if a British ship operating under a permit was available.

In 1979, a number of mechanical changes were made to Part VI of the Navigation act in addition to a more significant amendment to tighten the requirement for ships operating under licence or permit to not be in receipt of subsidies. Prior to this amendment, subsidies were permitted from any Commonwealth country, after the amendment, subsidies were only permitted to be paid by Australia.

In 1981, the Act was amended to remove protection for unlicensed British ships, evening the treatment for all non-Australian ships plying the coast.

In 2006, the Act was amended to provide greater powers to cancel continuing voyage permits to the Minister.

This series of amendments had the practical effect of progressively easing access to the coastal trades for foreign ships where supplementation of the Australian fleet was necessary.

The *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Coastal Trading Act) was legislated by the previous Australian Government as part of a suite of reforms intended to arrest the decline in the Australian shipping industry. The provisions of the Coastal Trading Act provide the benchmark for the consideration of the reforms identified in this RIS.

RIS QUESTION 1 – THE POLICY PROBLEM

In line with the Australian Government Guide to Regulation, this section:

- Clearly identifies and defines the problem the Government is trying to solve.
- Demonstrates why it is a problem: and addresses risks or other dangers to be mitigated.
- Offers evidence about the magnitude of the problem and the costs of not doing anything.
- Describes the businesses, community organisations or individuals affected by the problem.
- Explains which, if any, current government measures have sought to address this problem.
- Establishes why those measures are not working.

THE PROBLEM THE GOVERNMENT IS TRYING TO SOLVE

The cost of Australian domestic shipping services is uncompetitive on a global scale and the movement of manufacturing inputs and completed products on the Australian coast can be more expensive than importing inputs or finished products from other countries.

Despite the recent global oversupply of shipping capacity, the declining number of trading ships on the Australian registry has exacerbated an already existing shortage of tonnage on domestic routes. There are sufficient foreign ships available to service the needs of the Australian economy and the opportunities for competitive freight pricing are only likely to be achievable through greater access to the buyers of shipping services as the Australian economy continues to grow.

Successive governments have allowed access to foreign ships where no Australian ships are available to provide a suitable service. In addition to this objective, the existing regulatory framework seeks to balance industry demands for access to lower cost foreign shipping services in the domestic economy with the preservation of an Australian maritime industry.

The current legislative framework allowing foreign ships to participate in the domestic economy (the *Coastal Trading (Revitalising Australian Shipping) Act 2012*) is inefficient and burdensome on both shippers and the shipping industry. It has neither revitalised the Australian fleet, nor provided the flexibility required by shippers to efficiently and effectively move goods around the Australian coast. In addition, it also does not effectively support industry in making reasonable decisions about freight rates and multi-modal transport pricing.

Recent freight reports suggest the Coastal Trading Act has not increased the market share of coastal shipping as a freight transport mode when compared with land-based modes. In an environment where freight volumes are increasing, bulk commodities, such as aluminium ores, iron ore and petroleum, account for over 70 per cent of domestic coastal shipping movements. Despite this large market share and growth in the overall freight task, projected growth in domestic coastal shipping movements is dramatically lower than for the national road and rail freight task.¹

The policy development process covered by this Regulation Impact Statement seeks to identify and understand stakeholder concerns and to reshape the regulation of coastal shipping to deliver a better balanced and less burdensome framework. The revised framework would

¹ BITRE, 2014, *Freightline 1 – Australian freight transport overview*, BITRE, Canberra, pp.5, 8.

provide shippers with access to cheaper shipping services and would assist in making shipping more attractive when compared to land transport options.

THE NATURE OF THE PROBLEM

As outlined above, the current situation is such that foreign participation in the Australian domestic maritime industry is essential for the foreseeable future. The key question faced by successive governments is one of the level of participation of foreign ships. In particular, balancing the need for access to cost effective services with a desire to promote jobs in the domestic Australian economy has been an issue carefully considered over numerous iterations of coastal shipping regulation.

There are three central issues to the current situation – the Australian fleet is not large enough to meet the demand of shippers, the Australian fleet is ageing and becoming increasingly expensive to run and maintain compared to younger fleets, and Australian labour is relatively expensive compared with international counterparts in a globally competitive industry. In addition, future policy also needs to be made in consideration of Australia’s long term skills needs.

Stakeholder consultation indicated the current regulatory settings are not effectively balancing these needs and that freight rates had increased unduly since the commencement of the current regulatory framework. Extensive industry consultation indicated the existing framework adds unnecessary regulatory and cost burden to users of shipping services and may have led to a disproportionate increase in freight rates since the commencement of the legislation.

Further, consultation has indicated that without support beyond the measures introduced by the former Government in the 2012 reform package, major reinvestment in the Australian fleet is unlikely. On this basis, Australian reliance on foreign shipping services is likely to grow in the coming years as ships continue to leave the Australian fleet due to retirement or reflagging overseas to pursue more favourable taxation and employment environments.

The key considerations during the policy development process are the size and carrying capacity of the Australian fleet, the costs of an ageing fleet, labour market issues, and issues around the loss of maritime skills.

THE DECLINING SHIP SIZE AND CARRYING CAPACITY OF THE AUSTRALIAN FLEET

The fleet of Australian ships suitable for providing domestic maritime transport services is relatively small. There are currently 49 Australian registered ships (general licence) permitted to provide interstate maritime transport services in an unrestricted manner. A further 8 foreign registered ships (transitional general licence) employing Australian crew are also permitted to provide interstate maritime transport services with the same rights as Australian ships through grandfathering arrangements from the previous regulatory framework. Many of these ships are small and provide specialised services to remote communities in Northern Australia. The increase in the number of smaller ships is indicative of a specialisation in service provision by Australian shipping companies.

The fleet of major Australian registered ships with coastal licences has been declining over decades and in the past decade alone, from 30 in 2006-07 to 15 in 2013-14. The introduction of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Coastal Trading Act) has not

revitalised Australian shipping – there has been a 63% decrease in the carrying capacity of the major Australian coastal fleet since the Coastal Trading Act was introduced.²

A key reason for this decline is the retirement of older ships from the fleet without Australian shipping industry action to replace these vessels.

The declining tonnage of trading ships on the Australian registry has led to a shortage in Australian capacity on domestic routes and has brought about an increased reliance on foreign ships to provide these services.

AN AGEING AUSTRALIAN FLEET

The higher operating costs of older vessels in the Australian fleet also contribute to the higher freight rates typically charged by general licence and transitional general licence vessels.

Industry consultation conducted by the Department indicates that the current Australian fleet is relatively old by international standards, where shippers tend to have a preference for ships under 15 years old. The average age of an Australian major trading ship with a general licence is currently around 23 years and none of these vessels are under 15 years.

Consulted parties advised these older ships are generally slower, less fuel efficient, less reliable and more prone to breakdown, and require larger crew contingents than their more modern counterparts. In addition, these ships generally attract higher insurance premiums. Combined, these factors contribute to higher operating costs for older ships and the Australian shipping fleet's participation in international trades is declining. Domestic coastal trade suffers from either high freight charges or loss of business to the road and rail freight sectors.

LABOUR MARKET ISSUES

Crew costs are a major contributing factor to higher freight rates typically charged by general licence and transitional general licence vessels. Combined with the higher costs of operating an ageing fleet, higher labour costs impact the international competitiveness of Australian ships. In the absence of a competitive advantage brought about by a higher level of service or more efficient operations, the higher labour costs cannot be offset and Australian shipping remains uncompetitive.

As outlined by a number of stakeholders, Australian labour costs are significantly higher than the international standard. Modelling for the proposed options has estimated that the Seagoing Industry Award 2010 (Seagoing Industry Award) Part A is between \$4,169 and \$5,202 more expensive per ship per day than the International Transport Federation's Uniform Collective Agreement (ITFUCA) rate.³ Part B of the Seagoing Industry Award is estimated to be between \$2,980 and \$3,956 more per ship per day than the ITFUCA rate. There are also administrative costs involved in applying Australian workplace relations laws under the current framework.

Previous regulatory interventions in this area have been based on the idea that when foreign ships are engaged in domestic trading that is incidental to their international trading, they should not be covered by domestic workplace relations laws. These interventions have also recognised that in order to provide a more equitable operating environment for Australian

² Bureau of Infrastructure, Transport and Regional Economics, 2015, *Unpublished Data*.

³ Depending on whether the ship is manned by an 18 or 24 person crew.

ships, foreign ships engaged predominantly in the Australian domestic economy should be paid domestic wages.

The Government recognises the competing objectives of reducing detrimental costs within the Australian shipping industry, while also ensuring that foreign ships engaged in significant Australian trade abide by labour conditions more closely aligned with Australian ships. Based on stakeholder experience and the continued decline of the Australian fleet, there is scope to better balance these two objectives.

LOSS OF MARITIME SKILLS

Employee associations and some landside employers have raised concerns about the loss of seagoing maritime industry experience within the Australian workforce. In particular, a global shortage of skilled officers is increasing pressure on landside employers seeking personnel with suitable seagoing experience to fill positions including marine pilots, harbourmasters, insurance specialists and others.

As Australian tonnage continues on a long term declining trend, the availability of positions will decrease. Like other industries, landside operators will likely need to seek skills in an increasingly globalised market and at globally competitive wage rates.

THE SIZE OF THE PROBLEM

In 2012, analysis conducted by Deloitte Access Economics⁴ (DAE) found that the licensing arrangements introduced under the current Coastal Trading Act would:

- increase the cost of coastal shipping and, by extension, freight rates of up to 16 per cent;
- likely see costs borne predominantly by users of coastal sea freight, which would diminish competitiveness, encourage substitution of Australian-manufactured products for imports (especially if the Australian dollar remained high), and bear negatively and potentially significantly on future investment decisions;
- have an aggregate impact of between -\$242 million and -\$466 million on Gross Domestic Product over the 2012–2025 period in 2012 Net Present Value terms (compared to the regulatory system under the Navigation Act); and
- cause net job losses of 200 full time equivalent (FTE) employees over the long term, although immediate displacement was estimated at a peak loss of 570 FTE employees.

Since the introduction of the Coastal Trading Act on 1 July 2012, stakeholders have noted an increased administrative burden, operational uncertainty where Australian ships can contest licence applications, and reluctance by international ships to participate in the current regulatory system. Further, the Coastal Trading Act has not arrested the decline in the number or capacity of the Australian major trading fleet, nor met demand from purchasers of shipping services.

Stakeholder feedback from consultation supports DAE's first two findings. In particular, Bell Bay Aluminium⁵ noted their experience of increased costs and reduced competition in the

⁴ Deloitte Access Economics, 2012, *Economic impacts of the proposed Shipping Reform Package*, Sydney, NSW, pp iii-v.

