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**DEL AGUILA Fiorella**

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**From:** Sutton Michael  
**Sent:** Tuesday, 9 February 2016 12:44 PM  
**To:** BRYANT Katherine  
**Cc:** DRINKELL James  
**Subject:** QB16-000027 [SEC=UNCLASSIFIED]  
**Attachments:** QB16-000027.docx

Katherine – james spoke to me – here is the version that is in pdms as it comes through to me

michael

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### 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 and will soon drop to 6.
  - 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

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- 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 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.

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- 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.
- In addition, no third party responses were received from interested parties which include maritime unions, regarding the temporary licence application.
- 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.
- The maritime unions appear to be of the view that if an operator holds a General Licence it should be forced to use it to carry cargo or passengers regardless of the wishes of the shipping company or the commerciality for the shipping company or the shipper.
- That is simply not tenable; it is not the law and if it were to be enforced it would guarantee an even quicker decline in the number of licenced ships than we are seeing now.
- 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.

### *[If asked] about the ship Noah Satu*

- I understand that the Australian Maritime Safety Authority (AMSA) announced on 7 February 2016 that the general cargo ship *Noah Satu* would be banned from Australian ports for twelve months following repeated non-compliance with Australian maritime regulations.
- This follows an earlier three month ban in September 2015.
- The *Noah Satu* was engaging in international trading and my Department has advised that it has no record of the vessel ever undertaking a coastal voyage under a Temporary Licence.
- This just shows, if you do the wrong thing, AMSA has the power to act and will act.

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### 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 Ship Management (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. This application was not challenged by any General Licence holders (Australian flagged vessels). In addition no third party responses were received from interested parties regarding this licence application, including maritime unions. 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.

#### Crew Qualifications and Safe Manning Certificates for MV Portland

Following an announcement that the MV Portland was to be sailed to Singapore to be sold, ASP applied to AMSA to amend MV Portland's Minimum Safe Manning Document to change the crew requirement from Integrated Ratings (which is an Australian-specific qualification) with Deck and Engine Ratings (which is the international qualification) for its voyage to Singapore.

The application complied with the Navigation Act 2012, marine orders and international obligations. Where the criteria set out in the marine orders are met, there is no basis for AMSA to decline the application.

MV Portland's Minimum Safe Manning Document also maintained safe crewing requirements. The process followed by AMSA to issue of the safe manning determination was consistent with the processes in place for any Regulated Australian Vessel.

ASP also applied to AMSA to issue certificates of recognition to seven foreign seafarers to fill the Deck and Engine Ratings positions on board. The application complied with the relevant Australian and International regulations and the certificates of recognition were issued by AMSA. In accordance with standard procedures, AMSA checked the validity of the foreign seafarers' qualifications and AMSA has no reason to believe their qualifications are fraudulent. The suggestion that the foreign crew had inferior or fraudulent qualifications has not been substantiated. The Navigation Act 2012 provides penalties for provision of fraudulent information

[The Department was not aware of the amendments to the safe manning certificates or of the plans to evict the remaining MUA members until after the evictions took place.](#)

#### Questions from Opposition Senators at Senate Estimates 8 February 2016

Questions focused on whether the Delegate, in considering the issue of a temporary licence for Alcoa, had considered the element of the objective of the Coastal Trading Act relating to maximising the use of Australian licenced vessels to carry coastal cargo. No notices in response from general licence holders or comments from third parties were received in response to the application, and there are no provisions in the Act that can require a general licence holder to carry coastal cargo or passengers where it is not commercial to do so. Alcoa had not advised the Department of its plans in relation to the MV Portland when it lodged the application.

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### 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.

### Noah Satu

The Noah Satu has been detained by AMSA five times since August 2013 for deficiencies related to its equipment, its operations, its safety management system and non-compliance with the Maritime Labour Convention. The safety management system detention resulted from repeated failings related to navigation safety, compliance with pollution prevention requirements and fire safety.

In September 2015, an AMSA inspection identified deficiencies that included incorrect navigational charts; expired or unmaintained safety equipment; failing to undertake enclosed space entry drills; unapproved machinery configurations; records of hours of work and rest; inadequate food; inappropriate passage planning; recording of oil and garbage management; and repeated failure to comply with mandatory reporting requirements while transiting through the Great Barrier Reef area. The shipboard safety management system was found to be inadequate to manage compliance with these mandatory rules and to ensure the ship was capable of responding to emergency situations.

The Noah Satu returned to Australian waters on 26 January 2016 and was subject to a port State control inspection in Port Alma, Queensland. The vessel was again detained due to major failings in the vessel's safety management system and adherence to labour conditions.

The Noah Satu's ban from using Australian ports will remain in force for twelve months until 2 February 2017.

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