Submission by

Freight on Rail Group

To

Senate Enquiry into the Shipping Legislation Amendment Bill 2015 [Provisions].

August 2015

This document has been prepared by the Freight on Rail Group (the Group). The Group is a rail freight focussed industry group established to engage with Government and key stakeholders on major public policy issues. It consists of the seven major rail freight businesses in Australia:

Aurizon
Aurizon has rail and road-based freight and infrastructure operations across Australia. Aurizon operates above-rail freight services from Cairns through to Perth, and manages the Central Queensland Coal Network made up of approximately 2,670km of heavy haul rail infrastructure.

Australian Rail Track Corporation (ARTC)
ARTC has responsibility for the management of over 8,500 route kilometres of standard gauge interstate track across Australia. ARTC also manages the Hunter Valley coal rail network, and other regional rail links.

Brookfield Rail
Brookfield Rail manages and operates a 5,500 kilometre open access, multi-user rail freight network extending throughout the southern half of Western Australia, providing access for intermodal, iron ore, grain, alumina and various other bulk commodities.

Genesee & Wyoming
G&W is a global vertically integrated rail freight company with a large Australian presence in SA, NT, Victoria and NSW. G&W owns nearly 5,000 kilometres of track in SA and NT, including the 2,200-km Tarcoola-to-Darwin railway.

Pacific National
Pacific National is one of the largest providers of rail freight services in Australia, providing intermodal, coal and bulk rail haulage services throughout Australia.

Qube
Qube is Australia's largest integrated provider of import and export logistics services. It offers a broad range of logistics services with a national footprint and a primary focus on markets involved in international trade in both the bulk and container markets.

SCT Logistics
SCT is a national, multi-modal transport and logistics company. It operates its own intermodal rail services from the eastern States to Perth, while also providing bulk rail haulage services. It has facilities in Brisbane, Sydney, Parkes, Melbourne, Adelaide and Perth.

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Executive Summary

This submission outlines the position of the Freight on Rail Group (the Group) in relation to the Senate Rural and Regional Affairs and Transport Legislation Committee's Enquiry into the *Shipping Legislation Amendment Bill 2015 [Provisions]* (the Bill).

The proposed changes to the regulation of coastal shipping contained in the Bill are important to rail freight businesses. On a number of major domestic freight routes in Australia, there is direct competition between rail freight and coastal shipping to carry both containerised freight (also known as intermodal freight) and bulk freight.

The Group has two related concerns with the Bill.

First, the potential impacts that the Bill might have on land freight transport have not been properly considered due to a significant gap in the Regulatory Impact Statement (RIS) prepared to inform the Government and stakeholders of the expected impacts of the Bill.

Although a preliminary impact assessment of the likely economic impacts of the proposed coastal shipping reforms was prepared to inform RIS, the assessment did not model the impact of any potential transfer of freight from the road and rail industries to shipping[1]. The RIS states that these potential impacts were not modelled as it was "assumed the potential for transfer from land to maritime transport" would be low "because many shippers could already access these lower cost services through the existing system"[2].

However, despite this assumption and the reason for it, the RIS further states that the significant economic benefits that are outlined in the RIS "are anticipated to increase if cargoes are able to be transferred to a lower cost transport system"[3]. It gives the examples of freight transfers involving "long distance container movements, container repositioning or other low urgency freight"[4].

These statements and the examples cited in relation to containers, i.e. intermodal freight, would indicate that there is the potential for a significant transfer of freight from land based transport to shipping under the proposed regulatory changes, which would inevitably damage land freight transport businesses and lead to job losses, including in regional areas and in Western Australia.

As a result, we believe the Government's decision to introduce the Bill was not properly informed as to the potential negative consequences for the rail freight industry.

Our second area of concern is that some of the proposed regulatory changes in the Bill would have the effect of providing an unreasonable competitive advantage to foreign ships that might choose to compete in the domestic freight market.