⁵ Bell Bay Aluminium, 2014, submission to Department of Infrastructure and Regional Development *Options Paper: Approaches to regulating coastal shipping in Australia*, p 4.

coastal shipping market since introduction of the Coastal Trading Act. Bell Bay Aluminium faced an increase in freight rates from \$18.20/tonne in 2011 to \$29.70/tonne in 2012, or, compared with \$17.50/tonne charged by international operators, and was effectively restricted to use of a single Australian flagged vessel. Similarly, the Cement Industry Federation⁶ stated that there is presently no cost advantage in shipping clinker (a cement input) between Australian ports over importing from Asia, which has a negative impact on the Australian cement industry's international competitiveness.

The current regulatory and policy settings for coastal shipping are expected to cost between \$242 and \$466 million to 2025 and, to date, has had little appreciable effect upon the Australian shipping industry. Consequently, maintenance of the current settings is not recommended. These settings will likely continue to have a negative effect on growth in the broader Australian economy due to the existing restrictions on access to timely, flexible and cost effective shipping services.

CURRENT REGULATORY FRAMEWORK

Coastal shipping in Australia is currently regulated under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Coastal Trading Act), which commenced on 1 July 2012.

The Coastal Trading Act was intended to balance the interests of the Australian shipping industry and users of shipping services by regulating Australian and foreign ships through a licensing system. It provides an advantage to Australian ships by allowing them unrestricted access to coastal trade along with the opportunity to compete for voyages proposed to be conducted by foreign ships.

Four types of licence are available under the existing legislative framework; General Licence, Transitional General Licence, Temporary Licence and Emergency Licence. An overview of each of the licence types is included at Appendix A.

The existing framework rebalanced the use of Australian and foreign ships in a way that continues to permit the use of foreign ships where suitable Australian ships are not available. The current approach has been widely criticised by shippers and some sectors of the shipping industry because it removed some of the flexibility previously available under the Navigation Act.

Historically, foreign flagged ships operating domestically under permits issued under the previous *Navigation Act 1912* (Navigation Act) were generally not covered by Australian labour laws. In 2010, the application of the *Fair Work Act 2009* (Fair Work Act) was expanded to certain foreign-flagged vessels operating in Australian waters and engaged in coastal trading.

Following the introduction of the Coastal Trading Act in 2012, consequential amendments were made to the *Fair Work Regulations 2009* (Fair Work Regulations) to maintain the alignment of the Fair Work Act to crew on ships (both Australian and foreign flagged ships) engaged in coastal shipping if the ships are:

- operating under a general, transitional general or emergency licence under the Coastal Trading Act; or

⁶ Cement Industry Federation, 2014, *Submission to the Department of Infrastructure and Regional Development Options Paper: Approach [sic] to Regulating Coastal Shipping*, p 7.

- operating under a temporary licence and have made at least two other voyages under a temporary licence in the last 12 months.

In addition, the Seagoing Industry Award covers employers which are engaged in the seagoing industry, and employees in a range of roles from crew to Master and Chief Engineer. Part A applies to all ships except those which have been granted a temporary licence under the Coastal Trading Act.

During the creation of the Seagoing Industry Award 2010, Part B was established with separate, lower rates of pay and conditions for foreign seafarers on foreign ships. This decision recognised stakeholder concerns that it was inappropriate to apply the same labour conditions to seafarers on foreign ships as those that applied on Australian ships. Part B applies to ships granted a temporary licence under the Coastal Trading Act. Entitlements provided under Part B are less generous than Part A. Part B covers ordinary hours of work, overtime, rest periods, leave and public holidays. It also provides for the accrual of 8 days leave per month of service.

While Part B wages are generally lower than equivalent classifications under Part A, they are generally higher than minimum international seafarer wage rates sought by the International Transport Workers' Federation. This means foreign seafarers working on temporary licenced ships are entitled to more generous wages and conditions when engaged in coastal shipping in Australia than when they are engaged in international shipping voyages.

SHORTCOMINGS IN CURRENT MEASURES

The current measures have failed to arrest the decline in the Australian fleet, the substantial regulatory burden and high costs imposed by the system on shippers. While there has been a small increase in the number of ships in Australia's major trading fleet engaged in coastal trading, the overall tonnage of the fleet has continued to decline.

While the existing framework has supported the transition of the Australian industry to more specialised niche market services, it has not provided adequate flexibility to the users of shipping services wishing to access cheap, reliable and globally competitive services utilising otherwise unoccupied foreign tonnage already on the coast.

Information provided by industry indicates that by limiting the ability for shippers to access underutilised tonnage already on the coast, or for shippers to more efficiently use tonnage in the global fleet; the existing regulatory framework is placing undue upward pressure on freight rates.

More broadly, access to more efficient and cost effective transport services will enhance the viability of transport reliant industry sectors and will increase choice for transport service consumers.

Without remedial attention, these shortcomings will continue to entrench the existing issues in the coastal shipping industry.

RIS QUESTION 2 – THE NEED FOR GOVERNMENT ACTION

In line with the Australian Government Guide to Regulation, this section:

- Clearly identifies why there is a legitimate reason for government to intervene.
- Demonstrates that government has the capacity to intervene successfully.
- Identifies alternatives to government action.
- Clearly identifies what objectives, outcomes, goals or targets Government is aiming for.
- Identifies the constraints or barriers to achieving the goals of the Government.
- Ensures Government objectives are:
 - specific
 - measurable
 - accountable
 - realistic
 - timely.

THE REASON FOR GOVERNMENT INTERVENTION

The current regulatory framework for coastal shipping has not arrested the decline of the Australian shipping industry. Rather, it has restricted access to the Australian market and has resulted in a situation where Australian businesses reportedly cannot access efficient, flexible and cost-effective shipping services suitable to meet their business needs. Given Australia's export orientated economy, with its focus on minerals and energy, a viable shipping industry, including a sustainable coastal trading sector is critical to the ongoing prosperity of the nation.

THE CAPACITY OF GOVERNMENT TO INTERVENE

The Australian Government already regulates the participation of foreign ships in the domestic economy. The preferred option would be consistent with the generally progressive opening of the Australian domestic shipping market to foreign participation that has taken place over the past 100 years.

The Australian Government is the most appropriate level of government to intervene in this issue due to the wide ranging national policy areas that are connected including taxation, migration and tourism. In the absence of intervention to change the current approach, the domestic market would remain under the existing regulatory framework and if this framework were simply repealed, the domestic shipping market would effectively be closed to foreign participation like the rest of the domestic economy.

Results from consultation conducted to support the development of the options presented within this RIS indicated shippers, shipping companies, and industry representative groups all agree the Government has the capacity to intervene in this matter and should as a matter of urgency.

ALTERNATIVES TO GOVERNMENT ACTION

The nature of the situation is such that there is no alternative to government action. Because legislation is already in place, the Australian Government will need to act to change the existing regulatory framework if it wishes to change the policy approach to coastal shipping.

OBJECTIVES, OUTCOMES GOALS AND TARGETS

A key objective of coastal shipping policy is to stimulate growth in maritime transport with flow on benefits to other industries by removing the existing administrative burden on shippers and ship operators conducting business in Australia under the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

If this objective is met, shippers will have access to more efficient services and will be better able to choose the most appropriate transport mode to meet their business needs. This increased flexibility will allow Australian industries reliant on domestic transport services to optimise their business models free from existing constraints on the use of maritime transport services.

Analysis indicates the preferred option could deliver a net present value benefit of approximately \$667.4 million over the forecast period. In addition, deregulatory savings per year are estimated to be in the order of \$21.4 million.

CONSTRAINTS AND BARRIERS

Supply side factors such as the availability of ships in the Australian market, particularly where greater benefits for owners could be derived overseas is a key constraint to addressing the problem. The policy set out in industry consultation activities addresses this issue to the best ability of the Government by providing a flexible and cost effective regulatory framework with minimal barriers to entry. Nevertheless, some operators may continue to perceive the operating environment in Australia to challenging compared to some other countries.

Making Australia an attractive destination to provide shipping services is expected to largely overcome supply shortage issues; combined with existing global pricing practices for shipping services, this will ensure shippers are able to access transport services at globally competitive rates.

In the current global environment with an oversupply of ships, shippers are unlikely to face difficulty in sourcing transport services; however, in the future an increased exposure to global market forces could result in a situation where Australian shippers are less able to source cheap and reliable domestic sea freight services. Consultation indicated this is a risk the industry is willing to assume in a globalised economy.

SMART CHECKLIST FOR PROPOSED MEASURES

SPECIFIC TARGETS

As outlined above, the specific target of each of the options explored is to improve access to cost effective, reliable, and efficient maritime transport services for domestic shippers. With the exception of Option 1, each of the options explored would meet this target.

An additional target for coastal shipping policy is to support the development seafaring skills to ensure other industry sectors continue to have access to personnel with appropriate experience and skill sets. Ensuring that foreign ships engaged in significant Australian trade abide by labour conditions more closely aligned with Australian ships is also a target. Option 4 includes measures to directly support the retention and development of seafaring skills for people with

Australian work rights and seeks to better balance the application of Australian workplace relations arrangements.

SUCCESS MEASURES

The success of policies to address the identified problems will be measured in largely qualitative terms through consultation with shippers and the shipping industry during a routine policy review process. Industry feedback about the relative ease of securing cost effective, reliable and efficient transport services in a deregulated market, along with the ongoing availability of skilled personnel for other maritime industry sectors will indicate the level of success of the preferred option.

Some quantitative information, such as changes to the volume of goods transported domestically by sea, may be indicative of growth in the sector but would need to be considered in light of growth in the overall domestic freight task and any modal shift to or away from maritime transport.

ACCOUNTABILITY

The administration of coastal shipping policy will be held to account through the provision of regular industry policy bulletins ensuring consistent and fair advice is provided across the industry, regular reporting on KPIs and through the provisions of the regulator performance framework being implemented from 1 July 2015.

Industry will be held accountable through a range of compliance and enforcement measures available to the Minister responsible for the Act. These include the power to cancel a licence granted to a ship and powers to take action linked to strong civil penalty provisions.

Government and industry will also be held accountable under the preferred option through reporting and publication requirements. These will ensure activities conducted under licence are transparent and publically visible.

ACHIEVEABILITY

The delivery of a successful coastal shipping policy is achievable and will deliver the intended outcomes for shipping companies, shippers and the broader Australian economy. Legislating to clear existing impediments to market participation, while retaining protection for key skill bases will ensure Australian businesses are able to compete in a global marketplace. Further, key skill groups will be supported through minimum crewing requirements to ensure landside and in-port service providers have access to experienced Australian seafarers as part of a broader international workforce.

TIMELINESS

The proposed measures are timely and will be introduced in a reasonable timeframe. At this stage, the Government proposes commencement of the new regulatory framework as soon as practicable. This timeframe provides sufficient lead in for business to optimise their operations in line with the incoming framework and for the issuing of permits as required ahead of the commencement date. An earlier start would not provide sufficient transition time for business and a later start date would bring about undue uncertainty in the industry.

