

**DEL AGUILA Fiorella**

---

**From:** Sutton Michael  
**Sent:** Tuesday, 2 February 2016 9:55 AM  
**To:** BRYANT Katherine; FINLAY Jess  
**Cc:** WERNER Stephanie; DRINKELL James; RAMESH Kaushik  
**Subject:** Coastal Trading Act and Shipping Costs QB16-000027 [SEC=UNCLASSIFIED]  
**Attachments:** Coastal Trading Act and Shipping Costs QB16-000027.docx

**Importance:** High

**Categories:** Charges

Katherine – have noticed there is a minor error in 27 – see attached.

Would you like us to fix up today?

michael

## FOR OFFICIAL USE ONLY

### Coastal Trading Act and Shipping Costs

#### Talking Points

- The Senate failure to pass the *Shipping Legislation Amendment Bill 2015* on 26 November 2015 has put the coastal shipping sector's viability and competitiveness at risk.
- The decision is a missed opportunity to implement a single, streamlined permit for all ships, replacing the cumbersome three-tier system currently in place.
- The legislation would have removed significant costs from the regulatory framework, and facilitated the provision of more competitive shipping services that would have ensured shipping takes its rightful place as a critical element of the national transport system.
- The Australian Government remains committed to improving our national prosperity and we will revisit the legislative framework and try again to make Australia's shipping industry competitive.
- The case for coastal shipping reform remains clear. Look at the facts:
  - Under Labor the fleet of major Australian registered ships (over 2,000 dead weight tonnes) with coastal licences plummeted from 30 vessels in 2006-07 to just 15 in 2013-14.
  - The number of ships with Transitional General Licences has dropped from 16 to just 7.
  - Between 2000 and 2012, shipping's share of Australian freight fell from 27 per cent to just under 17 per cent, while the volume of freight across Australia actually grew by 57 per cent.
  - Over the first two years of Labor's botched Coastal Trading Act there was a 63 per cent decline in the carrying capacity of the major Australian coastal trading fleet.
  - Looking forward, at this rate Australia's overall freight task is expected to grow by 80 per cent come 2030, but coastal shipping will only increase by 15 per cent.
  - A substantial increase in the freight rates experienced by shipping users – e.g. Bell Bay Aluminium recorded a 63 per cent increase in freight costs in one year;
  - A 63 per cent reduction in the deadweight tonnage (or capacity) of major Australian-flagged vessels with coastal licences from 2011-12 to 2013-14; and

FOR OFFICIAL USE ONLY

PDMS: QB16-000027

## FOR OFFICIAL USE ONLY

- Around 1,000 extra administration hours per year on the industry to meet the red tape of the scheme, as estimated by the Business Council of Australia.
- Tasmania in particular urgently requires coastal shipping reform. As the Productivity Commission noted in its recent report into Tasmanian freight: *'Given its reliance on sea transport, Tasmania is particularly affected by inefficiencies embedded in coastal shipping regulation. This regulation should be reviewed and reformed as a matter of priority.'*
- Labor's reforms have failed coastal shipping. Without reform, businesses relying on coastal shipping will be sunk and I fear that the Australian industry will just continue its decline.
- Without changes to economic and regulatory settings, shipping will not be able to deliver the competitive, efficient services that Australian businesses need.

*[If asked] The decision by Alcoa to decommission the MV Portland and replace it with foreign flagged vessels operating under temporary licences*

- The MV Portland was scheduled to set sail around two months ago (14 November 2015) but the MUA refused to allow the vessel to depart. On 17 November and 21 November the Fair Work Commission made orders that the MUA stop its unprotected industrial action. The MUA took the matter to the Federal Court and on 8 December they lost.
- The Fair Work Commission orders were repeatedly ignored. It seems the MUA believes it only has to abide by Court decisions when they like them.
- Once a decision is made by the Fair Work Commission or the Courts, it is incumbent on all parties to respect the decision – win or lose.
- It is not for industrial parties to pick and choose which orders of the Commission they will comply with. If the obligation to follow orders of the independent umpire is only seen as optional, then the integrity of the entire Fair Work system is put at risk.
- Alcoa, and its ship management company, ASP Ship Management, having exhausted all other options had no choice to bring an end to the dispute. The MV Portland has been sold and ~~has it needs to~~ sailed to Singapore.
- This is undoubtedly a difficult time for the 40 workers of the MV Portland and their families.
- This was, however, a commercial decision made by Alcoa under Labor's coastal trading laws.
- Alcoa applied for and obtained a temporary licence under the provisions contained in Labor's *Coastal Trading Act* for the transport of alumina from Western Australia to Portland.

FOR OFFICIAL USE ONLY

PDMS: QB16-000027

## **FOR OFFICIAL USE ONLY**

- The decision to grant a temporary licence was upheld by the Federal Court in December 2015.
- Before the temporary licence was granted, other Australian general licence holders were approached about the carriage of the cargo and none expressed an interest in doing so.
- Any suggestions by the MUA that this situation was brought about by the Government or is because of the Government's proposed reforms are factually wrong and nothing more than a political tactic to distract from Labor's failed coastal shipping experiment.
- In this situation without the issue of a temporary licence Alcoa may not have had a viable way of transporting alumina to its Portland smelter, putting the smelter's future and more than 2,000 direct and indirect jobs at risk.

## FOR OFFICIAL USE ONLY

### BACKGROUND

#### Alcoa's decision to decommission MV Portland

Alcoa advised the Government that decommissioning the MV Portland is one of a number of cost saving measures being taken in an attempt to help protect more than 2,000 direct and indirect jobs associated with the Portland aluminium smelter. Alcoa has worked with its ship manager, ASP, to help ensure that any affected crew from the MV Portland receive appropriate entitlements and assistance.

Alcoa applied for and was granted (on 22 October 2015) a Temporary Licence under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the Act) using a foreign flag vessel to transport alumina between WA and Portland up to October 2016. The new Temporary Licence covers 17 voyages until October 2016. The first voyage was scheduled for late October 2015 and was not performed.

On 12 January 2016, Alcoa and its ship managers, ASP, evicted the remaining MUA members from the MV Portland and provided a replacement foreign crew for the vessel, prior to sailing it to Singapore for completion of the sale of the ship.

#### Legal action by the Maritime Union of Australia

On 24 November 2015, the MUA filed an application in the Federal Court for a judicial review of the decision to grant Alcoa a temporary licence. The full bench of the Federal Court handed down its judgement on 17 December 2015. The Court ordered that the application be dismissed with costs payable by the MUA.

The MUA argued that the grant of the temporary licence to Alcoa under the Act on 22 October 2015 was invalid on four grounds. The Court dismissed the first three grounds.

With regards to the fourth ground, the Court found there was a breach of Section 30(a) of the Act, which requires publication on the Department's website of a copy of the application. However, the Court also found that in this case, the breach did not invalidate the temporary licence, as the Act contains a number of indications that the Parliament did not intend that a breach of this provision would invalidate a temporary licence.

The Department has since changed its processes to ensure material published on its website complies fully with requirements of Section 30. The Department is also strengthening its verification process to ensure the entity seeking a licence is an eligible applicant. Further work is underway to develop a compliance and enforcement framework that will ensure industry is meeting their regulatory obligations.

---

	Contact Officer	SES Contact Officer
Name:	Naa Opoku	Michael Sutton
Title:	Director, Coastal Trading	Acting Executive Director, Surface Transport Policy
Landline:		
Mobile:		

DEPARTMENT INFORMATION CORRECT AS AT: 15 January 2016

FOR OFFICIAL USE ONLY

PDMS: QB16-000027