An unreasonable competitive advantage would particularly arise because the Bill proposes allowing foreign ships competing in the domestic freight market against land freight transport operators for up to six months of the year to be exempt from Australia's workplace relations regulations.

This exemption would allow foreign ships to incur substantially lower wages, conditions and associated workplace relations costs compared to rail, road and Australian coastal shipping businesses.

[1] Department of Infrastructure and Regional Development, Regulation Impact Statement: Coastal Shipping Reform, page 13.
[2] Ibid, page 13.
[3] Ibid, page 13.
[4] Ibid, page 13.

As a consequence, we anticipate there would be negative impacts on land based transport modes and Australian coastal shipping businesses in the form of a likely transfer of freight business to this competing mode, with consequential reductions in revenue for rail freight businesses, resulting in lower investment and job losses.

The potential for the proposed changes to have a substantial negative effect are due to the fact that freight rates charged by shipping companies are already lower than those of rail and road freight on long-haul routes, e.g. the routes between the east coast and Perth.

Our group estimates that in just the last 12 months, freight rates charged by some coastal shipping operators have been reduced by 35 per cent. As a consequence, coastal shipping is already beginning to increase its share of the freight market, without any changes to coastal shipping regulation.

Therefore the proposed changes would simply allow foreign ships to lower freight charges even further.

Although we strongly support an efficient and highly competitive freight transport system, it would be unreasonable to allow foreign ships exemptions to Australian regulations that land based transport modes, and Australian shipping businesses, are required to meet.

The proposed exemptions to Australia's regulatory requirements for foreign ships operating in the domestic freight market for up to six months would be expected to:

- Cause a reduction in the market share of rail freight for long haul rail freight movements, particularly those between the east coast and Perth, adversely impacting the freight rail industry (which is similar to shipping in that it is cost competitive over long distances).
- Encourage dumping practices, i.e. transport services provided at a price lower than they are provided in the home nation of the foreign ship, and greater import substitution as barriers to entry in the domestic freight market are reduced, damaging freight pricing and causing a downturn in volume growth as demand reduces.
- Reduce the capacity of the rail freight industry to invest in rail freight infrastructure.
- Increase rail freight pricing in the longer-term to allow the industry to cover fixed operational costs as a result of reduced or unreliable demand caused by modal shift to shipping.

Job losses in the rail freight industry would be the unavoidable result of these impacts.

We are not suggesting that foreign shipping businesses should be restricted from competing in the domestic freight market, recognising that an efficient freight transport system across all transport modes is needed to underpin the competitiveness of Australia's industries and contributes to productivity and economic growth.

However, the domestic freight market should be regulated on the basis of competitive neutrality between the transport modes. As it is currently drafted, the Bill does not accord with this principle.

Furthermore, it is important that Government policy decisions are assessed as to their impact across all freight transport modes, and not simply one sector. Given the significance of the potential impact to the rail freight industry, the fact that the RIS does not properly inform the Government and industry as to the full extent of the potential impacts of the Bill is cause for it to be reconsidered.

We therefore submit that the Bill should be withdrawn to allow the Government to further consider the matters raised in this submission, and to make appropriate amendments to the legislation.

Introduction

This paper highlights the likely impacts to freight rail as a result of the introduction of policy changes to the regulation of Australia's coastal shipping industry.

It represents the views of the Freight on Rail Group (the Group)*, which was established to develop policy positions that contribute to an efficient freight transport system, recognising the importance of an innovative and highly competitive rail freight industry to the national economy. The Group is represented by seven of Australia's major rail freight operating companies and network rail organisations.

The members include Aurizon, Australian Rail Track Corporation (ARTC), Brookfield Rail (Australia), Genesee & Wyoming, Pacific National, Qube Holdings and SCT Logistics.

The Group appreciates the opportunity to provide a submission to the Senate Enquiry into the *Shipping Legislation Amendment Bill 2015* (the Bill).

The objective of the Freight on Rail Group (the Group) is to contribute to a policy and regulatory environment that enables the development and operation of an efficient and commercially sustainable freight transport sector. The efficiency of the freight transport network is critical to the competitiveness of Australia's industries in domestic and international markets and, therefore, contributes to the ongoing development and growth of the Australian economy.

