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THE CHANGING REGULATION OF COASTAL SHIPPING IN AUSTRALIA

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ABSTRACT

Market access to coastal shipping services is often severely restricted, but in some markets access is more liberalized. Most countries impose national flag requirements as a minimum. However, Australia's coastal shipping market has been more open than many other markets, allowing foreign flag access to domestic shipping via a unique permit and licensing scheme. This paper assesses Australian regulation of cabotage by examining the nature of the Australian permits issued to foreign flag companies for domestic shipments, and evaluates the changes currently being proposed against a database of permits issued in 2009 and 2010, during four different regulatory periods: (1) prior to the imposition of the Fair Work Act 2009 regulations; (2) the transition period where the rules for the implementation of the Fair Work Act 2009 were known, but not yet regulated; (3) after the Act's full implementation, but before its enforcement; and (4) after full enforcement was expected. The conclusions about the regulation of permits and the associated issues of compliance monitoring will be of interest to those contemplating revising their coastal shipping market regulations through the use of a permit system.

Key Words: Short Sea Shipping, Permits, Cabotage, Australia

1 INTRODUCTION

In most countries the ability of foreign companies to access transport markets is governed by legislation and/or regulation of cabotage. In shipping, cabotage is generally interpreted as the requirement to use a national-flag ship for the transport of freight and/or passengers between ports within a country. As noted by Brooks (2009, 2012), this interpretation differs by country depending upon what is included in the definition of a ship, a port or the relevant economic and/or geographic market, as well as whether ports on different coasts in one country are considered as included. For the purposes of this paper, cabotage is defined as the carriage of goods between two marine ports; if the regime is a closed one, international ship operators may not pick up and drop off cargo between these two ports as part of their route. If a foreign-flag ship is allowed to pick up cargo between two marine ports in the same country as part of an international voyage, this will be called incidental cargo.

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As Australia provides a liberal, although still restricted, market for coastal shipping services (based on the findings of Brooks, 2009), and is currently in the process of reforming access to its cabotage markets, its coasting trade regulation is the subject of this paper. Furthermore, Australia provides transparent and publicly accessible data on which ships are granted permits to access cabotage markets, and whether or not those permits are used. Because of this, it is possible to assess the monitoring and compliance of the Australian permitting system for which reform is proposed. Such a unique opportunity for policy reflection could not be missed.

Since the Independent Review of Australian Shipping (2003), Australia has been considering reform of the market access and fiscal conditions under which coastal and international shipping will operate. The Review called for changes to Australia's cabotage regime, suggesting, among other things, the adoption of a tonnage tax regime. In October of 2008, the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development and Local Government concluded that the domestic shipping industry needed to be supported from several perspectives: coastal shipping could reduce congestion on landside infrastructure and reduce environmental impacts of landside transport, while at the same time creating employment for Australians (House of Representatives, 2008). While the House of Representatives' report did underscore the necessity of clarifying permit language, it did not advocate greater restrictions on market access, but sought to level the playing field between Australian and international shipping companies through fiscal change. For the purposes of this paper, the issue of other changes of a fiscal nature will not be discussed; the paper will focus solely on the permit issues of the 2009 reform and contemplated future reform currently in development.

In 2010, the Australian government proposed to alter the permit and license regulations to grow Australian shipping participation through regulation-induced market changes. The most critical changes proposed from a cabotage perspective are to eliminate the Continuing Voyage Permit (CVP), introduce a temporary license as a transition to a general license in the gap created by the removal of continuous voyage permits, and further restrict the Single Voyage Permit (SVP) conditions. This is seen as a reversal of the more than a decade long experiment of streamlining access to markets for foreign vessel operators, which was introduced in 1998. Then, due to a lack of adequate freight services to serve demand (Meyrick and Associates, 2007), Australia sought both to provide service to thin markets and, more important, to provide for safe shipping (through a focus on accident prevention) and equitable treatment of foreign and national owners. In its 2000 review of shipping regulation, the most important shipping policy issue was the fair treatment of seafarers. The review concluded that Australia needed to avoid "distortions in the shipping market through regulation (BTRE, 2000: 52, Recommendation 5(d))." This focus, plus fair labour conditions, were at the heart of Australian shipping policy on market access during the 2000-2008 period; such a focus on labour practices was updated via the introduction of the Fair Work Act 2009, where new labour rules were imposed on vessels under permit.