Consultation with industry will determine lead times and transitional arrangements for the new measures.

RIS QUESTION 3 – POLICY OPTIONS

In line with the Australian Government Guide to Regulation, this section:

- Identifies a range of genuine and viable alternative policy options.
- Ensures any of the live options can achieve the Government's stated policy objectives.
- Gives the decision maker confidence you have identified all of the available options open to the Government.
- Identifies the context for the options considered.

POLICY OPTIONS CONSIDERED

The Department of Infrastructure and Regional Development commissioned independent economic modelling from the Predictive Analytics Group on the three options to regulating coastal shipping in Australia outlined in the Options Paper.⁷ For each of the three options, the report modelled the costs/benefits to the Australian economy over a 20 year period commencing from 1 July 2015. The preliminary impact assessment indicated a controlled deregulation of the industry was likely to deliver the greatest benefit to the Australian economy of approximately \$786.2 million. The retention of a regulatory framework with reduced industry burden was likely to deliver a significant benefit to the Australian economy of approximately \$705.3 million, while a simple repeal of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* would result in an estimated economic cost of approximately \$2.5 billion.

The preliminary impact assessment did not model the transfer of freight from the road and rail sectors to coastal shipping and assumed the potential for transfer from land to maritime transport would be low, even in a market with reduced shipping costs. This is because many shippers could already access these lower cost services through the existing system. The above benefits are anticipated to increase if cargoes are able to be transferred to a lower cost transport system, for example long distance container movements, container repositioning or other low urgency freight.

Following the consultative process undertaken in connection with the options paper, the Deputy Prime Minister and Minister for Infrastructure and Regional Development, the Hon. Warren Truss MP held an industry roundtable in early February 2015 to canvass views on a further option to those presented in the options paper.

The additional option was developed in light of the outcomes of the consultative process and better reflected industry views about the advantages of an option that captured most of the benefits of full deregulation but with additional protections for wages and conditions for workers onboard ships trading in Australia for most of the year. The additional option also better reflects the desire of the industry to develop maritime skills for future needs in landside roles and associated industries. The additional option (option 4) is similar to the controlled deregulation option but would require the employment of people with Australian work rights in some circumstances, and the application of the Fair Work Act to foreign ships engaged predominantly in coastal trade. This option is anticipated to deliver a benefit of approximately \$667.4 million.

⁷ Australian Government, *Options Paper: Approaches to regulating coastal shipping in Australia*, April 2014.

Maintaining the status-quo was not considered as this would entrench the existing issues in the market highlighted previously in this Statement.

SPECIFIC OPTIONS CONSIDERED

In coming to the preferred approach, the Australian Government initially considered three options. These were outlined in the Options Paper on Approaches to regulating coastal shipping in Australia.⁸ Following extensive consultation on the three options, a fourth option was developed. The fourth option included changes to the Australian International Shipping Register (AISR) which are outlined below. The Deputy Prime Minister and Minister for Infrastructure and Regional Development led consultation on this option with key industry stakeholders during an industry roundtable event in February 2015.

DEREGULATORY OPTIONS

Option 1: Remove all regulation of access to coastal trading

This Option involves the repeal of the Coastal Trading Act without consideration or treatment of the residual effects of other legislation. As a result, all foreign flagged ships undertaking coastal shipping would be subject to all applicable Australian laws currently disapplied by the Coastal Trading Act.

This option was considered due to calls from the shipping industry and business lobby groups for the existing laws to simply be repealed. Upon further investigation, it became quickly apparent that such a move would remove the exemption from importation currently afforded to ships operating under a temporary licence. Without this exemption, ships carrying domestic cargo would be imported, requiring the payment of duties and leading to the loss of work rights for members of the ship's crew unable to obtain an Australian work visa. The removal of the Coastal Trading Act would also result in the application of the Fair Work Act and the Seagoing Industry Award Part A to all seafarers engaged in coastal trading.

This option was not considered in great detail due to the significant negative effect it would have on Australian industry reliant on foreign shipping services. The option was costed in net present value terms as a part of the economic contribution analysis.

Option 2: Remove all regulation of access to coastal trading and enact legislation to deal with the effects of other Australian laws

This Option also involves the repeal of the Coastal Trading Act and introduction of a range of other legislative provisions within a number of other Acts to ensure the policy objective of open market access to coastal trade by all ships is realised.

This option was considered as a workable alternative to option one and would, in effect, open the Australian coast entirely to foreign ships carrying domestic cargo. Such a liberalisation would be world leading and would have significant benefits for users of shipping services. It is likely that under Option 2, shipping freight rates would be significantly lower than present; however these benefits would come at a cost to the Australian shipping industry. Under this option, the existing application of the Fair Work Act and the Seagoing Industry Award to foreign registered ships is removed entirely and on-board arrangements in line with international

⁸ Australian Government, *Options Paper: Approaches to regulating coastal shipping in Australia*, April 2014.

practice would apply. Under Option 2, it is unlikely Australian ships would be able to compete with foreign ships on price. This would likely lead to a significant decline in the Australian industry with associated lost opportunities for skills development and retention for positions in landside or in-port operations requiring seafaring experience.

This option was costed in net present value terms as part of the economic contribution analysis. The deregulatory benefit was also costed as part of this RIS process.

REDUCED REGULATION OPTIONS

Option 3: Continue to regulate coastal trade, but minimise industry burden and cost

This Option involves the Australian Government continuing to regulate coastal trade under an amended Coastal Trading Act, which would see major burdens and costs to industry removed.

This option would remove the aspects of the current legislation causing the greatest inconvenience to industry without fundamentally changing the framework. In particular, this option would remove the requirement for new temporary licences to include five or more voyages and would clarify the number of voyages required in applications to add new voyages to a licence. It would also clarify the aspects of a voyage permitted to be varied through an authorised matters variation. This model would retain the existing provisions around contestability but would more clearly set out the matters required to be considered by the decision maker and their relative importance. Under this option, the existing application of the Fair Work Act and the Seagoing Industry Award to foreign registered ships is removed entirely and on-board arrangements in line with international practice would apply.

This option was costed in net present value terms as part of the economic contribution analysis. The deregulatory benefit was also costed as part of this RIS process.

Option 4: Reduced regulatory burden option with provisions to preserve skills

Following extensive industry consultation this option was developed to provide additional flexibility to users of foreign shipping services while supporting the development and retention of an Australian skills base in the maritime industry. This skills base will support landside and in-port operations by providing suitably experienced seafarers for positions in these sectors requiring personnel with seafaring experience.

Under this option, the existing licensing system would be replaced with a single permit allowing unrestricted trading on the coast. A permit would be available to both Australian and foreign ships and the existing contestability provisions would be removed. In addition, reporting would be simplified to six monthly voyage reports.

Those seafarers working onboard ships trading for less than 183 days in a permit period would remain on their existing employment arrangements with the ship, while those working on ships trading in Australia for more than 183 days in a permit period would be entitled to pay and conditions set out in Australian law.

To support an Australian skills base, foreign ships trading on the coast for more than 183 days in a one year permit period would be required to have crew with Australian work rights as the Master or Chief Mate and the chief engineer or first engineer of the ship. International labour arrangements will continue to apply to foreign ships that engage in less than 183 days of coastal

trade. This would mean that ships predominantly engaged in international trade, without a strong connection to Australia's domestic economy will not be covered by Australian labour law. Foreign ships that do engage predominantly in Australia's coastal trade will be required to conform with the minimum standards for crew pay and conditions currently set out in the Fair Work Act and Part B of the Seagoing Industry Award. These requirements would apply from the first day of the permit period.

To further strengthen skills development opportunities, the requirements for entry to the Australian International Shipping Register will be amended to remove current restrictions and barriers to entry. In particular, the reaching a collective agreement with the seafarers' bargaining unit will remain an option but will not be a mandatory condition for registration.

The requirement to engage in predominantly international trade will be removed. Instead, AISR ships would be required to engage in at least 90 days of international trade per year. In order for AISR ships to be competitive with other foreign ships, similar workplace relations requirements would apply as for foreign ships.

This option was costed in net present value terms as part of the economic contribution analysis. The deregulatory benefit was also costed as part of this RIS process.

LINKAGES BETWEEN POLICY OPTIONS AND GOVERNMENT OBJECTIVES

The key government objectives in a revised policy on coastal shipping are reducing red tape, easing access to shipping services and increasing competition between Australian and foreign ships. In addition, the Government supports the development and retention of Australian maritime skills and jobs, as well as better balancing the application of Australian labour law to foreign ships.

While Option 1 would remove red tape in the licensing system, it would also remove existing protections for ships operating under licence. As a result, a significant net increase in red tape and administrative burden would be incurred by ships required to comply with a range of legislation currently disapplied by the licensing system. This would likely be passed on to shippers and lead to higher freight rates. Option 1 would also reduce the availability of ships providing services in the domestic market, therefore further increasing the cost of obtaining shipping services in Australia. Effectively closing the coast to all but Australian ships could lead to the creation of more Australian jobs with associated skills benefits; however, the possible skills benefits would be outweighed by the other detriments stemming from this option. For these reasons, Option 1 is not consistent with the Government's objectives.

Option 2 is clearly linked to most of the above outlined objectives. Removing the existing licencing system and allowing foreign ships the freedom to operate in the domestic market while remaining not imported by Customs would reduce red tape in the application and Customs compliance processes. It would also significantly increase access to foreign ships and benefit competition between Australian and foreign ships. This option would likely lead to a significant decline in the Australian registered fleet, and for this reason would likely not align with the Government's objective of promoting skills development and retention in the maritime workforce. The measure also fails to adequately address public expectations regarding the payment of Australian wages to workers who work predominantly in the domestic economy. For these reasons, Option 2 would be broadly consistent with the Government's stated objectives with the exception of skills development and retention.

Option 3 is clearly linked to most of the above outlined objectives. This option would reduce red tape for licence applicants by clarifying the existing legislative framework. It would also ease access to shipping services, although to a lesser degree than Option 2 or Option 4. Option 3 would retain the existing competition and dispute resolution mechanisms and therefore would not enhance competition beyond the existing framework. Option 3 fails to adequately address public expectations regarding the payment of Australian wages to workers who work predominantly in the domestic economy. This option would also not have any benefit over the status quo in terms of skills development and retention.

Option 4 has the clearest and strongest links to each of the Government's objectives for this policy development process. It harnesses the benefits of deregulation while balancing the interests of a strong domestic industry and workforce. International labour arrangements will apply to foreign ships engaged predominantly in international trade, whereas Australian labour arrangements will apply to foreign ships engaged predominantly in Australia's domestic trade. This option would meet the Government's objectives in the same way as Option 2 and, as a result of the minimum crewing requirements for ships trading for more than 183 days on the coast, would also provide opportunities for skills development and retention. For this reason, Option 4 is most closely aligned with the Government's objectives for coastal shipping policy.