Consistent with this objective, it is our position that both domestic and international freight businesses should have the opportunity to compete in Australia's domestic freight market, provided that this is on the basis of competitive neutrality between transport modes, and between all businesses whether domestic or foreign. The concerns in this submission relate only to the provision of domestic freight services, not to international freight transport.

Australia's international competitiveness is highly dependent on the continuation of a sustainable freight transport sector, contributing to national productivity and efficiency.

The sustainability of all transport modes, including freight rail, is important to enabling the integration and productivity of Australia's domestic supply chains, and the long-term competitiveness and economic growth of the nation. It is therefore important that Government policy decisions assess the impact across all freight transport modes, and not simply one sector.

The rail freight industry recognises the importance of having a viable shipping industry and agrees that the current system is not optimal. However, the Government's proposed reform would make it even more difficult to continue a sustainable freight rail industry, which already has high fixed costs when compared to the road freight industry. It is on this basis that the Group is recommending that the Government should withdraw the current Bill and make appropriate amendments.

For reference a detailed background of the Coastal Shipping Reform is at <u>Appendix A</u>.

The Proposed Reforms

The proposed reforms would see the introduction of a new single permit framework, which would replace all currently available licenses and provide unrestricted access to all vessels, Australian and foreign, to carry goods on domestic voyages for one year. As part of the changes, foreign-flagged ships would be able to avoid the need to apply Australian wages and conditions to their crew, so long as they are trading in the nation's waters for 183 days (roughly six months) or less. See table at <u>Appendix B</u> for a snapshot of the proposed changes as part of the reform.

* Note the views expressed herein may not be representative of the entire Group's membership base.

Regulatory Impact Statement: Land freight impacts not considered

The Group is concerned that the potential impacts the Bill might have on land freight transport have not been properly considered due to a significant gap in the Regulatory Impact Statement (RIS).

Although a preliminary impact assessment of the likely economic impacts of the proposed coastal shipping reforms was prepared to inform RIS, the RIS states that the assessment did not model the impact of any potential transfer of freight from the road and rail industries to shipping[5]. The RIS states that these potential impacts were not modelled as it was "assumed the potential for transfer from land to maritime transport" would be low "because many shippers could already access these lower cost services through the existing system"[6].

Despite this assumption and the reason for it, the RIS further states that the significant economic benefits that are outlined in the RIS "are anticipated to increase if cargoes are able to be transferred to a lower cost transport system"[7]. It gives the examples of freight transfers involving "long distance container movements, container repositioning or other low urgency freight"[8].

These statements and examples appear to acknowledge that there is the potential for a possibly significant transfer of freight from land based transport to shipping under the proposed changes.

The references to long distance container movements in the examples cited relate to intermodal freight, where rail and road freight between them currently have a large share of the domestic market, including the transport of containers over long distances.

Any transfer of freight from land based transport to shipping would have a negative impact on land based transport businesses. Furthermore, it is well recognised that rail freight is more efficient and cost effective when carrying containers and bulk freight over long distances. Therefore, the Bill would erode this critical area of rail freight operations within the Australian domestic freight market.

Because the preliminary impact assessment prepared for the RIS did not model, and therefore the RIS was not informed by, any potential impacts on road and rail freight, we submit that there is an important gap in the evidence base for understanding the impacts of the Bill on the overall domestic freight market.

We believe the RIS should have been informed by a rigorous assessment of any potential costs or benefits associated with impacts on the road and rail freight industries, and made the findings available.

We further submit that because of these absence of these impacts, the RIS does not properly inform the Government and industry as to the full extent of the potential impacts of the Bill.

Competition between road, rail and sea freight

Road, rail and shipping compete to carry domestic freight on a number of long-hail corridors including the east-west corridor, i.e. freight services between the capital cities of the eastern states, Adelaide and Perth, and the north-south corridor connecting Victoria, New South Wales and Queensland. Any future reduction in volumes along key rail routes, such as the Adelaide to Darwin line, will place these markets at risk and hamper the viability of their operation.

