AUSTRALASIAN RAILWAY ASSOCIATION SUBMISSION

To

The Australian Government’s Options Paper: Approaches to regulating coastal shipping in Australia

June 2014
THE ARA

The following submission is made by the Australasian Railway Association on behalf of its members.

The Australasian Railway Association (ARA) is a not-for-profit member-based association that represents rail throughout Australia, New Zealand and Indonesia. Our members include rail operators, track owners and managers, manufacturers, construction companies and other firms contributing to the rail sector. We contribute to the development of industry and government policies in an effort to ensure Australia’s passenger and freight transport systems are well represented and will continue to provide improved services for Australia’s growing population.

The ARA thanks the Department of Infrastructure and Regional Development for the opportunity to provide a submission to their process. We also thank the Department for their extension to 10 June by which to provide this submission. For further information regarding this submission, please contact Bart Mellish, Manager of Freight Policy for the ARA via (02) 6270 4530 or bmellish@ara.net.au

SUMMARY

The motivating factors of the rail industry in making this submission are the direct impacts the proposed policy options in the Options Paper would have on the freight rail industry, as well as on the broader land transport industry.

Essentially, coastal shipping freight services, when they are provided for intrastate and interstate services, carry the same freight as domestic land based road and rail services, and therefore compete with land transport operators to provide these services.

Whilst it is important for the economic productivity of Australia that these coastal shipping services competing in Australia’s domestic freight are not unduly discriminated against in terms of access or pricing, it is important that there is competitive neutrality with respect to regulation of the freight transport market.
BACKGROUND

In 2012 the Federal Government introduced a package of coastal reform bills with a view to revitalising the domestic shipping industry.

The *Stronger Shipping for a Stronger Economy* package comprised four elements: tax reforms aimed at encouraging investment in Australian shipping; simplified regulatory framework; the establishment of an Australian International Shipping Register (AISR); and the establishment of a Maritime Workforce Development Forum. The package of reforms commenced on 1 July 2012.

It is understood that after the introduction of the reform package, there has been criticism of elements of the reforms, particularly around an apparent increase in the tonnage rate of moving freight by sea and in some administrative requirements, such as requiring operators to nominate a certain number of journeys before being granted a licence.

As a result of this, the Productivity Commission and other key stakeholders recommended a review of coastal shipping regulation. Subsequently, the Federal Government has commenced a review, which is the purpose of this Options Paper.

SUBMISSION

The stated purpose of the Option Paper is to seek the views of stakeholders about the current operation of the Australian shipping industry, in particular the *Coastal Trading (Revitalising Australian Shipping) Act 2012*. Furthermore, it is stated that the consultation process will be seeking to identify the related implications of any changes to the regulation of coastal trading and welcomes input from stakeholders on any transitional issues which may arise through a reform process.

As such, the rail industry would submit that there are implications broader than for just the coastal shipping industry in any proposed reforms. Impacts on broader economic productivity, supply chain resilience and the competitiveness of other modal choices should be taken into account when considering the regulatory environment of the coastal shipping sector.
As stated earlier, while it is important that coastal shipping services competing in Australia’s domestic freight are not unduly discriminated against in terms of regulation, access or pricing, it is important that coastal shipping services are not unduly favoured in comparison with competing land transport modes such as rail.

**The domestic freight transport market**

The domestic freight transport market totalled almost 600 billion tonne kilometres in 2011-12. Of that, rail transport accounts for approximately 49 per cent of total domestic freight, road freight about 35 per cent and coastal sea freight 16 per cent. Air freight comprises less than 0.01 per cent of total freight.  

Rail’s share of almost half of the freight market is comprised roughly of the following:

- Iron ore and coal account for over 80 per cent of rail freight.
- Grains, sugar, fertilizers and other bulk products make up 8 per cent.
- Non-bulk freight, which is most significant on East-West freight routes, accounts for around 8 per cent.