This paper seeks to examine the regulation of coastal shipping permits through a period of transition, and draw conclusions about coastal shipping regulation using permits open to foreign flag operators. It is a sequel to a study in press on permits in the Australian container trades (Brooks, 2012). Therefore, while this paper has a broader focus than just container traffic permitted (it looks at bulk, breakbulk, containers and passengers), its scope is narrower in that it examines only single voyage permits and their use rather than the broader scope of all permits and licenses for foreign flag shipping. Brooks (2012) was mostly concerned about the ability to resolve the market boundary porosity issue when discussing coastal shipping as a competitive alternative to road and rail transport; the

intention of this paper's focus on all permitted activity of the single voyage type is to examine the issues specifically within the ability to offer coastal shipping in order to meet the needs of thin markets, one of the purposes of the 1998 reform. The two should be considered companion works if a complete picture on permit and license approaches is desired.

The next section of the paper will explain in greater detail the Ministerial regulations imposed on foreign flag ships offering services in Australia's coasting trades under permit during the two-year 2009-2010 period, and then explain how these regulations will change when coastal shipping reform is complete. The paper then discusses the data and methodology used to examine that data, before presenting the findings of the data analysis. It then draws conclusions about the monitoring of and compliance with single voyage permits that may be of use beyond just the Australian situation. It also provides some commentary on whether the proposed system for Australian coastal trading will meet the needs of industry in thin markets.

2 AUSTRALIAN REGULATION OF COASTAL SHIPPING

Access to Australian coasting trades is currently governed by section 288 of *The Navigation Act 1912*; it does not mandate the use of an Australian flag vessel, but does require that vessels operating under license pay Australian wages (Department of Infrastructure and Transport [DIT], nd, c). Specifically, in the study period and before the reform process is complete, a foreign-flag ship may participate in Australia's coasting trade because it has been either licensed for the trade or issued a permit. Vessels may be licensed to participate in Australia's coastal trade irrespective of ownership, flag and crew nationality, but must meet international standards and qualifications as required under those IMO and ILO Conventions to which Australia is a signatory. Licenses are issued on two conditions: (a) the vessel's crew is paid Australian wages while the vessel trades on the Australian coast and (b) the crew has access to the vessel's library facilities. During its time in Australian waters, it is an offence for the licensed vessel to be in receipt of a subsidy from a foreign government in the previous 12 months or to expect to receive one (DIT, nd, c). Licenses are extremely inexpensive at AUD22 at time of writing. Reform to licensing conditions is currently under review by the government, the second consultation period having closed in March of 2012. As this paper does not examine licenses in the study period, they will not be discussed further from a data perspective.

An unlicensed ship may be permitted to access the coasting trade under the following conditions: (a) there is no suitable licensed ship available, **or** (b) the service carried out by licensed ships is inadequate, **and** (c) it is considered desirable from a public interest perspective that an unlicensed ship be allowed to undertake that particular shipping activity (Section 286 of the *Navigation Act 1912*). The DIT issues two kinds of permits: Continuing Voyage Permits for a period of up to three months and Single Voyage Permits, for a single voyage between designated ports for the carriage of passengers or specified cargo (DIT, nd, c). In no case are these permits allowed for the carriage of intra-state cargo under Part VI of the Act, and they are only to be used by unlicensed vessels in the inter-state trade. Permits are more expensive than licenses at AUD22 for a passenger SVP, AUD200 for a cargo SVP and AUD400 for a cargo CVP (at time of writing). The volume must therefore be adequate to absorb the additional cost.

In December 2010, the government released its first consultation paper (Department of Infrastructure and Transport, 2010) on the nature of shipping reform. Its objectives focused solely on the supply of shipping, proposing to introduce a second register so that

the tax inequities between Australian-owned shipping and international shipping would be addressed. As part of this reform, the permit changes noted in the introduction were proposed (e.g., elimination of the continuous voyage permit, further restriction of the single voyage permit conditions and the introduction of a temporary license).

Based on these proposed changes, the assessment of permits (without examining SVP carriage in depth) was undertaken in early 2011, which concluded Brooks (2012: 320):

> *In summary, elimination of the CVP option in favor of a temporary license would not address the needs of the market from a demand perspective for the carriage of* ***containers*** *[emphasis added]. The volume is still marginal … and unstable, and so would not provide a bankable business opportunity for a container feeder operation. This indicates that the temporary permit would not likely convert to a general license without some intermediate step between SVP and the temporary permit. The key to successful business development is having enough intermediate steps to ensure the gradual 'upselling' of services from SVP through to license.*

Since that analysis was completed in June 2011, draft versions of new legislation have been proposed. On 9 September 2011, the Minister for Infrastructure and Transport announced the Government's shipping policy reform agenda, *Stronger Shipping for a Stronger Economy* (DIT, 2011a), and a round of industry consultation on the draft legislation began. The Government proposed to introduce six pieces of legislation to replace the almost 100-year-old *Navigation Act 1912*, and the Coasting Trade Bill would provide a new regulatory framework and licensing system. Consultation has taken place (closing on 5 March 2012) and it is very clear that the government proposes to eliminate permits altogether, a change from its position in the 2010 Discussion Paper. As noted in DIT (2011b: 7, para. 25):