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[5] Department of Infrastructure and Regional Development, Regulation Impact Statement: Coastal Shipping Reform, page 13.

[6] Ibid.

[7] Ibid.

[8] Ibid.

Because of the advantages of using rail freight on long-haul routes, rail freight has a relatively high market share on the east-west corridor. Almost all of the large volume, medium to long-haul freight corridors for domestic freight involve competition between road, rail and coastal shipping for the provision of freight services.

We recognise that there are some significant freight tasks where there are no viable land based alternatives due to sea transport being the only option, e.g. freight services to Tasmania, or due to poor or non-existent road and/or rail infrastructure. Our submission is concerned primarily with where land freight transport competes with shipping.

Rail freight is particularly suited to high volume, bulk commodities. Generally these are provided over long and short distances. Accordingly, rail has traditionally handled the freight market for agricultural and mining commodities. Rail also plays a specialised role in servicing ports and other dedicated facilities where operators favour rail over road.

Within the provision of intermodal (non-bulk) freight services, rail is generally more suited to longer haul distances in order to offset the additional handling to facilitate inter-modal service. It is within this segment that road freight has successfully captured market share from rail through the introduction of larger, higher productivity vehicles.[9] As such freight rail has over many decades faced strong competition from road freight operators.

Furthermore, the rail freight industry incurs significant capital and operating costs for equipment (including rolling stock and terminals) and costs related to third party access to the rail network, costs related to hiring, training and retaining a skilled and specialised workforce. The impact of these costs is compounded by the cost of meeting different regulatory requirements across jurisdictions and different third party track access conditions, including route accreditation and audits.[10]

With the substantial investments and ongoing costs associated with rail freight provision, the industry generates efficiencies when it is able to build scale in its operations.

The rail freight industry at a glance[11]:

- Added $13.2 billion to the Australian economy and made 0.7 per cent of the total national economy in 2013.
- Employs almost 15,000 people across Australia, with a large portion in regional areas, paying annually over $1.2 billion in wages.
- Carried over 1 billion tonnes of freight in 2012–13 on Australian railways.
- Has an operational heavy railway network of around 33,000 kilometres.
- Is a cost-effective, efficient and environmentally friendly transportation method relative to road freight. It produces up to 19 times less emissions than road freight and is up to 23 times more energy efficient.
- The largest proportion of rail’s task is bulk freight carried over longer distances, including almost all coal and iron ore, and a significant role in transporting grains, rice, cotton and sugar for processing and/or export.

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[9] Access Economics 2007, *The cost of The Costs of Road and Rail Freight - Neutrality and efficiency in the farm-to-port logistics chain*, Rural Industries Research and Development Corporation.

[10] Transport Research Support Program, 2015, ‘Railway Cost Structures’, available on 18 August from: http://www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/railways_toolkit/ch2_1_2.html

[11] Australasian Railway Association (ARA) 2010, *Towards 2050: National Freight Strategy and the role of Rail*, ARA; Bureau of Infrastructure, Transport and Regional Economics (BITRE) 2014, *Trainline 2*, Australian Government, pages 3-8; Gargano, S. 2015, *Rail Freight Transport in Australia*, IBISWorld Industry Report I4710, page 11.

Coastal Shipping: Recent Developments

In 2012, it was estimated that coastal shipping accounted for around 17 per cent of the domestic freight task, in comparison to freight rail, which was estimated at just over 48 per cent.[12] See map at Appendix C for the most common freight routes by mode and volume.

Since then, industry estimates indicate that there are coastal shipping freight rates offered by shippers on the east-west corridor that have been reduced by over 35 per cent in the past 12 months. As a result of reduced pricing, amongst other factors, sea freight has attracted a growing market share of domestic freight, which has led to a shift from rail to sea freight. Based on industry estimates, the east-west corridor has seen a drop by 3 per cent in volumes in the past 12 months.