BREADTH OF OPTIONS CONSIDERED

The options considered cover the full breadth of reasonably available policy directions the Government could take. They include a complete deregulation of coastal shipping (bringing about a closure of the Australian coast), a controlled deregulation also removing aspects of customs, taxation and workplace relations legislation, a reduced regulation option granting greater access than is presently given to foreign ships, and a reduced regulation option granting greater access but addressing the concerns of associated industries around skills development and retention.

THE CONTEXT FOR OPTIONS CONSIDERED

In the options paper, the Government announced it would review the existing arrangements for coasting shipping with a view to revising or reversing measures that hinder the competitiveness of Australia's shipping services.

Following an extensive consultative process, the Government plans to amend the existing policy and regulatory framework for coastal shipping to:

- foster a competitive coastal shipping services industry that better supports the Australian economy;
- maximise the utility of existing shipping assets on the Australian coast by enabling the efficient allocation of coastal shipping services in line with industry demand;
- facilitate market development in the provision of shipping services to Australia; and
- to support the development and retention of seafaring skills in the Australian maritime industry.

Easing the current regulatory burden on the maritime industry through the removal of barriers to accessing the market for coastal shipping services will provide opportunities for more

efficient and competitive services. These may deliver cost savings to shippers and the broader Australian economy in line with the Australian Government's deregulation agenda.

RIS QUESTION 4 – THE LIKELY NET BENEFIT OF EACH OPTION

In line with the Australian Government Guide to Regulation, this section:

- Identifies who is likely to be affected by each regulatory option and assess the economic, social and environmental costs and benefits as well as how those costs and benefits are likely to be distributed.
- Quantifies the benefits and costs of the Government's policy proposal on businesses, community organisations and individuals to a level of detail commensurate with the impact of the policy proposal.
- Identifies and assesses the cost of offsetting deregulatory measures.
- Assesses the costs and benefits of all proposed options.
- Analyses qualitative impacts as well as quantitative impacts.
- Provides information on applicable international standards and whether the policy proposal differs from or adopts those standards.

STAKEHOLDERS

The principal stakeholders that would be affected by the options are shippers of goods and shipping service providers, both Australian and foreign. The majority of stakeholders provided written submissions or met with the Department during the options paper process.

OVERVIEW OF THE COST BENEFIT ANALYSIS PROCESS

A key part of preparing this RIS was contracting an independent economic modelling specialist, Predictive Analytics Group (PAG), to prepare a cost benefit analysis for the Department. The cost benefit analysis was undertaken based on an updated shipping cost model prepared by the Bureau of Infrastructure, Transport and Regional Economics in support of the RIS prepared for the 2012 reform package and assessed as a high quality model by the Office of Best Practice Regulation (OBPR).

For consistency, the freight task (and its growth in the years modelled) was assumed to be the same in the base case and in each of the policy cases.

Some general assumptions, consistent across the modelling were made about ship costs including crew costs and other operating costs. Port and fuel costs were not considered in the model as they do not depend on the flag of the vessel. A general assumption that a rate of return on capital invested of 5% is appropriate and a discount rate of 7% was applied to the economic capital costs. Foreign ships were assumed to be open registry ships paying ITF wages and minimal company tax (except where a different wage structure is applied in a policy option).

Based on the above assumptions, a set of base case and policy case ship operating models with various crewing arrangements and taxation treatments was prepared and daily financial and economic costs were estimated using the ship cost model. These costs were then applied in line with the market share assumptions made for the base case and each of the policy cases. For each ship model, daily costs were prepared for a handy size bulk carrier, a panamax bulk carrier, a capsized bulk carrier, a product tanker, a container ship, a product tanker with a DWT of 20,000 tonnes and a crude tanker with a DWT of 100,000 tonnes.

In developing the market share assumptions, PAG considered the Bauxite trade from Weipa to Gladstone, a triangulated Bauxite route, iron ore, other dry bulk, crude oil, petroleum, other

liquid bulk, cruise shipping, inter capital containers, and Bass Strait non bulk freight. Market share predictions were prepared for each of these sectors under the base case and each policy option.

A copy of the Cost Benefit Analysis prepared by Predictive Analytics Group (the PAG report) is included at Appendix B. This report sets out the full set of assumptions and modelled scenarios prepared to support the consideration of the policy options set out in this RIS. The assumptions underpinning the report were developed by PAG in consultation with the Department and the report provides an overview of the best available estimates of the effect of the reforms considered during the policy development process discussed in this RIS. The actual outcomes of the reform process will be dependent on commercial decisions by ship operators that will likely take account of a broader range of factors; however, the ranking of the reforms in terms of the relative benefit provided would not be expected to change even if the magnitude of the benefits were to increase or decrease.

It is important to note the PAG report considers a number of additional options not discussed in this RIS process. Options 1,2 and 3 in this RIS corresponds to Options 1, 2 and 3 in the PAG report. Option 4 in the RIS corresponds to Option 6 in the PAG report. Options 4 and 5 in the PAG report were examined to provide a more diverse range around the minimum crewing requirements and to test the overall economic impact of having no minimum Australian crewing requirement or having a more stringent minimum Australian crewing requirement. These options were not considered in detail as options in and of themselves during the final policy development process.

OPTION 1

Option 1 is the removal of all regulation of access to coastal trading by repealing the Coastal Trading Act. This option received very little support in the consultative process conducted by the Department of Infrastructure and Regional Development, with only one consulted party preferring this option. All other respondents that commented on this option were strongly unsupportive of the adoption of a system that would, in practice, greatly restrict foreign access to the Australian coast.

BENEFITS

The benefits for this option are decreased compliance costs for foreign and Australian ships from the removal of licensing system contained in Coastal Trading Act and a potential increase in the number of Australian flagged vessels undertaking coastal trading. However, these benefits would be outweighed by the significant cost from all foreign ships providing services in the domestic economy ships being imported under the *Customs Act 1901* (the Customs Act).

COSTS

The Coastal Trading Act provides for foreign ships used to carry passengers or cargo under temporary or emergency licences to not be considered as 'imported' under the Customs Act. Repeal of the Coastal Trading Act under this option would remove this provision, meaning all foreign flagged ships participating in coastal shipping would be considered imported and therefore subject to the Customs Act and a range of other legislative provisions triggered by importation. Such requirements relate to prohibited and restricted goods regulations, immigration, quarantine and revenue laws.

This option confers significant costs on ships treated as imported, predominantly from changes to labour and employment conditions. Importation requires ships to repatriate all foreign crew possessing *Maritime Crew Visas* within five days, and replace them with Australian crew, or with foreign crew possessing appropriate Australian work rights such as *Temporary Business Long Stay (subclass 457)* visas. Holders of a 457 visa would be required to be working in an occupation eligible for the visa class, meet English language competency requirements and would attract sponsorship and nomination costs, which were not included in the modelling. While Masters, engineers and officers are eligible for a 457 visa, lower level crew (ratings/ordinary seamen) are not included in the list of permissible occupations. Maritime industry skill shortages may place further upward pressure on wage costs, or make filling these crew vacancies difficult under this scenario. Some foreign ships may also become liable for GST charges upon importation, which, although a much smaller cost, may act as a further disincentive.

It would be extremely impractical for certain ships to be imported and have their crew replaced, for example container ships undertaking an international liner service. In this situation the coastal containers that would ordinarily be moved on an international liner service would have to be moved by rail instead. The requirement for foreign ships to be imported would be a significant and often insurmountable barrier to entry for these ships.

This option could increase costs to Australian shippers, driven by the higher wage costs for Australian crew. The application of the Fair Work Act and Seagoing Industry Award Part A to all seafarers engaged in coastal trading would increase costs to business. The increase in labour costs for foreign ships would make participation in the Australian coastal trading less attractive.

This option has the potential to increase the market share for Australian flagged ships. However, this option could increase costs to Australian shippers, driven by the higher wage costs for Australian crew.

As a result it is likely many foreign ships would elect to not participate in the domestic market. The result of this would be a decline in the supply of ships for coastal trading which would further increase costs to Australian shippers and would likely result in a shift towards road and rail freight transport.

Option 1 would result in an estimated economic cost of approximately \$2.5 billion over a 20 year period commencing on 1 July 2015.⁹

DEREGULATORY SAVINGS

LICENSING FRAMEWORK

There would be no licensing system under this option, which results in savings to businesses as they will not have to incur the significant administration, compliance and delay costs that result from the current regulatory framework. Business will receive savings under this option as a result of not having to use the online licensing system (establishment and maintenance of user account and training costs), not having to apply, and pay the fee, for licences and not notifying and reporting on voyages. There will also be no delay costs associated with application approvals.

⁹ This net present value has been calculated using a 7 per cent discount rate as per the Office of Best Practice Regulation's Guidance Note on Cost-Benefit Analysis.

The annual deregulatory savings to businesses from the removal of licensing system has been estimated by the Department of Infrastructure and Regional Development and the Department of Employment to be \$2.5 million.

TERMS AND CONDITIONS OF EMPLOYMENT

The application of the Fair Work Act and Seagoing Industry Award Part A to all seafarers engaged in coastal trading would result in a direct increase in costs to business of approximately \$14.9 million per year.

COMBINED SAVINGS

Under this option, the combined deregulatory cost to business is approximately \$12.3 million. Suitable potential offsets from within the Infrastructure and Regional Development portfolio have been identified, but as the option is not considered to be practical and the Government has stated it will not be adopted, these savings have not been included in the RIS.

Average Annual Regulatory Costs for (from Business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in cost
Total by Sector	\$12.3	\$0	\$0	\$12.3
Costs offset(\$ million)	Business	Community organisations	Individuals	Total change in cost
Agency	\$0	\$0	\$0	\$0
Within Portfolio	\$0	\$0	\$0	\$0
Outside Portfolio	\$0	\$0	\$0	\$0
Total by Sector	\$0	\$0	\$0	\$0
Are all new costs offset?				
<input checked="" type="checkbox"/> yes, costs are offset <input type="checkbox"/> no, costs are not offset <input type="checkbox"/> deregulatory, no offsets required				
Total (\$million) (Change in costs - Costs offset)	\$12.3			

OPTION 2

Option 2 is the removal of all regulation of access to coastal trading by repealing the Coastal Trading Act, and the enactment of legislation to deal with the effects of other Australian laws. This option received moderate support in the consultative process conducted by the Department of Infrastructure and Regional Development. Support for this option generally came from foreign shipping companies and shippers of goods.

BENEFITS

Repealing the Coastal Trading Act and enacting legislation to deal with the effects of other Australian laws would encourage foreign ships to increase their participation in coastal trading. Foreign ships may be able to increase their market share in sectors where there is not 100% market share for foreign ships currently, for example cruise shipping, the dry bulk trade (excluding bauxite and iron ore¹⁰) and non-bulk freight on Bass Strait. The potential to increase market share will depend on the type of service a foreign ship can offer compared to the service Australian ships are currently providing.