> *The Coastal Trading Bill will establish a new regulatory framework for coastal trading, which will be based on a three-tier licensing system. Vessels engaged in coastal trading will be required to operate under a general licence, a temporary licence or an emergency licence. The permit system under the current Part VI of the Navigation Act will be abolished.*

Since a general licensing system already exists, what is new are the proposals for a temporary license (featuring 10 or more voyages) and an emergency license, transition provisions and the elimination of the permit system currently in use. Furthermore, a civil penalty system is featured so that a higher penalty may be imposed than is currently possible.

As execution of the reform packages are planned for 2012, it may well be too late for Australian cargo interests to get changes to the proposed system, but that does not mean that there are not lessons to be learned from an analysis of the permit system as it was executed in the transition period from 2008 regulations to new legislation proposed in 2012.

3 METHODOLOGY

Having examined demand for CVPs in previous research (Brooks, 2012), the focus of this paper is to examine the single voyage permit in greater detail. The reform legislation initially did not contemplate the removal of single voyage permits (comparing Appendix 1 with Appendix 2), although it did contemplate changing their nature. However, in August of 2011, mid-way through the analysis, the Department released its Regulation Impact

Statement (DIT, 2011c) indicating that both CVPs and SVPs would be removed effective 1 July 2012 (Appendix 3). Although that date is now later, it appears that the concept of permits is no longer part of the Australian vision of coasting trade. It was then that a broader view of assessing the permits was determined to be the goal of the research.

Because these are permits for a single voyage, it is possible to build a new database that combines permits issued (DIT, nd, a) and permit use as reported in the SOCAC (Statement of Cargo Actually Carried) database (DIT, nd, b), both published by the Department of Infrastructure and Transport on its web site. Therefore, if the two datasets could be combined, it is possible to assess three research questions:

> **Research Question 1**: Were single voyage permits used as planned by government?
>
> **Research Question 2**: Did shipping companies use SVPs in a way or ways not allowed, assuming honesty in their SOCAC filings? and
>
> **Research Question 3**: Did problems exist with the permitting system from a monitoring, compliance and enforcement perspective?

The task this paper planned to undertake in the beginning was to examine these three research questions via the building of a new database with the published information, assuming that the SVP would be retained although a different form was expected.

In examining the issues surrounding Australia's approach to permitting and licensing of foreign flag operators for domestic coastal shipping services, it is critical to understand the timeline of permit and license reform, as distinct from the timeline of shipping reform with respect to taxation and the development of a second (international) shipping register. The methodology for this paper is founded examining four distinct periods of time. The starting point is the period where the 2008 Ministerial Guidelines (DIT, 2008) were applicable; for this period, the data collected include all permits applied for between January and the end of June 2009, a period when the 2008 guidelines applied. The second period comes under the 2009 Ministerial Guidelines, as approved 2 July 2009 (DIT, 2009a), and covers those permits approved between July and December of 2009; at this time the implementation of the *Fair Work Act 2009* was expected for January 2010 but had not yet been implemented. The third period comes under the 2009 Ministerial Guidelines, as approved 21 December 2009 (DIT, 2009b), and covers those permits approved between January and June of 2010, when the *Fair Work Act 2009* was implemented but not fully enforced. The fourth period, July to December of 2010, is that period where not only are the new wage regulations in place, but enforcement was anticipated by foreign-flag operators to be fully operational, so one could expect that compliance would be tightly monitored. (The third and fourth periods only differ in terms of market expectation about enforcement and compliance, e.g. the third period serves as a transition period and therefore may be closer to the fourth period in execution than the second period would be.) One would expect that if Fair Work regulations required the payment of Australian wages to an international crew, the number of SVPs would peak in the second period and decline precipitously to almost none in the fourth period.

Immediately upon collecting the data from the web site, a number of problems or challenges arose. First, the data in the permits record may be quite offset from the data in the SOCAC set, because a permit may be requested well in advance of the load date for the cargo, so the date on the application may not appear in the same period as the load date. Second, the week the permit is posted to the website may actually include more than seven days of data and some weeks have no posted data (for examples, the weeks of 26 April and 13 Dec and last two weeks of December in 2009). Third, the SOCAC database does not contain the date the permit was issued. For these reasons, this assessment will rely on load date for comparison purposes rather than permit dates.