Furthermore, there are indications that coastal shipping is expected to increase its share of the domestic freight market, with forecasts showing that coastal shipping will experience renewed market share growth.[13]

Potential impacts on Rail Freight

The Group expects that if the Bill were passed by the Parliament in its current form it would provide an unreasonable competitive advantage to foreign ships that operate in the domestic freight market for up to six months each year.

We submit that efficient freight transport services require an integrated network involving all transport modes. It is also important that all freight transport is regulated on the basis of competitive neutrality.

Transport policies that do not aim to achieve competitive neutrality can result in distortions in existing markets.

It is important that the proposed reforms be assessed on their potential impact to the whole freight transport sector – rather than an individual component of it. Any proposed reforms should aim to achieve a more integrated and competitively neutral transport network.[14] We submit that such reforms would promote efficient and sustainable economic outcomes for the benefit of all freight customers and the Australian economy.[15]

We are concerned that the proposed changes to coastal shipping will not require foreign ships (when operating in the domestic freight market for up to six months each year) to comply with Australia's workplace relations regulations, including the paying of Australian wage rates and providing associated conditions.

These proposed arrangements would give foreign ships a significant additional cost advantage in the form of regulatory exemptions that would not be available to the road and rail freight industries. We submit that this would amount to an unreasonable competitive advantage for foreign ships.

We note that the Bill proposes that foreign ships which participate in the domestic freight market for more than six months a year would not have an exemption from workplace relations regulations.

However, we submit that the six month exemption period is a considerable time during which foreign ships could compete against land transport operators each year. Furthermore, this could be expected to result in an incentive for foreign ship operators to make arrangements

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[12] BITRE 2014 *Freightline 1 – Australian freight transport overview*, Commonwealth of Australia, p.5.

[13] Chartered Accountants Australia and New Zealand 2015, *Trade Winds of Change*, Acuity, Issue July 2015.

[14] Productivity Commission Inquiry Report, 2005, *Review of National Competition Policy Reforms*, Commonwealth of Australia

[15] National Transport Commission (NTC) 2009, *Freight Rail Productivity Review: Final Position Paper*, NTC, Melbourne; Access Economics 2007, *The cost of The Costs of Road and Rail Freight - Neutrality and efficiency in the farm-to-port logistics chain*, Rural Industries Research and Development Corporation.

that fully utilise the exemption period by, for example, seeking to move large volumes of freight within the six month timeframe, and/or rotating ships to operate within the six month exemption period.

We also submit that there is a risk shipping companies operating foreign ships may choose to participate in the Australian domestic freight market using the regulatory exemption when there is a large supply of shipping capacity available for them to do so, and withdrawing if international demand increases in other markets. In other words, the potential impacts could fluctuate depending on demand for international shipping services. It will also be important that the potential for future fluctuations in international shipping demand, and any impacts from this on foreign ships participating in Australia's domestic freight market, are well understood.

Rail is reliant on economies of scale to remain competitive and sustainable. Any loss of the freight market on long haul rail freight corridors, such as the east-west corridor between the east coast and Western Australia, will adversely impact the sustainability of the freight rail industry and employment levels within it.

Rail freight pricing reflects fixed costs, such as track infrastructure and rolling stock. This requires a degree of stable demand when setting prices. If rail freight revenue were to reduce as a result of a reduction in volumes due to the loss of market share, this could in turn trigger a cost increase to users in the supply chain in order to cover the ongoing fixed costs.[16]

In relation to the intermodal freight market, where shipping is a competitor with rail, freight rail will be vulnerable to customers considering switching non-time sensitive goods by sea.

The proposed exemptions to Australia's regulatory requirements for foreign ships operating in the domestic freight market for up to six months would be expected to:

- Cause a reduction in the market share of rail freight for long haul rail freight movements, particularly those between the east coast and Perth, adversely impacting the freight rail industry (which is cost competitive, like shipping, over long distances).