Dramatically opening access to foreign competition on domestic freight routes, which is a potential outcome of some of the options proposed, would place some freight logistics supply chains in a difficult position.

Should competitive neutrality not be apparent across transport modes, many products may no longer be viable to be moved by rail in their current quantities. These products range from manufacturing products such as steel, to agricultural bulk products such as grain, to intermodal containerised freight on the East-West freight route.

Whilst there can be no argument made against increased competition, it is a concern of the rail industry that fully relaxing the regulatory environment and opening coastal shipping routes to foreign competition could result in a situation where there is not competitive neutrality across competing transport modes. This situation would arise if foreign flagged ships were not required to meet all Australian domestic regulatory requirements.

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1 ‘Freightline 1 – Australian freight transport overview’ Department of Infrastructure and Regional Development, BITRE 2014.
**Competitive Neutrality**

Acknowledging the intrinsic differences between modal choices in the movement of goods, domestic freight markets should operate as far as possible on a level footing by having either:

- An equitable and comparable regulatory environment; or
- Competitive neutrality between competing modes of transport.

Maintaining an equitable and comparable regulatory and pricing environment, or alternatively factoring in these costs by way of enforcing competitive neutrality charges would ensure that one or more modes are not artificially favoured over others, which would lead to sub-optimal economic outcomes in the long term.

In terms of defining competitive neutrality, the following is of use:

“Competitive neutrality requires that governments should not use their legislative or fiscal powers to advantage their own businesses over the private sector. If governments do advantage their businesses in this way, it will distort the competitive process and reduce efficiency, the more so if the government businesses are technically less efficient than their private sector competitors. Private competitors also regard such advantages as simply inequitable, as is illustrated by the number of complaints about this issue made to the Independent Committee of Inquiry into National Competition Policy. This inequity is particularly marked where government businesses are not subject to tax and private businesses see their own tax payments as effectively subsidising their government business competitors.

Competitive neutrality policy, as set out in this statement, should be understood in the context of the economic reforms which have been implemented progressively in Australia and elsewhere over the past decade or so. A consistent theme in those reforms, whether in international trade, domestic regulation or public sector management, has been an increased reliance on market based mechanisms and competition to promote efficiency and competitiveness.”

Consistent with this definition, we assert that competitive neutrality applies with equal validity to the potential for governments to use legislative or fiscal powers to advantage one category

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of business within a particular industry over another. The promotion of efficiency and competitiveness, which is emphasised in the definition quoted above, requires that there must be consistent and fair treatment of different forms of freight transport by government regulation and fiscal policy.

The notion of competitive neutrality leads to a key position of the rail industry— that coastal shipping operators, including both domestic and international shipping operators, must be subject to all relevant regulations that apply to road and rail freight transport operators, including but not limited to workplace relations, taxation treatment and occupational health and safety requirements. If coastal shippers were to operate domestically without being subject to all domestic regulations that apply to land freight transport operators, this could be expected to have a negative impact on the competitiveness of road and rail transport— thereby affecting both private sector and government investment in these transport modes.

In the case of the rail industry, both the private sector and governments have made, and continue to make, significant long term investments into rail freight infrastructure in Australia. These investments are made on the basis of a level of certainty in the costs, including regulatory costs, and competitiveness of rail transport against other forms of transport into the future.

There are potentially negative consequences both for this investment and for the policy objective of governments to expand the use of rail freight if the Federal Government were to introduce a major change in policy for coastal shipping without a well-considered approach to ensuring that competitive neutrality between the freight transport modes is not adversely affected by all relevant regulation.

**Discussion**

Shipping companies often have capacity on coastal legs where they are repositioning in preparation for the next major leg of their international journey. So any additional revenue they can achieve contributes to offset operating costs on that leg. The rates that are offered can be vastly lower than road and rail (and domestic shipping carriers) because it is a cost recovery exercise at best. The benefits of this therefore flow offshore at the expense of local carriers.