While the plan for data collection was sound, the circumstances were somewhat akin to traversing a minefield. The uncertainty over future applicable conditions was a moving target that meant long-term planning by industry was simply not possible. This is most evident in the three appendices demonstrating the regulatory adjustments that were being discussed in parallel with the specific periods. By December 2010, the government was proposing elimination of CVPs (to be replaced by a temporary license) and tightening of SVPs (Appendix 2); by the summer of 2011, discussions about eliminating SVPs were well underway and confirmed in the Draft Exposures of the legislation (DIT, 2011b).

Previous analysis by Brooks (2012: 318-319) on SVPs (for TEUs only) found that

> *...[E]ven though the requests for SVPs have grown in 2010, they have still not reached a critical mass to support a specific coastal service. In fact, the permit requests for all other port-pairs ... offer little promise of sufficient volume. Second, the port-pairs have serious cargo directional balances that make offering a service an unlikely proposition for all but the most risk-prone of ship operators; no container ship owner can run vessels with a slot utilization rate below 50 percent for very long! Third, the SVP volumes are sufficiently low that the primary purpose of the vessel must be bulk or passenger services, and the container carriage is an additional revenue source, complementary to other services the vessel already offers.*
>
> *In summary, SVP cargo for TEUs does not supply a business proposition for a ship owner in isolation from CVPs; it merely reflects opportunity for additional revenue from existing services in the area. ... [I]t is clear that SVPs allow incidental or opportunistic carriage where, without the SVP option, the traffic would probably move by a lower-volume land-based alternative or, more likely in the case of remote communities, not at all.*

This section on methodology would not be complete without discussing what constitutes a violation, as it is used in the analysis presented in the next section, which clarifies what is a breech of the rules in the Ministerial Guidelines for the relevant period (DIT, 2008, 2009a, 2009b). In addition to those already noted above (like the unavailability of a licensed ship to carry the cargo and the public interest test), availability is defined as there being no licensed ship available within a window of three clear days either side of the proposed sailing date); in addition, an applicant will be in breech of the permit if the volume of cargo falls outside a tolerance zone of plus or minus 10 percent (DIT, 2008). A violation on each of the possible elements in a filing with respect to three days either side of port loading date, loading site and volumes are detailed in the notes to Tables 2 and 3. It is also considered a violation if no SOCAC filing has been made for a permit issued, as this is a mandatory requirement within 14 days. Substitution of vessel, loading and discharge ports are also classified in Table 2 as violations, although they are not clearly identified as such in the ministerial guidelines.

4 FINDINGS AND DISCUSSION

Table 1 provides the first glimpse of the challenge the Australian government must have had in monitoring compliance with the permit rules in the past and through the transition. Taking the subset of all permits that are single voyage permits and matching them to the reported carries in the SOCAC database, it becomes clear that there are difficulties in gaining a complete picture of industry compliance with the permitting environment in Australia. Table 1 demonstrates that during the first two periods, e.g., in 2009, there were

very few permits issued for which there was no matching SOCAC activity. In both half-years, less than one percent of permits remained unused. By 2010, number of permits issued grew significantly (rather than declining as expected), but greater than 20 percent of issued permits were unused, e.g., a permit was issued for which there was no matching carry data entered in SOCAC. Throughout the four periods, the number of carry records was relatively consistent, although declining in the final period. This is not surprising as the circumstances faced by industry became increasingly unclear as Australia was consulting widely on all aspects of its shipping reform, and industry dislikes uncertainty.

Summary of Permits		**Summary of Carries**			
Total Permits Issued (1)	**No Carries % of Total Issued (2)**	**Total Carries (3)**	**No Permit Found (4)**	**Exclusions (5)**	**Matched Permit-Carries (6)**
Jan-Jun 2009					
874	1	924	44	101	779
	0.1%	100.0%	4.8%	10.9%	84.3%
Jul-Dec 2009					
839	4	943	74	21	848
	0.5%	100.0%	7.8%	2.2%	89.9%
Jan-Jun 2010					
1086	243	990	102	104	788
	22.4%	100.0%	10.3%	10.5%	79.6%
Jul-Dec 2010					
1111	344	860	97	80	695
	31.0%	100.0%	11.3%	9.3%	80.8%

Notes:
1. Total number of SVP Permits with a Sailing Date in the specified period.
2. Subset of Total Permits (1) for which there is no matching permit number in SOCAC data.
3. Total number of records in filed in SOCAC with a Sailing Date in the specified period.
4. Records filed in SOCAC for which there is no matching permit number in the SVP Permits database.
5. Exclusions are those records for which the vessel name in the SOCAC data was filled with text other than vessel name.
6. All carries in the specified period for which there is a matching permit (in any period), and for which it appears a ship did sail. This is the number that the following tables use as a starting point.