Australian shippers would be able to transport their goods at a potentially lower cost due to the increase in foreign ships and their lower operating costs. In addition, it is expected the reduction in costs to shippers will generate new business opportunities for sea freight that are currently too expensive to optimise or which currently utilise land-based freight.

The realisation of the benefits detailed above is based on two key assumptions. Firstly, it is assumed that new legislation would allow foreign ships to continue to be exempt from being considered as 'imported' under the *Customs Act 1901*. This would allow Maritime Crew Visas to continue to operate (so foreign ships would not be subject to the associated higher crew costs) and GST payment would not be required. Secondly, it is assumed that the new legislation would be successful in eliminating the all undesired effects of repealing the Coastal Trading Act.

The Fair Work Act and Seagoing Industry Award would not apply to foreign ships engaged in coastal trading under option 2. This policy decision would result in savings to foreign ship operators as those temporary licence and transitional licence ships currently subject to the Fair Work Act would no longer be required to pay according to Part A (for transitional general licence ships) and Part B (for temporary licence ships) of the Seagoing Industry Award. Instead, foreign crew on foreign ships would likely return to the lower international standard set by the International Transport Federation Uniform Collective Agreement. The reduction in labour costs for foreign ships may encourage competition in the coastal shipping market, with cost savings likely to be passed on to users of shipping services.

Option 2 would result in an estimated economic benefit of approximately \$786.2 million over a 20 year period commencing on 1 July 2015.¹¹

¹⁰ These cargoes are already predominantly carried under temporary licence.

¹¹ This net present value has been calculated using a 7 per cent discount rate as per the Office of Best Practice Regulation's Guidance Note on Cost-Benefit Analysis.

COSTS

Under this option there is the potential for some Australian seafarer jobs to be lost. Australia's coastal seagoing workforce is estimated at 1177 jobs¹².

Should a less regulated coastal shipping regulatory system be implemented, it is likely that some operators of Australian ships will seek to move to the lower cost model and flag their ships overseas. This would allow operators to pay all workers on the now foreign flagged ships internationally competitive wages and conditions.

The issue of any impact on Australian jobs must be considered in the broader context of increased domestic shipping activity - the increase in associated on-shore work and the impact lower shipping costs will have on onshore industries reliant on shipping services. The reforms may allow these industries to be more competitive and this may prevent further job losses in Australian manufacturing, resources and other industries. The modelling undertaken for the cost-benefit analysis did not include the cost of the potential losses of Australian seafarer jobs.

The modelling for the cost-benefit analysis also did not include any costs associated with identifying and enacting new legislation to negate the undesired effects of repealing the Coastal Trading Act.

DEREGULATORY SAVINGS

LICENSING FRAMEWORK

There would be no licensing system under this option, which results in savings to businesses as they will not have to incur the significant administration, compliance and delay costs that result from the current regulatory framework. Business will receive savings under this option as a result of not having to use the online licensing system (establishment and maintenance of user account and training costs), not having to apply, and pay the fee, for licences and not notifying and reporting on voyages. There will also be no delay costs associated with application approvals.

The annual deregulatory savings to businesses from the removal of licensing system has been estimated by the Department of Infrastructure and Regional Development and the Department of Employment to be is \$2.5 million.

TERMS AND CONDITIONS OF EMPLOYMENT

Removing the requirement for foreign ships to pay their seafarers according to the Fair Work Act and the Seagoing Industry Award would result in foreign seafarers on foreign ships being more cost effective than Australian labour on Australian ships. This would increase cost pressures on the Australian fleet and make the option for Australian ships to re-flag and re-crew more attractive. Option 2 results in a direct saving of \$25.4 million to foreign ship operators per year.

¹² This is the number of seafarers working in the blue water – ocean going ships category as identified in the Maritime Workforce Development Forum Australian Maritime Industry Census (p. 16)

COMBINED SAVINGS

Under this option, the combined deregulatory saving is approximately \$27.9 million.

Average Annual Regulatory Costs for (from Business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in cost
Total by Sector	(\$27.9)	\$0	\$0	(\$27.9)
Costs offset(\$ million)	Business	Community organisations	Individuals	Total change in cost
Agency	\$0	\$0	\$0	\$0
Within Portfolio	\$0	\$0	\$0	\$0
Outside Portfolio	\$0	\$0	\$0	\$0
Total by Sector	\$0	\$0	\$0	\$0
Are all new costs offset?				
<input type="checkbox"/> yes, costs are offset <input type="checkbox"/> no, costs are not offset <input checked="" type="checkbox"/> deregulatory, no offsets required				
Total (\$million) (Change in costs - Costs offset)	(\$27.9)			

OPTION 3

Option 3 is the continued regulation of coastal trading, but with a reduction in industry burden and cost. This option received moderate support in the consultative process conducted by the Department of Infrastructure and Regional Development. Support for this option generally came from Australian shipping companies.

BENEFITS

A more flexible licensing system is likely to be more attractive for foreign ship operators and therefore may increase the number of foreign ships participating in Australian coastal shipping. Foreign ships may be able to increase their market share in sectors where there is not 100% market share for foreign ships currently, for example cruise shipping, the dry bulk trade (excluding bauxite and iron ore) and non-bulk freight on Bass Strait. The potential to increase market share will depend on the type of service a foreign ship can offer compared to the service Australian ships are currently providing. The more flexible system is also likely to reduce the number of coastal shipping voyages that are cancelled or forgone, saving licence holders both time and money.

As with options 2 and 4, Australian shippers would be expected to benefit from lower costs of shipping, as more competitive foreign ships are encouraged to enter the market. This has the potential to generate new business, for example where shipping costs would be prohibitive under current arrangements, and to make sea freight more competitive with land-based freight transport.

Additionally, the geographic reach of the Coastal Trading Act would be expanded to cover the carriage of liquid fuel products from offshore installations, floating production, storage and offtake vessels and floating storage units to the mainland. This will allow petroleum companies to gain a licence enabling a foreign flagged vessel to undertake this type of movement, removing the risk of importation under the Customs Act.

The Fair Work Act and Seagoing Industry Award would not apply to foreign ships engaged in coastal trading under option 3. This policy decision would result in savings to foreign ship operators as those temporary licence and transitional licence ships currently subject to the Fair Work Act would no longer be required to pay according to Part A (for transitional general licence ships) and Part B (for temporary licence ships) of the Seagoing Industry Award. Instead, foreign crew on foreign ships will likely return to the lower international standard set by the International Transport Federation Uniform Collective Agreement. The reduction in labour costs for foreign ships may encourage competition in the coastal shipping market, with cost savings likely to be passed on to users of shipping services.

Option 3 would result in an estimated economic benefit of approximately \$705.3 million over a 20 year period commencing on 1 July 2015.¹³

¹³ This net present value has been calculated using a 7 per cent discount rate as per the Office of Best Practice Regulation's Guidance Note on Cost-Benefit Analysis.

COSTS

Under this option there is the potential for some Australian seafarer jobs to be lost, although the potential for job losses is less compared to options 2 and 4. Australia's coastal seagoing workforce is estimated at 1177 jobs¹⁴. Should a less regulated coastal shipping regulatory system be implemented, it is likely that some operators of Australian ships will seek to move to the lower cost model and flag their ships overseas. This would allow operators to offer all workers on the now foreign flagged ships internationally competitive wages and conditions.

The issue of any impact on Australian jobs must be considered in the broader context of increased domestic shipping activity - the increase in associated on-shore work and the impact lower shipping costs will have on onshore industries reliant on shipping services. The reforms may allow these industries to be more competitive and this may prevent further job losses in Australian manufacturing, resources and other industries. The modelling undertaken for the cost-benefit analysis did not include the cost of the potential losses of Australian seafarer jobs.

DEREGULATORY SAVINGS

LICENSING FRAMEWORK

Under this option there will be savings to industry due to the easing of some restrictions in the licensing system. A significant reduction in delay costs has been assumed due to the broadening of the tolerance provisions. The broadening of the tolerance provisions will result in less authorised matters and new matters applications being made, which will result in vessels spending less days waiting for approval of an application.

The administration costs will increase very slightly compared to the status quo. A moderate increase in the number of Temporary Licence applications and new matters applications has been assumed due to the ability to submit applications containing less than 5 voyages. As a result of the assumed increase in applications, the number of voyages undertaken has been assumed to increase slightly, which leads to slight increase in the amount of reporting. Authorised matters variations have been assumed to decrease moderately due to the broadening of the tolerance provisions. Overall, a decrease in the number of transactions occurring has been assumed as the decrease in authorised matters applications is greater than the increase in Temporary Licence and new matters applications.

There will be no change in substantive compliance costs as the training requirements for the online licensing system will not change.

The annual deregulatory savings to businesses from the easing of some restrictions in the licensing system is \$1.2 million.

TERMS AND CONDITIONS OF EMPLOYMENT

Removing the requirement for foreign ships to pay their seafarers according to the Fair Work Act and the Seagoing Industry Award would result in foreign seafarers on foreign ships being more cost effective than Australian labour on Australian ships. This would increase cost pressures on the Australian fleet and make the option for Australian ships to re-flag and re-crew

¹⁴ This is the number of seafarers working in the blue water – ocean going ships category as identified in the Maritime Workforce Development Forum Australian Maritime Industry Census (p. 16)

more attractive. Option 3 results in a direct saving of \$25.4 million to foreign ship operators per year.

COMBINED SAVINGS

Under this option, the combined deregulatory saving has been estimated by the Department of Infrastructure and Regional Development and the Department of Employment to be approximately \$26.6 million.

Average Annual Regulatory Costs for (from Business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in cost
Total by Sector	(\$26.6)	\$0	\$0	(\$26.6)
Costs offset(\$ million)	Business	Community organisations	Individuals	Total change in cost
Agency	\$0	\$0	\$0	\$0
Within Portfolio	\$0	\$0	\$0	\$0
Outside Portfolio	\$0	\$0	\$0	\$0
Total by Sector	\$0	\$0	\$0	\$0
Are all new costs offset?				
<input type="checkbox"/> yes, costs are offset <input type="checkbox"/> no, costs are not offset <input checked="" type="checkbox"/> deregulatory, no offsets required				
Total (\$million) (Change in costs - Costs offset)	(\$26.6)			

OPTION 4 (PREFERRED OPTION)

Option 4 is the replacement of the existing tiered system with a single permit system that provides unrestricted access to coastal shipping, with a minimum crewing requirement if a foreign vessel undertakes more than 183 days of coastal shipping in a permit period.

In relation to labour arrangements, option 4 seeks to balance interests through applying Australian workplace relations conditions to those foreign ships predominantly engaged in the domestic economy. The Fair Work Act and Seagoing Industry Award Part B will apply to foreign ships that engage in more than 183 days of coastal trading in a permit period.