Under this scenario, some coastal shipping journeys could arguably be the equivalent of ‘dumping’ practices of selling goods— extra capacity is marginally costed with the price being lower than foreign vessels would price their services in their home market.
When a transport method is marginally costed as per the above example, there is the possibility that, apart from commercially negotiated port access and usage fees, no additional contribution would be made to building productivity growing long term transport infrastructure. This is despite the potential commercial benefits that foreign shipping operators participating in the Australian domestic freight market stand to gain a commercial benefit from infrastructure improvements such as, for example, channel deepening. Thus, all ships that participate in the coastal shipping market should be required to make a fair contribution to the costs of channel deepening and similar infrastructure works from which they gain a commercial benefit.

In the short term, the ability of foreign shippers to offer domestic coastal shipping services at marginal cost may have a cost displacement effect. In the intermodal freight market, where shipping is substitutable for land transport, flexible operators will respond to randomly available cheap shipping services by switching freight from rail to shipping. In contrast, the price of rail is largely derived from a combination of fixed costs (track infrastructure, locomotive capital, rolling stock etc.) and requires a degree of certainty in periodic demand when setting prices.

Therefore, the random and large scale disruption of services and the introduction of greater demand uncertainty will lead rail to increase its price in order to reduce cost recovery risk. In terms of the net economic effect, the temporary and random lower prices received by some operators are offset by the permanent higher price imposed on others.

There is also an issue of supply chain risk which should be considered. Operators of foreign vessels essentially have a relocatable transport asset, which connects to fixed transport assets (such as port, road and railway connections). This can create a situation of supply chain risk in that there can be a risk of significant assets being stranded should shipping operators decided to move operations for pricing or logistical reasons. This can also act to create a disincentive to investment in future infrastructure, with less certainty of continued used than for other transport modes.
The rail industry wishes to provide recommendations in response to this consultation process. These are:

1) Policy changes should be informed by the need for competitive neutrality for all forms of interstate and intrastate freight transport, including road and rail freight.

2) Any changes to the regulation of coastal shipping must ensure that foreign flagged ships are subject to the same taxation, workplace relations, safety, environmental and other domestic regulation as rail and road freight operators.

3) If recommendation 2 proves impractical, steps should be taken to ensure that foreign flagged vessels are subject to the costs associated with the regulations they are ordinarily required to comply with.

4) Coastal shipping operators, including foreign flagged ships, which participate in the Australian domestic freight market in the future should be required to make a fair contribution to any channel deepening and similar infrastructure works, that are in addition to port infrastructure, from which they derive a commercial benefit. (Any such contributions should be considered separately from and in addition to commercially negotiated access and usage fees for port infrastructure.)

5) Foreign flagged ships should remain regulated under a licensing arrangement to allow them to participate in the domestic freight market, for the reasons outlined in the ARA’s Recommendations 1-4, in addition to security purposes and for data collection.

The rail industry is supportive of reform which increases supply chain efficiency and encourages greater economic productivity. Furthermore, we encourage governments to consider reforms in the context of net economic productivity and strike a balance between encouraging competition and regulating access. The best way to achieve this balance is to continue to regulate coastal trading, ensure any new legislation preserves competitive neutrality between transport modes, and to maintain regulated access arrangements for international carriers in line with those stated above.
The rail industry wishes to convey the importance of competitive neutrality in maintaining a viable, efficient and productive freight transport sector. There is a major risk that the well-meaning intention of removing anti-competitive regulations could in fact have anti-competitive outcomes. Therefore, the rail industry recommends a well-considered approach to ensuring genuine competitive neutrality is sought as a central outcome to this review process.

The ARA thanks the Government for the opportunity to provide comment on its Options Paper. For further information regarding this submission, please contact Bart Mellish, Manager of Freight Policy for the ARA via (02) 6270 4530 or bmellish@ara.net.au