- Encourage dumping practices, i.e. transport services provided at a price lower than they are provided in the home nation of the foreign ship, and greater import substitution as barriers to entry in the domestic freight market are reduced, damaging freight pricing and causing a downturn in volume growth as demand reduces.

- Damage the domestic land freight industry through a loss of revenue and a reduction in the capacity of the rail freight industry to invest in infrastructure.

- Increase rail freight pricing in the long-term to cover fixed operational costs as a result of reduced or unreliable demand caused by modal shift to shipping.

Job losses in the rail freight industry would be the inevitable result of these impacts, including in regional areas and particularly in Western Australia.

Given the significance of these potential effects on the rail freight industry the fact that, as outlined earlier in this submission, the RIS does not properly inform the Government and industry stakeholders as to the potential impacts on rail and road freight, is of particular concern.

We therefore submit that the Bill should be withdrawn to allow the Government to further consider the matters we have raised, and to make appropriate amendments to the legislation.

[16] Gargano, S. 2015, *Rail Freight Transport in Australia*, IBISWorld Industry Report I4710*,* pages 3-10.

Appendix A

The Coastal Shipping Reform

On 1 July 2012, the former Government passed the most extensive suite of changes to coastal trading since the Navigation Act 1912 in the form of the Coastal Trading (Revitalising Australian Shipping) Act 2012, and its associated Acts. These came on top of the Fair Work Australia Act, which mandated that Australian labour standards be applied to foreign-registered ships operating with foreign crews in the Australian coastal shipping trade.

The Coalition Government raised coastal trading reforms as part of their 2013 election commitment (led by Leader of the Nationals and Deputy Prime Minister, the Hon Warren Truss MP, Minister for Infrastructure and Regional Development).
In 2014, the Australian Government undertook a formal review of the regulation.

On 8 April 2014 an Options Paper was released addressing the approaches to regulating coastal shipping in Australia. The Australian Railway Association provided a Submission to the Options Paper highlighting the direct impacts that any policy change would have on the freight rail industry.

In February 2015, the Deputy Prime Minister held a coastal shipping policy roundtable with approximately 30 representatives from the shipping industry, including Australian and foreign-flagged shipping companies, shipping users and peak bodies. The rail freight industry was not invited to participate.

Given this, in mid-June 2015, members of the Group met with officials from the Commonwealth Department of Infrastructure and Regional Development to raise its concerns over the reform, and discussed the likely impacts to rail. Members also made representations direct to Government re-enforcing these concerns.