This option was developed as a result of strong stakeholder support for an option that was somewhere between options 2 and 3. In particular, the Department of Infrastructure and Regional Development observed a significant degree of support for a 'light touch' licensing system, which provided legislated certainty along with a high degree of openness and flexibility.

BENEFITS

This option would encourage the increased participation of foreign ships in coastal trading, encouraged by a new single permit system with minimal compliance costs. Foreign ships may be able to increase their market share in sectors where there is not 100% market share for foreign ships currently, for example cruise shipping and the dry bulk trade (excluding bauxite and iron ore). The potential to increase market share will depend on the type of service a foreign ship can offer compared to the service Australian ships are currently providing.

As with options 2 and 3, Australian shippers would be expected to benefit from lower costs of shipping, as more competitive foreign ships are encouraged to enter the market. This has the potential to generate new business (where shipping costs would be prohibitive under current arrangements), and to make sea freight more competitive with land-based freight transport.

Additionally, the geographic reach of the Coastal Trading Act would be expanded to cover the carriage of liquid fuel products from offshore installations, floating production, storage and offtake vessels and floating storage units to the mainland. This will allow petroleum companies to gain a licence enabling a foreign flagged vessel to undertake this type of movement, removing the risk of importation under the Customs Act.

The requirement to retain a minimum contingent of crew with Australian work rights on board vessels undertaking more than 183 days of coastal shipping in a one year permit period would ensure the ongoing availability of personnel with seafaring skills and experience in the Australian economy.

Consultation indicated the importance of ongoing access to these skill sets for a range of harbour and landside roles in the maritime industry. Several stakeholders were concerned about the retention of appropriate maritime skills in the Australian workforce. Under a scenario which could see fewer Australian ships, particular concerns included a diminished availability of seafaring skills for specialised landside positions, and possible lag times and limited training berths to train new personnel. Others suggested these skills could be sourced globally in the same way as foreign shipping services, while some cruise operators suggested the passenger industry could play a greater role in training.

Some foreign ships would continue to be subject to the Fair Work Act under option 4, however the threshold for coverage will be lifted to ships that engage in more than 183 days of coastal trading in a permit year. This policy change acknowledges the concerns of stakeholders that

current Fair Work Act coverage is burdensome, while also requiring adherence to Australian wages and conditions for ships engaged in significant Australian coastal trade.

Option 4 would result in an estimated economic benefit of approximately \$667.4 million over a 20 year period commencing on 1 July 2015.¹⁵

COSTS

Under this option there is the potential for some Australian seafarer jobs to be lost, even with the requirement to maintain a minimum contingent of Australian crew on board vessels spending more than 183 days undertaking coastal shipping in a permit period.

The issue of any impact on Australian jobs must be considered in the broader context of increased domestic shipping activity - the increase in associated on-shore work and the impact lower shipping costs will have on onshore industries reliant on shipping services. The reforms may allow these industries to be more competitive and this may prevent further job losses in Australian manufacturing, resources and other industries. The modelling undertaken for the cost-benefit analysis did not include the cost of the potential loss of Australian seafarer jobs.

DEREGULATORY SAVINGS

LICENSING FRAMEWORK

Under this option there will be savings to industry due to the simpler single permit system and the fact that a permit provides unrestricted access to coastal shipping. There will be savings in administration costs as permits provide unrestricted access to coastal shipping, compared to the existing licence system where every voyage needs to be approved for a Temporary Licence. There will also be a saving from the reduction in reporting, from pre and post voyage reporting for Temporary Licence holders to one report every six months. Savings in administration costs will also occur due to the removal of the notice in response process.

There will also be a reduction in substantive compliance costs for businesses. The time required to train staff to use the online licensing system will be reduced as less interactions will be required with the online permit system. Delay costs will be eliminated as the single permit system provides unrestricted access to coastal shipping.

The annual deregulatory savings to businesses from the single permit system is \$2.4 million.

TERMS AND CONDITIONS OF EMPLOYMENT

Part B of the Seagoing Industry Modern Award was created by the then Australian Industrial Relations Commission to apply to foreign ships engaged in coastal trading. Option 4 will continue to utilise Part B for foreign ships, replacing the current link to a temporary licence (after the first two voyages) to a ship's engagement in coastal trading for more than 183 days in a permit year. Modelling for option 4 estimates that a total of ten foreign ships are likely to reach this threshold and therefore be covered by the Fair Work Act and Part B. These wages and conditions will apply from day one of the permit period. For the purposes of modelling, ten ships are anticipated to trade for more than 183 days, based on current trading practices.

¹⁵ This net present value has been calculated using a 7 per cent discount rate as per the Office of Best Practice Regulation's Guidance Note on Cost-Benefit Analysis.

Administrative savings resulting from option 4 are estimated to total approximately \$85,000, and labour cost savings are estimated to total approximately \$19 million per year.

COMBINED SAVINGS

Under this option, the combined deregulatory saving has been estimated by the Department of Infrastructure and Regional Development and the Department of Employment to be approximately \$21.4 million.

Average Annual Regulatory Costs for (from Business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in cost
Total by Sector	(\$21.4)	\$0	\$0	(\$21.4)
Costs offset(\$ million)	Business	Community organisations	Individuals	Total change in cost
Agency	\$0	\$0	\$0	\$0
Within Portfolio	\$0	\$0	\$0	\$0
Outside Portfolio	\$0	\$0	\$0	\$0
Total by Sector	\$0	\$0	\$0	\$0
Are all new costs offset?				
<input type="checkbox"/> yes, costs are offset <input type="checkbox"/> no, costs are not offset <input checked="" type="checkbox"/> deregulatory, no offsets required				
Total (\$million) (Change in costs - Costs offset)	(\$21.4)			

INTERNATIONAL STANDARDS HARMONISATION

There are no international standards for the regulation of participation in domestic economies. Coastal shipping is regulated in a range of ways ranging from highly prescriptive and restrictive approaches such as the Jones Act in the USA through to more open arrangements such as those in New Zealand. All options considered are consistent with international practice.

RIS QUESTION 5 – CONSULTATION

THE PURPOSE OF CONSULTATION

Consultation was undertaken with industry stakeholders, industry and employee representative groups, government agencies and with other interested parties to assist the Government in developing an understanding of the key issues faced by each stakeholder group. These initial stakeholder consultation activities assisted in further shaping the policy options presented to Government for consideration.

Given the broad spectrum of stakeholders interested in coastal shipping, conducting a thorough consultation process was essential to ensure the best possible advice was prepared about the most effective policy for coastal shipping.

CONSULTATION STRATEGY

The consultation process began with the publication of an options paper “Options Paper: Approaches to regulating coastal shipping in Australia”. The options paper highlighted questions for discussion by industry and called for submissions from interested stakeholders.

Submissions were received from 85 interested parties including major Australian and foreign shipping companies, Australian industry reliant on shipping services, and from industry and employee representative groups (see Appendix C).

Supporting the options paper process, the Department of Infrastructure and Regional Development met with 103 stakeholder organisations through a series of open and private consultation sessions. These sessions took place in Brisbane, Canberra, Hobart, Melbourne, Perth and Sydney. Open consultation sessions included a presentation explaining the different options followed by an open discussion; private sessions complemented these open sessions and supported the discussion of more sensitive issues. During the private sessions, the Department sought targeted information about the effects of the current framework and any potential changes. The consultative process was publicised broadly through emails to industry and information on the Department’s webpage. Advertisements were also published in the *Lloyd’s List DCN*, *The Australian Financial Review* and *The Australian* regarding the consultation process.

To establish the likely economic benefits or costs of each option, the Department commissioned independent research and an online data collection exercise. This work provided an independently verified net present value for each proposed option and the results are reflected in this Regulation Impact Statement.

Consultation was also undertaken to determine the regulatory burden imposed by the current system. For this purpose, businesses regulated under the current coastal trading regime were asked to respond to a questionnaire. The information provided during this process assisted in the refinement of policy options and in establishing the regulatory burden of the existing system and of the options considered.

After the Government had time to consider the submissions made to the options paper process and had further refined the options under consideration, the Deputy Prime Minister held an industry roundtable on 2 February 2015. This meeting drew together and sought views from senior representatives from a range of businesses and industry associations affected by the

existing regulatory framework. During this meeting, the Deputy Prime Minister put forward how the Government envisaged the proposed reforms proceeding and encouraged feedback from stakeholders. Following the industry roundtable, the Government received an additional 19 submissions from industry members. This feedback assisted in shaping the preferred option set out in this Regulation Impact Statement.

PARTIES CONSULTED

A wide range of stakeholders were canvassed as part of the consultation process. Various stakeholders engaged in or with an interest in coastal shipping were consulted with, including ship owners and operators, manufacturers, industry bodies, unions and state and territory governments. Both General Licence holders and Temporary Licence holders were present amongst those stakeholders who were consulted with. In total, 85 parties provided a submission to the review and 103 stakeholders were met with through public and private consultation sessions. A list of submissions is included at Appendix C.

Following this process the Deputy Prime Minister hosted a roundtable discussion at Parliament House in February 2015 to further refine the proposed model. The attendees at this meeting were the largest companies and stakeholder groups in the industry, the majority of which had made earlier submissions to the process.

CONSULTATION TOPICS AND ISSUES

During the consultative process associated with this regulatory development program, the Government canvassed a wide range of issues. These included what the regulation of coastal shipping should seek to achieve, the efficacy of the existing measures and a range of future policy options including complete deregulation, a more controlled deregulatory process, relatively minor changes to the existing framework, and a controlled deregulation with protections for Australian skills and jobs.

Three options were presented for the consideration of stakeholders in the options paper:

- *Option 1 – remove all regulation of access to coastal trading* involves repeal of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Coastal Trading Act) without consideration of the residual effects of other legislation. All foreign flagged vessels undertaking coastal shipping would be subject to all applicable Australian laws, including the *Customs Act 1901*.
- *Option 2 – remove all regulation of access to coastal trading and enact legislation to deal with the effects of other Australian laws* involves repeal of the Coastal Trading Act and introduction of a range of other legislative provisions to ensure open market access to coastal trade by all vessels.
- *Option 3 – continue to regulate coastal trade, but minimise industry burden and cost* involves the Australian Government continuing to regulate coastal trade under an amended Coastal Trading Act, which would see major burdens and costs to industry removed. This option would retain some protection for the Australian flagged coastal fleet while providing greater flexibility to buyers of shipping services and both Australian and foreign flagged suppliers of coastal shipping services.

In addition to these options, and in light of industry feedback, a controlled deregulation option with protections for Australian skills and jobs was developed after the options paper process.

This fourth option is the recommended option and was presented to an industry roundtable meeting by the Deputy Prime Minister in February 2015.