Table 1: Summary of SVP Permits and Carries Data

On the other hand, the consistency was not reflected in the matches of data. While the number of reported carry data records peaked in the first half of 2010, problems with the SOCAC data filings also became more apparent. For example, a substantial number of records have been classified as "exclusions"; these are records where the vessel name is not a vessel name but some other text (most commonly the following: permit not used, vessel not used, not needed, cancelled, not used, not performed, unused, not shipped, N/A or Nil). Furthermore, throughout 2010 there was a noticeable rise in the number of SOCAC records for which no permit is found. As a result, the number of records that can be examined for violations (broadly defined) has declined considerably to 63 percent in the second half of 2010. In summary, the number of single voyage permits with matched carry data peaked in the second half of 2009 and then declined in the next two periods. The

existence of almost 700 matched records in each of the periods is adequate, however, to illustrate the issues associated with the permit process.

Why has this rise in permits not executed as required occurred? This is a matter for speculation without access to the government records on individual permit cases. It may have occurred because, with reform in the plans, and with the anticipated demise of the SVP, the government's interest in monitoring was diverted to the necessity of preparing new legislation and consulting with industry. It may also have been that industry was less accurate in its filings or less careful in its execution on what was seen to be a changing situation. Perhaps it was a case of both. The point is not to assign blame, but rather to indicate the types of turmoil in the market throughout 2010.

Matched Permit-Carries (1)	Carry Violations (2)	Date (3)	Vessel (4)	Load Port (5)	Discharge Port (6)
Jan-Jun 2009					
779	451	63	1	81	179
100.0%	57.9%	8.1%	0.1%	10.4%	23.0%
Jul-Dec 2009					
848	470	61	1	103	188
100.0%	55.4%	7.2%	0.1%	12.1%	22.2%
Jan-Jun 2010					
788	581	110	9	341	207
100.0%	73.7%	14.0%	1.1%	43.3%	26.3%
Jul-Dec 2010					
695	540	70	1	376	153
100.0%	77.7%	10.1%	0.1%	54.1%	22.0%

Notes: Percentages: The violations are a percentage of the total Matched SVP Permits to Carries; therefore, some vessels have multiple violations of the permit and so a total would be misleading. This table needs to be combined with Table 3 for a complete picture.

1. Matched SVP Permits to Carries listed in the SOCAC published records, calculated in Table 1.
2. Total number of permit violations identified in the matching process for which there is at least one violation in any category.
3. Total number of violations for which the SOCAC date differs from the Permits date by more than +/- three days.
4. Total number of violations for which the SOCAC ship name does not match the ship name on the permit.
5. Total number of violations for which the SOCAC Load Port differed from the Load Port on the permit.
6. Total number of violations for which the SOCAC Discharge Port differed from the Discharge Port on the permit.

Table 2: Permit Violations for the Vessel

Examination of Tables 2 and 3 provides insight into the nature of shipping industry violations of permitting rules against the ministerial guidelines. Table 2 indicates those violations that result from decisions by the shipping company while Table 3 indicates those violations resulting from the failure of cargo owners to supply the promised volumes that the shipping company anticipated carrying when it applied for the permit.

Table 2 is surprising in its presentation of violations of permits awarded. More than half of all permits in all periods presented violations of both types. Very few of these violations are where the vessel name does not match the name on the permit. The largest number of violations is due to a change in load or discharge port, and these rose significantly in 2010. The ministerial guidelines, and indeed the concerns of the Australian shipping industry, are mostly focused on date violations, yet date violations make up a small portion, seven to 14 percent, of the total violations.

Matched Permit-Carries (1)	MT (2)	Over MT (2)	TEU (3)	Over TEU (3)	BB (4)	Over BB (4)	PAX (5)	Over PAX (5)
Jan-Jun 2009								
779	409	126	106	14	50	2	1	1
100.0%	52.5%	16.2%	13.6%	1.8%	6.4%	0.3%	0.1%	0.1%
Jul-Dec 2009								
848	415	164	104	16	52	3	2	0
100.0%	48.9%	19.3%	12.3%	1.9%	6.1%	0.4%	0.2%	0.0%
Jan-Jun 2010								
788	453	157	182	64	59	1	8	0
100.0%	57.5%	19.9%	23.1%	8.1%	7.5%	0.1%	1.0%	0.0%
Jul-Dec 2010								
695	342	145	199	57	77	3	0	0
100.0%	49.2%	20.9%	28.6%	8.2%	11.1%	0.4%	0.0%	0.0%

Notes: Percentages: The violations are a percentage of the total Matched SVP Permits to Carries; therefore, some vessels have multiple violations of the permit and so a total would be misleading. This table needs to be combined with Table 2 for a complete picture.