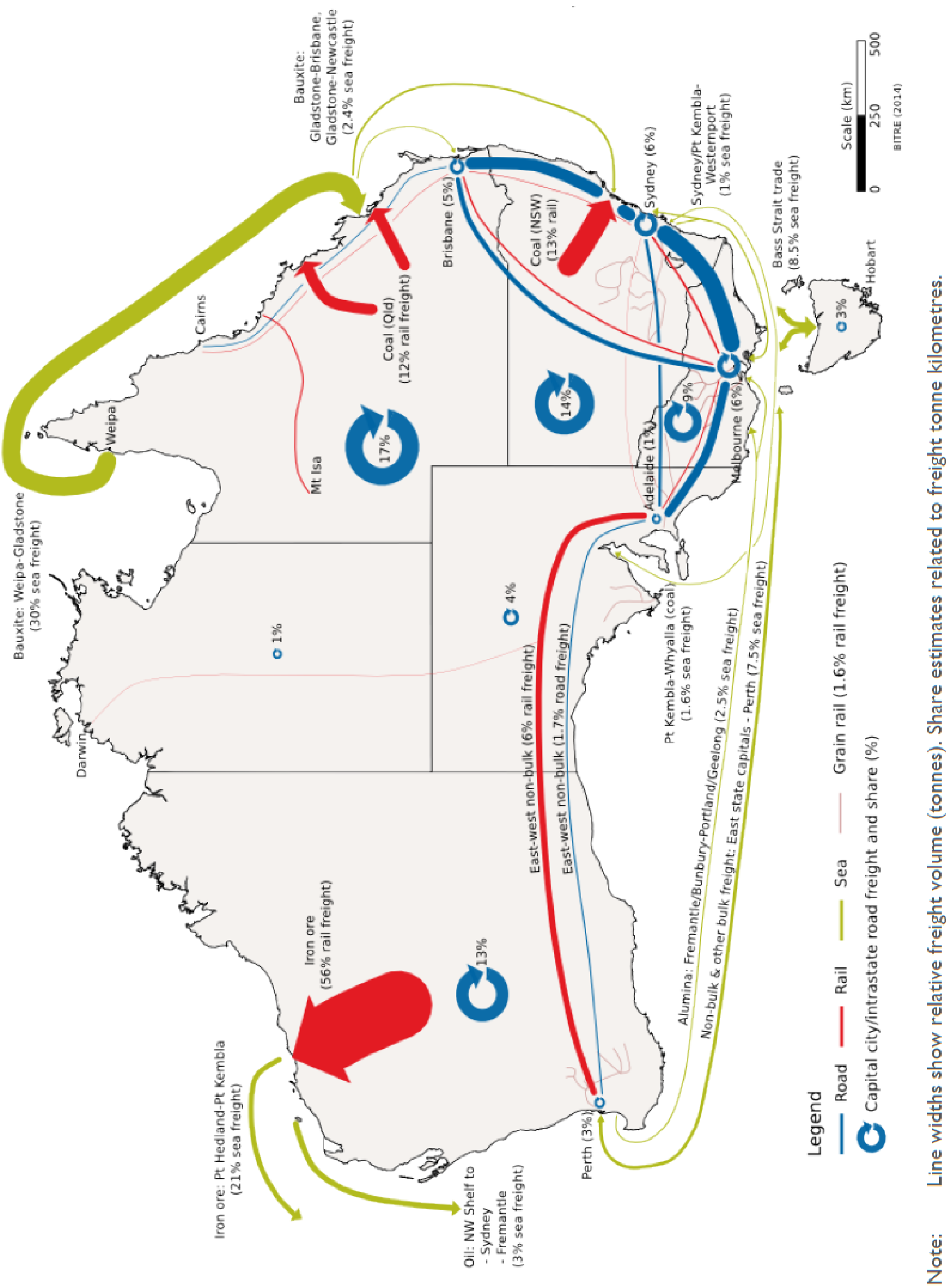
On 25 June 2015, the Government introduced its legislation into the Parliament, which included a Regulatory Impact Statement (RIS). The RIS assumes the potential for transfer from land to maritime transport would be nil to low, however, no modelling to support this statement has been undertaken despite having raised this as an issue.

Appendix B

Coastal Shipping Reforms: Changes at a glance

Policy	What's Out	What's In
Permit	3 tiered Licence system	Single Permit system
Access	Unrestricted access for Australian vessels with General Licence only Temporary Licence- Restricted access, negotiation with general Licence holders required	Unrestricted access to all vessels -Australian and Foreign, no negotiation required.
Duration	5 years General Licence- Australian vessels 12 months Temporary Licence- Foreign vessels	All vessels 12 Months.
Voyages	Temporary Licence requires at least 5 voyages to be nominated at time of application. Permit limited to those nominated voyages.	Unrestricted No requirement to nominate voyages at time of application
Crewing/Wages Requirements	General Licence Australian crew, Australian wage conditions Temporary Licence Minimum wages set out in Part B of Seagoing Industry Award 2010	Foreign Vessels If coastal trading > 183DAYS 2 Australian Crew The rest to be paid minimum wages set out in Part B of Seagoing Industry Award 2010 If coastal trading < 183DAYS Existing International on board arrangements will apply.
Reporting	Temporary Licence requires voyage reports to be issued after each voyage	2 standard reports per permit year

Major freight flows in Australia (based on freight routes in 2012)



Source: BITRE, 2012 FreightLine.


RAILWAY
CROSSING
STOP
LOOK FOR TRAINS