Consultation during the industry roundtable focused on a proposed regulatory framework developed from the earlier canvassed options but building on industry feedback to date. This discussion focussed on the theme of workability in the proposed model, industry impacts and timing practicalities.

OUTCOMES OF CONSULTATION

Stakeholder support was divided between Options 2 and 3. Australian shipping companies generally preferred Option 3, while foreign shipping companies and shippers of goods preferred the less restrictive Option 2.

One party supported Option 1 but indicated support for the removal of other regulatory barriers for foreign vessels, aligning with Option 2. In practice, Option 1 would significantly increase the difficulty for foreign vessels to compete in the coastal trading market.

A number of stakeholders supported a position somewhere between options 2 and 3. In particular, the Department observed a significant degree of support for a 'light touch' licensing system, which provided legislated certainty along with a high degree of openness and flexibility.

Overall, stakeholders felt that the Coastal Trading Act has acted as an unreasonable barrier to competition and market entry by foreign vessels, having the effect of increasing the price of coastal shipping services and thus the viability of Australian business.

Several stakeholders perceived conflict within the different aims or 'object' of the Coastal Trading Act; some aims clearly support, develop and protect use of the Australian shipping industry while others aim to provide Australian export industries with the most efficient and competitive shipping services available (which may not always be Australian).

Stakeholders were most concerned by the cost of Australian shipping, which was stated to be almost double that of using foreign flagged vessels. The primary driver of higher costs was seen to be high Australian wage costs relative to foreign vessel wage costs. As such, many stakeholders criticised the 2010 extension of the Fair Work Act to (some) foreign ships. Other cost drivers related to the high average age of Australian vessels, such as higher fuel consumption and insurance premiums.

Stakeholders called for policy certainty to create greater certainty in business planning and perceived a propensity in Australia to change shipping regulations on a semi-regular basis, which they felt posed a high sovereign risk for coastal shipping operations in Australia.

The current Temporary Licence system was seen as a further disincentive to the participation of foreign vessels, due to high compliance costs and operational uncertainty. Temporary Licences were seen as overly inflexible because foreign vessels are currently required to apply for a minimum of five voyages (seen as impractical for last-minute shipping), and abide by tolerance provisions for volume and loading date (± 20 per cent; \pm five days). Of particular concern was the ability of Australian vessels to contest the granting and amendment of Temporary Licences to foreign vessels; in light of foreign vessels' 'inflexible' requirements, this ability to contest was seen as overly advantageous for Australian vessels. Purchasers of shipping services, who prefer cheaper foreign services, felt that required negotiations with more expensive Australian shipping companies rarely resulted in mutually acceptable outcomes being reached.

During consultations, many participants expressed concern about the application of the Fair Work and Part B of the Seagoing Industry Award. They had concerns with both labour costs and the administrative complexity in interpreting and applying the legislated requirements. Some stakeholders also suggested that the switching on and off of the Fair Work Act and complexities

associated with Part B are a particular disincentive for foreign ships looking to engage in domestic coastal trading, reducing the availability of certain coastal routes.

Not all stakeholders consider Part B is a significant cost driver in setting freight rates. During consultations, a limited number of ship operators suggested the additional labour costs were minimal when compared to other factors affecting freight rates, such as the cost of fuel. The Maritime Union of Australia also argued for the retention of the Fair Work Act and Part B on the basis that foreign flagged ships engaged in coastal trading are participating in the domestic freight market and are in competition with Australian ships and other modes of transport.

Service reliability was noted as of critical concern to some shippers, such as fresh produce shippers with lower volumes. Under the current regulatory system, these stakeholders felt that the compliance burden deterred and even prevented use of existing capacity on foreign vessels on the Australian coast to move coastal cargo. Some users who supported Option 3 were concerned about long-term commitment from foreign vessels; Tasmanian fresh produce exporters also expressed concerns about whether services could be maintained at an appropriate price. However, bulk shippers were confident of sourcing sufficient services from the global market under an open coast scenario.

Specific representations were made of business opportunities for lower cost shipping services to Tasmania. These opportunities have not been pursued due to the need to reveal the proposed voyage and cargo patterns to General Licence holders (Australian shipping companies) through the Temporary Licence application process, with the fear they will be either challenged by General Licence holders or cannibalised by other Temporary Licence holders.

Feedback during the industry roundtable and provided afterwards indicated general support for option 4.

RIS QUESTION 6 – THE PREFERRED OPTION

In line with the Australian Government Guide to Regulation, this section:

- Describes what Government learned from consultation.
- Indicates which of the identified options has been recommended to Government.
- Explains the decision making process and clearly outlines any:
 - caveats or qualifications
 - assumptions
 - unresolved issues
 - weightings applied to evidence or arguments.

KEY FINDINGS FROM CONSULTATION

Stakeholder feedback has signalled the Coastal Trading Act has resulted in:

- (a) an increased administrative burden and cost for foreign employers, resulting in higher shipping costs for purchasers of shipping services;
- (b) operational uncertainty, due to the ability of Australian flagged ships to contest licence applications and variations by foreign flagged ships; and
- (c) a reluctance by international ship operators to participate in coastal shipping under the current regulatory system, resulting in underuse of international ships' capacity between stops along the Australian coast.

Stakeholder opinions were divided between a complete deregulation of the sector (through Option 2) and the maintenance of a minimalist regulatory framework (Option 3). Australian shipping companies generally preferred the retention of a minimalist regulatory framework, while foreign shipping companies and shippers of goods preferred a more extensive deregulation of the sector. The Department observed a significant degree of support for a 'light touch' licensing system which provided legislated certainty along with a high degree of openness and flexibility.

Some key observations from the consultation process include:

- the ongoing availability of people with seafaring experience, local knowledge and an understanding of the specifics of how the Australian industry operates is considered to be essential by many landside businesses. In particular, the need for people with these skills and knowledge to fill key roles in Australia's ports was highlighted as a concern in the absence of measures to ensure such people continue to be available.
- perceived conflict within the different aims or 'object' of the Act; some aims clearly support, develop and protect use of the Australian shipping industry while others aim to provide Australian export industries with the most efficient and competitive shipping services available (which may not always be Australian).
- the majority of general licence holders for coastal shipping prefer to see regulation maintained in some form;

- users of foreign shipping services feel little is achieved by the Coastal Trading Act requirement to negotiate with general licence companies. The more expensive nature of Australian shipping services is such that a mutually acceptable outcome can almost never be reached with the shipper preferring the cheaper foreign service;
- opportunities for lower cost services to Tasmania had been identified by foreign competitors but have not been pursued due to the current requirement to reveal the proposed voyage and cargo patterns to general licence holders through the application process, with the fear they will be either challenged by general licence holders or cannibalised by other temporary licence holders;
- there are opportunities to remove the inflexibility in the temporary licencing process by removing the five voyage minimum, the 20 per cent tolerances and the 5 day time window for loading. This would recognise the often 'last minute' nature of shipping consignments and ease the compliance burden as an immediate concession to the business needs of shippers; and
- while its level of significance across consultation participants varied, many stakeholders cited the application of the Fair Work Act to foreign ships as a priority issue, voicing concerns both with increased labour costs and administrative complexity. Some stakeholders indicated the complexities associated with the application of the Fair Work Act are a particular disincentive for foreign ships looking to engage in domestic coastal shipping, reducing the availability of certain coastal routes and impacting on a shipper's ability to move their cargo to meet business requirements.

Maintenance of the current regulatory settings will likely have a negative effect on growth in the broader Australian economy due to the existing restrictions on access to timely, flexible and cost effective shipping services. Government is considering options to reset the regulatory framework to better support an efficient shipping industry to in turn benefit the broader Australian economy.

In addition, the existing framework continues to protect an Australian fleet that is old and expensive by global standards.

THE RECOMMENDED OPTION

The preferred approach is to pursue reform to the existing legislative framework to significantly reduce industry costs and burden and to remove impediments to foreign ships seeking to access the Australian coast while retaining measures to support the ongoing supply of maritime skills in the Australian economy through option 4.

This approach would replace the existing four tiered licensing framework with a single coastal trading permit for both Australian and foreign ships. Under this framework:

- ships covered by a permit would not be imported by Customs;
- Australian and foreign ships would be afforded equal access rights to carry coastal goods or passengers;
- a foreign ship operating in Australia under a permit for more than 183 days would be required to meet minimum Australian crewing requirements and be covered by the Fair Work Act and Part B of the Seagoing Industry Award; and

- voyages loading or unloading at roadsteads outside state waters, and voyages loading at offshore oil and gas installations for transport to the mainland would be eligible for coverage under the permit system.

While consultation revealed strong support for both a controlled deregulation of coastal shipping and amendments to simplify the existing regulatory and policy framework, it appears the most satisfactory and beneficial approach for business and government lies between the two options.

Although the costings for a reduced regulatory framework appear to provide the greatest economic benefit, adopting this option (as presented in the options paper) would not resolve a number of significant concerns raised during the consultative process and would only provide an additional \$5.94 million per year in benefits across the Australian economy. While Option 2 may have been assessed as having the highest net economic benefits, it is not feasible to introduce reforms to coastal shipping without balancing the benefits of increased use of foreign vessels with measures to ensure that the services delivered by foreign ships are provided in a manner that meets the expectations of the Australian community as to crewing and employment standards. These measures are foundation elements of the new regulatory and policy framework, and the comparison of net economic benefits needs to be considered in this context.

Option 4 is preferable to Option 2 because it more closely aligns with Government priorities in the area of skills development and protections for seafarers on foreign ships and would ensure a reasonable ongoing availability of skilled and qualified mariners with local knowledge and experience to fill positions in on-land transport and logistics industry sectors. Although it is possible these skills could be brought in at global market rates, consultation indicated the industry highly values local knowledge.

Key aspects of Option 4 are:

- removing licensing impediments, particularly the requirement to apply for specific voyages and to vary voyages already approved;
- removing the ability for Australian ships to challenge the granting of a licence to foreign ships;
- allowing the carriage of petroleum products from offshore installations in Australian territory to the mainland;
- retaining the application of the *Fair Work Act 2009* to foreign ships predominantly engaged in Australia's domestic trade; and
- maintaining career paths for the skilled professions of Masters and Officers and Engineers, by requiring ships wishing to trade on the coast for more than 183 days in the licensing period to meet minimum Australian crewing requirements.

The combination of measures in Option 4 would address the specific concerns of stakeholders about the loss of skills in the market, and would provide a preference to employing Australians over foreign nationals in the domestic economy in line with Government policy.

THE DECISION MAKING PROCESS

The following process was followed in order to ensure the best possible policy would be chosen and implemented by the Government with regards to the regulation of coastal shipping in Australia.