1. Matched SVP Permits to Carries listed in the SOCAC published records. Calculated in Table 1.
2. Total number of permit violations identified in the matching process for which the metric tonnes (MT) carried was more than +/- 10% of the permitted volume, calculated as (permitted-carried)/permitted. Over MT is the number of violations where the carried volume was more than +10% of the permitted volume.
3. Total number of permit violations identified in the matching process for which the TEUs carried was more than +/- 10% of the permitted volume, calculated as (permitted-carried)/permitted. Over TEUs is the number of violations where the carried volume was more than +10% of the permitted volume.
4. Total number of permit violations identified in the matching process for which the breakbulk (BB) volume carried was more than +/- 10% of the permitted volume, calculated as (permitted-carried)/permitted. Over breakbulk volume is the number of violations where the carried volume was more than +10% of the permitted volume.
5. Total number of permit violations identified in the matching process for which the PAX (passengers) carried was more than +/- 10% of the permitted passengers, calculated as (permitted-carried)/permitted. Over passengers is the number of violations where the carried volume was more than +10% of the permitted volume.

Table 3: Permit Violations by Conditions of "Cargo" Permitted

Of greater concern are the violations attributable to cargo (Table 3). Examining more than 695 records in each period, it seems that violations seldom occur on passenger permits, and that shipping operators seldom carry an excess of passengers. The passenger violations are mostly of the "no-show" variety. The largest category of violations on the cargo side is

found with the metric tonnage numbers. In fact, it appears there is remarkable consistency in that almost half of the violations are in metric tonnes carried, and most are undercarriage as opposed to carriage of excess cargo. In terms of TEUs, the violations have risen over time; again, it is undercarriage rather than carrying more than permitted. Breakbulk violations are also of the undercarriage variety.

5 PUBLIC POLICY IMPLICATIONS

Stepping back to understand what these findings mean for managers in government, it becomes clear that there are issues with the structuring of monitoring and compliance/enforcement databases. In the Australian case, although the data are hosted on the government's website and readable by any interested party, entering the database is restricted to those who wish to register and have an Australian business number and an Australian company number. This means that some of the following comments are based on speculation as to why the patterns noted above have occurred.

According to the coastal trading online reference guide (DITRDLG, 2008), registered users populate both the permit database and the SOCAC database. The same process is used for those applying for licenses, finding a license and making payments. As these last three are not relevant to the discussion of permit violations on the single voyage permits assessed, we will not discuss further. The application for a new permit requires the applicant to complete the permit details and a statement supporting public interest. The process provides a list of all ships available matching the permit applicants search criteria. If the ship is not already in the system, the registered user then enters the data for a new ship. The guidelines provide that the dates be provided in a specific day–month–year format. Likewise, load and discharge dates are also entered. It appears that ports of loading and discharge are from pick lists (pull down menus) while dates are not. This is critical as one of the problems encountered in this analysis was that the online information had haphazard date format problems (a mix of Australian and US date formats), and an excessive amount of time was required to verify the date data for this study (and forced each record to be verified against the original published; we had to trap the errors by converting months to text in order to identify mis-entry). It is critical to ensure, if a government is keen to monitor compliance and enforce dates, that unambiguous pick lists are used.

Although Australia has made it a condition of all permits that the registrant completes the Statement Of Cargo Actually Carried within 14 days of each sailing date, the first instruction in completing this statement is to enter the permit number and the system searches for the permit data. This means the permit data and the SOCAC data are tied. What is not clear, though, is why the violations are not quickly addressed. Are they not automatically monitored by the system and exception reports created, say, weekly or monthly? Otherwise, why is there so much evidence of continuing violations? It does appear from the identification of exclusions and volume numbers, that there is little concern with the under-use of permits, possibly signaling to those applying that undercarriage is not a serious offence even though this is a listed breech.

In summary, without access to the government's data, an assessment of the initial research questions can only be done at a very superficial level. Over the four periods, were single voyage permits used as planned (**Research Question 1**)? In response to this question, it must be concluded that the decline anticipated in permits sought did not materialize in 2010 as expected. In other words, there was a continuing need that was not deterred by anticipated enforcement of the *Fair Work Act 2009*. On the other hand, the

uncertainty about future regulation may have had something to do with why industry continued to apply, particularly when it became apparent that that enforcement was not a significant priority. Did shipping companies use SVPs in ways not allowed, assuming honesty in their SOCAC filings (**Research Question 2**)? Yes, and the number of violations throughout 2010 skyrocketed from 2009 levels. These violations included not only the ones for which the government indicated explicit penalties, but also substitutions of vessels, load and discharge ports that reflect the high variability in coastal shipping tasks to be undertaken over time. These confirm the tenuousness of demand noted in the earlier study (Brooks, 2012). Third, are there problems with the design of the permitting system from a monitoring, compliance and enforcement perspective (**Research Question 3**)? Again the answer is yes; the problem with pick lists for dates created a database that is considered, from a third party, independent perspective, as unreliable for monitoring and compliance purposes.

What can those in other countries learn about setting up a permitting regime, beyond the importance of database design to manage the monitoring and compliance process? Brooks (2012) noted the importance of graduated opportunity to the development of net new business. To quote (Brooks, 2012: 320):

> *While the temporary license provides a good transition measure for those intending to seek a general license (perhaps requiring it to be tied to a general license application), it does not replace the CVP as an interim measure for building cargo beyond the incidental cargo stage. This means that growing cargo demand to a sufficient volume for a licensed ship seems to be missing an early demand-building step in the government's policy toolbox.*

Creating value for customers and building traffic is a long, slow process, the number of bankruptcies of coastal operators in all jurisdictions attests to the difficulty of inducing switching from land-based modes. Again, citing Brooks (2012: 323):

> *The policy question is how to make the system flexible enough to meet the needs of incidental carriage (in markets where there is clearly not adequate volume to sustain an operator) and for remote communities or small volume markets, while building demand volume that will eventually support a coastal shipping operator when the price for land transport options rises, as it will in a carbon-constrained and carbon-taxed world.*

Cargo interests find it difficult to build new business and be globally competitive from product origins not in major consumption markets and not well served by shipping companies. It seems that this concern about growing traffic for Australian companies and the transition to that stage is at the heart of industry concerns with the second exposure drafts of legislation (DIT, 2011b). As noted by the Department in its Regulation Impact Statement (DIT, 2011c: viii), a key theme for shippers emerging from the first round of consultation is that

> *Shippers support an effective, efficient and internationally competitive domestic shipping industry, but are concerned that Government intervention could increase freight rates and make some currently marginal trades uneconomic;*
>
> *More specifically shippers fear that restricting the use of Continuing Voyage Permits and Single Voyage Permits could lead to different modal choices (from maritime to land-based transport) or in particular cases, to the relocation of production offshore depending on the increase in transport costs;*
>
> *... and*

> *The new regulatory regime needs to consider the operational flexibility that shipping and shippers indicate is present in the current regulatory framework.*

In other words, the laddering of a SVP regime developing feed for CVPs and ultimately licenses is recognized as providing that operational flexibility that will build business. In its comments on the second exposure draft legislation, National Bulk Commodities Group (2012: 3) notes that the legislation "goes too far in reducing access to alternative sources of shipping services" as "foreign flagged vessels operating under the present Single Voyage Permits and Continuing Voyage Permits make up 37 per cent of the coastal shipping task."

From the perspective of the cargo owner or the foreign flag operator, the new coastal shipping regulatory environment seems almost punitive in its restrictions on foreign-flag shipping. The Australian Logistics Council (2012: 2) believes that "there should be a 5th object added to the bill: e) does not affect the economically efficient movement of cargo." Furthermore, the

> *ALC agrees with the apparent consensus view that an applicant needs to be able to anticipate at least the need for 10 relevant voyages before being eligible to apply for a temporary license should be changed.*
> *If an arbitrary figure is to be picked, a number less than 10 is probably desirable.*

Support for this point of view was unequivocal from the Australian Industry Group (2012: 3): the "qualifying requirement of not less than 10 voyages a year is too onerous … [suggesting] that the number of voyages authorised by the licence must be three or more" while Shipping Australia Limited (2012) argued for five as a minimum.

Even more important than the challenge of building traffic is the retention of existing business in a new regulatory environment. Submissions by Caltex (2012) and Orion Expedition Cruises (2012) noted problems specifically with respect to tanker shipments and passenger cruises respectively, both concluding that the new legislation would damage existing trade opportunities. Caltex (2012: 3) notes that severe hardship is likely for the companies requiring tanker services as

> *There are currently no Australian licensed crude oil Aframax and Suezmax vessels to conduct such voyages and the Department's Regulatory Impact Statement, dated August 2011, states that: 'The prospect of an Australian registered crude oil carrier on the coast is therefore considered small.' The requirement to apply for a temporary licence (TL) for a foreign flagged ship when it is well known that there is no local alternative is unproductive for the applicant as well as the Department.*

On the passenger side, the legislation fails to reflect the unique nature of the cruising business. Passengers booking cruises have little patience with conditions that fail to meet market needs. "[P]assengers themselves should be able to select which standard and size of cruise ship they wish to travel on for their holiday, and if a General Licence
Holder is not able to meet their needs, then the passenger should be free to select a different product" Orion Expedition Cruises (2012: 2). Furthermore, cruise ships have the added complexity of passengers wanting to book as much as 18 months ahead and/or opting to travel alone rather than always in a double occupancy cabin situation. Are cabins to be only available on a double occupancy basis?