The first step in the decision making process was the publication of an options paper titled "Options Paper: Approaches to regulating coastal shipping in Australia". This paper put forward three broad options for the consideration of stakeholders:

- (a) *Option 1 – remove all regulation of access to coastal trading*
- (b) *Option 2 – remove all regulation of access to coastal trading and enact legislation to deal with the effects of other Australian laws*
- (c) *Option 3 – continue to regulate coastal trade, but minimise industry burden and cost*

The options paper also posed questions for industry to consider in relation to the current coastal trading framework as well as in relation to potential changes to the regulation of the sector. The options paper also called for submissions from industry and other stakeholders with an interest in the coastal shipping sector. The Department received submissions from 85 parties, including major Australian and foreign shipping companies, Australian industry reliant on shipping services, and from industry and employee representative groups.

Supporting this process, the Department also met with 103 stakeholder organisations in a series of open and private consultation sessions. These sessions were held in cities around the country as outlined in the response to question 5.

Following the discussion paper and submissions process, a range of options were presented to the Government. These options reflected the outcomes of consultation with industry and relevant stakeholder groups.

Reflecting industry feedback an additional policy option for the regulation of coastal shipping similar to option 2 but with additional measures to preserve skills, preference employing Australians over foreign nationals in the domestic economy, and to provide assurances about wages and conditions was developed. This preferred option was tested with various coastal shipping stakeholders at an industry roundtable meeting hosted by the Deputy Prime Minister at Parliament House in Canberra on 2 February 2015. Following this meeting, additional submissions were received and the preferred policy option was further refined and developed based on this input.

RIS QUESTION 7 – IMPLEMENTATION AND EVALUATION

In line with the Australian Government Guide to Regulation, this section:

- Discuss any implementation challenges you may face in this policy proposal.
- Assess the implementation risks: their likelihood, consequences and management.
- Outline transitional arrangements in moving from one policy to another.
- Describe how the performance of your policy will be evaluated against its objectives, during and after implementation.

IMPLEMENTATION CHALLENGES

While some legislative complexities in establishing the new framework are anticipated, implementation of the preferred option is anticipated to be relatively straightforward. The legislation drafted to give effect to the changes includes transitional measures providing for a clean switchover between the current and future regulatory frameworks. Further, the long lead time from introduction of a bill to commencement provides sufficient time for industry to secure appropriate permits ahead of the commencement of the new system.

A comprehensive communications plan will be delivered to ensure all affected parties are aware of their obligations as the existing system comes to a conclusion and the new system commences.

IMPLEMENTATION RISKS

For the preferred option, the key implementation risks and their likelihood, consequence, treatment measures and residual risk level are:

Risk	Likelihood	Consequence	Treatment	Residual Risk
1 – Ships unable to move cargo				
Permits not issued on time	Low	Severe	Administrative processes developed to ensure permits are issued within legislated timeframes.	Low
Application for Permit not lodged	Medium	Severe	Communications campaign with existing and future licence holders to ensure applications are lodged with sufficient processing time allowed.	Medium
2 – Administrative Risks				
Administrative framework not in place ahead of commencement, or is inadequate to deal with circumstances arising during the early stages of implementation.	Low	Medium	Administrative processes will be developed ahead of commencement and a supporting IT system will be deployed.	Low
Volume of applications causes a failure of supporting IT systems	Low	Medium	IT system will be tested to ensure it is capable of handling applications in expected volumes.	Low
Permits not issued on time due to volume of	Low	Severe	Transitional arrangements and a long lead	Low

Risk	Likelihood	Consequence	Treatment	Residual Risk
applications			time have been built in to the new system to avoid this likelihood	
Insufficient resources to process applications ahead of commencement	Low	Severe	The Shipping Business Unit is currently staffed appropriately and extra staff are available if needed	Low
3 – Communications risks				
Industry unaware of changes	Low	Medium	There has already been an extensive consultation process, coupled with a broad publicity program there is little risk of industry being unaware of the changes	Low
Industry unable to meet requirements	Low	Medium	Extensive consultation on the proposed model, and the design linking permits to ships rather than voyages will minimise the likelihood of this risk	Low

TRANSITIONAL ARRANGEMENTS

The recommended option will be implemented through amendments to the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and the *Shipping Registration Act 1981*.

Legislative changes to bring about a new permit framework would commence on as soon as practicable after the requisite legislation is passed.

A post implementation evaluation of the efficacy of the new measures introduced under the Coastal Shipping Act will be conducted in five years. This evaluation would consider whether access to shipping services had increased, whether costs had noticeably decreased, and the

extent of any broader economic stimulus brought about by the revised market access framework.

Timing for any changes to the Fair Work Regulations will be determined by the Minister for Employment, in consultation with the Prime Minister and the Deputy Prime Minister, having regard to the progress of the Bill to amend the Coastal Trading Act.

EVALUATION PROCESS

If agreed by the Parliament, the preferred option will be evaluated through a range of mechanisms including regular reviews under the regulator performance framework, monitoring by the Cabinet Implementation Unit and internal reviews and audits within the Department of Infrastructure and Regional Development. In addition to these Government monitoring programs, the significant profile of the proposed amendments is such that the maritime industry and users of shipping services will also provide public and private evaluative feedback on the efficacy of the new system.

APPENDIX A LICENCE TYPES UNDER THE *COASTAL TRADING (REVITALISING AUSTRALIAN SHIPPING) ACT 2012* AND ASSOCIATED LEGISLATION

GENERAL LICENCE

A General Licence is available to vessels on the Australian General Shipping Register and provides unrestricted access to engage in coastal trading in Australian waters for five years.

The licence affords holders the opportunity to compete for trade on the Australian coast and is intended to maximise the use of vessels registered in the Australian General Shipping Register in coastal trading.

Each seafarer working on the vessel must be an Australian citizen or permanent resident or hold a visa with appropriate work rights. A copy of the licence must be displayed on the vessel and the holder of the licence must comply with the relevant reporting requirements. The vessel must continue to be registered on the Australian General Shipping Register to meet the conditions of holding a General licence.

TRANSITIONAL GENERAL LICENCE

A Transitional General Licence is available to eligible vessels that held a licence under the previous arrangements in place under part VI of the Navigation Act 1912. A Transitional General Licence is intended to assist ships operating under the former arrangements to transition to Australian registration, is issued for a period of five years and may be renewed once. A Transitional General Licence affords the ship it is issued to the same rights as a General Licence.

TEMPORARY LICENCE

A Temporary Licence may be granted to a shipper, or the owner, charterer, master or agent of a vessel registered on the Australian International Shipping Register or under a law of a foreign country and provides restricted access to engage in specific coastal trading voyages over a 12 month period.

Applications for new temporary licences must include a minimum of five voyages – for cruise shipping this means five end to end journeys, not five stops on a single ticket. The same requirement applies to cargo with a licence being required for each end to end cargo movement conducted by the ship.

Temporary licences can be varied after they are issued, to either add additional voyages (in minimum groups of five) or to amend the details of already authorised voyages (for example to vary departure or arrival dates or the number of passengers to be carried).

Information about applications is provided by the Department to all General Licence holders and allows them to provide notice that a General Licensed vessel is available to conduct any of the notified voyages. This triggers a mandatory consultation process between the shipper and the General Licence holder that may be arbitrated by the Department.

This is a competitive process and does not automatically grant voyages to Australian operators. A decision is made by the Minister or their delegate and a challenge does not guarantee that the

Temporary Licence application will be rejected. Few applications are contested but this process reduces productivity and increases uncertainty.

Once issued, a copy of the licence must be displayed on the vessel and the holder of the licence must comply with the relevant conditions and reporting requirements.

EMERGENCY LICENCE

An Emergency Licence may be granted to a shipper, or the owner, charterer, master or agent of a vessel registered in the Australian General Shipping Register, the Australian International Shipping Register or under a law of a foreign country to respond to significant national emergencies, as outlined in the regulations, for a period of no more than 30 days.

The licence allows an applicant to respond to a specific emergency of a kind identified in the regulations and must give details of each aspect of the intended voyages including the reasons why the voyages cannot be undertaken by a vessel authorised to be used to engage in coastal trading under a general licence.

A copy of the licence must be displayed on the vessel and the holder of the licence must comply with the relevant conditions and reporting requirements.

COST BENEFIT ANALYSIS

[Provided as a separate Attachment to the email transmitting the RIS to OBPR].

APPENDIX C

LIST OF PUBLIC SUBMISSIONS

1 Mr Peter Wilson	28 Gearbulk Australasia Association	
2 Maersk Line Australia	29 CSR	59 Business Council of Australia
3 Australian Peak Shippers Association Inc.	30 BlueScope	60 Ports Australia
4 North Queensland Bulk Ports Corporation	31 MMG Limited	61 Woodside
5 North Star Cruises	32 University of Queensland	62 Tourism and Transport Forum
6 K&L Gates	33 Caltex	63 Shipping Australia Limited
7 Australian Maritime College	34 National Farmers Federation	64 Cement Industry Federation
8 Seacare Authority	35 Australian Institute of Marine and Power Engineers	65 Compagnie Du Ponant
9 South Australian Tourism Commission	36 Inco Ships Pty Ltd	66 Australian Institute of Petroleum Ltd
10 Coral Princess Cruises	37 Rio Tinto Alcan	67 Cruise Lines International Association Australasia
11 Australian Expedition Cruise Shipping Association	38 Bunbury Wellington Economic Alliance	68 Silversea
12 Teekay Shipping	39 Gypsum Resources Australia	69 SeaRoad
13 Launceston Chamber of Commerce	40 Australian Industry Group	70 Australian Railway Association
14 Australian Shipping Consultants Pty Ltd	41 Chamber of Minerals and Energy of WA	71 Australian Mines & Metals Association (AMMA)
15 Fremantle Ports	42 Ashurst	72 Maritime Union of Australia
16 Cristal Mining Australia Limited	43 International Marine Contractors Association	73 ANL
17 National Public Lobby	44 Maritime Engineers Pty Ltd	74 Carnival Australia
18 Institute of Public Affairs	45 APT	75 Shell Australia
19 Freight Logistics Council of Western Australia	46 Braemar Seascope	76 BP Australia
20 Koppers Carbon Materials and Chemicals	47 Port of Townsville	77 Hartmann Project Lines
21 Bell Bay Aluminium	48 Australian Maritime Officers Union	78 Origin
22 CSL Australia	49 Australian Coastal Shipping	79 Tasmanian Government
23 Australian Competition and Consumer Commission	50 Minerals Council of Australia	80 Northern Territory Government
24 South Australian Freight Council	51 Sea Swift	81 Manufacturing Australia
25 Cruise Down Under	52 Tasmanian Farmers & Graziers Association	82 Wilmar Sugar
26 Asciano	53 Alcoa of Australia	83 Australian Food and Grocery Council
27 Oceania Economic Development Corporation	54 Australia Aluminium Council	84 Grain Trade Australia
	55 Arrium	85 Australian International Marine Export Group and Superyacht Australia
	56 Port of Brisbane	
	57 Incitec Pivot	
	58 Australian Shipowners	