Finally, the commentaries on the proposed legislation are prescient that Australia's efforts to undertake reform of its permitting system is flawed. SAL (2012) questions the severe restrictions proposed on the right of the master to manage the ship (not noted by other commentaries). Wallenius Wilhelmson Logistics (2012) concludes that "it would

appear impractical for any carrier to provide the level of detail / accuracy required or implied in the draft bill for a projected 12 month period in advance." In short, there appear to be critical problems for both cargo and operators that have not yet been resolved.

In 1998, Australia opened the door to its coastal shipping market in order to provide better freight services where markets were too thin to support Australian shipping. The experiment was a highly successful one until the end of 2009; CVPs and SVPs were, by then, carrying almost 40% of coastal freight. In attempting to provide for greater Australian shipping participation, the government has opted to eliminate SVPS, which provided a useful service to marginal markets where there remains insufficient volume to support an operator, and convert those using CVPs to a temporary license en route to a general license. The ensuing market uncertainty was reflected in a significant rise in the number of moves that did not comply with the legislation. Furthermore, the analysis undertaken highlighted the challenge of managing a complex monitoring and compliance program. Adjustments to the legislation now threaten to increase freight rates, reduce service to remote communities, and add an onerous burden to the coastal tanker and cruising markets. The legislative changes will not support the switching of land-based transport to coastal shipping without allowing for a laddered development of the opportunity in increments much smaller than incorporated into the legislation; as it stands, the increments are simply too large to encourage right-sizing of vessels deployed by the potential operator as the market demand is built. Success for Australian shipping growth is not likely to be built on lost demand.

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Access to Market	Allowable Coastal Cargo and Operations	Characteristics		
		Crew	Flag	Owner or Operator
License	Unrestricted ability to carry coastal cargoes and passengers – must pay Australian wages, ship must not be in receipt of subsidy.	Unrestricted	Unrestricted	Unrestricted
Continuing Voyage Permit	Restricted to the carriage of cargo between specified ports over a 3-month period – subject to criteria of licensed vessel availability, adequacy and in the public interest	Unrestricted	Unrestricted	Unrestricted
Single Voyage Permit	Restricted to single voyage based on application, defined date of voyage and tonnage – subject to criteria of licensed vessel availability, adequacy and in the public interest	Unrestricted	Unrestricted	Unrestricted

Source: Department of Infrastructure and Transport (2010), p. 11.

Appendix 1: License and Permit Systems (under 2008 Ministerial Guidelines)

Access to Market	Allowable Coastal Cargo Operations	Characteristics		
		Wage Rates	Flag	Owner or Operator
Licence	Unrestricted ability to carry coastal cargoes and passengers – ship must not be in receipt of subsidy	unrestricted Part A (Seagoing Industry Award)	unrestricted	unrestricted
Single Voyage Permit	Restricted to single voyage based on application, defined date of voyage and tonnage – subject to criteria of licensed vessel availability, adequacy and in the public interest	Part B (Seagoing Industry Award)	unrestricted	unrestricted
Continuing Voyage Permit	Restricted to voyages under 3 month period based on application, defined dates of voyage and tonnage – subject to criteria of licensed vessel availability, adequacy and in the public interest	Part B (Seagoing Industry Award)	unrestricted	unrestricted

Source: Department of Infrastructure and Transport (2011c), Table 4, p. 34.

Appendix 2: License and Permit System Proposed in December 2010 Consultation

Access to Market	Allowable Coastal Cargo Operations	Characteristics		
		Crew / Wage rates	Flag	Owner or Operator
General Licence[(1)] – Australian registered	Unrestricted ability to carry coastal cargoes and passengers. Access to Australian taxation incentives	Australian Resident /Part A - Seagoing Industry Award	Australian	Australian
General Licence – transitional[(1)]	Foreign ships licensed under existing regime Unrestricted ability to carry coastal cargoes and passengers Five-year transition No access to Australian taxation incentives	Australian Resident/(s457 visa) Part A - Seagoing Industry Award	Foreign	Australian or Foreign
Temporary Licence[(1)]	Time, trade and/or voyage limited	Part B - Seagoing Industry Award	Australian (AISR[(2)]) or foreign	Australian (AISR) or foreign
Emergency Licence[(1)]	Limited to emergency situations	Part B - Seagoing Industry Award	Unrestrict-ed	Unrestrict-ed

Notes: 1. Subject to meeting safety, marine environment protection, security, etc standards

2. On AISR vessels, at least two senior officers, preferably the master and chief engineer, should be Australian residents.

Source: DIT (2011c), Table 5, pp. 34-35.

Appendix 3: License and Permit System Proposed in 2012 Consultation Closing 5 March 2012